

Appeal No. VA11/2/026

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

Brian & Patricia Conroy/Tankardstown Tourism Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2206190, Restaurant/Café at Lot No. 3Qb, Tankardstown, Stackallan, Navan, Co. Meath.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Aidan McNulty - Solicitor

Member

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

By Notice of Appeal dated the 12th day of May, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €75 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 23rd day of September, 2011. At the hearing, the appellants were represented by Mr. Brian Conroy. Mr. Noel Whelan, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent and Mr. Patrick McMorrow, MSCSI, a valuer in the Valuation office was also present. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

At issue

Quantum and rateability

The Property Concerned

The property concerned is located in the townland of Tankardstown, County Meath, circa 5km from Slane and 2km from Rathkenny and is circa 15km off the M1 motorway. The subject premises consists of “The Brabazon” à la carte restaurant, a bistro/restaurant, a bar and an office area, situated to the rear of Tankardstown House and positioned at lower courtyard level with separate entrance and car park. There is also a small store at the entrance to the lower courtyard/garden area. The assessed property is located in former stable/courtyard buildings which have been extensively restored and refurbished to a high standard. The complex is open to the public and is also popular for weddings and special events with the house and nearby cottage, which are not part of this assessment, available to let on a self-catering basis.

Accommodation

The agreed accommodation measured on a net internal area basis and the store measured on a gross external area is as follows:

Floor Area

Restaurants and Bar areas (NIA)	230.0 sq. metres
Kitchen/Ancillary Stores (NIA)	59.4 sq. metres
Office (NIA)	63.4 sq. metres
External Store (GE)	99.0 sq. metres

The Appellants' Evidence

Prior to the oral hearing Mr. Conroy presented a written statement to the Tribunal which was received into evidence under oath at the oral hearing. No legal submissions were received on behalf of the appellants nor was there any legal representation. At the outset Mr. Conroy, who is resident in the UK and involved there in heritage-type projects similar to the subject development, set out his stall clearly and questioned why:

- (a) the subject property was not exempt from rates as was a similar property in the UK?
or, if not,
- (b) why a substantial allowance might not be considered in the light of the current economic climate and/or in recognition of the very high level of liabilities/ expenditure incurred by the appellants with the Tankardstown project to date?

Mr. Conroy's statement of evidence was pitched at two levels in support of his views.

1. The Micro Level

This presentation covered the following factors under four headings and proposed that an RV of €7.50 was more realistic.

- a. Allowance for particular type of layout.
- b. Use of the courtyard and mews which he argued was not residential and not office/ commercial, citing a UK precedent, Deerleap, which was restored and developed by Mr. Conroy but exempted from rates by the UK Rating Authorities (East Hampshire District Council).
- c. No allowance had been made for major structural restoration works running into millions of euro covering *inter alia* clearance of semi-derelict buildings, access issues, landscaping, etc.
- d. Remoteness of location - five miles from major road, no passing trade due to its particularly rural location and limited access. This was in contrast to the Valuation Office comparators which Mr. Conroy argued were far superior in terms of passing trade and location. Further the subject restaurants were closed Mondays and Tuesdays all year round and for extended periods due to poor access during adverse weather conditions.

2. The Macro Level

Mr. Conroy referred the Tribunal to a number of documents included in his written presentation, as follows:

- a. Brochure for Deerleap, Rowlands Castle, Hampshire
- b. Tankardstown planning document to Meath County Council, September 2004.
- c. The Society of Chartered Surveyors submission to the Department of the Environment and Local Government on Part IV, Planning and Development Act, 2000.
- d. An Taisce and Meath County Council correspondence and documents, 2006, 4.11.2010.
- e. Brian and Patricia Conroy presentation to Meath County Council, 29th August 2008.
- f. Tankardstown proposed Care Home and Special Care Unit drawing and landscape layout.
- g. Tankardstown Estate Tourism Master Plan document submitted to Meath County Council 4th July, 2011.
- h. All previous documents submitted by Brian Conroy to the Valuation Office and the Valuation Tribunal

The essential requirement for rateability of property was commercial activity, Mr. Conroy contended. The core thrust of the Tankardstown project, he added, was non-commercial. However, other activities such as the restaurants, “The Brabazon” and the bistro, albeit commercial in themselves, were merely in a support role to the events in Tankardstown House which was a family home initially but was now a significant source of employment.

For Tankardstown to survive however, certain enabling development was necessary as outlined in the documents referred to above. In the end, between objections from An Taisce and one thing and another, Meath County Council refused the planning permission sought for key development.

At this juncture, the Tribunal felt it appropriate to indicate to Mr. Conroy the limits of the Tribunal jurisdiction in this case. The Commissioner of Valuation had assessed a valuation on parts of the subject property, i.e. “The Brabazon” and the bistro restaurants, a storage building and an office. The issues for the Tribunal to address were:

1. was the Commissioner of Valuation right to value the building? and if so
2. was the assessment correct ?

Was the storage building commercial or solely domestic? If not solely domestic the building must be valued. In the case of the subject premises it was clear, the Tribunal added, that there was a commercial dimension to certain premises, viz. the restaurants and offices, and thus they were not exempt despite the appellants arguing that the totality of the project dictated otherwise. The rateable valuation itself would be based on what rent the hypothetical tenant was willing to pay the hypothetical landlord for the use of the buildings as at November 1988, with due regard to comparable properties within the rating authority area.

Mr. Conroy however continued to maintain the position that the rating system instead of compensating him in some measure for the massive investment undertaken had in fact punished him.

Cross-Examination by Mr. Whelan, BL

It was put to Mr. Conroy that the macro model was a non-runner and that as far as the restaurants and bar were concerned they were run on commercial lines, albeit with low traffic volumes arising from remoteness putting pressure on profitability.

On the question of the office, Mr. Conroy insisted that it was residential study and for private use only and that the office use was part business and part domestic. In contrast Mr. Whelan argued that the use of the office was not solely domestic. When closely examined in relation to the use of the external store Mr. Conroy was adamant that this was domestic, being deployed for the storage of tables and chairs from Tankardstown House per se.

Responding in conclusion to the matter of quantum overall Mr. Conroy defended his proposed RV of €7.50 on the basis that if suitable comparators were available, which in his view they were not, a figure pitched at such a level would have been justified. In the process Mr. Conroy accepted that certain elements of the subject property were rateable, thus disposing of the issue of exemption and focusing on quantum.

The Respondent's Evidence

Mr. Patrick McMorrow, on behalf of the respondent, having taken the oath adopted his précis. In line with his précis he described the subject property as having been refurbished to a very high standard and also extensively restored. In response to questions from his counsel in relation to the external store located at the entrance to the carpark he conceded that it should not have been included in the rateable valuation as it was used for the storage of the tables and chairs from Tankardstown House which was used for self-catering purposes and thus not commercial. Turning to the office area which was located within the courtyard self-catering area Mr. McMorrow was satisfied that the said property fell into the mixed use category and not totally domestic as was contended. Moving on to his valuation methodology, Mr. McMorrow indicated that the rates per sq. metre applied to the subject property, viz

Restaurant/ Function Room	€41.00 per sq. metre
Kitchen and Stores	€27.34 per sq. metre
Office	€41 per sq. metre
Store	€13.67 per sq. metre (now withdrawn)

were made by reference to the values of comparable properties appearing in the valuation list for the Meath County Council area. (The respondent's comparisons 1-3 are attached at Appendix 2 to this judgment.)

Asked by Mr. Whelan, BL, what his view of the appellant's suggested RV of €7.50 was he replied that it was erroneous and devoid of comparative back-up. However in the course of cross-examination by Mr. Conroy it was put to Mr. McMorrow that his comparators were far from ideal. Comparison No. 2, Keenan's Restaurant in Slane, was a purpose-built unit with operational efficiencies in terms of layout, in contrast to the subject, and Comparison No. 3 was, in effect, a shop and functions rather differently from an office.

Replying to closing questions from the Tribunal, Mr. McMorrow confirmed that:

1. By and large the subject property was not easy to locate; and
2. The office area (mews cottage etc.) was engaged in mixed use and was not totally domestic.

The Respondent's Legal Submissions

1. The property, now that it had been agreed that the external store be excluded, is a relevant property as per schedule 3 of the Valuation Act, 2001, and does not fall into any of the categories which would cause it to be deemed relevant property not rateable pursuant to schedule 4 of the Act.
2. None of the exemptions canvassed by the applicant are provided for under Schedule 4 of the Act. These were particularly referable to large scale capital investment.
3. The onus of establishing that the property is to be excluded from the Valuation List rests with the appellant who has not done so in this instance. The only circumstances where a property could be exempt is if it falls clearly within one of the express exemptions provided for in the Valuation Act, 2001. There is no means by which some other category or grounds for exemption can be implied. The respondent relies on the seven interpretive principles to be applied by the Tribunal in relation to the Valuation Act, 2001, and exemptions thereunder as set out by MacMenamin, J in *Nangle Nurseries V Commissioner of Valuation* (2008) IEHC73.
4. The restaurant/bar facilities at the subject property make them, as a matter of law, relevant properties which are rateable and the "similar properties" put forward by the appellant are not in fact comparable.

Findings

The Tribunal, conscious of the fact that no comparisons had been proffered by the appellant, has considered all the evidence, including comparisons and legal submissions introduced by the respondent, and finds as follows:

1. Massive capital investment in restoration, development and structural works, while extremely praiseworthy in itself and perhaps even benefitting from other government reliefs, will find no relief under the Valuation Act, 2001 in terms of exemption from rates.
2. The external store is non-commercial in nature and should not have been included in the rateable valuation, as accepted by the respondent.

3. The Tribunal noted that no comparisons were incorporated in the appellants' précis and took into consideration Mr. Conroy's reason for their omission which was that no appropriate comparators were available to him in Ireland.
4. The property suffers significant transportation deficits arising from location off the main traffic routes and lack of adequate signage. This is to be contrasted with the properties forming part of the respondent's comparisons, in particular Keenan's Restaurant in Slane. This should be reflected in a lower rate per sq. metre for the restaurant/function room, ancillary areas and the office to that used by the respondent.

Determination

Having regard to the evidence adduced and the arguments proffered the Tribunal determines the rateable valuation of the relevant property as follows:

Restaurant/ Function Room	230 sq. metres	@	€35 per sq. metre	=	€8,050.00
Kitchen and Stores	59.4 sq. metres	@	€25 per sq. metre	=	€1,485.00
Office	63.4 sq. metres	@	€30 per sq. metre	=	<u>€1,902.00</u>
			NAV		€11,437.00
				say	€11,400.00

Rateable Valuation €11,400.00 @ 0.5% = €57

RV €57

And the Tribunal so determines.