

Appeal No. VA02/2/070

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

**Bundoran Cineplex Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**  
**RESPONDENT**

RE: Cinema at Map Reference: 3A Drumacrin, Bundoran Urban, County Donegal

**B E F O R E**

**Frank Malone - Solicitor**

**Deputy Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Frank O'Donnell - B.Agr.Sc. FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF FEBRUARY, 2003**

By Notice of Appeal dated the 23 April 2002, the appellant against the determination of the Commissioner of Valuation in fixing a rateable valuation of €457.11 on above described relevant property.

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

- (1) The valuation is excessive and inequitable
- (2) The valuation is bad in law

The appeal proceeded by way of an oral hearing that took place in the Distillery Building, Church Street, Dublin on the 13<sup>th</sup> December 2002. The Appellant was represented by Mr Owen Hickey, Barrister instructed by Cathleen Dolan Solicitor. Mr Alan McMillan, ASCS, MRICS, MIAVI, Director GVA, Donal O'Buachalla, John O'Connell and Martin Barrett gave evidence on behalf of the appellant. The respondent was represented by Ms Sean Quinn, Barrister instructed by the Chief State Solicitor and Mr. Christopher Hicks, Valuer in the Valuation Office gave evidence.

In accordance with the Rules of the Tribunal, the parties had prior to the commencement of the hearing exchanged their précis of evidence and submitted the same to this Tribunal. At the oral hearing both valuers having taken the oath, adopted their précis as being their evidence in chief.

### **Property Location**

The property is located at Station Road, Bundoran, Co. Donegal.

### **Description**

The subject property is a detached purpose built modern cinema. There are six screens at ground floor level with a total seating capacity of 950. There is a spacious foyer that consists of the usual retail outlets together with a coffee shop and a children's party area.

### **Valuation History**

The property was revised in November 2001 and appealed in March 2002 with no change being made to the RV.

**Agreed Floor Area Gross Internal**

Ground floor cinemas, foyer, café, etc. 1462m.sq

Staff areas (first floor) 156.sq.m

**Appellant's case:**

Mr Owen Hickey BL called Mr John O'Connell proprietor to outline how this development came about. Mr. O'Connell stated that he was a resident of the area and had a small family Hotel business. He felt that Bundoran needed some indoor Tourism attraction as was stated in the development plan for the area. He owned a small derelict site with poor access but felt that the local Authority would be supportive of his project to build a cinema there and would give him access to his site to develop it.

Because of the competition from other cinemas in the surrounding area he felt that in order to create an impact he had to do more than build a four-screen cinema. He felt that the business in Bundoran was very seasonal with July and August being their peak period as well as Easter and October Bank Holiday weekends. In order to cope with peak times, he made the decision to build a Cineplex in order to impress the Film Companies so as to get top class product so that they could function.

He claimed that at present they were making a loss every night. He also stated that the repayments were arranged on a percentage scale and therefore they would not lose as much money during the winter months. In reply to Mr. Hickey regarding the location of the cinema, Mr O'Connell stated the site of the cinema was formerly a railway station which had been disused since the 1950s, had been a holiday car park in the 1970s and had fallen into disrepair. As the property adjoined his family property, it was in his interest to develop it. In doing this he had to construct two new roads by agreement with the County Council because it is totally off the main thoroughfare and is the only commercial property in the area.

Mr Hickey asked Mr O'Connell to comment on the respondent's three comparisons. With regard to the cinema in Cavan, Mr O'Connell stated that as it was located in the middle of a busy town beside Dunnes Stores and because the building is constructed with several units for letting within the building, it would have an all year round business. In regard to Letterkenny, this cinema is the main tenant in a big new development in the centre of the town. The town also has a third level facility and it was his view that Letterkenny's turnover would be five times that of Bundoran. With regard to the Sligo cinema, he stated that this opened as a seven-screen cinema and such was the demand that it now had twelve screens which indicates the business they are doing. He replied to Mr Hickey regarding an interview which he had given to "The Donegal Democrat" on the 31/01/02, wherein he stated that his six screen Cineplex was going from strength to strength ( a copy of which attached to Mr Hicks précis). Mr. O'Connell claimed he would always give a favourable response to publicity. He stated that he would disagree with Mr Hicks' interpretation of Bundoran being the Mecca of the North West.

Under cross-examination by Counsel for the respondent, Mr O'Connell stated that he would be prepared to make his accounts available for the subject property if requested. With regard to the number of seats, Mr O'Connell said there were 950 seats. However, he felt that because the valuer was using a sq.m. basis of valuation for this property and not seat numbers, seat numbers were not important. He stated that because of the poor location of the cinema, he was unable to compete with other amenities in prime locations in the town. In reply to the Chairman as to the basis for Mr O'Connell's assertion that the numbers attending Letterkenny cinema would be five times that attending Bundoran, Mr O'Connell replied that the population of Letterkenny was five times that of Bundoran and in logic he felt that the cinema going public would reflect this differential. He said that this was his opinion rather than a scientific fact. Mr O'Connell said that the article in "The Donegal Democrat" was publicity for his business and he was going to give the best impression possible.

Mr Alan McMillan, adopted his précis as his evidence and commented on the premises and area as follows:

- He stated that Bundoran is a well-known tourist destination and business is, therefore, highly seasonal.
- The resident population is approximately 1,800 (1996 Census) but may now be as high as 2,500 including environs. This can swell to 7,000 or 8,000 in the busy summer months, June, July and August but throughout the rest of the year the town is quiet. The town enjoys little or no passing business or trade.
- The seasonal nature of Bundoran coupled with small local catchment area means that a Dublin-style programme (from 12 noon onwards) must be operated during the tourist season with consequent high operating costs. Outside the tourist period attendance dictates losses.
- A further manifestation of this seasonal factor and the nature of the local tourist business is a relatively high floor area to cater for the "crèche" factor.
- Mr McMillan, commenting on the sole comparison which was employed by the Commissioner of Valuation at revision, the Gaiety Cinema in Sligo, stated that it was a modern purpose built seven screen cinema (now expanded to 12) located in the heart of Sligo town which has a resident population of approximately 20,000 probably rising to 40,000 within an 8km/10km radius, as well as a sizeable third-level student population (approx. 4,850), plus seasonal tourist trade.

**Sligo(Gaiety)** is valued (1998/4 Revision - €546) as follows:

- Ground Floor: 1503 sq.m. @ €67.50 psm
- First Floor: 28 sq.m. @ €35.60 psm

The nearest rival Cineplex to Sligo is Castlebar (80km) or Longford (90km). In contrast, Bundoran with its restricted hinterland faces competition from Ballyshannon (8km) and Enniskillen (42km). He stated that the phenomenon of Cineplex's has been confined to the densely populated suburban areas, major cities and significant provincial town centre locations, often with designation available. He said that either way there are usually

complimentary facilities either offered or available adjacent. Bundoran is the exception to this model and, he submitted, must be distinguished on that account.

To support his determination, he gave in tabular form an analysis of four cinemas [Sligo @ €7.50psm, Letterkenny @ €3.50psm, Lifford @ €40.20psm and Monaghan @ €46.37psm]. In reply to Mr. Hickey regarding Sligo Cineplex as a comparison, Mr McMillan stated that geographically it was one of the cinemas closest to Bundoran but that it had a vastly superior market because of location and population. With regard to Letterkenny, which he stated was the fastest growing town in the country, this again has a superior location and a much larger customer base. Regarding Lifford, this cinema serves Strabane (population approx. 15,000) which again increases its customer base substantially and it is not seasonal. Monaghan has a smaller ground floor area but a much larger customer base, also benefiting from a cross border trade.

The Tribunal Chairman questioned the fact that no agreement had been reached on an analysis of the rateable valuation for Lifford and Monaghan and this made the work of the Tribunal very difficult. He also questioned the introduction of added correspondence on the day of the Tribunal, which again gives the members little time to study it. Mr Hickey agreed to make all information available in future. Under cross examination by Ms Quinn, Mr. Mc Millan was asked about the relevance of Water World as a comparison as it is a very different type of leisure facility. Mr McMillan stated that if there was activity in the area, some part of the complex would remain open but this was not the case. It closed down completely during the off-peak season. Mr Mc Millan in reply to the Chairman as to how his comparisons were valued, stated that Sligo, Letterkenny and Lifford were valued on an NAV basis while Monaghan was an NAV rental approach. In reply to the Chairman as to the distance between the subject property and the comparisons, Mr. McMillan gave the following reply: Ballyshannon 8km, Sligo 35km, Letterkenny 55km, Enniskillan 42km, Monaghan 112km.

### **The Respondent's Evidence**

Having adopted his précis as his evidence in chief, Mr Hicks described the property as a new freestanding cinema facing a car park at Station road, Bundoran. It is a standard cinema of an industrial type construction. It has six screens which he stated was the same number as Letterkenny and less screens than Sligo. Bundoran has greater seating capacity than Letterkenny. The floor size was, he said, similar to Letterkenny and when compared on that basis, there was a close connection between the two. The differential in valuation was, he stated, much greater than 10%.

With regard to the seasonal nature of Bundoran, he said that Bundoran gets a huge boost in the summer and he said it was one of the nightlife capitals of Donegal with a six-fold increase in population during the summer months. This was instanced by the fact that Bundoran has eight hotels and several caravan parks and guesthouses. Commenting on a Bundoran web site, he stated that according to the web site the population increases to 20,000 during the summer.

Regarding the location of the Cineplex, he stated that it was normal for a cinema not to be on the high street, that it has easy access and fronts the new town centre car park which is free.

He said that in his opinion the only reasonable approach was to value the property on a square metre basis.

Mr Hicks replied to Ms Quinn as to whether he could stand over his claim that there was a differential of 11% and 6% between the valuation of properties in Letterkenny and the valuation placed on similar properties in Bundoran. He stated that he was very familiar with this area, having valued more than forty premises in Bundoran and hundreds in Letterkenny and also the other towns mentioned. He stated that there were also three Tribunal decisions on properties in Bundoran and all those supported his view that there is a difference of about 10% between Bundoran and Letterkenny on similar properties. He stated that having given this case a lot of consideration, he had come to the opinion

that Letterkenny was the best comparison because it was a stand alone cinema on its own site as against a building which shares space or is attached to other properties as the others are. The only difference is that Letterkenny has its own car park and that he had conceded that this car park should be valued separately. He accepted that the value put on car spaces by Mr Mc Millan was reasonable and he would accept and re- analyse his figures on that basis.

With regard to his three comparisons and the comparisons of Mr Mc Millan, he stated that there was a wide range in valuations and because of this divergence, he felt that the best comparison was Letterkenny and he felt that a level of €60 psm was the correct figure for Bundoran. Under cross examination by Mr Hickey he agreed that Bundoran would not benefit from passing trade but that people went there for leisure reasons. Mr Hicks stated that he understood that all the hotels remain open during the winter months which he felt was an indication that business was carried on during the winter. However he was unable to deny Mr O'Connell's claim that three Hotels closed Monday to Friday in winter and that one closed completely until March.

Both parties disagreed on the number of people attending cinemas during the winter months. Mr Hickey questioned Mr Hicks as to what value he placed on the information he obtained on the web. Mr Hicks replied he was making the information available to help the Tribunal and that it had no bearing on his judgement in relation to the subject property.

With regard to the Newspaper ("The Donegal Democrat") article, Mr Hicks stated that the article appeared after he had valued the property and therefore he was not influenced by it. He would agree that in a promotional article everyone would make the best case possible for his or her business. Mr Hickey put it to him that the subject property was located in a poor location in Bundoran and to compare it with the high street locations of Sligo and Letterkenny was unfair. Mr Hicks did not agree with that interpretation.

With regard to Lifford, Mr Hicks said that from his knowledge of the town it was very poor from a business point of view, that a derelict site remained uncleared following a hotel fire some years ago and that he had never found any property to rent in the town.

Regarding Monaghan cinema, Mr Hicks stated it was very hard to come to any conclusion about that. He stated that Mr McMillan seemed very sure about floor area, lay out and design of Monaghan at this stage but that no such information was produced to the Commissioner. He said that it was not appropriate to produce such evidence now when it was not given at the time the valuation was assessed several years ago. In reply to the Chairman, Mr Hicks stated that he would not agree with Mr Mc Millan that 48sq.m of the first floor was void. He felt it was very usable space.

**Determination: -**

The Tribunal, having carefully considered all the evidence, including that in relation to comparisons, both in the written submissions and given orally at the hearing, makes the following findings:

The Tribunal considers that business in Bundoran is highly seasonal, that the town has no adjacent complimentary facilities and that the lack of passing trade leaves the property concerned at a disadvantage when compared to other cinemas. However, the Tribunal is also aware of the huge increase in population during the summer months that brings its own benefits. The Tribunal in assessing the valuation has included all the area on the first floor as usable space as per the respondent's analysis of the rateable valuation.

The Tribunal therefore, having regard to these factors, determines the rateable valuation on the subject property as follows:

**1462 sq.m @ €50 per sq.m = €73,100**

**156 sq.m @ €20 per sq.m = €3,120**

**NAV €76,220 0.5%**

**R.V. = €381.55 Say €380**