Appeal No. VA12/3/014

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Scotts Bar & Restaurant Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 818727, Licensed Shop at Lot No. 28/14a 15 to 20, Santry, Whitehall C, Whitehall, County Borough of Dublin.

B E F O R E

Niall O'Hanlon – BL	**Deputy Chairperson**
Frank O'Donnell - FRICS, B Agr Sc, MIREF	**Member**
Fiona Gallagher - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF JANUARY, 2013

By Notice of Appeal received on the 23rd day of July, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €825 on the above described property.

The grounds of appeal as set out in the notice of appeal are:
"The rate is excessive based on current turnover, sq. footage used and rent payable."
"Sq. footage, current trading figures, rent payable/receivable, social amenities.

″The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 4th day of October 2012. The appellant was represented by Ms. Imogen Goodwin, manager and majority shareholder, Scott's Bar and Restaurant Ltd. The respondent was represented by Mr. Liam Hazel, MSc Real Estate, BSc (Hons) Real Estate, Valuation & Property Management, ASCSI, MIPAV, a valuer at 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. Following the evidence so tendered the following emerged as being the facts relevant and material to the appeal.

At Issue

Quantum.

The Property Concerned

The subject property, which trades as The Swiss Cottage, is situated on the eastern side of the old Swords Road, approximately 6.5km north of Dublin city centre. It has extensive road frontage onto the busy Swords Road, which is the old airport road. It is located close to Santry Business Park where there are many vacant and abandoned commercial units.

Description

The subject property comprises a single-storey licensed premises with good road profile on a corner with 76 surface car spaces at the rear. It consists of a ground floor bar, restaurant and beer garden with ancillary toilets, stores, kitchen and staff facilities to the rear. Total frontage of the subject to the Swords Road is *circa* 30 metres. An off-licence, which shares frontage onto the Swords Road, was previously part of the subject but is now valued separately. There is also a barber shop at the rear facing onto Schoolhouse Lane, which is valued separately.

Accommodation

The agreed accommodation comprises:-

	Sq. Metres
Bar & Lounge	421.10
Restaurant	157.14
Kitchen	92.00
Toilets	68.54

Entrance Porch	9.60
Keg Room, Stores, Staff Room & Offices	142.30
Beer Garden (outside Smoking Area)	59.36

Tenure

The appellant took possession of the subject premises in August 2010 by way of a lease agreement which was surrendered in favour of a new agreement in March 2012. Annual rent for the subject premises under the new agreement amounts to €119,600. However, an annual rent is received by the appellant from the adjoining off-licence in the amount of €39,000, thus leading to a net annual rent payable for the subject premises of €80,600.

Valuation History

The property was the subject of an appeal to the Valuation Tribunal in 1993 and the rateable valuation was determined by the Tribunal at €685.80 (£540). Subsequently in 1997, following upgrading and extensions to the property, the rateable value was agreed at first appeal at €1,015.79 (£800). Following a revision in 2011, the proposed valuation certificate issued with the valuation unchanged at RV €1,015.79. At representations stage, following receipt of information clarifying the occupation of the property, separate valuations were placed on the off-licence and the barber shop. The final valuation certificate for the bar and restaurant following consideration of representations issued at RV €825. No change was made at appeal stage to RV €825.

The Appellant's Evidence

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

In her written evidence, Ms Goodwin stated that planning permission for redevelopment of the site was granted in 2011 to include the demolition of The Swiss Cottage public house and off-licence and construction of a mixed use development to comprise 48 residential units, 10 retail units, 2 restaurants, 1 public house, 60 basement and 55 surface car parking spaces and ancillary accommodation. An appeal, she stated, was lodged with An Bord Pleanála by a local residents association and substantial parts of the permission have been overturned and refused. No works have taken place on the site.

She stated in oral evidence that the current way of reaching the rateable valuation does not fairly reflect the drop in property rents or indeed the economic downturn. She confirmed that her company took over the public house in August 2010. There are 17 people employed and she agreed that it had a large road frontage. She also confirmed that the rateable valuation does not include the off-licence or barber shop, and these are valued separately. She stated that the rateable valuation should be based on turnover and not on a square footage and that the Tribunal should not therefore take into account Section 49(1) of the Valuation Act. She requested a reduction in valuation based on turnover. The restaurant area, she said, is not being used, has not traded for some time and she requested relief of one-third for the non-use of the restaurant. She stated that the Cat and Cage public house on Drumcondra Road secured relief of one-third for the non-use of a restaurant. Ms Goodwin has negotiated a commercially viable rent for the premises, based on 10% of turnover, and the current commercial rates are over 80% of the rent payable which, she said, is completely unsustainable or commercially viable. She also stated that the car park is available to the residents free of charge. She contended for a valuation of €380.

She again emphasised that the valuation should be based on turnover and not on the area and that Section 49 should be disregarded. Ms Goodwin pointed out that the property is currently being revalued as part of the revaluation of the Dublin City Council rating authority area and stated that such revaluation will be based on turnover and as such is likely to lead to a reduction in the rates levied on the property. She asked the Tribunal to provide that relief now.

The Respondent's Evidence

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

In his evidence Mr. Hazel estimated the Net Annual Value (NAV) of the property concerned in accordance with S.49(1) of the Valuation Act 2001 as set out below:-

	Area	**Per Sq. Metre**	**NAV**
Principal Trading Area	578.25	€226.72	€131,101
Total NAV €131,101 @ 0.63%		Total RV	€825.94
		Rounded	**€825**

In support of his opinion of the NAV, Mr. Hazel put forward three comparisons all of which are located in the same general area of the subject:

Comparison 1

PN818727 - This is the subject property at 1997 first appeal. The ground floor bar, lounge and off-licence were valued at €226.72 per sq. metre.

Comparison 2

PN730929 – The Sheaf O'Wheat, Coolock Village, situated approximately 4km east of the subject. The valuation was agreed at €825.33 and devalues at €225.09 per sq. metre. In evidence, Mr. Hazel stated that the property was valued in 1991 on a turnover basis.

Comparison 3

PN818048 – The Comet Bar, Swords Road, Santry, was valued in a 1993 revision. The rateable valuation, determined at €526.94, devalues as follows:

Ground Floor Bar & Lounge @ €273.93 per sq. metre
First Floor Lounge @ €91.31 per sq. metre
Mr. Hazel stated that this property was valued in 1993 on a turnover basis.

Mr. Hazel made the following further points:-

1) He agreed that the off-licence and barber shop are each valued separately.
2) The 1993 revision of the subject premises was based on turnover.
3) The 1997 revision was based on the 1993 revision plus additions and was based on turnover.
4) The bar, lounge and restaurant of the subject are in the same condition now as in 1997. No change has taken place.
5) The restaurant is capable of beneficial occupation.
6) There was a change in the methodology at the Valuation Office in valuing licenced premises in 2008. The policy decision was to value these on areas rather than turnover.
7) He alluded to a previous Tribunal decision, **VA10/4/002 – Mia Taverns**, and referred to an extract from it in his précis of evidence, as follows:-

"In the Tribunal's opinion, the proper construction of Section 49 is that the value of a property concerned subject to a revision of valuation is to be 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 assessed 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).

In the present economic circumstances rental values of all commercial property has 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." As it stands at the moment, the value of a shop on Grafton Street or indeed, on 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, 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 reference 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 a means of comparison than valuation.

In our 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 valuation date."*

Findings

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

1) Section 49(1) of the Valuation Act 2001 sets out the method of determining a property's value as follows:-

   "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) In **VA10/4/002 – Mia Taverns** the Tribunal outlined its opinion in relation to the construction of Section 49 of the Act.

3) Having regard to Section 49(1) and the **Mia Taverns** decision, one must look at comparable properties to arrive at a valuation for the subject property. Accordingly, it is not open to the Tribunal to adopt the approach urged upon it by the appellant of disregarding section 49.

4) The comparisons offered by Mr. Liam Hazel on behalf of the respondent are, in the Tribunal's opinion, comparable to the subject, particularly his comparison no. 2.

5) There has been no change to the subject property since the revision in 1997. It is agreed that the only change to the property is the fact that the off-licence and barber shop are now valued separately.

6) The restaurant, though unoccupied, is capable of rateable occupation and accordingly rateable, according to the terms of Paragraph 2(b) of Schedule 3 of the Valuation Act 2001.

Determination

The Tribunal upholds the rateable valuation of €825 as submitted by the respondent.

And the Tribunal so determines.