

Appeal No. VA08/3/004

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

Gerry & Theresa Meyler

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2168343, Licensed shop, Restaurant/café at Lot No. 2, Fence, Tacumshin, Wexford, County Wexford

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Damian Wallace - QFA, MIPAV, Valuer

Member

James Browne - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF NOVEMBER, 2008**

By Notice of Appeal received on the 10th day of July, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €128.00 on the above described relevant property.

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

" Turnover figure used for business is unsustainable. Only the issue of turnover and market conditions."

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 4th day of September, 2008. The appellant was represented by Mr. Terry O’Leary, BSc Property Surveying, ASCS, MRICS, Chartered Surveyor, Golden Estates, Wexford. The respondent was represented by Mr. Patrick McMorrow, ASCS, IAVI, a Valuer in the Valuation Office. Both valuers adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

The Property

The property concerned, the Millhouse Bar, is a long established rural public house that was extended and refurbished in 2005. The property now consists of a bar with games area, main lounge and seating area with small dance floor and a music/entertainment area, customer toilets, open plan lounge extension and dining area with a capacity of c. 65 covers, kitchen stores and staff area, a small beer garden and smoking area to the rear, a service yard and extensive car park to the side and rear. The estimated cost of these improvements was in the region of €400,000. There is living accommodation attached to the licensed premises and this is where the appellant lives.

Location

The property is located outside the village of Tacumshane in a very rural location on the southern boundary of Co. Wexford. It is approximately 10 kilometres from Wexford town and 7 kilometres from Rosslare. Mr. O’Leary’s précis stated that there are no shops in the village and no residential developments in the area within recent times other than one-off houses.

Valuation History

The property was valued in 2007 at €128. On appeal to the Commissioner of Valuation, the Appeal Officer affirmed this figure.

The Appellant’s Case

Mr. O’Leary, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He confirmed that the floor areas were agreed and accepted that the turnover method was the most suitable method of valuation of the

subject property. He stated that the valuation proposed by the Valuation Office was excessive in the light of current pub trade in the area.

In his evidence, Mr. O’Leary referred to **VA95/5/024 - Nallob Limited t/a O’Donoghue’s** where the Tribunal dealt in some detail with the various methods of valuing licensed premises for rating purposes. In that case, he said, the Tribunal stated *“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.”* The Tribunal went on to say that *“Three year’s accounts without any distortion during that period are usually and should, on a confidential basis, be made available where possible.....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...”*

Mr. O’Leary said the Valuation Office had valued the subject property using the turnover figure for just one year – the year ended 30th June, 2006 - and without reference to the suggested practice of distinguishing between food and drink sales. He said that the only audited turnover figure available for the subject property was that up to 30th June, 2006 and said that the breakdown of that figure was as follows:

Restaurant	€267,098
Bar	€324,739

He said that accounts for 2007 were not yet made available, but they would show the turnover to be significantly lower than the previous year.

Mr. O’Leary outlined details of three local licensed premises as follows:

1. The Broadway Tavern, Broadway, Co. Wexford, closed for the last three years.
2. Butler’s House, Broadway, Co. Wexford, which was purchased three years ago for €1.2 million, is now on the market for €800,000 and was closed for the last two weeks.
3. The Hitching Post, Ballycogley, Co. Wexford, closed for the last two years.

He added that all of these premises are located within 7 miles of the subject premises and said he introduced them to provide evidence of the current difficult environment for public houses/restaurants.

Mr. O’Leary then introduced his comparisons (details at Appendix 1 hereto) as follows.

Comparison No. 1 - Ferryport House, Rosslare Harbour, a guesthouse and restaurant with a valuation of €130.

Comparison No. 2 - Castlevue Heights Restaurant with a valuation of €35.

On the basis of the anticipated 2007 turnover figure which, in the opinion of their auditor, would be in the region of €400,000 Mr. O’Leary contended for a valuation of €102.94 calculated as follows:

Anticipated Turnover :	€400,000
Backdated to 1988 61.2/118.9	= 0.5147
0.5147 x €400,000	= €205,880
Devalue @ 10%	= €20,588
RV @ 0.5%	= €102.94

Cross Examination

Under cross examination by Mr. McMorrow, Mr. O’Leary confirmed that he accepted turnover as the basis for the NAV/RV but added that profits should also be taken into account. He acknowledged that he had not supplied three years’ accounts but that was because they were not available. In response to Mr. McMorrow who quoted from **Nallob Limited** that “*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*”, Mr. O’Leary agreed that turnover was treated in that case as the most crucial issue. Referring to Section 49(1) of the Valuation Act, which requires properties to be valued by reference to the values of similar properties in the same rating area, Mr. McMorrow stated that neither of Mr. O’Leary’s comparisons has a seven day license and neither is in the same category as the subject property. He also referred to **VA04/1/003 - Eden Fitness Club** where the Tribunal found that “*...the only relevant comparables are those of a similar mode or category or use located in the same rating area*”. In reply Mr. O’Leary held that his

comparisons were comparable as both included restaurants which were in direct competition with the subject property.

Respondent's Evidence

Mr. McMorrow having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. By consent, he substituted a new location map for that originally contained in his précis. He agreed with Mr. O'Leary on the location and description of the subject property.

He said that the valuation of the subject property was made by reference to the values of comparable properties in the valuation list for Wexford County Council rating area and that his three comparisons [see Appendix 2 hereto] are all licensed premises and are located in a rural setting within a short distance of the subject. He outlined the basis of his valuation as follows:

Turnover to year end 30/6/06	€591,837
<i>(The only post improvements full year available)</i>	
Adjust to Nov 1988 (DPI) 0.5147	= €304,629
NAV @ 9%	= €27,416
	@ 0.5% = RV € 137

The Revision Officer set the valuation at RV €128. On appeal to the Commissioner the Appeal Officer confirmed this figure.

Mr. McMorrow confirmed that he made an allowance for the "honeymoon" period that may have been reflected in the 2005/2006 turnover because of the new extension and gave a reduction of 8-10% off the calculated figure. He added that if there had been certified figures available for 2 years he would have taken them into account but, as there wasn't he gave an allowance which yielded a valuation of €128.

Mr. McMorrow then introduced his comparisons [see Appendix 2 hereto] as follows:

- Comparison No.1 - The Temple Bar - RV €120
- Comparison No.2 - Kevin Doyle (Butler's) - RV €133.32

Comparison No. 3 -The Hideout - RV €57.14

All these comparisons are rural based, seven day licensed premises in the vicinity of the subject property. In each case the valuation is based on turnover. His best comparisons, he said, were Comparisons 1 and 2.

In cross examination Mr. O'Leary asked Mr. McMorrow to clarify the relevance of his comparisons given the fact that they do not have any significant restaurant portion. Mr. McMorrow confirmed that they were the best available comparisons and the most relevant. In summarising his case he said that Mr. O'Leary had not put forward any relevant comparison. He also added that an allowance for a sector-wide downturn could not be made in a single revision.

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following findings:

1. The subject property, following extensive refurbishment, is a modern building finished to a high standard.
2. The Tribunal notes the location of the subject property and accepts there is a lack of any significant development in the surrounding area in recent years.
3. The Tribunal notes that the appellant and the respondent agreed that the turnover method was the most suitable method of valuation for the subject property.
4. The valuation was made on the basis of certified accounts for 2005-2006, the most recent available at revision and to date.
5. The certified accounts do not show a breakdown for food and drink sales. Nor did the appellant provide certified evidence of that breakdown or apply such a breakdown in his estimate of valuation.
6. The Tribunal is satisfied that turnover, rather than profits, is a more reliable basis of valuation.
7. The Tribunal accepts that the economic downturn in the licensed trade sector cannot be addressed in a single revision.
8. The Tribunal has considered the comparisons offered by both parties and accepts the respondent's contention that the appellant's comparisons do not fall in line with Section

49 (1) of the Act. These comparisons are a 16 bed-roomed guesthouse with restaurant and a pitch and putt club with restaurant.

9. The Tribunal notes the reduction made at revision stage to reflect the “honeymoon” period of the first year’s trading.

Determination

In reaching its determination the Tribunal has been required to consider only the evidence submitted and adduced. In so doing the Tribunal has made the foregoing findings and in the light of those findings determines that the valuation of the respondent is fair and reasonable. The Tribunal therefore affirms the valuation of €128.

And the Tribunal so determines.