

Appeal No. VA02/4/007

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Michael John McGonigle**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Licensed Shop at Map Reference 30Aa pt 22A.32.33 Carrowtrasna, Greencastle, County Donegal

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Joseph Murray - Barrister**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF JUNE, 2003**

By Notice of Appeal dated the 25th October 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €30 on the relevant property above described.

The Grounds of Appeal as set out in the said Notice of Appeal are that:

"The valuation is incorrect in comparison to other relevant properties in the same rating area.

1. This appeal proceeded by way of an oral hearing held in Letterkenny on the 28th of February 2003.
2. At the hearing the appellant was represented by Mr. Patrick McCarroll MRICS FIAVI ASCS IRRV MCI Arb, and the respondent by Mr. John Kirwan B.Agr.Sc., Valuation Diploma, a valuer in the Valuation Office.
3. Prior to the hearing the Valuers exchanged written submissions and valuations, which were forwarded to the Tribunal and subsequently received into evidence under oath at the oral hearing.

### **The Property**

The subject property comprises a licensed premises known as Mc Gonigle's Bar located on a minor county road between Greencastle and Shrove.

The licensed premises form part of a two-storey building which is mainly residential in character. The agreed area of the licensed area is as set out below.

|                        |                      |
|------------------------|----------------------|
| Bar including entrance | = 67.5m <sup>2</sup> |
| Stores                 | = 12m <sup>2</sup>   |

### **Rating History**

At 2000/2 revision the rateable valuation was determined at €6 which was reduced to €30 at first appeal stage. The Appellant was still aggrieved and lodged a further appeal to this Tribunal.

### **Appellant's Evidence**

Mr. Mc Carroll having taken the oath adopted his written précis, which had previously been received by the Tribunal as being his evidence in chief. In his evidence Mr. Mc Carroll said that the subject property was located on a minor county road with little passing traffic in an area with no tourist attractions. Mr. Mc Carroll went on to say that tourism in Donegal had suffered greatly in recent years due to the affect of the foot and mouth outbreak and the absence of American tourist activity due to the events of September 11. As a consequence the business

depended upon local custom, which was confined mainly to weekends and evenings during the week. In his opinion licensed premises with such such a low turnover could only continue to survive if it was run as a family run enterprise on a part time basis.

Mr. Mc Carroll in his evidence contended for a rateable valuation of €16 calculated as set out below.

Turnover

31/03/00                   €3,074

31/03/01                   €2,332

9-month period to 31/12/01 annualised say €2,000.

This comes to a total of €157,406 average annual turnover = €2,468 backdated to November 1988 (by reference to the Alcoholic Drink Index) = €34.839

Net Annual Value @ 9% = €135 Rateable Valuation @ 0.5% = €16.

In support of his opinion of net annual value Mr. Mc Carroll relied upon four comparisons as set in the Appendix 1, which forms part of this judgement. In particular Mr. Mc Carroll relied upon the licensed premises at Ardmallin Townland near Malinhead. This property he said occupied a better location than the subject and its turnover benefited from tourist activity during the summer months.

### **The Respondent's Evidence**

Mr. Kirwan having taken the oath adopted his written précis, which had previously been received by the Tribunal as being his evidence in chief.

In his evidence Mr. Kirwan concurred with Mr. Mc Carroll in relation to the description and area of the subject premises but opined that the tourist element of the business was better than that put forward by Mr. Mc Carroll and said that in his opinion could be further developed. He did not however challenge the account introduced by Mr.

Mc Carroll but was of the opinion that a hypothetical tenant would reasonably expect to achieve a higher turnover having regard to the area and facilities of the premises. In his opinion the size

of the licensed premises was a factor that must be taken into account in arriving at opinion of net annual value as this could dictate the number of customers that could be accommodated therein at any one time.

Mr. Kirwan contended for a rateable valuation of €30 calculated as set out below.

|                    |                                    |                         |
|--------------------|------------------------------------|-------------------------|
| Bar and Entrance   | 67.5m <sup>2</sup> @ €82 per meter | = €5535                 |
| Stores             | 12m <sup>2</sup> @ €41 per meter   | = €492                  |
| Net Annual Value   |                                    | = €6,027 but say €6,000 |
| Rateable Valuation | @ 0.5%                             | = €30.                  |

In support of his opinion of Net Annual Value Mr. Kirwan introduced nine comparisons details which are set out in Appendix 2 attached to this judgement. These comparisons comprise three licensed premises in Cardonagh two in Greencastle and one between Greencastle and Shru.

The other comparison was located in Ardmallin townland and was a common comparison also used by Mr. Mc Carroll. Five of these comparisons were valued by reference to turnover and the other four were valued on a square meter basis.

### **Findings**

1. In the subject appeal, the valuers have adopted different methods of valuation in order to arrive at their respective opinions of net annual value. Mr. Mc Carroll has relied upon the actual turnover whilst Mr. Kirwan has valued the premises by comparison with the assessments of other licensed premises on a square metre basis.
2. Over the past several years this Tribunal has dealt with a large number of appeals where the subject properties have been licensed premises. An examination of the judgments does not indicate a preference for any of the accepted methods of valuation and each case was determined on the basis of the evidence that was used at the hearing.
3. In the case Nallob Ltd t/a O' Donoghues VA95/5/024 the Tribunal dealt in some detail with the various methods of valuing licensed premises for rating purposes. At paragraph six of the judgment thereof the Tribunal made the following observations.

6. Whilst entering the caveat that no one method is sacrosanct or conclusive, there is no doubt 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 hereditament, 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 affect on the business must and should also be disregarded. Three years 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 Auditors Certificate, the Profit and Loss Account, the Trade Account, the breakdown of the turnover between food, cigarettes and 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”.

4. This Tribunal fully agrees with the above findings that turnover is a primary factor in determining net annual value of a licensed premises. This is not to say that the physical characteristics of the premises should be totally disregarded. Indeed if the licensed area

is too small it could in certain circumstances have the affect of limiting the level of business that a hypothetical tenant could reasonably expect to achieve.

5. Having carefully considered all the evidence adduced in this appeal the Tribunal accepts the appellant's evidence that the subject premises relies mainly on local based custom supplemented by some tourist business during the spring and summer months. The Tribunal also notes but does not necessarily fully accept the appellant's contention that tourism in the area has been adversely affected by the combination of unusual circumstances such as the Foot and Mouth outbreak and the events of September 11<sup>th</sup>.
6. Having regard to the above the Tribunal considers that the most appropriate method of valuation is to use the accounts/turnover basis as put forward by Mr. Mc Carroll. However having regard to the size of the premises, its location, the turnover and recent trading conditions the Tribunal has come to the conclusion that a hypothetical tenant in formulating his opinion of rental value would be prepared to apply a higher percentage of turnover than the 9% put forward by Mr. Mc Carroll.
7. Accordingly therefore the Tribunal determines the net annual value of the subject premises to be as follows.

|                                     |           |
|-------------------------------------|-----------|
| Average turnover 31/3/00 – 31/12/01 |           |
|                                     | = €2,468  |
| Backdate to 1988                    | = €34,839 |
| Net annual value @ 10%              | = €3,400  |
| Rateable Valuation @ 0.5%           | = €17.    |

And the Tribunal so determines.