

Appeal No. VA11/2/016

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

Inishelm Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 771213, Licensed Shop at 57a, Dorset Street Lower, Ballybough B, Ballybough, County Borough of Dublin

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Michael F Lyng - Valuer

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF NOVEMBER, 2011

By Notice of Appeal received on the 16th day of May, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €345 on the above described relevant property.

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

"Amalgamation of two separate rating hereditaments. Valuation excessive."

"Comparison of similar premises valued by Commissioner of Valuation."

The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 30th day of September, 2011. At the hearing the appellant was represented by Mr. Eamonn O’Kennedy, B.Comm, MIAVI, principal of O’Kennedy & Co. Valuation and Rating Consultants and the respondent was represented by Mr. Frank O’Connor, MSCS, MRICS, District Valuer in the Valuation Office.

Location

The subject property is located on Lower Dorset Street at the junction with Portland Place, close to Dublin City Centre and approximately 0.5 miles from Croke Park. The surrounding area is predominantly commercial, comprising mainly retail units at ground floor level with mixed commercial and residential accommodation on upper levels.

The Property Concerned

The subject property is a licensed premises situated on the ground floor and basement of a three-storey building. The building is around 150 to 200 years old, constructed with brick walls, solid timber floors and a natural slate roof. The ground floor accommodation consists of a bar, lounge, off-licence and WCs, with stores and a tap room in the basement. Since the property’s last revision in 1993, a function room was added to the ground floor, the off-licence was partitioned off from the front lounge and the toilets and corridors were reorganised.

Total accommodation is as follows:

Ground Floor Bar/Lounge & Off-Licence	191 sq. metres
Ground Floor Function Room	90 sq. metres
Basement Cellar	64 sq. metres

Rating History

The subject property was listed for revision by the appellant, resulting in an increase in the rateable valuation from €292 to €345. The appellant appealed against this valuation to the Commissioner, which appeal was unsuccessful. A final valuation certificate issued on 20th April 2011 with a RV of €345. The appellant appealed this decision to the Tribunal.

The Issues

Quantum and valuation methodology.

The Appellant's Evidence

Mr. Eamonn O'Kennedy, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as his evidence-in-chief. He stated that he believed that the adjusted net turnover basis at the date of valuation was the correct method to value the subject property. He stated that this method was introduced by the Commissioner of Valuation in 1991 for valuing licensed premises and remained in place until 2009, when the Commissioner sought to change to a rate per sq. metre method of valuation.

Mr. O'Kennedy referred to a number of revisions carried out on licensed premises in Dublin in recent years – *Cabra House* in 2003, *Kavanagh's, Malahide Road* in 2008, *The Stone Boat* in 2008, *The White Horse Inn* in 2000 and *Hedigans* in 2008 together with a decision of the Tribunal, **VA10/3/028 - Tony Ward T/A Redz**, where the adjusted net turnover method was used. Mr. Kennedy also referred to a number of Tribunal decisions from 1995/1996, **VA95/5/024 – Nallob Limited t/a O'Donoghue's**, **VA95/5/025 – Swigmore Inns Ltd. t/a Doheny & Nesbitt** and **VA96/2/076 – Philip Maher & Patrick Leneghan t/a The Sarah Curran**, where the Commissioner attempted to introduce a price per sq. metre method to value licensed premises, which was rejected by the Tribunal, which found that the turnover system was the fairest method of valuing licensed premises. He stated that the only decision where a rate per sq. metre method was accepted by the Tribunal was the recent decision in **VA10/4/002 - Mia Taverns**. However, he stated that even in that case the Commissioner had not sought to increase the rateable valuation of the premises on revision, as he had in this case.

In addition, Mr. O'Kennedy also made reference to the decision in **VA06/3/048 - Rathbeale Service Station Ltd.**, where the Commissioner pointed out that the accepted tone of the list for valuing petrol stations was the throughput method. He submitted that the tone of the list in the Dublin City rating authority area for valuing licensed premises was the adjusted turnover at the date of valuation and that every single pub in the area had been valued on that basis. Mr. O'Kennedy questioned whether it was open to the Commissioner to change the method of valuing licensed premises without legislation. He submitted that the price per sq. metre was a weak system and should only be used as a method of last resort e.g. if accounts are not available or supplied. He stated that pubs are let based on turnover and that a publican would

not look to rent a pub with a greater area where the turnover was the same as a smaller premises.

In arriving at his opinion of RV, Mr. O’Kennedy used net annual turnover figures at y/e 30th September, 2009 and at y/e/ 30th September, 2010, which he adjusted back to 1988, giving a figure of €403,000. Taking a percentage of 9%, which he stated was the figure used for drink in the vast majority of pubs in Dublin, gave a Net Annual Value of €36,000. Applying a rate of 0.63% resulted in a RV of €225. However, on the basis that the extension to the premises may have resulted in an addition in value, Mr. O’Kennedy increased the RV to €260. He did however state that the extension was of a poor standard and was added at the peak of the licensed trade. He stated that it was now surplus to requirements due to the downturn in trade and was now used only occasionally for functions.

With regard to the method used by the respondent, namely to devalue the valuations of pubs which had been valued on an adjusted turnover basis at revision on a sq. metre basis, Mr. O’Kennedy stated that this was an academic exercise and lead to wildly varying rates per sq. metre. He also stated that pubs valued in the revaluation exercises conducted in South Dublin, Fingal and Dun Laoghaire Rathdown rating authority areas had been valued solely on an accounts basis and that the tone had been settled on that basis.

In response to a question from the Tribunal with regard to the location of his comparisons, Mr. O’Kennedy contended that a pub on Dorset Street, like the subject, was reasonably comparable to a pub on the south side of Dublin, like some of his comparisons. He stated that all pubs in Dublin are comparable as the main guiding factor is turnover, although a prudent publican would also look at the location, as it can impact on turnover.

Respondent’s Evidence

Mr. Frank O’Connor having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as his evidence-in-chief. Mr. O’Connor stated that from 2009 the Commissioner felt that an adjusted turnover basis of valuing licensed premises was not in conformity with Section 49(1) of the Valuation Act, 2001 and since then the majority of pub revisions in Dublin have been done on a rate per sq. metre basis. He submitted that the Tribunal decision in **VA10/4/002 - Mia Taverns** supported this method. Mr. O’Connor also refuted Mr. O’Kennedy’s contention that the tone

of the list for licensed premises was the adjusted turnover method of valuation and contended instead that it was the devalued price per sq. metre. In addition, he stated that a revaluation exercise was totally different to a revision, as all properties were valued at the same time and in those circumstances it was appropriate to use turnover figures.

Mr. O'Connor contended for a RV on the subject property of €345, calculated by retaining the valuation agreed on the premises in 1993 i.e. RV €92, which equates to a NAV of €46,350. Devaluing that against the drinking area at the time, of 213 sq. metres, results in a rate per sq. metre of €218. He then added on the extension, which had a drinking area of 68 sq. metres, which he valued at a rate of €24 sq. metres, giving an additional NAV of €,432. This resulted in an overall NAV of €4,762, giving a RV of €345. When one devalues the total drinking area of the entire premises this results in an overall rate per sq. metre of €95.

Mr. O'Connor made reference to three comparisons, all located in the vicinity of the subject. He devalued the comparisons by the total drinking area in order to arrive at a rate per sq. metre. Doing this exercise resulted in rates per sq. metre varying between €206 for *The Big Tree* and €76 for the ground floor drinking area in *The Hogan Stand*. Mr. O'Connor stated that the subject was valued at a lower rate than any of the comparisons and contended that the valuation was fair when one considers the provisions of Section 49(1) of the Valuation Act, 2001. He further stated that he was familiar with all the comparisons and that there was no difference in standard or quality of fit-out between them and the subject and thus he was comparing like with like.

Cross-Examination

It was put to Mr. O'Connor that pubs with smaller floor areas can be more valuable than larger premises and therefore that it was not fair to value them on a sq. metre basis, which could result in a small busy pub ending up with a valuation half that of a pub with a much larger drinking area, which actually had a lesser turnover. Mr. O'Connor was asked by the Tribunal whether the rate per sq. metre should be adjusted in those circumstances in order to arrive at a consistent tone. He replied that pubs are different than shops and that if they have been originally calculated on a turnover basis, it is impossible to devalue them identically on a per sq. metre basis. Mr. O'Connor also stated that although he added the extension on to the previous NAV the overall devalued rate per sq. metre actually dropped by 10% and that this, in effect, amounted to a quantum allowance.

Summary

Mr. O’Kennedy stated that most publicans value pubs based on turnover and that banks, when lending money in respect of pubs, also look at the turnover of the premises. He stated that if the turnover was the same on smaller premises versus larger premises a publican would opt for the smaller premises, as they would have lower overheads. Mr. O’Kennedy stated that in his opinion the rate per sq. metre method introduced by the Commissioner for revisions of pubs was not fair. The turnover basis was what was accepted by the trade and it was unfair of the Commissioner now to adopt a different method.

Mr. O’Connor submitted that he had complied with the provisions of Section 49(1) of the Valuation Act, 2001 when valuing the subject property and that his valuation should stand. He further stated that the method he had adopted was in line with the Tribunal decision in **VA10/4/002 - Mia Taverns v Commissioner of Valuation.**

Findings

1. When valuing a property at revision the guiding principle is what is known as the “tone of the list”, as set out in Section 49(1) of the Valuation Act, 2001, which states, *“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”)* falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”
2. The respondent drew the Tribunal’s attention to the decision in **VA10/4/002 - Mia Taverns**, where similar arguments to those advanced by the appellant and respondent in the instant case were promulgated. Although previous decisions of the Tribunal are not binding, they are certainly of persuasive authority and this Tribunal sees no reason why it should not follow the reasoning adopted in **VA10/4/002 - Mia Taverns**, which dealt with this whole issue in great detail.
3. As was pointed out by the Tribunal at paragraph 19 of the determination in **VA10/4/002 - Mia Taverns**:

“Nothing in either Section 48 or Section 49 gives authority to support an argument that the net annual value of licensed premises must be determined according to a formula. Indeed Section 49(1) specifically refers to ‘the values, [...] of other properties comparable to that property.’”

Furthermore, as was stated by Kingsmill Moore J. in the Supreme Court in **Roadstone Ltd. v Commissioner of Valuation** [1961] I.R. 239 at p. 260:

*“It has been repeatedly decided that in arriving at his estimate of the hypothetical rent a judge is not bound to use any particular method but may arrive at his determination in whatever way is most suitable to produce the required result: **Dundalk Gas Co. v Commissioner of Valuation**, per FitzGibbon J., at pp. 167, 168; **Commissioner of Valuation v Dundalk Urban District Council**, per Murnaghan J., at p. 289. The ascertainment of the net annual value as directed by the section is a question of fact and not a question of law (**Mersey Docks and Harbour Board v Birkenhead Assessment Committee**, per Lord Halsbury at p. 180) and common sense and economic considerations must be the guides.”*

4. Given the downturn in business in the licensed trade in recent years, adjusting current turnover back to the valuation date in 1988 using the drinks price index for pubs on revision is likely to lead to anomalies and unfairness with regard to the tone of the list. The method used by the Commissioner in the present case, although perhaps not perfect, is in the opinion of the Tribunal less likely to lead to such anomalies.
5. It is common case that an extension was added to the subject property sometime since the last revision, which extension even the appellant was willing to accept had some value. When looking at the valuation date of November 1988, the question one needs to ask is whether a pub with the extension would have been more valuable than a pub without such extension and the answer is clearly yes. Accordingly, the appellant’s case for a lower RV on the property now with the benefit of an extension, than that fixed when no extension existed simply does not stand up.
6. The Tribunal accepts the comparisons put forward by the respondent, all of which are in close proximity to the subject property and are similarly circumstanced. The valuation placed on the subject by the respondent in light of these comparisons seems fair and reasonable.

Determination

Having regard to the foregoing the Tribunal determines that the appeal be dismissed and the existing valuation of €345 be affirmed.

And the Tribunal so determines.