

Appeal No. VA12/1/015

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

Zrko Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 843530, Hotel, Carpark at Lot No. 124d/1 Pembroke Road, Pembroke West B, Pembroke West, County Borough of Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Patrick Riney - FSCSI, FRICS, ACI Arb

Member

Aidan McNulty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF AUGUST, 2012

By Notice of Appeal received on the 22nd day of February, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €14,085 on the above described relevant property.

The grounds of appeal are set out in a schedule accompanying the Notice of Appeal, copies of each which are attached at Appendix 1 to this judgment.

This appeal proceeded by way of an oral hearing held on the 7th and 28th days of June, 2012 at the office of the Tribunal, Holbrook House, Holles Street, Dublin 2.

At the hearing, Mr. Owen Hickey, SC, instructed by Mr. Tom O’Byrne of Matheson Ormsby Prentice, Solicitors, appeared on behalf of the appellant and expert valuation evidence was given by Mr. Aidan Reynolds, MSCSI, MRICS, an associate director in Savills.

Mr. David Dodd, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Alan Sweeney, BSc Property Valuation & Management, a valuer in the Valuation Office, gave evidence on behalf of the respondent.

Prior to the commencement of the oral hearing and in accordance with the rules of the Tribunal, each party submitted to the Tribunal and exchanged a précis of the evidence they proposed to adduce under oath at the hearing. From the evidence so tendered (much of which was factual and not in dispute) and from other evidence received orally at the hearing, the following facts material and relevant to the appeal were agreed or are so found.

The Issue

The only issue in dispute is the valuation of the subject property determined in accordance with Section 49(1) of the Valuation Act, 2001, arising from a revision of valuation carried out pursuant to the provisions of Section 28 of the said Act. It is agreed that the relevant valuation date is the 19th of November, 2010.

The Property Concerned

The property concerned, which is known as the Ballsbridge Hotel, is an eight-storey structure built in two stages – the early 1960s and extended in or about 1998. The original building traded as Jurys Ballsbridge Hotel and the later extension was known as the Jurys Towers Hotel. Both hotels operated as a single entity and shared common services notwithstanding the fact that the Towers had its own reception area, entrance and guest lifts.

In 2006 the entire property was purchased for the purposes of redevelopment. After a relatively short period of vacancy, the premises reopened and were re-branded as the Ballsbridge Hotel and traded as a 3-star establishment. Part of the original ground floor accommodation was subdivided and let out under various licence arrangements as a

supermarket, delicatessen shop, barber's shop and ladies' hairdressing salon, all of which were accorded separate valuations as a result of the revision process. The valuation of the remainder of the premises, i.e., the subject property, was entered in the valuation list at a rateable valuation of €14,085.

Accommodation

It is agreed that the property concerned provides a total of 396 bedrooms (291 standard rooms and 105 executive rooms) together with the following facilities:

- Large entrance and reception lobby;
- Raglans restaurant (150 – 180 covers);
- The Dubliner bar (seating for over 100);
- Conference and meeting rooms including the ballroom with a capacity for up to 1,000 delegates for conference use and 650 in banquet hall;
- Eight meeting rooms of various sizes suitable for a variety of purposes.

Area

The area of the property concerned, measured on a gross external area basis, is agreed to be 24,682 sq. metres. It is also agreed that there are 207 on-site car parking spaces.

Location

It is agreed that the property concerned occupies a prominent location in the Ballsbridge area, at the junction of Pembroke Road, Northumberland Road and Lansdowne Road. It is also agreed that the surrounding area is in a mixture of uses including offices, residential and hotels. Other hotels close by include the Berkeley Court, the Four Seasons, Bewley's Ballsbridge and the Herbert Park. It is further agreed that the area is well served by public transport services and the Lansdowne Road Dart Station is approximately 500 metres distant.

Valuation History

Following the construction of the Jurys Towers a revision of valuation was carried out at the 1999/4 revision. In due course the valuation of the Jurys complex was agreed following an appeal to this Tribunal and the valuation so agreed being IR£11,435 i.e., €14,519 having regard to the provisions of Section 5 of the Valuation Act, 1986, since repealed. It is agreed that at the time the hotel was trading as a 4 or 5-star facility and that the comparisons used in

agreeing the valuation were the Conrad Hotel, the Fitzwilliam Hotel on St. Stephen's Green and the Merrion Hotel, all of which had a similar 5-star grading.

As a result of the 2010 revision, a valuation certificate was issued to the effect that it was proposed to enter the valuation of the property concerned in the valuation list at a rateable valuation of €14,805. No change was made at representation stage nor following an appeal to the Commissioner of Valuation under Section 30 of the Valuation Act, 2001 and in due course a further appeal was lodged with this Tribunal under Section 34 of the Act.

The Appellant's Evidence

Mr. Reynolds in his evidence contended that the proper rateable valuation of the property concerned was €11,557, calculated as set out below:

Hotel:	24,683 sq. metres @ €70 per sq. metre	= €1,727,783
Car parking spaces:	207 spaces @ €515 per space	= <u>€ 106,605</u>
Net annual value		€1,834,388
Rateable valuation @ 0.63%		= €11,557

Mr. Reynolds said that in arriving at his opinion of net annual value he had regard to the fact that the subject property had a 3-star classification and hence he was of the opinion that his determination should be made by reference to the values of other hotels which shared a similar classification. In the event, Mr. Reynolds introduced five comparisons details of which are contained in Appendix 2 to this judgment.

In evidence, Mr. Reynolds said that the hotel first opened in the late 1960s and was extended in or around 1998. Although ongoing routine maintenance was carried out up to the time of sale in 2006, no significant investment other than minimal maintenance had been carried out by the new owner. As a consequence, Mr. Reynolds said that, *"the guest bedrooms and common areas in particular are very tired and dated."* In addition, Mr. Reynolds said that, *"some of the flood damage is evident in a number of the rooms on the seventh floor (which are out of use) and the eighth floor meeting/function room (which is also out of use)."* Mr. Reynolds also pointed out that following severe flooding in late October, 2011, much of the ground floor reception area and some public areas are now refurbished and are in good decorative condition. These works were completed post the relevant valuation date and hence

any benefit to the rental value of the subject property, as a result thereof, are to be disregarded in the valuation process.

Mr. Reynolds said that as part of the re-branding the hotel currently operated as a *“budget type hotel with a 3-star classification.”* Mr. Reynolds made reference to the operating performance of the property concerned and furnished information in relation to occupancy rates, average room rates, RevPar and total sales, together with what he considered to be relevant Trip advisor comments. Details of the information so provided are contained in Appendix 3 to this judgment.

Under examination, Mr. Reynolds said that in arriving at his opinion of net annual value he had exercised proper rating valuation methodology and rationale. Firstly, he had inspected the property; secondly, he had enquired about its grading/classification; and lastly, he had had regard to the provisions of Section 49 of the Act, which dictates that the valuation 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”* or, in other words, by reference to the “tone of the list”. In this regard, Mr. Reynolds said that in his opinion the tone referred to was the value of other hotels with a similar 3-star classification as the property concerned enjoyed. Mr. Reynolds said that his valuation approach was in sharp contrast to that being used by the respondent. Firstly, the respondent had relied principally upon the 1999 valuation of the property concerned and secondly, had undue regard to the values of other hotels which enjoyed either a 5 or 4-star classification, which in Mr. Reynolds’ opinion were not *“properties comparable to that property”* within the meaning of Section 49(1).

In relation to the respondent’s comparisons, Mr. Reynolds said that little regard should be given to Comparison No. 1 (the 1999 revision of the property concerned) and Comparison No. 2 (the Berkeley Court Hotel) which is currently the subject of an appeal to this Tribunal. The Herbert Park Hotel (Comparison No. 3), Mr. Reynolds said, was valued at €75.17 per sq. metre which was fair having regard to the fact that it was a 4-star establishment and approximately one third of the size of the property concerned. Comparison No. 4, (The Mespil) Mr. Reynolds’ said was a common comparison and of assistance insofar as it was a 3-star hotel valued at €75.17 per sq. metre. However, he felt the subject should be valued at a

lower rate per sq. metre by virtue of the fact that it was half the size of the Mespil hotel and was in inferior overall repair and condition.

Under cross-examination, Mr. Reynolds said that he would accept that the 1999 valuation of the property concerned was fair and in accordance with the statutory provisions current at that time and that the figure of €82 per sq. metre was in line with the valuations attributed to other 4/5-star hotels in the area. However, Mr. Reynolds reiterated his contention that this rate per sq. metre was not now appropriate for a number of reasons such as: the hotel was not in the same condition as it was in 1999; it now had a 3-star classification; and, more importantly, part of the original hotel at ground floor level was now used as a supermarket, delicatessen outlet, barber's shop and ladies' hairdresser to which the public at large had access. In regard to classification, Mr. Reynolds agreed that the subject property, from a solely property consideration, met the physical requirements for a 5-star classification which was not the case in relation to some of his comparisons.

When asked about the valuation of the Berkeley Court Hotel, Mr. Reynolds said that whilst he had included it in his list of comparisons, it was of no assistance insofar as it was the subject of an appeal to this Tribunal. However, Mr. Reynolds said that in his opinion the Berkeley Court was in better condition than the subject property and was in sole use as a hotel.

When asked about his Comparison No. 1 (The Maldron Hotel), Mr. Reynolds agreed that it was located in the south Docklands area which could not be considered as good a location as Ballsbridge. He also agreed that the valuation of the Burlington Hotel was of little assistance in that the valuation of this hotel was determined in 1985 before the introduction of the Valuation Act, 1986 which first introduced the concept of the "tone of the list" into the Irish rating code.

On re-examination by Mr. Hickey, Mr. Reynolds affirmed his opinion that the 1999 valuation of the property concerned was fair and reflected the fact that at that time it was in excellent overall condition and operated with the benefit of a 4/5-star classification. This was not the case at the relevant valuation date where the property had deteriorated due to a lack of ongoing maintenance and investment and furthermore now operated as a 3-star hotel. These, he said, were factors that must be taken into account when arriving at its net annual value. In

his opinion, routine maintenance and continuing capital investment is necessary in order to ensure that hotels continue to meet the requirements for 5-star classification.

The Respondent's Evidence

Mr. Sweeney, having taken the oath, adopted his précis which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence, Mr. Sweeney contended for a rateable valuation of €13,570 calculated as set out below:

Hotel: 24,682 sq. metres @ €82 per sq. metre =	€2,024,023
Car spaces: 207 spaces @ €634.87 per space =	<u>€131,418</u>
Total NAV	€2,155,441
€2,155,441 @ 0.63% =	€13,579
RV rounded to	€13,570

It is noted that the above valuation is lower than the valuation of €14,085 which currently appears on the valuation list.

In support of his opinion of net annual value, Mr. Sweeney introduced four comparisons details of which are contained in Appendix 4 to this judgment.

Mr. Sweeney in evidence said that in his opinion there was no significant change in the property concerned since it was last valued in 1999 other than that parts of the ground floor were separately occupied and had had separate valuations attributed to them as part of the revision process. Mr. Sweeney said that in his opinion there was no valid reason to alter the basis on which the hotel was last valued in 1999 since it had not altered in any material manner such as location, bedroom accommodation, number and range of function rooms and other essential factors. Mr. Sweeney said that he was aware that the hotel now operated as a budget hotel with a 3-star classification but was of the view that this was at the choice of the current operator. The fact of the matter was that the property met all the physical requirements necessary for 5-star classification, whereas most other 4-star and 3-star hotels in the immediate vicinity did not and could not.

Mr. Sweeney said that in his opinion the valuation of the property concerned was fair and reasonable and was well supported by the valuations of his comparisons. When asked to

comment on the comparisons introduced by Mr. Reynolds, Mr. Sweeney said that they were not particularly relevant due to a number of considerations, such as location and range of facilities provided within them. As far as Mr Sweeney was concerned, the 1999 valuation of the property concerned was the most relevant evidence of all that was available as also was the valuation of the Berkeley Court Hotel which was immediately adjoining.

Under cross-examination, Mr. Sweeney said that when valuing hotels regard had to be had to all aspects of the property concerned and the values of those hotels which were considered to be comparable in terms of location, physical attributes such as scale, number of bedrooms and other facilities. Whilst regard should also be had to the classification of a hotel, no greater emphasis should be given to this than to the other relevant factors, Mr. Sweeney said. When asked if it would be standard valuation practice to value a hotel in accordance with Section 49(1) of the Valuation Act, 2001 by reference to the values of hotels which are of a similar grading, Mr. Sweeney said it would be, but not to the exclusion of other factors which could have a bearing on its valuation such as the values of other hotels with a different classification and the nature and scale of the business being carried on therein. It was, Mr. Sweeney said, essential to consider everything that could affect the value of the hotel concerned, including its location, size, physical condition and range and variety of facilities available to residents and visitors.

When asked if he had regard to the values of the hotels used as comparisons at the 1999 revision, i.e., the Conrad, the Merrion and the Fitzwilliam hotels, Mr. Sweeney said he did not because in his opinion there was ample supporting evidence to be drawn from the assessments of other hotels in closer proximity to the property concerned. In regard to the subject property, Mr. Sweeney acknowledged that to a limited extent the property had suffered from a lack of routine maintenance and that Mr. Reynolds description of it as being “*tired*” was not totally inappropriate. Whilst he acknowledged that it was highly unusual to find a supermarket within a hotel, Mr. Sweeney did not accept that it would have an adverse effect on its rental value of the magnitude suggested by Mr. Reynolds.

In regard to the appellant’s comparisons, Mr. Sweeney said that he was of the opinion that little regard should be attached to the Maldron Hotel by virtue of its Docklands location, or to the Burlington Hotel, having regard to the fact that its value was determined prior to the introduction of the 1986 Valuation Act. Mr. Sweeney said that the Mespil Hotel was a valid

comparison to some extent and indeed was included in his list of comparisons. Nonetheless, Mr. Sweeney said, regard should be had to the fact that it was a converted office building and not purpose-built. Furthermore, he said, under no circumstances could the Mespil obtain a 5-star classification because it could not meet the physical requirements in relation to room sizes and other important factors referred to under the classification scheme. To that extent, therefore, it was to be distinguished from the property concerned. Similarly, the Bewley's Hotel, he said, was of little assistance in that it was specifically designed and constructed to meet the demand for budget accommodation, something which could not be said for the property concerned. Mr. Sweeney said that, in his opinion, his valuation of the property concerned on the basis of €82 per sq. metre, as compared to €75.17 applied to the Mespil and Bewley's, fairly represented the differences between them.

In response to a final question from Mr. Hickey, Mr. Sweeney said that in arriving at his opinion of net annual value he had valued it having regard to its actual state and all other material factors.

Under re-examination, Mr. Sweeney said he did not see the property concerned when it was last valued in 1999 nor could he be confident as to what extent, if any, the property had deteriorated since that time.

Legal Submissions

During the course of the hearing, counsel made comprehensive written and oral submissions which were of great assistance to the Tribunal. Set out hereunder is a brief summary of the main issues raised by counsel which they considered were particularly relevant and material to arriving at the proper valuation of the property concerned, in accordance with Section 49(1) of the Valuation Act, 2001.

The Appellant's Submissions

Mr. Hickey submitted that *"the valuation approach of the respondent in purporting to value the subject property, a grade 3 hotel, by comparison primarily with four-star and five-star hotels and applying the 5-star rate per square metre to the subject property, is wholly misconceived. It is axiomatic, and sound valuation practice adopted by the Commissioner of Valuation from time immemorial, with which the Valuation Tribunal will be familiar, that hotels are valued by comparison primarily, in so far as it is reasonably practicable, with*

other hotels of the same grade. Examples of this practice, in the cases of the Loch [sic] Eske Hotel (VA10/3/035), the Regency Hotel (VA09/4/023) and indeed the valuation of the subject property in 1999 when it was a Grade 5 hotel, were cited in the course of the hearing and abundant other examples of this practice exist.”

“ It is submitted that this valuation approach of the Respondent’s valuer, Mr Alan Sweeney, which is purported to be justified on the grounds that the subject property has the physical potential to trade as a five-star hotel, is manifestly perverse and incorrect. In answer to a question on cross-examination, Mr Sweeney asserted that he would value a new Grade 3 hotel, which had the physical capacity to trade as a Grade 5 hotel, by reference to a physically similar grade 5 hotel in the same rating area. It is submitted that this approach would be clearly wrong, and it is submitted that the Commissioner of Valuation would certainly not adopt such an approach to the valuation of a new Grade 3 hotel in such circumstances. In this regard, the Tribunal will have noted, Mr. Sweeney’s reply, when asked on cross-examination if he could give one example or instance, across all of the work of the Valuation Office in its valuation of hotels, of a Grade 3 hotel being valued by the Commissioner of Valuation as a Grade 5 hotel, that he could not do so.”

“Mr. Sweeney’s confirmation on cross-examination of his failure to look at the Conrad, Fitzwilliam and Merrion hotels – the three hotels to which the subject property was compared to by the Respondent in the 1999 revision – is affirmatory, it is submitted, of his awareness that a proper comparison of the subject property with an array of Grade 5 hotels would not bear scrutiny and would point up the unsoundness of his valuation approach.”

In arriving at the valuation of the property concerned the respondent’s valuer, Mr. Hickey submitted, disregarded the physical deterioration of the subject property which he acknowledged under cross-examination had taken place since the property was last valued in 1999. This physical deterioration, Mr. Hickey submitted, *“would of itself prohibit its having the status of a Grade 4 or Grade 5 hotel and that in light of this fact alone Mr Sweeney’s insistence on valuing it as if it were a Grade 5 hotel is wholly wrong and flies in the face of the valuation principles required to be applied in the proper application of the “tone of the list” pursuant to subsection 49 (1) of the Act”.*

Mr. Hickey further submitted that the respondent's valuer had *"taken no proper account of the effect of the value of the franchises inserted into the subject property which existed at the material date for valuation. From his evidence, it appeared that Mr. Sweeney could not conceive of any significant deleterious effect on value of such franchises on the balance of the hotel, quite apart from any physical interference with the ground floor layout, to which he was equally indifferent. It is submitted that the intrusion of franchises of the kind inserted into the subject property would manifestly have brought its tone and value at the material date for valuation and that, again, the effect of the existence of these facilities alone would have been sufficient to render Mr. Sweeney's valuation of the subject property as if it were a Grade 5 hotel wholly wrong and an improper application of the "tone of the list". It is submitted that Mr. Sweeney's failure to appreciate the true effect of the intrusion of these franchises into the ground floor of a hotel is again clearly demonstrative of the unsoundness of his valuation approach."*

"It is noted that the subject property in its former state is Mr. Sweeney's first comparison. In this regard, it is confirmed that the Appellant is not for the time being contending (with respect to this hearing only) that the subject property in its former state cannot be deemed to be one of "other properties" within the meaning of those words in subsection 49(1) of the Act [...] It is submitted in any event that if the subject property in its former state is deemed a valid comparison for the purposes of subsection 49 (1) of the Act, it bears no comparison whatsoever with the smaller, one or two grades lower, physically deteriorated and franchise-encumbered hotel which is the subject matter of these proceedings."

The Respondent's Submission

Mr. Dodd in his submission firstly contended that *"the onus falls on the appellant to satisfy the Tribunal that the valuation is excessive and to produce admissible and reliable factual and expert evidence to prove its grounds of appeal."* In this regard, he said the appellant's valuer had agreed that the 1999 valuation was fair and equitable and further agreed that the only changes that had taken place were (a) that there was a change in condition and (b) that the relevant property concerned had gone from a 5-star hotel to a 3-star hotel.

In Mr. Dodd's contention, as much of the appellant's evidence related to the condition of the property concerned which the appellant described as being somewhat *"tired"* due to a lack of investment and ongoing routine maintenance, it would appear that the appellant's valuer was

referring principally to items which are not of themselves rateable, i.e., carpets, fittings, furniture and furnishings. Similarly, when making comparisons with other hotels, Mr. Reynolds consistently commented that they were in “*better condition*” but when pressed to say in what way they were in better condition, Mr. Reynolds generally referred to non-rateable items which did not constitute part of the values of the hotels in question. In fact, Mr. Dodd submitted, the appeal was not well-founded as the appellant was relying on matters under the heading of condition which by their very nature are “*tenant’s items*” which under rating law the tenant would be expected to bring to the property. Mr. Dodd submitted that “*If [...] the Tribunal should consider the condition of the carpets, curtains, bed linen, the fittings and fittings [sic] in the bathrooms and that such factors are to be taken into account by valuers, this would be a radical departure in rating law (and a significant error in law)*”

Mr. Dodd, in his submissions, once again emphasised that the onus of proving that the valuation as determined by the Commissioner is excessive lies with the appellant who must produce evidence (including evidence drawn from relevant comparisons) sufficient to warrant a reduction. In this instance, the appellant had failed to so do. In particular the appellant had failed either to produce evidence to support the general proposition that “*in respect of building general [sic] if money is not spent over time that the structure and condition will deteriorate.*” Furthermore, Mr. Dodd submitted that there was no evidence of any structural deterioration in the property concerned. In the absence of such evidence it would be inappropriate for the Tribunal to reduce the valuation of the property concerned due to the alleged but unsubstantiated evidence of deterioration of the structure of the property concerned.

Mr. Dodd submitted further:

“Turning to the second change which this Appellant relied upon in order to justify the reduced valuation, he relied heavily on the fact that the building had gone from a 5 & 4 star hotel business to a 3 star hotel business under the Failte Ireland Hotel Classification Scheme. His evidence was that “three star hotels” were to be compared to “other 3 star hotels”, and this was a three star hotel now and that the value of the property should therefore be reduced.”

“He indicated that he had read the hotel classification scheme. He accepted that many of the aspects of the scheme do not relate to property but relate to service. He accepted, by

example, that the existence of a concierge service, the availability of valet parking, the provision of extras such as chocolates and so on & so forth were matters which were relevant to the star rating system. He accepted that these were not relevant to the valuing of the property under the Valuation Act 2001.”

“He accepted that a hotel which satisfied the property aspect of the star rating system, could change hands and the new operator could choose to operate it as 3 star business. As a fact, this is what occurred in the subject property.”

“He accepted that the exercise under the 2001 Act was not to value the business but to value the property. It was put to him that what he was doing was valuing the business operated in the subject property and not valuing the subject property itself.”

“He was then specifically asked to identify which property aspects of star rating system did the property fail at the valuation date (2011). He was unable to identify any property aspects of the star rating system which the property now failed. He had not identified any property change resulting in the change in the star rating in his precis (though referring to the star rating system at length).”

Mr. Dodd also submitted that the appellant was incorrect not to have regard to the 1999 valuation of the property concerned particularly since he had agreed that it was a fair and reasonable valuation when made. It was, Mr. Dodd submitted, normal practice on revision to have regard to the existing valuation. Indeed, Mr. Dodd said *“it would be absurd in a valuation context for a valuer to ignore the previous valuation.”* The fact that the appellant’s valuer in this instance had chosen to ignore the 1999 valuation was a fatal error in the appeal.

Findings

In this appeal both parties were represented by counsel who made comprehensive written and oral submissions during the course of the hearing. The Tribunal acknowledges the range and extent of the submissions which were of great assistance to the Tribunal in arriving at its determination. The Tribunal also acknowledges the efforts that both expert witnesses put into preparing their written précis and in presenting their evidence to the Tribunal. Having carefully examined all the evidence introduced and the arguments adduced the Tribunal finds as follows:

1. This appeal arises from an application made by the appellant for a revision of valuation in accordance with Section 27 of the Valuation Act, 2001.
2. In due course, the Revision Officer appointed by the Commissioner of Valuation came to the conclusion that a material change of circumstances had taken place since the valuation was last revised in 1999 in respect of the property which was the subject of the application for revision. The property in question, formally known as Jurys and now trading as the Ballsbridge Hotel, is a well-known premise occupying a prominent location in the Ballsbridge area.
3. Having come to the conclusion that a material change of circumstances had occurred, the Revision Officer created four new entries in the Valuation List in respect of a supermarket, delicatessen shop, ladies' hairdressers and gents barber shop and amended the existing valuation of the hotel to reflect the reduction in the area by the subdivision of part of the ground floor area.
4. The statutory basis for valuing property on foot of a revision carried out under Section 28 is contained in Section 49 of the Valuation Act, 2001 which provides as follows:

“49.– (1) 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 the property is situate in, of other properties comparable to that property.

(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situation in the same rating authority area as it is situated in then—

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the

property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property's net annual value shall, in so far as it is reasonably practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act."

5. Section 49(1) is clear and unambiguous inasmuch as it states that the value of property concerned is to be made "*by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property*" or in other words by reference to the tone of the list.
6. It is common case that the only physical change that has occurred since the property was last valued in 1999 was the sub-division of part of the ground floor space so as to provide a supermarket, delicatessen, ladies' hairdresser and barber shop. The nature of the occupation of these entities was sufficient to meet the requirements of rateable occupation and hence they were accorded separate valuations. It is common case that the public at large have access to them and may avail of the use of the hotel car park. It is also common case that the introduction of a supermarket into a hotel is somewhat unusual and neither valuer could provide evidence of this having occurred elsewhere.
7. It is also common case that at the 1999 revision, the hotel at that time operated as a 4 or 5-star establishment and its value was determined in accordance with Section 5(2) of the Valuation Act, 1986 (since repealed) by reference to the "*valuation of tenements and rateable hereditaments which are comparable and of similar function*

and whose valuations have been made or revised within a recent period'. The comparisons used at that time were the Conrad, Fitzwilliam and Merrion hotels, all of which at that time had a 5-star rating. It is agreed that the subject property currently operates as a 3-star grading.

8. The grading of hotels is independently carried out by Fáilte Ireland, the statutory body responsible for ensuring that accommodation standards meet customer needs. Fáilte Ireland operates a mandatory hotel classification scheme which provides that there be five levels of classification ranging from 1-star to 5-star and in conformity with the classification matrix prepared by Fáilte Ireland as set out in some detail in the guidance document prepared by that body. In order to obtain classification the hotels must meet specific physical requirements in relation to construction, safety, repair, bedroom size and the extent of facilities therein provided. The scheme also takes into account matters which are not of a physical nature and which relate mainly to the range and quality of services available to guests such as room service and other services of a personal nature. Under the scheme, it is possible for a hotel to be possessed of the physical characteristics necessary for a 5-star grading but at the same time fail to provide the range of services required for this classification. It is common case that this is the situation that pertains at the property concerned where the current operator has chosen a budget-type business model. It is also common case that the Mespil Hotel and others, because of their physical shortcomings under the classification scheme could not obtain 5-star grading irrespective of the customer services provided.

9. The respondent valuer's approach was straight-forward and uncomplicated. Having inspected the property he reduced its existing area by the total area occupied by the supermarket and the other 3 separate units of occupation and applied €82 per sq. metre to the net area thus arrived at, i.e., the same rate per sq. metre as used at the 1999 revision. In support of this figure, Mr. Sweeney introduced 3 comparisons. In submission, it was contended that this approach was perfectly reasonable inasmuch as no **physical** change had taken place since the 1999 revision other than that the area of the hotel was reduced. Whilst it was acknowledged that there had been a change of grading under the classification scheme, this of itself was judged not to be material in

that it was the current operator's choice to operate a budget hotel business model, whereas the hypothetical tenant envisaged in rating law could decide otherwise.

10. The appellant's valuer took an entirely different approach and proceeded on the basis that the true interpretation of Section 49(1) was that the valuation of the subject property (a 3-star hotel) should be made by reference to the values of other 3-star hotels.
11. Under rating law it is the property that has to be valued and in accordance with Section 49(1) its value "*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.*" In carrying out the exercise the property must be valued *rebus sic stantibus* taking into account all extrinsic and intrinsic factors which could have a bearing on its value, including the fact that in this case the subject property meets the physical requirements for a 5-star classification, notwithstanding the fact that it currently trades as a 3-star establishment.
12. The issue to be determined is what is the net annual value of the property concerned in accordance with the statutory basis contained in Section 49(1). In this instance the hypothetical tenant envisaged in rating law would not necessarily be concerned that the present occupier is operating the hotel as a 3-star establishment but more probably would be concerned about the general condition of the property and the fact that part of the ground floor space is being operated as a supermarket and three other retail outlets and the effect that these might have on the likely profitability of the property concerned. The fact that the subject property meets the physical requirements necessary for obtaining a 5-star classification would give the hypothetical tenant the opportunity of selecting the business model he considers to be the most appropriate.
13. In relation to comparisons it must be said that, in principle, the Tribunal is of the opinion that there was nothing untoward in using the 1999 valuation as a relevant comparison. Indeed, there is ample evidence in several cases in the past where the Tribunal has acquiesced in the practice whereby the existing valuation has been taken as the starting point in situations where the property concerned has been extended, reduced in size or subdivided, as the case may be. That said, however, regard must be

had to the changes that have taken place since the 1999 valuation was made, including the introduction of a supermarket and three other retail units into the ground floor accommodation and any other material factor that could have a bearing on the value of the premises.

14. Mr. Reynolds in his evidence claimed that to some extent the condition of the hotel had deteriorated through lack of routine maintenance and investment. Whilst the Tribunal is prepared to accept that some merit should be accorded to Mr. Reynolds' evidence in this regard, and that the condition of the hotel in a general sense is not what it was in 1999, the Tribunal nonetheless considers that some of Mr. Reynolds' comments referred to items of a non-rateable nature and that, to some extent, he overstated his case.

15. In relation to the 1999 valuation of the subject property, the Tribunal accepts that the €82 per sq. metre applied at that time reflected its actual state as a hotel in good condition trading as a 4 or 5-star establishment. Having regard to the current state and condition of the property, it follows that this figure must be subject to a downward adjustment to reflect the property's less than pristine condition and the presence of the supermarket and three other retail units at ground floor level, which (particularly the supermarket), serves a wider customer base than the hotel residents and guests. These are factors to which a hypothetical tenant would have regard in arriving at an opinion of rental value.

16. No weight is attached to the Berkeley Court comparison by virtue of the fact that a revision of this valuation requested by the occupier has still not been completed. The valuation of the Herbert Park hotel building and the Mespil Hotel are of some assistance, but consideration must be given to their size and location relative to that of the property concerned. It is also noted that the valuers are agreed that the Mespil Hotel could not under any circumstances meet the physical requirements to obtain a 4 or 5-star classification.

17. In relation to the other comparison produced by Mr. Reynolds, i.e., the Maldron, the Burlington and Bewley's hotels, the Tribunal notes that they are all, with the exception of the Maldron, valued at rates per sq. metre in excess of €70 per sq. metre,

which Mr. Reynolds considered to be the appropriate figure to be used for the subject property. In the final analysis, the Tribunal is not inclined to attach much weight to the Maldron Hotel assessment due to its location, which both valuers consider to be inferior to the subject property. The Burlington Hotel assessment is of no assistance whatsoever in that it was made prior to the commencement of the Valuation Act, 1986.

18. The Tribunal notes that the car parking was valued in 1999 at IR£500, i.e. €635 per space, at the 1999 revision and can find no good reason as to why it should not be valued at the same figure at this revision.

Determination

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

Hotel	24,682 sq. metres	@ €77 per sq. metre	=	€1,900,514
Car Spaces	207	@ €635 per space	=	<u>€131,445</u>
		TOTAL	=	€2,031,959

Net Annual Value say €2,032,000

RV @ 0.63% = €12,801.60

RV say, €12,802

And the Tribunal so determines.