

Appeal No. VA97/2/020

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

Dermot Cawley

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed House at Map Ref: 28, Townland: Kilkelly, ED Kilkelly, RD: Swinford, Co. Mayo

Quantum - Underground Stream

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF SEPTEMBER, 1997

By Notice of Appeal dated the 18th April, 1997 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £48 on the above described hereditament.

The grounds of appeal as set out in a letter accompanying the Notice of Appeal were in summary.

"1. That an increase from £10 to £48 in his rateable valuation was excessive and that he would be unable to pay this on an already stretched budget.

2. There was considerable damp in the premises due to an underground stream. This stream has flooded on many occasions. It is impossible to rent the bar and residence with the underground stream.

3. No food was served on the premises nor did it have any grocery shop like other businesses in the town.

The Property

The property comprises a two storey residential licensed premises with a seven day licence attached to it. It is located in the village of Kilkelly with street frontage on two sides. Kilkelly is situated just off the main Claremorris to Charlestown road close to Knock International Airport.

Accommodation

Ground Floor : Kitchen, Utility, Scullery, Bar/Lounge (885 sq.ft.)

First Floor : 3 Bedrooms, Sittingroom, Kitchen and Bathroom.

Valuation History

The valuation history commences in 1924 when an RV of £10 was placed on the above described hereditament. In November 1995 following a request for revision the revised list issued assessing the new rateable valuation at £48 with a domestic element of £16 being part thereof. This valuation was appealed to the Commissioner by the occupier but no change was made at first appeal and it is against that determination that this appeal has been taken by Mr Cawley to the Valuation Tribunal.

Written Submissions

A written submission was received on the 1st September 1997 from Mr. Dermot Cawley. In that written submission Mr. Cawley restated the grounds of appeal as had accompanied his Notice of Appeal. He also added that the property was old, built in 1850 and very costly to

maintain. He submitted that the financial upkeep of his property was larger than any other comparable property in Kilkelly itself.

A written submission was received from Mr. Dervan on the 10th September 1997 on behalf of the respondent. Mr. Dervan in his written submission described the subject premises and its valuation history as summarised above. Commenting on the grounds of appeal set forth by Mr. Cawley, Mr. Dervan said that the premises had not been reassessed since 1924 and that the old valuation was clearly out of date. He said similarly that whilst the underground stream would have an adverse effect, this was offset to a large extent by the very prominent location. He assessed the valuation on the subject premises as follows;

	30/11/1995		30/11/1994
	£		£
Bar Turnover	94,953		90,739
Adjusted to November 1988	78,333		76,639
Average adjusted Turnover		=	77,486
N.A.V. @ 8½%		=	6586
Domestic @ £250/month		=	3000
			<hr/>
			9586
RV @ .5%	=	£47.93 SAY £48 (Domestic £16)	

This equates to a net annual value of £123/week on the bar.

That was the method of valuation adopted by Mr. Dervan and set out in his precis of evidence.

In support of his valuation he referred the Tribunal to a number of comparisons which are attached as appendix one to this judgment.

Oral Hearing/Determination

This appeal proceeded by way of an oral hearing which took place in Galway, today, 17th September 1997. Mr. Cawley appeared in person whilst the Commissioner of Valuation was represented by Mr. Dervan. Having taken the oath both Mr. Cawley and Mr. Dervan proceeded to give evidence in accordance with their respective précis of evidence and on the conclusion thereof made to this Tribunal certain submissions. The effect of such evidence/submissions was that Mr. Cawley suggested that a rateable valuation of between £38 and £42 would be fair and reasonable with regard to his property whilst Mr. Dervan maintained that the figure of £48 should remain intact. Having carefully considered the aforesaid evidence and submissions the following are the findings of the Tribunal in this case.

1. There is no doubt but that the old valuation attaching to this property, made in 1924, is out of date and was of course made on a basis which is no longer reflected in the valuation law as it applies today. Some highly relevant principles are now contained in the provisions of the 1986 Valuation Act and whilst many provisions of the old statutes going back to 1852 and earlier have been retained and remain of very considerable importance nevertheless any valuation made prior to 1988/1989 was not made on an NAV basis and consequently can effectively be disregarded when property is revised at any time thereafter.

2. As appears from his assessment of valuation, details of which were given heretofore, Mr. Dervan has placed considerable if not total emphasis on the turnover figures as submitted in arriving at his suggested NAV. These figures, in relation to the subject property, cover the year end to November 1994 and to November 1995. In addition, during the course of the hearing, Mr. Dervan informed us as to what the turnover figures were in relation to the three best comparisons as adduced by him and as set out at numbers 1, 2 and 3 in the appendix attaching hereto.

3. The first one is Mr. Gurren' property which has a rateable valuation of £52 with a domestic element of £10. That converts to an NAV of £123 per week.
4. The second is the property of Mr Luttrell which, in 1995, had a revised rateable valuation of £42 placed thereon again with a £10 domestic element. The third is the premises of Mr. Kevin Duffy which, on the commercial part of his property has a rateable valuation of £20 with the residential parts being separately rated. From the turnover figures given to us in relation to each of these comparisons it is quite clear that in all cases the turnover is in excess of that achieved by Mr. Cawley. Indeed, it appears to us that if up to date figures were available with regard to each of these four properties it is likely that the disparity would be even greater. Consequently we believe that the suggested figure of £48 does not sufficiently reflect the disparity in the figures just mentioned.
5. On behalf of the Commissioner it was strongly urged upon us that the location of the subject property was almost exceptional and certainly had a frontage and was situated in an area superior to that of the other three comparisons. That indeed may be the case. However if one adopts a turnover basis as a method of valuation then it seems to us that the location of the property in question will be adequately reflected in those figures and accordingly we do not consider it necessary that a further adjustment, on this ground only, should be made.
6. There is another reason why in our view the Commissioner's valuation is too high. Mr. Cawley informed us of the existence of a stream which runs under his property. The presence of this stream causes considerable dampness in the house and bar and the walls have to be constantly painted and the skirting boards regularly replaced. The stream has caused flooding on a number of occasions. All of this leads to the necessity of maintenance well in excess of anything appropriate to the comparisons. There is no suggestion on behalf of the Commissioner that the comparisons suffer from such distinct or peculiar features as this underground stream. There is no suggestion that, what might be considered, exceptional maintenance costs are incurred in upholding and

maintaining these comparisons. In our view therefore we believe that this is also a reason why an adjustment must be made to the suggested rateable valuation of £48.

7. In very broad terms it appears to us that the comparisons, and in particular those mentioned at numbers 1 and 2, devalue at about 8%, approximately, of turnover. We propose, to reflect the findings above made, to apply a rate of 7.5% approximately, to Mr. Cawley's turnover which results in an NAV of £5,811. We propose to convert that to a rateable valuation of £44 which includes the domestic element of £16.

Accordingly the decision of this Tribunal is that the appropriate rate of valuation is £44.