

Appeal No. VA96/2/078

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

Fitzgerald Group t/a The Poitin Stil

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Shop and Restaurant at Map Reference 25Aa, Townland: Tootenhill, ED: Lucan, (Rathcoole DED) 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 4TH 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 £710 on the above described hereditament.

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

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. Jim Gormley, District Valuer in the Valuation Office.

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

Material Facts Agreed or Found by the Tribunal

Valuation History

In December 1995 the rateable valuation was assessed at £175. In May 1990 revised to £315 and affirmed at first appeal. In December 1993 revised and R.V. increased to £710. This was appealed and in March 1996 the Commissioner issued a decision affirming the valuation at £710. This figure is now the subject of the appeal to this Tribunal.

Situation

The premises are situated in the village of Rathcoole, six miles south west of Dublin City Centre and eight miles from Naas. There is frontage to the southbound carriageway of the Naas/Dublin dual carriageway.

Premises

These premises comprise a two storey detached licensed premises together with adjoining car park. It is of modern construction but with a thatched roof.

Accommodation

The improved premises now has a total floor area of 17,500 sq. ft. and the accommodation is as follows:

Trading Area:

Bar/Lounges	7,271 sq. ft.
Off Licence	230 sq. ft.

Restaurant	3,151 sq. ft.
Carvery	613 sq. ft.

Ancillary Accommodation:

Kn. & Stores / (Grd. Fl.)	3,352 sq. ft.
WC's	1,204 sq. ft.
1 st Fl. Stores	1,680 sq. ft.

Total Area: 17,500 sq. ft.

Expenditure

A major reconstruction was carried out in 1992 at a cost of approximately £700,000.

Turnover for year end December:

1991	£728,666
1992	£749,704
1993	£1,979,060

Appellant's Case

Mr. O'Kennedy in his précis and direct evidence stated *inter alia*. These are old established licensed premises well located in Rathcoole village with frontage onto the Naas/Dublin dual carriageway. They have been recently refurbished and are in good decorative condition. There are three other licensed premises in Rathcoole, two more in nearby Saggart and a further licensed premises nearby also with frontage to the Naas/Dublin dual carriageway. The premises benefits more from passing trade than its rival licensed premises. However, a threat to the trade would be the refurbishment of surrounding premises or other ones fronting the dual carriageway, construction of new premises in the locality, any alteration to the present traffic flow, restricting direct access from both sides of the dual carriageway, strict implementation or changes in the current drink driving legislation. The hypothetical tenant would be aware of the possible changes to this trade both in the short and long term.

Mr. O'Kennedy provided four bases for the calculation of N.A.V. and thus R.V.

Method No. 1

Open market value. He estimated this at £850,000 in 1998 and taking a yield of 10% gives an N.A.V. of £85,000.

Method No. 2

Rate psf on the various floor areas - £7.25psf on the Bar/Lounge, £10.00 on the kitchen/entrance, £5.00 on the restaurant, £3.00 on the stores/kitchen/carvary and £2.00 on stores giving an N.A.V of £85,000.

Method No. 3

Profit Basis giving NAV of £85,000

Method No. 4

Mr. O'Kennedy provided numerous comparisons, comparative method with similar licensed premises producing an NAV of £85,000. These included rent reviews of leased premises; analysis of R.V. and N.A.V.'s to give rate psf for hotels; licensed premises in the immediate area; similar value licensed premises, which have been subject to sale and revaluation in recent years; recently revised licensed premises which were sold during 1996; general comparisons on similar valued licensed premises and comparisons of Tribunal decisions on similar value licensed premises. At a reconvened hearing, he reduced his comparisons to eleven only comprising premises of similar value.

Mr. O'Kennedy emphasised that up to November 1988 only two pubs had sold for in excess of £850,000. The subject premises had a restaurant licence and therefore one hours extra trading. In his view his most relevant comparison was the Palmerstown House which has a valuation of £535.

In cross-examination he stated that the rents he had quoted were for rent reviews rather than an analysis of the R.V. and N.A.V. In each case the analysis of R.V. and N.A.V.

gave considerably higher rents psf including the Black Sheep at £13.25psf, The Penthouse at £10.75psf, The Towers at £12.90psf and if these figures were applied to the subject they would of course give rise to a rateable valuation considerably in excess of the £710 fixed. In relation to the profits method of valuation he contended that it was not appropriate that the amount for rent and rates should be 50% in each case and that the subject premises had a high food content which carried considerably more expenditure. He acknowledged that the comparisons of pubs in Rathcoole were all small premises.

Mr. Pat Walsh of the Fitzgerald Group took the oath. He questioned why the subject premises had a rateable valuation of 50% higher than several other premises in the same group. He stated that the food content of the turnover was now 53% as opposed to 48% or 49% three years ago. There were much higher costs in relation to food. Wages in relation to drink were in the order of 16-18% of the turnover where as in relation to food they were in the order of 30%. Other pubs in the group are in built up urban areas but the subject is in a small village and subject to passing trade. It is vulnerable to road developments etc. In his opinion turnover in isolation is not sufficient to make the assessment required under section 11 of the 1852 Act.

The Respondent's Case

Mr. Gormley in his précis and direct evidence stated *inter alia*;

1. When considering the first appeal on this property, accounts for the years 31st December 1991 and 1992 had been provided but not for the year ending 31st December 1993 which would reflect the improvements and major extension carried out in 1992. These accounts only became available for this Tribunal hearing.
2. In his view the only relevant turnover figures were for 1993 because they were the only ones which reflected the premises as they existed at the valuation date.
3. He provided two bases of valuation;
 - (i) Turnover

Turnover to the year ended December 1993 £1,979,060 adjusted to 1988 by the drinks price index gives a turnover of £1,612,523 at 8% = N.A.V. £129,001 and applying the fraction of 0.63% giving an R.V. of £812.

(ii) Estimated capital value in 1988

In the building's present condition - £1.4 million @ 10% = £140,000 N.A.V. @ 0.63% = £882 RV.

Four comparisons were introduced and each compared with the subject premises.

1. The Goat Grill VA93/4/005. The Goat Grill is the respondent's primary comparison – RV £825.
2. The Red Cow Inn 93/4 - FA £1,180
3. The Foxes Covert VA 94/1/020 - RV £905
4. Belgard Inn 1991/4 - FA £950

In cross-examination Mr. Gormley stated that the present market valuation of the Poitin Stil was certainly not less than the turnover and up to 1.3 to 1.4 times the turnover thus giving a capital value of £2 million to £2.4 million.

He had relied on the accounts method in dealing with the valuation with the market value in 1988 as a check. In his opinion the market value in 1988 of the building in its present condition was £1.4 million on the basis of the current turnover adjusted to 1988. On a pound for pound basis this would give a valuation of £1.6 million.

Mr. O'Kennedy drew to his attention The Bell public house which had sold for £2.4 million and yet had a rateable valuation of £500, Ballinteer House which had sold for £2 million in 1996 but with a valuation of £410.

In relation to adjusting the turnover by the drinks price index, Mr. Gormley stated that the C.P.I and the drinks price index were similar and therefore it was reasonable to use the drinks price index. This had been used in the Goat where the food content is 40%.

Mr. Gormley accepted that the food content of the turnover was also approximately 40% in the subject case.

In summing up Mr. Gormley stated that these were exceptional premises and that much of the evidence would in fact give a rateable valuation much higher than £710, in fact in the order of £850 to £1,000. He noted that in relation to capital values The Bell had been purchased for £1.5 million, demolished and rebuilt at a cost of £500,000. But the turnover in the new building is still only £800,000 per annum. In his view capital values are unreliable and the profit generating capacity is paramount to the hypothetical tenant and should be the preferred method of Valuation.

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

In our opinion it is very difficult where a property has been as extensively redeveloped as this has in recent years, to estimate its capital value at 1988 and we are therefore disinclined to follow that method of valuation. The method of applying a rate psf has certain merits in that it applies a value to the premises rather than the business. However in this instance it is clear when many of the comparisons provided by the appellant are analysed on the basis of their N.A.V. rather than the rent reserved that the rates applicable to the subject premises would be higher thus giving rise to a higher rateable valuation than the £710 already fixed. The profits method usually allows for the divisible balance to be split 50/50 and if that was done in this instance then the rateable

valuation would come out higher than the £710 fixed. The gross floor area basis is more applicable to hotels than to public houses. The turnover basis has been used in numerous cases and is certainly an item, that will always interest the hypothetical purchaser or tenant. Obviously in this case it is only appropriate to use the 1993 turnover, as the turnover prior to that date does not reflect the premises that are being valued. The question to be asked then is what yield is to be applied to the adjusted 1988 turnover to get an N.A.V. In this instance the respondent has applied 8% and comes out at a higher valuation than that fixed. In fact the rateable valuation of £710 fixed would analyse at 7% which is a relatively low figure and in our view well reflects the high food content in the turnover. Therefore while we are not setting a precedent by saying that 7% is correct for a public house with a high food content we are simply noting that an analysis of the rateable valuation of £710 is 7% of the adjusted turnover. Accordingly we affirm the valuation of £710.