

Appeal No. VA11/5/266 & 267

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

**Loci Venues Ltd. and
Cian & Lorcan O'Rourke**

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2165798, Pub at Marine Road, Dun Laoghaire, County Dublin AND
Property No. 5002966, Night Club/Discotheque at The Pavillion, Marine Road, Dun
Laoghaire, County Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

James Browne - BL

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF FEBRUARY, 2012

By Notices of Appeal received on the 31st day of August, 2011 the appellants appealed against the decision of the Commissioner of Valuation in fixing valuations of €200,000 (VA11/5/266) and €190,000 (VA11/5/267) respectively on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal as are follows:

Re: VA11/5/266: *"Rental levels are too high when considered against other comparables."*

Re: VA11/5/267: *"Rental levels are too high when considered against similar premises and it's only open 1 - 3 days per week."*

The appeals proceeded by way of oral hearings held in the offices of the Valuation Tribunal,

Ormond House, Ormond Quay Upper, Dublin 7, on the 24th day of January and on the 1st and 8th days of February, 2012. At the hearings the appellant was represented by Mr Brian Bagnall, FRICS, FSCSI, Principal of Bagnall & Associates. The respondent was represented by Mr Neil Corkery, ASCSI, a valuer at the Valuation Office.

At issue

Quantum.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the initial hearing and submitted same to this Tribunal. At the oral hearings, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to these appeals.

The Properties

The subject relevant properties comprise a modern, purpose built pub (VA11/5/266) and nightclub (VA11/5/267) complex situated over two floors above a retail development located on the ground floor. Both levels feature large outdoor balconies. The subject properties are understood to have been constructed in *circa* 2003. Parking facilities for both are provided on street and also by an underground car park.

Location

The subject properties are located at the junction of Marine Road and Queens Road, Dún Laoghaire, opposite the main offices of Dún Laoghaire Rathdown County Council and overlook Dun Laoghaire Harbour. The properties are close to Dún Laoghaire town centre, Dún Laoghaire Shopping Centre and the George's Street area, the main shopping area in Dún Laoghaire. The properties are *circa* 11 kms south of Dublin city centre and the area is served by public transport by means of the DART and bus services. The Dún Laoghaire DART station is located opposite the subject properties.

Services

The subject relevant properties are served with mains power, water, telephone, storm and foul sewer.

Tenure

The properties are understood to be held freehold by the appellant.

Floor Areas

The agreed floor areas, measured on a net internal area (NIA) basis, are as follows:-

Property No. 2165798 (VA11/5/266)

Public areas:	367 sq. metres
Kitchen:	60 sq. metres
WCs:	48 sq. metres
Balance:	54 sq. metres
Total area:	529 sq. metres

Property No. 5002966 (VA11/5/267)

Public areas:	234 sq. metres
Balcony/Smoking area:	116 sq. metres
Kitchen/Servery:	48 sq. metres
WCs:	40 sq. metres
Balance:	68 m ²
Total area:	506 sq. metres
Total overall area:	1,035 sq. metres

Valuation History (VA11/5/266 & VA11/5/267)

- June 2010: A Valuation Certificate (proposed) was issued on the two properties together with an RV of €400,000.
- February 2011: An Appeal was lodged with the Commissioner of Valuation by the appellants' agent. Following consideration of the grounds of appeal and upon the request of the appellants, the valuation was apportioned between the bar and the nightclub, designated as separate properties, in the amounts of €200,000 and €190,000 respectively.
- August 2011: Appeals were lodged with the Valuation Tribunal on 31st August, 2011.

Appellant's Case

Mr Brian Bagnall, representing both appellants, took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submissions. The consultant valuer made the following points:-

- His clients purchased these properties from the receiver/liquidator in August 2009.
- Pubs in Dún Laoghaire Rathdown are valued for rating purposes on a turnover basis and he considers same to be the correct approach.
- He and the Valuation Office have encountered difficulties in obtaining trading accounts on the properties for the period prior to and during the appointment of the receiver, understood to be BDO Simpson Zavier, when the establishment traded as one single entity.
- He succeeded in receiving one set of uncertified consolidated profit and loss accounts only for the period ending 31st May, 2008, for the trading group Sharmane, a copy of which was enclosed with his précis.
- He also enclosed a copy of unsigned profit and loss accounts for Loci Venues Ltd. for the year ended 31st August 2010.
- Based on the foregoing, Mr Bagnall drew to the Tribunal's attention the annual turnover net of VAT for 2008 achieved by the complex operating as one unit. He pointed out that under new ownership, namely his clients, the complex had achieved a similar level of turnover for the year ended 31st August, 2010, during which the business also traded as one unit.
- He noted that the Commissioner of Valuation had advised that Dún Laoghaire Rathdown pub valuations under the recent Revaluation Order were based on turnover figures for the year ended 2006.
- Having regard to the lack of turnover evidence and relying upon the foregoing, Mr Bagnall added back a loading factor of 10% on the year-end May 2008 turnover figure to reflect what he considered might be a reliable year-end 2006 consolidated turnover figure for the enterprises which operated then within both properties.

- He endeavoured to underpin his evidence by enclosing a copy extract of page 26 of the Marketing Institute/UCD Michael Smurfit Graduate Business School *Consumer Market Monitor* Retail Sales Index for bars between 2005 and 2010.
- He divided turnover into two elements, namely for drink and food sales he computed the NAV on drink sales by applying a multiplier of 10.5% and on food sales of 7%. In the case of the latter and in accordance with established rating valuation practice under the current Revaluation on such relevant properties, he reduced the food turnover figure by €20,000.
- These calculations produced an estimated NAV on drink sales of €184,687 and on food sales of €35,423, which combined to a total estimated NAV of €220,110.
- Mr. Bagnall then apportioned the NAV between the bar on the first floor and the nightclub on the second floor by 2/3 and 1/3 respectively, or bar at €146,740 and nightclub at €73,370.
- To support the application of a 10.5% multiplier which he applied to drink sales, Mr Bagnall stated that the overhead costs of the DJ and security in the amount of €8,646 as at year-end 31st May, 2008 was in his opinion unusually high for such an establishment and hence the minor reduction from the standard 11% multiplier to calculate his estimated NAV. See detailed calculations below.*

In conclusion, Mr. Bagnall expressed the view that the two comparisons noted in his précis, namely Weirs on Georges Street, Dún Laoghaire and Winters Bar (common comparison) in the Dundrum Town Centre were to be viewed with caution as the former is a long established iconic premises serving food and drinks on the main shopping and pedestrian thoroughfare of Dún Laoghaire and the latter, with a large associated nightclub, is located within the largest retail complex in the country, and is served with separate access from the external street and a common foyer which also provides access to Bennigans, Pizza Hut, KFC, McDonalds, TGI Friday's, Eddie Rockets and the main cinema complex at the Dundrum Town Centre.

Appellant's Comparison Properties

Summary comments as noted above.

* Based on the foregoing criteria, Mr Bagnall concluded that the NAV of the subject properties should be determined as follows:-

NAV

Total Turnover (P & L 31/5/2008):	€2,077,258
Less food sales (P & L 31/05/2008):	€ 478,231
Balance drink sales: *	€1,599,027

* includes all beverages, cigarettes, door and room hire, and snacks from P & L 31/05/08

NAV

Drink etc. €1,599,027 + 10%:	€1,758,929.70
@ 10.5%:	€ 184,687.61
Food €478,231 + 10% (corrected by Val.Trib.)	€ 526,054.10
Less deduction agreed	<u>€ 20,000.00</u>
	€ 506,054.10
@ 7%:	€ 35,423.79

Total estimated NAV: €20,111

The Appellant apportioned this NAV between the bar on the first floor and the nightclub on the second floor at 2/3 and 1/3 respectively.

Estimated NAV	Bar	€147,741
	Nightclub	€ 73,370

Cross-examination of the Appellant

In response to questions put by M. Corkery and the Tribunal, Mr Bagnall stated that:-

- i. The Sharmane Group was a former division of the Thomas Read Group.
- ii. The joint premises were sold by the receiver/liquidator to the current appellants at a price equivalent to approximately 150% of the year-end May 2008 turnover consolidated sales figure but Mr Bagnall did not consider this to be an unusual multiplier having regard to prices being paid in the past for such type establishments, adding that in some cases the sales multiplier had increased to twice average annual turnover.
- iii. Mr Bagnall stated that the demand and prices paid for such establishments did not fall off until late 2010 in the area.

Respondent's Case

Mr Neil Corkery, having taken the oath adopted his written précis as his evidence-in-chief.

The location, description, accommodation, floor areas and tenure details provided by the Respondent were common case to those provided above by the Appellant. He also confirmed the foregoing details on the valuation history of the property when initially treated as a single entity and later the apportioned NAV values applied to the bar and nightclub on PN 2165798 and PN 5002966 respectively. He advised that he inspected both properties on 19th January, 2010.

Mr. Corkery also advised that he had requested audited accounts for years ending 2005, 2006 and 2007 and was informed that they were not available, but he was provided with rental evidence on the property by the Thomas Read Group prior to 2009, which formed the basis of the initial valuation of €400,000 noted above when the premises was assessed as a single property. He also added to the description of the property that the bar trading as the "40 Foot Bar" is actually located on the podium level with the nightclub trading as "Prive Club" located overhead which features a large outdoor balcony and smoking area. He said the club had reopened following substantial redevelopment works in September 2009. He noted the high specification and interior finishes of both properties, their proximity to the major retail areas of Dun Laoghaire Shopping Centre, the Pavilion, Georges Street and drew attention to the considerable footfall and pedestrian traffic resulting and generated by the nearby ferry port, public bus and train services.

Respondent's Comparison PropertiesComparison No. 1

Property: Winters Bar and Parker Brownes Nightclub, Dundrum Town Centre

Occupier: Baveno Ltd.

Property No: 2185247

Comparison No. 2

Property: Tonic Bar, 2 Carysfort Avenue, Blackrock, Co. Dublin

Occupier: Jetin Ltd.

Property No: 502269

Comparison No. 3

Property: The Noggin Inn, 47a, Upper Sallynoggin Road, Sallynoggin, Co. Dublin

Occupier: Dragon Tree Limited.

Property No: 507859

Mr. Corkery provided location and floor area details of the foregoing in his précis on the above mentioned comparators. He confirmed that the basis of valuation on all three properties was the turnover method and in the case of the Winters Bar and The Tonic Bar, the multipliers applied by the Commissioner on bar sales was 11% and food sales 7%, the first €20,000 of turnover value on the latter deducted, as noted above. Mr. Corkery advised however the The Tonic Bar on Carysfort Avenue, Booterstown is in a vastly inferior location to the subject relevant properties.

With regard to his third comparison namely The Noggin Inn at Sallynoggin, Mr. Corkery informed the Tribunal that the NAV on food sales was determined by applying a lower multiplier of 5%, again having deducted the initial €20,000 of food sales.

Valuation by the Respondent

The following summarises the valuation details of the subject properties computed by the Respondent, as submitted by Mr. Corkery during the course of the hearing:-

40 Foot Bar, Marine Road, Dun Laoghaire, Co. Dublin

Property No: 2165798 (VA11/5/266)

		% to NAV	NAV
Est Trade Bar:	1,400,000	11%	€154,000
Est Trade Food	700,000	7%	€ 49,000 Note 1
Total:			<u>€203,000</u>
NAV Rounded to:	€200,000		

Note 1 The first €20,000 of food sales excluded from calculation as per agreement.

Prive Nightclub, Marine Road, Dun Laoghaire, Co. Dublin**Property No: 5002936 (VA11/5/267)**

		% to NAV	NAV
Est Trade Bar & Door	1,750,000	11%	€192,500
			€0 Note 1
Total:			<u>€192,500</u>
NAV Rounded to:	€190,000		

Note 1 The first €20,000 of food sales excluded from calculation as per agreement

Cross-examination of the Respondent

In reply to various questions asked by the Tribunal and the Appellants' Agent, Mr. Corkery responded that:-

- 1) Due to the elevated positions of both properties, they are both off the main pedestrian path route.
- 2) The internal floor area of the premises trading as Winters Bar and Parker Browns Nightclub in the Dundrum Town Centre is approximately 50% larger than the combined public areas of the two subject properties, excluding w/c areas.
- 3) Such difference in measured floor area may or may not, in his view, influence sales turnover figures and noted that small bars often enjoy disproportionately higher turnover than some large trading establishments in the same area.
- 4) Challenging an assertion that Winters Bar and Parker Browns Nightclub is in a superior location to that of the subject, he added that the "40 Foot Bar" and "Prive Club" are centrally located in a busy town, in close proximity to a DART Station and well served by public transportation.
- 5) He acknowledged that DJ and Security overhead costs at the subject properties in the region of +/- 4% of turnover may appear high when compared to the staffing costs reported at the Winters Bar facility but he could not comment any further on this matter as he did not have a breakdown of the overall staffing costs provided for there.
- 6) He acknowledged that it may possibly be reasonable to apply a loading of 10% on the year-end May 2008 turnover figures on the subject properties to make them relative to

year-end 2006, but in the circumstance queried the manner of such an approach and stated that, in his view, the turnover figures provided for year-end May 2008 may have reflected an under-performing operations history of the business under the control and management of a Receiver.

- 7) While further acknowledging that Weirs on Georges Street in Dun Laoghaire may be perceived as one of the best bars serving food in the town, he informed the Tribunal that the valuation there was also based on turnover but that the trading figures were surprisingly lower than what might be anticipated.

Adjournment

The hearing of 24th January was temporarily postponed to 1st February, 2012, to afford the parties an opportunity of again seeking accounts for year-end 2006, when the Respondent acknowledged that the Net Annual Value of the subject properties might be re-assessed and guided by such figures, if made available to him for inspection.

Reconvened Hearing of 1st February, 2012

When the hearing recommenced the parties informed the Tribunal that an Estate Agent had declined to release information and detailed trading accounts, albeit uncertified, as they considered themselves bound to confidentiality imposed upon them by their clients, the Receivers appointed by the creditors on the former Sharmane Group.

Following some discussions and a review of Schedule 2, paragraphs 8 and 9 together with Section 64 and 65(2) of the Valuation Act, 2001, the Respondent and Appellants' Consultant agreed to make one more effort together to gain sight of the accounts held by the Estate Agent in their office and to report their findings and respective updated position/s at another reconvened hearing on 8th February, 2012.

Reconvened Hearing of 8th February, 2012

The parties confirmed that they had been provided an opportunity by the Estate Agent to jointly review some limited uncertified trading figures during the past week of the firm which managed the business of the 40Foot Bar at the subject relevant properties prior to 2009.

The turnover figure reported as at year-end May 2006 when analysed by applying multipliers of 10.5% and 7% on drink and food sales respectively, and maintaining the €20,000 allowance on food sales, produced an estimate of NAV in the sum of €205, 459. Refer to copy details dated 8th February, 2012, submitted by Mr. Bagnall in the attached appendix. It was noted by the parties that the if the multiplier on drink sales has been set at the 11%, then the analysis would result in a total estimated NAV of €13,240.16.

The parties informed the Tribunal that having regard to the foregoing recent additional information made available to them, they were not in a position to advise any change in their respective analysis of the turnover figures and as a result wished to continue with the appeals before the Valuation Tribunal. The appellants' agent argued that the consolidated turnover figures for the former 40 Foot Bar to y/e May 2006 further supported the evidence previously furnished by him on these appeals. The Respondent contended to the contrary stating that the trading figures for 2006 demonstrated that the business at the 40 Foot Bar at or about 2006 was likely not reaching optimum levels of performance and accordingly should be considered with caution, and in his view, the hypothetical tenant would have been informed by them and readily identified potential opportunities for improved trading.

Mr. Bagnall remarked that the earlier referenced loading of 10% on the 2008 turnover, in light of the figures now to hand for year end May 2006, did not appear to be warranted. The Respondent replied that the Commissioner of Valuation remained satisfied that the Net Annual Values on the Valuation List have been correctly calculated in accordance with the Valuation Act, 2001.

Summations

Both the Appellant and the Respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions employed by them in both their précis of evidence and adduced at the hearings.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at the hearings.

1. The Tribunal notes the assertion of the Respondent that the trading figures employed

by the Commissioner to determine a valuation on such premises as those classified herein by the “turnover” method would take account of an average of three years trading.

2. The Respondent advised during the course of the hearing that those trading figures relied upon by him in his three comparison properties were not average numbers but, as noted in his précis, estimated averages.
3. The Tribunal has been provided with a regrettable lack of evidence by both parties to support their respective arguments.
4. This Tribunal has not been provided with evidence to establish that the estimated sales turnover figures of businesses trading from premises at Sallynoggin, Dundrum Town Centre and Carysfort Avenue may be considered in the instant appeals as reliable indicators of likely sales turnover at the subject relevant properties as at the relevant date of valuation.
5. The Respondent did not challenge the Appellant’s reliance on the Retail Sales Index - Bars, published by the MII/UCD Smurfit Graduate Business School which analysed Bar sales values and volumes figures for the period 2005-2010.
6. The foregoing Index did not provide an analysis of bar food sales trends or statistics.
7. The Tribunal acknowledges the concurrence of the parties to apportion the combined subject sales turnover figures - Drinks 2/3 : Food 1/3.
8. The Appellant did not provide the Tribunal with a cogent argument to support the application of a reduced multiplier from 11% to 10½% to calculate the NAV on drink sales.

Determination

Notwithstanding the paucity of evidence, the Tribunal is satisfied in this particular case that the submissions and arguments adduced by the Appellants’ consultant accords, albeit in a limited manner, with best practice and the standard approach to valuing such properties on a “turnover” basis. However in deference to the argument made by the Respondent, though lacking empirical research, the Tribunal was convinced that on balance, there may be grounds to consider the possibility of under-performance in trading terms at the 40 Foot Bar at the

period prior to and following the appointment of the Receiver. With this in mind, the Tribunal, in this particular case, holds the view that the loading of 10% on the May 2008 turnover figures should increase to 12½% to make both the bar and food sales values relative to what may be considered as potential annual turnover figures at the pertinent valuation date.

Accordingly, the Tribunal considers that fair and reasonable valuations on the subject units should be calculated as follows:-

NAV

Total Turnover (P & L 31/5/2008):	€2,077,258
Less food sales (P & L 31/05/2008):	€ 478,231
Balance drink sales: *	€1,599,027

* includes all beverages, cigarettes, door and room hire, snacks from P & L 31/05/08

NAV

Drink etc €1,599,027 + 12.5%:	€1,798,905.30
Apply multiplier @ 11%:	€ 197,879.58
Food €478,231 + 12.5%:	€538,009.87
Less: (agreed reduction)	<u>€ 20,000.00</u>
	€18,009.87
Apply multiplier @ 7%:	€ 36,260.69
Total NAV:	€234,140.27

Apportioned between the bar on the 1st Floor and the nightclub on the 2nd Floor as agreed at

2/3 and 1/3:	Bar	€156,094
	Nightclub	€ 78,047

NAV say	Bar	€156,000
	Nightclub	€ 78,000

And the Tribunal so determines.