

Appeal No. VA98/3/112

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

Michael Flannery

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed House at Map Reference 3.3a, Street: The Common, Townland: Cornaroya,
E.D. Ballinrobe, R.D. Ballinrobe, Co. Mayo

Quantum - Appropriate valuation method for well run pub

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Marie Connellan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF JULY, 1999

By Notice of Appeal dated the 6th day of August 1998 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £95 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the valuation is excessive, inequitable and bad in law".

The appeal proceeded by way of an oral hearing, which took place in the Courthouse, Castlebar, Co. Mayo on the 9th day of July 1999. The appellant was represented by Mr. Patrick J. Nerney BE Chtd. Eng. MIEI. MIAVI., Valuation Consultant. Mr. Michael Flannery was himself in attendance and gave evidence under oath. The Respondent was represented by Mr. Colman Forkin, a Valuer with 19 years experience in the Valuation Office. In accordance with practice and as required by the rules of this Tribunal the parties had prior to commencement of the hearing exchanged précis of evidence and submitted same to us. Having taken the oath each valuer adopted as his evidence in chief his précis.

In adopting his précis Mr. Nerney noted that the accounts he had provided for 1995 were for ten months and not twelve months and making adjustment for that brings his assessment of rateable valuation to £63. Mr. Forkin also provided two adjustments to his written précis one in relation to his comparison, which provided an estimated turnover and secondly in relation to a quotation on rent that parties had exchanged earlier.

The facts agreed or found by the Tribunal

There was little dispute between the parties regarding the nature of the premises, their location and the style of business. It seems to be accepted that this is probably the best public house in Ballinrobe and is well run by the proprietor and his family.

The appellant's case

Mr. Nerney in his evidence provided an estimate of rateable valuation of £63 derived from the accounts for 1995, 1996 & 1997. Having amended the 1995 figures to account for the ten-month period rather than the twelve-month period. He adjusted the net profit from the account by adding back items for rates, director's remuneration and depreciation and corrected the figures to 1988 levels using the consumer price index and this gave an average divisible balance of approximately £22,166. Taking the net annual value at 50% of, i.e. £11,083 and adding for domestic at £1,600 gave a total N.A.V. of £12,683 which applying the fraction of 0.5% gave an R.V. of £63. He made various points about these premises including the hours of business, the limited trade in Ballinrobe, the high food content in the turnover and the fact that this premises draws trade from a wider area.

Mr. Flannery in his sworn testimony gave evidence about the running of the premises, the difficulty with staff, the longer hours than normal during which food is served (from 12:30

pm to 10:00 pm), the difficulty of retaining staff and the lack of use of the staff during certain afternoon hours. His principal business is concentrated between July and August and on week-ends. The monthly accessible accounts relate to only half his annual mileage and in relation solely to this business as directed by his accountant.

The Respondent's Case

Mr. Forkin in his evidence relied on the accounts method as had Mr. Nerney *** only on the 1996 accounts. He added back for rates, for depreciation, director's remuneration and also for motoring expenses to reach him adjusted and fulfilled and on that basis came to a divisible balance of £46,859. The tenant's share at 50% left available for rent and rates £23,430. He adjusted this to November 1988 using the CPI factor of 0.8% giving £18,744 say £19,000 N.A.V. and thus an R.V. of £95 including the domestic element of £10. In cross-examination Mr. Nerney asked whether the motoring expenses should be added back, as in his and the client's view they were totally related to the running of the business to which Mr. Forkin responded to the effect that they were a normal asset.

Summing up Mr. Forkin said that this was a good property, with a considerable proportion of the turnover due to the owner's efforts and it was the best pub in Ballinrobe. Mr. Nerney said that the tenant's share was for rent and rates and not for *** and no adjustment for the motoring expenses should be made. The resultant figure should be in the order of £64.

Determination

Having considered the evidence, firstly the Tribunal is of the view that three years' accounts should be taken as it is not reasonable to take one year only and the Tribunal has dealt with the accounts for 1994, 1995 and 1996 as provided in Mr. Nerney's submission. The Tribunal has made a simple adjustment to the 1995 figures, which were for ten months to bring them to a twelve-month figure. The efforts of the proprietor must be recognised in reaching the rateable valuation and he must not be punished for running a good business or a profitable business and for generating the turnover. What the Tribunal is endeavouring to do is put a rateable valuation on the premises and not on the business, although in practice for public houses and such like, the turnover is often the only guide available and therefore the efforts of the proprietor do tend on occasions to get reflected where there is particular effort, and undoubtedly Mr. Flannery has indicated to us that this is so and Mr. Forkin has also accepted the contribution to turnover of the owner's efforts. The Tribunal must endeavour to isolate

this factor: if it was a situation where the proprietor was running the premises very badly and it had a low turnover it would not be reasonable that the Tribunal should put a low rateable valuation on the premises but rather the correct R.V. based on the N.A.V. as defined in the relevant acts and the same attitude should be adopted here.

From the accounts we have ascertained the average net profit for each year 1994, 1995, 1996. To these figures we have added back rates, director's remuneration and depreciation. We have not added back motor expenses in this case as they relate totally to the business. We have also added back rent for the year 1996 as there is rent on the premises in the accounts for that year and that would affect the net profit figure and rightly should be added back. The resulting average figure for adjusted nett profit is £37,009. This is the divisible balance. The portion of the divisible balance as agreed between the parties for rent and rates is 50% so that gives, an amount available for rent and rates of £18,504.50. We have adjusted this figure to take into account the rates content, (i.e. we have deducted the rates from this) and have also adjusted the figure back to 1998 as each of the parties has done (using the factor of 0.8%) and adding domestic this gives an N.A.V. of £15,200. Applying the agreed factor of 0.5% gives an R.V. of £76 and the Tribunal so determines.