

Appeal No. VA96/3/002

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Clontarf Castle Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop, restaurant and land at Map Ref: 71a Castle Avenue, Ward: Clontarf East D, County Borough of Dublin
Quantum

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Rita Tynan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF OCTOBER, 1997

1. By Notice of Appeal dated the 11th day of July 1996 the Appellant Company, Clontarf Castle Limited appealed against the determination of the Commissioner of Valuation in placing a rateable valuation of £950 on the above described hereditament.

The grounds of appeal as set out in the said Notice are that:-

- "1. The valuation is excessive and inequitable.
2. The valuation is bad in law."

2. This case proceeded by way of an oral hearing at which both the Appellant Company and the Respondent were represented by Valuation Experts. In accordance with the Rules of this Tribunal the parties had, prior to hearing, exchanged précis of intended evidence and submitted the same to us. Having taken the Oath, both Valuers adopted, as their evidence in chief, their said respective précis. From the evidence so given the following are the material facts, either agreed or so found, which are relevant to this appeal.
3. (a) The subject matter of this appeal, Clontarf Castle, is a well established and well known licensed premises which also provides cabaret entertainment. It is located at Clontarf on Castle Avenue which is a through road from the Coast Road to the Old Howth Road. It is approximately 3 miles from Dublin city.
- (b) The said premises, which comprise an old castle building to the front and a single storey return to the rear was fully described to us as to its structure, internal layout and accommodation. Drawings were submitted as part of this evidence.
- (c) The accommodation comprises bars, restaurant and cabaret room. On the ground floor there is also a kitchen, stores, changing room and toilets. On the first floor there is a kitchen, wash-up area and two offices. There are offices on both the second and third floors though the latter is disused. The premises is served by a large tarmacadamed car park with marked facilities for at least 200 cars.
- (d) The agreed areas are as follows:-
- | | |
|------------------------|-----------------------------|
| Bars | 2,300 sq.ft. with 140 seats |
| Cabaret Room | 3,165 sq.ft. with 280 seats |
| Restaurant (1st floor) | 1,491 sq.ft. with 100 seats |
- This total area amounts to 6,956 sq.ft. being part of an overall gross area of approximately 19,300 sq.ft..
- (e) Prior to 1995 the entirety of the above described hereditament was subdivided into two lots with lot number 43a being a gate lodge and lot number 71a being the balance of the rateable hereditament. A combined rateable value of £690 was placed thereon. Following a request therefor the Revision List of May 1995, placed a separate valuation on lot number 43a of £35 but increased the valuation on lot number 71a to £950. On 22nd May

1995 the Appellant Company appealed to the Commissioner. The results of First Appeal, published 1st July 1996, made no change in this rateable valuation. On the 11th day of that month the Appellant appealed to this Tribunal. The sole issue, the subject matter of this appeal, is one of quantum.

4. On behalf of the Appellant Company, Mr. Killen suggested that since this rateable hereditament was not the subject matter of any letting and since he was not in a position to produce any evidence of letting values of comparable properties then his approach to valuation could not be based on the Rental Method. The Appeal Valuer so agreed. Mr. Killen therefore suggested that the correct method of valuation was either one based on profit or else one arrived at by comparing the subject property with other comparable properties of similar function and use and located in the same rating area as Clontarf Castle. On behalf of the Commissioner, Mr. Dervan's first approach was to suggest that the appropriate NAV could be obtained by taking a percentage of the adjusted turnover with his second based on the Profits Method.
5. Herein, we set out in tabular form the relevant details as submitted by both parties, when one adopts a Profit Method.

Valuations Compared Appellant (Accounts Valuation)				Valuation Office (Reconstituted Profit Method)		
	'95	'94	'93		'94	'93
Sales	£1,937,190	£1,778,777	£1,879,799			
Profit	£1,107,207	£950,145	£1,041,108			
Cabaret Surplus	£79,146	£49,621	£125,927			
Gross Profit	£1,186,353	£999,770	£1,167,035			
Net Profit (loss)	£25,487	(£21,436)	£28,307	£25,487	(£21,436)	£28,307

Adjusted Net Profit*	£	£	£	£246,	£61,83	£281,058
	194,568	45,029	240,96	951	9	
			4			
Available for Rent & Rates	£	£	£	£160,	£40,19	£182,688 (@ 65%)
	97,284	22,514	120,48	518	5 (@	
	(@	(@ 50%)	2 (@	(@	65%)	
	50%)		50%)	65%)		
Adjust to CPI	£	£	£	£124,	£31,95	£153,133
	85,259	19,720	106,49	048	2	
			8			
Rates Factor	/1.1634	/1.1634	/1.1635	/1.15	/1.1587	/1.15876
				876	6	
NAV	£	£	£	£107,	£27,57	£132,154
	70,931	16,949	91,532	052	4	
RV	£	£	£	£	£	£ 833
	447	107	577	674	174	6.

The following should be noted about these details:-

- (a) The first area of difference between the parties was to identify precisely what items should be "added back" to the net profit (loss) in order to arrive at the adjusted net profit. Originally, Mr. Killen felt that the appropriate figures in respect of pensions, repairs, loss on disposal and motor travel should not be so added back whereas the Appeal Valuer did. Subsequently, it is agreed that all of these items other than pensions should be added back. The reason why pensions were excluded was that the same were not in respect of any Directors but were for the benefit solely of the employees. We agree that in such circumstances the amount attributable to pensions should not be so added back.
- (b) The second issue centred on what was the appropriate percentage of this adjusted net profit which should be available for rent and rates. Mr. Killen suggested 50% whereas Mr. Dervan suggested 65%. We do not agree with this latter figure and whilst it is true to say that there is no fixed or rigid percentage figure which is applicable in all circumstances, nevertheless, we are satisfied that in this case a 50% division is appropriate.
- (c) The third issue was whether or not the CPI Index or the Drinks Price Index should be used in order to obtain the November 1988 figure. Where the evidence shows that the vast bulk of revenue is generated by drink only then in our view the Drinks Price Index is the appropriate index. However, where the sales figure is arrived at by a substantial different mix of products then in our view the CPI may be more appropriate, and
- (d) The final issue between the parties was whether the rates factor should be

1.1634 or 1.15876. Ultimately it was agreed that the latter factor should be used.

7. In any event even without making these adjustments, what appears from the table above, is that on the Appellant Company's approach the rateable valuation for 1995 should be £447, for 1994 - £107 and for 1993 - £577. For the comparable periods the Commissioner's figures are £674, £174 and £833. With the adjustments, which we have made or which have been agreed the Appellant's figures would read £524 for 1995, £124 - 1994 and £648 - 1993.

8. As can be seen the divergence is very substantial, is not easily explainable and is even more difficult to analyse in any logical or sequential way. Consequently, we are satisfied that this method is unreliable for the purposes of trying to ascertain what the correct NAV should be so that a fair, just and uniform RV can be attached to this property.

9. In support of the Comparable Method, both Valuers have submitted a number of comparisons which they say underpin their approach to valuation. On behalf of the Appellant Company we have been referred to Johnny Fox's in Glencullen, to the Sheiling Hotel on the Howth Road and to the Abbey Tavern in Howth itself. We are satisfied without question that numbers 1 and 3 are not comparable and even with adjustments reasonably made and reasonably based could not be so made. On behalf of the Commissioner we have been referred to the Country Club in Churchtown (commonly known as the Braemor Rooms), the Sheiling Hotel, the Beechcomer in Killester and the Yacht in Clontarf. The Sheiling Hotel is different in a number of respects. Firstly, it is a hotel with 11 bedrooms, secondly its turnover, adjusted to 1988, is only £600,000 in comparison with the average adjusted turnover of the subject property being almost £1.6m and thirdly its location, its structure, its condition, and its customer base are all substantially different from Clontarf Castle. We do not believe that the Beechcomer is of any assistance. The Yacht, though purely a licensed premises, is of interest in that its adjusted turnover to November 1988 is £1 m approximately, its total retail area is 5,047 sq.ft. and it has a rateable valuation of £610 placed thereon at 1993 first appeal. However, in our view the most comparable property is the Braemor Rooms in Churchtown. The appropriate turnover figure is £1.47 m and it has a rateable

valuation of £815. That equates with an NAV which is approximately 8.8% of the adjusted turnover.

- 10.** In our opinion, therefore, we feel that some reliance should be placed on the Yacht in Clontarf, but far more on the Braemor Rooms in Churchtown which up to 1992 had also very a well known and extensive cabaret business. That business was in existence when the RV of £815 was placed thereon at the 1991 first appeal stage. We therefore believe that the correct and appropriate RV on the subject property should be £860 and we so declare.