Appeal No. VA08/5/224

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Kingsoak Taverns Ltd. T/A Clarion Hotel Dublin Liffey Valley **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2180798, Hotel at Liffey Valley, Clondalkin, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Brian Larkin - Barrister	**Member**
Frank O'Donnell - B. Agr. Sc. FIAVI.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF MARCH, 2009

By Notice of Appeal dated the 2nd day of September, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €3,000,000 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"The Valuation is excessive. The correct NAV has not been assessed. No regard has been made to Receipts & Expenditure or profitability of subject. Yeats Country Ryan Hotel (1986 No. 603 SS)"

This appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 5th and 9th days of February, 2009. At the hearing the appellant was represented by Mr. Alan McMillan, ASCS, MRICS, FIAVI, ACI.Arb, a Director of GVA Donal O Buachalla. Mr. Liam Cahill BA, ASCS, MRICS, MIAVI, a Team Leader in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Andrew O'Neill, the General Manager of the property concerned, gave evidence of fact in relation to the operation and management of the hotel.

The Property Concerned

The property concerned is a new hotel premises located just off the N4 close to its intersection with the M50 about 10 kilometres west of Dublin City Centre. The hotel trades under the 'Clarion' brand and is approached from the N4 via the main access road to the Liffey Valley Shopping Centre.

Accommodation

The hotel which has a 4-star grading is a part two storey, three storey, four storey and five storey building over basement level and contains the following accommodation:

- 257 standard bedrooms
- 8 suites (bedroom and sitting room)
- 27 executive suites (large bedroom and sitting room)
- The 'Sinergie' restaurant with circa 150 covers
- 'Kudos' bar/restaurant
- 11 function rooms of various sizes including the 'Dorada' (6 persons) 'Mira 1 & 2' (40 theatre style), 'Pegasus 1 & 2' (290 persons).
- 'Sanovitae' Health & Leisure Club – comprising a 20 metre swimming pool, children's leisure pool, solarium, sauna, treatment rooms and gym.

Adjacent to the main hotel building there is a self contained five storey block containing 60 suites providing the following accommodation:

- 55 one bedroom suites
- 3 two bedroom suites

- 2 two bedroom penthouse suites

The hotel has 350 car parking spaces at basement and surface levels, the use of which is free to patrons of the hotel and its facilities.

The area of the property concerned measured on a gross external area basis has been agreed as follows:

Floor Area
- Hotel and Leisure Centre: 18,088 sq. metres
- Suites Building: 5,073 sq. metres

Rating History
The property concerned was first valued in 2005 and revised in 2006. It was valued in 2007 as part of the South Dublin revaluation programme at a net annual value of €3,250,000 which figure was reduced to €3,000,000 following an appeal under section 30 of the Valuation Act, 2001. The appellant, being still dissatisfied with the decision of the Commissioner of Valuation, lodged a further appeal to the Tribunal under section 34.

Nature of the Dispute
It is agreed that the only issue in dispute is the quantum of the valuation as determined by the Commissioner of Valuation at appeal stage.

Tenure
The hotel is occupied by the appellant under a number of lease arrangements a summary of which is set out below:

A. The Hotel Complex

Rent

130 rooms	€1,060,000
Bar, restaurant + C&B area	€ 320,000
Leisure	€ 600,000
156 rooms – 63 suites @ €18k	€1,134,000

8 rooms – 8 suites @ €12k	€ 96,000
3 rooms – 3 suites @ €6k	€ 18,000
Total Rent	€3,228,000

B. In addition to the above the appellant is in occupation of the 60 suites under a revenue sharing arrangement with Gallanstown Ltd. Under this arrangement the income from the suites is shared on a 55/45% basis exclusive of VAT. Gallanstown in turn have entered into 'sale and leaseback' arrangements with investors on rents varying from €1,443.75 and €1,650.00 per month.

The Appellant's Evidence

Mr. McMillan having taken the oath adopted his précis and valuation which had previously been received by the Tribunal and the respondent as being his evidence-in-chief. At the hearing, Mr. McMillan was granted leave to present a supplementary submission and this too was adopted by him as part of his evidence.

In his evidence Mr. McMillan put forward a valuation prepared on the Receipts and Expenditure (R&E) method based on the documents contained in his précis and annotated 'profit and loss summary' for the years ending the 31st of December 2006 and 2007. A copy of Mr. McMillan's calculations is set out in Appendix 1 attached to this judgment.

At the hearing Mr. McMillan said he wished to amend his 2006 year calculations so as to show an income of €1,001,400 for the suites in substitution for the figure of €232,600 contained in the summary as this figure represented income for part of the year only. The effect of this correction was to increase the divisible balance for 2006 to €1,912,800 thus giving a net annual value of €1,641,888 and an average figure for the years 2006 and 2007 of €1,465,000 as against his original figure of €1,300,000.

In this supplementary document Mr. McMillan prepared a valuation using the valuation scheme devised by the Valuation Office for valuing hotels for revaluation purposes in the South Dublin area. Mr. McMillan said that he had prepared this valuation to assist the Tribunal but explained that his preferred method of valuation was the R&E method as put forward by him. In regard to the valuation scheme, Mr. McMillan expressed the view that the percentages of turnover used by the Valuation Office for the income derived from the suites

and the leisure areas at 40% and 30% respectively were much too high and did not fully reflect the costs incurred in operating these sections of the property concerned. A copy of Mr. McMillan's valuation using the valuation scheme is set out in Appendix 2 attached to this judgment.

In evidence Mr. McMillan said the hotel first opened for business in 2005 and the suites block was added in 2006 but only came fully into operation in 2007. In relation to the hotel, Mr. McMillan drew the Tribunal's attention to a number of factors which he considered important:

- That there is no public transport available from the hotel to the airport.
- That there is no bus stop adjacent to the hotel.
- That the hotel has not proven to be an attractive location for wedding parties.
- That the leisure centre is not profitable due to the high labour and energy costs associated therewith.
- That the kitchen, restaurant and bar areas were originally designed for a 130 bedroom hotel and have not since been extended.

Under examination Mr. McMillan confirmed his opinion that he considered the R&E method of valuation to be the most appropriate method when valuing properties such as hotels and that he had significant reservations regarding the construction of the valuation scheme introduced by the Valuation Office.

When asked about the complicated lease structure for the hotel and the suites block, Mr. McMillan said that in his view these were more in the nature of financial arrangements designed to take advantage of what was in essence a tax driven scheme rather than leases in the true sense of the word. Whilst he was aware that some of the parties to these arrangements could be called 'related parties' he could not comment as to the content or financial aspects of these arrangements. He had based his valuation on the financial information provided to him which as far as he was concerned showed the actual trading position of the hotel operation. Mr. McMillan did not accept the proposition put to him that the extent of 'related parties' in the affairs and management of the hotel rendered the R&E method of valuation in relation to this property suspect and not reliable.

Mr. McMillan confirmed that he had agreed the valuations of the Moran Bewleys Hotel and the Comfort Inn Citywest Hotel but in regard to the latter, he had not agreed the analysis of the valuation contained in Mr. Cahill's précis.

When it was put to him that the valuation of the Moran Bewleys Hotel indicated a 54.5%/ 45.5% divisible balance in favour of the landlord, Mr. McMillan said his analysis was 52%/48% on the same basis.

When asked about his second valuation using the valuation scheme prepared by the Valuation Office, Mr. McMillan said his percentages of 16% & 11% applied to the suites and leisure centre were based on his discussions with the hotel management and in the light of the labour and energy costs associated with these sectors of the business.

Mr. Andrew O'Neill, the General Manager of the hotel, outlined in some detail his expertise in the hotel business generally and his association with the property concerned which commenced during the construction stage.

Mr. O'Neill said that the development of the hotel and the apartment block associated with it were 'tax driven' and this was borne out by the somewhat unusual lease structure arrangements of which he was aware but not to the extent that he could comment on their contents in any great detail. Mr. O'Neill said that the recording of all the wage and service costs in the complex was designed so that the cost of each business centre could be identified and monitored. Accordingly it was possible for him to say that the gross profit derived from the leisure centre was €248,000 from an income stream of €974,500 for the year 2007. On the basis of an R&E valuation exercise this would represent a rental figure of about 11%.

Mr. O'Neill said that the suites were not as profitable as the rooms in the hotel and this was borne out by the Revpar figure for 2007 which shows figures of €58.88 for rooms in the hotel proper and €46.30 for the suites.

Mr. O'Neill said he had examined Mr. Cahill's valuation and said that the estimates of turnover contained therein as of September, 2005 were in excess of the actual turnover achieved in 2007 both in total and in each sector of the business. At 2005 levels, the turnover

would have been much less, he said. Mr. O'Neill also pointed out that Mr. Cahill's estimate of Revpar at €56.25 as at 2005 was high when compared with that achieved in 2007 of €58.88.

When asked to explain the difference between 'budget' and 'actual' figures in terms of turnover Mr. O'Neill said that the budget figures were to some extent overstated in order to keep staff motivated and in normal circumstances were about 10% in excess of anticipated turnover.

When questioned about the percentages contained in the Valuation Office scheme for the various business sectors, Mr. O'Neill said that those for the bar sales and the hotel accommodation were acceptable but those for food, suites and leisure were not – particularly the latter two which were stated at figures well in excess of what could be achieved.

Mr. O'Neill under examination confirmed that there was a complicated ownership/franchise structure in place and that there was a significant degree of 'related party' type arrangements about which he had limited information. As far as he was aware 20 of the suites in the separate block were owned by individual investors but he had no knowledge of who they were or what indeed were the financial arrangements between them and the hotel operators.

When questioned about the leisure centre Mr. O'Neill said that this currently had a membership of 1,876 who paid annual fees ranging from €300 to €545. Use of the leisure facilities was free to the hotel guests. When asked if it would be possible to lease the leisure centre off separately Mr. O'Neill thought not as the property concerned marketed itself as a leisure hotel.

Mr. O'Neill was subjected to detailed questioning about the 2006 and 2007 profit and loss summary and explained that the suites only came into operation fully in 2007. One of the disadvantages, he said, in this from an operational point of view was that some of their major customers now occupied suites instead of rooms within the hotel and this had impacted on sales. Trading conditions in 2007, Mr. O'Neill said, were difficult and room rates were the same as in 2006 and this was having an adverse effect on Revpar. In relation to the accounts Mr. O'Neill was most helpful in explaining the difference between the budget figures and

forecasts and said that forecasts were subject to continual review in the light of current trading conditions.

The Respondent's Evidence

Mr. Cahill having taken the oath adopted as his evidence-in-chief his written précis and valuation which had previously been received by the Tribunal and the appellant. In his evidence Mr. Cahill put forward two valuations annotated Method A and Method B both of which are set out in detail in Appendix 3 attached to this judgment.

Mr. Cahill said that he was attaching most weight to his valuation annotated Method B which was prepared using the valuation scheme introduced by the Valuation Office for the revaluation and which had found widespread acceptance among ratepayers and their consultants in the valuation of most of the other hotels in the South Dublin area.

It is noted that Mr. Cahill's valuation under Method B of €2,756,000 is considerably less than the valuation of €3,000,000 currently in the Valuation List.

In support of his opinion of net annual value Mr. Cahill introduced four comparisons of hotels in the South Dublin area whose valuations had been agreed either at representation stage or appeal stage. In particular he drew attention to the fact that the Moran Bewleys Hotel and the Comfort Inn Citywest Hotel had been agreed with Mr. McMillan at the section 30 appeal stage. At the hearing Mr. Cahill also introduced information in relation to the agreement reached in connection with the Citywest Conference, Leisure & Golf Resort which had been agreed between the parties at Valuation Tribunal appeal stage. Mr. Cahill's fifth comparison in his précis was in relation to a leisure centre, known as the Liffey Valley Fitness Centre at Coldcut Road, Clondalkin.

On the day of the hearing Mr. Cahill handed in a three page document which contained a R&E method of valuation based on the actual and budget figures for the years 2006 and 2007. A copy of this document is to be found in Appendix 4 attached to this judgment.

In his evidence Mr. Cahill said that he was the Team Leader appointed by the Commissioner of Valuation for the revaluation of hotels and leisure premises in the South Dublin rating authority area. In arriving at his opinion of the net annual value of the property concerned, he

had in the first instance had regard to the comprehensive financial information provided to him by the appellant. In his opinion these accounts have to be treated with some caution as they contain payments under various headings to interrelated parties by way of rent and management fees. Whilst his valuation Method A was based on rents passing his preferred method of valuation was that annotated Method B which was based on the valuation scheme prepared by the Valuation Office following a detailed examination of the hotel business.

Mr. Cahill said that in his opinion it took a new hotel three to four years to reach its optimum level of trading. In his opinion the 2007 turnover was lower than he would have expected and indeed what a hypothetical tenant under the rating hypothesis would have expected to achieve in 2005. Mr. Cahill said he could not understand how Mr. McMillan could sustain his opinion of net annual value of €1,465,000 when compared to the valuation of €1,565,000 that he had agreed in respect of the Moran Bewleys Hotel. Moran's hotel, he said, was a 3-star, 299 bedroom hotel with basic amenities and no leisure centre. If the Moran Bewleys valuation was right then most certainly Mr. McMillan's valuation of the property concerned was wrong, he said.

In relation to the leisure centre Mr. Cahill said the percentage applied to the turnover in this instance was in line with that agreed for a similar facility in the Citywest Conference & Hotel premises.

Under examination regarding the valuation prepared by him on the R&E method handed into the Tribunal on the second day of the hearing, Mr. Cahill said he had only carried out this exercise as a counter to the valuation put forward by Mr. McMillan. In preparing his valuation he had examined all the financial information provided to him in relation to actual and budget turnover figures for the years 2006 and 2007. Based on this information he had come to the conclusion that a hypothetical tenant in the market at the relevant valuation date of 30th September, 2005 would have anticipated a turnover of €13,000,400 to be achieved on an ongoing basis. Mr. Cahill said his tenant's share of 37.5% was based on an analysis of an agreed valuation of the Red Cow Hotel using the R&E method of valuation. Mr. Cahill agreed that his R&E method of valuation did not support his estimate of net annual value of €2,756,000 but said he had only prepared this valuation in order to indicate that Mr. McMillan's valuation of €1,465,000 was totally untenable.

Mr. Cahill agreed that Mr. O'Neill's evidence in relation to the suites clearly indicated that the Revpar was lower than that for the rooms in the hotel. Mr. Cahill said that in the light of this information the 40% which he had applied to this sector of the business may have been excessive and perhaps should have been closer to 30%.

Note:

At the end of the evidence Mr. McMillan said that in the light of Mr. Cahill's evidence in relation to the Moran Bewleys Hotel agreement he was now of the opinion that the tenant's share in his valuation should be 45% and not 50% as put forward by him originally. In the circumstances therefore, he said he would now like to amend his opinion of net annual value of the property concerned from €1,465,000 to €1,659,000.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and finds as follows:

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 all there are 14 hotels in the South Dublin rating authority area. The valuations of 12 of these have now been agreed either at section 30 appeal stage or following an appeal to this Tribunal. Only two appeals have come before this Tribunal for determination, **VA08/5/225 – Q.E Facilities Ltd. t/a Tower Hotel** in Tallaght and the property concerned.

4. In the Tower Hotel appeal the Tribunal accepted Mr. Cahill's valuation model although it expressed some reservation in regard to the 'limited hard information' upon which it is based.

That said however, there was at the date of the hearing in this appeal thirteen assessments in the Valuation List, twelve of which had been agreed in accordance with Mr. Cahill's valuation model and one determination by the Tribunal on a similar basis. In such circumstances the Tribunal cannot at this stage in the revaluation program, unless there is good reason for so doing, proceed to value the property concerned in this appeal other than by reference to the valuation model prepared by the Valuation Office.

5. It is noted that Mr. O'Neill who, let it be said, was an excellent and most helpful witness did not cavil with Mr. Cahill's percentages in relation to bar sales and bedroom accommodation although he did consider Mr. Cahill's percentages in relation to the leisure centre and the suites to be much too high.

6. In relation to the leisure centre income the Tribunal accepts Mr. O'Neill's evidence that Mr. Cahill's valuation of this sector of the business is excessive. Accordingly the Tribunal considers that the appropriate figure to apply to this income stream is 20% and not 11% as suggested by Mr. O'Neill nor the 30% put forward by Mr. Cahill. In arriving at the figure of 20% the Tribunal has taken into account the fact that the use of this facility is free to hotel guests and this undoubtedly is a marketing aid to the hotel in attracting custom.

7. In relation to the income from the suites we are of the view that this should attract a higher percentage than that applied to the accommodation within the hotel proper. It would appear that this accommodation may be an added attraction to long stay guests and or corporations who may make block reservations and hence the marketing and other associated costs of selling this accommodation would be less than those for the accommodation within the hotel.

Determination

Having regard to the above findings the Tribunal accepts the valuation model put forward by Mr. Cahill which has been used for valuing all other hotels in the South Dublin Rating Authority area. However, having regard to Mr. O'Neill's evidence and the comprehensive range of financial information provided to us we are of the opinion that Mr. Cahill's estimates of turnover in each sector as of September 2005 are unduly optimistic. Furthermore we are of the opinion that the percentage applied to the estimated turnover in respect of income derived from the suites and the leisure centre should be 25% and 20% for the reasons cited above.

Accordingly the Tribunal determines that the net annual value of the property concerned in accordance with section 48 of the Valuation Act, 2001 as set out below:

Accommodation revenues	€5,400,000	@ 21%	= €1,134,000
Apartment suite revenues	€1,115,000	@ 25%	say = € 279,000
Food	€3,185,000	@ 7%	say = € 223,000
Conference & room hire	€ 550,000	@ 30%	= € 165,000
Bar	€1,200,000	@ 11%	= € 132,000
Other	€ 150,000	@ 30%	= € 45,000
Leisure Centre	€1,025,000	@ 20%	= € 205,000
Estimated NAV = Say			€2,183,000

And the Tribunal so determines.