

Appeal No. VA11/2/002

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

Declan Taite

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1545898, Hotel at Belgard Road, Tallaght, Co. Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Veronica Gates - Barrister-at-Law

Member

Frank Walsh - QFA, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF OCTOBER, 2011

By Notice of Appeal received on the 12th day of April, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,290,000 on the above described relevant property.

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

"In comparison to similar properties and having regard to the NAV and the fact that the property is in receivership, we consider the RV to be excessive."

The appeal proceeded by way of two oral hearings, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 27th day of June, and the 20th day of September, 2011. The appellant was represented by Mr. John F. Kenneally, MRICS., MIAVI., Kenneally McAuliffe Surveyors, Property & Rating Consultants, and the respondent was represented by Ms. Rosemary Healy-Rae, BL instructed by the Chief State Solicitor. Mr. Denis Maher, MRICS., a Valuer in the Valuation Office also appeared on behalf of the respondent, the Commissioner of Valuation.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the initial hearing and submitted same to this Tribunal. At the June oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly at / or between the hearings or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At Issue

Quantum

The Property

The subject property comprises a 122 bedroom hotel with 4-Star classification, constructed in the mid to late 1990's. The hotel includes Reception area, Bars, Restaurants, Café, Conference and Banqueting facilities and a Nightclub catering for 600 patrons. The subject property is located within a 5/6 storey mixed development with retail units on the ground floor and offices overhead. Parking facilities are provided at ground level and at two basement levels.

Location

The subject property is located adjacent to and immediately south-east of The Square Shopping Centre in Tallaght, South County Dublin and adjoins the junction of Belgard Road with the Tallaght Bypass (N81).

Services

The subject property is served with mains power, water, telephone, storm and foul sewer.

Tenure

Understood to be freehold.

Floor Areas

The floor area of the subject property was agreed by the parties at the initial Hearing, at 8,618 sq. metres.

Valuation History

2007: The property was inspected under a Section 19 valuation order for South Dublin County Council. A valuation of €1,290,000 was fixed. Following Representations, the valuation was affirmed and a Valuation Certificate issued.

2010: Upon the request of South Dublin County Council, following a part-letting of the ground floor area of the hotel to a Bookmakers establishment, the Commissioner of Valuation was requested to *“please subdivide R.V. on property no. 1545898 to create a separate R.V. for Tom Flood Bookmakers on the ground floor of the Plaza Hotel, Belgard Road, Tallaght...”*

Upon inspection of the subject property, the appointed Revision Officer concluded that the Bookmakers operation on the ground floor of the hotel in rating terms constituted a material change of circumstance in accordance with the definition provided in Section 3 (1) (e) “material change of circumstances” of the Valuation Act 2001.

The Revision Officer also concluded that the foregoing request of South Dublin County Council was merely to determine a valuation for the Bookmakers premises and not to re-assess the valuation of the hotel, except insofar as the value of the Bookmakers premises affected the value of the hotel, if at all.

The respondent then determined that the valuation on the hotel, as set out above, in the amount of €1,290,000 should remain unchanged. The value of the bookmakers property was established by him at €7,500.

The appellant's Consultant Rating Valuer firm Kenneally McAuliffe, filed an appeal application on the foregoing Revision, date received by the Valuation Office 17th September, 2010. The appeal documentation noted the occupier as Declan Taite, Asset Receiver (Tallaght Plaza Hotel) trading as the Plaza Hotel.

2011:

With the valuation remaining unchanged, the Appellant filed a Notice of Appeal with the Valuation Tribunal on the 12th April, 2011 seeking a reduction on the valuation of the subject hotel property from €1,290,000 to €900,000.

The appellant subsequently filed his précis of evidence with the Tribunal wherein he sought a further reduction in the valuation of the Plaza Hotel premises to a figure of €725,000.

Appellant's Case

Mr. Kenneally took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. He acknowledged from the outset that the parties had now agreed that the subject floor area was 8,618 sq. metres. Mr. Kenneally supplemented his précis with copy correspondence addressed to the Registrar of the Valuation Tribunal, dated 22nd June, 2011, which contained copy correspondence from RSM Farrell Grant Sparks addressed to Kenneally McAuliffe, dated 17th June, 2011, which provided a projected turnover figure for the subject hotel for its financial year end 2011. These two letters, together with the foregoing précis are attached hereto as Appendix No. 1.

The facts pertaining to the location and description of the hotel were common case. However, the appellant was of the view that the valuation of the subject hotel property when determined by the Commissioner of Valuation following Revaluation in the South County Dublin Rating Authority area in 2007 was flawed then, and accordingly remained flawed to the date of the Hearing.

Mr. Kenneally contended that the valuation was based on:-

- (a) estimates only of the passing rent, which rent he indicated was based on a non-arms' length rental agreement at that time;
- (b) an estimate of annual turnover in the hotel; and
- (c) the floor area of the property

Mr. Kenneally noted that the operation of the hotel transferred to the appointed receiver on 27th July, 2010.

Mr. Kenneally sought to analyse the valuation established by the Commissioner on the property on a rate per square metre basis, which he devalued at €49 per sq. metre (based on the earlier assumed floor area of 8,688 sq. metres). This sum produced a NAV of €1,294,512 which was rounded to €1,290,000. Mr. Kenneally also analysed the valuation on the basis of both passing rent and estimated turnover.

Mr. Kenneally then sought to review the NAV by considering the following approaches to valuation:-

- (a) **Receipts and Expenditure Method.** In the circumstances, he concluded that as the profit was very limited, the R & E method was not satisfactory.
- (b) **Revenue Breakdown.** Mr. Kenneally analysed turnover by reference to estimated annual revenue generated under the following headings:- accommodation, food, drink, admissions, cloakroom, room hire/conferences, and other, and applied thereto established rating percentages to each, and reached an opinion that a fair NAV would amount to a figure of €700,000.
- (c) **Comparable Method** based on a square per metre basis. Referring to three other properties in the South Dublin area, namely the Clarion Hotel (excluding suites),

Maldron Hotel and Bewleys Hotel, which he analysed and devalued at €105, €85 and €109 per square metre, respectively, he contended for a rate per sq. metre to be applied on the subject hotel property of 8,618 sq. metres of €85 per sq. metre = NAV €732,530. He then adjusted this figure down to a NAV of €725,000. Mr. Kenneally explained that financial trading information and figures were not available to him or the Receiver for the period extending from year end 2005 to 27th July, 2010.

Cross-examination of the Appellant

In reply to questions raised by the respondent, Mr. Kenneally confirmed or advised as follows:-

1. The request from the Local Authority which led to the Revision in 2010 was not to value the hotel but to subdivide its Rateable Valuation to make provision for the establishment of the Bookmakers premises within.
2. There was no specific request made by the Local Authority to value the hotel.
3. The appellant was seeking a Revision of the hotel based on the foregoing request.
4. There was no other change to the Plaza Hotel, other than the reduction in floor area attributed to the Bookmakers premises, but Mr. Kenneally noted that some businesses within the hotel had changed and/or closed since 2007.
5. Mr Kenneally acknowledged that Mr. Liam Cahill of the Valuation Office, having valued fourteen hotels in the South Dublin County Council area, in the recent Revaluation of all properties in the area, was well placed to consider valuations on all those hotels. He then qualified his response to note that in his opinion, Mr. Cahill had not relied on turnover figures to determine the NAV for those hotels but on an inflated rate per square metre valuation method.
6. Representations had preceded First Appeal on the subject.
7. Mr Kenneally agreed that the area of the Bookmakers premises is c. 51 sq. metres or approximately 0.6 % of the total floor area of the hotel and declared that that matter alone or exclusively would not warrant a reduction in the NAV of the hotel from €1.29 million to €725,000.

8. When challenged on the use of projected turnover figures supported with seven months of actual trading performance data to establish the NAV of the subject, Mr. Kenneally concluded that the Commissioner of Valuation relied upon trading figures for year end 2006 to establish the valuation determined in the 2007 Revaluation.
9. Mr. Kenneally concluded the appellant's case in this phase of the hearing by requesting the Tribunal to consider only Section 49(1) of the Valuation Act, 2001 in the instant case.

Respondent's Case

Mr. Denis Maher took the oath and adopted his précis as his evidence-in-chief, attached hereto as Appendix No. 2. He summarised the history of events in terms of the request by South Dublin County Council, which led to the conclusion that a "material change of circumstances" had arisen as noted above. He said that as a result, and as the appointed Revision Officer, he decided that the effect of the introduction of the Bookmakers premises within the ground floor of the hotel was essentially *de minimus* in rating terms to the valuation of the hotel. He calculated a NAV of €7,500 on the latter premises and determined that the NAV on the hotel, as established at recent valuation should remain at €1,290,000.

Mr. Maher stated that the NAV of the hotel was calculated in accordance with the "tone-of-the-list" of properties comparable to it at Revaluation in 2007 i.e. in accordance with Section 49(1) of the Valuation Act, 2001. He added that the matter of the hotel being in receivership was not pertinent to the rating exercise and should not influence its Net Annual Value.

Cross-examination of the Respondent

Responding to various questions raised by the appellant, Mr. Maher confirmed and advised as follows:-

1. A revision of the hotel was warranted by reason of the work undertaken upon the request of South Dublin County Council, but conversely he argued that the effect to the NAV of the hotel, resulting from the reduction in its floor area resulting from the letting to the Bookmakers, was *de minimus*.
2. He was not specifically requested to "revise the hotel".

3. The Commissioner of Valuation had complied with Section 49(1) of the 2001 Valuation Act.

The Tribunal then rose to consider two issues.

Issues arising

1. During the course of his evidence at the initial hearing, Mr. Kenneally contended that the valuation date on the subject property should vary with that established and relied upon by him in his comparison properties as submitted.
2. The respondent contended that it was appropriate in the present case not to amend the valuation of the hotel as set out in Section 28(4)(a)(i) having relied upon the definition of material change of circumstance, as set out in Section 3 (1) (e) “material change of circumstances” of the Valuation Act 2001. At the initial hearing, Mr. Maher advised that the prescribed task to “amend the valuation” per Section 28(4)(a)(i) above was satisfied by the decision taken by the Revision Officer in this case which was *not to amend* the valuation.

Following further consideration, the Tribunal requested the parties to submit further information on foot of their foregoing views and such materials were received by the Tribunal from the parties as requested on 15th August, 2011, copies attached hereto as Appendix 3 and 4 from Kenneally McAuliffe and Rosemary Healy-Rae, B.L., dated 12th August, 2011, and 10th August, 2011, respectively.

The hearing was adjourned to allow the parties sufficient time to consider the above requests and respond in due course. A tentative date of 20th September, 2011, was set to list the matter, if necessary, For Mention, or if appropriate, to reconvene the hearing to allow the Tribunal an opportunity to seek and obtain clarification on any matters which might arise following its review of the requested submissions.

Mr. Kenneally’s reply confirmed that the subject “.... *valuation date is September 30th 2005 and the comparisons were valued at that date also*”. Ms. Healy-Rae replied with a legal submission, which concluded as follows:-

“by its very nature the subdivision of a property gives rise to the existence of two separate relevant properties. Each of these properties then becomes potentially liable

to a revision under section 28(4). Each of the two individual properties must be independently assessed in accordance with the facts. However, there is nothing in section 28(4), or indeed in any part of the 2001 Act, to suggest that because a valuation is attributed to one of the relevant properties, the valuation of the other relevant property must necessarily be amended in some way. In the circumstances, it is respectfully submitted that, based on the provisions of section 28(4) and on the facts arising in this case, the revision officer was entitled to decide not to amend the valuation of the original relevant property”.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at both hearings. The Tribunal finds that:-

1. In order to establish the valuation of the hotel in accordance with the subject revision, the parties are relying upon Section 49(1) of the Valuation Act, 2001.
2. The appellant has acknowledged and accepted that the relevant valuation date, in common with the comparison properties cited in his précis, is 30th September, 2005.
3. The parties are seeking to rely upon the “tone-of-the-list” but it would appear that the appellant is seeking to extrapolate information and devalue the three comparison properties in his précis of evidence without regard to the fact that the subject hotel was valued in accordance with a Revaluation Order during 2007 and the value of same was determined by reference to thirteen other hotels in the Local Authority area and made relative to same.
4. The valuation of €1,290,000 determined on the subject property was fixed at Revaluation and the decision on same by the Commissioner to list it at that value was neither challenged nor appealed.
5. Section 63(1) of the 2001 Valuation Act provides that “*the statement of the value of property as appearing on a Valuation List shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act*”.
6. The reduction of the floor area in percentage terms may be considered *de minimus* in rating parlance but from a tax liability perspective, it should not be ignored.

7. The parties did not proffer any arguments to suggest any greater impact on the operation of the hotel from the introduction of the Bookmakers premises within, other than the resultant reduction in the floor area and the associated subdivision of the original hotel premises.
8. The parties did not contend for or argue that the use, management, location, potential contributions or levels of interference to the rental value of the hotel, its potential footfall in terms of increase or decrease, or such influences, and accordingly, the Tribunal may only consider the effect of the introduction of the Bookmakers property within the ground floor of the hotel by reference to the reduced floor area of the latter in the order of approximately 0.6%.

Determination

This Tribunal is of the view that the valuation of the subject property should be reduced by a factor equivalent to 0.6% which would lead to an adjusted NAV of €1,282,260.

Say NAV €1,280,000

And the Tribunal so determines.