

Appeal No. VA95/5/002

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

Bernadette Egan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed House, Offices, Yard and Shop at Map Ref: 29.31.45.46 John Street Upper, Kilkenny No. 2
Urban, Urban District of Kilkenny, Co. Kilkenny
Quantum - Representation by accountant

B E F O R E

Liam McKechnie

S.C. Chairman

Mary Devins

Solicitor

Fred Devlin

FRICS.ACI Arb.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF OCTOBER, 1996

1. By Notice of Appeal dated the 28th day of September, 1995 the appellant ratepayer appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £130 on the above described hereditament. In both the Notice and Hearing which followed, the sole ground of appeal relied upon and argued was that, in the circumstances of this case, the figure of £130 was excessive.

2. This appeal was heard by way of an oral hearing which took place in Kilkenny on the 3rd day of April, 1996. Mr. John O'Mara, FCPA AITI AIIS, Registered Auditor of John O'Mara & Company, Certified Public Accountants appeared on behalf of the appellant. Mr. Kevin Heery, B.Comm MIAVI, District Valuer with 20 years experience in the Valuation Office appeared on behalf of the respondent. Both Mr. O'Mara and Mr. Heery, having taken the oath adopted as their evidence in chief their respective written submissions. These submissions previously had been exchanged between the parties and received by this Tribunal.

3. The property in question consists of a residential licensed premises with a separate shop (victualler and off-licence). It is a two storey, double fronted terraced building and is located on the east side of John Street Upper, close to the junction with the Dublin/Carlow Road. This street which is some distance from the main commercial area of the city has restricted parking with none on one side and loading only on the other side. The accommodation on the ground floor, details of which are given at paragraph 7 hereunder, comprises a victualler/off-licence shop with separate entrance on the ground floor and with an associated preparation and fridge area. There is a lounge/bar with toilets, kitchen and storage. The residential element of this property is on the first floor with a separate entrance from the ground floor and the accommodation comprises a lounge, living room, four bedrooms, kitchen/dining room and bathroom.

4. In 1976 the rateable valuation increased by £12 to a total of £52. In 1989 that figure was increased to £120. A reduction of £20 was achieved at First Appeal stage and by agreement between the parties, this Tribunal on the 4th October 1990 made a determination by consent declaring the rateable valuation on the subject premises to be £80. In the early 1990's significant alterations and improvements were carried out to the ground floor. These included the creation of a lounge/bar with new toilets and the confining of the off-licence/butchery business into a smaller self-contained unit. Once more on revision, the Commissioner by decision dated the 10th November 1993 increased the rateable valuation to £185. At First Appeal stage that figure was reduced to £130 and it is against that decision that the ratepayer has now appealed to this Tribunal.

5. At the commencement of the oral hearing when appearances were being sought, it became clear that Mrs. Egan was represented by her accountant, Mr. O'Mara. On enquiry we were informed that Mr. O'Mara had no qualification in this area and likewise had no previous valuation experience. This created a difficulty, which the Tribunal pointed out, in that, were a conflict in valuation matters to arise between the parties then of necessity the Tribunal would have to prefer the evidence of Mr. Heery provided, of course that the same was credible and had a sustainable base. Because of this Mr. O'Mara was invited to take further instructions from his client and if necessary, to apply for an adjournment so that he could be assisted by a Valuer. He declined such an invitation and did so on the express basis that prior to the hearing his client, being appraised of this possible difficulty, was satisfied that her interests would still be best served and protected by continuing to engage only Mr. O'Mara on her behalf. As there was no objection by the Commissioner to this course the hearing then proceeded and concluded in the normal way. The Tribunal however, would like to make it clear that in permitting this type of representation it was not creating a precedent and that in any further similar situation it reserves unto itself the right to review on a *de novo* basis any suggestion that a third party unconnected with the subject premises, having no qualification in valuation matters and being neither solicitor or counsel can represent a ratepayer.

6. In support of his suggested valuation, Mr. Heery referred to four licensed premises. The first two were Langtons and the Kilford Arms, both at John Street Lower. Neither of these properties, in our view are in any way comparable to the subject premises. Both for many years have engaged in a continuous programme of development and both are significantly larger. Rateable valuations of £480 and £365 clearly indicate that this is so. Accordingly, no assistance can be obtained by a further consideration of these suggested comparisons. On behalf of Mrs. Egan, Mr. O'Mara referred us to three licensed premises. The first was William Byrnes which is situated opposite the subject premises. The valuation on this licensed premises, however, dates from 1975 and accordingly, was not made on the NAV basis and furthermore could not under any circumstances be deemed to be recently revised. The second and third comparisons, namely James Langtons and Shem Lawlors are in a similar though not identical situation. Both have valuations dating from the mid 1970's but both have been recently revised and are presently the subject matter of appeals. In those

circumstances and in the absence of precise details as to what the respective submissions will be on those appeals it is not possible in our opinion to place any credible evidential value on these suggested comparisons. Accordingly, we are satisfied that all of the comparisons suggested by Mr. O'Mara and the first two suggested by Mr. Heery are of no benefit when considering what the correct NAV and therefore RV should be of the subject premises.

7. In the table following we set out details of the accommodation on the ground floor of Mrs. Egan's premises as well as similar details in relation to the Commissioner's comparisons three and four which in our opinion are applicable.

	Subject Premises - 29.31.45.46 John St. Lr.	Grogan's - 2.2a John St. Lr.	Thomas Stephenson (The Arch Bar) - 12.12A John St. Lr.
Lounge/Bar:	1,000 sq.ft	516 sq.ft	915 sq.ft
Snug:		130 sq.ft	
Stores:	182 sq.ft		431 sq.ft
Kitchen:	199 sq.ft	96 sq.ft	118 sq.ft.
Toilets:	206 sq.ft		172 sq.ft.
Basement (Beer Cellar)		462 sq.ft	
Shop (incl. Preparation Area):	652 sq.ft		
Total	2,239 sq.ft	1,204 sq.ft	1,636 sq.ft

(a) Grogan's valuation, agreed at 1991 revision, is £95 with a £10 domestic element thereto

(b) The valuation on the Arch Bar, agreed at 1989 revision is £81 with a £9 domestic element thereto.

8. On behalf of the Commissioner it is suggested that the rateable valuation of £130 can be sub-divided as to £79 on the licensed premises, £18 on the residential portion and the balance, namely £34 on the butcher shop. The figure of £79 is arrived at, according to Mr. Heery's evidence, by taking an estimated potential turnover in 1988 terms of £175,000 and by applying a rate of 9% to this figure. We do not accept the Commissioner's estimate of the 1988 turnover. We think it too high. We have had evidence from Mr. O'Mara, which we accept that in 1993 the actual turnover in the pub was £124,000 with a drop of £7,000 in the succeeding year. Whilst it would have been most helpful to have the 1992 turnover figures, but more particularly the 1995 figures, nevertheless, even in the absence of this information, we do not believe that there is any real basis for suggesting that the estimated turnover figure as of 1988 could be in fact almost 50% higher than the actual figure for 1994. Secondly, in our opinion, the subject premises can be in general terms be compared favourably with the Arch Bar. Whilst the latter is situated closer to town, nevertheless, it is located in the same general trading/business area. Disregarding for a moment the shop element of the subject premises, the other areas are largely similar to those existing in the Arch Bar. See the table above mentioned. As the Arch Bar has a valuation of £81 with a £9 domestic element, it would in our view be correct to apply similar rates to both the lounge/bar and to domestic elements of the subject premises.

9. With regard to the latter, Mr. Heery suggests a rental of £70 per week to sustain a suggested RV of £18. We do not believe that such a rental value could be obtained. In our view, a rent of £40 per week is much more likely to reflect market conditions than a figure of £70 per week.

10. Accordingly, this Tribunal determines that the rateable valuation of this hereditament shall be £116, based on a net annual value of £23,200 and so determines.

