

Appeal No. VA95/5/024

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Nallob Limited t/a O'Donoghue's**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Licensed shop at Map Reference 15 Merrion Row, Ward: Mansion House, County Borough of Dublin.

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Barry Smyth - FRICS.FSCS**

**Deputy Chairman**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 4TH DAY OF OCTOBER, 2000**

By Notice of appeal dated the 18th day of October 1995, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £425 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice are that; "valuation is excessive and inequitable having regard to the Valuation Acts and on other grounds also".

The appellant was represented by Mr. Eamonn O’Kennedy B.Comm, MIAVI, Valuation & Rating Consultant. The respondent was represented by Mr. Michael Keogh, District Valuer in the Valuation Office.

Having taken the oath each valuer adopted as his evidence in chief his written submission, which had previously being exchanged by the valuers and submitted to the Tribunal.

### **Material Facts Agreed or Found by the Tribunal**

#### **Recent Valuation History**

In November 1993, the revised valuation lists issued included this property at R.V. £470 from a previous £185. This was appealed and in September 1995, the valuation was reduced to R.V. £425. This figure was appealed to this Tribunal.

#### **Situation**

The premises is situated on the south side of Merrion Row between St. Stephen’s Green and Baggott Street in Dublin City Centre.

#### **Premises**

The premises comprise a four story over basement traditional licensed premises. The building is old.

#### **Accommodation**

The accommodation and the agreed areas are as follows:

	<i>Sq. ft.</i>
<b>Ground Floor</b> Entrance Hallways	59
Lounge Bars	705
Kitchen	83
Toilets	98

<b>First Floor</b>	Hallway/Landing	-
	Lounge Bars	602
	Toilets	148
<b>Second Floor</b>	Spirit Store	187
	Rear Room	245
<b>Third Floor</b>	Disused Rooms	432
<b>Basement</b>	Stores	898 (gross internal)
	(incorporating cellars)	
	Total floor area	3,457
	Excl. W.C.'s	3,211

**Services** All main services are provided including water, sewerage and gas fired central heating.

### **Purchase Price**

The property was purchased in June 1988 for £400,000. This purchase price did not include the fixtures and fittings.

### **Turnover**

In each case for the year ending 30<sup>th</sup> June -

1990 - £822,364,

1991 - £800,154,

1992 - £842,370,

1993 - £795,111.

### **The Appellant's Case**

Mr. O'Kennedy in his précis and in his direct evidence stated inter alia that the property is a well-established licensed premises but in a poor structural and decorative condition and there have been no substantial improvements or maintenance work carried out for a number of years. The upper floors are almost completely disused. The pub was well established in the 1960's as a traditional music centre and has traded well since then on that reputation.

The property has been owned by well-known figures in the licensed trade for many years. The premises however are small and this limits the potential for the property to increase business any further. He emphasised that it was relevant to assess the valuation of the property at November 1988 and that the property had sold in June 1988 for £400,000. He assessed the market value at November 1988 at £500,000. He stated that the market value of licensed premises had increased dramatically from 1989 to 1991 but had become overheated in 1992 and 1993 and that up to November 1988 only three pubs had exceeded £800,000 capital value. He noted that there was a lack of comparative rental evidence for public houses. Mr. O'Kennedy provided five comparisons which are appended to this judgment as *Appendix One* and also details of three premises sold during 1996 which were the subject of revisions of valuation and details of three further premises which were sold during 1988. And again details are appended to this judgement.

Mr. O'Kennedy estimated the net annual value of the premises at November 1988 at £45,000 by two methods:

He took the capital value of the property at £500,000 and de-capitalised that using the yield of 9% thus an NAV of £45,000. Secondly he applied a rate of £35psf to the ground floor bar area, £20psf to the kitchen entrances and £15psf on the first floor and £5 on the second floor, nominal rents on the balance of the second and third floors and £5 on the basement giving rise to £45,000 N.A.V. Applying the fraction of 0.63% gives an R.V. of £283.50, which he rounded down to £275.

Commenting on the respondent's calculation of N.A.V., Mr. O'Kennedy stated that the figure of £46psf on the ground floor was excessive for the date and that his figure of £35psf included an amount for the licence for which the respondent had added £15,000 per annum. In his view without a license the rental value would be in the order of £20-£23psf. In cross-examination he accepted that there was not a market of consequence for property investment in pubs and that his yield of 8% or 9% represented what a tenant in occupation would pay to acquire the freehold of the premises.

### **The Respondent's Case**

Mr. Keogh relied upon his précis and offered no further oral evidence. He assessed the valuation on two bases:

- (i) A rate psf applied to the various areas and adding an annual figure for the licence and,
- (ii) A yield on the adjusted turnover figures.

Mr. Keogh applied £46psf to the ground floor area, £10psf to the first floor and £5 to the second floor, nil on the third floor and £5 to the basement and adding £15,000 for the licence giving an N.A.V. of £67,000.

On the turnover basis he adjusted the figures to November 1988 in line with the drinks price index and took an average of three years, 1990, 1991 and 1992 giving a figure of £748,602. To this he applied the yield of 9% which he stated was used in many other cases giving an N.A.V. of £67,374. Applying the fraction of 0.63% these figures give an R.V. of £422 or an R.V. of £424 which he rounded to R.V. £425.

In cross-examination he stated that he had no direct evidence for a rent of £46psf for this part of Baggot Street but that in Merrion Row there is evidence at £45psf and that he had used his knowledge of the market and was giving his evidence as an expert valuer. His figure of £15,000 per annum for the licence was based on a yield of 10% on the capital value of the licence of £150,000. He acknowledged that both Foleys and the Baggott Inn were considerably larger

premises but pointed to the fact that the turnover was considerably lower than the subject premises.

### **The Valuation of Licensed Premises**

On several previous occasions this Tribunal has reiterated the undoubted fact that the basic approach in determining valuations is still to be found in Section 11 Valuation Act 1852. Under the relevant part thereof the valuation of houses and building “*shall be made upon an estimate of the net annual value thereof: that is to say, the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance and other expenses (if any), necessary to maintain the hereditament in its actual state, and all rates, taxes and public charges, if any, (except tithes rent charge), being paid by the tenant*”.

This section has been amended by Section 5 of the Valuation Act 1986. This amendment essentially, was enacted so as to recognise inflation and having taken that into account to seek to establish and retain a proportion between valuations and annual values. See *IMI –v- Commissioner of Valuation* 1990 2 IR 409, where at page 412, Mr. Justice Barron explains in considerable detail the underlying philosophy of this amendment. Since 1986 therefore it is necessary to consider both of these sections when embarking upon the process of valuation. However, the core basis remains the same and involves an exercise, partially real and partially artificial, of determining what the hypothetical tenant will offer for the premises in question.

In resolving this issue neither the Commissioner of Valuation nor this Tribunal is mandated by any statutory requirement to adopt any particular or specific approach or method. Whatever way produces the most suitable result then that way, in those particular circumstances, is the one, which should be adopted. See the often recited passage of Mr. Justice Kingsmill Moore in *Roadstone –v- The Commissioner of Valuation* [1961] IR 239 where he emphatically declared that in resolving this question of fact all methods were open for review and consideration. As licensed premises are clearly hereditaments which must be valued, the above principles apply to such premises in the same way as they apply to any others coming within the aforesaid Section 11.

In this jurisdiction, as one would expect, there are several decisions of this Tribunal where the subject property was a licensed premises. In all we think about ninety. An analysis of such judgments will show that from time to time either an appellant or the Commissioner have advanced a variety of methods by which, depending on the particular circumstances, any given public house is to be valued. Having considered the evidence in each case and the preferred method suggested by the parties this Tribunal adopted what it considered to be the most suitable method of arriving at a fair and equitable rateable valuation in each of the cases as aforesaid. As the circumstances inevitably were diverse so from time to time was the method or approach. In our respectful view this flexibility is both necessary and desirable and has the result of permitting this Tribunal in any given case to accord such weight to each evidential factor as it considers appropriate.

Little assistance, with regard to methodology, can be obtained from the U.K. This not so much on account of any fundamental difference in valuation principles but rather on account of the system of ownership/management of pubs which has become well established in England. In that jurisdiction apart from hotels and clubs the vast majority of licensed premises are controlled by the brewers and are therefore tied houses managed by occupiers and rarely if ever rented. Accordingly, their method of assessment is rather different to that pertaining in this jurisdiction.

On the recommended methods, normally advanced, could we, in general terms, comment as follows:

### **1. Evidence of Rent**

There is no doubt but that if there is evidence of rents, true in nature, arrived at in the market or via the market process, and otherwise unimpeachable, then such rents particularly if the business is maximised provide a significant evidential base upon which the assessment may be approached. Even then though, such rents, actual and real as these may be, are not conclusive, in that Section 11 refers to the rent which the hypothetical tenant is expected to pay and this within the prescribed terms of the overall statutory conditions. In any event in the case of licensed premises, up to relatively recently, there was no rental base in existence rather what was available was haphazard, particular to

specific circumstances and somewhat inconsistent. In the more recent past the practice of letting licensed premises has increased but not to such an extent that one could with safety define the nature of the market and separate what truly were lessor/lessee relationships from those more akin to management agreements. Therefore whilst in theory this approach is highly respected nonetheless in practice the accumulation of sufficient data upon which it could operate is still some distance off.

## **2. The Contractor's Basis**

This type of approach, frequently referred to as the method of last resort, rarely if ever is used in valuing licensed premises.

## **3. Capital Values**

In the instant case and indeed in several others where like hereditaments are the subject matter thereof, the parties have agreed on how the calculated N.A.V. should be converted to R.V. It is by applying a fraction, which depending on location, is usually 0.63% or 0.5%. This is taken as the means of incorporating the provisions of Section 5 into the valuation process. But fundamental to this approach is the necessity of identifying an N.A.V. as of November 1988. The difficulty in many cases of doing this is obvious and self-evident but in the case of licensed premises particular problems arise. For example turnover and trade as of the valuation date and the years leading up to it, are unquestionably of relevance to the hypothetical tenant as is the actual state and condition of the hereditament and its use at the relevant date *rebus sic stantibus*. As the interval of time between November 1988 and the valuation date continues to increase, it becomes even more difficult to establish a meaningful relationship between capital values and N.A.V. In addition capital value and the expected or demanded yields therefrom are more suited to property investment than they are for trying under Section 11, to deduce an N.A.V. from such capital values. In any event we have seen and know of very little evidence of any real investment market in licensed premises, which investors still consider somewhat uncertain and dubious. So, whilst details of capital values are helpful these, on their own right, will rarely be sufficient to satisfy the statutory requirements.



**4. Price psf**

Whether on the total area or only on those parts thereof which facilitate retail activity, it is not and has not been the experience of this Tribunal that either the acquisition of a licensed premises or the assessment of what rent it could carry, is approached in this manner. In other words it does not accord with the realities of the market place. Other types of premises with different uses yes but such a practice with regard to public houses would indeed be quite exceptional. That is not to say however that such an exercise is of no benefit. If having embarked upon such a calculation, the resulting rate, even with adjustments, bears no relationship whatsoever to other established values, then the completion of that approach cannot possibly produce the most desirable result. In our view while technically it could provide a common basis for assessment, nonetheless, unless the market follows suit it is questionable whether such an approach reflects the statutory requirements.

**5. Evidence of Rateable Valuation or N.A.V. on similar licensed premises**

While premises are or can be similarly circumstanced, evidence on a comparative basis can undoubtedly be considered and taken into account in approaching the question of calculating N.A.V.

**6. Accounts/Profits/Turnover or derivatives therefrom**

Whilst entering the caveat that no one method is sacrosanct or conclusive, there is no doubt but that in our opinion profits, turnover etc are hugely influential in the mind of a hypothetical tenant when determining the amount of rent which he is prepared to pay on an annual basis. Turnover seems to be more crucial than profit, this because it is the rent which is the measure of annual value and not profit. Knowledge of the existing turnover and the level at which the business is being conducted are vital elements in the calculation of any bid as is every other element which in either direction may affect the turnover. In considering this question of turnover one must be acutely conscious of the hereditment which is being valued, in this instance it is the “premises” and not the business, though of course the latter is material in that the power to earn or increase profit can be an indication of value in respect of the said premises. Likewise good management

should not be penalised and poor management be rewarded. Any “quite extraordinary”, dedication, skill, character or other personal attributes, this whether having a positive or negative effect on the business must and should also be disregarded. Three year accounts without any distortion during that period are usually and should, on a confidential basis, be made available where possible. Shorter periods may indeed suffice as where there is a start up situation or where after major alterations/extensions, the nature and size of the operation is significantly different. In the absence of such accounts, the following documentation may be proffered: an auditor’s certificate, the profit and loss account, the trade account, a breakdown of the turnover between food, cigarettes, drink etc. and a copy of the balance sheet. The breakdown as between drink and food is of particular significance. So once these limitations are observed and once it is appreciated that the actual turnover figure may and frequently will have to be adjusted, then this is a method which in our view is a forerunner in approaching the valuation of licensed premises.

### **Determination**

This is undoubtedly a well know Dublin public house enjoying both local and tourist business. The dilemma facing both the appellant’s and respondent’s valuers is how to deal with what best can be described as the good will of any public house where undoubtedly the turnover can be affected by the ability of the proprietor. The rateable valuation is a function of the net annual value of the building and not of the business and it is therefore important to distinguish the elements of turnover which reflect the location and nature of the building as opposed to those that reflect the ability (or lack of it) of the proprietor.

In our opinion O’Donohues is now so long established as a landmark pub that its turnover is less affected by its proprietor than might be the case otherwise. However, we acknowledge that the pub has a very limited size and the ability to increase trade is severely restricted.

We also acknowledge that the building is old and would be expensive to maintain.

Three methods of valuation have been put to us namely a yield on the capital value, a rental value psf on the various floor areas either inclusive of the licence or with the addition of the

licence and thirdly, a yield on turnover. In our view the first method is flawed because of the lack of investment by property investors and in this instance a yield on the suggested capital value in 1988 does not produce an N.A.V. that we feel is correct. There is great diversity of opinion between the two valuers in relation to the rate psf applicable to the principal trading areas and a lack of supporting evidence. In our opinion the best method to follow therefore in this instance is a yield on the turnover and as the valuation date is November 1993 we have taken the three years to the 30<sup>th</sup> June 1991, 1992 and 1993 which adjusted by the drinks price index and averaged for the three years gives a turnover in 1988 of £712,026. We acknowledge the limited size of these premises and the difficulty of increasing the trade in the future above its current level and therefore feel that a yield of 8% is more appropriate than 9% as proposed by the respondent. This gives N.A.V. of £57,000 and applying the fraction of 0.63% gives a rateable valuation of £359.10, Say £360.