Appeal No. VA14/4/023

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

MMEM Public Houses LTD **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

Re: Property No. 1037123 at Lot No. 9b, Monread Avenue, Naas, Monread South, Naas Urban, Naas UD, County Kildare.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6th OF JANUARY, 2016

BEFORE:

Stephen J. Byrne – BL	**Deputy Chairperson**
Michael Lyng – Valuer	**Member**
Rory Hanniffy – BL	**Member**

By Notice of Appeal received on the 25th day of November, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €290 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"On the basis that the RV as assessed is excessive & inequitable."

"The property has not been valued in line with the established tone of the list for comparable properties within the rating area per S[ection] 49 of the Valuation Act, 2001."

Description of the Property

The property at issue is a modern pub (licensed premises) on the ground/basement floors of a two-storey over basement detached building. It is situate on Monread Avenue, Naas. This is a residential and/or suburban area.

Background

The property has been the subject of an Appeal before the Tribunal (differently constituted). under Appeal No. **VA11/2/044 – MMEM Public Houses Limited**, a judgment in respect of which issued on 22nd December 2011.

Briefly, the Appellant, represented by Mr Eamonn Halpin of Eamonn Halpin & Co. Ltd, argued that there had been a material change of circumstances within the meaning of the Valuation Act, 2001.

There had been, by any measure, modest structural alterations carried out to the property and comprising the following:

- A kitchen extension
- A food store and on the other side of this food store – staff toilets and in addition, the removal of the internal wall in and about the service area.

The Respondent argued (unsuccessfully) that the structural alterations were *de minimis*. The Tribunal rejected this argument.

In summary the Tribunal reasoned that the alterations had a greater than negligible potential to impact on the turnover of the business. It is clear from a consideration of the Determination that the decision was significantly influenced by the fact that the initial valuation of the property relied more on the "*construction method*" of valuation than the "*turnover method*".

At page 3, paragraph 33, the Tribunal states as follows:

> *"In conclusion, we would make the following observations. We do not believe that this Determination should be read as a 'charter' for occupiers of licensed premises to make minor internal or external alterations and then claim that there has been a material change in circumstance. It seems to us that this case falls to be decided on somewhat unusual facts, including the primary use of the construction cost methodology at the time of the original valuation and the relative paucity of reliable figures in respect of turnover at that time also. It also seems to us that looked at in the round, the extensions and alterations would undoubtedly have led to a higher RV if included originally and may well be regarded as having an input in relation to turnover also. In these circumstances, the alterations in question appear to have changed the value of the premises within the meaning of the Act."*

The finding on the part of the Tribunal that there had been a material change of circumstances gives rise to a requirement on the part of the Revision Officer to exercise his powers pursuant to section 28(4) of the 2001 Act.

The Revision Officer has carried out this task and it is the decision of the Revision Officer in exercise of his powers which is now under appeal.

Needless to say, the decision of the Revision Officer will be considered in greater detail below. For the moment and in order to lend context to this Determination, the Revision Officer, in summary:

(i) Decided to revise the valuation upwards.

(ii) Decided that whilst the alterations added value to the premises, such value must and having regard to the modest nature of the structural alterations, be in turn modest.

(iii) The fairest and most equitable way of arriving at the correct valuation (on revision) was to take the valuation which was determined on foot of the earlier revision in 1995 and add on to same (employing the "bolt on" method) a modest, (perhaps nominal), value to reflect the modest increase in value to the premises achieved by the structural alterations.

(iv) Thus, we have a total valuation as follows: An RV of €290.69 comprised of the old valuation at €285.69 together with an addition of €5.00, giving an adjusted total NAV at €58,138 comprising the old NAV of €57,138 together with an additional NAV of €1,000, rounded to NAV (€58,000); RV €290.

As has been stated, the current appeal is concerned with the amount of this valuation and the means and/or method by which it is arrived at.

The matter proceeded by way of oral hearing which was commenced before the Tribunal on the 13th day of March 2015 which was adjourned and resumed and was heard again by the Tribunal on the 19th day of March 2015. At the oral hearing the Appellant was represented by Mr Eamonn Halpin of Eamonn Halpin & Co. Ltd who also gave evidence for and on behalf of the Appellant. The Respondent was represented by Mr David Dodd BL, instructed by Michael Collins of the Chief State Solicitor's Office, and Mr Patrick McMorrow gave evidence for and on behalf of the Respondent.

The Appellant's case

In summary, Mr Halpin, on behalf of the Appellant, makes the case that the Revision Officer has erred. The Revision Officer ought and on revision, to have had regard to public houses in the town of Naas. Had the Revision Officer done so and by reference to one or other of two methods, that is to say, (i) turnover (adjusted turnover); (ii) rent per square metre, the Revision Officer would, Mr Halpin submits, have concluded that the subject property could not be viewed as "*the best pub*" in the Rating Authority of Naas.

Mr Halpin further argues that the best evidence by which to determine the valuation of the subject property is the comparable evidence which he has detailed in his précis of evidence.

Mr Halpin nominated five comparisons. Each of the five is a licensed premises. Each of the five is located in the town of Naas.

In relation to each of the candidates for comparison put forward, Mr Halpin's valuation is based on one or other or both of the alternative methods identified by him, that is to say, turnover (adjusted turnover) or, alternatively, rent per square metre.

Mr Halpin devised a ranking for licensed premises appearing on what he contends is the valuation list for the relevant rating authority, (Naas Town Council). He dubs this "*the tone of the list*". Each of the candidates for comparison appears on this list and is given a ranking, as is the subject property.

The subject appears at No. 7 on the chart as devised by Mr Halpin. Mr Halpin argues that it is somewhat incongruous that the licensed premises, ranked by him at No. 7, carries the highest valuation of all of those appearing thereon. On Mr Halpin's presentation, there are comparable, if superior, properties which have a lower Rateable Valuation than the subject. He argues that this is anomalous. He suggests that it reflects a flawed determination of value on revision on the part of the Revision Officer.

Mr Halpin, in summary, advocates a valuation of €140 RV which is, he suggests, the mid range of the hierarchy of licensed premises for the town of Naas and more fairly and equitably reflects the amount of rate that should have been struck by the Revision Officer in exercise of his powers under the Act.

A further ground of appeal raised by Mr Halpin on behalf of the Appellant concerning the measurement of the area of the subject and on the occasion of revision and/or initial valuation in or about 1995. In his précis of evidence, Mr Halpin has noted that the agreed areas on the subject property reflect 251.1m squared (plus toilets at 32.3m squared) as against the Commissioner's recorded area of 413m squared. In Mr Halpin's opinion, this is a difference in measured area of in the order of 40% or thereabouts. This, on Mr Halpin's argument, fatally undermines the assessment as made on foot of this erroneous measurement.

It is noted that the Respondent takes issue with Mr Halpin's entitlement to raise this particular issue and/or ground at this point in time and in view of the fact that the assessment as carried out in 1995 and based on this erroneous measurement, was not appealed by the person in occupation, (the Appellant herein). Moreover, it was not, it seems, raised as an issue in the above mentioned appeal concerning whether or not the physical alterations amounted to a material change of circumstances.

The balance of Mr Halpin's evidence on submission is in the nature of an attack by him on the Respondent's case and more specifically:

The failure to have due regard to the tone of the list and the reliance/over reliance on the "bolt on" approach to valuation.

The Respondent's case in summary

The Respondent in evidence emphasises the, relatively speaking, unique aspect of the subject property. It is a suburban public house, modern, purpose-built, in a residential area.

The approach to determination of valuation on revision of the subject property requires consideration of:

* The fact that there was a revision of the property for valuation purposes in 1995.

* The rate fixed on foot of that revision was determined at €285.69.

* That rate was not appealed evidencing prima facie acceptance by the ratepayer of the determination of the rate as struck.

* The only physical change to the property as revised in 1995 and as valued on foot of same are the modest physical alterations as carried out and as already set out herein.
* Those physical alterations constitute a *de minimis* effect on the value of the property.

* The physical alterations constitute in substance a modest increase in the value of the subject property.

* This modest increase in the value of the subject property which has been brought about by the modest physical alterations requires an upward adjustment of the rate.

* There is a requirement to afford fairness and equity to both the individual ratepayer and the other ratepayers occupying their individual "slots" on the "tone of the list".

The fairest and most equitable approach to determination of the value of this property on revision is to apply a modest or nominal increase to the existing valuation.

* This is achieved by application of the "bolt on" approach and/or method where, simply put, a proportionate and separate valuation in respect of the extended area (extended by structural alteration) is appended to (bolted on to) the existing valuation yielding a revised valuation.

* Advocating this approach, Mr McMorrow, on behalf of the Respondent in his précis of evidence, states as follows:

"*It is well established practice to assess the valuation of extended property under revision by way of add-on or bolt-on to the pre-existing valuation.*"

Mr McMorrow goes on to cite Authorities of this Tribunal. He argues that those Authorities validate the approach the Revision Officer has taken to determination of the valuation on revision and which said determination, the Commissioner as Respondent, argues should be maintained.

Mr McMorrow asserts that in the particular circumstances and having regard to a number of material features of same, notably:

- In the 1996 revision which was not appealed
- The modest alteration to the physical make up of the subject property
- The singular features of the premises; a purpose-built detached, relatively speaking, modern pub in suburban Naas in a residential setting.

The best and most reliable comparable evidence is the McMorrow view:

"*The existing valuation is the most compelling comparison being identical in terms of location, construction and usage.*"

Accordingly and as stated, Mr McMorrow has argued in favour of a nominal increase in valuation, as hereinbefore set out.

In Mr McMorrow's précis of evidence adopted as his evidence in chief, he advances a single candidate by way of comparison, that is to say, the subject property.

Determination

Both Mr Halpin and Mr McMorrow have included in their respective documentation, Authorities which each respectfully maintains/supports their respective and materially conflicting positions. The Tribunal has read and considered the Authorities and will and as required refer to same when delivering its determination. It is mutually accepted that the determination of value in this case is a determination on foot of a revision.

The revision has been occasioned by a material change of circumstances. The material change of circumstances is in turn attributable to physical alterations carried out to the subject property. The physical alterations comprise a kitchen extension, food store and on the other side of the food store, staff toilets and include the removal of an internal wall in the serving area. The total area involved in the area comprised in the physical alterations comes to 14 square metres. The physical alterations as carried out have been characterised as modest.

The physical alterations, whilst modest, have been of sufficient import to move the Tribunal in the teeth of opposition from the Respondent herein to find that they constituted a material change of circumstances as defined by the 2001 Act.

It appears to be accepted by the parties and is in any event well settled that upon revision, the value of an individual property must be determined under and in accordance with the 2001 Act and more particularly, s. 49(1) thereof.

It behoves the Tribunal (on appeal) to consider:

* Section 49;
* The application of the section to the circumstances of this particular appeal.

In considering s. 49, the Tribunal is guided by and draws authority from decisions of the Tribunal which are relevant and/or material to same. By way of overview, the 2001 Act

makes express provision for distinct approaches to determination of value. The first consideration when deciding between the distinct approaches to determination of value is whether the person charged with the responsibility for determining value is dealing with revaluation or revision.

The numerous and helpful decisions from extremely distinguished and experienced divisions of the Tribunal make clear that revaluation occurs intermittently and purports and when bedded down to set in stone a fair uniform and equitable valuation for what in colloquially terms, is a generation of ratepayers.

Once revaluation has bedded down, so to speak, the opportunity and/or occasion for an individual reappraisal of the valuation struck is limited to the circumstances which, under the Act, permit revision.

On revaluation, valuation is determined under and in accordance with s. 48 of the 2001 Act. A person charged with the determination of value upon revaluation must, under s. 48, do so by estimating the net annual value. Net annual value is defined under s. 48(3) of the Act. Briefly, determination is by reference to the estimation of rent which a property might reasonably be expected to yield if let year on year in its actual state and where certain prescribed assumptions are taken into consideration.

Section 49, on the other hand, contains within it two distinct approaches to determination of valuation on revision. There is what might be termed the primary approach. There is, in addition, a secondary and/or default approach. It is secondary and/or default in the sense that it only becomes engaged where the person who is charged with determining valuation on revision, having considered the circumstances which he or she is required to consider, is satisfied that the "primary" requirements under s. 49(1) are not capable of being met.

In practical terms, s. 49(1) appears to envisage what might be termed a process of inquiry to be undertaken by the person charged with determination of valuation on revision. The commencement of this process of inquiry requires consideration at the very outset of the subject property, to include its physical characteristics, the size, the make-up, fit-out, to include the location of the property and to include its use.

Having considered the subject property, the person charged with the task of determining valuation on revision is required to do a trawl of and peruse and consider the valuation list (assuming of course that there is such a list). Incidentally, the fact of the existence of a valuation list for the rating authority in question does not appear to be in issue in this appeal.

At this particular stage of the process of inquiry, the intrepid inquirer is on the lookout for properties that strike him or her as comparable to the subject property. He or she will deploy the necessary skills and tools for such comparative analysis such as, but not confined to:

- Location.
- Use.
- Physical characteristics.

Section 49 requires the inquirer and whilst engaged in this particular trawl, to identify and it follows to nominate at least two candidates as comparable properties. The wording of the section is clear. There is express reference to "other properties". There is express reference to "values" taken to mean the values of "other properties".

It necessarily follows that if, at the end of this particular stage of the process of inquiry, the inquirer having completed his or her trawl of the valuation list, hand on heart, concludes that there are no comparable properties or alternatively there is but one comparable property, the focus of the process of inquiry necessarily and by statutory requirement, shifts.

The inquirer must, at this point and stage of the process of inquiry, necessarily conclude that he or she cannot determine valuation by employing the primary approach to determination and must set about determining value by use of the secondary (default) approach which is, as has been stated, a distinct and altogether different animal. It is along the lines of a modified s. 48(1).

If, on the other hand and at this critical stage of the process of inquiry, the inquirer, hand on heart, concludes that there are (more than one) comparable properties on the

valuation list, he or she must extract relevant recorded and/or documented information as to the value of those comparable properties.

This information as to the values will, in turn, inform and substantiate the valuation which the inquirer fixes at the conclusion of the process of inquiry and which the inquirer is doubtless prepared to stand over as a correct, fair and equitable determination of the valuation on revision of the subject property.

It necessarily follows that at the conclusion of this process of inquiry, the inquirer will or ought to have documents/reports intended by him or her to evidence and/or support, not just the determination as reached, but the conduct by him or her of a process of inquiry which, start to finish, adheres to the statutory requirements which are readily gleaned from a cursory consideration of s. 49(1).

The Tribunal, having carefully considered the evidence in this particular appeal, has concluded that the evidence as brought forward by the Respondent, (which evidence is intended to establish that the Revision Officer has and as required, reached his determination under and in accordance with the 2001 Act) does not stand up to scrutiny.

The Tribunal, having carefully considered the evidence, is not satisfied and on the evidence as adduced, that the Revision Officer in reaching his determination as to valuation in this particular instance, has done so and as required under and in accordance with the provisions of s. 49.

Employing the "process of inquiry" model as set out in this determination and which said model the Tribunal regards as encapsulating the means and/or method of determination envisaged by the Oireachtas in enacting s.49, it is clear that the approach to determination of valuation in this case and on revision does not and in a number of key and/or material respects, comply with same.

In particular, the Tribunal cannot and on the evidence as adduced in support of the decision of the Revision Officer, be satisfied that the Revision Officer, having considered the subject property and having satisfied himself that there is or was a valuation list for the relevant rating authority, trawled, perused and considered the valuation list with a view to considering

and if appropriate, identifying comparable properties, that is to say, properties comparable to the subject property.

The evidence as adduced by the Respondent at this hearing, if anything, evidences a conclusion and/or determination on foot of whatever inquiry has been made and to the effect that the valuation list did not, hand on heart, yield the requisite minimum two comparable properties.

In reaching this conclusion, the Tribunal emphasises in particular the following:

> "*There are fourteen pubs in the former district of Naas urban. The Monread Lodge is quite distinctive and not directly comparable to the others on the list, being the only pub of its nature in a primarily residential suburban location. Accordingly it is contended that the best comparison for the 2010 revision of the Monread Lodge is the pre-existing and long established old valuation on the subject (1995).*"

(As per the précis of evidence of Mr McMorrow).

The précis of evidence of Mr McMorrow lists only one comparable property, that is to say the subject property. There is nothing in the revision appeal report to positively indicate and/or suggest that the Revision Officer, Mr Purcell, carried out and/or conducted a process of inquiry consistent with the approach to valuation and as required of s. 49(1).

Insofar as the Revision Officer's appeal report goes into any detail as to the approach he has taken to determination of value and more particularly to the consideration and/or trawl of the valuation list and with a view to coming up with comparable properties, is as follows:

> "*the revision officer has used a public house from outside the Naas Town Council area as a comparison but only because it is in keeping with the location of the subject property in a residential estate outside the main town area.*"

If, as appears to be the case, the conclusion on the part of the Revision Officer, having engaged in a process of inquiry and having concluded, hand on heart, that there are no (an insufficient number) of comparable properties on the valuation list, then s. 49 requires the

Revision Officer, in such circumstances, to proceed to "plan B", as it were, that is to say to shift the focus of attention and to proceed to determine valuation under and in accordance with the secondary and/or default approach, as provided for under s. 49.

Whilst all of the evidence adduced for and on behalf of the Respondent, to include the documents in support of the decision as taken by the Revision Officer, may and at a stretch, permit the Tribunal to conclude that the Revision Officer, having commenced his process of inquiry, concluded and in the circumstances that there are no comparable properties or at most, only one comparable property, there is no evidence before this Tribunal which would allow the Tribunal to safely and/or property conclude and/or determine that the Revision Officer in this particular case proceeded to determine valuation by reference to the secondary or default approach being and as stated, a modified application of the approach as substantively provided for under s. 48(1) of the 2001 Act.

The patent absence of evidence of a sufficient number of comparable properties as apparent and on a consideration of both the decision of the Revision Officer and in turn the evidence of the Respondent in this appeal is in no small measure grounded on what the Respondent has advanced as the well established practice to assess the valuation of extended property under revision by way of add-on or bolt-on to the pre-existing valuation.

This is an approach and as has been stated, wherein the Revision Officer takes a valuation on revision and bolts on a valuation in respect of a modest extension following modest physical alteration to an otherwise unchanged property. The Respondent seeks to rely on a number of decisions of the Tribunal wherein the bolt-on approach to determination of valuation has been considered by and approved by the Tribunal. Careful consideration of the various decisions referred to, it must be said, supports what might be termed a line of authority wherein the bolt-on approach has in fact been considered and approved.

By way of observation and/or comment, the rationale underpinning the bolt-on approach makes a lot of sense where considerations of equity and uniformity come into focus as they must and where the task at hand is the imposition of a tax by any other name, which said tax must be tailored individually and collectively to ensure that the burden is an equitable one.

In the present appeal, where the evidence points to a failure on the part of the Revision Officer to carry out the type of inquiry envisaged by s. 49 and in the manner suggested by a cursory consideration of the provision, the Tribunal is and as a consequence being asked to consider and determine that this alternative approach, the bolt-on approach, can and should and in an appropriate case, override or act as a substitute for the type of detailed process of inquiry envisaged by and in the Tribunal' view prescribed by Statute. The Respondent has argued forcefully that this is and in the circumstances, an accepted and/or acceptable approach to determination of valuation on revision and entirely in accordance with the express requirements of s. 49.

The Respondent argues forcefully that this particular argument is supported by the numerous decisions of the Tribunal as canvassed.

It occurs to the Tribunal at the outset that this, if true, represents a radical state of affairs. It suggests a movement on the part of the Tribunal and of its own motion to structure and apply time and again an approach to determination of valuation which (a) is radically different to the approach enacted by the Oireachtas and provided for under the Act; this radical alternative in cases where the bolt-on approach is deemed to apply, obviates the requirement to consider the valuation list and to anchor the revised valuation by reference to comparable properties; (b) amounts in effect to a sub stratum approach to determination of value applicable in certain defined instances; (c) amounts in effect to a movement on the part of the Tribunal and of its own motion and in defined instances to bypass and/or circumvent approach to valuation on revision as expressly provided for under Statute; by proceeding to determine valuation more or less exclusively by reference to the "bolt-on approach" and without reference to the express requirement under s. 49 to determine valuation by reference "*the values as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property*".

The circumstances and/or the evidence in the decisions canvassed by the Respondent in advocating the bolt-on approach to determination, are markedly different from the circumstances and/or evidence adduced by the Respondent herein and in a critical and fundamental respect.

It is clear from a consideration of the decisions canvassed by the Respondent that in each case and without exception, the Respondent took the time and trouble to put before the Tribunal evidence and as required of comparable properties signalling prima facie and meaningful engagement by the Respondent with the express requirements of s. 49.

The position in the present appeal is fundamentally different. The Respondent in this instance has taken neither time nor trouble to put before this Tribunal evidence of properties comparable to the subject property and so as to meet the requirements of s. 49.

This Respondent has thereby deprived itself of entitlement to pray in aid and to rely upon the decisions of the Tribunal wherein the Tribunal has considered and endorsed the bolt-on approach.

Mr Halpin has offered a number of public houses situated on the main street of the town of Naas as candidates for comparison to the subject property, which as stated is a public house situate in a suburban residential area. The public houses as offered are of disparate size. One to the other they are comparable in terms of location, use and the fact that they are terraced.

Are these properties, hand on heart, properties which are comparable to the subject property? The subject property is by any measure, an imposing stand alone property. The location it occupies is markedly different. Candidates for comparison enjoy and/or suffer the fact that they compete almost cheek by jowl for urban trade. The subject on the other hand, enjoys or suffers the fact that it stands alone and without immediate competition, putting out for suburban residential trade.

In substance, the similarities as between the subject and the candidates offered by Mr Halpin for comparison come down to this:

(i) All are licensed premises.
(ii) All are located within the relevant rating authority.

In the instant case and in circumstances where the challenge in terms of countervailing evidence does not, in the Tribunal's view, meet the requirements provided for by statutory provision, the Tribunal, with a measure of reluctance, has concluded that the evidence as

offered by the Appellant warrants some consideration, tending to present as comparable properties as defined.

In coming to this decision, the Tribunal makes it clear that the weight to be attached to this evidence is significantly, although not fatally, diminished by the marked dissimilarities as between the candidates offered by Mr Halpin for comparison and the subject, which said marked dissimilarities are set out above.

In so deciding, the Tribunal is of the view that it would be wrong in principle to put out of the equation entirely the assessment of value of the property as made initially. This assessment was, it seems, bona fide made. Moreover, it was not appealed at the time by the occupier. It stands therefore as a bona fide indication of a fair and equitable determination of the proportionate burden of rates to be endured by this particular ratepayer.

Equally, it would be wrong in principle to put out of the equation entirely the apparently accepted fact that the area applied by the Revision Officer when striking this initial valuation, was over estimated to a significant degree (in the order of 40%).

The Respondent's suggestion that the Appellant's opportunity to make this argument is spent, is frankly without merit when regard is had, as it must, to the much acclaimed and laudable objective of achieving fairness, equity and uniformity.

When the initial valuation was struck, the Revision Officer in effect marked the subject as a superior premises within the rating authority of Naas.

All concerned, including the Tribunal, are put in the rather artificial position of having to "look back" to 1988 when circumstances for the owners and operators of licensed premises were, to euphemise, "altogether different".

The Tribunal is by law obliged to assume that the Revision Officer, when striking the initial valuation, had good and substantive reason to mark the subject property as s superior premises in Naas and in order to reflect this to attribute to the subject property the highest honour in terms of the apportionment of Rateable Valuation.

The Tribunal cannot and in conscience remove, overlook or disregard the material and uncontested fact that the Revision Officer when striking this initial valuation, did so on what the Tribunal has been told was an erroneous and significantly overstated calculation of the relevant applicable square footage.

Whilst the circumstances giving rise to the unveiling of this acknowledged anomaly are somewhat fortuitous in that they come about as a result of the carrying out of modest physical alterations to the subject property characterised as improvements, that cannot in and of itself and in the Tribunal's view preclude the Tribunal with the ultimate responsibility of ensuring that the burden of rates attributed proportionately, fairly, equitably and uniformly from, at the very least, inquiring into such anomaly and if deemed appropriate, to record the appropriate adjustment.

The Tribunal, having considered the matter, is of the view that this latent anomaly is sufficiently weighty and in the circumstances to entitle the Appellant to an adjustment. Whilst sufficiently weighty to entitle the Appellant to an adjustment, such adjustment does not and in the circumstances warrant the radical upheaval as advocated by Mr Halpin.

The Revision Officer, when striking the initial valuation, placed the subject at the top of the ranking of public houses for Naas. He did so for good reason. In so doing, he set the subject ahead of the pack of public houses within the urban setting of Naas. He was and in the prevailing circumstances justified in putting the subject ahead of the pack, when one has regard in particular to the distinguishing features of this particular property.

Having said that, the anomaly referred to in terms of the accepted error in calculation of the square footage of the subject property, in all probability, placed the subject further ahead of the pack than circumstances and/or equity warrant.

The failure of the parties to come to an accommodation on a fair and mutually acceptable quantum of rates after all this time and bearing in mind the previous outing between the parties is, to say the least, unfortunate.

The Tribunal has determined that in the unique and particular circumstances of this case, fairness and equity requires an adjustment in the Appellant's favour.

Fairness to the Appellant requires an adjustment in his favour. Fairness and equity to the Appellant's fellow ratepayers precludes the Tribunal from travelling the full distance urged upon the Tribunal by Mr Halpin.

The Tribunal considers that a fair and equitable adjustment in the particular circumstances is an adjustment of 60% of the initial valuation as struck by the Revision Officer. It is not of course possible to say with any measure of certainty that the Revision Officer would and had his attention been drawn to the error in measurement, have made an adjustment of this magnitude.

Revision carries with it, whether we like it or not, a measure of hindsight. Applying this measure of hindsight and having carefully considered the evidence as adduced and in particular the detailed and largely unchallenged evidence of Mr Halpin on behalf of the Appellant, to include his detailed comparative analysis, the Tribunal is satisfied that the distinguishing features of the subject property vis a vis the comparable properties has been somewhat over emphasised by the Revision Officer and that this over emphasis is not entirely attributable to the error in calculation of the square footage.

Accordingly and in the circumstances, the Tribunal is prepared to make an adjustment in the Appellant's favour of in the order of 60% of the Rateable Valuation as struck by the Revision Officer, that is to say 60% of the Rateable Valuation as struck by the Revision Officer herein and this yields an adjusted Rateable Valuation of €177.