Appeal No. VA91/2/027

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Snug Taverns t/a Submarine Bar **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Licensed Shop, Store and Yard at Lot No. 19Aa Cromwells Fort Road - Commons, D.E.D. Terenure - Cherryfield, Co. Dublin
Discovery, quantum - comparisons

B E F O R E

Henry Abbott	**Barrister Chairman**
Paul Butler	**S.C.**
Veronica Gates	**Barrister**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF MARCH, 1992

By notice of appeal dated 10th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £720 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the valuation is excessive in view of open market rental value of property and in comparison with valuation assessed on similar licensed premises by the Commissioner of Valuation.

THE PROPERTY

The subject property is situated at the junction of Cromwells Fort Road and Whitehall Road approximately five miles southwest of the City Centre. This is mainly a residential area with a number of retail outlets in the immediate area. The subject consists of the following:

Lounges	3876 sq ft	
Bar	1390 sq ft	
Off-licence	475 sq ft	
Office & Kitchen	431 sq ft	
First Floor Lounge	1003 sq ft	
First Floor Kitchen	103 sq ft	
First Floor Stores	213 sq ft	
WC's	870 sq ft	
Stores at rear	2250 sq ft	Gross

WRITTEN SUBMISSIONS

A written submission was received on the 31st October, 1991 from Mr. Eamonn O'Kennedy of O'Kennedy & Company, Auctioneers Valuation & Rating Consultants on behalf of the Appellant. In this Mr. O'Kennedy sets out details of the subject property and said that these are good quality licensed premises. He said that the property is in good structural condition throughout and that the premises have been refurbished to a standard in keeping with modern refurbishments of licensed premises. He says that in his opinion the open market capital value of the premises as at 1st November 1988 is £1,000,000. He said that in assessing this figure he has taken into account the sales of similar quality licensed premises in the area. Because of the extremely high percentage of all market transactions in the licensed trade being of a capital nature, Mr. O'Kennedy said that he considers that capital values are superior to rental values as a guide for the rateable valuations of licensed premises. Mr. O'Kennedy supplied comparisons of 25 licensed premises showing sale price, rateable valuation and a breakdown of the rateable valuation figure indicating capital value/rental value relationships on a year purchase basis. The comparisons submitted by Mr. O'Kennedy are attached as Appendix "A" to this judgment. Mr. O'Kennedy, in his precis, said that from an analysis of his comparisons it would appear that the Commissioner has taken a figure in the region of 15/16 years purchase to be appropriate for the licensed premises in the Dublin area. In support of the above figure Mr. O'Kennedy said that because of the desire for ownership of licensed premises, publicans would pay a higher years purchase figure than the occupier of other commercial properties. He also said that financial institutions look more favourably on the owner/occupier licensed premises and would be prepared to support the purchase of a rented top quality licensed premises at 15/20 years purchase. Mr. O'Kennedy said that from the analysis of sales and valuations in recent years and for the above reasons he would consider that a 15 year purchase would be an appropriate yield in this case. Accordingly he said that he would consider £65,000 to be a fair rental value for these premises as at November 1988 and in his opinion the rateable valuation of the premises as at November 1988 is £410.

A written submission was received from Mr. Brian O'Flynn, Valuer in the Valuation Office on behalf of the Respondent on the 31st October, 1991. In this Mr. O'Flynn outlines the details of the property and comments on the appellants grounds of appeal. He said that it was his understanding that the premises was purchased in 1987 for £850,000 and the adjacent car park for £100,000 in December, 1987. He said that the car park was subsequently tarmacadamed and marked out for 51 car spaces and that the purchaser carried out substantial improvements to the lounges and bars with the addition of a sun lounge. Mr. O'Flynn referred to information regarding the accounts which he had sought from the appellants and to extracts from the accounts that were submitted concerning bar sales and off-licence sales for periods ending 31st

March, 1988, 1989 and 1990. He said that the audited accounts which were not submitted would show the gross margin and the food sales or benefit accruing and other important items which relate to the net annual value. He said that the valuation of £720 was assessed on the limited information to hand, on the basis of Section 11 of The Valuation (Ireland) Act, 1852 and Section 5 (1) and 5 (2) of The Valuation Act, 1986. He said that, with the information now to hand and without audited accounts, the valuation could be calculated, based on the purchase price, at £820 rateable valuation and, based on turnover as supplied, at £1,165 R.V. Mr. O'Flynn supplied details of a number of comparisons which are attached as Appendix "B" to this judgment.

ORAL HEARING

Prior to the hearing of the case an application was made by Mr. O'Flynn on behalf of the Respondent for the discovery of documents. This application was heard before the Chairman of the Tribunal on the 21st October, 1991 and an undertaking was given by Mr. O'Kennedy on behalf of the appellant to submit the relevant figures.

The oral hearing took place on the 4th November, 1991 at which Mr. Eamonn O'Kennedy represented the Appellant and Mr. Aindrias O'Caoimh, Barrister instructed by the Chief State Solicitor represented the Respondent. Mr. O'Kennedy said that he relied upon his written submission, summarised above. He said that the capital value of the subject premises at 1st November 1988 was £1,000,000. He referred to the relationship between capital and rental values and relied upon sales of similar quality licensed premises. He again outlined the reasons why he felt a 15 years purchase figure was appropriate in respect of the subject premises. Mr. O'Kennedy said that the comparisons which he had supplied were chosen because they had been revised within the last few years and most of them had been recently sold. He said that an analysis of these would show that the rateable valuation works out at approximately £100 for every £250,000 capital value. Mr. O'Kennedy said that turnover was only one aspect of making a valuation, that a buyer looking at a premises would take its potential as a major factor, and that under good management turnover could be increased substantially.

Mr. Martin Whitehead, Financial Controller with the Smith's Group said that in respect of the £12,000 franchise for the food trade that the appellants supplied the kitchen and paid electricity charges. He said that the rent would probably be in excess of seven to eight thousand pounds. Mr. Whitehead said that the lessee does not pay any overheads and that the kitchen was set up by the Appellants initially so that they could run the pub food. He said that this did not work out and only lasted about five months. It was then decided to franchise out this area of the operation and that it has been leased to the same person for the last three and a half years. The only overhead, that the lessee has, is to pay their staff and to buy the food. Everything else is, he said, supplied by the Appellants.

Mr. O'Flynn said that he had to calculate the rateable valuation without the help of full audited accounts. With regard to his comparison of "The Cherry Tree" located close to the subject property Mr. O'Flynn said that it was valued on the square metre basis and that there is no relationship between the net annual value and rateable valuation. He said that the .63% between net annual value and rateable valuation is accepted by both parties and that rent is very much related to turnover. Mr. O'Flynn said that a lot of the appellants comparisons were not valued using the net annual value method.

Mr. O'Caoimh said that the comparisons used by the appellant were not based on the net annual value but that Mr. O'Kennedy had worked backwards by applying the .63%. He said that Mr. O'Flynn had regard to turnover which was conceded by Mr. O'Kennedy to be a relevant factor. Mr. O'Caoimh said that the main issue was what rent a tenant would pay for the subject premises and therefore regard must be had to what the turnover would be. He said that since it was stated that the business is maximised in these premises that the turnover would be the most accurate figures for working out the N.A.V..

FINDINGS

With regard to the discovery of documentation the Tribunal would wish to make two points as follows;-

(a) Orders of the Tribunal or of the Chairman concerning discovery must be fully complied with, and

(b) Those seeking discovery should ensure that they look only for the essential items that have a real bearing on the valuation of the property.

What is at issue here is the rent which a hypothetical tenant would pay on the subject premises. As this case has shown there are major difficulties and obstacles in arriving at a rental value in an area in which little or no rental evidence exists. While there are scientific approaches to determining the rental evidence these must be tempered by the overall criterion of what is fair and just. The respondent has proffered various figures for the Net Annual Value ranging from £130,100 to £184,926 both of which would yield rateable valuations in excess of the Commissioners determination at first appeal. Allowing for the fact that it is common ground that the subject premises is trading successfully, the Tribunal must look at these figures from the point of view of the hypothetical tenant and, taking into consideration the vagaries of the trade and the fickleness of customers in an area where there is significant consumer choice the Tribunal cannot regard the Net Annual Value figures contended for by the respondent as being, in any way, realistic. The Tribunal is reminded of its determination in Appeal No. 89/269 - O'Dwyer Brothers Limited -V- The Commissioner of Valuation in which it said:

> "The Tribunal is also influenced by the comparisons submitted and although it appreciates the application of the scientific approach by the Commissioner in determining rateable valuations it must ensure the rateable valuations are fair and seen to be so."

The Tribunal notes that the Respondent has criticized the comparisons put forward by the appellant on the grounds that these valuations were arrived at by the use of a different method than used by the Respondent in this case. The Tribunal feels that, irrespective of the methods used, these are recent valuations arrived at by the Commissioner of Valuation as been fair and just rateable valuations on the respective properties. It feels therefore, that these comparisons must be considered. Taking these comparisons into consideration and also taking the uncontested physical state of the premises and its trading performance into consideration the Tribunal has come to the conclusion that an appropriate Net Annual Value for the subject premises is £85,000. It therefore determines that the rateable valuation be reduced to £540.