

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF AN APPEAL AGAINST VALUATION FOR RATING PURPOSES**  
**VR/39/1979**  
**BETWEEN**  
**PATRICK A PARK - APPELLANT**  
**AND**  
**THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Lands Tribunal for Northern Ireland - Sir Frank Harrison MBE QC DL**

**Omagh - 10<sup>th</sup> December 1979**

This appeal was against the decision of the Commissioner of Valuation dismissing a first appeal which sought a reduction in valuation of £240 for a hereditament consisting of House, Out-Offices and Yard, at No 14 The Square, Stewartstown, County Tyrone contained in any entry made in the Valuation List in November 1978.

The Notice of Dismissal was dated 3<sup>rd</sup> May 1979, and the Notice of Appeal to the Tribunal dated 20<sup>th</sup> May 1979 gave the grounds of appeal as:-

"The main reason for the first appeal cannot surely have been given consideration at all"

and the reasons given were:-

"As in my first appeal, we (my family) are continually subject to considerable noise annoyance from a licensed premises which adjoins our yard at the back. So serious is the situation that advice is presently being sought from the local Public Health Department."

The ratepayer and his wife gave evidence and Robert McCann ARICS, a member of the District Valuer's staff produced in evidence a devaluation of the net annual value which showed:-

House	199m <sup>2</sup> @ £1.00 per m <sup>2</sup>	£199
	Central Heating	£ 22
	Garage	24m <sup>2</sup>
		<u>£ 20</u>
		£241
	<b>say</b>	<b>£240</b>

and a schedule setting out devaluations for 5 comparable hereditaments sited in the Square at Stewartstown.

The ratepayer produced photographs of the Square showing the subject and the situation of several of the comparables. Also sketches showing the main traffic routes through the Square.

The Tribunal inspected the exteriors of the comparables, and the interior of the subject.

The subject has all main services and full oil central heating, lounge, two reception rooms and living room/kitchen on the ground floor, with four bedrooms, bathroom and lavatory on the upper floor. The premises were built in 1977/78 on a site previously belonging to the ratepayer's family but which became his property. While his new house was being built, a public house adjoining his property on the southern side was being rebuilt and extended so to become a licensed restaurant and bar which opened for business in November 1978.

The configuration of the land has produced the situation that the subject ground floor including the living room/kitchen and yard are more or less on the same level as the lounge bar, and the "best" bedroom of the subject adjoins the lounge bar. The distance between the kitchen, and the lounge bar is not much more than the length of the kitchen itself.

The property is in good condition and well finished throughout. The comparables had house areas varying between 179m<sup>2</sup> @ 0.90p per m<sup>2</sup>, and 241m<sup>2</sup> @ 0.75p per m<sup>2</sup>. Three were renovated terrace houses (of which one was two doors away from the subject), one was an improved terrace house (232m<sup>2</sup> devalued at 0.70p per m<sup>2</sup>) adjoining licensed premises and which was facing the subject across the Square, and one was a newly built house with part central heating (125m<sup>2</sup>) with store (67m<sup>2</sup>) said to adjoin licensed premises, but on inspection no public house activity could be seen from outside.

As the ratepayer produced no expert evidence, it cannot be said that the valuation of £1.00 per m<sup>2</sup> is out of tone with the list which puts older houses which have been renovated or

improved at values between 0.75p and 0.90p per m<sup>2</sup>, and prices the advantage of full central heating at between 10% and 12% of the house valuation.

The ratepayer's case was however based on disabilities affecting the occupation of his house, and to which other premises according to his evidence were not subject.

It was accepted on behalf of the Commissioner of Valuation that musical entertainment was regularly provided in the adjoining licensed premises on 3 nights per week beyond normal licensing hours, and that functions with music often took place on the other weekday nights beyond those hours.

Mrs Park's evidence was that she had kept records of many occasions when there was also drunken brawling in the Street after licensed hours, the "revving" of car engines, slamming of car doors and general disturbance, and that many complaints to the licensee had been made, some of which he had tried to meet. During the licensed hours, and later on when music alone was the attraction, the ratepayer, his wife and two young children found it difficult to sleep, especially in warm weather when the bar lounge doors were opened for ventilation. Often the noise went on into the small hours of the morning and the ratepayer and his wife have never been able to use the "best" bedroom since the reconstructed licensed premises opened for business in November 1978.

The valuation of the subject premises was made in November 1978, so that rate-payer argued that the noise and its effect on an occupier of the subject had never been taken into account and he was of opinion that no one had ever seriously considered his case on its merits. He was critical of the fact that the Commissioner of Valuation had not given any reasons for his decision, and that no one from the Commissioner's Office had communicated to him the reasons for issuing the Notice of Dismissal.

Mr Robert McCann accepted the ratepayer's factual statements regarding the noise and that there were some degree of nuisance from the next door licensed premises, but as a matter of degree he said that all the nearby occupiers suffered to some extent and that he had in effect made an allowance of about 10% for "poorer situation" as without this factor he would have applied £1.10 per m<sup>2</sup> to the subject house area.

The Tribunal suggested to him that as the valuation of £240 was made in November 1978 before the extent of the nuisance had become known, any allowance made then was made without full knowledge of the pattern of disturbance since established but which might had

been foreseen. Mr McCann discounted the traffic noise to which to some extent all occupiers on the south and west sides of the Square are exposed, and made the point that the ratepayer had taken the risk of building his new house next licensed premises which were being developed.

The ratepayer has reported the nuisance to the public health authorities who are carrying out test measurements under the Pollution Control and Local Government (NI) Order 1978 SI 1978/1049 Part III.

## **DECISION**

The Tribunal accepts Mr McCann's evidence that the subject valuation made in November 1978 has not been shown to be out of tone with the list, and that the disabilities from traffic through the Square were to some extent shared by all the occupiers of premises there and were a factor in the tone of the list when the subject valuation was made.

The special disability for an occupier of the subject has however gradually become established since that date by the build up of trade in the reconstructed licensed premises. Because of the close proximity of the living room, kitchen, and bedroom accommodation to the lounge where music is regularly played during weekdays the noise factor and the consequential annoyance must be recognised as a substantial depreciating circumstance in the hypothetical market. In this connection, the loss of use of the "best bedroom" is to be given weight, and it is reasonable to conclude that the hypothetical market would not include families, (especially with young children) whose sleeping habits are easily disturbed by night noises, as potential tenants.

The disturbances from brawlers, and car noises in the small hours must be given some weight, but these are to some extent reflected in the tone of the list and have a more general effect on all occupiers of nearby premises. As a matter of degree such inconsiderate and thoughtless conduct does not present the high degree of nuisance which comes from late night music at close range and which affects the quiet enjoyment of the entire back living quarters of the subject premises.

It is important to bear in mind that the valuation appealed against was entered in the list in November 1978, but the hypothetical market must be credited with sufficient foresight to take account of the annoyance now being caused as a result of the close proximity of the adjoining licensed premises.

It is difficult to make any assessment of the impact of such a factor on rent in the notional market, but a hypothetical tenant would notwithstanding the fact that the subject is newly built, probably have preferred one of the two renovated houses (not next any licensed premises) or even No 31 The Square (an improved terrace house next licensed premises). The advantage of new construction, being more than offset by the interference with quiet enjoyment. On this comparison the Tribunal considers the valuation should be broadly in line with that for such other premises by making the valuation:-

House	199m <sup>2</sup> @ 0.75p (say)	£149
Central Heating (10%)		£ 15
Garage		<u>£ 20</u>
	<b>NAV</b>	<b>£184</b>

The valuation shall be reduced to £184 and the Tribunal so orders.

The respondent shall pay to the appellant £10 costs.

**ORDERS ACCORDINGLY**

**SIR FRANK HARRISON**

**11<sup>th</sup> January 1980**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:-**

**Appellant - In Person.**

**Respondent - Mr Robert McCann ARICS.**