Appeal No. VA14/5/967

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Longstone Investments Limited **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 838123, Pub at 10/11 Townsend Street, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF NOVEMBER, 2017

Barry Smyth – FRICS, FSCSI, MCI Arb	**Deputy Chairperson**
Mairéad Hughes – Hotelier	**Member**
Carol O'Farrell – BL	**Member**

1. THE NOTICE OF APPEAL

1.1 By Notice of Appeal dated the 22nd August 2014, the Appellant appealed against the determination of the Respondent pursuant to which the relevant Property was deemed rateable and a Certificate with a valuation of RV €90,000.00 was issued.

1.2 The Grounds of Appeal as set out in the Notice of Appeal are that the valuation of the Property is incorrect because:

"(1) The subject property's estimate of net annual value is excessive and inequitable. The tone of the list clearly shows that the Commissioner is attempting to tax the good will of the subject property. Based on the values of the comparables, the operator clearly has a strong personalised goodwill which would not be transferable to the hypothetical tenant and the tone of the list for pubs provides an accurate picture for the relative worth of the subject. Also see 'rating – Principles and practice' (3rd Edition) by Bond & Brown (p.291): *It is important to note, as with any receipts and expenditure valuation, or valuation involving percentage of likely receipts, that the valuation of the property and not the present occupier. Actual receipts should be used as a guide to the likely gross takings the hypothetical tenant could achieve. It may be that the actual tenant is achieving exceptional trade due to personal characteristics of the licensee ....., having exceptional personality or business acumen. The likely trade needed for the valuation is what a reasonably competent individual would achieve, not what a particular individual can achieve."*

(2) The Commissioner is attempting to suggest that this is one of the most valuable pubs in this area when in fact it is not even more valuable than the pub next door, MacTuarcaills, which is one of the most successful pubs in Dublin and is currently valued at less than the subject property."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €50,000.

2. THE HEARING

2.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Third Floor, Holbrook House, Holles Street, Dublin 2, on the 30th March 2016. At the hearing the Appellant was represented by the Mr. Eamon Halpin, BSc Surveying, MRICS/MSCSI and the Respondent was represented by Mr. Martin O'Halloran, M.Sc., B.Sc., MSCSI/MRICS of the Valuation Office.

3. THE PROPERTY

3.1 The Property is located on the north side of Townsend Street, Dublin 2, in the sector between Tara Street and Hawkins Street and is approximately 100 metres east of

D'Olier Street and 300 metres south east of O'Connell Bridge. It is in close proximity to Trinity College, Pearse Street Garda Station and Fire Station.

3.2 The Property comprises a three-storey building with the following agreed floor areas:

Ground Floor Bar	173.56 sq. metres
Ground Floor Disabled Toilet	
First Floor Lounge	36.08 sq. metres
First Floor Toilets	
Basement Stores/Office/Kitchen	121.7 sq. metres
Basement Staff Toilets	
External Covered Beer Garden	84.99 sq. metres
External Smoking Area	96.26 sq. metres

In addition, there is a second-floor apartment but that is not rateable. The building was constructed in 1994 and is well fitted out as a public house.

3.3 The Property was previously leased from the 16th of April 2008 to the 31st of December 2009 at a rent of €160,000 per annum. Following the expiry of that lease the rent was reduced to €65,000 per annum and the Appellant held over at this rent until a new lease dated the 5th of October 2012 was created for a term of 5 years from the 5th October 2012 at a rent of €65,000 per annum with 6 months' rent free.

4. RE-VALUATION HISTORY

4.1 On the 30th October 2012 a copy of a Valuation Certificate proposed to be issued under section 24 of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €90,000. No representations having been made to the valuation manager in relation to the matter, a Final Valuation Certificate issued on the 16th December 2013 in that amount.

4.2 On the 8th February 2014 the Appellant appealed to the Respondent pursuant to Section 30 of the Act against the determination of value on the grounds that the valuation was incorrect based on valuation levels applied.

4.3 On the 1st August 2014 the Respondent disallowed the appeal.

5. THE ISSUE

5.1 The sole issue in dispute between the parties was the appropriate net annual value ('NAV') for the Property.

6. RELEVANT LEGISLATIVE PROVISIONS

6.1 The NAV of the relevant property occupied by the Appellant must be determined in accordance with the provisions of section 48 of the Act. Section 48(1) provides as follows:

> "The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) provides for the factors to be considered in calculating the net annual value:

> "Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance, and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant."

7. THE EVIDENCE

7.1 For the appellant, Mr. Halpin, adopted his Precis as his evidence in chief and also adduced oral evidence. He argued that north side of Townsend Street is a poor location in terms of footfall for a pub and the high level of trade generated in the property reflects the acumen of the operator and would not likely be achieved by the hypothetical tenant. In his view, the annual rent payable in respect of the property of

€65,000 was a very clear guide as to (NAV) and for those reasons and on the further ground that the Respondent had taxed the goodwill of the operator he disputed the Respondent's NAV figure of €90,000. In his opinion the appropriate NAV is €50,000. In approaching his valuation, he considered four methods namely:

(i) The Actual Rent – which at €65,000 from January 2010, confirmed by way of the Lease of October 2012, and allowing for 6 months' rent free and deducting the residential accommodation which was not rateable, he said equated to a rent of €46,500.
(ii) The Fair Maintainable Trade (FMT) – where he discounted the actual trade by 30% to estimate FMT and applied a percentage of 9% to give an NAV of €54,000. On this basis he contended for a valuation of €50,000. He said did not include any food sales as food is a separate operation and the only benefit conferred by that separate operation on the publican is increased drink sales which he said are included in the FMT (drink sales).
(iii) Direct comparison with the tone of the list to demonstrate the validity of his approach. On this basis he opined that the Property had a NAV of €45,000.
(iv) Retail Zone A levels in the locality plus the value of the licence but only to demonstrate the validity of the first two methods of valuation and that this again produced a valuation of €50,000.

7.2 For the tone of the list, he provided details of 9 comparisons:

1. MacTurcaills, Tara Street - NAV of €83,800.
2. Chaplins, Hawkins Street - NAV of €35,000.
3. The Wiley Fox, formerly the Pint, 28 Eden Quay beside Liberty Hall - NAV of €45,000.
4. The Darkhorse Inn, 1-2 Georges Quay – NAV of €50,000.
5. Kennedys now The Workshop, Georges Quay – NAV of €50,000.
6. O'Neill's Pearse Street – NAV of €56,900
7. The Lombard, Pearse Street -NAV of €50,500
8. Ned's Townsend Street - NAV of €25,500
9. Oil Can Harry, Lower Mount Street – NAV of €25,000

pointing out that all the comparisons save Chaplin's has a better profile than the subject property.

7.3 In cross examination he agreed that the passing rent and estimate of FMT together with the tone of the list were the most relevant methods of assessing NAV. He expressed the view that the Property must be valued on the basis of what trade the hypothetical tenant could do and not necessarily what the current operator is doing. In his opinion, the current operator had managed to keep drink prices up while other publicans had reduced prices to maintain turnover. He had utilised 9% of his estimate of FMT in order to estimate the rent the hypothetical tenant's would pay pointing out that his calculation disregarded the actual turnover of the current operator. Though he accepted that the operator's name was not well known or a brand, he argued that the operator has particular skills that the hypothetical tenant could not replicate.

7.4 In response to a question from the Tribunal Mr Halpin accepted that food is served on the Property but said that this was a separate operation as the publican did not regard the provision of food as worthwhile and he was not in a position to furnish any information to the Tribunal in respect of the food sales turnover.

7.5 For the Respondent, Mr O'Halloran adopted his Precis of evidence as his evidence in chief and also adduced oral evidence. He stated that in relation to the valuation of public houses for the 2011 revaluation the Valuation Office had obtained financial information from 267 licensed premises to establish a ratio between FMT and net effective rent and the result of this exercise was that the percentage on sales turnover or FMT used in the NAV calculation ranges from 8% to 11% but with the majority of licensed premises being dealt with at 9% and 10%.

7.6 He provided 4 comparisons of key rental transactions:

i. The Brew Dock, Store Street - Rent €119,600 p.a. FMT Drink 10% Food 7% NAV €80,000

ii. Bachelor Inn, Bachelor's Walk - Rent €100,000 p.a. FMT Drink 10% Food Nil NAV €70,000

iii. The Lotts, Liffey Street - Rent €110,000 p.a. FMT Drink 10% Food 7% NAV €80,000

iv. The Harbourmaster, Custom House Quay - Rent €280,000 p.a. FMT Drink 10% Food 7% NAV €115,000

He also relied upon 4 comparisons to show evidence of equity and uniformity (Tone of the List):

1. J.W. Sweetman Burgh Quay - FMT Drink €1,975,000; Food €500,000 NAV €225,000
2. O'Reilly's Bar, Tara Street - FMT Drink €900,000; Food €20,000 NAV €90,000
3. Palace Bar, Fleet Street - FMT Drink €1,370,000; Food €55,000 NAV €150,000
4. The Oval, Abbey Street - FMT Drink €575,000; Food €325,000 NAV €66,000

In respect of each of these properties the percentage rate applied to the total of the FMT in drink sales was 10% with the exception of Palace Bar, where the percentage rate applied was 11%.

7.6 In Mr O'Halloran's opinion, the value based on accounts produced at Tribunal stage appeal was FMT on drink sales €850,000 at 10% €85,000 and FMT on food sales, €280,000 less €100,000 i.e. €180,000 at 7% €12,600 total NAV €97,600 and he asked that the Respondent's valuation of €90,000 be affirmed. This was based on the established rate of between 8% to 11% on the FMT on drink sales and 7% on food sales in excess of the first €100,000 and therefore the level applied achieved equity between rate payers.

7.7 In cross examination, in response to questions on the relationship between rent and NAV, Mr O'Halloran stated that the valuation of licensed premises is based on FMT but because uniformity and equity are essential to the administration of the rating system the valuation scheme for licensed premises is relevant to NAV. He accepted that the turnover on J.W. Sweetmans was exceptional and was not a direct comparison with the subject Property. He stated that he was unaware that O'Reilly's Bar is situate in a section of Tara Street railway station and that its trade is generated by the volume of passengers using the station. He accepted that Palace Bar is at the entrance to Temple Bar but noted that it is valued at 11% of FMT rather than the more average 10% which was applied to the Property.

In response to a question on Retail Zone A figures adjacent to the various comparisons, he stated that it was not relevant in the valuation of licensed premises. He did not accept that Abbey Street, where The Oval is located was a busier location for a pub than Townsend Street. Asked why he would not be persuaded by the market rent payable in respect of the Property, he stated that he had looked at the turnover of comparable properties pointing out that rent must not be considered in isolation. He did not accept that the NAV determined in respect of the Property is greatly in excess of other licensed premises in the locality if one looked at a less select but somewhat wider group.

7.8 In response to questions from the Tribunal, particularly as how the Valuation Office went from turnover to FMT, Mr O'Halloran stated that the accounts of licensed premises were analysed to ascertain turnover in 2010, 2011 and 2012 i.e. either side of the relevant valuation date. They looked at the gross profit margin, the expenses used to derive the trade, security, advertising, entertainment etc., the level of trade and that of comparable properties, the opening hours, the performance, the methods of generating trade, the physical characterises and the actual turnover. The factor ranges from 8% to 11% depending on location and performance of each premises. As no food sales figures were available in respect of the Property when the valuation was determined, food was estimated based on figures for other licensed premises in the locality. He drew attention to the food menus appended to his Precis.

7.9 In summing up, Mr Halpin said that it appears that the Commissioner considers the Property's location as being as good as that of Temple Bar and O'Connell Street Bridge and he dismissed that as nonsense. The Property was leased fully furnished and the Lease included the apartment. While FMT is one way method of valuation, he stated that it was appropriate for the valuer to 'stand back and look'. The tone of the list comparisons are all valued at 10% of FMT. He stressed that the exceptional acumen of the operator had pushed up the turnover, that the Property is not situate in a 'naturally gifted 'location so that one would have to make a special journey to go there and that regard should also be had to local rents.

7.10 Mr O'Halloran in summing up stated that applying percentages to FMT is a well-established method of valuing licensed premises and the NAV is what the hypothetical tenant would pay, not the actual rent of the Property. The tone of the list of licensed premises within a 300-metre radius is an NAV of €103,000. The Respondent had taken a yield or factor of 10% on FMT (drinks) and 7% of FMT (food sales) having deducted the standard €100,000 from the food sales figure and therefore requested that the valuation of €90,000 be affirmed.

8. FINDINGS AND DETERMINATION

8.1 It is a long established practice that licensed premises are valued on the basis of FMT and this has been confirmed as the best valuation approach in numerous Valuation Tribunal judgements.

8.2 The FMT adopted should represent the annual trade considered to be maintainable at the valuation date having regard to the physical nature of the premises and its location on the assumption that the business will be carried out by a reasonably efficient operator. The relevant valuation date is the 7th of April 2011. However, information on the size of relative premises utilised for comparisons may give some indication as to whether or not premises are trading above or below their potential. In assessing FMT a valuer should exclude any income above the normal expectation that is attributable solely to the personal circumstances or skill, expertise, reputation and/ or brand name of a particular operator.

8.3 The rental percentages are determined and applied to receipts for drink and food and the sum of the values attributed to the food and drink will in most cases provide the NAV. The choice of percentage to be applied to the total FMT is a matter of judgment. Having calculated a NAV, it is necessary to "stand back and look" in order to consider whether or not the figure arrived at appears reasonable in comparison with that of similar licensed premises in the locality. Therefore, the tone of the list or emerging tone is also relevant.

8.4 The rent reserved in a lease of licensed premises may or may not be relevant in assessing the NAV for rating purposes depending on circumstances and so it is important to look behind the letting agreement. The Property was acquired as part of a redevelopment site and subsequently came under the control of the National Asset Management Agency. There could be special circumstances in a letting, for example, a desire to build up sales to enhance a future sale of the property and in this instance it appears from correspondence from the landlord's solicitor that the Appellant may have renunciated its right to a renewal of the lease under the Landlord and Tenant (Amendment) Act, 1980 as amended. The current annual rent being paid is less relevant than the open market rental value of the Property.

8.5 Retail Zone A rents are irrelevant in the valuation of licensed premises as there are locations where such premises could be very successful and valuable whereas those same locations might not have any retail attraction.

8.6 The parties worked off different estimates of FMT for the Property and also differed on the factor that should be applied to the FMT. On the basis that the Appellant is an exceptional operator, Mr Halpin discounted the average drink trade figures for the period 2010 to 2012 by 30% to arrive at a FMT of €601,307 and applied 9% to arrive at a hypothetical rent of €54,000. His calculation omitted food sales. The Respondent's valuation of €90,000 was based on a FMT in drink sales of €800,000 applying 10% and a FMT of €260,000 in estimated food sales applying 7% after first deducting €100,000.

8.7 Although the food operation is separately run, food is catered in the Property and therefore contributes to its value. While the Tribunal is valuing a property and not a business all the factors that contribute to the value of the property must be taken into account. The food sales should be included even though the food operator does not pay any fee to the publican as omission of this factor could lead to under valuation of the Property.

8.8 The appeal is made against the valuation as stated in the Valuation List, namely €90,000, and it is not open to the Respondent to contend for a higher figure at Tribunal appeal stage for any reason as the Valuation Tribunal has no jurisdiction to consider anything other than the determination of value made by the Respondent following the Appellant's appeal pursuant to section 30 of the Act. In fairness, Mr O'Halloran, although he gave evidence that in his opinion would justify a higher valuation on the basis of the Appellant's accounts which were only produced at the Tribunal appeal stage, merely asked that the Tribunal affirm the Respondent's valuation of €90,000.

8.9 Many of the Respondent's comparisons are located in more prominent positions for example, J.W. Sweetman on Burgh Quay, immediately beside O'Connell Bridge, Palace Bar in Fleet Street and The Oval in Abbey Street Middle.

8.10 The Brew Dock at 1 Store Street, Dublin 1 has a FMT of €935,000 including €235,000 on food whereas the average turnover of the subject Property is €859,000 plus an estimated €280,000 on food. The NAV on The Brew Dock is €80,000.

Batchelor's Inn on Batchelor's Walk is better located and has a NAV of €70,000.

The Lotts at 9 Liffey Street has a FMT of €965,000 including €215,000 on food and an NAV of €80,000.

The Appellant's comparison, MacTurcaills at 31-35 Tara Street, is almost twice the size of the subject Property but otherwise in a similar location has an NAV of €83,800.

Chaplins at 1 – 2 Hawkins Street is smaller than the subject Property, but has an NAV of €35,000.

The Pint, now known as The Wiley Fox, on Eden Quay which is of similar size to the subject Property has an NAV of €45,000.

O'Neill's a long established pub, somewhat bigger than the subject Property has an NAV of €56,900.

The Lombard at 44 Pearse Street, smaller than the subject Property, has an NAV of €50,500.

Oil Can Hurry's at Lower Mount Street, Dublin 2, although within the same rating authority area is too far removed from the Property to be a useful comparison.

8.11 The Tribunal finds that the rent reserved on the Property at €65,000 per annum is out of line with rent reserved on other similar licensed premises in the general locality.

8.12 The evidence establishes an average annual trade in drink sales for 2010, 2011 and 2012 in the order of €859,000 which is indicative of special business acumen on the part of the operator. In the Tribunal's opinion the hypothetical tenant could not confidently expect to maintain the same level of trade.

8.13 The Tribunal estimates the FMT in drink sales at €773,100 and the FMT in food sales at €208,000 at the valuation date based on comparisons of licensed premises in the general locality. The Tribunal's valuation is therefore as follows:

	FMT	
Drink	€773,100 @ 10%	€77,310
Food €208,000 - €100,000	€108,000 @ 7%	€7,560
Total		€84,870

SAY €84,500

8.14 In conclusion, therefore, the appeal is allowed and the Tribunal amends the value of the Property, the subject of the appeal, as stated in the valuation certificate to €84,500.00.

And the Tribunal so determines.