

Appeal No. VA93/3/007

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

Drake Inn Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed House at Map Reference: 59.60.62, Main Street, Finglas, Ward: Finglas East,
County Borough of Dublin

Quantum - Percentage of turnover, tone of the list

B E F O R E

Veronica Gates

Barrister (Acting Chairman)

Brian O'Farrell

Valuer

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF JULY, 1994

By Notice of Appeal dated the 27th day of July, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £950 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

"The Valuation is excessive and inequitable."

The Property:

The property comprises a licensed premises located in Finglas Village on the eastern side of the dual carriageway that runs from Glasnevin to Finglas crossroads.

In the immediate vicinity are The Shamrock, The Drogheda Lodge and The Finglas Inn, while on the opposite side of the dual carriageway are The Jolly Topper and the Cardiff Inn.

The premises, extended in the reconstruction work of 1971, are well maintained. Approximately £90,000 was spent on general refurbishment in 1989.

The ground floor comprises a small bar/lounge, 1,170 square feet area to the front and a sizeable lounge to the rear, 4,778 square feet. There are stores at the rear of the premises comprising 595 square feet. The first floor has offices and stores, areas are agreed between the parties.

Tenure:

The Drake Inn Limited occupy the complete premises, the subject of this appeal.

Valuation History:

The subject premises of this appeal comprises Lot 59, 60 and 62. At revision in 1991 Lot 59, 60 - R.V. £530 was increased to R.V. £730. Lot 62 - R.V. £36 was increased to R.V. £55 - Total £785. At First Appeal this figure was increased to £950. It is against this valuation that an appeal lies to the Tribunal.

Written Submission:

A written submission was received on the 26th January, 1994 from Mr. Desmond Killen, F.R.I.C.S. I.R.R.V., a Director of Donal O'Buachalla & Company Limited, on behalf of the appellant.

In the written submission Mr. Killen described the subject property, its tenure and its valuation history as set out above. He said that in arriving at the correct rateable valuation regard had to be had to the preamble to the 1852 Act, Section 11 of the Valuation (Ireland) Act, 1852 and Section 5 of the Valuation (Ireland) Act, 1986. Mr. Killen said that in order to comply with the acts one must consider the established methods of assessing N.A.V. and thus rateable valuation and that in the case of the subject premises the methods he had used were

rental value, profits method and comparative method as, he said, the contractors theory was not appropriate in the subject case.

With regard to the rental value Mr. Killen said that the rental value of the premises was not proposed as the net annual value on the subject premises and that therefore, this method was not being adopted. He said on the profits method adopting the figures as set out in his written submission he derived a net annual value of £100,670 as the average N.A.V. over the years 1990, 1991 and 1992. Adjusted to 1988 by 7.5% = £93,120 x .63% = R.V. £587, say £590.

Commenting on the comparative method Mr. Killen said that to make a correct comparison one must compare N.A.V./R.V. of various somewhat comparable licensed premises in the Finglas area. The premises which he suggested were comparable were:-

1)	The Drogheda Lodge	R.V. £410
2)	The Shamrock	R.V. £750
3)	Finglas Inn	R.V. £630
4)	The Jolly Toper	R.V. £450
5)	The Cardiff Inn	R.V. £450
6)	Cappagh House	R.V. £230

Mr. Killen said that the information on these premises was not available to him but was to the respondent. He invited the respondent to analyse the rateable valuations on these premises having regard to the year of the assessment, the trading accounts, the estimates of N.A.V./R.V., their location and condition of the buildings. The validity, he said, of the comparables in relation to the subject could thus be adjudged. He said that he deferred comment on this method until such analysis was provided. He, therefore, relied in his submission on the profits method as the correct method of calculating the rateable valuation on the subject premises.

Concluding Mr. Killen said that the correct N.A.V. could only be obtained from a direct analysis of the accounts and that the use of turnover figures only as a basis for an accounts valuation was misleading.

A written submission was received on the 24th January, 1994 from Mr. Christopher Hicks, an Appeal Valuer in the Valuation Office, on behalf of the respondent.

In the written submission Mr. Hicks said that an analysis of figures available from rented public houses in the Dublin area provided a method of estimating rents on other non-rented public houses. In relation to licensed houses in general, he said that the main determinant of value was turnover. He said that rent could be expected to vary between 9% and 14% of annual turnover although the attached comparisons included one pub rented at only 7½% of turnover and three rented at over 20% of turnover. He said that these were the extremes.

Mr. Hicks said that the factors which decided the percentage applicable were:-

- 1) **Level of Turnover:** Pubs rented at 14% and more are all doing at least £1 million per annum while a pub doing only £100,000 per annum is unlikely to achieve more than 9% of this figure in rent.
- 2) **Gross Profit:** This is a function of prices charged which in turn reflect location and the physical condition and nature of the building. He said that 25% of gross profit is normally a close approximation of rental value.

Mr. Hicks said that details such as car parking, floor area, capital value etc need only be considered when actual turnover figures are unavailable or are different from what one would reasonably expect. On this basis Mr. Hicks set out the calculation of the rateable valuation on the subject premises as follows:

Turnover	£1,330,000 (average 90/91/92 to '88 base)
	@ 11.4% = £151,620 N.A.V.
	@ 0.63% = £955.21
	R.V. = £950.00

Mr. Hicks set out details of four comparisons in the written submission and these are summarised below:-

- 1) **Shamrock Lodge**
Rent agreed in 1990 - £198,000
Turnover £1,011,000 @ 11.77% = £119,000
N.A.V. £119,000 @ .63% = £750 R.V.
- 2) **O'Riordan's (Drogheda Lodge)**
Turnover £589,000 @ 9.8% = £58,000

N.A.V. £58,000 @ .63% = £365 R.V.

3) Finglas Inn

R.V. £630 (1991)

4) Martins

VA90/3/5

R.V. fixed at £260

Devalues: Turnover £360,566 @ 11.4% = £41,100

N.A.V. £41,100 @ .63% = £260

Oral Hearing:

An oral hearing took place on the 16th February, 1994. Mr. Desmond Killen of Donal O'Buachalla & Company Limited appeared for the appellant and Mr. Christopher Hicks of the Valuation Office appeared for the respondent.

The parties gave evidence in line with their written submissions.

The hearing was adjourned to allow both parties to agree facts and to exchange additional information in relation to the subject.

The oral hearing was resumed on the 13th June, 1994. Mr. Desmond Killen appeared on behalf of the appellant and Mr. Christopher Hicks appeared on behalf of the respondent. Mr. Donal Creegan, Accountant, attended the hearing to give evidence in relation to the rental level on Cappagh House.

Mr. Creegan confirmed that the rent currently passing on Cappagh House has been suspended since the 1st December, 1993 because of the inability of the present tenant to pay same. This tenant holds the premises on a 1 year lease with an option to purchase at the expiry of the lease. This tenant has been in occupation since September 1992. The leasing agreement consisted of a 1 year lease with an option to purchase, the rent is a staggered rent which was increased ultimately to a rent of £40,500 per annum. Such rent was deemed to be a deposit on the purchase price should the tenant decide to avail of the option to purchase at the end of the year. Having made this agreement the tenant subsequently discovered that no financial institution would lend money on the property because of its history.

Mr. Creegan said that the purchase price for the premises was specified as £440,000 in the option to purchase agreement. He said that in his estimation this sum was a gross over value of Cappagh House but that it was the sum which the tenant at the time thought he would be able to pay.

Mr. Creegan said that a Valuer had valued the property for the purpose of the tenancy agreement and has set the purchase price at £440,000 and the rent at £40,500 per annum.

Mr. Hicks suggested that the correct turnover for Cappagh House is £270,000, a figure which was supplied by the present tenant.

Mr. Creegan said that he was not able to comment on what the current turnover might be.

Summarising the details in relation to Cappagh House, Mr. Hicks said that there was a capital value of £440,000 in September 1992, a rent of £40,500 per annum, an uncontested rateable valuation of £230 and a stated turnover from the tenant of £270,000.

Mr. Creegan explained that Cappagh House has a history of short tenancies and prior to the 1992 letting there had been difficulties in obtaining a tenant for the property and it had in fact been closed down for a one year period during the 1980's.

Mr. Creegan said that the situation with the suspended rent could not be considered an indefinite one. He said that the rates had not been paid, the insurance premium of £3,500 was also unpaid and that no rent was being paid on the premises for the moment.

Mr. Hicks said that his written submission and the letters dated the 16th February, 1994 and the 2nd February, 1994 summarised his opinion in relation to this case.

He said that, in his opinion, to consider the turnover of a premises rather than relying on accounts in detail is a preferred method of arriving at net annual value. Mr. Hicks estimate of net annual value on the subject is £151,620 in contrast to Mr. Killen's estimate of £93,120.

In reply to a question from the Tribunal in relation to the Royal Oak public house, Mr. Hicks said that it had been purchased in April 1989 for £750,000. The turnover in 1990 was £671,831 and in 1991 the turnover figure was £802,000. The R.V. of the Royal Oak is

currently £450 and turnover is calculated on average at £800,000 less 10% of the 1991 turnover, yielding an N.A.V. of £72,000.

Mr. Hicks said that the percentage he has put forward in the subject case, namely, 11.4% is the appropriate one and has been estimated in relation to actual rents being paid on public houses. He said that there has been a major revision of pubs in Dublin in the last three years and a considerable amount of rental evidence has become available. When the Royal Oak was valued there was not the same information on rental evidence available and the figure of 10% was simply an estimate.

Mr. Killen said that in his opinion 11.4% was not the correct figure to use and cited two recent Tribunal Judgments in support of his contention, namely; *VA93/3/038 - Westside Taverns Limited t/a The Greyhound Inn* and *VA93/3/063 - Jack Graham, Rathcoole Inn*. He said that in the Rathcoole Inn case the Commissioner had used 9.11% of the turnover for N.A.V. and the Tribunal had, in fact, applied 7.36% of turnover. He further said that in the Greyhound Inn, the Tribunal indicated that 9% of turnover was the appropriate figure to be used in the licensed area.

There followed a discussion in relation to the validity of the accounts method of valuation. Mr. Killen said that an accounts valuation is a correct method of valuation, although not the only one. He said that it has been put forward by the Commissioner in a number of cases, namely, *VA93/3/048 - Berne Hotel t/a Killiney Court Hotel*, and also in the Rathcoole Inn case. Mr. Killen said that one must take into consideration the possibility that a number of the rents discussed may be in fact, management rents.

In summary he said that his case with his estimate of rateable valuation at £590 is substantiated not alone by his precis of evidence, but also by an analysis of the comparisons. He said that the one comparison where there is a purported rent is unsubstantiated and that the turnover is also unsubstantiated except by word of mouth. In contrast he himself has produced detailed accounts and analysed comparisons and there is little doubt that not alone was the £780 R.V. fixed on revision too high, but the decision to increase it to £950 was completely unwarranted.

Mr. Killen emphasised that the reason for the turnover being so good in this case is personal management and that the hypothetical tenant is not the actual tenant and that his client should not be penalised for her hard work.

Determination:

The Tribunal has had regard to the written and oral evidence adduced by both parties. It has considered the evidence in relation to rental values on the various comparisons in the immediate vicinity, and in particular the Shamrock Lodge and the Finglas Inn. It would appear that this is a very well run family enterprise and this fact is reflected in the good turnover figures.

The Tribunal considers that the percentage figure of N.A.V. to turnover suggested by Mr. Hicks at 11.4% is somewhat high.

Taking these and all other relevant factors into consideration the Tribunal is of the opinion that the correct rateable valuation for the subject premises is £710 and so determines.