

Appeal No. VA96/3/022

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

Tony Weir t/a The Step Inn

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed house and restaurant at Map Reference 19/9a, Townland: Kilgobbin, Glencullen,
DED: Rathmichael, Dunlaoghaire Rathdown.

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF OCTOBER, 2000

By Notice of Appeal dated the 24th day of July 1996, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £450 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice are that; "the RV of the property was agreed at 1990 First Appeal. Since that date there has been no change to the property. The RV is excessive by comparison with other licensed premises in the area".

The appeal proceeded by way of an oral hearing at which the appellant was represented by Ms Margaret Nerney BL instructed by Amory's Solicitors. Mr. Frank O'Donnell, B.Agr.Sc. FIAVI MIREF of Frank O'Donnell & Company was the rating consultant and the appellant Mr Tony Weir gave the Tribunal a statement of his evidence and also gave oral evidence at the hearing. The respondent was represented by Mr. Andrias O Caoimh SC, as he then was, now, Mr Justice O Caoimh. Mr Pat McMorrow District Valuer in the Valuation Office gave evidence on behalf of the respondent.

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

Material Facts Agreed or Found by the Tribunal

Recent Valuation History

In November 1994, the revised valuation lists included this property at R.V. £450 from a previous £310. This was appealed and in July 1996, the results of the first appeal issued making no change to the valuation. This figure was appealed to this Tribunal.

Situation

The premises is situated in the village of Stepside on the road between Dundrum and Enniskerry 2 miles from Sandyford and 3 miles from Dundrum.

Premises

The premises is a two storey licensed premises constructed of rubble masonry walls with slate roof. Though the premises are old, a major refurbishment was carried out in 1988 at a substantial cost estimated at about £680,000.

Accommodation

The accommodation and the agreed areas are as follows:

	Ground Floor	Sq. ft.
	Bar	854
	Snug	185
	Conservatory	215
	Entrance	28
	Lounge Dining area	2,007
	Kitchen	877
	Toilets	516
First Floor	Store	207
	Store	534
	Toilets	125
	Office	180
	Apartment (Domestic)	269
	Car park	48 Cars
	Total floor area	5,997

Purchase Price

The property was purchased in January 1992 for £800,000.

Turnover:

In each case for the year ending 30th June 1993 - £1,156,543: 1994 - £1,384,073

The Appellant's Case

Mr. O'Donnell estimated the net annual value of the premises at November 1988 using three methods:

1. Investment Method A

Purchase Price – January 1992		£800,000
Deduct Non-Rateable Items	Say	<u>£ 75,000</u>
		£725,000
Adjust to Market Value @ 1988 – Say 16%		£605,000
N.A.V. @ 8%		£ 48,400
R.V. @ 0.63%		£ 304.92

2. Investment Method B

Actual Purchase Price @ 1988	=	£420,000
Add for improvements	=	£210,000
	=	£630,000 @ 8%
NAV	=	£50,400
RV	=	£317

Mr O Donnell adjusted his figures for improvements at the hearing in response to a statement from Mr Weir that £680,000 was spent by the previous occupier on the premises. His adjusted calculation on this basis gave RV£554.

3. Rental Method (Sq. Ft. Method)

	<u>Area (Sq. Ft.)</u>	<u>Rate/Sq. Ft.</u>	<u>NAV</u>
Ground Floor	4,682	£7.00	£32,774
1 st Floor	1,820	£3.00	<u>£5,460</u>
			£38,234
		Add Licence	
£100,000 @ 10%			<u>£10,000</u>
			£48,234
R.V.	@ 0.63%		£303.87

referred the Tribunal to the following Tribunal appeals, Charlie Chawke, Charjon Investments Ltd t/a “The Goat” VA93/4/005, Snug Taverns VA91/2/027 and O Dwyer Brothers Ltd. VA89/0/269 and to the decision in *Armstrong v Commissioner of Valuation* [1905] 2IR p 448. She submitted that no one method should be adopted but that the Tribunal should take an overview to assess if the resulting valuation is fair and reasonable taking into account comparisons.

On behalf of the respondent, Mr O Caoimh, referring to Cartwright's case [1900] AC 150 submitted that in so far as profits can be attributed to the hereditament they can properly be taken into account in assessing the valuation.

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 or 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.

Findings

- 1.** It is common case that the subject of this appeal is part only of the licensed premises and restaurant known as The Step Inn.

2. Shortly after the premises were purchased by Bass Taverns in 1988, some £680,000 was spent in carrying out improvements to the property as a result of which the rateable valuation was increased from £175 to £450, which figure was reduced to £310 at the 1991 first appeal stage.
3. The premises were purchased by the appellant in January 1992 for a consideration of £800,000 and during the course of the negotiations the appellant was given to understand that the annual turnover at that time was in the order of £700,000.
4. Following the purchase the appellant carried out some minor alterations, which did not materially alter the under-lying physical characteristics or extent of the premises.
5. The Step Inn is a well-known and well-established premises with ample car-parking facilities in the village of Stepside within easy reach of the southern suburbs of Dublin City.
6. The increase in turnover since the appellant commenced trading is in excess of that which would be generated by reference to the C.P.I. or any similar index applicable to the licensed trade and represents a significant uplift in sales in terms of volume. As to what extent this is due to the personal efforts of the appellant was not fully explored at the hearing. Nonetheless the Tribunal accepts that the appellant has a history of taking over established licensed premises and by virtue of earnest endeavour increasing the turnover significantly as has indeed been achieved in relation to the subject premises.
7. The appellant's valuer introduced three separate methods of valuation i.e. – Investment Method A & B and a Rental Method based on a rate p.s.f. which gave somewhat similar rateable valuations varying from £304 to £317. However in view of the fact that investment method B understated the money spent by Bass Taverns by a significant amount i.e. – from £250,000 to £680,000 little weight can be attached to evidence derived primarily from capital values. Similarly the weight to be attached to the comparative

evidence on a sq. ft. basis is limited as no two licensed premises are the same and all have their own characteristics and attractions

8. In support of his opinion of rateable valuation, Mr. O'Donnell submitted details of the rateable valuation of eight other somewhat similarly located licensed premises varying from £310 to £425. However little information was provided by him as to the basis of these valuations so that these comparisons are of limited assistance to the Tribunal.
9. Mr. McMorrow arrived at his opinion of net annual value by using the profits method and having done so compared the resultant figure to the net annual value of three other premises by reference to percentage of turnover, rate psf in relation to the ground floor licensed area and the overall rate psf to include ancillary accommodation. Neither party introduced a valuation based on turnover.
10. The Tribunal has come to the conclusion that the appellant is a hardworking and experienced publican with a proven track record and the increased turnover achieved by him in a relatively short period coupled with a gross profit margin in excess of 50% bears ample testimony to this conclusion.
11. In his use of the profit method of valuation Mr. McMorrow made no allowance for the appellant's personal attributes or business acumen which, in the opinion of the Tribunal, ought to have been taken into account in this instance.
12. On the basis of the evidence adduced it would appear that the subject premises are substantially the same as they were when the rateable valuation was agreed at £310 at the 1991 first appeal stage. In fact the only material change, which has taken place, is the occupier who has significantly increased the turnover and achieved the somewhat better than normal gross profit margin. In the normal course of events it is unlikely that the premises would have been listed for revision and in fact the request for the revision was initiated by the occupier.

- 13.** In accordance with Section 11 it has to be assumed that the subject premises are vacant and to let in their current physical state and circumstance with the benefit of the licence. The next step is to determine the rent that the hypothetical tenant would consider it worth paying in order to achieve the level of profit he would expect to make as the occupying licensee. In arriving at this opinion of rental value regard would be had to the physical state and circumstance of the property, the location and the level of turnover that could reasonably be achieved. An obvious guide to this last factor would be the level of turnover actually being achieved and whether or not that level could be maintained.
- 14.** On the basis of the evidence the Tribunal has come to the conclusion that the present occupier has achieved a level of turnover and gross profit margin in excess of what a hypothetical tenant may consider to be either achievable or capable of being maintained and the evidence given in relation to the turnover achieved by the previous occupier would seem to confirm this point of view.
- 15.** The Tribunal in this instance considers the valuation prepared on the profit basis by Mr. McMorrow to be the most helpful but is of the opinion that some allowance must be made to reflect the level of turnover and profit margin that the hypothetical tenant might consider to be achievable particularly having regard to the turnover achieved by the previous occupier.

Determination

Having regard to all the evidence given and arguments adduced the Tribunal considers the net annual value in accordance with the statutory provisions to be as follows;

Net annual value as determined

by Mr. McMorrow by use of the profit method = £76,000.

Less say a 15% allowance to reflect the turnover
a hypothetical tenant might consider sustainable = £64,600

Rateable valuation @ 0.63% = £406.98 (including domestic)

= Say £400 R.V.