

Appeal No. VA90/2/030

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**John Duignan, Beachcomber Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Licensed House and Yard at Lot No. 179 Howth Road, Clontarf, County Borough of Dublin

**B E F O R E**

**Henry Abbott**

**Barrister Chairman**

**Veronica Gates**

**Barrister**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30TH DAY OF JANUARY, 1991**

By notice of appeal dated 16th July, 1990, the appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuation of £500.00 on the above described hereditament.

The grounds of appeal as set out on the notice of appeal are that the rateable valuation is excessive and inequitable and does not conform with the principles of equity enshrined in the Valuation Acts and on other grounds.

**BACKGROUND:**

This appeal was first listed for hearing before the Tribunal on the 24th of September 1990. Mr Martin Kelly, M.I.A.V.I. Auctioneer, Estate Agent who represented the appellant in this case requested an adjournment of the hearing by letter dated the 17th of September 1990 due to his illness. This request was not opposed by the respondent and was granted by the Tribunal in the circumstances. The appeal was again listed for hearing on the 25th of January 1991.

By letter dated 14th of January 1991, Mr E.P. Whelan, Staff Valuer in the Valuation Office requested the Chairman of the Tribunal, pursuant to paragraph 8 of the First Schedule to the Valuation Act, 1988, to direct the appellant to disclose the following information:-

- (1) Date of completion of re-furbishment of premises.
- (2) Certified turnover figures and the percentage gross profit for 12 months from the date of completion of re-furbishment.
- (3) Number of permanent staff employed and number of temporary staff employed.
- (4) Wages bill for the most recent 12 month period.
- (5) Comparative rental information.
- (6) Maintenance and insurance costs.

The Chairman of the Tribunal heard the application for disclosure on Monday 21st January, 1991. Mr Liam Cahill, Valuer in the Valuation Office presented the application on behalf of the respondent and Mr Tony Brooks, B.Agr.Sc. M.I.A.V.I., Valuation, Rating and Property Consultant represented the appellant. Having heard the application for discovery and the comments thereon by Mr Tony Brooks on behalf of the appellant the Chairman of the Tribunal

pursuant of Paragraph 8 of the First Schedule to the Valuation Act, 1988, directed that the following information/documentation be made available by the appellant to the respondent in the above appeal:

- (1) Certified turnover figures and the percentage of gross profit for a one year period commencing in the range 30th November, 1988 to the 31st December, 1988.
- (2) All tax deduction cards for a three year period as follows -1988, 1989 and 1990.
- (3) All documentation relating to the wage bill for the last three years as follows - 1988, 1989 and 1990.
- (4) All documentation in relation to proof of maintenance and insurance costs over a three year period as follows - 1988, 1989 and 1990.

During the course of this application a further application for discovery was submitted to the Chairman of the Tribunal by Mr Tony Brooks on behalf of the appellant to direct the respondent to furnish the following:-

- (1) A copy of the Revision Lists showing the nature of Revision requested by Dublin Corporation.
- (2) A copy of the Report of the Revising Valuer.
- (3) A copy of the Report of the Appeal Valuer including recommendations and any associated comments.
- (4) A copy of the Commissioner's decision as handed down on first Appeal showing the grounds whereby an agreement between the Agent for the Appellant and the Appeal Valuer was rescinded.
- (5) Copies of the Commissioner's relevant comparisons and rental information.

The Chairman of the tribunal determined that no direction be made on foot of this application.

By faxed letter dated 24th January, 1991, Mona O'Leary, B.A. Solicitor, Commissioner for Oaths, on behalf of the appellant wrote to the Chairman of the Tribunal giving notice that the appellant intended applying for an adjournment of the hearing of the above matter. That, the application would be based on the necessity to seek a judicial review of the applications for discovery heard on Monday the 21st January, 1991 and the orders arriving therefrom, and in particular that;

- (a) The notice given of the hearing of the application was insufficient to allow the appellant to properly present his case.
- (b) The time given in which to comply with the order for discovery was unreasonable and oppressive to the appellant.
- (c) The refusal to grant discovery to the appellant in the terms requested or at all hinders the appellant in the preparation and presentation of his case.

#### **WRITTEN SUBMISSIONS:**

A written submission was received on the 23rd of January, 1991 from Mr Liam Cahill, B.A. a Valuer in the Valuation Office on behalf of the respondent. In this Mr Cahill outlined the valuation history of the premises which is situated at Killester on the East side of the Howth Road opposite the junction with Collins Avenue East. He said that the property was first valued circa. 1927, the property then operated as a shop. An "off licence" was granted in 1938. The valuation was fixed at £125 in 1945 when the premises first traded as a licensed house and shop. At the 1969 Revision, the valuation was fixed at £300, and the accommodation briefly comprised:

Ground floor bar and lounge	1980 sq. ft.
First floor lounge	405 sq. ft.

The premises were listed for revision of valuation in 1989. The valuation was increased to £500. The accommodation comprised:

Ground floor bar and lounge	3078 sq. ft.
First floor lounge	1593 sq. ft.

The determination of the Commissioner fixing the valuation of £500 was appealed to the Commissioner. Mr Cahill was appointed as Appeal Valuer and carried out an inspection of the property in April 1990. Having considered his report the Commissioner made no change to the valuation.

Mr Cahill said that Killester is an established residential and commercial location between Fairview, Raheny and Clontarf. He said there is heavy passing traffic on the Howth Road, Killester Dart Station is closeby. He said that the commercial properties at Killester provide neighbourhood shopping facilities. These include a bank, building society, newsagents, chemist, bookmaker, video shop, take away and Super Valu Supermarket. Mr Cahill said that there is ample car parking available at Killester and quoted a letter from McGovern and Associates, Architects to Dublin Corporation concerning the parking facilities in connection with a Planning Application.

Mr Cahill said that the Beachcomber dated from the 1920's with extensions added over the years. It is part two storey with single story at rear. The front elevation is set back circa. 15 metres from the Howth Road. The property, he said, comprises an attractive, modernised and easily managed ground floor lounge/bar, with additional lounge at first floor. He said that there is a side entrance providing access to the small yard and stores. Mr Cahill said that the Beachcomber differs from most recently refurbished licenced properties in that food sales are insignificant relative to total sales.

Mr Cahill said that he wrote to Mr Martin Kelly, Rating Consultant for the appellant on the 4th April, 1990 and attached a copy of that letter and Mr Kelly's reply of the 9th of April 1990 which

are appended to this judgment as Appendix 1. He said that discussions with the appellant's valuer failed to resolve the appeal, and that further discussions took place in August and September 1990 when he wrote to the appellant's valuer on the 4th and 6th September seeking additional information. Mr Cahill attached copies of these letters which are attached also in Appendix 1 to this judgment. He said that he had not received any reply to these letters. Mr Cahill said that he received information on turnover in November 1990 and that this information appeared to contradict earlier information supplied by the appellant's valuer. He said that clarification had been sought and he again wrote to the appellant's valuer on the 18th December, 1990 setting out the information required.

Mr Cahill outlined his calculation of the Net Annual Value of the property as follows:-

Estimated turnover, net of V.A.T.	£800,000
Gross Profit @ 40%	£320,000
Net Profit @ 50%	£160,000

Available for rent 50%	£ 80,000
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**Say £80,000 Net Annual Value**

The relationship between Net Annual Value and Rateable Value is 0.63%

N.A.V. £80,000 @ 0.63% = £500

**Say £500 Rateable Valuation**

Mr Cahill said that the Net Annual Value of £80,000 devalues as follows:-

Ground fl bar/lounge	3,078 sq ft @ £19 sq ft	= £58,482
First fl lounge	1,593 sq ft @ £10 sq ft	= £15,930
Add for licence	£50,000 @ 10%	= <u>£ 5,000</u>

£79,412

**Say £80,000**

He attached three comparisons as follows:-

- (1) Dollymount House Ltd.,
- (2) Quinns, Lot 42-44 Drumcondra Road Lr
- (3) McGreevy Properties Ltd, Richmond Road, Dublin 3

The details of the Net Annual Value calculations and the rateable valuations of these comparisons as submitted by Mr Cahill are attached as Appendix 2.

Mr Cahill also submitted the copy of a letter dated the 22nd January, 1991, to the Tribunal referring to the hearing of the application for discovery which was held on the 21st January, 1991. In this letter he dealt with three issues which were raised at that hearing before the Chairman as follows:-

- (1) There was no agreement reached at first appeal stage.
- (2) Discussions at first appeal were prejudiced by the information supplied by Mr Kelly in relation to turnover.
- (3) All agreements at first Appeal are subject to the approval to the Commissioner of Valuation .
- (4) Regarding the date of the completion of the refurbishments, he said that the notification of

Planning Permission was dated the 24th June, 1988 and was subject to five conditions, including consultation with the Chief Fire Officer which would further delay the commencement of the refurbishment of the property. He also said that the submitted figures for turnover relate to a period from July 1982 to November 1988 and relate almost entirely to the property prior to refurbishment.

**ORAL HEARING:**

The oral hearing took place on the 25th January, 1991.

Ms Mona O'Leary B.A, Solicitor, Commissioner for Oaths represented the appellant together with Mr Martin Kelly and Mr Tony Brooks. Mr Liam Cahill represented the respondent. Ms O'Leary made an application for an adjournment on the basis as set out above in her letter dated 24th January, 1991, to the Chairman of the Tribunal. The Tribunal considered the application and refused the adjournment.

Mr Cahill gave evidence along the lines already outlined in his written submission. With regard to the turnover figures produced by Duignan & Co., Chartered Accountants, by letter dated 5th November, 1990 to Mr John T. Duignan, Manager Director, The Beachcomber Ltd., Mr Cahill said that these figures were net of V.A.T. He said that this is the custom in the licenced trade. He said that the figures supplied covered varying periods, initially sixteen months, then twenty five months and from November 1986 on a yearly basis to November 1988. Mr Cahill said that by averaging out the amounts for the different periods on a yearly basis and adjusting for the varying drink price levels, he estimated the average turnover between 1983 and 1988 to be £805,000. He said that this figure was low as it related to the property prior to improvement.

The appellant made the following points :-

- (1) That carparking is a major problem for this premises. While there is a very wide footpath on which people park it leads to a significant amount of double parking with people being trapped inside. There is also a full-time warden putting tickets on cars in this area.
- (2) That the upstairs part of the premises only opens at 8.30 p.m. each evening.
- (3) That the location of Killester could not be compared with that of the other comparisons supplied by Mr Cahill in terms of the surrounding population and the



attraction of other catchment areas such as Croke Park in relation to Maher's of Richmond Road.

- (4) That it is difficult to distinguish in the accounts what was existing stock and thus what the actual turnover was.

The Tribunal must put on record its disappointment that sufficient effort was not put into complying with the order for discovery made by the Chairman of the Tribunal. It would also like as a matter of record to draw attention to the provisions in the Valuation Act for non-compliance with such directions. The Tribunal feels that it would not have been an impossible task to supply the proper information regarding the accounts for the period in question. In addition it feels that it was in the appellant's interest to have present an accountant to clarify the issue of whether or not the turnover figures supplied were net of V.A.T. The Tribunal is conscious of the fact that the appellant was first notified that this case was listed for hearing before the Tribunal on the 14th August, 1990, and that the appeal to the Tribunal was made on the 16th July, 1990. The Tribunal has already in a previous judgment indicated that by virtue of an appeal to the Tribunal it is taken that the appellant is willing, anxious and prepared to have the appeal heard. The Tribunal in these circumstances, cannot accept that the appellant did not have a proper opportunity to prepare and present his case. In the absence of evidence to the contrary the Tribunal accepts Mr Cahill's contention that the figures supplied by the accountants are net of V.A.T. It also accepts the approach adopted by Mr Cahill in calculating the rateable valuation. Nevertheless the Tribunal is conscious that there is some parking problem at this premises and that the location may be marginally less favourable than the comparisons submitted by Mr Cahill. It is noted that the Net Annual Value supplied by Mr Cahill is calculated on an extrapolated and annualised basis. The Tribunal feels that taking everything into consideration and following the approach adopted by Mr Cahill that an appropriate Net Annual Value for this premises is £75,000 and concludes that the proper rateable valuation for the premises is £470.00

