

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF AN APPLICATION**  
**BT/79/1990**  
**BETWEEN**  
**KIERAN SALLY - APPLICANT**  
**AND**  
**ELIZABETH A MICHAUX AND SHEELAGH HUGHES - RESPONDENTS**

**Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS**

**Omagh - 18<sup>th</sup> September 1990 and 24<sup>th</sup> October 1990**

This was an application under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") for a grant of a new tenancy of licensed premises at No 45 John Street, Omagh, Co Tyrone. The application dated 18<sup>th</sup> June 1990 followed the Respondent/Landlords' Notice to Determine Business Tenancy dated 30<sup>th</sup> April 1990 terminating the existing lease of 50 years from 1<sup>st</sup> November 1940 on 1<sup>st</sup> November 1990. That Respondents' Notice objected to the grant of a new tenancy but such stated objections are not relevant for prior to the first day of hearing the objection was withdrawn and the parties were given time to negotiate terms and to lodge expert valuer's proofs of evidence.

Following that Notice to Determine, the Applicant on 12<sup>th</sup> June 1990 served notice that he was unwilling to give up possession of the licensed premises.

The expert valuers were unable to agree the terms of the new tenancy, and following the exchange of proofs of evidence in accordance with the Lands Tribunal Rules, the Tribunal heard the evidence on 24<sup>th</sup> October 1990.

Mr Kevin Denvir of Counsel for the Applicant called Mr Kieran Aidan Sally, the Applicant, and Mr Samuel Norman Devlin FRICS ARVA to give evidence.

Mr Sally testified that he purchased the leasehold interest in the licensed premises for £21,000 on 2<sup>nd</sup> August 1982 and before commencing trading spent £30,000 approximately extending and refurbishing the premises. The vendor had kept no accounts and the purchase price did not include bar furniture, stock nor any chattels. The volume of trade done by the vendor prior to the sale was very poor. He considered that the price he paid for the premises included any goodwill and the licence which was transferred to his name. He further testified that his trade had reduced in the past year or two mainly due to a nearby

licensed premises (the "Elbow" at Nos 28 to 30 John Street) reopening after extensive renovations.

Mr Devlin spoke to a rental of £700 per annum. He considered the current market value is £14,000 disregarding (in accordance with Section 15 of the 1964 Act):-

- (a) Goodwill.
- (b) Improvements carried out by the Applicant and his predecessor in title.
- (c) The benefit of the licence which Mr Devlin considered belonged to the Applicant.

He supported this capital value of £14,000 with two transactions viz:-

No 41 John Street a vacant house held freehold which sold for £9,000 on 27<sup>th</sup> April 1984.  
Net Annual Value:- £45.

No 43 John Street a vacant house held freehold which was purchased by the Applicant in 1988 for £18,000.  
Net Annual Value:- £60.

He submitted the Applicant's profit and loss accounts for the years ended 28<sup>th</sup> February 1987, 28<sup>th</sup> February 1988 and 28<sup>th</sup> February 1989 respectively.

He agreed that his rental estimate of £700 per annum was for a dwelling house in poor order and not for either commercial premises or licensed premises. In answer to the Lands Tribunal he considered that if the licence was not to be disregarded (but both the improvements and the goodwill were still to be disregarded) his estimate would be increased to £1,400 per annum.

Mr Mark Orr of Counsel (for the Respondents) called Mr William David Reilly FRICS to give evidence. Mr Reilly spoke to a rental estimate of £8,750 plus rates. He estimated the current open market value with vacant possession at £70,000.

He supported these estimates with two transactions, viz:-

No 28 to 30 John Street (the Elbow Inn). Ground floor licensed premises recently renovated. Leased McGale to Daly for 9 years at a rent of £200 per week plus rates. Net Annual Value £2,730.

No 7 John Street (the Fox's Lair). Licensed premises. A contract for sale recently signed at £65,000 plus £11,000 for contents.

Mr Reilly considered that the rent paid for the Elbow Inn did not include any goodwill for the premises were run down for sometime, then closed for about four months for renovation before being leased. He further considered that the sale of the Fox's Lair included some goodwill.

The Tribunal finds the following facts proved or admitted:-

1. The present lease (Mary Ann Hughes to Kathleen Bradley and Teresa Bradley) was for 50 years from 1<sup>st</sup> November 1940 subject to a ground rent of £25 per annum. No other consideration was stated, apart from the lessee's covenants. The deed of indenture described the demised premises as

"ALL THAT AND THOSE Licensed premises situate at 45 John Street, Omagh aforesaid Parish of Drumragh Barony of East Omagh and County of Tyrone as at present in the occupation of the Lessees".

Inter alia, the Lessees covenanted:-

"AND ALSO that they the Lessees will during the said term as long as the necessary licence can be obtained use the said premises hereby demised as an Inn tavern or public house and that they will not whether by themselves or their servants do or suffer any act matter or thing whereby a conviction against any law for the time being regulating the sale of intoxicating liquor may be obtained and will not do or suffer to be done on the premises any act whereby the licence necessary for using the said premises as an Inn tavern or public house may be forfeited or the renewal thereof withheld but will at all times conduct said premises and the business of a publican carried on therein in a peaceable and orderly manner and in accordance with the laws for the time being regulating the sale of intoxicating liquor and will at all proper times apply the same as aforesaid".

2. The Applicant purchased the premises on 2<sup>nd</sup> August 1982 for £21,000 and before commencing trading spent approximately £30,000 in enlarging and refurbishing the premises.

Inter alia, the alterations were the addition of a lounge bar, the inclusion of the former kitchen and scullery in the ground floor public bar and the conversion of a store in the yard into gents' toilets.

3. The Applicant's predecessors in title had also carried out some improvements in or about 1950 - that consisted of a two storeyed return to the house.
4. The profit and loss accounts submitted show the following volume of trade:-

Year ended 28 <sup>th</sup> February 1987	Turnover:- £64,877
Year ended 28 <sup>th</sup> February 1988	Turnover:- £66,356
Year ended 28 <sup>th</sup> February 1989	Turnover:- £53,851

Notes:-

- (a) The Tribunal notes that those three accounts were prepared within the two months prior to the hearing.
- (b) The accounts did not carry the usual accountants' endorsement. They were not signed but carried a stamp of Messrs O'Donnell and Mellon of 19-21 Castle Street, Omagh.
- (c) Bank Fees and Interest for those respective accounting periods are:-

1987	£ 27
1988	£ 12
1989	£3,842

No evidence was forthcoming as to a loan obtained for the licensed premises business to cause the figure for 1989 to increase by so much.

5. John Street leads from the Court House at the top of the hill at High Street to Church Hill which is farther away from the town centre. Some of the properties in John Street are vacant and in poor order, but John Street is mainly a commercial but secondary street.

Recently there was an application for a full on-licence for Nos 47-51 John Street. Those premises formerly had been licensed but by 1985 they had become dilapidated and because certain repairs were required, the owner sold the licence, let the first floor to a private club and closed up the ground floor. The Court refused the grant of the licence on 27<sup>th</sup> July 1990 because the Court could not say that "despite the increase in population and the decrease in the number of public houses that the number of

licensed premises in the vicinity of the premises for which the licence is sought is inadequate".

There are five existing public houses in John Street.

6. The Applicant applied for an Urban Development Grant for his premises on 12<sup>th</sup> February 1990. He wished to expand his drinking space to the first floor but it was refused because in the Omagh district grants are only to be considered for improving vacant property.

Mr Mark Orr of Counsel (for the Respondents) submitted:-

1. The licence is part of the demise and belongs to the Respondents - it was clearly a demise of licensed premises in existence. Refers to a Lands Tribunal Decision BT/44/1988 Armstrong v White.
2. The Applicant did not have to purchase a licence and obtain the Court's permission to transfer it to the leasehold property. All the Applicant had to do when he purchased was to get the licence (which passed with the assignment of the lease) transferred to him to enable him to carry on trading in the premises.
3. It was accepted by the Respondents that although the lease was for 50 years subject to a ground rent of £25 per annum, that this application is properly made within Section 1 of the 1964 Act and is not within the exclusions of Section 2(a) to (e) inclusive of the 1964 Act.

Mr Kevin Denvir of Counsel (for the Applicant) submitted:-

1. The Applicant owns the licence - it is his name on that licence and he can sell that licence. Thus, in accordance with Section 15(2)(d) of the 1964 Act any value attributable to the licence should be disregarded.
2. The licence does not run with the land. There should be express words in the lease to ensure that the licence belongs to the lessors and that the licence is surrendered to the lessors at the end of the lease.
3. The Tribunal cannot get much help from Mr Reilly's evidence for he failed to discount for the improvements, the goodwill and the licence.

4. The Applicant's expert valuer set out the basis on which he had come to his rental assessment.

## **DECISION**

It is accepted by both the Applicant and the Respondents that this is a valid application. There is a wide divergence between the rental figures submitted viz £700 per annum for a lease of 14 years without any rent review is the figure on behalf of the Applicant; £8,750 plus rates on behalf of the Respondents. In answer to a question from the Lands Tribunal the Respondent's expert valuer accepted that the term should be for 14 years but that there should be a rent review after 7 years to an open market rent.

Both expert valuers appear to have estimated a rent before knowing the terms of the proposed lease. There was no evidence before the Tribunal that any of the terms was discussed by the valuers until the hearing itself. The Tribunal accepts that in view of the fact that the existing lease was for 50 years the proposed lease should be for the maximum period permitted by the 1964 Act viz 14 years. Other terms of the new lease will parallel the old lease ie the Applicant will be responsible for rates, repairs, insurance (in a proper sum) and a covenant (to protect the licence) as in the existing lease.

The existing lease was subject only to a payment of £25 in two moieties viz a ground rent and, therefore, there was no rent review. The rent to be fixed by this Tribunal is an open market rent subject to certain matters being disregarded. The Tribunal's experience over a long number of years has not known a modern lease of 14 years without at least one rent review during the term. But that review should not be to an open market rental but to a rental fixed at the end of 7 years on the basis of Section 15(2) of the 1964 Act. The Tribunal suggests to the parties that if not agreed it might be referred to the Tribunal as an arbitrator.

With those terms in mind the Tribunal can now assess the quantum of rent. The statutory basis is contained in Section 15 of the 1964 Act viz:-

"(2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded -

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;

(b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business);

(c) any effect on rent of any improvement -

(i) carried out by the tenant or a predecessor in title of his; or

(ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy;

other than in pursuance of an obligation to the immediate landlord;

(d) in the case of a holding comprising premises licensed under the Licensing Acts (Northern Ireland), any addition to its value attributable to the licence, if it appears to the Lands Tribunal that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

(3) None of the provisions of the Rent (Northern Ireland) Order 1978 shall operate to limit or affect the amount of the rent which may be fixed by the Lands Tribunal under subsection (2)."

The Tribunal must reject Mr Reilly's estimate of rental value at £8,750 per annum for

(a) It was an estimate of rent based on the current market value. It did not disregard the effect on rent of the improvements done by the Applicant during his occupation nor the improvements done by the Applicant's predecessor in title. However, the Tribunal accepts that most of the earlier improvements were nullified by the Applicant's improvements.

(b) It did not disregard in its entirety the goodwill attaching to the holding. Mr Reilly's rental comparison was said (by him) not to include any goodwill for the comparable licensed premises had been closed for four months while improvements and refurbishment took place. While the Tribunal accepts that the goodwill attaching to that comparison had been damaged to some extent, the Tribunal does not accept that it was completely extinguished.

The Tribunal does not accept Mr Devlin's estimate of rental value at £700 per annum - nor the estimate of £1,400 per annum if the Tribunal holds that the benefit of the licence belongs to the tenant. Although Mr Devlin disregarded the effect on rent of all improvements carried out by the Applicant and his predecessor in title and disregarded any goodwill attaching to the holding he came to the conclusion that he was left with estimating the rental value of a poor dwelling house with no commercial potential nor potential for use as a licensed house. This the Tribunal cannot accept. However difficult the statutory hypothesis may appear to an expert valuer who works in the real property market in the real world the fact is that at all times during the continuance of the existing lease the demised premises have been licensed premises and that is currently the situation and will stay the same during the proposed 14 years lease. The Tribunal considers that the licence was part of the demise and the Lessee's covenant not to "suffer any act matter or thing whereby a conviction against any law for the time being regulating the sale of intoxicating liquor ..." etc etc, underlines that the licence was part of the demise. Nor on that statutory hypothesis can the Tribunal accept 5% as being the return on capital invested in licensed premises in Northern Ireland.

Both valuers used the same basic method of arriving at a rental value; first of all a capital value was estimated and a percentage return on that capital value was taken to be the rental value.

The Tribunal was given no evidence to enable some other method being acceptable. The rent to be assessed disregarding all the relevant matters mentioned in Section 15(2) of the 1964 Act is to be "that at which, having regard to the terms of the tenancy, the holding might reasonably be expected to let in the open market by a willing lessor ....".

Thus the rent must be what a willing lessor might reasonably expect. The length of the tenancy might have an effect on that reasonable expectation eg the rent for a 3 years term with one review during that term would differ from a rent for a 14 year term with no review whatsoever.

The holding, ignoring all improvements made, consisted of a licensed house with a small public bar of some 12 square metres on the ground floor together with (on the ground floor) a living room/kitchen, (on the first floor) 2 bedrooms with a boxroom on mezzanine level and 2 attic bedrooms on the second floor. There was an outside WC and a store in the yard at the rear. The capital value of the those premises in the open market is estimated by the Tribunal to be worth today, excluding the goodwill attaching by reason of the carrying on of the licensed business by the tenant and his predecessors but including the licence, £25,000. The return on that capital reasonably expected by a willing lessor in the open market the Tribunal takes @ 9½% giving the rental value at £2,375 per annum.



Summarising:- The Tribunal grants a term of 14 years at a rent of £2,375 per annum with the tenant paying rates, the tenant repairing (as in the existing lease), the tenant insuring (as in the existing lease but for a proper replacement sum) and covenanting to protect the licence (as in the existing lease). There is to be one rent review at the end of the seventh year - such rent to be fixed on the statutory basis contained in Section 15(2) of the 1964 Act.

The Tribunal makes no order as to costs.

**ORDERS ACCORDINGLY**

**28<sup>th</sup> November 1990**

**Mr A L Jacobson FRICS  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:-**

**Mr Kevin Denvir of Counsel (instructed by Messrs Corr and Sally, Solicitors) for the Applicant.**

**Mr Mark Orr of Counsel (instructed by Oliver M Loughran, Solicitor) for the Respondents.**