Appeal No. VA04/2/053 & 054

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Allonway Ltd
&
Balticross Ltd **APPELLANTS**

and

Commissioner of Valuation **RESPONDENT**

RE: Swimming Pool & Gymnasium at Lot No. 2abc/1, & Hotel & Aparthotel at Lot No. 2abc, Baltimore, Tullagh, Skibbereen, County Cork

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI	**Deputy Chairperson**
Michael F. Lyng - Valuer	**Member**
Joseph Murray - B.L.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 25TH DAY OF NOVEMBER, 2004

By Notices of Appeal dated the 21st day of May, 2004, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €170.00 and €700.00 on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal are:
"The valuation on the property is incorrect because (1) it disregards the previously agreed valuation in respect of the subject premises (2) it disregards the valuations on comparable properties."

The two appeals, with the agreement of both parties concerned, were heard contemporaneously at the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin, 7 on the 17th September, 2004. Mr. Desmond Killen, F.R.I.C.S., F.S.C.S., I.R.R.V., a Director of GVA Donal O Buachalla, Property & Rating Consultants and Mr. Tom Murray FCMA, Managing Director, Baltimore Hotel Ltd. represented the appellant. Mr. Daniel Griffin, B. Comm., M.I.A.V.I., a Staff Valuer in the Valuation Office, represented the respondent. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief.

Description:

The subject relevant properties consist of:

1. A modern 3 star hotel with 40 standard hotel bedrooms, a three storey block containing 12 x 2 bedroom suites and a row of 6 terraced and semidetached houses with 6 x 3 bedroom suites. The suites each have a lounge/kitchen. The hotel restaurant has accommodation for c.90 people. The function room has accommodation for c.100. There is a hotel bar, meeting room, and the usual ancillary accommodation of kitchen, stores, staff quarters etc. The hotel is seasonal. It closes from about the 20th of December each year to around the 1st of February following. The gross area is 4,498 sq. metres, including 1,773 sq. metres for the apartments/2 and 3 bedroom suites.

2. A Health & Leisure Centre with 16 metre pool and gymnasium with a gross floor area of 631 sq. metres.

Valuation History – Both properties

1. The hotel was first valued in 1972 and revised in 1991 and again in 1997. In 1998 when the number of bedrooms was increased from 30 to 40 and a Leisure Centre added, the property was again valued and that valuation remained in place for the hotel and Leisure Centre until the recent revision in October 2003, which fixed the RV of the hotel/apart-hotel at €700. That RV remained unchanged following an appeal to the Commissioner and is now appealed to the Tribunal.

2. The swimming pool/gymnasium was first valued, as part of the hotel, in 1998. It was revised and separately valued in October 2003 with the RV fixed at €170. That RV remained unchanged following an appeal to the Commissioner and is now appealed to the Tribunal.

Appellant's case

Hotel, Apart-Hotel

Mr Desmond Killen stated that the issue in this case is quantum. There was a hotel, a number of apartments and a Leisure Centre. The hotel and Leisure Centre were valued and, on foot of the Valuation Act 2001, the apartments came to be valued. The Valuation Office decided that the rate per sq. metre should be increased by 42.9%. Mr Killen considered this increase untenable and not in accordance with the Act.

In the appeal valuer's report in 1997, the subject property is said to be located on the edge of Baltimore village with magnificent sea views. However, Mr Killen said, the magnificent views are long gone due to the development of the village.

Mr Killen also questioned whether one of the comparisons used at revision 98/4, the West Cork Hotel, Skibbereen, was now compliant with Section 49 of the Valuation Act 2001. He was unsure whether it was in the Skibbereen Urban District rating area or in the Cork County Council Rating Area. He also said that the report states that the best comparison was the West Cork Hotel in Skibbereen. He noted too that in that same appeal valuer's report (1997), when fixing that valuation, mention was made of other hotels particularly the West Lodge Hotel, Bantry which is now introduced by the Valuation Office as a comparison for the first time.

Mr. Killen expressed the view that the subject, as per 1998 revision report, is the primary and best comparison. The revision officer's report then stated that, with the addition of a

3rd floor, the number of bedrooms had increased from 30 to 40 and that the apartments built in the grounds of the hotel were not rateable. At that revision, the only comparison used was the subject itself and the valuation was increased from £235 to £330. In the 2003 revision, Mr Killen stated, the valuation report states that no changes were made to either hotel, apart from a small addition at the rear entrance, or leisure centre, except for change of occupation, but that the apartments were now valued.

Mr Killen went on to say it was clear from the 2003 revision report that the hotel is unchanged and that the valuation was assessed correctly in 1998, is in the Valuation List and thus is a proper comparison as envisaged in Section 49 of the Act and complies also with Section 63 of the Act. Mr Killen then referred to a recent decision by the Tribunal in **VA04/1/047 - Sam McCauley Chemists Ltd** in which the Tribunal stated *"the effect of section 49 and section 63 of the Valuation Act, 2001 means that the correctness or otherwise of a challenged assessment must be decided prima facie by reference to the levels of values appearing in the relevant Valuation List. These levels which have become established either by acceptance or as a result of the appeal procedures in accordance with section 30 and/or section 34 of the Valuation Act, 2001 are now commonly referred to by rating practitioners as the "tone-of-the-list" although these words have as yet never appeared in any statutory provision."* Mr Killen stated that the valuation of the hotel prior to this revision is firmly established in the Valuation List and complies with the criteria as set down in the aforementioned Judgment.

Mr Killen said that the Apart-hotel operates on a seasonal basis and is a family-oriented business. July and August have the maximum occupancy and this drops to about 50% in April, May, June, September and October. It operates for weekends, Friday evening to Sunday evening in November, part of December and for February and is closed for the remainder of December and for January. The function room can only cater for a maximum of 130 persons and therefore there are weddings or other functions. The bar has very little passing trade and competes for business with a number of licensed establishments in Baltimore.

Mr Killen stated that when the valuation was assessed in 1998 there was a hotel and Leisure Centre together, which are now separate, and the analysis of the valuation was- hotel 2,865 sq. metres @ €23.91 and Leisure Centre 631 sq. metres @ €23.91. Mr Killen referred to a letter in his précis from Mr Tom Murray FCMA Managing Director Baltimore Harbour Hotel stating that since 1998, no additions or alterations to the hotel have taken place.

Mr Killen said he would accept that a number of dwellings have been built in Baltimore bringing the population to 383 but he felt that the number was probably less. As some of the new houses are now occupied by people who were clients of the hotel, the hotel lost business as a result. He also stated that the population of Bandon and environs is 5,161.

Mr Killen then addressed his comparisons the first of which is the subject property itself. He said his second comparison, the Celtic Ross Hotel, Conference and Leisure Centre, Rosscarbery, Co. Cork, is a much superior hotel to the subject. It is a 3-star, 66-bedroom, purpose built hotel, in a better location and with all year round trade catering for conferences, wedding receptions and functions. He estimated that its bar trade alone would far exceed the total trade in the subject. His third comparison, the West Cork Hotel, in the town of Skibbereen, has all year round trade, 36 bedrooms, bar and restaurant.

Having regard to the foregoing Mr Killen stated that the correct valuation of the subject hotel to be as follows:

4,498 sq. metres @ €23.90 per sq. metre = €107,502
@ 0.5% = €538 RV

<u>Health & Leisure Centre</u>

The Health & Leisure Centre was valued as part of the hotel at 98/4 revision. The 1998 revision report describes it as "a pool and gym built in part of the former industrial school" and is referred to by Mr Dan Griffin of the Valuation Office as a Leisure Centre with swimming pool, gymnasium, sauna, etc. attached to the Baltimore Harbour Hotel. This, he says, is unchanged since the last revision in 98/4, except for change of occupation. A separate but related company to the hotel company, Allonway Ltd, now occupies the Leisure Centre. It has a membership of about 300 and charges the hotel for its guests to use the facility. The hotel charges the Leisure Centre a management charge as the hotel's management runs the Leisure Centre. Mr Killen questioned the nature of the revision application, which was to "value Apart-hotel adjacent to Baltimore Harbour Hotel." He stated that the object of the revision was to value the apartments and it was never in any way sought to revalue what was there already. Mr Killen stated that in his view taking all the circumstances into account a fair valuation for the Leisure Centre would be:

631sq. metres @ €23.91 per sq. metre = €15,087 NAV
RV @ 0.5% = € 75 RV

In reply to Mr Griffin in relation to the hotel/apart-hotel, Mr Killen stated that he first inspected the subject property on the 25th August 2004. He also stated that he found certain problems with the hotel - it is a piecemeal development which no longer has a sea view except from the 3rd floor, the only function room has no natural light and is very small. Mr Killen would not agree that €23.91 per sq. metre is more appropriate to an industrial building than to a hotel/apart-hotel or a Leisure Centre. Mr Griffin stated to the Tribunal that when the 1997 revision was carried out, the then significant trading loss was taken into account in arriving at an RV of €298.38 and that no such trading problem exists now. Mr Killen stated that when Mr Griffin asked for accounts for the subject the latter stated that he requested them, only to establish the amounts of money that had been spent on the property, and that he was not using accounts to deal with the valuation under appeal. Mr Griffin stated that Section 49 of the Valuation Act, 2001 states that other properties comparable to that property being valued should be used when carrying out a valuation and asked why the subject property was the only comparable used by Mr Killen. Mr. Killen stated that the subject property was in the list at the time and that the Valuation Office in the 1998 revision used the subject as a comparison.

In reply to a query of the Chairperson, Mr. Killen agreed that a Material Change of Circumstances occurred when the Apart-hotel was added on, the Leisure Centre removed and one property effectively became two relevant properties. Mr. Killen stated that the "tone-of-the-list" was established by the hotel and the only comparators recorded by the Valuation Office are the West Cork Hotel, Skibbereen and the Celtic Ross Hotel, Rosscarbery, Co. Cork. Mr. Killen included the subject as it was in the Valuation List as a relevant property and in his opinion, is the primary comparison in this case.

Mr. Tom Murray, Managing Director of the Baltimore Harbour Hotel, having taken the oath, clarified for the Tribunal the relationship between the management of the Health & Leisure Centre and the hotel. He stated that the former was owned by a company called Allonway Ltd, that all the revenue is recorded separately in the books of Allonway Ltd, that it shares management with the hotel, that he is the Managing Director of the whole complex and that the hotel General Manager has responsibility for management of the Health & Leisure Centre as well. The income from the Leisure Centre earned by Allonway is used to offset in part the cost of management provided by the hotel on an annual basis. The Leisure Centre is open all year round from 8am to 10pm to cater for circa 300 members and people holidaying in Baltimore can buy a weekly membership. The staff in the Leisure Centre are employed by Allonway Ltd.

In reply to Mr Griffin, Mr Murray stated that the cost of the 3 bedroom suites including fit out was €600,000. He also stated that the hotel has had very large borrowings over many years, continues to have large borrowings and has not shown a profit to date. This, he stated, is due primarily to location and not to the size of the hotel or the number of bedrooms. In reply to the Chairperson, Mr Murray said that the occupancy of the hotel over the season would be about 55%. He also stated that he tried to market the Leisure Centre at a discount for people owning the new holiday homes in Baltimore in order to generate business and he only got an uptake from the owners of 10 houses. He advised that the turnover for the bar in the subject property is probably the lowest turnover of any pub in Baltimore.

Respondent's case

Hotel, Apart-Hotel:

Mr. Daniel Griffin outlined the location of the Baltimore Harbour Hotel which, he stated, was situated 7 miles south west of Skibbereen and is one of two hotels in Baltimore. The village is a popular West Cork holiday destination renowned for sailing and water sports. A considerable amount of tourist related development has taken place in the village over the last few years including the building of about 200 new holiday homes. He outlined all the hotel's facilities, agreed that the area was 4,498 sq. metres, including 1,773sq. metres on the 2 and 3 bedroom suites and that this is the first valuation of these suites.

Mr. Griffin stated that the hotel had a chequered trading history up to the time of acquisition in the mid 90's by the present owner. The hotel was originally built in the early 1970s. The first valuation followed revision in 1972 - RV @ €279.34. The 1991 revision reduced the RV to €165.06 because at the time the Bord Fáilte grade was removed. In the 1997 revision, the RV was increased to €298.38 and at the 1997 Appeal the RV remained unchanged. The1998 revision increased the RV to €419. The main issue raised by the appellant at First Appeal was that the 1998 appeal rate of €23.92 per sq. metre should remain because there were no changes to the hotel or Leisure Centre since the previous assessment. The Valuation Office response to the main issue was that Section 49 (1) of the Valuation Act, 2001 requires that valuations be determined by reference to the values as appearing in the Valuation List relating to the same rating authority area and that comparable properties are valued at higher levels than the €23.92 sought on the subject.

Mr. Griffin stated that the Tribunal, in **VA89/0/024 - North Kerry Milk Products Ltd. V Commissioner of Valuation**, had given guidance on the length of time valuations should remain in place. The Tribunal expressed a wish that in the circumstances where there were no new buildings or installations added, valuations should remain in place for an appreciable length of time, which it regarded as not less than five years. In the subject case, five years has elapsed. Mr Griffin stated that a Material Change of Circumstances had occurred in this case which allowed the revision to be carried out. Prior to the revision, the accommodation provided 40 bedrooms, post revision it is 82. Operational efficiencies have improved considerably with these additions. Also about 200 new holiday homes have been built in the village over the last few years including a large development directly adjacent to the subject. Mr Griffin contended for a rateable valuation of €760 calculated as set out below:

4498 sq. metres @ €34.17/sq. metre = €153,696.66
RV @ 0.5 % = €768.48
Say €760

With reference to the Valuation Office comparisons, Mr Griffin stated that Casey's Hotel, Baltimore was the most proximate comparison in location terms. It is a 3 star hotel valued at €34.17 per sq. metre. It has 14 bedrooms, bar, restaurant, function room. He also stated that the 3-star Celtic Ross Hotel, Rosscarbery was valued at €34.17, the 3-star Westlodge Hotel, Bantry at €33.08 and the 2-star Barleycove Beach Hotel, Barleycove, Goleen at €28.70 per sq. metre.

<u>Health & Leisure Centre:</u>

Mr Griffin stated that this property comprises a modern Health and Leisure Centre attached to Baltimore Harbour Hotel, developed in 1998. It is operated by a related company to the hotel. It is equipped with a 16-metre swimming pool, children's pool, jacuzzi, bubble pool, steam room, sauna and fully equipped gymnasium with treatment rooms for massage and reflexology. The facilities are available to hotel guests and the general public. Current membership is circa 300 members. The fees for six months are €310 and 12 months €480. The building has a gross area of 631 sq. metres.

The Health & Leisure Centre was first valued in 1998 as part of the hotel at €23.92 per sq. metre. This valuation remained in place until the recent revision. Mr Griffin contended for a rateable valuation of €108 calculated as set out below:

631 sq. metres @ €34.17per sq. metre = €21,561.27

RV @ 0.5% = €107.80

Say €108

Under cross-examination by Mr. Killen, Mr. Griffin acknowledged that he may not have complied with the Valuation Act, 2001 when he included the West Cork Hotel as one of his comparisons. However, Mr Griffin stated that several comparisons were considered in the preparation of the revision and the appeal, and at a meeting with Mr Killen they reviewed about six comparisons. Mr. Griffin stated that he had no difficulty rationalising the increase of the overall unit rate on both the hotel and Leisure Centre by 42.9%. Mr Griffin advised that in the Valuation List, the rate per sq. metre for hotels is quite narrow between town hotels and seasonal hotels. This valuation in 1997 was very much out of the range and for various reasons it was dealt with leniently. He did not have accounts for the subject properties when he was making the valuation and therefore they were not considered. Mr Griffin stated that where a Material Change of Circumstances occurred, all matters can be considered in carrying out a revision. Mr Griffin agreed with Mr Killen that the only Change of Circumstances that had occurred in regard to the Leisure Centre was that it split operationally from the Baltimore Harbour Hotel and was now on its own.

Findings

The Tribunal, having carefully considered all the evidence proffered and arguments adduced, makes the following findings:-

- The Baltimore Harbour Hotel has had trading difficulties for many years due in a significant way to the highly seasonal nature of Baltimore coupled with a small local catchment area.
- Because of its remote location, the subject property enjoys very little benefit from passing traffic, which creates a disadvantage when compared to other hotels.

- The low permanent population in the local area of about 400 provides for very little bar business.
- The new holiday homes do not appear to have enhanced the hotel business.
- The Baltimore Harbour Hotel, as revised in 1998, was and remains a good comparison property for the purposes herein.
- The Health & Leisure Centre should carry a rateable valuation similar to the remainder of the hotel and Apart-hotel premises.
- The Tribunal may only consider comparative evidence on relevant properties located within the same Rating Authority area, in this case Cork County Council, and not UDC or Town Council areas such as Skibbereen or Mallow.
- There has been a Material Change of Circumstances to the subject relevant property since the 1998 revision.
- Examples of buildings cited in evidence other than those of similar function, for the purposes herein, have not been considered.

Determination

Having regard to the foregoing, the Tribunal has come to the conclusion that the valuations of the properties concerned should be calculated as set out below:

VA04/2/054 Balticross Ltd

4498 sq. metres @ €27.76 per sq. metre =	€124,864
RV @ 0.5% =	€624.32
	Say €620

VA04/2/53 Allonway Ltd

631 sq. metres @ €27.76 per sq. metre =	€17,517
RV @ 0.5% =	€ 87.58
	Say €88

And the Tribunal so determines