Appeal No. VA91/3/029

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Louis Fitzgerald t/a Palmerstown Inn **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Licensed House, Carpark and Yard at Lot No. 2/1.2.3.4.5.8.9.10.11 Village of Palmerstown, E.D. Palmerstown West, Dublin - Belgard, Co. Dublin
Quantum - Base date for assessing NAV, relevant comparisons

B E F O R E

Padraig Connellan	**Solicitor (Acting Chairman)**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF MAY, 1992

By notice of appeal dated 10th day of October, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £630 on the above described hereditament.

The grounds of appeal are as set out in the Notice of Appeal in particular that the valuation is excessive in comparison to valuations assessed on similar licensed premises by the Commissioner of Valuation in recent years.

The Property

The premises are situated in Palmerstown Village approximately 6 miles south west of the city centre. The property comprises a 2- storey and part single storey detached property. The premises have been refurbished to a good standard with natural and artificial lighting. The accommodation is as follows:

Ground Floor

Bar	76 sq meters
Lounge	484 sq meters
Restaurant	188 sq meters
Stores	104 sq meters
Off Licence	32 sq meters
Kitchen	57 sq meters
Toilets	52 sq meters

First Floor

Residential

Valuation History

Prior to the 1988 Revision, the property was valued at £320 and was described as Licd House, Off & Yard. As a result of the 1988 Revision the valuation was increased to £455 and the description amended to Licd Ho, Dance Hall, Off, Carpark and Yard. The "Swan" Disco was in operation at the rear of the property and incorporated the former dance hall and store. This valuation was appealed in 1988 and was reduced to £385.

A request by the County Council to value improvements came about in 1990 and as a result of the 1990 Revision the valuation of the property was increased to £650 and the description amended to Licd Ho, Carpark and Yard.

This valuation was appealed and resulted in a reduction to £630. This figure is the subject of this Tribunal Appeal.

Written Submissions

A written submission was received on the 14th January, 1992 from Mr. Eamonn O'Kennedy of O'Kennedy & Company, Valuation and Rating Consultants on behalf of the Appellant. In this submission Mr. O'Kennedy outlined the details of the property and said that it is a well located and good quality licensed premises. He said that the building is old and is in good condition throughout although the first floor is in need of attention. He said that the turnover of the premises has increased considerably since the refurbishment but pointed out that where such refurbishments take place turnover tends to show an immediate increase but then declines again sometimes substantially after a 2 to 5 year period. He said that the drop in turnover is almost always accounted for by increased competition due to refurbishements carried out by rival licensed premises in the same general area. He said that this is now happening in the area as "The Foxhunter" has recently completed a refurbishment programme and the "Deadmans Inn" has lodged planning application for a major refurbishment programme. He said that a considerable amount of the turnover in the premises is due to off sales and that the gross profit margins on off sales runs at approximately 7% and is below the gross profit figure for normal sales on licensed premises. He said that the off-license section now faces new competition from 2 supermarkets, "Crazy Prices" and "Superquin" who have just recently opened up new off-license shops on the Lucan Road. Mr. O'Kennedy said that the restaurant market is very over supplied and that a large number are experiencing difficulties. Mr. O'Kennedy said that the premises were revalued as recently as 1988 at £385 and that it was difficult to understand how the Commissioner could alter the valuation so dramatically in the meantime, given that the Commissioner is taking November 1988 as the date for the basis of his valuation in recent years. Mr. O'Kennedy said that in his opinion the open market capital value of the premises at November 1988 is £800,000. He made the point that he considers the capital values to be superior to rental values as a guide to

Rateable Valuations in the case of licensed premises and hotels. He said that from his analysis of valuations on other licensed premises he concluded that the Commissioner of Valuation had taken a figure in the region of 15 to 16 years purchase to be appropriate for licensed premises in the Dublin area. Mr. O'Kennedy explained this by saying that because of the desire of ownership in the licensed premises trade that publicans would be prepared to pay a higher purchase figure than the occupiers of other commercial properties. He also said that financial institutions look more favourably on owner/occupier licensed premises and would be prepared to support the purchase of rented top quality licensed premises at 15 to 20 years purchase. He said that in recent years the capital value of licensed premises in Dublin have risen considerably while rental values have not increased in line. Mr. O'Kennedy concluded that in his opinion the fair open market rental value of the premises as at 1st November, 1988 is £61,000 and that in his opinion the Rateable Valuation on the premises at that date should be £385.

A written submission was received from Mr. Colman Forkin, valuer in the Valuation Office on behalf of the Respondent on the 14th January, 1992. In this written submission Mr. Forkin outlined the details of the property and the valuation history. In this submission Mr. Forkin commenting on the grounds of appeal of the Appellant said that in arriving at his valuation on the property that he took into consideration the statutory provisions and the decisions of the courts as regards inflation, the rent which a hypothetical tenant would pay, and the profit earning ability. He referred the Tribunal to its judgment in Appeal No. VA90/2/30 - "The Beachcomber" -V- The Commissioner of Valuation wherein he said the Tribunal accepted turnover figures as a basis for calculating Rateable Valuation. Mr. Forkin set out his calculation of the Rateable Valuation of the subject as follows:

	Gross T.O.	£1.35 million
Est. Net T.O. @ 1988 =	£1 million	
Gross Profit		
@ 39%	£390,000	

Net Profit @ 50% £195,000

Allowable for

Rent @ 50% = £ 97,500 Say **£98,000**

Est. N.A.V. £98,000 x .63% = £617.40 + £15.00 domestic

= £632.40

Say **£630**

Mr. Forkin set out a number of comparisons of licensed premises in the Dublin area.

Oral Hearing

The oral hearing took place on the 15th January, 1992 at which Mr. Eamonn O'Kennedy B.Comm, M.I.A.V.I. represented the Appellant and Mr. Colman Forkin M.A. B.Sc (Surveying) A.R.I.C.S. represented the Respondent. Both Mr. O'Kennedy and Mr. Forkin relied on their precis of evidence submitted in advance of the hearing and summarised above. Mr. O'Kennedy made reference to the 20 comparisons which he supplied and said that the evidence supplied clearly shows that the Rateable Valuation works out at £100 for every £250,000 capital value. He put particular emphasis on Morris's of Terenure on which a Rateable Valuation of £270 was assessed in November 1991 and which sold in 1991 for £1,020,000; Duffy's of Malahide where he said the Rateable Valuation was increased from £350 to £450. He said that under no circumstances would he consider the Palmerstown Inn to be a better property than Duffy's. He also referred to Searsons of Baggot Street which has a Rateable Valuation of £300, and the totally refurbished "Beggers Bush" Haddington Road which was valued in November 1991 at £240. He referred to his other comparisons which he said indicated a similar relationship between capital value and Rateable Valuation. He made specific reference to a Valuation Tribunal Determination in Appeal No. VA/89/269 - O'Dwyer Brothers which he said had a market value in November 1988 of £1,250,000 and on which the Tribunal fixed a valuation of £560. He said that this again ties in approximately with his proposed relationship of £100 valuation for every £250,000 capital value. Mr. Forkin said that a number of Mr. O'Kennedy's comparisons were fixed on the old square metre method and that they must therefore be disregarded. He said that the basis on which the property must be valued under the 1986 Act was on Net Annual Value and that his approach was to calculate Net Annual Value by reference to turnover. Mr. O'Kennedy replied that all his comparisons had been revalued since the passing of the 1986 Act and that they were of similar nature and recent comparisons. Mr. Forkin agreed that the 1986 Act had been passed by the Oireachtas but said that the Commissioners Office did not apply the Net Annual Value method until the revisions in 1989. Both Valuers were at variance with regard to the Commissioners practice in using November 1988 as the base date for the application of the .63%. Mr. Forkin argued in favour of the application of the Net Annual Value by reference to turnover, but Mr. O'Kennedy countered that argument by saying that turnover in the licensed trade was very fickle and depended very much on what particular public house was in vogue at the time. He said that this can change rather rapidly as other local public houses undertake refurbishments. Mr. O'Kennedy pointed out to the Tribunal that while Mr. Forkin had submitted details of turnover in his comparisons, some cases, for example, "The Silver Granite" were revised by reference to the floor area. There was a protracted argument between the parties on the base date for the appeal with Mr. O'Kennedy arguing strongly that the policy used by the Commissioner of Valuation was that of assessing the Net Annual Value of the property as at November 1988 while Mr. Forkin argued that the Commissioner's approach was to assess the Net Annual Value at the appropriate date which is in this case November 1990. He said that the Valuer will then reckon back the Net Annual Value to November 1988 and apply the fraction of .63% at that time. Mr. Forkin referred to a Tribunal Appeal -VA/90/2/30 - "The Beachcomber" and said in that case the Tribunal seemed to give backing to the use of turnover figures as a means of assessing Net Annual Value. Mr. O'Kennedy said that he disagreed with the extent to which Mr. Forkin was relying on turnover and while he regarded it as a relevant factor he felt that other factors such as capital value were of more significance and should be taken into consideration. He said that there is a dearth of rental evidence in the licensed trade and that the only means of assessing a rental value is by reference to sales prices and the return which the owner would expect. He said that in the licensed trade, given the nature of the business, that a 15 - 16 years purchase is more common than the rate of return a person might look for in another business. He said that on the basis of evidence of cases in which he was involved that banks will readily accept this.

Findings

The Tribunal have considered the evidence given, both written and oral in this case and the various points of disagreement between the two parties. With regard to the appropriate base date for the calculation of Net Annual Value the Tribunal, while appreciating that the Commissioner is making some effort to provide for inflation as outlined in the Irish Management Institute case in the High Court, feels that there is no provision in the relevant Act for back dating Net Annual Value and that the appropriate date for any particular appeal must be that as set out in the Valuation Code. It has in previous cases referred to the need for a good statistical basis on which the provisions of the 1986 Act could be constantly monitored and updated. The Tribunal does not feel bound in any way by agreements that the Commissioner might enter into with Valuers on this point.

With regard to Mr. Forkins point that rateable valuations calculated on the square metre method be disregarded, the Tribunal is conscious of the provisions of the Act and, would regard recent comparisons as determined by the Commissioner of Valuation as being fair and reasonable valuations to be valid, irrespective of the method used. The Tribunal finds that the evidence provided by Mr. O'Kennedy in 20 comparisons would indicate that the Rateable Valuation for the subject property is out of line with recently revised properties. It is conscious of the fact that this particular subject property has been extensively refurbished in 1989 and that it is a very attractive premises with a good trade. However, taking all aspects into consideration the

Tribunal is of the opinion that the appropriate Rateable Valuation on the subject property should be £450.