

Appeal No. VA04/2/037

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**O'Dwyers Ltd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Licensed Shop at Lot No. 116.118/118A, Kilmacud West/Kilmacud Road,  
Stillorgan Kilmacud, County Dublin

**B E F O R E**

**John Kerr - BBS. ASCS. ARICS. FIAVI**

**Deputy Chairperson**

**Joseph Murray - B.L.**

**Member**

**Michael McWey - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF OCTOBER, 2004**

By Notice of Appeal dated the 26th of April, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €750.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"Valuation excessive in comparison with similiar lic'd premises valued by  
Commissioner of Valuation."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 21<sup>st</sup> July 2004. At the hearing, the appellant was represented by Mr. Eamonn O’Kennedy, B.Comm., MIAVI, Valuation & Rating Consultant and Mr. Damien Curran, Grade 1 Valuer in the Valuation Office, MRICS, ASCS, BSc (Surv) represented the respondent. Both parties, having taken the oath, adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief.

### **The Property**

These licensed premises are situated on the Lower Kilmacud Road East close to Stillorgan, County Dublin. The property consists of a two-storey corner premises. It is a good quality building in an established residential area. The adjoining unit (formerly a shop) was acquired three years ago and converted to a licensed premises. Some refurbishment has been carried out.

### **Accommodation**

#### Ground Floor

Lounge Bar

Ladies/Gents toilets

Bottle store

General stores

#### First floor

Lounge/Restaurant

Ladies/Gents toilets

Kitchen

Stores

#### Attic

Office

### **Services**

All main services connected

## Tenure

Part freehold – original licensed premises

Part lease – adjoining shop leased and incorporated into ground floor bar

## Valuation History

The property was revised in July, 2003, following acquisition of the adjoining shop - with an RV of €800.

Following appeal to the Commissioner the RV was set at €750. It is against this decision of the Commissioner that the appeal to the Tribunal now lies.

## Appellant's Submission in Summary

Mr O'Kennedy, for the appellant, made the following submissions:

- In his précis of evidence the appellant noted that circa 1995 the Tribunal, in the context of **VA95/5/025 – Swigmore Inns Ltd. t/a Doheny & Nesbitt**, **VA95/5/024 – Nallob Limited t/a O'Donoghue's** and **VA96/2/076 – Philip Maher & Patrick Leneghan t/a The Sarah Curran**, made an analysis of the various methods of valuing licensed premises and in the course of that analysis commented that while no one method is sacrosanct or conclusive, profits, turnover etc. are hugely influential in the mind of a hypothetical tenant in determining the amount of rent he is prepared to pay on an annual basis.
- The appellant relied on the turnover method of valuation using the turnover figures at 30<sup>th</sup> June 2003, broken down between drink and food and adjusted to November 1988 as follows:

Net turnover as at 30/6/2003                      €1,574,586

### Breakdown

Drinks net turnover                              €1,146,532

Food net turnover                                €428,054

Drinks turnover adjusted to November 1988

€1,146,532 x 135.5

249.4 = €622,915

NAV €622,915 @ 9% = €56,062

Food turnover adjusted to November 1988

€428,054 x 135.5

249.4 = €232,532

NAV €232,532 @ 7% = €16,277

€56,062 + €16,277 = €72,339 increased to €83,000 to allow for expected increase of approximately 15% in turnover in future years

€83,000 @ 0.63% = RV €524.90 say €525

- He used 9% of adjusted net turnover on drink. 7% on food or overall 8%. Turnover dropped for the year ending June 2003 to €1,574,586 from €1,607,063 the previous year.
- Where turnover was poor because of bad management, he would allow a figure in excess of these amounts to reflect this. The subject premises is well managed.
- There are very little parking facilities in front of the building. It is more of a local pub than passing trade. It is located in a residential neighbourhood with limited parking facilities. Neighbours object to parking outside their houses.
- O'Dwyers is a family pub with food and drink, but food is not as profitable as drink.

- It was unfair that the rate in the euro was higher in the Dunlaoghaire /Rathdown Rating Authority area than elsewhere in the Dublin area. The respondent replied that the issue was about quantum, not the rate in the euro.
- Respondent did not look to turnover but to tone in general
- Claimed that equity requires use of comparison methodology based on turnover figures and not on the broad approach of the “tone-of-the-list”.
- Comparisons based on turnover

### **Appellant’s Comparisons (see details at Appendix 1)**

Mr O’Kennedy commented as follows on six of his eight comparisons, and confirmed the application of valuations based on adjusted turnover.

- **The Willows, Dundrum**  
This is similar to the subject property, located in a residential area, having no carpark and no “volume hit” at weekends.
- **Sandyford House**  
The comments referring to The Willows above also apply to this property which is located in a very small village and has very little weekend “peak” business. Declared to be very close in value to the subject property.
- **Uncle Tom’s Cabin**  
This is similar in size to the subject and, like it, has a prominent location. It benefits from weekend “peak” business from young customers and also has a large car park.
- **The Orchard**  
This is considered a much superior licensed premises with turnover almost double that of the subject premises, but Mr O’Kennedy introduced it because it is in the same area as the subject property. It benefits from day and evening

trade with the advantage of night trading linked to the nearby supermarket. It has a good weekend trade and a large car park.

- **The Millhouse**

This is also a much superior premises with turnover substantially in excess of the subject. The subject premises does not compare with the value of this property or that of The Orchard. Respondent used these comparisons also but for different reasons.

- **Conways, Blackrock.**

Similar turnover to subject premises with the advantage of a village location. Its RV is considered to be based on adjusted turnover @ 8.5%.

- **Eagle House, Dundrum**

Smaller than subject in a prominent location with valuation based on 10.5 % of turnover. No comment was offered by appellant at hearing on this property.

- **O'Shea, Clonskeagh**

Similar size to subject with an RV of €444. No comment was offered by appellant on this property at hearing.

### **Respondent's Submission in summary.**

Mr Curran, representing the respondent, made the following submissions:

- There has been extensive refurbishment on the subject since the last revision (RV €12.66) with circa €40,000 expended. The adjoining shop (RV €1.42) has been leased and incorporated into the pub.
- There is a "tone" applicable to licensed premises in the immediate area and a general tone applicable to licensed premises in the Dunlaoghaire-Rathdown Rating Authority area. In his précis, he stated that the tone applicable to

licensed premises in both instances was more complex than a simple percentage applicable to turnover or a price per square metre approach

- The licensed premises in the immediate vicinity have been valued on a “relative ranking” basis. More recently in Blackrock a similar approach was adopted which followed an earlier tone where NAVs were based on a range of 9-14% of turnover, which include food sales. Tone comparisons gave an RV of €750. General tone goes right to the boundaries of the Rating Authority area.
- Four of his comparisons were derived from the general tone plus the ranking method.
- There was no discussion about turnover with the appellant at First Appeal.
- There is no established practice of differentiating between food and drink with regard to turnover in Dunlaoghaire/Rathdown.

### **Respondent’s Comparisons (see details at Appendix 2)**

Mr Curran used tone comparisons based on relative value. His first two comparisons, The Millhouse and The Orchard, are common comparisons. The RV in the first three comparisons was reached by compromise agreements based on “tone”. All are in the Stillorgan area.

- **1. The Millhouse**  
Geographically close to subject and similar in size and type. RV €825.33
- **2. The Orchard**  
Geographically close and larger than the subject. RV €338.03. Agreed as inferior to the premises above.

- **3. Blakes**

Geographically close to the subject. Agreed as being inferior to both 1 and 2.

RV €800.00

### **Comparisons in Blackrock**

Here, valuations are based on a “relative ranking” basis.

Mr Curran gave 5 comparisons in the Blackrock area:

- **4. The Clock** - RV €119.01
- **5. O’Rourkes** - RV €61.88
- **6. Conways** - RV €11.70
- **7. The Mad Hatter** - RV €33.29
- **8. Tonic** - RV €80

In comparisons 4, 5 and 6 the valuations were based on between 9% and 14.1% of turnover. By compromise agreement it was agreed that the Tonic premises was the most valuable in Blackrock with the addition of a former Off Licence into the main property, with an RV of €80. Next in ranking came the Mad Hatter, which by compromise agreement based on acceptance that the property was more valuable than Conways and less valuable than the Tonic pub, RV agreed at €33.29. O’Rourkes, a small pub on the main street, had the lowest value and was said to be under-trading, valuation based on 12.5% of adjusted turnover to give a value of €61.88.

### **Findings & Conclusions**

The best comparators in this case are The Mill House and The Orchard and both were introduced by each party in their comparisons. Both are considered local pubs and The Orchard has particular relevance in this case, as it is under the same family ownership and structure. The appellant used the percentage of net turnover, adjusted to November 1988, as the appropriate approach. The respondent used the “tone method” based on a percentage of adjusted turnover or capital value.



The Tribunal considers that the “tone method” applied to licensed premises should not be applied to a whole Rating Authority area but should be limited to a certain locality, district or street. Case law supports this approach and it is considered established in practice. By way of illustration only, a pub on top of Killiney Head may not be comparable, using the “tone method”, to a pub on the main street of Blackrock. There are too many variables to be considered for different locations. The “tone method” should be confined to a particular area.

To reach a fair rateable valuation, the Tribunal is of the view that the relative spread or a relativity concept should be employed.

It was established by the Valuation Office Specialist Unit in 1995 that the RV on The Millhouse was £560 and on The Orchard £575 and the subject premises was £325. The subject RV was adjusted after the acquisition of the adjoining shop (RV €1.42) to an RV of £397. To reach a fair rateable valuation, the Tribunal is of the view that the relative spread or a relativity approach in this particular case should be employed, reflecting the similarity in the market trading conditions of the properties, their management style and ethos, and the nature of their operations and taking account of the increased floor area of the subject.

Accordingly and by applying a notional update adjustment by indexing those figures of the foregoing assessed RVs on The Millhouse to €825 (16.9%) and The Orchard at €38 (15.7%), the Tribunal concludes that the appropriate RV on the subject, i.e. O’Dwyers Ltd. premises, while maintaining a similar “spread” should be fairly calculated by increasing the assessed RV from £397 (€04) to €10 to be consistent with the principle of the increase already established in the two primary comparators.

And the Tribunal so determines.