

Appeal No. VA99/3/001

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

James D. Wynne

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop at Map Reference 1 Edward Street, Tralee Urban, Tralee, Co. Kerry

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Finian Brannigan - Solicitor

Member

John Kerr - MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF SEPTEMBER, 2000

By Notice of Appeal dated the 9th day of July 1999, the appellant above named appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £56 on the above described hereditament.

The Ground of Appeal as set out in the said Notice are that; "the attached letters appear to have been totally disregarded by the Commissioner of Valuation particularly 4(iii) of my letter dated 20th April 1999".

This appeal proceeded by way of an oral hearing at which the appellant appeared in person though with the assistance of a Mr. Kelly who despite being a Solicitor took no active part in the case. The status of this Mr. Kelly within the appeal hearing was not defined and no objection was taken to his presence. Mr. David Molony, an appeal valuer appeared on behalf of the Commissioner of Valuation. Prior to the commencement of the hearing the parties in accordance with the rules and practice of this Tribunal had exchanged their respective précis of evidence. Having taken the oath both witnesses adopted their précis as constituting and as being their evidence in chief. Cross-examination followed, submissions were made and judgment was reserved. From the foregoing the relevant facts material to this appeal which essentially are not in dispute, are as follows:

Location

The hereditament in question is located on the eastern side of Edward Street adjacent to the junction of Lower Castle Street.

Description

The premises the subject matter of this appeal known as the Osborne comprises a mid-terrace ground floor licensed premises with a small store. Ceiling height is up to first floor, which is effectively used exclusively for toilets though it also has a small area, which could not be adequately or objectively described as an office area. The accommodation is as follows:

Ground Floor

Bar Lounge	61.3 sq. m. 660 sq. ft.
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Store	3.4 sq. m. 37 sq. ft.
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First Floor	25.1 sq. m. 270 sq. ft.
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The premises internally and externally is in very good condition having recently been refurbished/redecorated with alterations carried out thereto. All main services are connected.

Valuation History

Prior to 1988 there was an R.V. of £19 on the premises, which was calculated under the old system and is therefore not relevant to this appeal. In August 1998 the property was inspected and revised. On 9th November the valuation list issued with an R.V. of £56 placed thereon which is equivalent to an N.A.V. of £11,200. On the 13th November 1998 there was an appeal to the Commissioner of Valuation. On 6th July 1999 the results of that appeal issued and these showed no change to the original R.V. of £56 and thus to this Tribunal the appeal dated the 9th July 1999.

In the notice of appeal to us the appellant refers to a letter written to the Commissioner of Valuation dated 20th April 1999 and in particular he makes a complaint that he, the Commissioner, did not have proper regard to paragraph 4(iii) thereof which reads “*the turnover referred to at II above would give a very low letting value and probably little or no increase in the letting value that existed prior to the improvements being carried out*”. In essence the main argument advanced by the appellant is that on the recorded turnover, an R.V. of £56 was not and could not be justified. In support of this decision Mr. Wynne gave evidence and made submissions. He also relied upon his letter dated 28th January 2000 addressed to the Valuation Office as well as referring to the accounts for year ending 31st December 1999. In brief the essential factors relied upon by him are as follows:

1. This property was purchased at auction on 23rd October 1997 for £252,000.
2. The premises had been closed for approximately 10 years prior to that and accordingly the turnover on the opening was very low.
3. In the recent refurbishments, which cost about £107,000, the retail bar area was not as such increased and the alterations if these could be so-described were essentially cosmetic in nature.
4. These said alterations were carried out principally in response to the fire officer’s requirements and not otherwise.
5. Being closed for a long period there was no track record and the only audited accounts were those as mentioned above, namely for the year ending 31st December 1999. In this only set of accounts which are reported under the heading Birchfox Taverns Limited on which no point was taken, it appears:

- (a) That the annual turnover for the year in question was £104,000 approximately
- (b) That the gross profit was £46,479 and accordingly
- (c) When the other deductions were made this operation had an operating loss of £21,055 for the year in question.

In all it was argued that with this level of turnover the resulting loss could not in any circumstances underpin the N.A.V., which was used as the basis for the R.V. Finally Mr. Wynne takes issue with all of the comparisons produced on behalf of the Commissioner and in particular with the licensed premises known as Val's Pub on 29 Bridge Street and Jack's Pub, The Square, Tralee.

Mr. Molony, the appeal valuer, gave details of the breakdown of his suggested N.A.V. These are as follows:

Bar/Lounge	£16.00psf or £172.30psm
Store	£ 3.00psf
First Floor (offices)	25.1 sq. m. @ £10.76psm = £270

Objection was taken to the first floor which he describes as office. It is said in his précis on page 8 that he has placed a rate of £6.00psf thereon. This however must be a typing error as the N.A.V. opposite this calculation is £270, which would equate with £1psf on this area of 270 sq. ft. Accordingly his N.A.V. is £1,091 which when the factor of 0.5% is applied gives an R.V. of £54.70 which is rounded to £56.00.

In support of this breakdown the appeal valuer has referred us to three comparisons.

1. Lot 14a Edward Street, Tralee, Co. Kerry

Licensed premises, which is known as The Cottage. This was revised in 1997/4.

R.V. £50.00

Bar/Lounge 48.9 sq. m. / 576 sq. ft. (£19.00psf)

Store	2.5 sq. m. / 27 sq. ft. (£9.50psf)		
N.A.V.	£10,236 @ 0.5%	=	£51.18
	R.V.	=	£50.00

In Mr. Malony's view there is an alternative way of approaching the valuation of this property in that a leasehold exists for two years and eleven months from September 1996 at a rent of £16,000 p.a. Accordingly if one deducts say 30% from that rent to reflect the November 1988 situation, one is then left with an estimated N.A.V. £11,200 which when converted gives an R.V. of £56.00.

2. Lot. 2 The Square, Tralee, Co. Kerry

R.V. £90

1993/4 First Appeal

This property is significantly greater in area than the subject property and on the ground floor has a bar and lounge, which is sub-divided for the purposes of devaluation.

Bar Lounge	47.4 sq. m. / 510 sq. ft. @ £22.00psf
Bar Lounge	42.7 sq. m. / 460 sq. ft. @ £11.00psf
Cold Room	8.9 sq. m. / 96 sq. ft. @ £ 4.00psf

The details in relation to this comparison then continue to the first floor, which consists of a restaurant/kitchen/store and the second floor where a store is located. In all the ultimate N.A.V. is £20,476 which when converted gives an R.V. of £90.00. It should immediately be pointed out that this property is in a far better location than the subject property and as already stated has a significantly greater floor area and in particular has a significantly greater retail area. Hence whilst of some assistance to us, this Tribunal does not consider this to be the prime comparison available to support the Commissioner's breakdown.

3. Lot 29 Bridge Street, Tralee, Co. Kerry

R.V. £120

1996/4 First Appeal

Ground Floor

Bar/Lounge 105.1 sq. m. / 1,131 sq. ft. @ £16.00psf

Office 5.5 sq. m. / 59 sq. ft. @ £ 6.00psf

First Floor

Bar/Dining Room 70.6 sq. m. / 760 sq. ft. @ £7.00psf

Lobby 2.6 sq. m. / 28 sq. ft. @ £3.00psf

Second Floor

Kitchen Stores 47.9 sq. m. / 516 sq. ft. @ £2.00psf

N.A.V. = £24,886

@ 0.5% = £124.43

R.V. = £120.00

The area is significantly greater and indeed in our opinion better located than the subject property. In any event by reference to these comparisons, the appeal valuer Mr. Molony gave evidence to us indicating that in his opinion he has fully justified the underlying N.A.V. which gives an R.V. of £56.00. In making a valuation of a property reference must be made to Section 11 of the 1852 Act, and to Section 5 of the 1986 Act as follows:

“and such valuation in regard to Houses and Buildings 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 Rentcharge,) being paid by the Tenant”.

“Notwithstanding section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made may be reduced by such amount as is necessary to ensure, in so far as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditament bears to the net annual values of the other tenements and rateable hereditaments”.

As can therefore be seen it is necessary to estimate what a hypothetical tenant would pay for the premises in question by way of rent and the fact that the premises in question is occupied by the owner is immaterial. The duration as is evident from Section 11 is from year to year and therefore the rent is not one for a term of years or any greater period. The rates, taxes, repairs and insurance and the other expenses must be taken into account when calculating what rent this hypothetical tenant would pay.

In addition of course the property must be rated in accordance with its actual state and condition at the relevant date. This under the principle of *rebus sic stantibus* which is well-established in valuation, law and practice. Essentially therefore what this Tribunal must do is to ascertain what rent a hypothetical tenant would pay for the premises in question in its actual state and condition at the relevant date on a year to year basis. It is the premises and not the business which must be valued. True the actual and potential business capacity are relevant but only as an indication of the value of the property. It is the latter and not the former upon which we must place an N.A.V. In considering this, the hypothetical tenant will not be bound by the actual rent and will not under any circumstances feel obligated to the accounts produced. He will of course consider and be mindful of such accounts but does not have to treat them as conclusive. He will look at the history of the trading pattern. He will look at the market and his competitors. He may see opportunities not evident to the existing user. He may feel that the property is being under-

utilised or that management efficiency could be increased. Indeed he may think that by changing the entire focus of the business carried on in the premises he could achieve a great deal higher turnover than what the accounts reflect and thus in that way he would be in a position to offer more to the landlord for rent. So accordingly, it is crucial to understand that whilst the actual trading position is of relevance, whilst the accounts will of course be considered, nonetheless, the hypothetical tenant will also take into account all perceived advantages which he might believe the property has in order to calculate what rent he would be prepared to pay for the premises in question.

In our opinion the best comparison is the comparison immediately on the opposite side of the same street. That is Comparison No. 1 and as previously stated this has a floor area of 576 sq. ft. with £19.00psf thereon. However though the best comparison, there are distinguishing features between that property and the property in question. The subject property has as we have previously stated, been closed for almost ten years. It has no track record. It has but one year's trading and those accounts show that the premises is operating at a loss. It also shows that the turnover is not very significant and that the gross profit is not perhaps what one would expect with a licensed premises being well managed and being in operation for more than one year. We feel and therefore in our view a hypothetical tenant would feel that there is a good deal of scope for much improvement with the business and premises itself. Notwithstanding, and having considered all matters we feel that some allowance must be made over and above what is being made by the appeal valuer in order to reflect these distinguishing features. In our opinion the appropriate valuation for the subject property would be as follows:

660 sq. ft. @ £14.00psf	=	£9,240
37 sq. ft. @ £ 3.00psf	=	£ 111
270 sq. ft. @ £ 1.00psf	=	£ 270

We have made no change to the two figures last mentioned, these having been given by the Commissioner of Valuation. In all the N.A.V. is £9,621 @ 0.5%, which gives an R.V. of £48.11 and we round that off to £48.00. Accordingly in our opinion the correct R.V. for this property should be £48.00, and we so determine.