

Appeal No. VA97/4/013
& VA97/4/014

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Portmarnock Hotel G.L. Partnership (Natworth Ltd.) - VA97/4/013
Natworth Ltd. - VA97/4/014

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Hotel at Lot Nos. 4B & 4Aa, Townland: Burrow, DED: Malahide, Portmarnock
North, Fingal, Co. Dublin
Quantum - Method of Valuation

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Rita Tynan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MARCH, 1999

By Notices of Appeal dated the 21st day of July 1997 the appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £1800 & £800.00 on the above described hereditaments.

The grounds of appeal as set out in the said Notices 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 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 which hearing commenced on the 17th day of December 1997 and was adjourned pending receipt by the Tribunal of a section of the lease dealing with the rent review which was missing from the documentation and of an option agreement between the parties to the lease and was reconvened on the 30th November 1998. The appellant was represented by Mr. Owen Hickey B.L. with Mr. Desmond Killen FRICS, a Director of Donal O’Buachalla & Company Limited. The respondent was represented by Mr. Eamonn Marray B.L. with Mr. Malachy Oakes, a District Valuer in the Valuation Office.

Having taken the oath each valuer adopted as his evidence in chief his written submission which had previously been exchanged with the other Valuer and submitted to the Tribunal.

Material Facts agreed or found by the Tribunal

The property is located on the coast approximately ten miles north of Dublin City Centre at Portmarnock formerly a seaside resort but more recently a residential suburb of the city and the location of a number of golflinks in addition to that attached to the subject property. The location is also approximately five miles from Dublin Airport.

The property although in practice a single unit is contained in two separate hereditaments relating to different titles. *4B Burrow E.D. Portmarnock North (VA97/4/013)* comprises new buildings accommodating 77 standard bedrooms, 20 executive bedrooms, a bar/lounge and a restaurant and has an agreed floor area of 5,398.5 sq.m² (58,110 sq.ft.). This section is held on lease for a term of 35 years from the 29th March 1996 at a commencing rent of £381,500 per annum with the tenant being liable for all the usual outgoings. The lease contains a first rent review after seven years and nine months and subsequently at five year intervals, the rent to be reviewed to the open-market level. There is an option agreement between the parties to the lease dated the 20th November 1995 giving the relevant parties ‘put or call’ options for the sale or purchase of the property at particular dates prior to the first rent review date in the sum of £4,790,000. This appears to be a scheme to take advantage of capital allowances available on hotel investments.

4Aa Burrow, E.D. Portmarnock North (VA97/4/014) comprises the original period house accommodating foyer and shop, function room, bars, six bedroom suites and a more recently constructed golf shop and changing facility. The agreed floor area is 2,842.5 sq.m. (30,597 sq.ft.) of which approximately 1,406 sq.m. (15,134 sq.ft.) is in need of refurbishment. This portion of the property is freehold.

The valuation date in this appeal is November 1996.

The only accounts available are those from July to December 1996 and as they represent a start-up situation are of no value in the assessment of N.A.V. and R.V. in this case.

The hotel has a four star grading.

The relevant factor for relating N.A.V. to R.V. in this instance is 0.63%.

The Appellant's Case

Mr. Killen stated that the old and new sections blend into an elegant premises overlooking Portmarnock Strand with its own new golf course and that the bedrooms, bars, restaurant and public areas merit the four star grading but that he had reservations in relation to the main function room which at the revision date was unimproved. He stated that competition in the North Dublin areas of Malahide, Portmarnock, Sutton and Howth is keen with the following hotels located in this area;

Forte Post Hotel at Dublin Airport

Forte Travel Lodge at Swords

The Grand Hotel in Malahide

The Marine Hotel at Sutton Cross

Sutton Castle Hotel

The Howth Lodge Hotel

The Saint Laurence Hotel in Howth.

He listed four accepted methods of arriving at N.A.V.:

- (a) rental value
- (b) comparisons
- (c) accounts
- (d) capital value and contractor's test.

In relation to (a) *rental value* he noted the rent commencing in March 1996 of £381,500 per annum and analysed this at £6.56 per sq.ft. overall. He offered the opinion that the respondent's estimate of N.A.V. at November 1988 of £285,714 - that is £4.90 p.s.f., which was an adjustment of 25% from 1996 to 1988 or 3.12% per annum, did not make sufficient reduction for the period and that the growth in the hotel and leisure industry suggest that rental values will have changed between 1988 and 1996 at the rate of 5-6% per annum and that the N.A.V. on his comparisons supported this view.

In assessing his N.A.V. Mr. Killen relied on his method (b) *comparisons* and provided two namely the Grand Hotel in Malahide and the Forte Post Hotel at Dublin Airport, the details of which are set out in the Appendix to this judgment.

In relation to the Grand Hotel, he noted that it had been assessed on a capital value basis with a yield of 8% applied to the capital value giving rise to an N.A.V. of £332,000 approximately. He then went on to apply rates p.s.f. to the various areas of the Grand Hotel to directly arrive at an N.A.V. of £330,000. He stated that it was the premier North County Dublin Hotel and that its conference and business centre is one of the busiest and largest in the country.

His second comparison was the Forte Post Hotel which he analysed from the R.V. and N.A.V. at £4.70 p.s.f. on the main hotel area and £2.35 on the basement with £3.00 for the manager's house and £2.00 on the garage.

Methods (c) & (d)

In view of the relatively short period of trading prior to the revision date, he offered the view that the accounts method would be unreliable and also as a major part of the premises is leasehold, that a capital value and contractor's test basis was not appropriate.

He offered the view that bedroom rates in hotels had increased from 1989 to 1995 by an average of 49.5%. He stated that the consumer price index is an inappropriate method of adjusting rents from one date to another as it does not reflect the property industry and said that in his opinion a growth rate for the relevant period would be 7% per annum for a hotel. He noted that the overall rate p.s.f. analysed from the N.A.V. of the Grand Hotel, Malahide was £2.90 p.s.f. overall and compared with the subject property being let in 1996 at £6.56 p.s.f. represented growth of 85%.

He estimated the N.A.V. in each case as follows;

VA97/4/013 – The modern leasehold section

58,110 sq.ft. @ £3.80 p.s.f.
 N.A.V. = £220,818
 @ 0.63% R.V. = £ 1,390

VA97/4/014 – The original house and older extensions

30,597 sq.ft. @ £3.15 p.s.f.
 N.A.V. = £96,380
 @ 0.63% R.V. = £ 607
 Say £605.

Respondent's Case

Mr. Oakes set out in detail the combined accommodation of the two hereditaments. He drew attention to the Tribunal's decision in the *Ferrycarrig Castle Hotel VA95/1/025* at page 9, where the Tribunal noted that there may be a paucity of market evidence to assist the valuer in arriving at the appropriate N.A.V. of a particular property. He also referred to Mr. Justice Barron's decision in the *Rosses Point Hotel Company -v-Commissioner of Valuation, High Court 1987*.

From these judgments he concluded that the best estimate of N.A.V. is one based on an open market rent freely entered into by a prospective tenant who would have anticipated what his profit would be and that the subject case had a rent of £381,500 per annum on the major area comprised in VA97/4/013. He adjusted the passing rent back to November 1988 by applying the Consumer Price Index which gave rise to a figure of £313,383 and this was further reduced to £286,200 N.A.V. and thus an R.V. applying the fraction of 0.63% of £1,800.

Mr. Oakes then analysed his N.A.V. of £286,200 on the major section at the rate of £4.92 p.s.f. and applied this figure to approximately half the area of the freehold property VA97/4/014 as follows;

Hotel, Golf reception, Bedrooms	15,163 sq.ft. @ £4.92 p.s.f.
Hotel to be refurbished	15,134 sq.ft. at £3.50 p.s.f.
	N.A.V. £129,046
	@ 0.63% £812
	Say £800

In relation to comparisons he offered the opinion that the Portmarnock Hotel and Golf Links is unique in the area and the existing hotels are hardly comparable. The two major hotels in the area would be the Grand Hotel in Malahide and the International Airport Hotel and he set out in detail the accommodation and R.V.'s of each. He noted that each was assessed on the basis of capital value and estimated net profit and not on a rate p.s.f. He quoted further from the Ferrycarrig judgment where it is stated that “*generally speaking the N.A.V. is akin to open market rental value*” and as a result suggested that the passing rent is sufficient to enable the N.A.V. to be applied in an equitable fashion.

In conclusion he commented that in the Grand Hotel, Malahide the bedrooms were in need of refurbishment, the site was confined and the business was changing from weddings and dinner dances to seminars and conferences etc. and that the Airport Hotel was largely a bedroom business and that in his view the subject property is better than each of these.

In cross examination Mr. Oakes stated that in other cases a reduction of 27-30% of the passing rent had been allowed to get to the 1988 level and that in the Ferrycarrig case the Tribunal had used the consumer price index and if this had been applied to the passing rent the N.A.V. and thus R.V. would have been higher and therefore in his view the valuation was not excessive. He stated that the C.P.I. was a valid method of adjusting rents in the absence of other evidence and that it was used in the licenced trade and indeed in the Ferrycarrig case. When asked was the C.P.I. now out of line with the growth of property values, he stated that it was used by the Valuation Office as a tool particularly in the licenced trade and that it gives a uniform valuation. In relation to the original buildings which had been altered and the accommodation reduced, he stated that this was a management decision who must have considered the change in use to be potentially more profitable and therefore it was appropriate to keep the same N.A.V. and R.V.

In relation to Mr. Killen's comparison of the Grand Hotel, Mr. Oakes stated that it was changing its business and that it was a tribute to the management that it is doing the existing level of business, that it is on a very restricted site and that the subject has a golf links and no carparking problems. In response to a question in relation to Mr. Killen's analysis of the rents in the Grand Hotel and the fact that the area of the subject premises needing to be refurbished was valued at £3.50 p.s.f. which was as high as Mr. Killen's analysis of the highest rent in the Grand Hotel, Mr. Oakes stated that the Grand Hotel had been valued on a capital value basis and not on a rent p.s.f. basis. He also stated that much of the Grand Hotel is very old, whereas the subject property is of a high quality, built and refurbished to a high standard.

Determination

The appellant and respondent agreed about every aspect of these premises except the approach to estimating the N.A.V. and thus R.V. The appellant ignores the passing rent on the larger part of the premises and relies on a comparative or rate p.s.f. basis and derives that rate p.s.f. by comparison with rates p.s.f. analysed from the R.V. and N.A.V. of two hotels in the locality, The Grand Hotel in Malahide and the Forte Post Hotel at Dublin Airport. The respondent relies totally on the passing rent.

The Tribunal has frequently stated that passing rent is primary evidence for assessing the N.A.V. of a particular property and has equally, frequently bemoaned the lack of such evidence. It would therefore be difficult for the Tribunal to ignore the passing rent in this case. However two factors must be considered

- (1) Is the passing rent and the lease an arms length transaction that reflects the true open market rental value and
- (2) What factors should be utilised to adjust the passing rent back to the relevant date?

The Tribunal has been provided with copies of the lease and the option agreement and these indicate that this is a scheme to give the landlords the advantage of capital allowances available on hotel investments, there is nothing to indicate that the parties have not entered into the matter freely or that the agreements give undue advantage in rental terms to either the landlord or the tenant and indeed neither the appellant nor respondent has argued that such is the case. It therefore must be accepted that this is an arms length transaction and the rent reflects a market rental value.

There is no definite factor available for adjusting any rent back to 1988 from a particular date. The consumer price index is an inappropriate tool as it does not include any commercial property and the only rents that are included are local authority and private housing. In fact it has often been the case that changes in commercial property rents are totally at variance with changes in the consumer price index.

In licensed trade cases the index that has been used by the Valuation Office and the appellants is the alcoholic drinks index and this has been applied only to turnover and not to rents or capital values and it is not correct to imply that the consumer price index has been used in the adjustment of rents in licensed premises. In the *Ferrycarrig Castle Hotel case - VA95/1/025*, the Tribunal used the C.P.I. to adjust the amount available for rent or rates derived from the adjusted net profit/divisible balance.

The respondent adjusts the passing rent downwards initially in line with the consumer price index and then appears to take a random amount off that figure giving a N.A.V. that is approximately 33% less than the passing rent at the revision date. The appellant stated that bedroom prices had increased by 49.5% over the period and that in his opinion the value of hotel property had grown by approximately 7% per annum over that period and the respondent in cross examination stated that property values generally had risen by 25-30% in the period 1988 to the relevant date.

The Tribunal must be guided by the passing rent and can only regard the rental p.s.f. analysis of the Grand Hotel, Malahide as secondary evidence as the R.V. and N.A.V. were calculated on a capital value rather than rental value basis.

The Tribunal determines the R.V. in each of these cases as follows:

VA97/4/013 – Portmarnock Hotel G.L. Partnership

Passing rent at revision date £381,500 per annum. Various figures were produced and suggested in both direct evidence and cross examination as being of use in adjusting this rent to November 1988. These figures included the C.P.I. index with a further reduction of 9.5%; the fact that the hotel bedroom rate for accommodation had increased by 49.5% over the relevant period and 7% per annum growth in the value of hotels. There is no index of either capital value or rental value of hotels available. In any event indices have only limited value in adjusting rents. The consumer price index is not suitable for adjusting rents as it contains no commercial rents or capital values but only local authority and private residential rents.

The Tribunal consider that an appropriate figure taking into account the above evidence, to reduce the passing rent to 1988 in this particular case is 40%;

Passing rent £381,500 adjusted to account for an increase in values over the relevant period equates to –

£272,500 N.A.V.

@ 0.63% = £1,716

Say £1,700.

VA97/4/014 – Natworth Limited

The estimated N.A.V. in VA97/4/013 derived from the passing rent on the modern leasehold section is equivalent to £4.69 p.s.f. for a purpose built modern hotel.

Refurbished portion of this hereditament –

15,463 sq.ft.

@ £4.00 p.s.f. = £61,852

to allow for age & style

Area to be refurbished -

15,134 sq.ft.

@ £3.00 p.s.f. = £45,402

Total N.A.V. £107,254

@ 0.63% = **R.V.** £675.

The Tribunal therefore determines the R.V. in relation to VA97/4/013 at £1,700 and in relation to VA97/4/014 at £675.