

Appeal No. VA96/5/016

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

James McHugh, Arcade Taverns Limited t/a Newtown Pery

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop and restaurant at Lot No: 49, 50 (ground floor, basement, and 1st floor. rear), Thomas Street, Ward: Shannon B, County Borough of Limerick
Quantum

B E F O R E

Mary Devins - Solicitor

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JULY, 1997

By Notice of Appeal dated the 7th October, 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £255 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

"the valuation is excessive and inequitable when compared with existing type of premises in the area. Also on the basis of lack of profitability of the enterprise and location of premises."

The Property:

The property comprises a licensed premises, with bar and lounge on the ground floor and a night club in the basement. It is located in Thomas Street, a short distance from O'Connell Street. The accommodation comprises the following:

Ground Floor

Off Licence (now cafe)	463 sq.ft.	43.0 sq.m.
Kitchen	60 sq.ft.	5.6 sq.m.
Common Entrance Lounge Bar/Restaurant	1,614 sq.ft.	150.0 sq.m.

1st Floor Rear

Office/Store	369 sq.ft.	34.3 sq.m.
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Basement

Nite Club	1,123 sq.ft.	104.3 sq.m.
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Valuation History:

Prior to redevelopment in 1989 the old rateable valuation was £115. This was revised in 1990 to £315. On first appeal there was a new lot created relating to a sub-letting of the off licence area at £15,000 pa. The rateable valuations of both lots were £180 and £75, giving a total of £255 for the existing premises. The shell rent at this time was £75,000 from 26th January 1990 for the entire premises. (A letter of agreement relating to the 1990/4 first appeal was attached to the written submission.) In 1994 the premises was again revised following a request from the occupier. On the basis of this revision the two lots were amalgamated and a rateable valuation fixed at £255. No change was made at first appeal.

Written Submissions:

A written submission was received on the 3rd day of April 1997 from Mr. Desmond Killen, FRICS, FSCS, IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited on behalf of the Appellant.

In his written submission, he set out the background to the subject appeal. He also supplied details of the accommodation of the subject premises and his valuation considerations.

Mr. Killen submitted that the appropriate rateable valuation on the subject premises should be calculated by reference to the accounts method and he set out a detailed valuation on this basis which assessed rateable valuation at £190.

Mr. Killen submitted an additional summary of evidence to the Tribunal on 14th April 1997 in which he provided a valuation using the comparative method of valuation, on foot of information supplied to him by the Respondent. The rateable valuation proposed by Mr. Killen on this basis is £170.

A written submission was received on the 3rd day of April 1997 from Mr. Brian O'Flynn, District Valuer with 21 years experience in the Valuation Office on behalf of the Respondent.

In his written submission he set out the recent valuation history of the subject premises. He described the subject premises and said that it was completely redeveloped in 1989 and let by the developer on a 35 year lease with five year reviews from the 26th January 1990 at £75,000 pa. In addition, he submitted that there was an expenditure of £200,000 on improvements, fitting out and equipment. He submitted that half of this sum related to leased equipment.

Mr. O'Flynn set out his valuation on the subject premises based on:

1.	The renegotiated shell rent in 1993	£ 60,000
	Allow 20% rental growth from 1988	£ 50,000
	NAV £50,000 @ 0.63%	£ 315.00
2.	Purchase of landlord's interest March 1994	£420,000
	Add tenants improvements	<u>£100,000</u>
		<u>£520,000</u>

Allow 20% capital growth from 1988	£433,300
£433,300 @ 10% yield	£ 43,330
£43,330 @ 0.63%	£272.98
Say RV	£275.

3. Turnover basis for the years 1994 & 1995

Mr. O'Flynn assessed rateable valuation at £429 based on 10.26% of the 1995 turnover and £429 based on 10.3% of the 1994 turnover.

Mr. O'Flynn offered three comparisons of licensed premises in the area which are summarised below.

1. Teds (The Brazenhead) pt. 102 O'Connell Street

Licensed shop and restaurant.

Ground Floor & Basement

Rateable valuation calculated at 8% of 1988 turnover at £265.

2. The Texas Steakhouse, 116 rear 117 O'Connell Street

1989 Revision

Rateable valuation assessed at £290 based on 8% of the 1989 turnover.

3. Lot 1, 2, 3, 4 Baker Place, Custom House & Shannon Ward

Agreed valuation of £240. 1992/2 First Appeal.

NAV calculated at £38,095 - equivalent to 9% of the November 1988 turnover.

Oral Hearing:

At the oral hearing on the 16th April, 1997 in Limerick, the Appellant, Mr. McHugh was represented by Mr. Des Killen, Director of Donal O'Buachalla & Company Limited and Mr. McHugh, the Managing Director of the properties was also present. The Commissioner was represented by Mr. Brian O'Flynn.

On a preliminary issue as to whether a letter from the said Mr. McHugh to Mr. Gregg in the Valuation Office on the 29th January, 1992, prohibited the appeal from proceeding, on the basis of an agreement entered into by the Appellant, the Tribunal decided as follows:-

- a. A trading company known as Featherleaf, of which Mr. McHugh was a Director had, since this agreement gone into liquidation.
- b. There was a different tenancy.
- c. The property has changed in that there is a restaurant in place of an off-licence.

The Tribunal therefore concluded that the Appellant was not estopped by the earlier agreement and the appeal should proceed.

Following the decision on the preliminary issue, Mr. McHugh gave evidence on oath and traced the history of the property vis-à-vis its ownership as set out in the written submission on his behalf. Briefly, since and prior to the valuation date, Mr. McHugh has been a Director of all of the Companies which have had an interest in the property, namely Newrose Investments, a holding company, which purchased the property in March, 1994 and Arcade Taverns, an operating company, who are presently the occupiers. Previously Florelle Limited, holding company, had a 35 year lease on the property and the trading company at that time was Featherleaf, which as we earlier stated has now gone into liquidation and the property was then purchased by Newrose developments.

Mr. McHugh gave evidence that he never considered the off-licence in the property to be profitable and it has since been replaced by a restaurant, which is open from 10.00 am to 9.00 pm. The property also incorporates a night club which opens from 11.30 pm to 2.00 am. Mr. McHugh indicated in his evidence that since having become involved in the night club business, he was conscious of quite a lot of competition in the area around O'Connell Street, Limerick.

He produced a set of financial accounts for the years 1994 to 1996 to the Tribunal and confirmed that he himself dealt with most, if not all, of the accounts of the business as he

previously had, by profession, been an accountant in the Royal George Hotel. In producing the accounts, Mr. McHugh was prepared to add back the rent in the usual manner, because of the relationship that existed between landlord and tenant. He further indicated in his evidence that, taking an average figure of £8.30 psf, the rateable valuation would amount to £170, which he felt was reasonable in the circumstances.

On cross examination, Mr. McHugh admitted that he had previously sent a letter of agreement to the Valuation Office on behalf of Newtown Pery, but indicated that matters had changed as earlier set out. When questioned about the rent of the property in 1989, he indicated that it was on a 35 year lease, with a rent of £15,000 pa. He further replied, on questioning, that there was an expenditure of £200,000 on improvements and equipment for the night club following purchase of the premises.

In his own direct evidence, Mr. O'Flynn relied on his précis as his evidence in chief. He indicated that the property was of a good standard and in a very central location at the axis of the city access street. It was further his view that any changes to the property were improvements and considered that the file relating to the first appeal was important in this regard. He also noted that there was a disco licence attaching to the property. Mr. O'Flynn highlighted the important aspects of his case as follows:-

- a. There is shell rent in place.
- b. There was a purchase of the landlord's interest.
- c. The proportion of turnover as set out by him at 10.26% for the year ending 30th April, 1995 and 10.3% of the turnover in the year ending the 30th April, 1994 to determine rateable valuation was reasonable.

In reference to his comparisons, Mr. O'Flynn quoted his first comparison as Teds (The Brazenhead) Part, 102 O'Connell Street and confirmed that this was a lease of two years and nine months at a rent of £200 per week and was very comparable. His third comparison of Lot No. 1,2,3 and 4 Baker Place, Custom House in Shannon Ward, showed a rateable

valuation based on turnover and taking into account gross profits. In this comparison, he quoted an RV agreed at £240, which was equivalent to 9% of the November, 1988 turnover.

In cross examination, by Mr. Killen, Mr. O'Flynn calculated a rateable valuation of £235 based on a rent of £75,000 pa put to him by Mr. Killen with bar takings of £9,000 per week. Mr. O'Flynn did not disagree with Mr. Killen's contention to him that since the revision in November, 1990/4 to £150 there was a change in circumstances regarding the rent, the property being sold, and downturn in trade. However, he did remark that he did not know if the accounts were audited accounts. On further cross examination, Mr. O'Flynn indicated that he had never used the accounts method and had particularly not used it on pubs. He felt that he would have more confidence in turnover figures. Mr. Killen questioned the witness in relation to his allowance of 20% for rental growth, and he stated that his estimation of rent was not on the basis of evidence, but was his opinion as a professional Valuer. He further confirmed that the figure of 8% of turnover to represent the NAV was not related to any particular analysis.

Mr. Killen presented comparisons, most of which were also used by Mr. O'Flynn on behalf of the Commissioner. The only exception to this was the Desmond Arms at 39,40 and 41 Catherine Street.

Mr. Killen considered that this property was somewhat superior to the subject and traded extremely well. His suggestion in this regard was not disputed by Mr. O'Flynn. In relation to one of his comparisons, Mr. O'Flynn admitted that he only had one year's accounts to assess the turnover, as at the time it was only a new property. Mr. Killen further suggested to Mr. O'Flynn that Thomas Street, was a good place for young people, and had many fast food outlets, which impinged on the subject and this was accepted by the witness. Mr. Killen further submitted that the Desmond Arms at number 38 near the subject traded well.

In summing up, it was Mr. Killen's view that the actual rent is the best evidence in determining any NAV if it is an open market rent. However, he felt that he should use the accounts method in this particular circumstance as it reflected the true trading situation. In these circumstances, the company had three years trading and a hypothetical tenant would

look to the trading accounts to show what has happened in the business. He further submitted that in the circumstances as earlier set out, his client was entitled to apply for revision.

Mr. O'Flynn summed up his evidence by referring to the fact that there was a rent in place. It was a re-negotiated rent and there was a purchase. He further submitted that the purchase price of £400,000 is prime evidence of value where a sitting tenant is in place.

Having previously determined the preliminary issue, the Tribunal considered the further evidence submitted to it and on the basis of the factual evidence as set out by both parties, it is the view of the Tribunal that the Commissioner's decision on rateable valuation be affirmed and so determines.