Northern Ireland Unreported Judgments

Traynor v Secretary of State for Northern Ireland

QUEEN'S BENCH DIVISION

HUTTON J

27 FEBRUARY 1980

27 February 1980

HUTTON J

This is an appeal by the applicant against an Order of the leaned County Court Judge for the County Court for the Division of Armagh. By that Order made on 18 September 1979 the County Coutt Judge dismissed an appeal by the applicant under section 8 of the Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971 against an award of £8,500.00 made by the respondent under section 6 of that Act in respect of the almost total destruction of licensed premises in the village of Blackwatertown in the County of Armagh by a bomb explosion. The compensation of £8,500.00 awarded by the respondent had been assessed on the basis of the diminution in market value of the premises, and the County Court Judge held that the diminution in market value was the correct measure of compensation. The applicant appealed to this Court on two grounds. The first ground was that the proper basis for the assessment of the compensation should be the cost of reinstatement of the premises to their former design and size, which was agreed between the parties to amount to £22,696.00 after a deduction for betterment to allow for new premises in place of old ones. The second and alternative ground was that, if diminution in market value was the proper basis for assessing compensation, the sum awarded should be a figure in excess of £8,500.00.

The licensed premises had been in the ownership of the applicant's family since April, 1949 when they were conveyed in fee simple to the applicant's father, the late Mr Christopher Traynor, and the applicant's brother, Mr John Patrick Traynor, as joint tenants. The licensed premises had been long established in Blackwatertown and were the only licensed premises in that village. After they were acquired by Mr Christopher Traynor and his son, Mr John Patrick Traynor, in April 1949 Mr Christopher Traynor himself ran the premises for a time as a public house, but as he was also a farmer and an apple grower he found that he had not sufficient time to devote to the running of the premises; so by a Lease dated 1 March, 1954 Mr Christopher Traynor and Mr John Patrick Traynor leased the premises to Mr Francis MacOscar for the term of five years at the yearly rent of £156.00. The Lease contained a number of covenants by the Lessee, including a repairing covenant and covenants to use the premises only as a public house and not to do anything whereby the publican's licence attaching to the premises might be forfeited or the renewal thereof might be withheld. Mr MacOscar entered into possession under the Lease and ran the premises as a public house.

On 4 April, 1956 Mr John Patrick Traynor conveyed all his interest in the premises to Mr Christopher Traynor and the latter became the sole owner in fee simple. A few weeks later on 12 June, 1957 Mr Christopher Traynor died when the applicant, who had been born on 27 April 1955, was aged two years. By his Will which was proved on 30 August 1960 Mr Christopher Traynor appointed trustees and divided his lands between his children, and he devised his licensed premises in Blackwatertown to his trustees: "to hold same with the accumulations thereon upon trust for my son Peter Philip Traynor until he attains the age of twenty-one years and on his attaining said age then to him absolutely".

When the term of five years demised to Mr MacOscar by the Lease dated 1 March, 1954 expired at the end of February, 1959 Mr MacOscar held over and continued to pay a yearly rent of £156.00 to the trustees of the late Mr Christopher Traynor.

The applicant gave evidence before me. I regarded him as a truthful witness and I accept his evidence. He said that as he grew up he was aware that the licensed premises had been left to him by his father's Will and that he would become entitled to the premises when he reached the age of twenty-one years. When he left school at the age of about sixteen, he commenced to work as a labourer on building sites and eventually became the owner and driver of a mechanical digger which he hired out for building contracts, but it was always his wish and intention to take over and run the public house left to him by his father. He had some knowledge of the licensed trade as an elder brother ran a public house, left to him by his grandfather, a mile and a half outside Blackwatertown on the Moy Road. The applicant knew the licensed premises in Blackwatertown; he would sometimes go into them for a drink; and they appeared to him to be good premises doing a reasonably good trade. When the applicant became twenty in April 1975 he decided that he would like to take over the premises and run them as a public house when he became twenty-one. He therefore instructed his solicitor to take the necessary steps to obtain possession of the premises from Mr MacOscar, and pursuant to these instructions a Notice to Quit and a Notice to Determine under the Business Tenancies Act (Northern Ireland) 1964 were served on Mr MacOscar requiring him to quit the premises on 30 November 1975. The Notice to Determine under the Act of 1964 stated that the landlords would oppose an application to the Lands Tribunal for the grant of a new tenancy on the ground that they required the premises for their own use as a business, which was the ground specified in section 10(1)(g) of the Act of 1964. Each Notice was dated 23 May 1975 and was signed by the two trustees of the Will of Mr Christopher Traynor and by the applicant, and the two Notices were served on Mr MacOscar before the end of the month of May 1975. However, Mr Weir, Counsel for the applicant, accepted that it was doubtful whether the Notice to Quit and the Notice to Determine the tenancy would have been valid and effective under the Business Tenancies Act (Northern Ireland) 1964 to determine Mr MacOscar's tenancy on 30 November 1975 and that, having regard to the gale day, the first date on which the tenancy could have been determined was probably 28 February 1976.

A bomb almost totally destroyed the premises on 22 August 1975, and only the walls of the back part of the premises were left standing.

The applicant stated in evidence that after the explosion his intention was to obtain possession of the site, to rebuild the premises, and to run them as a public house for his own benefit, and that his intention in respect of the premises was basically the same as it had been before the explosion. He therefore instructed his solicitor to make a criminal injury claim and on his instructions his solicitor entered into discussions with the solicitor for Mr MacOscar (who had also made a criminal injury claim) to obtain possession of the site from Mr MacOscar. As a result of these discussions a written agreement dated 21 February 1978 was entered into between the applicant and Mr MacOscar whereby in consideration of the sum of £5,000 to be paid by the applicant to Mr MacOscar, the latter agreed:-

"1. To assign to Peter Traynor all rights and interests which he may have in a criminal injury compensation claim for damage to the premises caused by a bomb explosion on or about the 22 day of August 1975 and to instruct his solicitor, Vivian Mallon, to forward all papers and documents relative to the said claim to Christopher T. McAlpine, solicitor for Peter Traynor.

2. To give all reasonable assistance, information and help to Peter Traynor and his solicitor for the purpose of pursuing the criminal injury claim aforesaid and any other criminal injury claims relating to the premises and to give evidence in Court upon the hearing of said applications if required to do so.

3. To hand over and assign to Peter Traynor the liquor licence in respect of the premises and to take all steps as he may be reasonably required to do in order to effect such an assignment and transfer.

4. To give up all claims to a lease in or a renewal of the lease in the premises and to withdraw and abandon the application presently outstanding before the Lands Tribunal of Northern Ireland in relation to the premises.

5. To forego all further claims to any legal or other interest in the premises and the petrol pumps and tanks or to any compensation which may be payable in respect thereof and to do all acts and provide all help which may be reasonably requested in order to perfect the title of Peter Traynor to the premises and his right to the criminal injury compensation which may be payable in respect thereof.

6. Not to carry on the business of publican or to be concerned in any way in the sale of intoxicating liquor in Blackwatertown or within three miles of the premises nor to have any interest whatsoever in such a business or to assist or take part in any way in the running of such a business within the area aforesaid.

7. Peter Traynor agrees to and hereby authorises his solicitor, Christopher T McAlpine, to pay the sum of £5,000 aforesaid to Francis MacOscar's solicitor, Vivian Mallon, out of the proceeds of the criminal injury compensation which he may obtain in respect of the premises."

After this agreement was made with Mr MacOscar the applicant went ahead with the rebuilding of the premises. On the applicant's instructions Mr D Rafferty of Dungannon first sketched out plans for the rebuilding of the premises to their original design and size. But the applicant then changed his mind and decided to rebuild the premises with a larger public bar and much larger lounge bar - the purpose of the much larger lounge bar being to attract weekend trade and to provide sufficient space for a musical group to entertain the customers. Mr Rafferty drew up the plans for the larger premises and these plans also provided for the demolition of those parts of the premises left standing after the explosion. The cost of rebuilding on a much enlarged scale was, of course, going to be much greater than the cost of replacing the premises on their original scale; and to enable him to finance the cost of the proposed rebuilding the applicant borrowed considerable sums from his Bank. The applicant carried out a considerable part of the rebuilding work himself, and employed sub-contractors to perform those parts of the work which he was not capable of doing himself. The applicant does not yet know the precise cost of rebuilding but he estimates that it was between £65,000 - £70,000. the rebuilding work was completed in the summer of 1979. In September 1979 the applicant surrendered the publican's licence in respect of the old premises and obtained a publican's licence for the new premises. He commenced trading in the new premises on 14 September 1979 and has been trading in the premises since that date. During the three months period from 14 September to 14 December 1979 the receipts of the public bar were £10,083 after the deduction of VAT.

In a claim for compensation, where the issue between the parties is whether the measure of compensation should be diminution in market value or the cost of reinstatement, the three basic principles to be applied were stated as follows by the Lord Chief Justice in O'Hanlon v Armagh County Council [1973] NI 171 at 173:

"The cardinal legal principle is that of restitutio in integrum, which, loosely translated, means that the claimant is to be completely restored, so far as money can do it, to his former situation. The qualifying words, 'so far as money can do it', provide the key to the obvious fact that in practically all cases there is no such thing as perfect compensation and also lead on to the second governing principle, which is that the claimant should be neither impoverished nor enriched but simply compensated by the award of damages. The third legal principle, if such it can be called, is that a just assessment of damages in conformity with the first two principles depends on the infinitely various facts of each case. When one turns to the legal textbooks and the authorities one finds that hundreds of pages of the Law Reports in many jurisdictions have been filled with discussion as to the right way in which to apply the simple principles mentioned above. I cannot help feeling that

such discussion has caused a good deal of confusion by appearing to elevate methods of valuation to the status of rules of law.

It has been suggested in many cases, including the present, (and the suggestion has authority to support it), that it is a rule of law that the measure of compensation when damage is caused to property is prima facie the difference in the market value of the property before and after the damage and, where the property is a total loss, the market value of that property, and it has been further suggested that the only exceptions to that rule of law are to be found in certain defined situations.

I respectfully do not accept either point."

A somewhat similar statement of the basic principles was made by May J in CR Taylor (Wholesale) Ltd v Hepworths Ltd [1977] 2 All ER 784 at 791 h, [1977] 1 WLR 659 -

"The various decided cases on each side of the line to which my attention has been drawn, and to some of which I have referred in this judgment, reflect in my opinion merely the application in them of two basic principles of law to the facts of those various cases. These two basic principles are, first, that whenever damages are to be awarded against a tortfeasor or against a man who has broken a contract, then those damages shall be such as will, so far as money can, put the plaintiff in the same position as he would have been had the tort or breach of contract not occurred. But secondly, the damages to be awarded are to be reasonable, reasonable that is as between the plaintiff on the one hand and the defendant on the other."

And in Greenan Lodge Co Ltd v Secretary of State for Northern Ireland [1979] NI 65, [1979] 4 NIJB at p 18 Murray J stated:

"As regards the reinstatement measure of compensation, my reading of the modern cases is that there is now a greater readiness in the courts to apply it where the facts warrant it because of its effectiveness in producing that true restitutio in integrum which is required by the basic principles of the law."

In support of the argument that the applicant was not entitled to compensation measured by the cost of reinstatement Mr O'Reilly, for the respondent, advanced two main submissions. His first submission was based upon section 10(3) of the Business Tenancies Act (Northern Ireland) 1954 which provides -

"The landlord shall not be entitled to oppose an application on the ground specified in subsection (1)(g) if the estate of the landlord, or an estate which has merged in that estate and but for the merger would be the estate of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in section 1(1)."

Mr O'Reilly submitted that, at the date of the explosion, the applicant, not having attained the age of twenty-one years, had not acquired a vested estate in the premises under his father's Will and therefore, by virtue of section 10(3), would not have been entitled at the date of the explosion to oppose an application for a new tenancy by Mr MacOscar because an estate in the premises had not been vested in him for the requisite period of five years. Mr O'Reilly further submitted that if the applicant would not have been entitled to obtain possession from Mr MacOscar at the date of the explosion, he was not entitled to obtain compensation measured by the cost of reinstatement. In my judgment it is unnecessary for me to construe the Will to decide whether an estate in the premises had vested in the applicant before he attained the age of twenty-one years, because whether or not an estate had vested in the applicant I consider that section 24(2) of the Act of 1964 provides an answer to the respondent's submission based upon section 10(3). Section 24(2) states:

"Where the landlord's estate is held on trust the references in subsection (1)(g) of section 10 to the landlord shall be construed as including references to the beneficiaries under the trust or any of them; but, except in the case of a trust arising under a will or on the intestacy of any person, the reference in subsection (3) of that section to the creation of the estate therein mentioned shall be construed as including the creation of the trust."

In Sevenarts Ltd v Busvine [1969] 1 All ER 392, [1968] 1 WLR 1929 in relation to the similar provisions in the Landlord and Tenant Act 1954, the English Court of Appeal held:

"A landlord of business premises who holds the premises on trust is entitled, by s 30(1)(g) and s 41(2) of the Landlord and Tenant Act 1954, to oppose his tenant's application for a new tenancy if either the landlord himself, or his cestui que trust, intends to occupy the premises for the purpose of a business to be carried on there either by the landlord or by his cestui que trust."

In this case the Notice to Determine and the Notice to Quit were signed by the trustees of the Will as well as by the applicant. The legal fee simple in the premises was vested in the trustees at the date of the service of the Notices and at the date of the explosion and their estate as landlords had been vested in them for more than the requisite period of five years. Therefore section 10(3) did not prohibit the trustees from opposing an application for a new tenancy by Mr MacOscar and by virtue of section 24(2) they were entitled to oppose Mr MacOscar's application under section 10(1)(g) on the ground that the premises were to be occupied by their beneficiary, the applicant, for the purposes of a business. It is clear that in serving the Notice to Determine and the Notice to Quit the trustees were acting at the request of the applicant and in order to give him possession of the premises when he attained the age of twenty-one years. Therefore I consider that the applicant can validly content that, at the date of the explosion, the trustees, acting on his behalf and at his request, would have been entitled to oppose an application for a new tenancy by Mr MacOscar.

The respondent advanced no further submissions relating to the fact that Mr MacOscar was still in possession at the date of the explosion and to the question of the date at which the premises would vest in the applicant, and therefore it is unnecessary for me to consider the points which might have arisen if such submissions had been made.

Mr O'Reilly's second main submission was that the applicant had not reinstated the premises but had, in effect, built different premises which were much larger than the original premises. Mr O'Reilly further developed this submission by arguing that it would not have been commercially viable to reinstate the former premises on their original scale, and this being so, the applicant was not entitled to build different and larger premises and claim from the respondent the amount which it would have cost to reinstate the former premises. In support of the submission that there had been no genuine reinstatement by the applicant Mr O'Reilly made two further points. He relied on the failure of the applicant to enforce the repairing covenant in the lease against Mr MacOscar and he pointed to the delay which had elapsed between the date of the explosion and the commencement of building by the applicant.

In my judgment if an applicant, whose premises have been destroyed, would have been entitled to compensation measured by the cost of restoring the premises to their former design and size (subject to any deduction for betterment to allow for new in place of old), he does not lost his right to that amount of compensation if, in rebuilding, he builds to a more modern design which changes the layout, and increases the size, of the premises and enables them to be used in a more profitable way. In my opinion in such a case the right to recover the cost of reinstatement is not lost because the applicant decides to build larger premises, and the applicant is entitled to receive the cost of reinstating the old premises to their former design and size (subject to any deduction for betterment in the particular circumstances of the case to allow for new in place of old) and himself has to bear the additional cost of providing the extra accommodation. As Lord Denning MR stated in Harbutt's Plasticine Ltd v Wayne Tank & Pump Co Ltd [1970] 1 QB 447 at 468, [1970] 1 All ER 225:

"They replaced it in the only possible way, without adding any extras. I think they should be allowed the cost of replacement. True it is that they got new for old; but I do not think the wrongdoer can diminish the claim on that account. If they had added extra accommodation or made extra improvements, they would have to give credit. But that is not this case."

And at p 476 Cross LJ stated:

"Further I do not think that the defendants are entitled to claim any deduction from the actual cost of rebuilding and re-equipping simply on the ground that the plaintiffs have got new for old. It is not in practice possible to rebuild and re-equip a factory with old and worn materials and plant corresponding to what was there before, and such benefit as the plaintiffs may get by having a new building and new plant in place of an old building and old plant is something in respect of which the defendants are not, as I see it, entitled to any allowance. I can well understand that if the plaintiffs in rebuilding the factory with a different and more convenient lay-out had spent more money than they would have spent had they rebuilt it according to the old plan, the defendants would have been entitled to claim that the excess should be deducted in calculating the damages."

However if an applicant would not have been entitled to recover the cost of reinstating the old premises to their former design and size because, for example, he had not been in occupation of them and was merely retaining them for the development value of the site (which was the position in CR Taylor (Wholesale) Ltd v Hepworths Ltd [1977] 2 All ER 784, [1977] 1 WLR 659), I consider that he does not become entitled to recover the reinstatement cost of the old building because he erects a different and commercially viable building on the site which he does intend to occupy and run as a business. Therefore I consider that the issue in this case is whether the applicant would have been entitled to the reinstatement cost of restoring the premises to their original design and size; and this depends on whether it would have been reasonable, as between the applicant on the one hand and the respondent on the other, for the applicant to restore the premises to their former condition.

In the particular circumstances of this case I consider that the applicant (upon whom the onus of proof rests) has established that it would have been reasonable, as between himself on the one hand and the respondent on the other, to restore the premises to their former condition. In forming this view I have had regard to the following considerations:

(1) Whilst he was growing up the applicant was aware that the licensed premises had been left to him by his father's Will, and when he left school it was always his wish to take over the premises and run them himself. Family associations can be taken into account in deciding whether it would be reasonable for the applicant to reinstate a particular building. Thus in Murphy v Wexford County Council [1921] 2 IR 230 at 235 the Lord Chancellor stated:

"At the same time, I wish to guard myself from saying that there may not be instances, of which I can conceive several, such as buildings with an historical value or family associations, churches, chapels, long established business premises in important thoroughfares or commercial centres - in fact, premises which from special circumstances have a peculiar value to the owner, in which the compensation for their destruction in whole or in part would be less than adequate if it did not equal the cost of restoration."

(2) Prior to the explosion the applicant had evinced his intention of taking over and running the premises by causing a Notice to Quit and a Notice to Determine to be served on Mr MacOscar.

(3) The applicant stated in evidence, and I accept the truth of his evidence, that after the explosion he intended to rebuild the premises to their original scale and that on his instructions Mr D Rafferty sketched out

plans for the rebuilding of the premises to their original scale, but he then changed his mind and decided to rebuild the premises with a larger lounge bar in order to attract the weekend trade.

The applicant agreed in cross-examination that when he decided to try to terminate Mr MacOscar's tenancy in order to take over the premises and run them himself, he did not know what Mr MacOscar's turnover in the premises was and he did not check whether Mr MacOscar was making a living from the premises. Mr O'Reilly relied strongly on this point in advancing his submissions that it was unreasonable for the applicant to claim the cost of reinstatement and that there was no satisfactory evidence that the old premises were commercially viable as a public house, but in my judgment there are three considerations which effectively counter this argument:

(1) The applicant had himself been in the premises from time to time when they were being run by Mr MacOscar and it appeared to him on these visits that Mr MacOscar had a reasonably good trade.

(2) At the time of the explosion the premises were the only licensed premises in Blackwatertown and therefore, apart from the applicant's own observations when he was in the premises for a drink, the premises could depend upon having a steady trade from the local residents.

(3) Since the applicant commenced trading in the premises he has had a turnover of about £800 per week in the public bar which was largely derived from local customers. Therefore it is a reasonable inference that the old premises would have attracted a somewhat similar amount of custom, particularly as during the period when the applicant has been trading he has faced competition from a licensed club of the Ancient Order of Hibernians which had opened in Blackwatertown after the date of the bomb explosion. Therefore the fact that the applicant has been making a living from the trade in the public bar (leaving out of account the additional trade in the enlarged lounge bar) supports the view, which the applicant had formed prior to the explosion, that he could have made a living from running the old premises. Accordingly I consider that the argument that it would have been unreasonable for the applicant to have reinstated the old premises because he had no detailed knowledge of the trade which Mr MacOscar had been doing in them, does not rebut the other considerations which suggest that reinstatement would have been reasonable, and therefore I hold that it would have been reasonable for the applicant to have reinstated the old premises to their former design and size. I accordingly award the applicant the sum of £22,696.00, which is the agreed cost of such reinstatement.

If I am correct in awarding the applicant the cost of reinstatement it is unnecessary for me to make a finding as to the proper sum for diminution in market value, which was the alternative basis upon which the applicant claimed compensation. However, in case my decision that the applicant is entitled to the cost of reinstatement should be reversed by the Court of Appeal on a Case Stated, and because the matter was debated at length before me, I think it right to state my finding as to the amount of the diminution in market value.

In the County Court the applicant did not call a witness to dispute the figure of £8,500.00 for diminution in market value put forward by the respondent and there was no contest before the learned County Court Judge as to the correctness of this figure.

Expert evidence as to the market value of the premises at the date of the explosion was given before me by Mr Jebb, a Chartered Surveyor and Valuer, on behalf of the applicant, and by Mr Chambers, a Senior Valuer in the Valuation Office, on behalf of the respondent. The Valuers faced a difficult task because no figures were available as to Mr MacOscar's turnover and profits. Mr Jebb's approach was to arrive at a rent for the premises by making a profits valuation, and having determined the rent to capitalize it in order to arrive at the market value. Mr Jebb based his profits valuation on the known fact that after he commenced trading in the new premises the applicant's turnover in the public bar was about £800 per week. Mr Jebb estimated that the turnover in the old premises in August 1975 would have been £535 per week - the figure of £800 per week representing an increase of about 50% on £535 per week. Mr Jebb then reduced the weekly turnover of

£535 by about 30% to £380 per week to allow for the difference between old and new premises, which gave him a turnover of about £20,000 per annum. The remainder of Mr Jebb's calculation was as follows:-

Potential Turnover in 1975 say			20,000 per annum
	Gross Profit say 50%		10,000 per annum
Less	Working Expenses		
		£	
		Electricity	100
		Rates	300
		Insurance	50
		Repairs etc	700
		Wages for casual barmen etc	1,500
		Sundries	50
2,700			
		Net Profit	
7,300			
Less	Tenant's Remuneration		
		Wages	3,500
		Int on capital £5294 at 12 1/2%	660
4,160			
		Estimate of rent	
3,140			
		Add rental estimate living accom	
200			
		Rental estimate of damaged building	
3,340			
		£	£
Rent paid at August 1975		156 per annum	
Years' Purchase 6 months at 8%		0.46 72	
Reversion to full Rack Rent		3340	
Years' Purchase in Perpetuity deferred 6 months at 12%		7.9	26,386
	Estimated Market Value		
26,458			
			say 26,500

Less licensed
site say 4,000
Residual Value 22,500

Because of the difficulties which arose from the absence of any information about Mr MacOscar's turnover and profits, Mr Jebb sought to obtain, in the course of the hearing, details of the supplies of spirits and beers sold to Mr MacOscar for the year ending August 1975. Information was given to Mr Jebb by supplier, some of the information being verbal, and Mr Jebb gave this information to the Court. However, the information from one supplier appeared to relate to a person and premises other than Mr MacOscar and his premises, and I considered that the information from the suppliers was not sufficiently vouched to be relied upon.

Mr Chambers based his valuation on the Net Annual Value which the Valuation Office had placed on the old premises for the General Revaluation which was to come into force on 1 April 1976. The Net Annual Value placed on the licensed portion of the premises was £500. Mr Chambers considered, based upon a comparison of the Net Annual Value of other licensed premised in Moy, Caledon and Aughnacloy, that the Net Annual Value of £500 indicated a turnover of about £10,000 per annum in 1975. Mr Chambers regarded one year's purchase of the turnover as giving the market value of the licensed part of the premises. He considered that the market value of the dwelling portion of the premises was £3,500. He, therefore, put a market value of £10,000 plus £3,500 on the premises, and after deducting the site value, which he estimated to be £5,000, this gave a diminution in market value of £8,500.

Mr Chambers criticised Mr Jebb's profits valuation as being too speculative, and he also suggested that the figure of £2,700 which Mr Jebb deducted for working expenses should be increased by £1180 to allow for further expenses such as heating, telephone, postage and stationery, bank charges, audit fees, motor car expenses, cleaning and laundry, TV rental, breakages, hire of equipment from breweries and depreciation in fixtures and fittings. He also suggested that a gross profit of 50% on the turnover was too high.

In cross examination Mr Chambers agreed that a colleague in the Valuation Office had estimated the turnover of Mr MacOscar's premises in October 1974 as being £12,500. Allowing for a 10% increase for inflation from October 1974 to August 1975 this would give a market value for the licensed part of the premises in August 1975 of £13,750 plus £3,500 for the residential part of the premises, giving a total market value of £17,250 and deducting site value of £5,000, a diminution in market value of £12,250.

In the light of the evidence of Mr Jebb and Mr Chambers I arrive at the following valuation.

I adopt Mr Jebb's method of making a profits valuation and I take his figures, with the exception that I add £900 to his working expenses so that I take working expenses of £3,600. This gives a rental estimate of £2,440. £2,440 at 7.9 years' purchase gives £19,276 to which I add Mr Jebb's figure of £72 in respect of six month's rent at £156 per annum, giving £19,348. Thus the market value of the premises in August 1975 was £19,348 from which I deduct £4,500 for the site value, giving a figure of £14,848 for diminution in market value.

A rought cross check on this figure is provided by taking the market value as being one year's purchase of the annual turnover of £20,000 estimated by Mr Jebb, less the site value of £4,500.

In his evidence Mr Jebb stated that the figure of £20,000 which he had taken for the turnover in 1975 was a very conservative figure and in his view was much too low. But the onus of proof in establishing the amount of his loss rests on the applicant and where there were no figures relating to Mr MacOscar's turnover and profits I consider that Mr Jebb was obliged to take a conservative figure for turnover.

Therefore, if the proper measure of compensation in this case were the diminution in market value I would award the applicant £14,848. But as I have held that the proper measure of compensation is the cost of reinstatement I award the applicant £22,696.

Order accordingly