Appeal No. VA10/3/028

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Tony Ward T/A Reds **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 1277471, Licensed Shop at Lot No. 79ab, West Street, Fair Gate, Drogheda Borough, County Louth.

B E F O R E

Maurice Ahern - Valuer	**Deputy Chairperson**
Fiona Gallagher - BL	**Member**
Michael Connellan Jr - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 17th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €469.80 on the above-described relevant property.

The grounds of appeal as set out in the Notice of Appeal, is "The valuation is excessive and inequitable."

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 13th day of October 2010. At the appeal the appellant was represented by Mr. Terry Devlin, B.Sc., ASCS, MRICS, MIAVI of O'Donnell Property Consultants. The respondent was represented by Mr. Christopher Hicks, a Valuer in the Valuation Office.

Location

The subject property is located at 79A West Street, close to the junction with Patrickswell Lane and Dominic Street in the town of Drogheda, Co. Louth.

The Property Concerned

The subject property is a well established 3-storey licensed premises. The ground floor comprises a public bar, snug bar, lounge, kitchen area, wc and stores. The first floor comprises a further bar area with a smoking area to the rear and kitchen facilities. This area had previously been used as a restaurant, but this is no longer operating. The second floor comprises offices and staff areas and is in poor condition.

Rating History

The property was first valued in September 1996 with a Rateable Valuation (RV) of €203.20. It was subsequently revised in 2001 to take account of a new extension and the RV increased to €469.80. In 2009 the property was once again revised. The circumstances giving rise to the revision were that a ground floor retail unit next door to the subject property (Property No. 1277641) had been incorporated into the premises, thereby increasing the frontage onto West Street. As a result, the ground floor bar and lounge area increased by 52 sq. metres to 227 sq. metres. The first floor lounge and bar area also increased by 25 sq. metres to 252 sq. metres. Part of the roof of this area was replaced with a glass roof with openings to create a smoking area.

The Commissioner amalgamated the subject property and the adjoining property (No. 1277641), which had a RV of €38.09, and issued a Valuation Certificate on 4th December 2009 proposing a RV of €469.80 for the entire property. Representations were made to the Commissioner and the Valuation Certificate was issued unchanged on 16th December 2009. The appellant appealed against this valuation to the Commissioner. By decision of 21st July

2010 the Commissioner refused the appeal and affirmed the RV of €469.80. The appellant appealed that decision to the Tribunal.

The Issues

Quantum and valuation methodology.

The Appellant's Evidence

Mr. Terry Devlin, having taken the oath, adopted his written précis, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. Mr. Devlin stated that the subject property was located on West Street in Drogheda, which was once the main retail area of the town centre. However, he contended that this is no longer the case and that the area had deteriorated significantly over the last number of years. Mr. Devlin stated that when he surveyed the subject property on 20th October 2008 there were 17 vacant and dilapidated units in close proximity and that this situation had not altered in June 2010. He contended that the opening of various shopping centres and retail parks around Drogheda had the effect of reducing West Street to a secondary location at best. Mr. Devlin also claimed that the one-way traffic system within the town centre and the lack of on-street parking along West Street had also added to the decline of the area as a retail location.

Mr. Devlin further stated that a number of pubs in the town centre had closed in recent years or changed to restaurant use. He stated that the subject property had initially reduced its trading hours and had only been operating from 6 p.m. on Thursdays and Fridays and from 3 p.m. on Saturdays and Sundays. However, it had now ceased trading and was available to let.

In Mr. Devlin's opinion, the correct method to value a licensed premises is the turnover method. He referred to a number of decisions of the Tribunal (**VA02/2/108 - John Crowe T/A Molly Heffernan's, VA05/1/028 - Thomas Lynch, VA08/3/004 - Gerry & Theresa Meyler and VA95/5/024 - Nallob Limited T/A O'Donoghues**, where the turnover method was used. Mr. Devlin noted that in **VA08/3/004 -Gerry & Theresa Meyler v Commissioner of Valuation**, both parties agreed that the turnover method was the most appropriate method of valuation. He stated that the practice of adjusting turnover figures back to 1988 levels using the CSO Drinks Price Index had been adopted by the Commissioner of Valuation and had been accepted by the Tribunal in many recent cases, including **VA08/3/004 - Gerry & Theresa Meyler**. Mr. Devlin also referred to a public house, which was revised in 2009 in the Drogheda Borough Council area, The Thatch Pub, Donore Road (Property No. 2203990), which was valued on the turnover method. Therefore, he stated, that this showed that the turnover method was the correct method of valuation of licensed premises in Drogheda.

Mr. Devlin stated that the tone of the list for licensed premises in the Drogheda area was 9% for drink and 6% for food and that these were the figures used when the subject property was revised in 2001. Accordingly, he contended that this practice should apply to the current revision. Mr. Devlin also stated that the subject property had the highest RV of any public house in the Drogheda Borough Council area and that this should be taken into account in valuing the subject property. In support, he referred to **VA05/1/028 - Thomas Lynch**, where the Tribunal noted that there were a number of pubs in the immediate vicinity of the subject property that were valued considerably lower and stated that it was entitled to have regard to this. The Tribunal stated, *"It seems to us that some allowance should be made for the "tone" generated by the RVs of these public houses in considering the RV of the subject property."*

Mr. Devlin referred to two comparisons in support of his contention of RV. Comparison 1, The Thatch Pub, Donore Road is a modern, purpose-built pub with ample car-parking, unlike the subject property. It includes a bar, lounge, off-licence, function rooms and an ATM and is located in a commercial area close to the M1 and surrounded by local housing estates. This property was valued on the turnover method at revision in 2009 at a RV of €340. Comparison 2, The Weavers Pub, is located on West Street, 4 doors up from the subject. Mr. Devlin stated that this property was first agreed at appeal stage in 1994 using the turnover method. He stated that turnover from 1992 was used and adjusted back to 1988 using the CSO Drinks Price Index, giving a RV of €368.30. Mr. Devlin stated that this premises has been closed for the past 5 years.

Mr. Devlin stated that a hypothetical tenant, in determining the rent to pay for the subject property, would base his/her opinion on the turnover figures available, together with other factors such as location and the success of similar businesses in the general locality. He stated that the previous revision in 2001 used turnover figures for the business for the period 1st November 2000 to 31st August 2001, which figures were used to estimate a 12-month turnover. This was then adjusted to 1988 levels using the CSO Drinks Price Index. Mr. Devlin claimed that the RV assessed on the subject in 2001 was not appealed as the occupier was not professionally advised at the time.

Having regard to all of these factors, Mr. Devlin contended for a RV of €290, calculated as follows:

Average Turnover on Drink for Years 2007-2009	€670,718
Adjust to 1988 levels @ 0.4856	€325,701
(Drinks Price Index June 2008 to Nov 1988)	
Yield 9%	**€29,313**
Average Turnover on Food for Years 2007-2009	€592,291
Adjust to 1988 levels @ 0.4856	€287,616
Yield 6%	**€17,257**
Total NAV	**€46,570**
RV @ 0.63%	€293.39
Say	€290.00

Cross-Examination

Under cross-examination, Mr. Devlin agreed that the pub business, along with all other businesses, had declined significantly in recent years and that there were a number of other pubs currently for rent in Drogheda. He denied that he had ignored the comparisons, but rather asserted that he had valued the subject property in accordance with other public houses on the list and that the tone of the list in Drogheda for pubs involved valuing them on a turnover basis. Mr. Devlin stated that in order to ascertain turnover in 1988 all he could do was to adjust the turnover figures he now had back to 1988 levels using the price of drink. He argued that this approach had been accepted by both the Commissioner of Valuation and the Valuation Tribunal for the past number of years.

Mr. Devlin agreed that the request for revision of the subject property had come from the appellant, as he was not happy with the level of rates he was paying and that he had asked O'Donnell Property Consultants to review the valuation for him. Mr. Devlin acknowledged that in submitting the revision request his intention was to have the subject property looked at in terms of the rates levied thereon. He stated that the revision request form referred to the addition of a smoking room, which had been added in 2006/2007. It was put to Mr. Devlin that the revision officer was of the view that this was not a material change of circumstances. Mr. Devlin did not have details of the cost of this alteration.

Mr. Hicks put it to Mr. Devlin that the reason why this case had proceeded to the Tribunal was that there had been an amalgamation of the premises next door and the Commissioner took the view that this structural change merited a revision. It was further put to Mr. Devlin that a material change of circumstances had to lead to a change in the value of the property. Mr. Devlin stated that this adjoining property had been purchased by the appellant around 2002/2003 but he did not have details of the purchase price or the cost of amalgamating the properties, as he stated that he was looking at the subject property as it was in 2009, rather than investigating the background to the alterations.

The Respondent's Evidence

Mr. Christopher Hicks, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. Mr. Hicks stated by way of background that two principal sections of the Valuation Act, 2001 applied when valuing properties, Sections 48 and 49. He stated that Section 48 related to the revaluation of properties and that Section 49 related to the revision of individual properties. The 2001 Act was different to the 1986 Act, according to Mr. Hicks, in that under the 1986 Act consideration of comparisons was not obligatory and rental value took precedence and so valuations could vary quite considerably. However, Mr. Hicks stated that the 2001 Act did not make reference in Section 49 to net annual value and so if two pubs were agreed to be of the same value, they would have the same rateable valuation and thus there would be no need to do a calculation as such. He stated that if there were no comparisons, then a process of backdating to 1988 could be carried out. However, Mr. Hicks stated that there was no dispute in this case that there were comparisons.

Mr. Hicks outlined the valuation history of the subject property. The property was first revised in 1996 at a RV of €203.20. He stated that no accounts were provided and that the valuer had estimated the turnover at €600,000 per annum, including food. Mr. Hicks stated that the valuer had also analysed the property on a square metre basis, only taking account of trading areas and had also backdated the turnover to 1988 levels. He stated that two comparisons were relied on by the valuer at this revision, The Weavers and Bensons, which are both now closed. The subject property was revised again in 2001 to include a new extension and the RV was increased to €469.80. Mr. Hicks stated that when analysing the valuation on a turnover basis, 7% was allowed for food and drink together. Mr. Hicks himself also carried out an analysis of the property on a square metre basis.

Mr. Hicks stated that the 2001 valuation was in line with the tone of the list and was required to be deemed correct until revised. He made reference to the square metre basis of valuation and claimed that this had been a factor in the calculation of RV in Drogheda in the past and still was to a certain extent. Mr. Hicks also referred to the reduced opening hours of the subject property, but stated that most licensed premises only opened in the evenings or for less than 7 days per week and that some of the comparisons also operated on reduced opening hours.

Mr. Hicks stated that a revision request was received from the appellant in 2009 and that a number of changes had occurred to the property since the previous revision in 2001: i) a ground floor retail unit next door (which had a RV of €38.09) was incorporated into the subject, with the effect of doubling the frontage onto West Street; ii) the ground floor bar and lounge area was increased from 52 sq. metres to 227 sq. metres; iii) the first floor restaurant and lounge area was increased by 25 sq. metres to 252 sq. metres; and iv) part of the first floor area was converted into a smoking area, by replacing the tiled roof with a glass roof with openings. Mr. Hicks stated that in order to create a material change of circumstances, a request was presented to the Commissioner to include the shop next door and that this amalgamation of the two properties was seen by the revision officer as a material change of circumstances and the property was revised with a valuation of €469.80, effectively reducing the valuation by €38.09.

Mr. Hicks acknowledged that the turnover approach was the most common method of valuing public houses since the introduction of the Valuation Act, 1986 and involved taking a percentage of the estimated or actual 1988 turnover (usually somewhere between 7% and 12%). He stated that it was always assumed that the turnover method incorporated Section 49 of the Valuation Act, 2001, insofar as it compared one pub to another by calculating turnover back to 1988 levels. However, Mr. Hicks stated that it was essential to make a reasonable estimate of turnover in 1988 and that Mr. Devlin did not take account of the fall-off in turnover in the pub trade in recent years. He stated that the turnover method assumed that the physical quantity of goods sold remained more or less the same for any given floor area, but argued that the significant fall-off in pub turnover generally in recent years should be allowed for in calculating 1988 turnover. Therefore, he asserted that it was not sufficient anymore to look at the price of drink and backdate it to 1988 levels to estimate turnover in 1988, as the quantity of drink sold since 2001 had fallen considerably but the price of drink had remained more or less constant.

Mr. Hicks referred to the three comparisons cited by the appellant in his appeal application to the Commissioner. The first, The Weavers, Mr. Hicks stated was a similar property and had to be considered. It was last valued in 1994 and has remained unchanged since. It was now closed. The second, Drumcorp Ltd. (Squires), Mr. Hicks stated, was valued on a square metre basis. This property was also closed. The third, the former Gwent Arms Pub, was now a bookmakers.

Mr. Hicks also referred to the appellant's Comparison 1, The Thatch Pub in Donore Road, which was revised in 2009 at a RV of €340. He stated that the turnover of the subject was greater than The Thatch and that accordingly the subject should be valued at a higher rate than The Thatch. Mr. Hicks stated that the valuer of The Thatch Pub was of the view that backdating the turnover figures from 2008 and 2009 to 1988 using the Drinks Price Index did not represent the turnover in 1988, due to the decline in the pub trade. To compensate for that decline Mr. Hicks stated that the valuer had added back a percentage. He stated that the type of approach adopted there was what was now required.

Mr. Hicks contended for a RV of €469.80. He stated that if the subject was valued based on the difference in turnover as against The Thatch, this would lead to a RV of €540 and, further, that if the property was valued on a square metre basis based on the levels Mr. Hicks derived from analysing the valuation in 2001, this would result in a RV of €570. Mr. Hicks stated that due to the business in pubs being so poor, the Commissioner had made some allowance and thus left the valuation unchanged, whilst deleting the valuation on the adjoining premises. Accordingly, in the circumstances, Mr. Hicks stated that this was fair and reasonable.

Cross-Examination

Under cross-examination, Mr. Hicks stated that he believed the valuation of the subject property in 1996 was arrived at by a combination of the square metre method and turnover methods. He accepted that the comparisons referred to at that revision, The Weavers and Bensons, were agreed on a turnover basis. Mr. Hicks stated that the subject was also valued on a combination of the square metre and turnover bases in 2001. He stated that the valuer had carried out an analysis based on both methods and had picked an intermediate RV figure.

Mr. Hicks stated that if one improved a property by extending it, it was legitimate for a competitor to say that the property had improved relative to other premises, although it may not have increased its turnover, as turnover had decreased across the board. It was put to Mr. Hicks that the increased area of the subject reduced economies of scale by operating over two floors rather than one. Mr. Hicks replied that this was entirely a decision of the business and argued that in some cases it may be more compact to extend up a floor rather than extending on ground floor level.

It was put to Mr. Hicks that if one analysed public houses in Drogheda on a square metre basis that the subject had the highest valuation of any pub in that area. The subject was valued at a rate of €258 per sq. metre whereas The Weavers, four doors down from the subject, was valued at a rate of €136 per sq. metre. Mr. Hicks replied that this was the way the properties had sat on the list for the past 10 years. Mr. Hicks was asked if he had valued the subject in line with other pubs in Drogheda, how did it now have a much higher valuation than those other pubs. He was also asked whether he had considered The Weavers, but stated that he did not go into it as this property had closed. In response to a question from the Tribunal, Mr. Hicks stated that The Thatch was the most comparable property to the subject in terms of turnover, but in terms of location and type of premises The Weavers was generally very comparable.

Mr. Hicks was asked why he had moved away from the accepted method of backdating turnover to 1988 using the CSO Drinks Price Index. He replied that under the legislation he had to have regard to the comparisons and that if one took the 2009 and 2010 turnover and backdated it using this method one did not arrive at a realistic estimate of 1988 turnover and that this was not fair. Mr. Hicks agreed that The Weavers had been valued on that basis, but asserted that at the time it was valued nobody had contested that this was a fair and reasonable method of valuation. Mr. Hicks was asked what his grounds were for changing the previously accepted practice and the cut-off date from which he believed the practice should be changed. He responded that there were many statistics showing that turnover in pubs had decreased and that if one looked at the figures for the subject property, the turnover in 2001 was over €1.6 million, whereas in 2009 this had dropped to approximately €1 million. Mr. Hicks stated that he would have to look carefully at any pub valued on a turnover basis after 2001. He claimed that sometime in the last 10 years the method of assessing a realistic 1988 turnover by backdating it using the Drinks Price Index ceased to exist and could not be used anymore. It was put to Mr. Hicks, however, that there were several Valuation Tribunal decisions between 1995 and 2008 which adopted this method, the most recent of which used turnover figures from 2006.

Mr. Hicks explained that the revision officer of The Thatch had backdated turnover to 1988 levels using the Drinks Price Index, but was of the view that this did not represent a correct estimate of turnover in 1988 and accordingly had added back 67% to compensate for the decline in volume of sales. Mr. Hicks admitted that he was not sure where the valuer had got this figure, but that he had probably done research on the issue. He stated that he felt the adjustment was high and that in his view a 40% to 50% adjustment would be appropriate. Mr. Devlin put it to Mr. Hicks that he had never come across this approach by any party in his years as a professional valuer.

Mr. Hicks agreed that there was a revision of the subject property in 2009 and further accepted that no methodology for the valuation in that revision was set out by the respondent. He stated that it was simply decided by the respondent to leave the valuation unchanged and no calculation as such was carried out.

Summary

In summary, Mr. Devlin stated that in his opinion the correct method to value the subject property was the turnover method, which had been the preferred method of he Commissioner and of the Tribunal in many recent decisions. He also stated that the method of backdating turnover to 1988 using the CSO Drinks Price Index had also been accepted by both the Tribunal and the Commissioner. Mr. Devlin stated that the subject property was operating in completely changed circumstances since 2001 and that West Street had declined significantly. He argued that this was a new revision, that the property had to be valued as it stood in 2009 and that his contention for a RV of €290 was a fair valuation of the property.

Mr. Hicks stated that the basis of valuation in this case was Section 49 of the Valuation Act, 2001 and that under this section comparisons were paramount and that the Commissioner had to have regard to other properties in the Valuation List. Mr. Hicks stated that the property had been improved and enlarged and that the reason for the revision was due to efforts by the appellant to create a material change of circumstances which did not really exist, in order to reduce the valuation. However, Mr. Hicks stated that although the Commissioner was sympathetic to the plight of businesses in the current climate, the proper way of addressing the issue was through a revaluation or a reduction in the multiplier used to calculate the rates payable.

Findings

1. The Tribunal is satisfied that the appropriate valuation methodology for valuing licensed premises is the turnover method. This method has been endorsed by the Tribunal in numerous cases, including **VA02/2/108 - John Crowe T/A Molly Heffernan's, VA05/1/028 - Thomas Lynch, VA08/3/004 - Gerry & Theresa Meyler and VA95/5/024 - Nallob Limited T/A O'Donoghues**. Furthermore, Mr. Hicks himself acknowledged that the turnover approach was the most usual method of valuing public houses since the introduction of the Valuation Act, 1986.
2. The standard method that has been accepted by both the Commissioner and the Tribunal in the past for valuing public houses on a turnover basis involves ascertaining the average turnover for the premises and adjusting it back to 1988 levels using the CSO Drinks Price Index. Although Mr. Hicks stated that the approach accepted heretofore did not take account of the fall off in turnover in the pub trade in recent years, he failed to put forward an alternative appropriate method for calculating 1988 turnover. He referred to the approach adopted by the Commissioner in revising The Thatch Pub, Donore Road, Drogheda and stated that the valuer in that case added 67% after backdating the turnover to 1988 using the Drinks Price Index to take account of the decline in the pub trade. However, no justification for how this apparently arbitrary figure was arrived at was adduced before the Tribunal. Accordingly, in the absence of any evidence analysing the alleged decline in trade in the pub industry in recent years and how this would impact on calculating turnover in 1988, the Tribunal will not depart from the accepted practice of backdating turnover using the CSO Drinks Price Index.

3. The respondent in this case revised the premises on foot of the appellant's revision request and accepted that a material change of circumstances had occurred, warranting a revision. Having done so, the respondent should then have proceeded to value the subject property in accordance with the accepted method of valuing licensed premises, namely the turnover method, rather than simply amalgamating the existing premises with the adjoining premises acquired by the appellant and deleting the valuation in respect of that adjoining premises.
4. In looking at the comparisons put forward by both parties, the Tribunal is of the view that The Weavers, which is located on the same street as the subject, is the primary comparison. Indeed, this was used as a comparison when the subject property was first valued in 1996. The Weavers was valued on a turnover basis in 1994 with a gross turnover backdated to 1988 of €556,800 which, when taking a yield of 10.5%, gave a NAV of €58,513 and a RV of €368.30. The Thatch Pub, which was referred to by both parties, although it is a more recent revision, is not regarded by the Tribunal as a safe comparison and the Tribunal has already expressed its unhappiness with the analysis of that property put forward by Mr. Hicks.
5. The Tribunal has had regard to the fact that since the subject and The Weavers were last revised, there has been a marked decline in the trading potential of West Street and indeed both of these properties have now ceased trading. Mr. Devlin's evidence that when he surveyed the subject property on 20th October 2008 there were 17 vacant and dilapidated units in close proximity is noted. Furthermore, by not increasing the RV on the subject property, the revision officer thereby recognised that the location is in decline.
6. The Tribunal is satisfied that the appropriate yield to apply to the subject premises is 10.5% overall for food and drink, which is in line with The Weavers.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines the rateable valuation of the subject property to be €406 calculated as follows:

Average Turnover for Years 2007-2009	€1,263,009
(Drink - €670,718. Food - €592,291.)	
Adjust to 1988 levels @ 0.4856	€613,317
(Drinks Price Index June 2008 to Nov 1988)	

Yield 10.5%	€64,398
RV @ 0.63%	€405.71
Say	€406

And the Tribunal so determines.