

Appeal No. VA08/4/020

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

Michael H Burke

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No.1124229, Castle, Land at Lot No. 7B, Cloughaun, Castleboy, Loughrea, County Galway.

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF APRIL, 2009

By Notice of Appeal dated the 12th day of November, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €196.00 on the above-described relevant property.

The grounds of Appeal are set out in the Notice of Appeal and in a letter attached to the Notice of Appeal, a copy of which is contained in the Appendix to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 25th March, 2009. At the hearing the appellant was represented by Mr. John Kenneally, MIAVI, of Kenneally McAuliffe. The respondent was represented by Mr. Briain Ó Floinn, a District Valuer in the Valuation Office.

Location

The subject property is located on the N66 (the Loughrea to Galway Road) between Loughrea and Gort. The surrounding area is rural, made up of agricultural land, farm houses and one-off dwelling houses.

The Property Concerned

The property concerned comprises a Norman keep dating from circa 1239, which has been extensively refurbished and extended. The property is a six storey building and the accommodation includes a banqueting hall (with seating for 120 people), 7 bedrooms, 3 of which are ensuite and outside viewing areas on the second, fifth and sixth floors. There is also an outdoor cold store and 3 circular stores. The property is set in grounds of approximately 2 acres, with two artificial lakes and a car park with spaces for 50 cars.

The property is the private residence of the appellant, but is also rented out on an exclusive, self-catering basis for private functions such as weddings. The property does not have a licence for the sale of alcohol, nor does the owner hold, nor is he in a position to attain, a fire certificate, thereby precluding the subject property from operating as a commercial entity.

The accommodation is agreed as follows:

Ground Floor	315.90 sq. metres
First Floor	315.90 sq. metres
Second Floor	39.50 sq. metres
Third Floor	39.50 sq. metres
Fourth Floor	39.50 sq. metres
Cold Store	26.5 sq. metres
Circular Stores x 3	70.7 sq. metres
Roof Terrace 2 nd Floor	223.5 sq. metres
Roof Terrace 5 th Floor	17.86 sq. metres
Roof Terrace 6 th Floor	9.36 sq. metres

Tenure

The subject property is held freehold.

Rating History

On 4th February, 2008, the Valuation Office issued a Valuation Certificate, proposing a RV of €196 in respect of the subject property. A final certificate was issued on 12th March, 2008, confirming the RV of €196. The appellant appealed this decision to the Commissioner by Notice of Appeal dated 18th April, 2008. No change was made to the valuation on foot of this appeal.

The Appellant's Evidence

Mr. John Kenneally having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In evidence Mr. Kenneally stated that the appellant bought the property in the 1970s when it consisted of a tower which was the ruin of a Norman keep. It was refurbished and extended over a 30-year period, with the intention of being the appellant's private residence. Mr. Kenneally pointed out that the property is a listed building and therefore it is difficult to obtain planning permission in respect thereof and further the location is too rural in order for the property to operate as a hotel.

Mr. Kenneally stated that due to the nature of the structure, the gross internal area is circa 33% smaller than the gross external area as a result of the thickness of the building's walls. There is no passenger lift within the building, nor are there any facilities such as a leisure centre or a golf course attached to it. Mr. Kenneally went on to state that sometime after the property had been renovated the owner began to receive enquiries as to whether he would make it available for private functions, which he now does. He pointed out however that the property has no licences of any kind, such as publican or hotel licence and nor would it be in a position to operate as such as it would not be possible to obtain a fire certificate.

Mr. Kenneally contended for a RV of €73 calculated as follows:

Indoor Accommodation	750.3 sq. metres	@ €19 per sq. metre	= €4,256.00
Outdoor Roof Viewing Areas	250.72 sq. metres	@ €1.35 per sq. metre	= € 338.47
Outside Stores	97.20 sq. metres	@ €0.75 per sq. metre	= <u>€ 72.90</u>

Total NAV =	€14,467.00
@ 0.5% =	RV €73

In Mr. Kenneally's view a lesser rate per square metre ought to apply to the subject property than any of the hotels used by him as comparisons, as the subject is not comparable to a hotel. Mr. Kenneally contended that the information on the property's website that the property was used for 2 weddings per week was simply a marketing ploy and that the property does not cater for 100 weddings a year, as the appellant lives in the property most of the time.

Mr. Kenneally put forward four comparisons in favour of his opinion of value. The first, Bunratty Castle, is not in the same rating authority area as the subject, but Mr. Kenneally felt that he had to go outside the rating authority area because of the unique nature of the property. Bunratty Castle is a world-renowned property owned by Shannon Development, in a high profile location and is used for banqueting and functions. It sits on 26 acres of land, which is used as the Bunratty Folk Park and the entire surroundings are a draw for tourists. The castle devalues at a rate of €26 per sq. metre. The second comparison, Ballynahinch Castle, is a 4-star hotel with full facilities and 40 bedrooms and devalues at €27.34 per sq. metre, over €20 less than the value placed on the subject by the respondent. Comparison 3, the Claregalway Hotel, is a modern 3-star hotel with a leisure centre and devalues at €38 per sq. metre. The final comparison, the Lady Gregory Hotel, is another modern 3-star hotel, which devalues at €35.87 per sq. metre.

In summary Mr. Kenneally stated that the property is not a hotel and the appellant holds neither a hotel licence, nor a 7 day licence, nor any type of classification or grading. The entire property is let for private functions and there are no staff attached to the property. There are only 7 bedrooms in the property and in order to operate as a hotel, it is necessary to have 10 bedrooms. The appellant attempted to obtain planning permission for an extension to the property but this was refused. Mr. Kenneally was unable to answer a question posed by the Tribunal as to the turnover on the property, as he stated that hotels are not valued on a turnover basis, so he did not seek that information. In conclusion Mr. Kenneally contended that the subject should not be valued at hotel levels as it is not a hotel nor is it a full time commercial operation and it is not located in a tourist location.

Cross Examination

Under cross examination Mr. Kenneally admitted that the original castle was a ruin and that most of the building as it now stands is a new construction. Mr. Kenneally stated that although the owner asks for the prices advertised on the website he is not always paid these rates. In response to a question as to the number of lettings annually, Mr. Kenneally replied that the owner was not in a position to tell him off the top of his head, as the revenue from the subject property is included with his personal taxation and it is not his main business. Mr. Kenneally admitted that he did not clarify this matter with the owner's accountant, as he valued the property on a square metre basis only.

Mr. Kenneally further stated under cross examination that it is his understanding that the planning permission for the subject property is residential, but that he did not check this out. Mr. Kenneally denied that the subject is comparable to a hotel, or indeed to Bunratty Castle which is a serious business operation including a folk park. Mr. Kenneally accepted that one cannot stay in Bunratty Castle, whereas one can in the subject property, which is let on a self-contained basis. He denied that Bunratty was not a relevant comparison as it is a castle like the subject, which has banqueting facilities. He agreed that Bunratty Castle is not valued as a standalone property, but as part of the folk park, but pointed out that the castle has an area of 1,566 sq. metres and devalues at €26 per sq. metre which equates to a RV of €203.

The Respondent's Evidence

Mr. Briain Ó Floinn, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. Mr. Ó Floinn stated that the property is an old Norman tower house which has been tastefully renovated and extended and is now rented out on an exclusive self catering basis as a banqueting venue for weddings and other events. It is set in attractive gardens with 2 artificial lakes. He further stated that the property has a good, comprehensive website, which sets out the reservation rates.

Mr. Ó Floinn contended for a RV of €196, calculated as follows:

Castle & Tower (Ground & First Floors)	631.8 sq. metres @ €47.83 per sq. metre	= €30,219
Tower (2 nd Floor)	39.5 sq. metres @ €47.83 per sq. metre	= € 1,889
Tower (3 rd & 4 th Floors)	79 sq. metres @ €41 per sq. metre	= € 3,239

Cold Store	26.5 sq. metres @ €27.33 per sq. metre = € 724
Circular Stores x 3	70.7 sq. metres @ €20.5 per sq. metre = € 1,449
Roof Terrace (2 nd Floor)	223.5 sq. metres @ €6.83 per sq. metre = € 1,527
Roof Terrace (5 th & 6 th Floors)	27.2 sq. metres @ €4.10 per sq. metre = € 112
Total NAV	€39,159
@ 0.5%	RV €196

Mr. Ó Floinn put forward two comparisons in support of his opinion of the RV, the Raheen Woods Hotel and the Oyster Manor Hotel. The former is valued at a rate of €48.42 per sq. metre and the latter is valued at a rate of €34.10 per sq. metre in respect of the old part and €40.99 per sq. metre in respect of the new part. Mr. Ó Floinn admitted that these comparisons are not directly comparable to the subject property but are indicative of values. He stated that the subject is a very unique property and he had difficulty finding any comparable properties anywhere in the country.

Cross Examination

Mr. Kenneally put it to Mr. Ó Floinn under cross examination that he did not exercise the option of going outside the rating authority area to find comparisons. In reply Mr. Ó Floinn stated that he did look outside the area but found no relevant comparisons valued or listed commercially. It was further put to Mr. Ó Floinn that the respondent had valued the subject, which is not a hotel, at the same rate per square metre as the Raheen Woods, a modern hotel, built with the intention of being a hotel and further that the respondent's second comparison, the Oyster Manor Hotel had closed down. Mr. Ó Floinn replied that the fact that the hotel had closed did not negate it as a comparison, as it was in the Valuation List.

Mr. Ó Floinn admitted that he arrived at the rate of €47.83 per sq. metre applied to the subject by looking at the value placed on the Raheen Woods Hotel, but he also looked at the income generated by the subject as set out on the website, which came out much higher than that value, thus he adopted the lower valuation in line with his comparisons. He stated that according to the website the property is rented out for 100 events per year and that he had no evidence to the contrary in relation to rentals. However, Mr. Ó Floinn admitted that he did not ask the owner of the property for accounts and formed his own opinion as to turnover based on the information on the website.

In response to a question by Mr. Kenneally as to whether he would consider Ballynahinch Castle, which devalues at a rate far less than the subject, as a relevant comparison, Mr. Ó Floinn stated that that property is in a state of dilapidation according to the agent. It was also put to Mr. Ó Floinn in cross examination that he had valued the store rooms in the subject at a rate of €27.33 per sq. metre which is higher than the castle part of Bunratty Castle and approximately the same as the hotel part of Ballynahinch Castle. When asked to explain the fact that the RV of Bunratty Castle is €203, whereas the subject, a much inferior property, is valued at €196, Mr. Ó Floinn stated that Bunratty Castle is not comparable to the subject and in any event Bunratty Castle cannot be rented out like the subject as a standalone property, nor does it contain bedrooms or bathrooms.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced at the oral hearing including that in relation to the comparisons and makes the following findings:

1. The statutory basis of valuation is set down in Section 48 of the Valuation Act 2001, wherein at Section 48(3), the net annual value of a property is defined as being, *“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”*.
2. The onus of showing that the valuation of the property concerned appearing in the valuation list is incorrect is on the appellant.
3. In arriving at its decision, the Tribunal is relying on the comparisons put forward by both parties. However, the subject property is a unique property and there do not appear to be any direct comparisons. The hotel comparisons, from the same rating area as the subject property, put forward by both parties are not comparable to the subject property, which is not a hotel, and they are therefore not helpful. In the Tribunal’s view the appellant’s first comparison, Bunratty Castle, located outside the rating authority area, is the most relevant comparison, as it is also a castle and is used for banqueting/functions. In the circumstances the Tribunal finds that the appellant was entitled to go outside the rating authority area under section 49(2)(b) of the Act.

4. The Tribunal finds however that the subject property is inferior to Bunratty Castle and therefore that lower rates per square metre should apply. It was not contested that the subject property is situated in a rural location, holds no alcohol licences, does not have a fire certificate and is not in a position to operate commercially as a hotel. In contrast, Mr. Kenneally's evidence that Bunratty Castle is located in a high profile location and is part of a large business operation including a folk park which is a draw for tourists is accepted.
5. In the absence of specific evidence regarding the turnover of the subject property, the Tribunal does not place any weight on the rental rates for the property advertised on its website.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be €87 calculated as follows:

Indoor Accommodation	750.3 sq. metres	@ €22 per sq. metre	= €16,506.60
Outside Stores	97.2 sq. metres	@ €1.50 per sq. metre	= € 145.80
Roof Terrace (2 nd Floor)	223.5 sq. metres	@ €3.50 per sq. metre	= € 782.25
Roof Terrace (5 th & 6 th Floors)	27.2 sq. metres	@ €3 per sq. metre	= <u>€ 81.60</u>
Total NAV			€17,516.25
RV @ 0.5% =	€87.58		
Say RV	€87		

And the Tribunal so determines.