

Appeal No. VA95/5/025

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

Swigmore Inns Ltd. t/a Doheny & Nesbitt

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop at Map Reference 5, Lower Baggot Street, Ward: Mansion House, County Borough of Dublin

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Barry Smyth - FRICS.FSCS

Deputy Chairman

Con Guiney - Barrister at Law

Deputy Chairman

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF OCTOBER, 2000

By Notice of Appeal dated the 18th day of October 1995, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £425 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice are that; "valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also".

The appeal proceeded by way of an oral hearing at which the appellant was represented by Mr. Eamonn O’Kennedy B.Comm, MIAVI, Valuation & Rating Consultant. The respondent was represented by Mr. Michael Keogh, District Valuer in the Valuation Office.

Having taken the oath each valuer adopted as his evidence in chief his written submission, which had previously been exchanged between the valuers and submitted to the Tribunal.

Material Facts Agreed or Found by the Tribunal

Valuation History

Prior to the 1993 revision the property was valued at £70 dating from 1925. In the 1993 revision the property was valued at R.V. £470. This was appealed and was reduced on appeal to £425. This figure of £425 is now before this Tribunal.

Situation

These premises are situated on the north side of Lower Baggott Street close to its intersection with Merrion Row and Merrion Street. This is a busy commercial area.

Premises

The premises comprise a four story over basement terraced building and it is a traditional public house with bars on the ground floor and function rooms and ancillary accommodation on the upper floors and cellars in the basement.

Accommodation

The accommodation and agreed floor areas are as follows:

		<i>Sq. ft.</i>
Ground Floor	Bar (front)	516
	Bar (rear)	374
	Toilets	243

First Floor	Lounge Bar	481
	Kitchen	80
	Toilets & Corridor	338
Second Floor	Function Room	531
Third Floor	Office & Storeroom	386
Basement	Stores	<u>465</u>
	Total Floor Area	3,414
	Excluding W.C.'s	2,833

Services All main services are provided.

Purchase Price

£875,000 - 1990.

Turnover

Seventeen months, year ending 31st January 1992 - £928,485,

Twelve months, year ending 31st January 1993 - £774,161.

Appellant's Case

Mr. O'Kennedy in his précis and in his direct evidence stated *inter alia*;

These are well known traditional licensed premises, which are in fair structural and decorative condition throughout. The premises has been altered in recent years by the addition of a bar at the rear. The current owners have increased the turnover substantially since acquiring the property but in his view there is no further scope for increasing the turnover as its potential has been maximised. In his opinion the market value of the property at November 1988 was £550,000 and he noted that only three pubs had sold for over £800,000 by that date. He gave evidence of two licensed premises with leases in place and rents reserved which had been

purchased by the tenants in each case at a yield in the order of 8%. He stated that no publican should be rated for his ability to trade. Other factors must be taken into account and not just the turnover looked at on its own. At this point the Tribunal Chairman noted that the turnover is relevant and must be considered but it is not sacrosanct and it is not the only item to be considered. Mr. O’Kennedy outlined how the turnover might be affected by the ability or interest of a proprietor. Mr. O’Kennedy provided six comparisons, the details which are appended to this determination as **Appendix One** and also comparisons of three pubs which were sold during 1996 which are the subject of recent revisions and other premises sold during 1989/1990, again the detail of which are all appended to this determination.

Mr. O’Kennedy estimated the N.A.V. at £44,000 being a yield of 8% on his estimate of capital value at 1988 of £550,000. As an alternative method of valuation he applied a rate psf to the various areas including £40psf on the front bar and £20psf on the rear bar and £15psf on the first floor, £10 on the kitchen, £7 on the second floor and £5 on the third floor with £5 on the basement cellars. These figures also giving rise to an N.A.V. of £44,000 Applying the fraction of 0.63% gives an R.V. of £277.20, Say £275.

Mr. O’Kennedy then commented on the various comparisons put forward in the respondent’s précis and their relativity with the subject premises. He offered the view in particular in relation to Toners licensed premises nearby that the rateable valuation of £300 should have been less. He also noted the much larger size of the Baggot Inn and Foleys both nearby. He accepted that 9% of the adjusted 1988 turnover figures had been agreed by the Commissioner of Valuation in a number of pub cases but stated that in his view 9% was not reasonable in all cases.

The Respondent’s Case

Mr. Keogh relied on his précis of evidence and added no further oral evidence. He assessed the rateable valuation on two bases, namely (i) a rate psf on the various floor areas and adding for the licence and (ii) a percentage yield on the adjusted turnover.

Mr. Keogh applied £45psf to the entire ground floor area, £10 to the first floor, £5 to the second floor, £2.50 to the third floor and £6 to the basement and added £15,000 for the licence giving an

N.A.V. of £67,070 and applied the fraction of 0.63%, giving a rateable valuation of £422.10, Say £425.

On the turnover basis there was an error in his calculation in that the turnover for the period ending 31st January 1992 was in fact for seventeen months rather than for the twelve months which he understood it to be. When this figure was adjusted to allow for that and then the turnover figures further adjusted to 1988, the average turnover in 1988 terms was £615,000 and applying his fraction of 9% to that gave an N.A.V. of £55,350 and the fraction of 0.63% to adjust to R.V. gives R.V. £349.

In cross-examination he accepted that the premises had sold for £875,000 in 1990 at a time when the turnover was only £6,000/£8,000 per week, in other words a price of more than twice the turnover. He explained that the property had not been on the market for sale and that the purchaser had to convince the long time owners of the property to sell.

Commenting on the appellant's evidence and comparisons he stated that the comparisons contained no analysis, had no floor areas nor turnover figures and that there was a considerably different market for suburban pubs than for city centre. He had agreed the net annual value on McDaid's public house in Harry Street at £50,000 per annum. He emphasised that it was important to compare like with like. Mr. Keogh gave comparisons of three public houses – The Baggot Inn in Lower Baggot Street, Foley's in 1 Merrion Row and Neary's in Chatham Street and he also gave evidence in relation to rental values in Baggot Street on shop premises.

The Valuation of Licensed Premises

On several previous occasions this Tribunal has reiterated the undoubted fact that the basic approach in determining valuations is still to be found in Section 11 Valuation Act 1852. Under the relevant part thereof the valuation of houses and building “*shall be made upon an estimate of the net annual value thereof: that is to say, the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance and other expenses (if any), necessary to maintain the*

hereditament in its actual state, and all rates, taxes and public charges, if any, (except tithe rent charge), being paid by the tenant”.

This section has been amended by Section 5 of the Valuation Act 1986. This amendment essentially, was enacted so as to recognise inflation and having taken that into account to seek to establish and retain a proportion between valuations and annual values. See *IMI -v- Commissioner of Valuation* 1990 2 IR 409, where at page 412, Mr. Justice Barron explains in considerable detail the underlying philosophy of this amendment. Since 1986 therefore it is necessary to consider both of these sections when embarking upon the process of valuation. However, the core basis remains the same and involves an exercise, partially real and partially artificial, of determining what the hypothetical tenant will offer for the premises in question.

In resolving this issue neither the Commissioner of Valuation nor this Tribunal is mandated by any statutory requirement to adopt any particular or specific approach or method. Whatever way produces the most suitable result then that way, in those particular circumstances, is the one, which should be adopted. See the often recited passage of Mr. Justice Kingsmill Moore in *Roadstone -v- The Commissioner of Valuation* [1961] IR 239 where he emphatically declared that in resolving this question of fact all methods were open for review and consideration. As licensed premises are clearly hereditaments which must be valued, the above principles apply to such premises in the same way as they apply to any others coming within the aforesaid Section 11.

In this jurisdiction, as one would expect, there are several decisions of this Tribunal where the subject property was a licensed premises. In all we think about ninety. An analysis of such judgments will show that from time to time either an appellant or the Commissioner have advanced a variety of methods by which, depending on the particular circumstances, any given public house is to be valued. Having considered the evidence in each case and the preferred method suggested by the parties this Tribunal adopted what it considered to be the most suitable method of arriving at a fair and equitable rateable valuation in each of the cases as aforesaid. As the circumstances inevitably were diverse so from time to time was the method or approach. In our respectful view this flexibility is both necessary and desirable and has the result of permitting

this Tribunal in any given case to accord such weight to each evidential factor as it considers appropriate.

Little assistance, with regard to methodology, can be obtained from the U.K. This not so much on account of any fundamental difference in valuation principles but rather on account of the system of ownership/management of pubs which has become well established in England. In that jurisdiction apart from hotels and clubs the vast majority of licensed premises are controlled by the brewers and are therefore tied houses managed by occupiers and rarely if ever rented. Accordingly, their method of assessment is rather different to that pertaining in this jurisdiction.

On the recommended methods, normally advanced, could we, in general terms, comment as follows:

1. Evidence of Rent

There is no doubt but that if there is evidence of rents, true in nature, arrived at in the market or via the market process, and otherwise unimpeachable, then such rents particularly if the business is maximised provide a significant evidential base upon which the assessment may be approached. Even then though, such rents, actual and real as these may be, are not conclusive, in that Section 11 refers to the rent which the hypothetical tenant is expected to pay and this within the prescribed terms of the overall statutory conditions. In any event in the case of licensed premises, up to relatively recently, there was no rental base in existence rather what was available was haphazard, particular to specific circumstances and somewhat inconsistent. In the more recent past the practice of letting licensed premises has increased but not to such an extent that one could with safety define the nature of the market and separate what truly were lessor/lessee relationships from those more akin to management agreements. Therefore whilst in theory this approach is highly respected nonetheless in practice the accumulation of sufficient data upon which it could operate is still some distance off.

2. **The Contractor's Basis**

This type of approach, frequently referred to as the method of last resort, rarely if ever is used in valuing licensed premises.

3. **Capital Values**

In the instant case and indeed in several others where like hereditaments are the subject matter thereof, the parties have agreed on how the calculated N.A.V. should be converted to R.V. It is by applying a fraction, which depending on location, is usually 0.63% or 0.5%. This is taken as the means of incorporating the provisions of Section 5 into the valuation process. But fundamental to this approach is the necessity of identifying an N.A.V. as of November 1988. The difficulty in many cases of doing this is obvious and self-evident but in the case of licensed premises particular problems arise. For example turnover and trade as of the valuation date and the years leading up to it, are unquestionably of relevance to the hypothetical tenant as is the actual state and condition of the hereditament and its use at the relevant date *rebus sic stantibus*. As the interval of time between November 1988 and the valuation date continues to increase, it becomes even more difficult to establish a meaningful relationship between capital values and N.A.V. In addition capital value and the expected or demanded yields therefrom are more suited to property investment than they are for trying under Section 11, to deduce an N.A.V. from such capital values. In any event we have seen and know of very little evidence of any real investment market in licensed premises, which investors still consider somewhat uncertain and dubious. So, whilst details of capital values are helpful these, on their own right, will rarely be sufficient to satisfy the statutory requirements.

4. **Price psf**

Whether on the total area or only on those parts thereof which facilitate retail activity, it is not and has not been the experience of this Tribunal that either the acquisition of a licensed premises or the assessment of what rent it could carry, is approached in this manner. In other words it does not accord with the realities of the market place. Other types of premises with different uses yes but such a practice with regard to public houses would indeed be quite exceptional. That is not to say however that such an exercise is of

no benefit. If having embarked upon such a calculation, the resulting rate, even with adjustments, bears no relationship whatsoever to other established values, then the completion of that approach cannot possibly produce the most desirable result. In our view while technically it could provide a common basis for assessment, nonetheless, unless the market follows suit it is questionable whether such an approach reflects the statutory requirements.

5. Evidence of Rateable Valuation or N.A.V. on similar licensed premises

While premises are or can be similarly circumstanced, evidence on a comparative basis can undoubtedly be considered and taken into account in approaching the question of calculating N.A.V.

6. Accounts/Profits/Turnover or derivatives therefrom

Whilst entering the caveat that no one method is sacrosanct or conclusive, there is no doubt but that in our opinion profits, turnover etc are hugely influential in the mind of a hypothetical tenant when determining the amount of rent which he is prepared to pay on an annual basis. Turnover seems to be more crucial than profit, this because it is the rent which is the measure of annual value and not profit. Knowledge of the existing turnover and the level at which the business is being conducted are vital elements in the calculation of any bid as is every other element which in either direction may affect the turnover. In considering this question of turnover one must be acutely conscious of the hereditment which is being valued, in this instance it is the “premises” and not the business, though of course the latter is material in that the power to earn or increase profit can be an indication of value in respect of the said premises. Likewise good management should not be penalised and poor management be rewarded. Any “quite extraordinary”, dedication, skill, character or other personal attributes, this whether having a positive or negative effect on the business must and should also be disregarded. Three year accounts without any distortion during that period are usually and should, on a confidential basis, be made available where possible. Shorter periods may indeed suffice as where there is a start up situation or where after major alterations/extensions, the nature and size of the operation is significantly different. In the absence of such accounts, the following

documentation may be proffered: an auditor's certificate, the profit and loss account, the trade account, a breakdown of the turnover between food, cigarettes, drink etc. and a copy of the balance sheet. The breakdown as between drink and food is of particular significance. So once these limitations are observed and once it is appreciated that the actual turnover figure may and frequently will have to be adjusted, then this is a method which in our view is a forerunner in approaching the valuation of licensed premises.

Determination

This is undoubtedly a well know Dublin public house enjoying both local and tourist business. The dilemma facing both the appellant's and respondent's valuers is how to deal with what best can be described as the good will of any public house where undoubtedly the turnover can be affected by the ability of the proprietor. The rateable valuation is a function of the net annual value of the building and not of the business and it is therefore important to distinguish the elements of turnover which reflect the location and nature of the building as opposed to those that reflect the ability (or lack of it) of the proprietor.

In our opinion Doheny & Nesbitts is now so long established as a landmark pub that its turnover is less effected by its proprietor than might be the case otherwise. However, we acknowledge that the pub is relatively small which limits the ability to increase trade. However the business is developing from a very low base.

We also acknowledge that the building is old and would be expensive to maintain.

Three methods of valuation have been put to us namely a yield on the capital value, a rental value psf on the various floor areas either inclusive of the licence or with the addition of the licence and thirdly, a yield on turnover.

In our opinion a yield on the estimated capital value is not a reliable method for assessing the N.A.V. because of the lack of an established property investment market in pubs and thus the calculation of a yield. In addition of course the market value is also an estimate and in view of

alterations that have occurred to the premises in the intervening period this may be difficult to ascertain.

The rate psf basis is also difficult to deal with because there is a lack of rental evidence in relation to public houses and the two valuers have given us figures that are considerably apart.

In our opinion the most reliable method to proceed on in the circumstances of this appeal is the turnover. We have adjusted the seventeen-month turnover to the 31st January 1992 to reflect 12 months and averaged this with the 12-month figure to the 31st January 1993 and adjusting these figures to 1988 by means of the alcoholic drinks index gives an average turnover of £632,007. Applying to this the yield of 9% because the business is only developing from a very low base gives an N.A.V. of £57,000 and applying the fraction of 0.63% gives £359.10. R.V. Say £360. And the Tribunal so determines.