

Appeal No. VA10/5/072

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

Nethercross Ltd. t/a Roganstown Golf & County Club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 359211, Hotel at Naul Road, Swords, County Dublin

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Michael Connellan Jr - Solicitor

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 25th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €38,000 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal which are attached at the Appendix to this judgment

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, located on the first floor of Ormond House, Ormond Quay, Dublin, on the 11th February, 2011. The appellant was represented by Mr Owen Hickey, SC, instructed by John Walsh Solicitors, Ranelagh, Dublin y. Mr. Alan McMillan, MSCS. MRICS, FIAVI, ACI Arb, of GVA Donal O’Buachalla gave expert evidence on behalf of the appellant. Mr. Ian McGuinness, Director of the subject hotel, also attended the hearing. The respondent was represented by Mr David Dodd, BL, instructed by the Chief State Solicitor. Mr. Liam Cahill, B.A., ASCS., MIAVI, Valuer at the Valuation Office gave expert evidence on behalf of the respondent. Mr. Alan Sweeney, Valuer, and Ms Yvonne Kiernan, Valuer, both with the Valuation Office, attended as observers.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum.

The Property

The subject property comprises a 4-star modern free-standing purpose-built hotel, generally on two floors and incorporates the former period dwelling known as Roganstown House. The latter is masonry constructed, rendered under its pitched slate roof and a protected structure. The modern construction to the rear is built of concrete, block walls, solid floors and generally under pitched roofs with manufactured slating. A Leisure Centre forms part of the complex.

Roganstown House was fully retrofitted and refurbished during 2003 / 2004 just prior to the opening of the complex in April 2004, which itself preceded the opening of the Roganstown Golf Course, just one month later.

The hotel comprises 52 en-suite bedrooms, 20 of which are on the ground floor, Restaurant, Resident's Lounge, Conference Centre, Function Rooms, Gymnasium, together with the 18 hole Golf Course. In addition, the property includes the Leisure Centre, various Reception areas, Golf Pro Shop, Changing Rooms, Spa Treatment Rooms and a Swimming Pool. The hotel is situated on circa 4 acres and the Golf Course on circa 155 acres. Public areas are air-conditioned and central heating is provided by a gas-fired / wood chip burner.

Of the 52 bedrooms, 35 are either double/twin, 14 executive and 3 are configured to meet disabled access needs. The main dining area, known as McLoughlin's Restaurant, seats between 75 to 80 persons, O'Callaghan's Bar 72 persons, in addition to the Golf Member's Bar. The meeting and conference facilities may be configured into individual rooms or open plan. The Gym and Leisure Complex including the 17-metre pool, sauna, steam room and Jacuzzi are all available for the pleasure of the hotel guests and members only. The membership is believed to be in the region of 600 persons. The Spa has 6 treatment rooms. Surface car parking is provided for 270 vehicles. The grounds are landscaped and like the property, are well maintained.

Floor Areas

The following areas were agreed at hearing:-

Total Floor Area: c. 6,170 sq. metres (including basement)

Total Site Area: c. 1.62 hectares

Location

The property is located in the townland of Roganstown, about 10 kms east of Ashbourne, 5 kms west of Swords, on a minor country road leading to Naul. It is described as a rural area, and is approximately 5 kms north of Dublin Airport.

Services

All usual required services (except drainage) are available and connected to the subject relevant property. A private sewage treatment plant is provided on site. No public transport serves the area.

Tenure

The subject Hotel and Leisure Centre, comprising approximately 6 acres, was leased by Joseph & Denise McLoughlin to Nethercross Ltd. on 16th March, 2004, for a term of approximately 99 years at a rental figure not disputed by the parties, with the property let on a shell and core basis, to be fitted out by the tenant. That lease provided for a review every fifth anniversary. The Lessors are directors of Nethercross Ltd. The freehold of the property was sold in 2006 with an agreement to purchase it back seven years later.

Valuation History

- July, 2009: The property was inspected under a Revaluation Order for Fingal County Council.
- September 2009: A draft Valuation Certificate issued with a valuation of €338,000.
- October, 2009: Representations were submitted by agent on behalf of appellant.
- December, 2009: A final Valuation Certificate issued with the valuation unchanged.
- February, 2010: An appeal was lodged to the Commissioner of Valuation.
- April, 2010: Agent was requested to supply additional information.
- June/July, 2010: Meetings held with agent.
- July, 2010: The latest Valuation Certificate issued with the valuation unchanged.
- August, 2010: Notice of Appeal lodged with the Valuation Tribunal.

Appellant's Case

Mr. Alan McMillan took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. There was no dispute between the parties on the location, description, facilities, condition, nature or scope of the property, as generally described above. In reply to initial queries from Mr. Hickey, Mr. McMillan indicated that in 2005 the hypothetical tenant, in considering the value of the premises, as prescribed in Section 48 of the Valuation Act, 2001, would have informed himself of concerns with respect

to threats of new rooms oversupply conditions arising in the hotel trade. He referred to a press release issued by Horwath Bastow Charlton in June of 2005, a Fáilte Ireland 2005 review and pre- 2005 Budget submissions, the latter which initially contributed in part to the termination of attractive Capital Allowance or tax relief measures linked to investment in hotel development, though the termination date for same was subsequently extended in the Finance Act of 2006. In reply again to Mr. Hickey, he summarised the conundrum faced by both valuers in this case stating that they were required to approach the task of valuing the property on the valuation date on data available to them only in 2009, noting that the same task was made all the more difficult as the subject hotel did not exist in 2005, while the valuers were required to assume what was ready and available to be valued, as of the relevant valuation date of 30th September 2005.

Mr. McMillan contended that the appropriate methodology in the instant case to establish a fair valuation on the subject property was to follow the R&E (Receipts & Expenditure) Method. He referred to Appendices 5, 6 and 7 of his précis to support his view that the R&E Method of Valuation in the subject case, was the most appropriate and suitable method to determine the rental value of the property. He explained that he was relying upon those documents which include copies of the Valuation Office Revaluation Practice Note, *The Receipts & Expenditure Method of Valuation for Non-Domestic Rating* (aka the RICS Guidance Note) published by the Joint Professional Institutions' Rating Valuation Forum 1997 and a copy of an Irish Hotels Federation (IHF) memo circulated following a meeting of the 11th January, 2007, with the Valuation Office, to address upcoming matters at the time regarding revaluation of their member's properties. Mr. McMillan, in relying upon the R & E method, contended that such an approach was affirmed as the most suitable method at a symposium organised by the SCS and the IAVI held on 23rd September, 2008, and attended by a senior management member of the Valuation Office, and also by a Valuation Tribunal judgment on **VA09/4/023 - Regan Developments Ltd. v Commissioner of Valuation**.

Mr. McMillan outlined the methodology underlying the R&E method and the calculations he employed to produce a Divisible Balance, proposed to be shared between tenant and landlord and used to deduce what he considered to be an appropriate rent on the property. Such rent, he explained, would provide the tenant with a reward for profit, an allowance for risk and a return on his capital employed, all on a "first call" basis. He then cited a number of Valuation Tribunal judgments as examples of a split of the Divisible Balance to be shared equally

between landlord and tenant, including the following:- **VA97/6/007 - Kelly's Strand Hotel v Commissioner of Valuation, VA93/3/048 – Berne Hotel Ltd. t/a Killiney Court Hotel v Commissioner of Valuation, VA94/1/014 – Mary O'Neill t/a O'Dea's Hotel v Commissioner of Valuation**, but also acknowledged that the **VA94/1/105 - Glentworth Hotel** case resulted in a different share arrangement namely 30% to the tenant and 70% to the landlord.

Against a background of over 1,200 new hotel bedrooms built since 2005 and available in 7 hotel properties near Dublin Airport, Mr. McMillan stated that the trade carried on at his client's property, though not considered an Airport Hotel, is directly impacted and severely threatened by such a sudden and large inventory increase and in increased associated facilities such as shuttle bus services provided from those hotels for the benefit of their customers, to and from the Airport. He also noted that though the business conducted at Roganstown Golf & Country Club is both leisure and commercial, much of the Northern Ireland business which was previously considered reliable, has been in decline for some time as a consequence to added competition and unfavourable currency exchange rates. Against a greater backdrop of new hotels in the greater Dublin area since 2005, prompted in large part, in the opinion of the valuer, by capital allowance incentives (which resulted in an increase of more than 31% in peak season room capacity in the period 2005 – 2009), Mr. McMillan portrayed a very competitive and difficult trading environment for his client. He contended that the growth in the industry, both in terms of demand and room rates, reached a peak during 2007 and that the industry is now in great difficulty with a considerable oversupply of rooms and diminishing market demand.

Mr. McMillan took issue with the "scheme" approach to determining the valuation of the subject employed by the Commissioner of Valuation and considered the methodology to be unreliable and not in accord with the aforementioned Guidance Notes. He acknowledged that such "scheme" was supported by the Valuation Tribunal on two hotel property valuations during the Revaluation of South County Dublin, namely the **VA08/5/225 – Q.E Facilities Ltd. t/a Tower Hotel Dublin v Commissioner of Valuation**, and the **VA08/5/224 – Kingsoak Taverns Ltd. t/a Clarion Hotel Dublin Liffey Valley**. He stated that the adoption of such a "scheme" in those cases was linked to a lack of accounts information available during the revaluation of hotels in South County Dublin. On the other hand, he contended that when the revaluation of the 27 hotels in Fingal County commenced, the

hoteliers there were much more forthcoming with financial information, but believed that there was no indication that the Commissioner of Valuation analysed such financial data, relying alternatively, as seen in the respondent's précis, on that "scheme" approach or Shortened Method again to value the subject.

Concluding a summary of his précis and direct evidence submitted to support his estimate of valuation on the subject property, including the Leisure Centre, in the sum of €310,000, Mr. McMillan, on behalf of his client, referred the Tribunal to the text of the penultimate paragraph of the Valuation Tribunal determination of four South County Dublin properties, Ref. No. **VA08/5/160, 106, 162 and 165**, and in particular the following words extracted from same:- *"That said, however, any such scheme must be well founded and sufficiently researched to withstand robust examination if it is to find widespread acceptance by ratepayers and their advisors. Furthermore, the scheme must be fully transparent in its application and contain within it sufficient flexibility to enable it to be used right across the sector."*

Cross-examination by Mr. Dodd

In reply to various questions put to him by Mr. Dodd, Mr. McMillan stated that the NAV set by the Commissioner of Valuation at €338,000 is excessive; that the appellant's submission was based on the R&E method prepared in accordance with the RICS Guidance Note; that Guidance Note 9.1 applies; and that the Tribunal did not accept the appellant's R&E approach or calculations in the aforementioned **Tower Hotel Dublin** and **Clarion Hotel Dublin Liffey Valley** hotel determinations which produced substantially different values to those established by the Valuation Tribunal in both cases, and that :-

- he considered and exercised the appropriate caution in the instant case as prescribed Finding 15 of the Tower Hotel judgment,
- he did not and could not include any accounts or any calculations for the subject hotel in 2004, as they were not available, but did consider and take into account those provided for to y/e 2005, 2006, 2007 and 2008, and accordingly could not fully comply with Guidance Note 5.6.

- he did not analyse projected receipts and expenditure on the subject property and accordingly, had some difficulties complying with Guidance Notes 5.8, 5.9, 5.10 and 5.11, confirming also that he did not have sight of Business Plans for the venture or the accounts of similar properties.
- the Golf Course was not the subject of valuation in accordance with Schedule 4 of the Valuation Act, 2001.
- the turnover figure provided for each of the years 2005 to 2008 (inclusive) included revenue for the Hotel and Golf Course, including Club house, Bar etc., and the accounts similarly reflected expenditures incurred on both the subject and exempted property, adding that for operational reasons, it was very difficult to segregate such accounting line items.

Respondent's Case

Following an adjournment, Mr. Dodd opened his client's case by referring to the information contained in Appendix 13 in the respondent's précis which contained e-mail communications dated 6th & 7th December, 2010, from Mr. McMillan to the Valuation Office, and replied thereto respectively, with respect to requests for additional detailed management accounts for the property, excluding the Golf Course, together with a copy of same. Mr. Hickey then indicated that his client had made an error by including the exempted Golf Course accounts in the précis of evidence submitted by Mr. McMillan, who then acknowledged the error, as the accounts in his précis provide for the Golf Club revenues, including green fees and subscriptions as well as all associated costs and expenditures. Referring to the 50:50 split of the Divisible Balance employed by him in his précis, Mr. McMillan acknowledged that he deduced same from the Guidance Note but in so doing was not specifically considering the elements of risk, profit requirements and capital employed by the tenant in the instant case.

Following a further adjournment, Mr. McMillan submitted an adjusted R & E calculation, removing the Golf Course turnover and expenditure figures, which resulted in a reduction in his calculation of estimated rent from a sum of €10,000 to a new figure of €13,000.

Respondent's Case

Mr. Liam Cahill then took the oath, adopted his précis as his evidence-in-chief, and under examination by Mr Dodd, reviewed his submission and confirmed that the task for the Commissioner of Valuation was to follow Section 48 of the Valuation Act, 2001 by reference to the relevant valuation date in the subject revaluation, of the 30th September, 2005. He added that legislation requires that a further revaluation will occur in the Fingal area sometime between 2010 and 2015. He then referred to page 9 of his précis which contains a summary overview of the hotel industry in Ireland from 2004 – 2010, in the Dublin market, and extract information from the Fáilte Ireland Hotel Review 2009, indicating a growth of about 36% in room capacity during the 5 year period, and a decline in occupancy from a peak of 72% in 2007 to 62% in 2009. Mr. Cahill explained the reduction of *Revpar, considered to be a key performance measure for hotels, between the periods 2006 – 2009 at 38.7% and 2007 – 2009 at 36.2% in the Dublin region. The Revpar and profit per available room data cited by Mr. Cahill was extracted from a Horwath Bastow Charlton survey of the hotel industry in 2010.

(* Revpar = average daily room rate x average room occupancy)

Mr. Cahill stated that the hypothetical tenant in 2005 would have:

- have been interested in the performance of the hotel;
- seen a limited number of new hotels in the Dublin area under development;
- anticipated an ever increasing growth in demand for hotel accommodation and related services, (but acknowledged that the latter did not occur post the demise of Lehman Brothers' bank in the USA in 2008).

Mr Cahill referred to the earlier-mentioned hotel cases in South County Dublin, namely the **Tower Hotel** and the **Clarion Hotel**, and the methodology to determine the valuation of those properties, which in principle was accepted by the Valuation Tribunal in the determinations that followed the appeals on same, namely; the “scheme” or Shortened Method, as provided for in Guidance Note 7 (7.1 – 7.7 inclusive).

Mr. Cahill stated that his calculations had regard to Revpar figures provided to him by Mr. McMillan. Mr. McMillan disputed this matter, as he claimed Mr. Cahill merely took an average of the 2006 and 2007 Revpar figures and ignored the commencement year of trading

Revspar or the downward swing in 2008. Mr. Cahill explained how his calculations by the Shortened Method, set out on page 19 of his précis, and in particular the estimated receipts, took account of the submitted accounts summarised in page 8 of his précis for year ends 2006 and 2007, excluding sales associated with the Golf Club Pro Shop and Bar, and applied the same percentages to the various revenue headings as those applied by the Valuation Tribunal in the past including the South Dublin Revaluation determinations on similar hotel properties. Mr Cahill's "scheme" exercise resulted in an estimate of Net Annual Value in the amount of €638,000.

Under further examination by Mr Dodd, Mr Cahill then referred the Tribunal to Appendix 18 of his précis, which contains an R&E analysis for the subject property, including the Golf Club, and relied upon trading figures furnished for years ended 31.12.2005, 2006, 2007 and 2008. Therein, the Divisible Balance was split by the respondent, 37.5% to the tenant and 62.5% to the Landlord. He also informed the Tribunal that he was not happy to rely upon the R&E method, notwithstanding Appendix 18 to his précis, and was relying only on the Shortened Method or "scheme", as set out on page 19 of his submission.

Cross-examination

Mr. Cahill responded to questions from Mr. Hickey and replied as follows:-

- In the context of the substantial difference in value between the valuers, i.e. €638,000 -vs- €133,000, Mr. Cahill referred the Tribunal to the Commissioner's Comparison Property No. 1, namely the Twelfth Lock Hotel, at Castleknock, where he reported the existence of an arms-length rental of €16,610 per annum. Mr. Hickey put it to Mr Cahill that the Twelfth Lock is a small 10 bedroom hotel with approximately 90% of its gross receipts generated by food and beverage sales, and in his client's opinion, a most unsuitable comparison property for the subject. Mr. Hickey also noted that his client, Mr. McGuinness, had offered to review the Golf Course accounts and meet with the Valuation Office personnel in Q4 of 2010, but the Valuation Office personnel declined the invitation to meet.
- Referring to the methodology to be employed to determine the value of the property, and in particular the R & E method as set out in the Guidance Note, Mr. Hickey asked

Mr. Cahill why it would appear that he ignored item 2.4, to which Mr. Cahill responded that there is not a requirement in this jurisdiction to use any particular method and referred to the **Rosses Point Hotel Company Limited v. The Commissioner of Valuation [1987] IR 143** High Court case. Mr. Cahill's view was that the R&E method could be used if sufficient information was available to do so.

- Mr. Hickey circulated a copy of the **VA08/5/125 – Marks & Spencers (Ireland) Ltd.** Tribunal judgment and recited a sentence from same, as follows:- *“in the circumstances of a Revaluation under Section 19, the valuation of “every relevant property is to be individually assessed in accordance with Section 48 as at the date specified in the valuation order”*. In response to a query as to how he would value a stand-alone hotel in South Dublin on his “scheme” or Shortened Method, the valuer responded by referring to Public Houses in Fingal and indicated that the percentage limits to the various estimates of revenue headings were established by Tribunal determinations.
- Under further cross-examination by Mr. Hickey, Mr. Cahill agreed that it was fair for Mr. McMillan to have regard to the 2006 and 2007 accounts, but contended that he should also have been mindful of the Guidance Notes 5.5 – 5.11 (inclusive). Mr. Hickey queried why Mr. Cahill appeared to be “slavishly following the Guidelines”.
- In response to queries raised on the percentage split of 50:50 on the Divisible Balance adopted by Mr. McMillan in his précis, Mr. Cahill could not say if the Guidelines supported the levels proposed by the Commissioner at 37.5% and 62.5%, but conversely could not say that they were not permitted.
- Mr. Cahill acknowledged that there was no definition in the Guidance Note provided for the term used in 7.3 namely “fair maintainable annual receipts”, but advised the hearing that his interpretation of same was akin to the estimate of revenue, as outlined on page 19 of his précis. Mr. Hickey then reminded Mr. Cahill of his earlier direct evidence wherein he advised the Tribunal that those figures referred to the accounts taken from 2006 and 2007 of the hotel, which he declared were at a period (and in particular during 2006) when “all the stars were aligned for the hotel industry”.

Findings & Conclusion

The Tribunal thanks the parties for the quality of their submissions and arguments in the instant case and in particular the manner in which they answered questions and clarified issues addressed during the course of the hearing.

1. The Tribunal also acknowledges the efforts of both parties on a number of occasions to endeavor to secure an agreement or settlement between them prior to and during the hearing.
2. The Tribunal acknowledges the difficulties both parties encountered in this case to collate and proffer sufficient materials to support their respective positions, given the lack of hotel rental evidence in the Fingal Rating Authority area
3. The Tribunal is of the view in this case, that the appropriate methodology to be adopted is that as set out in the RICS Guidance Note 5 (items 5.1 up to and including 5.58) and the “Stand back and look” approach outlined in the same Guidance Note items 5.59 and 5.60.
4. It would appear that the respondent and appellant may not have sought estimated revenue and cost or trading figures for the subject or such figures for similar properties, or Business Plans, or the accounts of similar ventures or those of similar properties, which might have been of considerable assistance to them in valuing what was a new property at the relevant Valuation Date and which information might have supported the use of hindsight as a means of confirming trends which might have been discernible to the hypothetical tenant, as at 30th September 2005.
5. The Tribunal appreciates the difficulty faced by both parties in endeavoring to establish whether the very substantial decline in the Irish hotel trade in the Dublin area, which occurred in the final quarter of 2007 and which has continued since in a downward spiral, was an event which the hypothetical tenant could have foreseen or was an event which might be foreseeable by him in September 2005.

6. The Tribunal has not been offered cogent reasons to vary the split levels of the Divisible Balance in this case from 50:50.

Determination

All of the foregoing considered, the Tribunal has determined that, having split the Divisible Balance on a 50:50 basis, the valuation on the subject property should be calculated at €60,843.

Valuation, say, €60,000.

And the Tribunal so determines.