Appeal No. VA09/4/023

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Regan Developments Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property NO. 710985, Hotel and Carpark at Lot NO. ON 2, Swords Road, Whitehall D, Whitehall, County Borough of Dublin

B E F O R E

John Kerr - Chartered Surveyor	**Deputy Chairperson**
Fiona Gallagher - BL	**Member**
Patrick Riney - FSCS FRICS FIAVI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JUNE, 2010

By Notice of Appeal dated the 23rd day of December, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €7,100 on the above-described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The valuation is excessive and inequitable - quantum issues."

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 4th day of March 2010 and the 7th day of May 2010. At the appeal the appellant was represented by Mr. Owen Hickey, SC, instructed by Mr. Paul Keogh, Solicitor. Mr James McGettigan and Mr. Jim McGettigan, proprietors, Regan Developments Ltd., attended, as did Mr. Kevin Daly, accountant to the appellant company, and Mr. Alan McMillan, ASCS, MRICS, FIAVI, ACIArb. The respondent was represented by Mr. Patrick McGrath, BL, instructed by the Chief State Solicitor and Mr. Peter Gilsenan, MIAVI, a valuer in the Valuation Office.

Location

The subject property is situated on the east side of Swords Road in Drumcondra, Dublin 9. It is located approximately 4km north of Dublin City Centre and 7km from Dublin airport and is close to both the M1 and the M50. The property is situated within a predominantly mature residential area and access to the hotel from the Swords Road is shared with an apartment complex.

The Property Concerned

The subject property is a 3-star hotel, which is comprised of an amalgamation of numerous buildings constructed over a prolonged period. There are 271 bedrooms within the various buildings of varying standards. The property also contains a dining room, a lounge and a bar. A conference centre was recently added, which can accommodate up to 750 delegates and can also be sub-divided into four individual, self-contained units. Within this block, a leisure centre has been constructed in the basement, containing a fully equipped gym, swimming pool, jacuzzi, sauna and steam room. A proposed spa has not been developed. There are 208 car parking spaces along the hotel frontage and in the controlled surface car park located at the eastern end of the premises.

The agreed accommodation is 16,871 sq. metres, of which 9,222 sq. metres was valued at the previous revision in 1997. The new accommodation of 7,649 sq. metres consists of two five-storey bedroom blocks and a single storey conference centre, including the gym.

Tenure

The property is held on a freehold basis.

Rating History

The property was initially valued as the Crofton Airport Hotel in 1963, with a RV of £625. Further revisions took place in 1970, 1979, 1985 and 1993. In 1997, following an extension to the hotel, the property was once again revised and following negotiations the RV was agreed at £1,950. In late 2008 the property was again listed for revision to take account of further extensions and renovations. On 6th May 2009 a Final Certificate proposing a RV of €8,580 was issued. This was appealed to the Commissioner on 15th June 2009 and following consideration of the appeal, the Appeal Officer reduced the RV to €7,100. The appellant appealed that decision to the Tribunal by Notice of Appeal dated 23rd December 2009.

The Issue

Valuation methodology and quantum.

Preliminary Issue

Mr. Patrick McGrath raised a preliminary issue as to whether the appellant's ground of appeal in respect of the correct valuation methodology to be used was properly before the Tribunal. He submitted that in order to protect the integrity of the valuation system, and because usually where issues come before the Tribunal they have been litigated at first appeal stage, the law usually requires that all issues brought before the Tribunal have been properly put before the Appeal Officer. In support, Mr. McGrath referred to the case of **VA96/6/002 - O'Brien & Binchy, Solicitors**.

Mr. McGrath argued that the issue at first appeal stage was whether the comparisons were suitable and no issue was raised as to the correctness of the valuation methodology. He referred to the Notice of Appeal, which states the grounds of appeal to be that the, "*valuation is excessive and inequitable – quantum issues*." He stated that methodology was not referred to in the Notice of Appeal, which was the fundamental document before the Tribunal, but was first referred to in the appellant's valuer's précis of evidence, submitted some two months later. Furthermore, Mr. McGrath stated that in the Notice of Appeal the method of calculating the rateable valuation was clearly based on a rate per square metre basis.

Mr. McGrath also referred to Rule 10 of the Valuation Tribunal Rules & Guidelines, which requires the Notice of Appeal to set out exhaustively the grounds upon which the appellant intends to rely on in the appeal and to section 35 of the Valuation Act, 2001. He argued that it

was important that the rules be complied with and that there were good policy reasons for these rules. Mr. McGrath also submitted that the onus was on the moving party to show why a new ground of appeal should be allowed and that in this case there were no exceptional circumstances such as to allow the appellant to make a fundamental change to the basis of the appeal.

In reply, Mr. Owen Hickey, for the appellant, stated that the substantive ground of appeal was that the valuation was too high. He submitted that time and again, methodology was not considered a substantive ground of appeal, but was part of other grounds of appeal. Mr. Hickey also stated that Mr. Tadhg Donnelly, who was the appellant's initial consultant valuer, had offered a turnover basis of valuation to the Commissioner and the Commissioner had not taken an issue with it. Furthermore, Mr. Hickey stated that the précis of Mr. Alan McMillan, the consultant valuer representing the appellant before the Tribunal, referred to methodology as one of the issues in the appeal and again no issue was raised by the Commissioner.

Mr. Hickey referred to **VA95/5/015 - John Pettitt & Son Ltd**., where it was held that a ground of appeal not advanced before the Commissioner could be raised before the Tribunal in exceptional circumstances, where the interests of justice require. He stated that the respondent used a receipts and expenditure basis of valuation in the 1997 revision and that the appellant only became aware that that method was used when the appeal was being brought before the Tribunal. He argued that the appellant's submission in relation to the correct valuation methodology went to the root and fairness of section 49 of the Valuation Act and the constitutionality of this section. He also argued that in allowing the ground of appeal there would be no prejudice to the respondent, but in disallowing the ground, the appellant would be highly prejudiced.

The Appellant's Evidence

Mr. James McGettigan

Mr. James McGettigan, proprietor of the subject property, took the oath and gave evidence on behalf of the appellant. Mr. McGettigan stated that he was the manager of the subject property, which was a family business. He stated that current trading conditions were the worst that he had ever experienced. In particular he stated that the UK and US markets had completely dried up in the last few years, that many local businesses had closed down or had

experienced job losses, that discretionary spending had dropped and people visiting the hotel for meals and drinks had decreased. Furthermore, he stated that the poor summers over the previous two years, together with the severe flooding and snow in the wintertime and more recently the volcanic ash cloud had resulted in a decrease in trade and tour operators cancelling bookings. Mr. McGettigan stated that the majority of these conditions also applied in May 2009, the relevant date for rating purposes.

Mr. McGettigan gave evidence as to problems the hotel had experienced with neighbours. He stated that there were problems obtaining planning permission for the conference centre and that there was a condition attached to the permission preventing the centre from being used for music and dancing. Smoking is also not permitted outside the hotel and there is a problem with traffic noise, as access to the neighbouring 151 apartments is through the curtilage of the hotel. Mr. McGettigan stated that a court order required the hotel to have 24 hour security with regular patrols, mainly to monitor the noise level and to ensure people were not smoking outside the hotel. Buses could also not turn on their engines first thing in the morning.

Mr. McGettigan stated that the hotel was originally built in the late 1950s, early 1960s. There are 80 bedrooms in the original block, which Mr. McGettigan stated were sub-standard. These rooms are only 80 to 100ft in size each and cannot be extended, as these rooms are in the protected part of the hotel. Mr. McGettigan said that there are only about 150 rooms that can be given to guests and that the poor quality rooms are only used occasionally. He further stated that the proposed spa had not been completed due to the state of the economy and as a result the leisure centre was too big.

In response to a question from the Tribunal, Mr. McGettigan admitted that his family had sold the land on which the apartments are now located for development purposes. He stated that there had been two entrances to the apartments, but that the other entrance was closed, as under the planning permission this was specified as an exit route for pedestrians only.

Mr. Kevin Daly

Mr. Kevin Daly, the appellant's accountant also took the oath and gave evidence. He had submitted a schedule to the Tribunal, setting out a proposed RV based on a receipts and expenditure basis (see Appendix 1 attached hereto). Mr. Daly stated that he mirrored the exercise carried out by the valuer in 1997 in arriving at his RV figure. When preparing his

schedule, Mr. Daly stated that he reviewed the trading accounts from 31st July 1996. He stated that the trading figures in 2009 were very disappointing compared to 2008. He projected the level of sales for 2010 and 2011. The 2010 figures were based on a 15% reduction from 2009, which Mr. Daly said was on the positive side and that the actual reduction was more in line with 20%. In Mr. Daly's view, a prospective tenant in May 2009 having sight of the hotel's trading accounts would arrive at a negative view of the business' prospects. Mr. Daly stated that in May 2009 the state of the hotel industry was poor, as there were too many hotel rooms available and the competition was too intense.

Under cross-examination, Mr. Daly admitted that his figure of €1,381 in respect of RV was based on the accounts for 2009 and that using this method one would arrive at a different RV for each year. However, Mr. Daly stated that he followed what had been done by the Commissioner of Valuation in 1997. He admitted that he had not calculated an estimated RV for the years 2007, 2008, 2010 or 2011.

Mr. Alan McMillan

Finally, Mr. Alan McMillan, 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 (Appendix 2). Mr. McMillan submitted an addendum to his précis, being two documents dated 4th March and 12th March 2010 (Appendix 3).

In the addendum, Mr. McMillan made an amendment to the schedule submitted by Mr. Daly on the basis that Mr. Daly had omitted two steps which were taken by the Commissioner of Valuation in 1997, as set out in the valuer's notebook. Mr. McMillan indexed the €448,203 available for rent and rates back to November 1988, which gives a figure of €253,968. From this figure, it was necessary to remove the rates element and separate out the rent, which gives an NAV of €219,184. The RV at 0.63% works out at €1,381. Mr. McMillan also made two amendments to his précis of evidence. He removed the second paragraph in the section entitled Valuation Considerations on page 6 and he also amended the RV at page 8 to €1,381, as calculated in his letter of 12th March 2010.

Mr. McMillan stated that he was familiar with the approach of valuing those properties whose values are usually determined by reference to their trading potential by some trade potential variable. He stated that such properties would include licensed premises, a hotel, a

petrol station or a quarry, where the business is essentially trade-based. He also stated that there was no bar to the respondent applying a trading potential method of valuation under section 49 of the Valuation Act, 2001 and that the Commissioner adopted this approach in relation to quarries and petrol stations. Mr. McMillan admitted that in applying a turnover basis, one could have a situation where a public house's turnover has increased, but because there has been no extension to the building, the property is not listed for revision and the RV is therefore not increased. Mr. McMillan also admitted that valuing on a receipts and expenditure basis did not consider the potential going forward, but stated that neither did a per square metre basis.

Mr. McMillan stated that the trading prospects in May 2009, the relevant date of valuation, were dreadful and had been for at least a year and a half before that. He contended that trading prospects were actually better in 1997 and that hotel room rates were at least as high then as at present. Mr. McMillan stated that as he had simply valued the subject property based on 2009 turnover and that because trading prospects were worse in 2009 than they were in 1997 when the property was previously revised, the RV of €1,381 was harsh.

Mr. McMillan admitted that he did not have any comparisons which were valued on a receipts and expenditure basis, but argued that what will inform a hypothetical tenant are the trading conditions. He stated that information in respect of receipts and expenditure was not available to him in respect of the comparisons he put forward, as it was confidential information between the ratepayer and the Commissioner. In Mr. McMillan's opinion, a trade related valuation was much fairer.

Mr. McMillan also put forward an alternative method of valuation based on a square metre basis, in the event that the Tribunal determined that this method was the correct and appropriate method of valuation. He contended for the same RV of €1,381, calculated as follows:

Floor Area 16,871 sq. metres @ €13 per sq. metre	= NAV €219,323
NAV @ 0.63%	= RV €1,382
Say €1,381	

Mr. McMillan stated that the subject property consists of an old Victorian residence, to which the owners added bedrooms in the 1950s and 1960s. He described the property as like a

"rabbit warren". Mr. McMillan stated that if he were to build the property from scratch, he would have built it very differently with a much reduced floor area. He further stated that the apartments beside the hotel had put any future development of the hotel under a huge spotlight and that none of his comparisons suffered from equivalent disabilities. Mr. McMillan said that the rooms in Block 4 and the new rooms in Block 3 were fine, but that it was downhill from there. He stated that the 78 bedrooms in Block 1 were of a date and time and most were of an inferior standard. The size could not be increased and the rooms were very tight and further, the lift to this block was very small. He also stated that there was no standard shape to the rooms at the front and that there was an attempt to convert some of these rooms into apartments. A further disadvantage in Mr. McMillan's view was that the conference centre was a long way from reception.

In support of his contention of rateable valuation, Mr. McMillan provided three comparisons. Comparison 1, The Hilton, Dublin Airport, is a common comparison with the respondent. Mr. McMillan stated that this property is a 4-star, modern, purpose-built hotel, located in a prominent location near the M50. He stated that the respondent had valued the new rooms in the subject property at the same rate as the Hilton, at €68.33 per sq. metre. However, in Mr. McMillan's view the new rooms in the subject property are dragged down by the older rooms and the layout of the property and thus cannot be valued at the same rate as the Hilton. Comparison 2 is the Day's Inn, Santry Avenue, Ballymun, which is a 3-star modern, purpose-built hotel and is valued at a rate of €63 per sq. metre. Mr. McMillan stated that this hotel was a short distance from the M50 and was a much smaller hotel than the subject property and more efficient to run. Comparison 3, the Travelodge Dublin Airport, Ballymun, is also a common comparison. This is another modern, purpose-built 3-star hotel and the hotel part is valued at €63 per sq. metre.

Mr. McMillan also addressed the respondent's comparisons. In respect of Comparison 1, the Skylon Hotel, Drumcondra, Mr. McMillan admitted that this is the closest property to the subject. However, he stated that in his opinion, the valuation of €71.76 per sq. metre is extraordinarily high and is off the end of the tone of the list. He further stated that this hotel is purpose-built and, although the front blocks are dated, they have been refurbished and there are newer blocks to the side and the rear. In Mr. McMillan's view, this property is not comparable to the subject. He noted that the entire property is valued at the one rate, both the old and new blocks. In respect of Comparison 4, The Croke Park Hotel, which is valued at a

rate of €68.34 per sq. metre, Mr. McMillan stated that it is a modern, purpose-built hotel, close to the city centre and it gets a lot of business from Croke Park.

Cross Examination

Under cross-examination, Mr. McMillan accepted that the reason this property was revised was because of a material change in circumstances, in the form of a structural change to the property. Mr. McMillan also accepted that the crucial determinant when revising a property was the tone of the list, although this phrase itself is not actually used in the legislation. He admitted that he had not referred to a single comparable property valued on a receipts and expenditure basis, but stated that there were a number of Tribunal judgments valuing properties on such a basis. However, Mr. McMillan admitted that there was no decision of the Tribunal under the 2001 Act valuing a hotel on a receipts and expenditure basis.

He refused to accept, however, that none of the comparisons referred to by both parties were valued on a receipts and expenditure basis, as he did not have access to the Valuation Office files and thus could not see how the valuations were arrived at.

Mr. McMillan accepted that if a receipts and expenditure basis based on a particular year was used, the RV could vary from year to year. In response to a question as to whether this was consistent with fairness and equity, Mr. McMillan argued that the material change of circumstances grounds for revision was not fair and equitable in any event. He accepted that the RV he contended for in respect of the subject property was much lower than the comparisons, which were also all 3-star hotels, except The Hilton, which was a 4-star and admitted that this was not fair and equitable.

In response to questions from the Tribunal, Mr. McMillan stated that the receipts and expenditure method was not the exclusive method for valuing public houses, but that it was the method applied in recent cases. He stated that the receipts and expenditure basis was a long established method of valuation by the Royal Institution of Chartered Surveyors (RICS) and that in practice it is used to value licensed premises, quarries and petrol stations. Mr. McMillan also stated that the RICS guidelines allowed consideration of projections. However, he stated that when using any method of valuation, there is a presumption of some stability, although it may not be a very long-term view.

The Respondent's Evidence

Mr. Peter Gilsenan, 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 (Appendix 4). Prior to Mr. Gilsenan giving evidence, Mr. Hickey raised the point that the person giving evidence on behalf of the Commissioner before the Tribunal was the Revision Officer and not the Appeal Officer. Mr. Hickey accepted that in this particular case the Appeal Officer had retired and he was not objecting to Mr. Gilsenan's evidence, but he argued that there was an impropriety where the person whose decision was appealed was defending the respondent's position. He therefore asked the Tribunal to give due weight to Mr. Gilsenan's evidence based on the foregoing remarks.

Mr. Gilsenan contended for a rateable valuation of €5,830, calculated as follows:

Hotel - Agreed 1997	9,222 sq. metres @ €41.54 per sq. metre	= €383,081.88
Hotel - New Additions	7,649 sq. metres @ €68.34 per sq. metre	= €522,732.66
Car Park	208 spaces @ €100 per space	= €20,800
Total NAV		= €926,614.54
@ 0.63%		RV €5,837.67
Say		RV €5,830

Mr. Gilsenan said that after viewing the extract from the valuer's notebook from 1997, it was not correct to state that the previous revision was done purely on a receipts and expenditure basis. Rather, the valuer had used four different methods and it was purely a cross-checking exercise. Mr. Gilsenan said he assumed that a rate per square metre basis was used, but he could not confirm this definitely.

Mr. Gilsenan said that the reason he had valued the subject property at two different rates based on the old part and the new additions to the hotel, was that he was trying to be fair, so he retained the rate per sq. metre that existed on the old part and valued the new part at a higher rate, as it was worth more. Mr. Gilsenan stated that the four comparisons that he had submitted were all located within the same rating authority area as the subject property and that all the figures on the comparisons were revision figures under the 2001 Act, based on section 49. Even though Comparisons 2 - 4 were new hotels, there were buildings on the properties before and thus the valuations were revisions. Mr. Gilsenan further stated that he was not aware of any revision of a hotel carried out on a receipts and expenditure basis. He

stated that all the properties he was aware of were valued on a per square metre basis and that when valuing a property on revision, one must have regard to other properties on the list, under section 49 of the 2001 Act.

Cross Examination

Under cross-examination, Mr. Gilsenan admitted that there was no evidence from the valuer's notebook from 1997 that the per square metre basis was the method adopted by the valuer and that the other three valuations were only cross-checking exercises.

He agreed with the principle set out in **Rosses Point Hotel Company Limited v. Commissioner of Valuation** (**Rosses Point**) [Unreported, High Court, Barron J., 28th January 1987], that profit earning ability was the basic element in determining NAV and that it was based, not on actual profits, but on what the prospective tenant would anticipate would be his profits. He also accepted that under revaluation, hotels were valued on a percentage of turnover and that turnover was a measure of profitability.

Mr. Gilsenan accepted that there was a difference between properties valued on a throughput or turnover basis, such as quarries, petrol stations and licensed premises and office premises, where the nature of the property had nothing to do with the activity carried on there. However, he stated that the Valuation Office valued hotels on a tone of the list basis. Mr. Gilsenan also accepted that in a hotel premises the activity was synonymous with the premises, in that one can only run a hotel from a hotel premises. He also accepted that the subject property was located close to the boundary with Fingal County Council and that a number of hotels in Fingal had been revalued on a turnover basis and that it was unfair that these hotels had been valued on a turnover basis when the subject property, which was located close by, was not. Mr. Gilsenan did not accept that valuing a property on a per square metre basis produced results that were unfair to the ratepayer, but rather contended that it depended on how one looked at it, as the receipts and expenditure basis threw up a figure that was not comparable to other properties on the Valuation List.

Mr. Gilsenan further agreed that the Commissioner could have decided that hotels should be valued on a turnover basis *ab initio* to set the tone of the list and that turnover would then have been the determining factor to establish the tone of the list. He admitted that he was required to value hotels on a per square metre basis by the Commissioner.

Mr. Gilsenan accepted that the rooms at the front of the hotel were of poor quality and stated that that was why he let the valuation on the old part of the hotel stand and valued the new part separately. However, although he accepted that the rooms were bad, he did not feel that they were uninhabitable.

Mr. Gilsenan stated that the hotel owner had sold the land on which the neighbouring apartments were built and thus should have expected that cars would be passing by. He stated that he took account of the vehicle access when valuing the property, along with the other disadvantageous factors. He agreed that a conference centre with a planning restriction was a crushing disability. Mr. Gilsenan refused to accept that all of the disabilities associated with the property permeated the value of the new extension, but argued that it was a new, purpose-built extension and should be valued accordingly.

Mr. Gilsenan was asked by Mr. Hickey whether the rate of €41.54 per sq. metre placed on the premises at the previous revision included car parking spaces. He replied that he did not know if they had been included and could not confirm if they were or not. It was put to him that if the car parking spaces existed at the time of the previous revision and were not included separately in the valuation, that they had therefore been included in the overall valuation. Mr. Gilsenan replied that maybe the valuer left them out and that all he had to go on was the valuer's notebook.

Legal Submissions

Detailed written submissions were made by counsel for the appellant and the respondent, which are attached to this judgment at Appendix 5. In particular, Mr. Hickey relied on the cases of **VA05/2/007 – Independent Biomass Systems Ltd** and **Rosses Point**. In the former case, Mr. Hickey submitted that the Tribunal found that it was appropriate to value certain properties by reference to their trading potential. He stated that the safe, fair and equitable way of valuing these sorts of properties was to look at some variable relating to trading potential and if such properties were valued on a brute per square metre basis, the ratepayer was penalised until revaluation. Mr. Hickey submitted that **Rosses Point** had not been usurped by the Valuation Act, 2001 and that if it had been the intention of the legislature to usurp this case, it would have had to have enacted express provisions. Mr. Hickey further submitted that this case was the proper basis for valuing hotels and that in **VA08/4/008 -**

Carrylane Ltd. the respondent referred to the case of **Rosses Point**, which was accepted by the respondent as representing the prevailing law post the Valuation Act, 2001.

Mr. Hickey accepted that the respondent was bound by section 49 of the Valuation Act 2001 when valuing the subject property. However, he submitted that there was a duty on the Commissioner to apply section 49(1) of the Act in accordance with the law as set down in **Rosses Point** and the Constitution, so that regard should be had to trading potential. He stated that it was trite of the respondent to say that the appellant's valuer had no comparisons based on a receipts and expenditure basis, when the reason he could not get such comparisons was because the Commissioner does not value hotels in that manner. However, Mr. Hickey argued that it was open to the Commissioner to apply a tone of the list basis to hotels on a receipts and expenditure basis. He also stated that Mr. Gilsenan had accepted under cross-examination that the procedures that the Commissioner was operating were unfair.

Mr. McGrath submitted that this case was concerned with revision, not revaluation and that all of the case law made it clear that a revision must be carried out in accordance with section 49(1) of the Valuation Act, 2001 and with the tone of the list. He stated that when a revaluation is done in a rating area, a trading-based system of valuation is applied. Mr. McGrath further submitted that Mr. Gilsenan was an officer of the respondent and he was obliged to carry out a revision in accordance with the law, irrespective of whether he considered it fair or not. He stated that no evidence had been adduced by the appellant of any property which was valued on a turnover basis. In any event, Mr. McGrath submitted that if a receipts and expenditure basis was used to value the subject property it would be unfair, as it would result in the subject having a much lower RV than the comparisons.

Mr. McGrath referred to three cases, **VA06/3/015, 016, 018 & 019 - Carphone Warehouse, Denholme Ltd, Power Leisure PLC & Hickeys Pharmacy Limited** (**Carphone Warehouse**); **VA04/3/013 - Ard Services** and **VA08/4/008 – Carrylane Ltd.,** which, he argued, found that a tone of the list basis applied. He submitted that all hotels in the Dublin City area were valued on a per square metre basis and that this was the only method of valuing the subject property.

In response Mr. Hickey submitted that the **Carphone Warehouse** case was not to point, as it dealt with shops, where the nature of the relevant property is not synonymous with the business being carried on in the property.

Mr. Hickey argued that Ard Services v. Commissioner of Valuation was authority for the proposition that a trading related variable was a proper application of section 49 of the 2001 Act. Mr. Hickey stated that **Carrylane** was under appeal and that there was authority that a case is not law when it is under appeal. (Mr. McGrath disagreed with this). In any event, Mr. Hickey submitted that there was a completely different point in **Carrylane**, in that the argument in that case was that the property was unlettable at the material date and as there was no letting value, there was no RV.

Findings

1. In relation to the preliminary point, the Tribunal determined at the hearing that there were exceptional circumstances where the interests of justice required that the appellant's ground of appeal as to the correct valuation methodology be permitted to be raised before the Tribunal.
2. The principles to be applied when valuing a property which is listed for revision are set out in section 49(1) of the Valuation Act 2001, which provides that, "*If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property*."
3. In determining the appropriate valuation to be placed on the subject property, the Tribunal is therefore bound to have regard to the comparable properties appearing on the valuation list, or what is known as the "tone of the list." All the comparisons put forward by both parties were valued on a per square metre basis and Mr. Gilsenan gave evidence that in a revision situation, all hotels in the Dublin City rating area were valued on this basis.
4. The Tribunal has taken cognisance of the appellant's very persuasive arguments in relation to this issue, but having regard to the provisions of section 49 and Mr. Gilsenan's evidence relating to the method of valuing hotels within the rating area upon revision, the Tribunal has no choice but to find that the appropriate method of valuing the subject property is on a per square metre basis.

5. The principles of equity and fairness, however, would anticipate the prudent use of a trading-based methodology in respect of hotels at revaluation stage, which may go to address some of the unfairness that a rate per square metre basis of valuation can produce at revision stage.
6. The Tribunal notes the argument advanced by Mr. Hickey in relation to the appropriate representative of the Commissioner to appear before the Tribunal. It is an unsatisfactory situation where a Revision Officer is required to give evidence before the Tribunal, when that individual's valuation may have been overturned by an Appeal Officer. The Tribunal therefore would request the Commissioner to give full and careful consideration to ensuring that the Appeal Officer is in attendance to give evidence before the Tribunal in future.
7. The Tribunal has had regard to the comparisons put forward by both parties and is of the view that the subject property is inferior to all the comparisons cited. There is a number of disadvantages peculiar to the subject property in relation to sharing access to the main road with a residential apartment development, restrictive planning conditions associated with the new conference centre and the inefficient layout of the property, resulting from its piecemeal development over some 40 years. A hypothetical tenant would have to take the whole property together and the value of the new part of the property can thus not be considered as equivalent to a new, purpose-built property.
8. In respect of the 208 car parking spaces, the Tribunal accepts the appellant's argument that car parking was included in the previous revision in 1997. The spaces should therefore not be valued separately in the present revision, having been taken into account in 1997.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines the valuation of the subject property to be €4,967 calculated as follows:

Hotel - Agreed 1997	9,222 sq. metres @ €41.54 per sq. metre	=	€383,081.88
Hotel - New Additions	7,649 sq. metres @ €53 per sq. metre	=	€405,397.00
Total NAV		=	€788,478.88
@ 0.63%		=	RV€4,967.42
Say			**RV €4,967**

And the Tribunal so determines.