

Appeal No. VA06/3/053

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

**Castlebar Town Council**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Holiday Complex, Hostel, Caravan Park, Gymnasium, Office(s), at Lot No. 3-4.5A, Knockacroghery, Castlebar Urban, Castlebar UD, County Mayo

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Joseph Murray - B.L.**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF JANUARY, 2007**

By Notice of Appeal dated the 10th day of August, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €355.00 on the above described relevant property.

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

" The hostel portion of the property should be excluded from valuation because it is used to provide lodgings, is not registered with Bord Failte under the provisions of the Tourist Traffic Acts and conforms with the description of a "domestic Hereditament" as defined in the Local Government (Financial Provisions) Act, 1978. The valuation is excessive having regard to the nature, type and operation of the property and the various drawbacks with which it is affected. Comparison of the subject property with one such as the licensed Traveller's Friend Hotel incorporating three bars and a theatre in addition to bedrooms and other facilities is unreasonable. The subject is not licensed and is not geared towards generating revenue on a proportionate basis to a hotel."

## **INTRODUCTION**

The appellant was represented by Mr. Patrick Nerney, BE Chtd. Eng., MIEI, MIAVI. Mr. James Devlin, BL appeared on behalf of the respondent instructed by the Chief State Solicitor. Mr. Ian Power, B.Sc (Property Management & Valuations), MIAVI, a District Valuer in the Valuation Office was also present.

At the outset the parties made it clear that the application by the appellant that the hostel portion of the property should be excluded from valuation was now withdrawn. In this regard we were referred to a faxed letter of the 4<sup>th</sup> December, 2006 from Mr. Nerney to the Tribunal wherein he indicated in writing that it was proposed not to contest the legality of the valuation of the hostel during the course of the appeal. The date on the faxed document is the 4<sup>th</sup> December, 2006 and the time appears to be 18.36hrs. We note also that submissions were received by the Tribunal from the Commissioner of Valuation (drafted by Mr. Devlin) on the 4<sup>th</sup> December, 2006, prior to receipt of this fax.

While the 4<sup>th</sup> December was the last day in which legal submissions could have been drafted and filed by either side, it seems clear that the decision to put in issue the legality of the valuation was taken some considerable time before that and it was not unreasonable for the Commissioner to instruct Counsel to prepare submissions in the circumstances. On behalf of the respondent it was indicated that they would be applying for costs in the circumstances. The Tribunal will deal with this at the end of the Determination.

The hearing therefore proceeded as an appeal on quantum only.

The respondent also indicated that they accepted that an element of the property was to provide accommodation for a caretaker and that as a result the previous Valuation Office valuation of €355 could now be reduced to €329.

## **THE EVIDENCE**

On behalf of the appellant Mr. Patrick Nerney gave evidence and, having taken the oath, adopted his précis of evidence. It was clear that the property (which is known as Lough Lannagh Holiday Village) is a large former dwelling which has been converted to a holiday complex. The complex comprises a hostel, a gymnasium, a conference centre, a number of caravan bays and a number of self-catering houses next to Lough Lannagh on the Lannagh

Road near Castlebar. The property was grant aided by Fáilte Ireland and was, Mr. Nerney stated, there not to make huge profits but rather to boost the economy, since there was little in Castlebar to attract people there. The property was developed by Mayo County Council and Castlebar Town Council. The cottages are self-catering but the hostel is self-catering or bed and breakfast. Mr. Nerney made it clear that it had no bar, restaurant or nightclub and that it only provided accommodation. It had a small gymnasium with approximately 200 members and no other social facilities.

Mr. Nerney argued that a rates bill on a valuation of €355 would in effect absorb more than 50% of the net profit of the entity. In his view the Tribunal was entitled to consider profit when considering what the appropriate NAV should be. The property has been in operation for approximately eight years and is not in a start-up mode; profits are going down rather than up. Mr. Nerney acknowledged that there was a hotel reasonably near, known as The Traveller's Friend. However, in his view the fact that this hotel had three bars and a theatre as well as being a property more likely to attract passing trade would not make it a fair comparison. Another hotel known as The Welcome Inn had a nightclub and other facilities.

Mr. Nerney was also of the view that the premises, the subject matter of this appeal were not in a good location and indeed could not be seen from the main road. In his view the premises in Barcastle [the respondent's comparison No. 3] were better.

In his submission it would be foolish to ignore the profits which the property would make when trying to assess the NAV since this should obviously be a matter of considerable significance to any hypothetical tenant.

In support of his opinion of NAV Mr. Nerney introduced 2 comparisons, details of which are set out in Appendix 1 attached to this judgment.

On cross-examination he asserted there was no comparable property in the vicinity. He did not agree that there was no basis for utilising the "*profits*" method of valuation. He did not believe that a rateable valuation of €100 was appropriate even including the hostel. He again asserted that the profits would have to be considered and pointed to the valuation carried out in respect of the premises in **Rosses Point Hotel Co. Ltd v. the Commissioner of Valuation (1987) I.L.R.M. 512**. In his view the property was being properly run but was hampered by

its location; little could be done to develop the property further. In analysing the Valuation Office comparable properties put before the Tribunal he made the following comments:

(i) **Phil and Kevin McMahon:**

In his view this was no longer a hostel. It was twice the size of a standard house and was developed to accommodate refugees. It would be regarded as lodgings. It now accommodates the Traveller's Support Group.

(ii) **St. Vincent de Paul:**

This property did not originally pay rates. He asserted that the local authority looked on this property as being a charitable operation and therefore did not collect rates. It was also a much smaller property than the one under consideration.

(iii) **Barcastle Gymnasium:**

In his view this premises was substantially bigger and had a swimming pool. It was also nearer the roundabout. It had other amenities such as bowling, snooker, hydrotherapy and a health and therapy centre. In his view it had better and bigger space and better potential. The gymnasium of the property under appeal was located at the back of the playground and was less attractive.

(iv) **Curves Gymnasium:**

Mr. Nerney objected to the use of this property again on the basis that it was inappropriate to look at a property that contained only one aspect of the various features in the property under review.

Mr. Nerney also expressed his concern that the caravan park valuations were much too high. The first valuation (Eamonn Hiney) he submitted was not listed anymore, though the Knock Shrine Society (the other comparable property) was. In his view the Hiney valuation was inappropriate even at €190 per stand.

## **THE RESPONDENT'S EVIDENCE**

On behalf of the respondent Mr. Ian Power gave evidence. Having taken the oath, he adopted his précis of evidence. He accepted that there was no identical property but indicated that

instead he tried to ascertain the value of the subject by looking at other properties with similar features. He then referred to his four comparison properties.

Contrary to Mr. Nerney, he contested that (i) (McMahon) was still on the list and was previously valued as a hostel. In addition while he accepted that (iii) (Barcastle) and (iv) (Curves) were gymnasia, in his view he had given a substantial reduction in his valuation. He even reduced the sq. metre area and in his view an RV of €329 was not unreasonable. He believed that the premises were in a reasonable location. He believed that he had made a proper allowance in relation to the gymnasium (in the Barcastle premises it was part of the second floor).

So far as caravan stands were concerned, he accepted that there were very few caravan stands within the area of Mayo County Council. In his view, however, the stands the subject matter of this appeal were better than those provided for mobile homes. They included electricity and modern conveniences and so were deserving of the valuation given.

On cross-examination he asserted that the development was a fairly significant development. In his view the location was a good one. He accepted that there was very little by way of passing trade but he was of the view that the gym attached to the property was better than the others referred to.

The fact that the property was a mile or so from the town centre still meant it was only a 10 minute walk. He accepted that The Traveller's Friend now had top class facilities although it may not have done so when it was valued. He also accepted that the theatre attached to The Traveller's Friend may be a pre-1998 development.

Mr. Power cautioned in cross-examination against valuing a company on profits. The other properties were not in his view so valued. He also felt that it was appropriate to consider the benefit the property provided to the rest of the town. In answer to the Tribunal he accepted that the property had not been set up to make a profit but contended that he bore this in mind in carrying out his valuation and, as a result, valued the property at a lower value than the other developments.

In support of his opinion of NAV Mr. Power introduced 4 comparisons, details of which are set out in Appendix 2 attached to this judgment.

## **THE LAW**

The law is clearly set out in the Valuation Act, 2001. Part 11 (Section 48 to 55 inclusive) of the Act sets out the basis of valuation. Sections 48, 49 and 50 set out the various methods which may be utilised.

While it does seem to us that the “*tone of the list*” method is the appropriate method to be used in the instant case we note that there are no identical premises which can be utilised as comparators for the subject property. We note also that some of the gymnasium comparators have been used in circumstances where they really only assist in helping to ascertain a value of part of the premises.

We note that so far as the hostel and gymnasium are concerned, the location of the subject property is less desirable, being not less than 10 minutes walk out of town. We note also that unlike some of the comparator properties, the subject premises does not include a bar or restaurant. Nor does the gym have some of the facilities which appear to be attached to the other premises.

We note also that while it is suggested that the additions on the caravan park are superior to what might be found in other caravan parks, the site in question does appear to be placed in a more problematic location.

Accordingly we are of the view that a discount should be given in those areas.

We do not accept that we are entitled to reduce rates simply by considering the profit made by the property in question. There is no statutory basis for such a proposition. We accept, however, that the factors we have mentioned above may make the property a less attractive option for a hypothetical tenant.

Accordingly we value the premises as follows:

<b>Hostel:</b>	Area 1,249.82 sq. metres @ €25.62 per sq. metre	€32,020.38
<b>Gymnasium:</b>	Area 569.1 sq. metres @ €34.59 per sq. metre	€19,685.17
<b>Offices:</b>	Area 165.52 sq. metres @ €27.34 per sq. metre	€ 4,525.31
<b>Shower/Stores:</b>	Area 135.57 sq. metres @ €20.51 per sq. metre	€ 2,780.54
<b>Caravan Park:</b>	20 stands @ €130 per stand	<u>€ 2,600.00</u>

**Total NAV: €61,611.40**

**RV @ 0.5% = €308.05**

**Say RV €308**

And the Tribunal so determines.

## **COSTS**

On behalf of the respondent, Mr. Devlin contended that the legal issue between the parties had only been withdrawn by the appellant on the last day for the filing of submissions (and as a matter of fact only after those submissions had been filed by the respondent). In his submission to the Tribunal Mr. Devlin asked that he be awarded his costs. The original argument made by the appellant was that the premises was to be treated as a “*domestic*” hereditament because it had not been registered with Bórd Fáilte. However, it transpired that the premises had been registered with Bórd Fáilte.

In response Mr. Nerney contended that the original appeal had included as part of the appeal a contention that part of the premises was “*domestic*”. He told the Tribunal that he believed the premises was not registered having been so informed. However, when he was told by Mr. Power that the premises had in fact been registered (which was the first time he discovered this) he then withdrew the appeal in relation to the legality of the valuation. It does appear, however, that Mr. Power investigated the original appeal on behalf of the Commissioner of Valuation as well as the appeal before the Tribunal.

It seems to us that the Commissioner of Valuation was entitled to instruct Counsel to prepare legal submissions in relation to the issue of the legality of the valuation, which it did. It is not an answer to say that the legal issue was withdrawn since this was done at a time long after any prudent client (and Solicitor) would have instructed Counsel to prepare submissions.

In our view the Commissioner of Valuation is entitled to costs incurred in relation to the instructing of Counsel for the preparation and filing of submissions. If the parties wish we will measure these costs but we would ask if at all possible that the parties attempt to agree the figure in question. However, if necessary we will give time to the parties to consider this.

And the Tribunal so determines.