

Appeal No. VA96/2/076

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

**Philip Mahon & Patrick Lenaghan t/a The Sarah Curran**      **APPELLANT**

**and**

**Commissioner of Valuation**      **RESPONDENT**

RE: Lic'd premises at Map Reference 19/20, Townland: Rathfarnham, Co. 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 5TH DAY OF OCTOBER, 2000**

By Notice of Appeal dated the 22nd day of April 1996, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £750 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that "the 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 MIAVA, Valuation & Rating Consultant. The Respondent was represented by Mr. Denis Maher, District Valuer in the Valuation Office.

In accordance with practise, having taken the oath each valuer adopted as his evidence in chief his written submission, which had previously been exchanged by the valuers and submitted to the Tribunal.

### **Material Facts agreed or found by the Tribunal**

#### **1. Valuation History**

1976 R.V. £650	1 <sup>st</sup> Appeal R.V. £480
1987 R.V. £500	1 <sup>st</sup> Appeal R.V.£480
1991 R.V. £660 including house	1 <sup>st</sup> Appeal £500 excluding house
1994 R.V. £750	1 <sup>st</sup> Appeal R.V. £750

It is against this figure of £750 that the appeal lies to this Tribunal.

#### **2. Situation**

The premises are situated in the centre of the village of Rathfarnham, a residential suburb of Dublin City. They are set back some 30 yards from the street frontage. Neighbouring properties comprise a mixture of commercial premises and two further licensed premises.

#### **3. Premises**

The premises comprise a two storey and part basement detached licensed premises of modern construction. Ground floor is in use as a lounge bar and the upper floor is a nightclub.

#### **4. Accommodation**

<b>Ground Floor</b>	Lounge	3638 sq. ft.
	Bar	948 sq. ft.

	Entrances	180 sq. ft.
	Kitchen	331 sq. ft.
	Toilets	522 sq. ft.
<b>First Floor</b>	Nightclub	4,046 sq. ft.
	Function Room	846 sq. ft.
	Kitchen	126 sq. ft.
	Store	148 sq. ft.
	Cloakroom/Lobby	301 sq. ft.
<b>Basement</b>	Stores	883 sq. ft.

## 5. Purchase price and expenditure

The property was purchased in 1987 for £575,000. It was refurbished and refitted in 1989/90 at a cost of approximately £315,000. The first floor nightclub disco was completed in 1992 at a cost of approximately £200,000.

## 6. Turnover and Net profit

Turnover in 1994 was £1,935,733.

## The Appellant's Case

Mr. O'Kennedy in his précis in direct evidence stated *inter alia* that although the premises has a small amount of off street parking, parking otherwise in the area is a major problem. That capital values in general for pubs have doubled from 1988 to 1991 and then it remained static till 1994 with some dramatic increases thereafter. He provided numerous comparisons which are appended to this determination and in particular made reference to the Templeogue Inn which was sold in 1986 for £640,000 and the Submarine Bar which was sold in 1987 for £820,000. In his opinion the market value of the subject property at November 1988 was £900,000 and he commented that only the Red Cow Inn had exceeded this level by 1988.

Mr. O'Kennedy estimated the rateable valuation at £570 calculated as follows:

**Method 1**

Capital Value at 1988 £900,000 at 10% yield = £90,000 NAV at .63% = £567

**Method 2**

Existing rateable valuation based on an NAV of £78,000 add first floor nightclub at £5 per sq. ft. = £25,000 but deduct previous value of first floor 5000 sq. ft. at £2 per sq. ft. = £10,000.

Therefore NAV = £15,000 & £78,000 = £93,000 at .63% = £585.90 RV

**Method 3**

Net profits with loan interest added back giving an NAV of £76,000 and an RV of £478.80.

Averaged and adjusted to 1998 = £190,000 and take 40% available for rent = £76,000

NAV at .63% £478.80

**Method 4**

Ground/Lounge	4,586 sq. ft. @	£12psf
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First Floor Nightclub	4,564 sq. ft. @	£5psf
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These figures are inclusive of the license

**Total** £77,832 say £80,000 p.a. @ .63% = RV£504

In cross-examination he dealt with the comparisons, particularly the Rathfarnham Orchard which has an RV of £500 from the 1992/4 1st Appeal indicating an NAV of £78,000.

In response to questions Mr. O'Kennedy offered the view that the Rathfarnham Orchard was a superior premises *albeit* with a smaller floor area than the subject and that it had a higher market value than the subject. He also offered the view that the adjusted turnover on the Stillorgan Orchard was in the order of one million and that was therefore taken at 8.5% to reach the R.V. of £500.

### **The Respondent's case**

Mr. Maher in his evidence stated *inter alia* that the disco should not be taken in isolation but the entire property treated as a unit. In his opinion the 1991 rateable valuation of £500 was arrived at erroneously and in his opinion was not correct. He said that the appeal valuer at the time had made a deduction on the capital value of the property to reflect the fact that the first floor was disused or not capable of beneficial occupation and he disagreed with this. He stated that the appeal valuer used three bases for approaching the valuation.

1. The purchase price less allowance for the first floor and adding improvements of £315,00 to give a total of £ 815,000 with a yield of 10% = £81,500 @ .63% = £513.
2. On the basis of turnover to the 30<sup>th</sup> April 1992 of £1,103,940. This was adjusted in line with the Drinks Price Index to £907,085 and taking a yield of 9% gave N.A.V. £81,637 @ 0.63% = £514.
3. The ground floor lounge space 4,757 sq. ft. @ £16psf = £76,112 and the license at £50,000 at a 10% yield = £5,000 = £81,112 @ 0.63% = £511.

Mr. Maher provided seven comparisons in support of his valuation and in brief they were as follows:

#### **The Foxes Covert**

VA94/1/020 – 91/3 First Appeal

R.V. - £954

#### **Deerpark Ltd. t/a "The Belgard Inn"**

1991/4 First Appeal.

R.V. agreed at £950.

#### **"Quinns" (formerly McGoverns)**

VA93/3/052

R.V. – Agreed £700.

**Ranelagh Taverns Ltd., t/a Richard Crosbie Tavern**

1993 First Appeal

R.V. £700.

**Barnhouse Ltd. t/a McSorleys, "Sandford House"**

93/4 First Appeal

R.V. - £470.

**"The Barge"**

VA96/2/060 – 95/2 First Appeal

R.V. £725. (No Tribunal decision at date of submission)

**"Searsons"**

Valued on appeal at N.A.V. - £89,682

Mr. Maher approached the valuation in four ways as follows:

	£
1) Turnover 1994	1,935,733
Adjusted to 1988 level for	
Price increases – Less 20%	1,548,586
Drinks T.O. @ 65%	1,006,581
Disco T.O. @ 35%	542,005
Est. N.A.V. £1,006,581 @ 9.5%	95,625
£542,005 @ 7.5%	<u>40,650</u>
Total	136,275
<u>Add.</u> Rental from food franchise say	<u>20,000</u>
	<b>156,275</b>
Est. N.A.V.	150,000
<b>R.V. @ 0.63%</b>	<b>£ 945</b>

2) Profits Valuation – giving an NAV of £144,000 and an RV of £907.

3)	£
Adjusted 1994 T.O.	1,548,586
N.A.V. @ 9.5%	147,115
Add Food Franchise	<u>20,000</u>
Est. N.A.V.	167,115
<b>R.V. @ 0.63%</b>	<b>£1,052</b>

4)	£
Ground Floor – 5732 sq. ft. @ £16	91,712
1 <sup>st</sup> Floor – 5477 sq. ft. @ £8	43,816
Basement – 883 sq. ft. @ £3	2,649
Licence £50,000 @ 10%	5,000
	143,177
Est. N.A.V.	143,000
<b>R.V. @ 0.63%</b>	<b>£900</b>

It should be noted that each of the above figures exceeds the rateable valuation of £750 and Mr. Maher indicated that in view of the nature of the business particularly the nightclub, a figure in the order of £800 - £850 would be appropriate and that the existing £750 was inadequate. In cross-examination in relation to the increased turnover, Mr. Maher acknowledged that it was due to the disco, other improvements to the premises and the ability of the proprietors. He accepted that the use of the first floor was uncertain in light of its history but that this was reflected in his valuation. While he accepted that the Commissioner fixed £500 in 1991, he, Mr. Maher would have taken a different approach and therefore £500 might not be the right figure. He accepted that the only thing that had been added to the premises since the £500 figure was the disco/nightclub. To Mr. O’Kennedy’s suggestion the disco would only add 10% to the value of the property, his response was that his function was to assess the NAV and if the disco is adding

£600,000 to £700,000 per annum turnover then this must be reflected in the NAV. He did not offer any view on the open market value of the Sarah Curran nor his view relative to the Orchard Inn and the Templeogue Inn.

In response to questions from the Chairman, as to whether the turnover of £1,935,000, could be achieved by the hypothetical tenant, Mr. Maher offered the view that the hypothetical tenant would achieve the same turnover and therefore the goodwill was attached to the premises and not the proprietor. On further questioning he estimated the current open market value in the order of £2.5 to £3 million. Mr. O’Kennedy in response to the same question felt that the hypothetical tenant’s turnover would be in the order of £1.5 million and that the current open market value of the property would be in the order of £2.4 to £2.5 million.

### **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 tithes 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**

In this case there is an existing rateable valuation of £500 prior to the development of the nightclub at first floor level. When the figure of £500 was fixed the space in which the nightclub is accommodated existed and therefore it is not a physical addition to the property but rather an increase in its use. Mr. Maher’s argument that the pre-revision valuation of £500 is incorrect is not sustained particularly when he provided the evidence as to how it was calculated which under three separate headings gives figures in the region of £511. The Tribunal has on a number of previous occasions stated that valuations should not be revisited within 5 years unless there

are exceptional circumstances and we think that should apply in this case. On this basis the existing £500 should stand with the addition for the nightclub, by whatever method is most appropriate.

On the basis of a rate per sq. ft. for the nightclub area, Mr. O'Kennedy proposed £5 per sq. ft. but deducts £2 for the existing value. However as it was previously not included it does not seem appropriate to make this deduction and therefore the figure of £27,335 per annum would stand as an NAV with a fraction of .63% applied, adding £172.00 to the existing valuation of £500, making a total of £672.00. Mr. Maher suggested £8psf, which would add £275 to the existing £500 producing an R.V. of £775.

An alternative method for the total property is to deal with the accounts and following Mr. O'Kennedy's figure there is an adjusted profit of £190,000 at 1988. Traditionally this has been regarded as 50% due for rent rather than the 40% applied by Mr. O'Kennedy, which would give rise to an NAV of £95,000 @ .63% giving an RV of £598.50, say £600.

On the basis of the turnover, £1,935,733 adjusted to 1988 by the Drinks Price Index gives an adjusted figure of £1,539,477. Apportioning this 65% to the drink turnover and 35% to the disco gives the following figures:

Drink	£1,000,660
Disco	£ 538,817

Estimating the NAV from these figures at a rate of 8% on the drink turnover (to reflect the input of the proprietor) and 5% on the disco turnover (to reflect the risk or fickle nature of this turnover element) gives rise to the following figures:

$$\begin{aligned} &£1,000,660 @ 8\% = £80,053 \\ &£ 538,817 @ 5\% = \underline{£26,941} \\ \text{NAV} &= £106,994, \text{ Say } £107,000 @ .63\% = \text{Say } £675 \text{ R.V.} \end{aligned}$$

**The Tribunal therefore determines the R.V. to be £675.**