

Appeal No. VA11/3/004

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

**Donnybrook Inns Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 842730, Licensed Shop, Restaurant/Cafe at Lot No. 16 to 24, incl 24e- Flr 0, Flr 1, Main Street (Donnybrook), Pembroke West B, Pembroke West, County Borough of Dublin.

**B E F O R E**

**Fred Devlin - FSCSI, FRICS**

**Deputy Chairperson**

**Brian Larkin - Barrister**

**Member**

**Frank O'Donnell - FRICS, B Agr Sc, MIREF**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 9TH DAY OF JANUARY, 2012**

By Notice of Appeal dated 11th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €19 on the above described relevant property.

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

"Valuation excessive in comparison with similar premises valued by Commissioner of Valuation in recent years".

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20<sup>th</sup> day of October, 2011. At the hearing the appellant was represented by Mr. Eamonn O’Kennedy, BComm, MIAVI, Principal at O’Kennedy & Co. The respondent was represented by Ms. Angelina Scanlan, BSc, MIAVI, a valuer with the Valuation Office. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as the facts relevant and material to the appeal.

### **At Issue**

Quantum

### **The Property Concerned**

The property concerned is located at 22-24 Donnybrook Road, Donnybrook, Dublin 4, circa 4 kilometres south of Dublin City Centre. The premises, Kiely’s of Donnybrook, are situated in a mainly commercial area at the junction of Donnybrook Road and Pembroke Villas. Donnybrook Road forms part of the N11 which links Dublin City with the South-east of Ireland.

### **Description**

The subject licensed premises consists of a ground floor bar, lounge, stores, cold room, kitchen, and toilets. There is a restaurant on the first floor in addition to kitchen, store and toilets.

Trading areas are as follows:

Ground Floor 382 sq. metres

First Floor 177 sq. metres

### **Tenure**

The property is held freehold.

### **Rating History**

The subject property (Property Number 842730) was last revised in 1993. The assessment was the subject of a First Appeal to the Commissioner of Valuation and was agreed with Rating Consultant Mr. Eamonn O' Kennedy of O'Kennedy & Co. Ltd. at RV €793.75.

In 1994 a former store (since converted to a kitchen), Property Number 842737, was entered on the Valuation List with a RV of €25.39, following agreement at first appeal stage. In September 2010 following an application for revision of the subject property and the said store in March 2010 a draft certificate issued with a valuation of €819 for the amalgamated premises. Subsequent representations to the Revision Officer in October 2010 left the valuation unchanged and an appeal was lodged with the Commissioner of Valuation in December 2010. On the 15<sup>th</sup> June, 2011, the Commissioner's response affirmed the decision of the Revision Officer resulting in the present appeal to the Valuation Tribunal.

### **The Appellant's Evidence**

Mr. O'Kennedy, having taken the oath, adopted his précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

In his evidence Mr. O'Kennedy said that it has been the accepted practice for many years past to value licensed premises for rating purposes by having regard to turnover. He stated that this satisfied the requirements of the tone of the list that the established method for the valuation of licensed premises was to take the existing turnover and to adjust it to 1988 levels by using the alcohol price index. Mr. O'Kennedy stated that over the past twenty years he had acted for owners of many licensed premises in negotiations at revision and subsequent appeal stages under the 2001 Act and the 1986 Act. During the period 1992 to 2009, he added, the Commissioner of Valuation valued all licensed premises in the Dublin rating area using the Adjusted Net Turnover at date of valuation as the basis for arriving at letting value of licensed premises. Thus a tone of the list was clearly established for the licensed trade.

Mr. O'Kennedy stated that it was his experience that net annual value in virtually all these cases was arrived at by applying 9% and 7% respectively to the drink and food elements of the existing turnover to adjust to 1988 levels. This methodology had been approved, he stated, by the Valuation Tribunal in the following significant cases:

**VA95/5/025 - Swigmore Inns Ltd. t/a Doheny & Nesbitt, Lower Baggot Street, Dublin 2**

**VA95/5/024 - Nallob Limited t/a O'Donoghue's**, Merrion Road, Dublin 2

**VA96/2/076 - Philip Maher & Patrick Lenaghan t/a The Sarah Curran**, Rathfarnham, Dublin

**VA96/3/022 - The Step Inn**, Stepside, Co. Dublin

In those instances, Mr. O’Kennedy also referred to the comments of the then Tribunal Chairman when he stated that the price per sq. metre method was not appropriate to the valuation of licensed premises in that it ‘*does not accord with the realities of the market place*’. Mr. O’Kennedy acknowledged that Section 49(1) was referable to all types of property, but stated that the realities of the licensed trade called for a different approach, i.e. the Accounts Method. In support of this view he drew the attention of the Tribunal to its decision in **VA06/3/048 - Rathbeale Service Station Ltd.**, where a selective approach, viz ‘*the throughput method*’ was adopted for Section 49(1) comparison purposes in the valuation of Service Stations.

The said Accounts Method – welcomed by both the VFI and LVA, Mr. O’Kennedy remarked – led to increased rateable valuations during the peak trading years 1993 - 2000 and reduced rateable valuations when turnover declined. Thus, there was a consistency which continued after the Valuation Act, 2001 until 2009.

In 2009 the Commissioner of Valuation made a fundamental change when he introduced the price per sq. metre valuation for the licensed trade. Mr. O’Kennedy argued that this method was suitable for general retail, office and industrial valuation but not for the licensed trade for the following reasons:

1. Licensed premises have always been let/sold on turnover basis and not on a sq. metre basis, which is more applicable to other commercial uses.
2. The use of sq. metre comparisons is acceptable in the case of shops, offices, industrial premises that have been valued on a sq. metre basis. Licensed premises, on the other hand, were valued on an adjusted net turnover basis at date of valuation, and the conversion of results arrived at under the Accounts Method to price per sq. metre gives rise to anomalies. Two licensed premises in Dublin with significant variation in size e.g. premises (A) 4,000 sq. ft. and premises (B) 2,000 sq. ft. but with similar turnover may be let at the same rental figure but premises (A) would carry double the rates burden of premises (B).

In his concluding comments on the rating method in place since 2009, viz the rate per sq. metre basis, Mr. O’Kennedy stated that it was noticeable that in situations where the turnover of licensed premises increased the Commissioner of Valuation increased the rateable valuations, but did not correspondingly reduce them when turnover dropped. Furthermore, he added that the Commissioner of Valuation’s Guidance Note to Valuers dated 23<sup>rd</sup> January, 2009 was of no legal standing and urged the Tribunal to take that into account.

Mr. O’Kennedy, relying on the Accounts Method, i.e. turnover, contended for the following valuation:-

Net Drink Turnover 2009 adjusted to Nov 1988

$$\begin{aligned} & \text{€1,454,914} \times \frac{135.5}{285.6} = \text{€690,269} \end{aligned}$$

Net Drink Turnover 2010 adjusted to Nov 1988

$$\begin{aligned} & \text{€1,288,163} \times \frac{135.5}{272.9} = \text{€639,597} \end{aligned}$$

Average €665,000

Net Food Turnover 2009 adjusted to Nov 1988

$$\begin{aligned} & \text{€472,862} \times \frac{135.5}{285.6} = \text{€224,344} \end{aligned}$$

Net Food Turnover 2010 adjusted to Nov 1988

$$\begin{aligned} & \text{€388,782} \times \frac{135.5}{272.9} = \text{€193,037} \end{aligned}$$

Average €220,000

Average adjusted Net Drink Turnover

$$\text{€665,000} @ 9\% = \text{€59,850} \quad \text{say} \quad \text{€60,000}$$

Average adjusted Net Food Turnover

$$\text{€220,000} @ 7\% = \text{€14,700} \quad \text{say} \quad \text{€15,000}$$

First Floor Restaurant                   €20,000  
   €5,000

RV €5,000 @ .63% = €98.50

Say €600

In support of his opinion of that valuation Mr. O’Kennedy introduced 17 comparisons, details of which are attached at Appendix 1 to this judgment.

In his evidence Mr. O’Kennedy said that in recent years turnover in the licensed trade had declined due to a number of factors, in particular the more stringent drink driving laws, the smoking ban and the economic downturn.

Mr. O’ Kennedy stated that the capital value of licensed premises had declined sharply due to falling turnover since 2000 despite increased drink prices. He reiterated that the Valuation Office did not appear fully to appreciate the changing landscape in the licensed trade and have ceased to value licensed premises at revision using the long accepted turnover method. As a result the Licensed Vintners Association had lost confidence in the Valuation Office.

### **The Respondent’s Evidence**

Ms. Scanlan, having taken the oath, adopted her written précis, which had previously been received by the Tribunal and the appellant, as being her evidence-in-chief.

In her evidence Ms. Scanlan contended for a rateable valuation of €819 calculated as follows:

Ground Floor Bar

382 sq. metres @ €294.77 per sq. metre           = €12,604,24

177 sq. metres @ €98.26 per sq. metre           = €17,392.02

559 sq. metres                                    Total NAV €29,996.26

Rateable Valuation NAV @ 0.63% = €818.97

Say RV €819

In support of her opinion of net annual value Ms. Scanlan introduced four comparisons, details of which are set out in Appendix 2 to this judgment.

Ms. Scanlan stated that the valuation was arrived at by reference to the values of comparable properties appearing on the Valuation List in line with Section 49(1) of the Valuation Act, 2001. The rateable valuation for the subject property agreed in 1993 and 1994, she added, is a direct amalgamation of the existing valuations for Property No. 842730 and Property No. 842737. Ms. Scanlan confirmed that there have been no significant changes to the premises. The former store area has been converted into a kitchen but the trading area has not been changed. All of her comparisons were assessed with regard to their 1988 value and the relativity established and agreed has been maintained over the years.

Ms. Scanlan in her evidence stated that the Turnover Method was abandoned in 2009 by the Valuation Office and that we must now have regard to the Tone of the List which was the fairest approach. In this connection she referred the Tribunal to the *Guidance Note to Valuers* dated 23 January, 2009 (entered into evidence earlier by Mr. O’Kennedy). Ms. Scanlan also referred the Tribunal to paragraph 21 of **VA10/4/002 - Mia Taverns** judgment “*the tone of the list is assumed to be fairly representative of the relevant values of all relevant properties with various use categories in a local rating authority area as at a common valuation date which in the case of Dublin, is now taken as being November, 1988 (see section 49(2). No evidence was adduced that, in relative terms, the various factors that would have a bearing on rental values are substantially different in the licensed trade when compared to other businesses. In the circumstances, the Tribunal feels that the current practice of valuing licensed premises which have been subject to a material change of circumstances “by references to their adjusted turnover may give rise to even more anomalies than currently exist on the Valuation List. Such a method of valuation should in the Tribunal’s opinion be seen more as means of comparison than valuation”*”.

Commenting on Mr. O’Kennedy’s comparisons, Ms. Scanlon said there were straightforward explanations as to why the rateable valuations for The Merrion Inn, Coman’s of Rathgar and Russell’s of Ranelagh increased, apart from adjusted net turnover. In most instances it was due to alterations, extensions or refurbishments to the respective premises.

Mr. O’Kennedy, in the course of his cross-examination of Ms. Scanlon, put it to her that it was strange that when turnover was increasing in good times, the Commissioner of Valuation took the increased turnover into account when assessing the Net Annual Value of licensed

premises, but would not take into account reduced turnover, i.e. the reverse, when times were bad economically.

## **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. The overall intention of the Valuation Act, 2001 is that all relevant property in the state will be the subject of a revaluation.
2. Section 19(1) provides that the Commissioner, after consultation with the Minister for the Environment and Local Government and the rating authority concerned, shall issue a Valuation Order for each rating authority area over the forthcoming years and shall appoint an officer of the Commissioner to organise and secure the carrying out of a valuation of every property situated in that area. To date two such revaluations have been completed - South Dublin County Council Rating Authority Area (2008) and Fingal County Council Rating Authority Area (2010).
3. Section 28 provides for the revision of valuations where it is considered that a material change of circumstances has occurred.
4. A material change of circumstances is defined in Section 3 of the Act as follows:
 

*“(a) The coming into being of a newly erected or newly constructed relevant property, or (b) a change in the value of a relevant property caused by the making of structural alteration or by the total or partial destruction of any building or other erection by fire or any other physical cause, or (c) the happening of any event whereby any property or part of any property begins or ceases to be treated as a relevant property, or (d) the happening of any event whereby any relevant property begins or ceases to be treated as property falling within Schedule 4, or (e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property.”*

In regard to this appeal (b) above is particularly relevant.



5. When a revision of valuation is carried out under Section 28(4), the value of the property concerned is to be determined in accordance with Section 49(1). In other words the value of the property is to be determined in accordance with the “tone of the list”.

Section 49(2) is also relevant and provides as follows:

*“for the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then (a) in case a valuation list is in force in relation to that area, the determination referred to in subsection 1 in respect of the first-mentioned property shall be made by the means specified in Section 48(1) but the amount estimated by those means to be the property’s Net Annual Value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property’s value is the amount that would have been determined to be it’s value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of Section 20 (b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first mentioned property shall be made by the means specified in Section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November, 1988, but the amount estimated by those means to be the property’s net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property’s value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act.”*

6. It is common case that many licensed premises in the Dublin City Council Rating Authority area were subject to a revision of valuation under the now repealed enactments in 1986 and 1988. During this period the value of the licensed premises to be listed for revision were determined in accordance with Section 5 of the Valuation Act, 1986 which amended Section 11 of the Act of 1852.
7. It is common case that, in the main, the value of each licensed premises, post implementation of the 1988 Act, was determined by reference to its turnover, the assessment process being to backdate the turnover at the valuation date to 1988 levels

by reference to the alcohol price index and applying to that figure a percentage in order to arrive at its net annual value. This method of valuation was approved in a number of appeals to this Tribunal including:

- (a) **VA95/5/025- Swigmore Inns Ltd. t/a Doheny& Nesbitt**, Lower Baggot Street, Dublin
- (b) **VA95/5/024- Nallob Limited t/a O'Donoghue's**, Merrion Road
- (c) **VA96/2/076- Philip Maher & Patrick Lenaghan t/a The Sarah Curran**, Rathfarnham, Dublin

8. It is not disputed that as far as licensed premises are concerned, turnover in volume terms has declined over the past several years due to a number of factors, including greater enforcement of the drink driving laws, the smoking ban and more recently the downturn in the economy. It is clear from the evidence adduced that the net annual values of licensed premises have, in the past, been determined by reference to their current turnover adjusted to 1988 levels of prices by use of the alcohol price index. Ms. Scanlan said in her evidence that this method of valuation had ceased since 2009 and was no longer in use by the Valuation Office at revision.
  
9. Section 48 provides that the net annual value of the property is to be an estimate of its net annual value based upon certain assumptions as set out therein. Section 49(1) requires that the value of the property concerned “*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*”. There is nothing in either Section 48 or 49 to give 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*”.
  
10. The RV of the combined elements of the subject property concerned in this appeal (i.e. the licensed premises and the stores) were agreed by Mr. O’Kennedy acting on behalf of the owners in 1993 and 1994 respectively at €793.75 and €25.39 respectively. A draft certificate issued for a total RV of €819 in September 2010 for the amalgamated subject property on the basis of a NAV €129,996 i.e. €125,966 + €4,030. Since last revised there has been no significant change to the subject property

apart from the store area being converted to a kitchen. The trading area has not changed. In her evidence Ms. Scanlon introduced details of the values of three other licensed premises in the immediate vicinity of the property concerned, which were also subject to revision in the period between 1993 and 1996, i.e. Madigans of Morehampton Road, Ashtons of Clonskeagh and the Merrion Inn, Merrion Road. It is not disputed that the values so agreed are in the current list, nor is it disputed that the values so agreed or determined were consistent one with another and fairly represented the relative values of each property on a common basis. In effect they represent the tone of the list. In the Tribunal's opinion, the proper construction of Section 49 is that the value of a property the subject of a revision of valuation is ascertained by reference to the "values" of other comparable properties. There is nothing in the section to say that the value of the property concerned is to be arrived by reference to its profits or turnover or indeed, any other method. The basis of valuation set down in Section 49 is the same for all properties (other than those specifically provided for under Section 53).

11. In the present economic circumstances rental values of all commercial property have fallen sharply, as indeed has turnover. When using Section 49, rental values are not particularly relevant, as the section requires that the net annual value of a property which is subject to revision shall be determined by having regard to "*the values [...] of other properties comparable to that property*". Thus, at the moment, for example, the value of a shop on Grafton Street, or indeed any other street in Dublin, will be determined by what is referred to as the "tone of the list" without reference to underlying economic circumstances or prevailing rental values. It is clear that in rating law the relative value of a property is more important than its value in absolute terms. The tone of the list is assumed to be fairly representative of the relative values of all relevant properties in the various use categories in a local rating authority area as at a common valuation date, which in the case of Dublin City Rating Authority Area, is now taken as being November 1988. [*cf.* Section 49 (2)(b)] No evidence was adduced that, in relative terms, the various factors that would have a bearing on rental values are substantially different in the licensed trade when compared to other businesses. In the circumstances, the Tribunal feels that the current practice of valuing licensed premises which have been subject to a "*material change of circumstances*" by reference to their adjusted turnover may give rise to more anomalies than

currently exist on the valuation list. Such a method of valuation should, in the Tribunal's opinion, be seen more as a means of comparison than valuation.

12. In the Tribunal's opinion, Section 49 requires that the value of a relevant property which is subject to a revision must be determined by reference to the values of properties which are in a similar use category or mode of use. The value of the properties on the valuation list reflect not just the values of those properties, but their relative values in relation to other relevant properties of a similar use and other properties in different use categories at the relevant revaluation date.
13. The definition of a "*material change of circumstance*", in the Tribunal's opinion, is unduly restrictive and, when taken together with Section 49, does not allow for a revision of valuation where a change in value may be warranted due to changes in economic factors or indeed, changes in relative values with and between different use categories. It is, as was stated above in this judgment, inevitable that a valuation list which has not yet been subject to a Section 19 revaluation will include anomalies which the Tribunal is unable to address under the 2001 Act. If these inequities and anomalies are to be reviewed a re-examination of the "*material change of circumstances*" definition and Section 49 will be imperative.
14. In its determination of the subject appeal the Tribunal endorses its approach and decision in **VA10/4/002 – Mia Taverns**.

### **Determination**

Having regard to the foregoing, the Tribunal determines that the appeal be dismissed and that the existing rateable valuation of €819 be affirmed.

And the Tribunal so determines.