

Appeal No. VA06/1/011

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

Joseph Conneely

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Shop, Restaurant/Cafe, Night Club at Lot No. 7, Market Street, Clifden,
County Galway

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Patrick Riney - FSCS FRICS FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF AUGUST, 2006

By Notice of Appeal dated the 16th day of January, 2006 and received in the Tribunal on the 27th day of February, 2006, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €450.00 on the above described relevant property.

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

"I feel that the valuation of Eur 450.00 put on my property at Market St., Clifden is excessively high. The town of Clifden depends very much on the tourism industry which has declined in recent years. The premises in question comprises of Public Bar, Restaurant, Night Club and Apartments. The bar operates all year round with the restaurant only open during the summer season running from May to September. The night club operates one night per week only."

1. This appeal proceeded by way of oral hearings held on the 23rd May, 1st June and 29th June, 2006 at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing Mr. Marcus Daly, SC, instructed by Messrs. Kennedy Fitzgerald Solicitors appeared on behalf of the appellant. Mr. James Devlin, BL, instructed by the Chief State Solicitors Office, appeared on behalf of the respondent, the Commissioner of Valuation.
2. At the hearing on the 23rd May, 2006 Mr. Daly, on behalf of the appellant, sought an adjournment. Mr. Daly in seeking the adjournment said that he had only been retained within recent days and from a brief examination of the papers in the case he had reluctantly come to the conclusion that he would require some time in order to better prepare his submissions. In particular, he said, the appellant's valuer lacked some basic information in relation to the valuation of properties upon which he had based his opinion of the appropriate rateable valuation of the property concerned. Mr. Daly said that the only matter at issue in this appeal was in relation to Quantum.
3. Mr. Damien Curran, Staff Valuer in the Valuation Office, said on behalf of the respondent, that he had only heard on the previous Friday that the appellant had retained counsel and this, he said, left the Commissioner of Valuation insufficient time to engage counsel in time for the hearing. Nonetheless Mr. Curran said he was prepared to proceed without the assistance of counsel. He also made the point that the appellant had ample prior notice of the hearing in order to prepare for the hearing and that there was no good reason for an adjournment at this late stage. Mr. Curran said that in the event of an adjournment being granted the Commissioner of Valuation would be seeking his costs for the hearing of the 23rd May.
4. Having considered the matter the Tribunal came to the conclusion that in this instance justice would be better served if the adjournment sought was granted. In relation to Mr. Curran's application for costs the Tribunal said it would deal with this matter after it had made its determination in relation to Quantum.
5. At the hearings on 1st June and 29th June, 2006, evidence in relation to the valuation of the property concerned and its accounts and financial statements was given by Mr. Owen F. Kennedy, principal of Joyce Mackie & Loughheed, Auctioneers & Valuers and Mr. Austin

Sammon, FCA, a member of the firm of auditors DHKN, respectively. Mr. Damien Curran, ARICS, ASCS, a Staff Valuer in the Valuation Office, gave valuation evidence on behalf of the Commissioner of Valuation.

The Property Concerned

6. The property concerned comprises part of a large new mixed development occupying a prominent location on Market Street, Clifden, Co. Galway. The development is three storey over pavement level at the front with two additional levels below at the rear which have the benefit of natural lighting and extensive views over Clifden Bay. The two upper floors provide a number of apartments which are accessed from an enclosed yard off Market Street. At pavement level the development comprises a lock up shop (separately valued) and the property concerned in this appeal.
7. The subject of this appeal, which is under the occupation and management of the appellant, comprises a public bar known as “Humpties”, a restaurant and night club. Each of these elements of the property is essentially self-contained from a customer point of view, but for management purposes it is possible to access one sector from another.

Accommodation

8. “Humpties Bar” comprises a public bar and lounge at pavement level with male and female toilet accommodation at lower ground floor level 1. The bar cellar is also at this level with the benefit of access from pavement level for delivery purposes.
9. The restaurant is at pavement level and lower ground floor level 1. The kitchen and food preparation area and stores are also at the lower level, as are the male and female toilet accommodation dedicated to restaurant patrons use only.
10. The night club/function suite area which is at lower ground floor level 2 has a separate entrance and lobby at pavement level. The night club/function suite area has a bar serving area and male and female toilet accommodation.
11. No agreed schedule of areas was provided to the Tribunal prior to the hearing and from the evidence tendered it would appear that areas and measurements were not discussed at any of the earlier stages of the appeal process.

Rating History

12. The property concerned was first valued on 16th June, 2005 and assessed at a rateable valuation of €450.00. No change was made at first appeal stage and it is against this decision of the Commissioner of Valuation that the appeal to the Tribunal lies.

The Oral Hearing

13. Following the adjournment of 23rd May, 2006 the hearing resumed on 1st June, 2006 and was completed on 29th June, 2006.

The Appellant's Evidence

14. Mr. Owen F. Kennedy gave valuation evidence on behalf of the appellant. Prior to the hearing, Mr. Kennedy submitted to the Tribunal a written précis of his evidence setting out in some detail his knowledge of Clifden and the surrounding area. In his evidence, Mr. Kennedy outlined the economic and commercial history of Clifden and the changing pattern of the tourist industry in the town over recent years. Clifden, he said, had a relatively short tourist season when visitor activity was at a high level, but for the rest of the year the town "*could be a very bleak place indeed*". The changes in the tourist industry were not, Mr. Kennedy said, confined to Clifden but affected the Connemara area generally, with the result that a number of tourist dependent businesses in the area had ceased to trade in recent times. This decline in tourist activity in the west was recognised by Bord Fáilte and the Government.

15. The subject property, Mr. Kennedy said, faced strong competition within the town and the surrounding area for what was in effect a declining customer base.

16. In his written précis Mr. Kennedy gave a detailed description of the property but without measurements or areas. He also listed a number of properties which he considered to be comparable to the subject property together with a statement of their rateable valuations. At the hearing Mr. Kennedy said he had re-inspected the property and had perused the architect's drawings of the premises and from these prepared a schedule of areas as set out below.

Ground Floor:

Bar:	90.6 sq. metres
Serving Area:	12.4 sq. metres
Restaurant:	94.56 sq. metres
Restaurant Reception and Serving Area:	9.35 sq. metres
Lobby and Entrance to Function Area :	No Area

Lower Ground Floor Level 1

Restaurant:	97.32 sq. metres
Kitchen, Food Preparation Area and Stores:	No Area

Lower Ground Floor Level 2

Nightclub/Function Area:	155 sq. metres
Bar Service Area:	27.3 sq. metres

17. Mr. Kennedy said that the subject property was the only such premises in Clifden which operated below pavement level, so that strictly speaking there was nothing comparable to it. Mr. Kennedy went on to describe in some detail his comparisons, as set out in Appendix 1 attached to this judgment. Whilst he was familiar with these properties, Mr. Kennedy said he was unable to provide areas or throw any light as to when or how their rateable valuations had been determined.
18. When asked to comment on the comparisons introduced by the Commissioner of Valuation Mr. Kennedy said he knew all of them quite well. The Kings premises (Valuation Office Comparison No. 1) was in his opinion better than the subject, in that it occupied a prime corner location and also had the added advantage of a designated pavement area for customers. This, he said, was particularly beneficial in the light of the “no smoking” regulations. The ground floor of Kings, Mr. Kennedy said, was given over to a large bar area (circa 200 sq. metres) with a restaurant at first floor level and kitchens and stores etc. at second floor level. Having regard to the location of Kings and its layout etc., Mr. Kennedy said he was of the opinion that the rateable valuation of the subject property should be lower than Kings, which was valued at €304.74.

19. Mr. Kennedy said that the Barry licensed premises (Valuation Office Comparison No. 2) was not as good as Kings nor did it occupy as good a location. Comparison No. 4 (Mitchell's Restaurant) was, he said, a well established licensed restaurant trading on ground and first floor levels. In many respects this property was similar to the restaurant element of the subject property in that it traded on two levels. However, in his opinion, customers would prefer to go upstairs rather than down to basement level and hence this should be recognised when valuing the property concerned.
20. As far as the rest of the Valuation Office comparisons were concerned, Mr. Kennedy was of the opinion that they were not particularly relevant, insofar as Comparison No. 5 was now demolished and Comparison No. 6 was a lock up shop.
21. Having regard to his comparisons and taking into account those introduced by the Commissioner of Valuation, Mr. Kennedy said that in his opinion the rateable valuation of the property concerned was in the order of €105.00 as stated in his précis.
22. After the luncheon adjournment Mr. Kennedy sought leave to amend his opinion of rateable valuation and put forward the following valuation calculated on a comparative basis:

Bar	85.21 sq. metres @ €200.00 per sq. metre	€17,420.00
Restaurant Ground Flr	94.56 sq. metres @ €155.00 per sq. metre	€14,184.00
Lower Ground Floor	97.32 sq. metres @ € 60.00 per sq. metre	€5,839.00
Nightclub/Function Area	155sq. metres @ €20.00 per sq. metre	€3,100.00
Beer Store	128 sq. metres @ €20.00 per sq. metre	€2,560.00
Kitchen	85 sq. metres @ €20.00 per sq. metre	<u>€1,700.00</u>
Total NAV		Say €44,800.00
Rateable Valuation @ 0.5%		= €224.00

23. At this point the hearing was adjourned.
24. On the 15th June, 2006 the Tribunal was furnished with audited accounts prepared by Messrs. DHKN Chartered Accountants in respect of the subject property for the years

ending 31st March, 2004 and 31st March, 2005. Non audited details of the turnover for the year ending 31st March, 2006 were also provided.

25. At the resumed hearing on the 29th June, Mr. Kennedy said that he had had an opportunity of examining the accounts and as a result put forward a second valuation prepared on what is known as the “accounts basis” as set out below:

Total Turnover for 30 month period	€1,953,299.00
Annualised Say	€781,300.00
Reduced to 88 levels by 0.53984	
Adjusted Turnover	€421,777.00
Net Annual Value @ 8%	= €33,742.00
Rateable Valuation @ 0.5%,	Say €168.00

26. Under cross-examination Mr. Kennedy said that on balance he considered his valuation prepared on the accounts basis to be the most appropriate, as turnover gave a true picture of the property’s trading position. Mr. Kennedy said he did not consider the Valuation Office approach, whereby each element of the business was separately assessed to be correct. In his opinion the property was a single business unit and hence it should be valued on a global turnover basis. When it came valuing licensed premises Mr. Kennedy said that [for whatever purpose] the most important factor to be borne in mind was the business turnover. Mr. Kennedy agreed that the 2006 trading figures were not audited but nevertheless felt that they should be used for valuation purposes as they showed what was really happening in the business. He further agreed that the 2005 accounts were prepared some months after the relevant valuation date of 16th June, 2005.

27. When questioned about his comparisons Mr. Kennedy agreed that all of the valuations referred to had been carried out before the introduction of the Valuation Act, 1986. However, since these valuations were in the valuation list, Mr. Kennedy said, they were valid comparisons.

28. Mr. Austin Sammon confirmed that he had been involved in the preparation of the accounts of the property concerned as provided to the Tribunal.

29. Mr. Sammon said that there was a central accounting system in place for the sale of liquor in the subject property. Under this system it was not possible to provide a breakdown of liquor sales in the Bar, Restaurant and Nightclub/Function Suite areas, nor indeed was he in a position to express any opinion as to how the total figure might be broken down.
30. When shown a letter dated 18th April, 2005 on Conneely's Bar & Restaurant notepaper sent to the Valuation Office stating that the "*annual on-licence turnover figure year ending 30/09/04 as submitted to the Revenue Commissioners for the above; €673,956.00*", Mr. Sammon said he could make no comment on it, as it had nothing to do with his function as auditor to the company. Mr. Sammon went on to say that up to the March 2005 period, when audited accounts were last prepared, the business was a loss-making venture and in his opinion this underlying situation was likely to continue into the 2006 accounts.
31. Mr. Sammon confirmed that the outgoings in the accounts showed a rent of €104,000 per annum being paid for the property and said that to the best of his knowledge this was not an arms length transaction as it was an arrangement between connected parties.
32. Mr. Joseph Conneely said that he had prepared the letter dated the 18th April, 2005 addressed to the Commissioner of Valuation. Mr. Conneely said that the figure referred to was a rough estimate of the total turnover of the business at that time. It was not the actual turnover but his best estimate and it included all sales of food, drink and other income raised from the business in its entirety.

Respondent's Evidence

33. Prior to the hearing Mr. Curran had forwarded a written précis and valuation to the Tribunal which he formally adopted at the hearing as being his evidence-in-chief.
34. In his evidence Mr. Curran contended for a rateable valuation of €450.00 calculated as set out below:

Bar

Estimated T/O = €800,000pa to Nov'88 = €431,872
 Yield = 8% = €4,549

Restaurant**Gr. Fl.**

Function Room 15.00 sq. metres @ €164.00 per sq. metre
 Restaurant 92.00 sq. metres @ €164.00 per sq. metre

Lr. Gr. Fl.

Restaurant/Kitchen/Recpt 396 sq. metres @ €2.00 per sq. metre

Night Club

Stores 128.18 sq. metres @ €41.00 per sq. metre **€5,275.38**

Rateable Valuation = Total NAV @ 0.5% = €449.12 Say €450.00

35. Mr. Curran said that in arriving at his opinion of net annual value he had come to the conclusion that the appropriate method of valuation to adopt was to value the bar ("Humpties") having regard to its turnover and in line with the assessments of other licensed premises in Clifden. The rest of the property he valued on a comparative tone of the list basis. In support of his valuation Mr. Curran introduced six comparisons, details of which are set out in Appendix 2 attached to this judgment.
36. Mr. Curran said that in arriving at his estimated turnover of €800,000 for the bar he had relied upon the information contained in the letter sent to him on 18th April, 2005 by Mr. Conneely to the effect that the turnover for the year ending 30th September, 2004 was €73,956. Armed with this figure, Mr. Curran said, he considered a turnover of €800,000 to be a reasonable estimate for valuation purposes at the relevant date.
37. When asked about his comparisons Mr. Curran said that in his opinion Kings (Comparison No. 1) was the most relevant. When valued at the 2000/4 first appeal stage this property, he said, had a turnover of just over €12,000. The 7.5% yield applied to the adjusted turnover figure of €75,597 was arrived at having regard to a number of adverse factors including the age of the property, inadequate storage at basement level which was

liable to flooding, the layout of the building with the kitchen and food preparation area at second floor level and the fact that the restaurant was not operated on a full time basis.

38. Mr. Curran said that none of the comparisons introduced by the appellant were relevant in that they were all determined prior to the introduction of the 1986 Act.

39. At the end of his direct evidence Mr. Curran sought leave to amend his valuation in the light of the audited accounts which had been made available to him and the Tribunal within recent days. Mr. Curran's amended valuation is as set out below:

Bar

Drinks sales as per 2005 accounts	€459,246
Estimated sales attributed to Humpties Bar	say €435,583
Add Bar food sales	<u>€84,417</u>
Total Bar Sales	say €520,000
Reduced to '88 levels	say €275,513
Yield @ 8%	= €22,041
Add net annual value of Restaurant and Nightclub area as before	<u>€55,275</u>
Total NAV	say €78,000
Rateable Valuation @ 0.5% =	€390.00

40. Under cross-examination Mr. Curran said that he had no knowledge of the subject property before it was redeveloped. He agreed that there were two levels below pavement level but said that this was a feature of the design in order to take account of the sloping nature of the site at the rear which afforded excellent views of Clifden Bay from the restaurant at ground and lower ground floor levels.

41. When questioned about Kings, Mr. Curran said he had no firsthand knowledge of the property or its turnover, but was solely relying upon information contained in the Valuation Office records prepared at the time of the 2000 revision. The information contained in these records, he said, reflected the state and circumstances of the property at that time and hence were reflected in the valuation so determined. It was possible, Mr. Curran said, that further changes had taken place which could affect the valuation currently in the valuation list.

42. When it was put to Mr. Curran that the entire of the subject property was covered by a single Circuit Court license, indicating that all areas of the property were subject to an ordinary seven day license, Mr. Curran said that this would not have a bearing on his decision to value the bar on a turnover basis and the remainder of the property on a comparative basis.
43. When asked by the Tribunal if he had physically measured the subject property, Mr. Curran said he had carried out a number of spot measurements onsite in order to confirm and satisfy himself that the architect's drawings could be relied upon for valuation purposes. Having so satisfied himself, Mr. Curran said he had calculated the areas from the drawings.
44. Mr. Curran agreed with the Tribunal that the cellar area at lower ground floor level 1 should be included in the valuation of the bar and accordingly he further amended his opinion of rateable valuation to the sum of €378.00.
45. At the request of the Tribunal Mr. Curran was asked to forward to the Tribunal a schedule of areas in respect to the accommodation at lower ground floor level 1 and lower ground floor level 2. This information was provided to the Tribunal in writing on 30th June, 2006.

Findings

At the hearings both parties were represented by counsel and the Tribunal is indebted to them for their assistance and patience in ensuring that all relevant facts that could have a bearing on the valuation process were brought to light and fully discussed. Having carefully considered all the argument and evidence adduced at the hearings the Tribunal finds as follows:

1. An appeal to this Tribunal in accordance with Section 34 of the Valuation Act, 2001 in relation to the revision of valuation carried out under Part 6 of the Act, is the third stage of a lengthy and comprehensive appeal process.
2. Under Section 29(1) the revision officer is obliged to issue to the occupier of a property whose valuation is the subject of a revision under Section 28, a copy of the certificate proposed to be issued in relation to that property. Under Section 29(2) the said occupier may, if dissatisfied make representations in writing to the revision officer in relation to any material particular contained in the proposed valuation

certificate. The revision officer in accordance with Section 29(3) may only issue the valuation certificate after he or she has considered the representations made by the occupier. This is the first occasion under the appeal process where the two parties concerned, i.e. the revision officer and the occupier, have an opportunity to discuss in detail the valuation in question and the valuation principles upon which it has been determined.

3. Under Section 30 of the Act the occupier (and other interested parties) may appeal in writing to the Commissioner of Valuation against the determination of the revision officer. An appeal under this Section shall specify in detail the grounds on which the appellant considers the valuation of the property concerned to be incorrect and furthermore by reference to the values of other comparable properties in the relevant valuation list, state what the appellant considers ought to have been determined as the property's value. This is the second occasion during the revision process where the parties concerned in the appeal process have an opportunity to discuss all relevant matters in relation to the property and the basis upon which the valuation has been determined.
4. Section 34 of the Act affords the occupier (and any other interested party whether or not he or she was the appellant in the appeal to the Commissioner under Section 30) an opportunity to lodge an appeal to the Valuation Tribunal against the decision of the Commissioner. Section 35 requires the appellant to specify the grounds on which he or she considers the determination of the Commissioner to be incorrect and specify also what the appellant considers to be the rateable valuation of the property concerned.
5. Having gone through the above process the Tribunal would expect that by the date of the oral hearing in relation to an appeal to it, **all** relevant facts including calculations and areas in respect of the property concerned, and all relevant comparisons would have been agreed. In such a situation the Tribunal would have to deal solely with the evidence in respect of those issues where it was not possible to reach agreement and proceed to identify and consider the reasons for any differences of opinion that had occurred. After all, the purpose of the evidence tendered by expert witnesses to the Tribunal is to assist it in forming its own independent judgement. Accordingly, the evidence so tendered should provide all the necessary information and the conclusions drawn therefrom in order to enable the Tribunal to evaluate the appropriateness of those conclusions in the light of the facts submitted.

6. For whatever reason it is clear to the Tribunal that there was little or no meaningful interaction between the parties up until the commencement of the oral hearing. This lack of engagement during the appeal process inevitably meant that when the matter came before the Tribunal a considerable amount of time and effort was spent in establishing fundamental facts in relation to the property, which ought to have been agreed beforehand. As a result the hearing was unnecessarily protracted, giving rise to additional costs to both sides. Whilst not wishing to attribute blame to either party it must be said that the onus of pursuing an appeal must first reside with the appellant, particularly in the light of Section 63 of the 2001 Act.
7. At the hearing it was evident that neither valuer had carried out a detailed measurement of the property concerned. Mr. Curran said he had carried out a number of check measurements onsite in order to verify that the copy of the architect's scale drawings which he had been provided with was sufficiently accurate for valuation purposes. Having thus satisfied himself, Mr. Curran calculated the areas of the various elements of the property off the drawings. Mr. Kennedy in his written précis made no mention of the areas at all, but at the hearing on 1st June, 2006 introduced a schedule of areas which he had scaled off the same drawings as used by Mr. Curran. Nonetheless there were a number of discrepancies in the areas put forward by both parties which the Tribunal found some difficulty in reconciling. The areas used by the Tribunal in this judgment are based on those introduced by the valuers and where necessary based on our own examination of the drawings in question.
8. Following his initial inspection of the property concerned Mr. Curran based his valuation of the public house section of the property on a statement of turnover submitted by Mr. Conneely. At the second day of the oral hearing the appellant introduced the financial statements of the property concerned for the years ending 31st March, 2004 and 31st March, 2005 respectively. For the purpose of this appeal it was agreed that the 2005 accounts would form the basis of the valuation. In the accounts, sales of drink for the year were stated to be €459,246. In evidence Mr. Sammon, of the auditors to the business, said that there was no system in place whereby the drink sales could be allocated between the bar, restaurant and nightclub/function suite area. Neither he nor Mr. Conneely expressed a view as to how the drink sales could be apportioned for valuation purposes.
9. At the hearing Mr. Curran agreed that the original turnover figure which he had been provided with did not represent the turnover of the bar. In the light of the 2005

accounts, Mr. Curran amended his valuation of the bar area on the basis of a total drinks sale figure of €459,246, he estimated a figure of €23,000 could be attributed to sales in the restaurant and nightclub areas. In the light of the food takings in the restaurant (€210,930) and the club door takings (€101,861) the Tribunal considers Mr. Curran's figure of €23,000 on drink sales to be inadequate. Making the best judgment that it can in the absence of any estimate from the appellant the Tribunal proposes to apportion 25% of the total drink sales to the restaurant and night club areas.

10. Having regard to the evidence and argument adduced at the hearing, the Tribunal considers the valuation approach put forward by Mr. Curran to be the most appropriate in the circumstances for the property concerned.
11. In regard to the comparisons put forward by the parties, the Tribunal finds those put forward by Mr. Kennedy to be of no assistance whatsoever, in that they are valuations carried out prior to the introduction of the Valuation Act, 1986. The valuation of Kings (Mr. Curran's comparison No. 1) and Mitchell's licensed restaurant (Comparison No. 4) are, in the Tribunal's opinion, relevant in the circumstances of this appeal.
12. Having regard to the layout of the property concerned the Tribunal is of the opinion that the restaurant at basement level 1 should be valued at a higher rate per sq. metre than the nightclub/function suite area at basement level 2.

Determination

Having regard to the above, the Tribunal determines the rateable valuation of the property to be as set out hereunder:

1. Bar

Sale of drink as per audited accounts for year ended 31 st March 2005	€459,246
75% of turnover attributed to "Humpties Bar"	€344,435
Add bar food sales as per accounts	<u>€84,417</u>
Total Bar sales say	€428,000
Adjust to Nov 88 levels x 0.5398	
Adjusted turnover Say	€231,000
NAV @ 8% =	€18,480 (a)

2. Restaurant

Ground Floor	92 sq. metres @ €160.00 per sq. metre	€4,720
Lower Ground Floor		
Level 1	97 sq. metres @ €64.00 per sq. metre	€6,208
Kitchen/stores	85 sq. metres @ €40.00 per sq. metre	<u>€3,400</u>
Total		€24,328 (b)

3. Nightclub/function suite area

Entrance	15 sq. metres @ €160.00 per sq. metre	€2,400
Function Room	185 sq. metres @ €40.00 per sq. metre	€7,400
Stores	80 sq. metres @ €20.00 per sq. metre	<u>€1,600</u>
Total		€11,400 (c)

Total NAV =	€54,208
NAV say €4,000.00	
Rateable valuation @ 0.5% Say	= €270.00

And the Tribunal so determines.