

Appeal No. VA13/4/001

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

Amber Springs Hotel Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2067956, Hotel at Lot No. 7Ab, Knockmullen, Gorey Rural,
Gorey, County Wexford

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

James Browne - BL

Member

Carol O'Farrell - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF APRIL, 2014

By Notice of Appeal received on the 17th day of October, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2,568 on the above described relevant property.

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

"On the basis that the Appellants are entitled to the revision sought, ie that the assessment be divided into 3 RVs in the interests of good estate management."

"It was inequitable for the Commissioner to deny the revision sought. It is provided for under S3(e) on the MCC Definition, 2001 Act."

By Notice of Appeal dated the 16th October 2013 the Appellants appealed against the determination of the Commissioner of Valuation not to review the valuation list on the grounds that no material change in circumstances had taken place in relation to the above relevant property to warrant the exercise of powers pursuant to section 28 of the Valuation Act 2001 ('the Valuation Act').

The Property

The property is a large modern four star three storey over basement hotel comprising 80 bedrooms, a large reception area and restaurant with conference facilities at ground and first floor level and spa and leisure facilities at basement level.

Valuation History

The hotel was first revised in 2006 and was revised again in September 2007 to include the leisure centre leading to an increase in the rateable valuation to €2,568.00. On the 20th August 2012 an application was made in accordance with section 27 of the Valuation Act for the appointment of a Revision Officer under section 28 of the Valuation Act to exercise powers under that section in relation to the property. The Revision Officer issued a notice of decision that the circumstances referred to in section 28(4) of the Valuation Act did not exist for the exercise of powers under section 28(4) in relation to the property. An appeal was lodged to the Commissioner of Valuation on the 9th March 2013 against the Revision Officer's decision. The appeal was disallowed on the ground that no material circumstances had occurred in relation to the property and an appeal against the decision of the Commissioner of Valuation was filed with the Valuation Tribunal on the 17th October 2013.

The Grounds of Appeal as stated in the Notice of Appeal are that:

1. The valuation is incorrect on the basis that the Appellants are entitled to the revision sought i.e. that the assessment be divided into 3 RVs in the interests of good estate management.
2. It was inequitable for the Commissioner to deny the revision sought. It is provided for under s.3(e) of the material change in circumstances definition in the 2001 Act.

The Appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 19th December 2013 and resumed on the 19th February 2014. Mr Eamonn Halpin B.Sc (Surveying) MRICS MSCSI of Eamonn Halpin & Co. Ltd appeared on behalf of the Appellants and Mr David Dodd BL, instructed by the Chief State Solicitor, appeared for the Respondent.

In accordance with practice, prior to the commencement of the hearing, the parties exchanged their respective précis of evidence and submitted same to this Tribunal. Mr Halpin on behalf of the Appellants and Ms Fidelma Malone on behalf of the Respondent, having taken the oath, adopted their respective précis as being and as constituting their evidence in chief. The evidence was supplemented by additional oral evidence obtained either directly or on cross-examination.

The Appellants' Case

Mr. Halpin provided the Tribunal with a review and synopsis of his submissions. He argued that the property should have been revised on the basis that it is one property now divided into three parts, namely, (i) the conference centre, (ii) the hotel and (iii) the leisure centre and spa. He advised that the Appellants wished to divide the assessment for business efficacy and in the interests of good estate management. He pointed out that the conference centre is essentially a separate wing of the hotel which has its own grand entrance and which can operate independently. He stressed that when the rateable valuation was last revised the conference centre was more or less fully occupied. Mr Halpin stated that the conference centre had become largely vacant and is currently on the market for letting and that the appellants have the right to apply for revision. He argued that the property qualifies for revision due to a “*material change in circumstances*” coming within section 3(e) of the Valuation Act. In support of his argument Mr Halpin pointed out that in order to claim vacancy relief the local authority required the property to be separately assessed on a revision application. He gave evidence as to the level of vacancy by reference to the letting logs in respect of the function room and meeting rooms in the conference centre for the years 2012 and 2013.

Under cross-examination Mr Halpin confirmed that vacant meant “*not booked on a particular day, empty*”. He also confirmed that the conference centre shares services

with the hotel and is available for booking on the hotel website. When it was put to him that it appeared from the abridged accounts of Amber Springs Hotel Limited that the Amber Springs Hotel Limited is in occupation of the hotel under a lease from Thomas Redmond and Patrick Redmond, Mr Halpin stated that he was not aware of the Lease. Mr Halpin sought to raise an additional point about the decision made by the Commissioner of Valuation on the first appeal. He argued that the Commissioner of Valuation having disallowed the appeal had nonetheless amended the occupier details. He opened the provisions of section 33(2)(a) and (b) of the Valuation Act to the Tribunal on this point.

Patrick Redmond, a director of the Amber Springs Hotel Limited, confirmed that he owned the hotel jointly with his brother Thomas Redmond and that they were directly involved in the development of the hotel and presently involved in its day-to-day management. He stated that that the conference centre was built at a time when corporate business was strong and that a separate entrance was built to facilitate a bigger conference facility which could be subdivided from the hotel in the future. He stated that the primary reason for listing the property for review with the Commissioner of Valuation was due to the downturn in the economy and the consequent fall off in business.

The Respondent's Case

Ms Fidelma Malone described the hotel as she found it upon her inspection on the 11th December 2012. Ms Malone stated that she accessed the conference centre accompanied by Mr Redmond through the main hotel entrance. Ms Malone said that she saw no evidence that the conference room was run independently from the hotel or that the services to the conference room ran independently of the hotel. She further stated that she had accessed the hotel website and noted that the conference centre was available for hire. Ms Malone gave evidence that she was of the view that the hotel, conference centre and leisure facilities were run as a single entity and that no material change of circumstances had occurred in respect of the property since the valuation last carried out in 2007. She confirmed under cross-examination that she did consider the 'vacancy issue' but that a single relevant property would not be divided and separately rated for something that might happen in the future. On cross-

examination she confirmed that a different set of standards had not been applied by the Commission of Valuation by reason that the property is a hotel.

Mr Dodd in his submission stressed that only two grounds of appeal had been set out in the Notice of Appeal. Specifically, he objected that the point made by Mr Halpin in relation to section 33 of the Valuation Act was not a stated ground of appeal, was mentioned for the first time on the second hearing date and was not a matter before the Tribunal for decision. For those reasons and having regard to the requirements of fair procedures, he argued that the appellants ought not to be permitted to raise it. Mr Dodd went on to submit that no evidence had been adduced to support the proposition that the single relevant property had become liable to be valued as two or more properties or that the Commissioner of Valuation had made any error. He submitted that the fact that the conference centre is largely vacant and under utilised, which he also emphasised was not a ground of appeal, did not mean in any event that a material change in circumstances has occurred. Mr Dodd referred to the definition of “material change in circumstances” in section 3 of the Valuation Act and argued that vacancy or lack of occupancy does not come within section 3(e) of the Valuation Act. He further submitted that the appellants had not established the necessary circumstances to bring their application within that provision. He concluded his submission stating that the decision of the Commissioner of Valuation was correct and the appeal ought to be disallowed.

Determination of the Tribunal

We have considered the written submissions and oral evidence offered by both parties and find as follows:

The Valuation Act 2001 (Appeal) Rules 2008 require appeal grounds to be set out exhaustively in a notice of appeal. The Tribunal does not entertain any amendments to grounds of appeal and, in particular, will not permit new grounds to be adduced other than in exceptional circumstances. The appellants did not seek to establish the existence of any such special circumstances and nor does the Tribunal consider that there is anything unusual or out of the ordinary or special in the circumstances of this appeal to allow the appellants to expand their grounds of appeal beyond those relied upon in the Notice of Appeal.

The appellants' primary argument was that the appellants are entitled to have the valuation of the subject property divided into three on the basis of a material change of circumstances. The appellants rely solely on paragraph (e) of the definition of "material change in circumstances" in section 3 of the Valuation Act. For paragraph (e) of section 3 to apply the appellants must show that a change of circumstances which consists of "*property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties*". Mr Halpin, when asked by the Tribunal to identify the particular change of circumstances upon which reliance was being placed for the purposes of paragraph (e) of section 3, stated that the change of circumstances is "the vacancy" of the conference centre. The Tribunal does not accept the argument advanced by Mr Halpin. In relation to paragraph (e) of section 3 it is clear that the subject property was previously valued as a single relevant property but there is no question of this single relevant property becoming liable to be valued as 2 or more relevant properties since there has been no change in the occupier of the hotel. The hotel was a single relevant property occupied by Amber Springs Hotel Limited when the valuation was last revised and it continues to be a single relevant property so occupied by Amber Springs Hotel Limited. The appellants cannot bring themselves within section 3(e) of the definition of "material change in circumstances" merely by reason that the conference centre lies vacant for most of the year due to a fall in bookings or because the owners of the hotel have decided to make the conference centre available for letting on the open market. The fact that the conference room is largely unused and is capable of being let out does not constitute the single relevant property as "*becoming liable to be valued as 2 or more relevant properties*". On the contrary, the evidence established that for the time being the conference centre continues to be part of the facilities offered and provided by the hotel. The Tribunal finds that no "material change of circumstances" has occurred to warrant the exercise of powers under section 28(4) of the Valuation Act

The Tribunal disallows the appeal and accordingly confirms the decision of the Commissioner of Valuation.