

Appeal No. VA04/2/041

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

Finbarr Murphy

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hotel at Lot No. 49B, Carrigrohane, Ballincollig, Cork Lower, County Cork

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Maurice Ahern - Valuer

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF NOVEMBER, 2004

By Notice of Appeal dated the 4th day of May 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €760.00 on the above described relevant property.

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

"The valuation is excessive, inequitable and bad in law when rental levels are taken into consideration. The description as outlined in 2 above should be amended to "hotel". It is envisaged that this property should be valued as a hotel."

At issue

Quantum

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin on the 9th day of September, 2004. At the hearing the appellant was represented by Mr. Owen Hickey BL, instructed by Messrs McNulty, Boylan & Partners, Solicitors, Cork and by Mr. Brian Bagnall, ARICS, ASCS, MIAVI, Principal of Brian Bagnall & Associates and his associate Mr. Tadhg Donnelly, MIAVI. The appellant, Mr Finbarr Murphy also attended. The respondent was represented by Mr. Terry Dineen, B.Agr.Sc., a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the commencement of the Hearing, the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the Appeal.

The Property

The appellant described the property as a Two Star Hotel with ten bedrooms, and the respondent has described same as a large, detached, mixed property comprising a Super Pub and a small (boutique) Two Star Hotel on a site of 4,500 sq. metres.

Tenure

Freehold. The property was purchased in early 2000.

Valuation History

The property was revised on 5th December, 2003, with an RV established at €760.00. The appellant filed an Appeal to the Commissioner of Valuation and on 6th April, 2004, the Commissioner affirmed the earlier decision again applying an RV of €760.00 on the subject property.

Appellant's Case

Mr. Hickey introduced the proprietor of the premises, Mr. Finbarr Murphy, who took the oath and replied to a number of questions put to him by Mr. Hickey. Mr. Murphy confirmed the name of the company registered to run the hotel was Gold Fleet Limited and Mr. Dineen acknowledged acceptance of same to the Tribunal. Mr. Murphy drew attention to the schedule of employees and emphasised the numbers, nature and roles of those employees whose primary functions are to meet the service requirements of his hotel, namely the first eleven names of the list provided at the Hearing, which contained a total of forty-four names. In answer to a number of questions put to him by Mr. Hickey, Mr. Murphy confirmed that the hotel opens for 363 days per year and maintains full service to residents. Mr. Murphy stated that the considerable staff complement would not be required, if he were not attempting to operate and manage a hotel, which he concluded was his primary desire and function as the owner of the premises.

Mr. Hickey, referring to photographs enclosed with Mr. Dineen's précis of evidence, indicated the manner of ingress and egress to the property and Mr. Murphy confirmed that the entrance to the hotel could not be identified or seen from the main Cork to Killarney Route passing by the property and known as the N22. Mr. Hickey continued to ask questions of Mr. Murphy, who in summary indicated that: the staffing ratio between the bars and the hotel would suggest that the description of a Super Pub as applied by the Valuation Office on the subject premises was grossly inaccurate; he affirmed that Ballincollig is a satellite town and not a suburb of the city, the centre of which is approximately 6 miles east of Ballincollig. He noted that the nearest licensed premises to the subject is the Rugby Club, another is located in the middle of the village at Oriel Court and a new multi million euro proposed development for a 100 bedroom hotel in the village has been granted Planning Permission, together with a Super Pub of 8,000 sq. feet and yet another further pub of about 4,000 sq. feet has been planned.

Mr. Murphy also corrected the text of Mr. Bagnall's précis of evidence to confirm that the village of Ballincollig lies approximately 3 miles west of Cork City boundary and not of Cork City centre, as stated.

The main emphasis of Mr. Murphy's Appeal rested on the description of the property as a Two Star hotel and he challenged the Valuation Office's approach that it should be rated as a Super Pub with a small boutique Two Star Hotel attached. The following points were noted by Mr. Murphy at the Hearing under examination by Mr. Hickey:-

- He again described the subject property as a Two Star hotel with ten bedrooms.
- The subject property, he stated, is registered as a hotel pursuant to the Tourist Traffic Acts 1939 - 2003, a copy of such Registration issued by Excellence in Tourism Ltd., dated 9th August, 2004, was produced at Hearing and supported by a copy letter from the same firm, dated 12th February, 2004, detailing the views and requirements of their Quality Advisor, Ms. Patsy Ryan, following her inspection of the subject premises for the purpose of compliance with necessary regulations for registration of Two Star hotels and setting out therein certain works and remedial works to be carried out prior to the next inspection visit.
- In accordance with hotel regulations, Mr. Finbarr Murphy, owner and general manager of the hotel, employs 2 Night Porters.
- Food is served, again to comply with hotel regulations, daily from 8 a.m. to 9 p.m.
- He acknowledged that the subject premises operates a nightclub within the premises.
- The subject is run as a hotel with a corresponding level of service.
- The property had previously been described by the Valuation Office as a hotel.
- The bar is not a lock-up premises as a description of a “Licensed Shop” provided by the Valuation Office would imply and Millers Bar area within doubles as a dining room for morning, lunch and evening meals.
- There is a staffed hotel Reception area in the premises.
- The Valuation Office failed to consider the level of expenditures made by the owner of the premises, and the constantly recurring costs directly associated with the provision of hotel services.
- The subject has external signage erected on the site identifying it to the public as the West Park Hotel.
- The comparisons adopted by the Valuation Office at First Appeal namely, Darby’s, The White House and The Corner House, all in the Ballincollig area, are described as Licensed Shops, are not hotels, do not provide accommodation, are not subject to compliance with hotel regulations and the associated level of services normally required of hotels, and are thus inappropriate comparisons to be introduced by the Valuation Office.
- The average gross wages of all staff at the subject property, as a percentage of turnover, net of VAT but including Tax / PRSI, is 32%, whereas other premises managed by Mr. Murphy in the past recorded figures as low as 11%.

- He indicated the requirement to provide adequate staffing to prepare and serve three meals a day, seven days a week.
- Mr. Murphy sought to affirm the definition of the hotel and confirmed that the subject property, under his management ethos and style, operates as a hotel and noted by reference to a copy Planning Application, Cork County Council Site Notice dated 31st May, 2004, his application for partial demolition of the single storey bedroom block of the premises and the request for Permission to construct a two storey bedroom block to accommodate twenty-eight bedrooms, a ground floor reception area, ancillary accommodation and toilets, a first floor residents lounge, toilets and meeting room, and finally, exterior residents courtyard and associated works, all such works he contended, are to be executed if Planning is granted with a view to upgrading the ranking of his hotel from Two to Three Star.
- He stated that there is a vibrant heart to the village of Ballincollig with a strong community spirit, good retail facilities, banking services, modern Cineplex, and so on, whereas the subject is outside the developed commercial area.
- Mr. Murphy, in reply to ongoing questions from Mr. Hickey, confirmed that wedding functions are held at the West Park Hotel and various community and sport clubs and organisations are, as a matter of goodwill, provided with meeting space free of charge.

Cross-examination

Mr. Dineen cross-examined Mr. Murphy with the primary focus of attention resting on the design and current functionality of the subject relevant property. Mr. Murphy would not concur with Mr. Dineen's contention that the subject operates essentially as a Super Pub, with the provision of accommodation being incidental only to the management and function of the premises. Mr. Murphy stated that their hotel occupancy level was high at a rate of about 78%, which prompted his decision to seek Planning Permission for eighteen additional, en-suite bedrooms. He confirmed the current single room rate, including breakfast, is €49.95. Various exchanges ensued between Mr. Dineen and Mr. Murphy resulting in a general acknowledgement that the 10 hotel rooms were producing annual revenues as reported at the hearing, net of food, as a contribution to the overall annual turnover of the hotel. Mr. Hickey challenged Mr. Dineen's approach insisting that the Valuation Office's Valuation should be determined by comparisons and not on the accounts method. Mr. Dineen replied indicating that he found it difficult to understand how eleven staff were employed to produce the level of

turnover as indicated at the hearing. Mr. Dineen continued to ask Mr. Murphy questions in relation to the operations and management of the hotel and in summary Mr. Murphy replied that many of his costs associated with the hotel side of the business are constant and his unit costs of operation would accordingly be reduced when and if Planning Permission was granted for the additional 18 bedrooms. Mr. Dineen remained focused on the cost element of wages attributed to the hotel side of the operation, Mr. Murphy argued that the regulations associated with hotel operations, the nature of the hospitality business, the hours of trading and the service requirements, as set out by Bord Fáilte, place a considerable payroll burden on his property. The debate continued between the owner and Mr. Dineen with regard to the style of business being conducted, and the type of licenses granted on the premises for the sale of liquor and holding of discos.

Mr. Hickey then introduced Mr. Bagnall, who took his position on the stand, took the oath and adopted his précis of evidence, noting corrections on page 5 and page 2 to reflect references to the Midleton Park Hotel and to confirm that the subject property is about 3 miles from the city boundary.

Mr. Bagnall stated that he has looked at about forty hotels, over thirty years of practice and that hotels are valued for rating purposes, as hotels throughout the country. He questioned whether the Valuation Office comparisons offered in their submission, were of similar function, as he considered them to be lock-up, licensed premises.

Mr. Bagnall, in reviewing Schedule 2 of his submission, addressed the Tribunal with details relative to the three comparisons listed by him, namely, The Midleton Park Hotel in Midleton, The Kingsley Hotel at Victoria Cross, Cork, and The Rochestown Park Hotel in County Cork. However, noting that his second comparison property is located within another Rating Authority and the lack of available information on the assessment of his third comparison property, he focused exclusively on The Midleton Park Hotel as his primary comparison property. He indicated that in accordance with tradition, that Four Star Hotel property located thirteen miles east of Cork City had been valued at a rate equivalent to €8.54 per sq. metre, noting it comprises eighty bedrooms and is more than three times the gross floor area of the subject property. He stated that he applied a reduction factor of 12.5% on the rate per sq. metre calculated on The Midleton Park Hotel to reflect the difference in standard between its Four Star classification and the subject's Two Star, which resulted in the sum of €1.25, which in turn produced an analysed RV of €460.00, all as set out under the heading 'Opinion

of Value' on page 3 of the précis. In reply to various questions from Mr. Hickey, Mr. Bagnall provided his opinion on matters raised in Mr. Dineen's submission. He challenged the page 4 statement that nomenclature is not important; he asserted that rating practise requires comparisons of like with like properties; he affirmed his view that contrary to Mr. Dineen's opinion, the subject is indeed a hotel and that the East Village Bar & Restaurant provides for a bar on the first floor, hotel on the second and bedrooms above, and reflected a building typical of those complying with licensing laws before same were relaxed in recent times. Mr. Bagnall confirmed to Mr. Hickey that the latter premises is considered by the public as a pub and is not widely considered a hotel. He again repeated his view that the Valuation Office comparisons are essentially licensed premises and not hotels and disclosed for the record, that his colleague, Mr. Donnelly, had dealt with this Appeal initially with Mr. Dineen at the Valuation Office.

There followed a lengthy process of cross-examination of Mr. Bagnall by Mr. Dineen, which concerned itself primarily with the description and nature of the premises, the comparisons employed by the parties in support of their arguments; a confirmation by both parties as to the area calculations of the subject; the floor layout and the uses employed for the particular area within the subject property known as Miller's Bar.

Respondent's Case

Mr. Dineen then assumed his position in the stand, took the oath and summarised his précis of evidence.

The substantive points made by him were as follows:

- He described the property as a Super Pub with a small Two Star Hotel on a site of 4,500 sq. metres. He acknowledged that it trades as and is registered as The West Park Hotel and provided the Tribunal with a copy floor plan of the premises with individual areas labelled relative to their particular function.
- The property is adjacent to the N22 in the built up area of Ballincollig, a large suburb of Cork with a population of 18,000, a little more than ½ kilometre from the centre of the village or town and 1.5 kilometres west of the end of the city's Model Farm Road.

- The premises is primarily ground floor with some basement areas dedicated to toilets and first floor for offices and store over the kitchens. In recent times reconstruction of the old hotel functions area resulted in the provision of a new servery and a main bar, Miller's Bar, a disco bar, extended kitchens and stores, whereas the northern side of the structure had not been changed, namely, the dining room, the hotel entrance and the ten standard bedrooms.
- Mains utility services are connected and there exists substantial car parking on site.
- The centre of Ballincollig is currently undergoing major new developments with the old Ballincollig Army Barracks site of 110 acres soon to become the new "town core".
- There are only four pubs within the built up streets and another three, including the subject, to the east and west adjoining the N22 in Ballincollig.
- The owner is seeking to develop a substantial all-day food trade, similar to its main competitor, i.e. The Darby Arms, which was let in May of 2001 on 4 year 11 month licence at the annual rent indicated at the hearing.
- The Disco in the subject currently operates on Saturday and Sunday nights.
- The Two Star Hotel is a useful low-key earner.

Mr. Dineen acknowledged the apparent large staff complement and suggested that a review of the said positions might indicate over-staffing in certain functional areas of the property. Mr. Dineen drew attention to the net floor areas of the ground floor bars and suggested that the relationship of same, taken as a percentage to the remainder of the premises, made it clear to an objective party that The West Park Hotel, though so named, was actually trading and pursuing business as a Super Pub.

Mr. Dineen asserted that his task was to consider the property as: vacant and to let in its existing state and, in introducing comparisons, which he considered to be suitable comparable properties indicated that, in his view, nomenclature is not important. He then referred to the valuation exercise carried out by him and confirmed that he had calculated a proposed RV of €630.00 on the subject property excluding the ten Bedrooms, Reception and Entrance, the latter three areas calculated separately on a gross external area basis and commanded a proposed RV of €130.00 and accordingly reached a total proposed RV of €760.00. He then provided the Tribunal with a summary of the four comparison properties set out in his précis, referring from time to time to the copy photographs and maps enclosed with same, namely,

The East Village Bar & Restaurant, Douglas, The Darby Arms in Ballincollig, The White Horse, Ballincollig and The Corner House, Ballincollig.

Cross-examination by Mr. Hickey

Preceded by a series of questions put by the Tribunal to Mr. Dineen in terms of hotel classifications, the use of the terms licensed shops and licensed hotel, Mr. Hickey cross-examined Mr. Dineen on the latter's role throughout the course of the Revision, Appeal and Tribunal Hearing in this case. Mr. Dineen answered by confirming his role at the various stages and accepted his function as the task given him, by his employer. Debate ensued between both parties on the application and interpretation of Section 49 of the Valuation Act, 2001 and Mr. Hickey referred to **IMI v Commissioner of Valuation, 1990 2 IR 409**.

He took issue with Mr. Dineen's description of Ballincollig as a suburb of Cork and claimed that it should be properly described as a satellite community, acknowledged that the bar areas within the subject may be considered large but reminded the Tribunal that they serve an alternative use as dining areas, as noted previously.

Mr. Bagnall's Summary

Mr. Bagnall challenged Mr. Dineen's assertion that "there is nominally a green belt between the Model Farm Road / Bishopstown western city suburbs and Ballincollig", and argued the converse. Mr. Bagnall acknowledged Mr. Dineen's statement that the footprint of the hotel was marginally extended by recent renovation works, but in his view, nothing turned on same. Mr. Bagnall accepted that the Valuation Office must compare the subject with comparable properties but contended that none of the four comparisons noted within the précis of evidence prepared by Mr. Dineen complied with such a requirement, as stipulated in Section 49 of the Valuation Act, 2001. He reiterated that the subject is a hotel and offers all the normal functions of a hotel. Mr. Bagnall stated that the Valuation Office's comparison properties being No's 2, 3 and 4, i.e. The Darby Arms, The White Horse and The Corner House respectively, were not hotels as they do not offer accommodation or portage and were essentially Lock-Up Licensed premises. He also challenged Mr. Dineen's comparison No. 1, which he viewed as a Licensed Shop, comprising of a second floor hotel with a very limited area of the ground floor dedicated for hotel purposes and services. He drew the attention of the Tribunal to the actual trading name or description submitted by the Valuation

Office, namely East Village Bar & Restaurant and expressed his opinion that that particular property clearly trades and focuses on the provision of food and beverages and its accommodation is considered incidental only to the commercial direction and efforts employed by its operator. He noted that there is no signage promoting the Valuation Office comparison No. 1 as a hotel.

Mr. Dineen and Mr. Hickey then availed of the opportunity to sum up their arguments and referred *inter alia* to the evidence adduced earlier; their conflicting views with regards to the nature and purpose of the subject property; the difficulty wherein the Revision Officer was the Appeal Officer; the interpretation by the Valuation Office that the subject is effectively a pub with ten hotel bedrooms added, and accordingly, the appropriate comparison properties, which should be considered by the Tribunal, to establish a fair rateable valuation.

Findings & Conclusion

The members of the Tribunal have carefully considered the contents of the written submissions and arguments made by both parties to the Appeal, and declare the following as the Tribunal's findings and conclusions:-

- a) Comparison No. 1, being the East Village Bar & Restaurant, as submitted by the Valuation Office, should in this instance be considered only in the context of its hotel or accommodation areas, which by the précis provided by Mr. Dineen, comprised of ground and second floor areas of 23.7 sq. metres and 323.5 sq. metres or a total of 347.2 sq. metres at a computed rate of €61.50 per sq. metre, which produced a net annual value of the said hotel area of that premises, in the sum of €21,352.80.
- b) The Tribunal does not consider the other comparisons No's 2, 3 and 4 submitted by the Valuation Office to be relevant as they are not registered hotel properties whereas the subject relevant property is, and accordingly, the Valuation Office, in the opinion of the Tribunal in this case, with reference to said comparisons, did not substantially comply with Section 49 (1) of the Valuation Act, 2001.
- c) The Tribunal, in the exercise of its function and in accordance with the aforementioned Act, must ignore the comparison introduced by the appellant namely the Kingsley Hotel at Victoria Cross, Cork City, as it is not within the same Rating Authority area.

- d) The Tribunal, in the absence of any challenge or argument to the contrary by the Valuation Office, adopts the approach employed by Mr. Bagnall of applying a reduction factor of 12.5%, to reflect the difference between Four and Two Star classification, applied as it was, on a computed rate of €8.54 per sq. metre, per his comparison No. 1, with a resultant reduction to €1.25 per sq. metre. By applying this rate per sq. metre to the agreed floor area of the subject hotel of 1,800 sq. metres, the result would be a NAV of €2,250.
- e) Relying upon the evidence introduced and the arguments adduced at the Hearing, the Tribunal is of the view that both NAV figures above computed producing a notional combined NAV of €13,602.80 should be considered as a numerator to be divided by the sum of the gross floor areas of the aforementioned two properties, i.e. 2,142.70 sq. metres and the resultant notional rate per sq. metre of €3.02 should then be applied as a multiplier to the floor area of the subject relevant property of 1,800 sq. metres to produce a Net Annual Value figure of €5,436.

Applying the necessary fraction of 0.5%, to said NAV, the resultant RV would calculate to a figure of €477.18.

Say RV €480.

And the Tribunal so determines.