

Appeal No. VA10/4/002

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

Mia Taverns

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 851697, Licensed Shop at Lot No. 127,129a Ranelagh, Rathmines East D, Rathmines East, County Borough of Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Tony Taaffe - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF APRIL, 2011

By Notice of Appeal received by the Tribunal on the 28th day of October, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €356 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"Valuation excessive in comparison to similar lic'd premises valued by Commissioner of Valuation." "Reduction in rental and capital value of premises."

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 1st day of February, 2011.
2. At the oral hearing the appellant was represented by Mr. Eamonn O’Kennedy, B Comm, MIAVI, Principal of O’Kennedy & Co., Valuation and Rating Consultants. Ms. Fidelma Malone BSc (Hons) Estate Management, MIAVI, a valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.
3. In accordance with the rules of the Tribunal Mr. O’Kennedy and Ms. Malone submitted to the Tribunal and to each other a written précis and valuation of the evidence they proposed to adduce at the oral hearing. From the evidence so submitted and additional evidence received during the course of the oral hearing the following material facts emerged or are so found by the Tribunal.

The Property Concerned

4. The property concerned in this appeal is Birchalls Licensed Premises situated in the village of Ranelagh where there are a number of other licensed premises in the immediate vicinity. Birchalls is a mainly single-storey structure and provides the following agreed accommodation:

Ground Floor:	Lounge	114 sq. metres
	Bar	25 sq. metres
	Stores	38 sq. metres
	Ladies/Gents toilets	
First Floor:	Kitchen/Stores	28 Sq. metres

Rating History

5. The valuation of the property concerned was agreed at first appeal stage in 1991 at a rateable valuation of £280, i.e. €355.53. The appellant on this occasion was represented by Mr. O’Kennedy. The valuation that was agreed was determined on the following basis:

Estimated 1988 turnover £44,500
 Net annual value @ 10% = £4,450
 Rateable valuation @ 0.63% = Say £280 (€355.53)

6. In April, 2009 the appellant made an application to the Commissioner of Valuation pursuant to Section 27(1) of the Valuation Act, 2001 for the appointment of an officer of the Commissioner to carry out a revision of valuation in accordance with Section 28(3) of the Act. On 14th January, 2010 a certificate in draft form was issued to the effect that it was proposed to assess the rateable valuation of the property concerned at €356 (i.e. the existing valuation). Representations were made by the appellant's agent against this proposal under Section 29(2) and a certificate in final form was issued on 24th February, 2010 confirming the valuation of €356. No change was made on foot of an appeal to the Commissioner and, in due course, an appeal against this decision was made to this Tribunal under Section 34 of the Act.

The Appellant's Evidence

7. Mr. O'Kennedy, having taken the oath, adopted his précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.
8. In his evidence Mr. O'Kennedy said that it has been the accepted procedure for several years past to value licensed premises for rating valuation purposes by having regard to their turnover. In the case of a revision of valuation carried out under Section 28 of the Valuation Act, 2001 the value of the property concerned is to be determined in accordance with Section 49(1) of the Act which provides that "*determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*" He said that the concept of "the tone of the list" valuations was first introduced under the Valuation Act, 1986 (now repealed) and that the established method for the valuation of licensed premises was to take the existing turnover and to adjust this figure to November 1988 levels by using the alcohol price index. Mr. O'Kennedy said that over the past 20 years he had acted for owners of a large number of licensed premises, in negotiations at revision and subsequent appeal stages under the 2001 Act and the repealed 1986 Act. In his experience net annual value in virtually all these instances was arrived at by applying 9% and 7% respectively to the liquor and food elements of the existing turnover adjusted to 1988 levels. This method of assessment, he said, had been approved by the Valuation Tribunal in a number of leading cases, namely, (a) **VA95/5/025 – Swigmore Inns Ltd. t/a Doheny & Nesbitt**, Lower Baggot Street, (b) **VA95/5/024 – Nallob Limited t/a O'Donoghue's**, Merrion Row, (c) **VA96/2/076 – Philip Maher & Patrick Lenaghan t/a The Sarah Curran**, Rathfarnham.

9. Having regard to the established method of valuation, as outlined above, Mr. O’Kennedy contended for the following valuation:

Net Turnover

Account year ending July 2008

Net Drink Turnover ~~€~~889,363

Net Food Turnover €39,844

Account year ending July 2009

Net Drink Turnover ~~€~~45,719

Net Food Turnover €39,710

Account year ending July 2010

Net Drink Turnover ~~€~~29,220

Net Food Turnover €26,074

Average Drink Turnover ~~€~~16,391

Adjusted to Nov. ’88 ~~€~~16,391 x 135.5 = ~~€~~34,620

Drink index July 2009 = 285.7

Say ~~€~~435,000 @ 9% = ~~€~~39,150

Say ~~€~~40,000

RV ~~€~~40,000 @ 0.63 = RV ~~€~~252

Average Food Turnover ~~€~~35,000

Adjusted to Nov. ’88 ~~€~~18,000

RV ~~€~~18,000 @ 7% = ~~€~~1,260

Say ~~€~~2,000 RV ~~€~~13

RV ~~€~~265

In support of his opinion of that valuation Mr. O’Kennedy introduced nine comparisons, details of which are attached at Appendix 1 attached to this judgment.

10. Mr. O’Kennedy, in his evidence, said that in recent times turnover in the licensed trade had declined due to a number of factors including greater enforcement of drink driving laws, the smoking ban and the current economic situation. The appellant in this case was an experienced operator who, in an effort to enhance the turnover of the property concerned, had

acquired adjoining premises at first floor level in order to expand the existing kitchen facilities so as to provide an extensive bar menu. However despite his best efforts there was no noticeable improvement in turnover so that there is now only a “soup and sandwich-type” service available and the new kitchen facility is closed and no longer in use.

11. Mr. O’Kennedy said that in his experience the capital value of licensed premises peaked in 2000 and since then had declined sharply due to a drop in turnover, despite increased drink prices. The Valuation Office, Mr. O’Kennedy said, did not appear fully to appreciate the changes that had taken place in the licensed trade and, in his experience, no longer valued licensed premises at revision using the long-accepted adjusted turnover method. As a consequence, the Licensed Vintners’ Association had lost confidence in the Valuation Office due to the change in its valuation methodology.
12. Under examination Mr. O’Kennedy reiterated his opinion that turnover in licensed premises generally had declined for a number of reasons but said the drink driving legislation and its enforcement was probably the most important factor. He confirmed also that he had agreed the value of the property concerned in 1991 at First Appeal stage, on the basis previously outlined by him. When asked if the use of the alcohol price index became less reliable over time, Mr. O’Kennedy said that, in his experience it was the only way to ensure uniformity of assessment.
13. When asked if the physical changes in the property concerned were significant, Mr. O’Kennedy replied that, while they were minor in extent, they nonetheless represented a material change of circumstances as defined in the 2001 Act and warranted a revision of valuation. Mr. O’Kennedy agreed with Ms. Malone that Section 49(1) merely refers to the “*values*” of other properties and that there is no mention in the section as to the method of valuation to be employed. However, Mr. O’Kennedy said that the accepted method of valuing licensed premises was by reference to turnover and this is what he had done. When it was put to him that the value of the property concerned would have been a “*comparable property*” under Section 49 until the application for revision was made, Mr. O’Kennedy agreed but said that he would not consider this proposition to be of any relevance in regard to the appeal now before the Tribunal.

The Respondent's Evidence

14. Ms. Malone, having taken the oath, adopted her written précis and valuation which had previously been received by the Tribunal and the appellant as being her evidence-in-chief.

15. In her evidence Ms. Malone contended for a rateable valuation of €56 calculated as set out below:

10% of 1988 potential turnover NAV €7,138.21, RV €59.97 say RV €56 (as per 1991 Appeal)		
Ground Floor Bar	139 sq. metres @ €6,433.33	= €6,433.33
Rateable valuation	= Total NAV €x 0.63%	= €55.53
Say RV €56		

In support of her opinion of net annual value, Ms. Malone introduced five comparisons, details of which are set out at Appendix 2 attached to this judgment.

16. In her evidence, Ms. Malone accepted that the addition of a kitchen and store at first floor level represented a change of circumstances as defined in the Act of 2001. However, it was her opinion that the change had no significant impact on rental value and, in her own words, was “*not a material change that changes the value of the pub from its previous assessment as the changes are considered to be de minimis*” In her written précis Ms. Malone made a number of points which the Tribunal believes should be reproduced in full, as they go to the root of the difference between the appellant and the respondent in this appeal.

“The valuation is made by reference to the values of comparable properties appearing on the Valuation List for the Dublin City Council area.

Since last revised there have been no significant changes to the premises. It is considered that whilst the amalgamation of two previously separate relevant properties into one (a small kitchen previously separately assessed on the first floor is now used in connection with the pub on the ground floor) amounts to a material change it is not a material change that changes the value of the pub from its previous assessment as the changes are considered to be de minimis. [sic]

If it is to be considered as a change to value then that change should be reflected in a small increase to the value of the pub to reflect the addition of this area to the subject premises.

There are no other factors that would change the value of the pub from when it was previously valued.

Economic changes since 1988 are excluded from the rating valuation process in between revaluations. It is not possible to take the recent dramatic fall off in values into account in the revision scenario--- in the same way the valuation on this pub was not revisited during the Celtic tiger era when values were rising dramatically---to do so would mean the premises would have a different rateable value each year.

All the relevant issues were taken into account in 1991 when the premises were assessed with regard to its 1988 net annual value. The current economic climate does not retrospectively apply to 1988 and to do so would give rise to serious inequities in a single valuation such as this considering the constraints imposed by the MCC provisions of the legislation.

We are required under section 49(1) to value by reference to values of comparable properties on the valuation list. All of the comparisons quoted were assessed in and around the same time (1991 and as in all revision cases their values were assessed with regard to 1988 value.) The correct relativity has already been well established and agreed at First Appeal stage and maintained over the years."

17. Under examination Ms. Malone confirmed that it was no longer the practice of the Valuation Office to value premises at revision solely by reference to its turnover. In her opinion, the value of licensed premises went into decline in 2007, as indeed had the value of all other commercial premises. On the other hand, during the period between 2007 and now, the alcohol price index had continued to increase, so that the index is no longer of any relevance in tracking property values. Section 49, she said, provides that the property concerned be valued by reference to other comparable properties and not by reference to its adjusted turnover. As far as she was concerned a material change of circumstances had occurred in relation to the property concerned and accordingly, the property had to be valued by reference to the values of other licensed premises in Ranelagh and which are in close proximity to the property concerned. Given the nature of the change that had taken place,

however, Ms. Malone said it was her opinion that there was no reason to change the existing valuation or to depart from the relationship that currently exists between the value of the property concerned and the values of other licensed premises in Ranelagh. Furthermore, she contended she saw no good reason to reassess the property concerned, either upwards or downwards, while that course of action was denied to other similar premises where a material change of circumstances cannot be established. When asked if turnover was no longer relevant in valuing licensed premises at revision, Ms. Malone said that it was, but to a limited extent. In present circumstances, use of the alcohol price index was questionable, having regard to the fact that capital/rental values and drink prices were moving in opposite directions. In such circumstances it might, she said, be more appropriate to have regard to the relative areas of the property concerned and comparable licensed properties in the area.

Findings and Conclusions

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

1. This appeal raises important issues in relation to the interpretation of those sections of the Valuation Act, 2001 in regard to the revision of valuations under Section 28 of the Valuation Act, 2001.
2. The overall intention of the 2001 Act is that all relevant property in the State will be the subject of a revaluation under Section 19.
3. Section 19(1) provides that the Commissioner, after consultation with the Minister for the Environment and Local Government and the rating authority concerned, shall issue a valuation order for each rating authority area over the next several years and shall appoint an officer of the Commissioner to organise and secure the carrying out of a valuation of every relevant property situated in that area. To date, two such revaluations have been completed – South Dublin County Council Rating Authority area (2007) and Fingal County Council Rating Authority area (2010). Other revaluations are at various stages in the assessment process.
4. Section 25(1) provides that *“It shall be the duty of the Commissioner to exercise the powers conferred on him or her by subsections (1) and (2) of section 19 from time to time*

in relation to each rating authority area so that the result referred to in subsection (2) is achieved.”

5. Section 25(2) provides that *“The result mentioned in subsection (1) is that a period of not less than 5 years and not more than 10 years elapses between the date on which any valuation list in relation to the area concerned is caused to be published under section 23 and the date on which the next subsequent valuation list in relation to that area is caused to be so published.”*
6. In the period between the periodic revaluations referred to in Section 25, revisions of valuations may be carried out under Section 28, following an application made to the Commissioner of Valuation under Section 27.
7. Following an application made under Section 27, the Commissioner shall appoint a Revision Officer to carry out the revision and to exercise his or her powers under Section 28 as appropriate.
8. Section 28(4) provides that:

“A revision officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property—

 - (a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—*
 - (i) amend the valuation of that property as it appears on the list,*
 - (ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*
 - (iii) amend any other material particular in relation to that property as it appears on the list,*

(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—

- (i) carry out a valuation of that property, and*
- (ii) include that property on the list together with its value as determined on foot of that valuation.”*

9. A material change of circumstances is defined in Section 3 of the Act in the following terms:

“(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or

(b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause, or

(c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or

(e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or

(f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property;”

In regard to this appeal “(b)” is particularly relevant.

10. “Value” is defined in Section 3 of the Act as being:

“(a) in relation to property specified in Schedule 3 (other than property specified in paragraph 1(o) of that Schedule or falling within section 15 (4)), the value by reference to which a rate made in respect of the property has effect,

(b) in relation to property specified in the said paragraph 1(o), the value of the property for such purposes as stand designated for the time being by or under any enactment,

(c) in relation to property falling within section 15 (4), the value by reference to which a rate is struck on the property under section 55 of the Fisheries (Consolidation) Act, 1959,

and references to a valuation or revaluation carried out or made in relation to a property shall be construed accordingly.”

11. Section 43(1) provides that until such time as a revaluation as provided for under Section 19, existing valuation lists shall “*continue in force*” as shall “*the value of each property appearing thereon.*”
12. Section 44 provides that a revision of valuation may be carried out in respect of a property concerned appearing in the valuation list in accordance with Section 28(4) of the Act.
13. When a revision of valuation is carried out under Section 28(4), the value of the property concerned is to be determined in accordance with Section 49(1), which provides as follows:

“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28 (4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

In other words, the value of the property is to be determined in accordance with what is known as the “tone of the list.” In the context of this appeal, Section 49(2) is also highly relevant. Section 49(2) provides as follows:

“For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then—

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property’s net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property’s value is the amount that would have been determined to

be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act."

14. It is common case that the property concerned in this appeal has been subject to a material change of circumstances as defined in the Act. The alteration in question consists of the addition of kitchen and stores at first floor level which were previously the subject of a separate valuation.
15. It is common case that a substantial number of licensed premises in the Dublin City Council Rating Authority area were subject to a revision of valuation under the now repealed enactments in 1991/1995. During this period, the value of the licensed premises so listed for revision were determined in accordance with Section 5 of the Valuation Act, 1986 which amended Section 11 of the Act of 1852.
16. It is common case that, in the main, the value of each licensed premises on that occasion was determined by reference to its turnover; the assessment process being to backdate the turnover at the valuation date to 1988 levels by reference to the alcohol price index and applying to that figure a percentage in order to arrive at its net annual value. This method of valuation was approved in a number of appeals to this Tribunal including (a) **VA95/5/025 – Swigmore Inns Ltd. t/a Doheny & Nesbitt**, Lower Baggot Street, (b) **VA95/5/024 – Nallob Limited t/a O'Donoghue's**, Merrion Row, (c) **VA96/2/076 – Philip Maher & Patrick Lenaghan t/a The Sarah Curran**, Rathfarnham.
17. The essence of a well founded rating system is that each ratepayer shall pay his or her proper proportion of the overall rates burden – no more and no less. This can be achieved when revaluations are carried out at regular intervals and by the proper use of Sections 28

and 49 during the interim periods. This statutory framework will ensure that the relative values of relevant property will be maintained within and between the different categories of property. Of course, the longer the interval between the revaluations, the greater will be the probability that the valuation list will not accurately reflect current relative valuation levels. In regard to the valuation list for the Dublin City Council Rating Authority area, for which, as yet, a Section 19 revaluation and has not been sought, there is an inherent risk – despite the best efforts of the Valuation Office – that anomalies will exist and increase, given the narrow definition of a “*material change of circumstances*” and the provisions of Section 49. Such anomalies will continue to exist and increase until such time as a revaluation is carried out.

18. It is not disputed that, as far as licensed premises are concerned, turnover in volume terms has declined over the past several years due to a number of factors, including greater enforcement of the drink driving law, the smoking ban and more recently the downturn in overall economic conditions. It is clear from the evidence adduced that the net annual value of licensed premises have in the past been determined by reference to their current turnover, adjusted to 1988 levels of prices by use of the alcohol price index. Ms. Malone, in her evidence, said that this method of valuation had ceased and was no longer in common use by the Valuation Office at revision.

19. Section 48 provides that the net annual value of the property is to be an estimate of its net annual value based upon certain assumptions as set out therein. Section 49(1) requires that the value of the property concerned “*shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*” Nothing in either Section 48 or Section 49 gives authority to support an argument that the net annual value of licensed premises must be determined according to a formula. Indeed, Section 49(1) specifically refers to “*the values, [...] of other properties comparable to that property.*”

20. The value of the property concerned in this appeal was last determined in 1991 and agreed by Mr. O’Kennedy, acting on behalf of the owner, at a net annual value of £44,500 (€6,503) and a rateable valuation of £280 (€355.53). The value so agreed at that time was based upon 10% of an estimate of 1988 turnover. In her evidence, Ms. Malone introduced details of the values of 4 other licensed premises in the immediate vicinity of

the property concerned, which were also subject to revision in the period between 1993 and 1996. In all instances, the net annual value was agreed with various rating consultants, including Mr. O’Kennedy (3 appeals), by reference to an estimate of their turnover at 1988 levels. It is not disputed that the values so agreed are in the current list, nor was it disputed that the values so agreed or determined were consistent one with another and fairly represented the relative values of each property on a common basis. In effect, they represent the tone of the list. In the Tribunal’s opinion, the proper construction of Section 49 is that the value of a property concerned subject to a revision of valuation is to be ascertained by reference to the “*values*” of other comparable properties. There is nothing in the section to say that the value of the property concerned is to be assessed by reference to its profits, or turnover, or indeed, any other method. The basis of valuation set down in Section 49 is the same for all properties (other than those specifically provided for under Section 53).

21. In the present economic circumstances rental values of all commercial property has fallen sharply, as indeed has turnover. When using Section 49, rental values are not particularly relevant as the Section requires that the net annual value of a property which is subject to revision shall be determined by having regard to “*the values, [...] of other properties comparable to that property.*” As it stands at the moment, the value of a shop on Grafton Street or indeed, on any other street in Dublin will be determined by what is referred to as the tone of the list, without reference to underlying economic circumstances or prevailing rental values. It is clear that in rating law the relative value of a property is more important than its value in absolute terms. The tone of the list is assumed to be fairly representative of the relative values of all relevant properties in the various use categories in a local rating authority area as at a common valuation date, which in the case of Dublin, is now taken as being November, 1988 (See Section 49(2)). No evidence was adduced that, in relative terms, the various factors that would have a bearing on rental values are substantially different in the licensed trade when compared to other businesses. In the circumstances, the Tribunal feels that the current practice of valuing licensed premises which have been subject to a “material change of circumstances” by reference to their adjusted turnover may give rise to even more anomalies than currently exist on the valuation list. Such a method of valuation should, in the Tribunal’s opinion, be seen more as a means of comparison than valuation.

22. In our opinion, Section 49 requires that the value of a relevant property which is subject to a revision must be determined by reference to the values of properties which are in a similar use category or mode of use. The value of the properties on the valuation list reflect not just the values of those properties, but their relative values in relation to other relevant properties of a similar use and other properties in different use categories at the relevant valuation date.
23. The definition of a material change of circumstances, in the Tribunal's opinion, is unduly restrictive and, when taken together with Section 49, does not allow for a revision of valuation where a change in value may be warranted due to changes in economic factors or, indeed, changes in relative values within and between different use categories. It is, as was stated earlier in this judgment, inevitable that a valuation list which has as yet not been subject to a Section 19 revaluation will include anomalies which the Tribunal is unable to address under the 2001 Act. In the circumstances the Tribunal suggests that the definition of a material change of circumstances and Section 49 be examined and, if necessary, amended in order to ensure that existing anomalies and inequities contained in the valuation list are addressed. This is particularly important given that the nationwide revaluation exercise as envisaged under the Act may take several more years to complete.

Determination

Having regard to the foregoing, the Tribunal has reached a determination that the appeal be dismissed and that the existing valuation of €356 be left unaltered.

And the Tribunal so determines.