Appeal No. VA96/2/017

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Eastland House Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Licensed house (pt. of) at Map Ref: 11-14 Coolock Village, Ward: Kilmore D, County Borough of Dublin
Quantum - Rebus sic stantibus

B E F O R E

Con Guiney	**Barrister (Acting Chairman)**
Patrick Riney	**FSCS.FRICS.MIAVI**
Barry Smyth	**FRICS.FSCS**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF FEBRUARY, 1997

By Notice of Appeal dated the 15th day of April 1996 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 Notice of Appeal are that:-

"**1.** The said assessment is grossly excessive and inequitable relative to assessments on other commercial properties in the administrative area Dublin Corporation and adjoining districts.

2. The assessment is bad in law in that it does not comply with the provisions of the *Valuation Acts 1852* to *1988* and in particular with the provisions of *Section 5 of the Valuation Act 1986*.

3. The Commissioner of Valuation failed to properly and adequately take into account the size, location and nature of the subject hereditament."

Oral Hearing & Written Submissions:

The appeal proceeded by way of an oral hearing which took place on the 13th day of December 1996 in the Valuation Tribunal Offices. The appellant was represented by Eoin Hickey, Barrister and Mr. Mairtin O'Ceallaig of Jones Lang Wootton. The respondent was represented by Aindrias O'Caoimh, Barrister instructed by the Chief State Solicitor with Mr. Patrick Conroy, MIAVI, District Valuer in the Valuation Office with 23 years experience as a Valuer. Having taken the oath both valuers adopted as their evidence in chief their respective written submissions which had previously been exchanged by them and submitted to the Tribunal.

Agreed Facts

The nature of the location of the property was agreed as was the description of the premises and the floor areas which comprised, front lounge, main lounge and bar with a total floor area of 223 sq.m., together with ancillary accommodation of toilets and kitchens. The first floor residential accommodation is separately rated.

Year Ending 31/8	Turnover Net of VAT	Percentage Gross Profit
1988	£465,434	
1990	£686,566	32.6%
1991	£890,854	35.7%
1992	£978,218	39.6%

The year ended 31/8/92 was the first full years trading with the benefit of the improvements having been carried out.

Mr. O'Ceallaig adopted two approaches to reach his assessment of rateable valuation of £260 as follows:-

(a) Estimated Rental Value Method

Bar & Lounge @ 223 sq.m @ £165 psm = £36,795

Plus licence fee, say	£ 5,000
	£41,795

NAV @ 0.63% = RV £263. Say £260

(b) Turnover Method

1988 turnover (ex VAT)	£465,434
@ 8.75% return	0.0875
	£ 40,725

NAV @ 0.63% = RV £257. Say £260.

Mr. O'Ceallaig argued that as it was the NAV of 1988 that had to be established it would be appropriate to use the 1988 turnover figures and in cross examination he said that the 1988 turnover figure should be increased by 10% to reflect the increased size of the property at the 1993 revision date. He stated that the turnover reflected the hard work and goodwill of the family proprietors and that a hypothetical tenant could not expect to achieve the same figures. He also argued that the premises was inferior to many of the comparisons because of the age of a portion of it, the relatively low headroom and the lack of car parking.

Mr. Conroy provided three methods for assessment of the appropriate rateable valuation. His first approach was the divisible balance based on the Trading and Profit & Loss Account for the year ended 31/8/92 adjusted to 1988 by the Drinks Price Index which produced an NAV of £76,648, an RV of £482. His second method was based on Turnover and the Percentage of Turnover and again he relied on the 1992 turnover figures which is the first full years trading with the benefit of the improvement carried out and adjusted same to the 1988 level and taking a rate of 8% produced an NAV of £67,155, an RV of £423. His third method was to estimate the Capital Value in 1988 at £800,000 to take that at 10% yield to produce an NAV of £80,000 and thus an RV of £504. In light of these figures he offered the opinion that the RV of £425 was minimum. Mr. Conroy provided six comparisons including the neighbouring "Sheaf of Wheat" in Coolock village which has an RV of £650. He argued that it was correct to consider the premises as at the valuation date November 1993 and the turnover of the improved premises and to adjust that turnover back to estimate its level to

1988 on the basis that the premises as existed in 1993 was the same in 1988. He stated that all his comparisons had been agreed on the basis of a percentage of the turnover and he felt a rate of 8% was appropriate in this case, which was lower than in other cases to reflect the fact that the accounts are for the first year of trading in the improved premises and that the goodwill reflects four generations of the same family running the premises.

In cross examination he stated that in his opinion the value of the unimproved premises in 1988 was £465,000 and the value in 1988 if the premises were as they existed at the revision date at 1993 would have been £800,000. The premises had a floor area of 108 sq.m. in 1988 but now the area is 223 sq.m.

Mr. Hickey in his closing submission, referred to the net annual value and the tone of the list and argued that the Valuation Office methodology was arbitrary and does not arrive at a real NAV. In contrast, Mr. O'Ceallaig had used the actual turnover in 1988. This licensed premises was represented by the Valuation Office in a different class to which it really belonged.

Mr. O'Caoimh in his submission stated that the essential differences were that the appellant sought to value the premises in its pre-improved condition, that it is a different hereditament to that which existed at the revision date. He emphasised the principle of *rebus sic stantibus*. The essential element is the capacity for earning and the goodwill is mainly tied to the premises in the licensed trade. The existing condition and state of the premises at the revision date in 1993 was the basis on which it was to be valued and not the condition in 1988.

<u>Determination:</u>

Having inspected the premises and considered the evidence, the Tribunal affirms the rateable valuation of £425.