

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

H.S.S. Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hotel, Aparthotel at Lot No. 15E (pt of), Collegeland, Saggart, Lucan, County Dublin.
Quantum - comparisons

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Maurice Ahern - Valuer

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF JANUARY, 2006

By Notice of Appeal dated the 2nd day of August, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €17,628.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

- "1. The aparthotel is not an economically viable entity. Its viability will depend on whether or not a proposed conference centre is completed and proves successful. These factors were and still are uncertain.
2. The fact that the aparthotel is not an economically viable proposition is evidenced by the extremely low occupancy rates.
3. Profitability is a factor which must be taken into account in any estimate of net annual value.
4. The aparthotel was designed and developed as a complex of apartments. It was not designed as a hotel.
5. The quality and standard of finish of the aparthotel is not such as would command an equivalent rate per sq. m. as the existing Citywest Hotel and the absence of any passing trade severely limit commercial potential.
6. It is inequitable to equate the rateable valuation on an uneconomic development such as the Aparthotel with the rateable valuations assessed on well-established hotels in the vicinity.
7. The rateable valuation of €17,628 covers a total floor area of almost 48,000 sq. m. It would be difficult to find a tenant for a unit of this size.
8. A hypothetical tenant would have regard to all of the foregoing in any assessment of net annual value.
9. In view of all these circumstances, the rateable valuation of €17,628 is excessive and inequitable."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 10th November, 2005. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Messrs Noel Smyth and Partners, Solicitors and by Mr. Patrick Hennigan, BSc.(Surv), Dip. Env. Econ., ASCS, MRICS, Principal of Hennigan and Company, Chartered Valuation Surveyors and Rating Consultants. Mr. Richard Mahon and Mr. Gavin Hegarty, Financial Controller and Planning Adviser, respectively, of the appellant company gave evidence on its behalf. Mr. Brendan Conway, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Briain O Fhloinn, a District Valuer in the Valuation Office, gave evidence on behalf of the respondent.

Preliminary Issue

Mr. Conway told the Tribunal that he wished to pursue the issue raised in the respondent's précis of evidence, namely the fact that in his view the appeal to the Tribunal was on grounds additional to those raised at first appeal stage and that these alleged additional grounds should not be considered by the Tribunal. Mr. Hickey, for the appellant, stated that all the grounds raised in the notice of appeal to the Tribunal had been raised in the notice of appeal to the Commissioner and in the letters dated 25th August, 2004 and 12th November, 2004 which were referred to in the notice of appeal and copies of which were attached to the said notice of appeal. He handed in a copy of those documents. The Tribunal adjourned to allow the respondent time to consider the two letters in question and when the hearing resumed Mr. Conway confirmed that he was satisfied that most if not all of the grounds before the Tribunal could be found in the two letters and he was not therefore pursuing the issue.

Background

The valuation unit comprises the Citywest Hotel and Apart-hotel the latter trading as the Citywest Golf Hotel. The Citywest Hotel was built on a golf course specialising in golf related activities, functions and conferences. It has two 18-hole golf courses. The level per square metre on this part of the property was agreed at €61.98 per sq. metre in 2003 and this level on this part of the property is not in issue. The property was revised in 2004 when the apart-hotel was valued and the level applied to it (also €61.98 per sq. metre) is in issue.

The construction of the apart-hotel was promoted by legislation which provided for tax allowances and incentives in certain circumstances for developers of new and additional hotel

bedrooms. To avail of these incentives, a scheme was devised for the sale of the apartments in the apart-hotel to investors who would lease them back to a management trading company which would be 100% owned by the investors themselves. The management trading company would in turn operate the apart-hotel under an operational contract with H.S.S. Limited (the appellants herein) initially for a period of seven years. All of the apartments were sold to investors on these terms (as of the valuation date of 3rd December, 2004).

The Apart-hotel

The apart-hotel consists of a five storey over basement building on a two acre site and is located on part of the Citywest Golf Course about 250 metres to the rear of the Citywest Hotel. It was designed as 140 apartments or “golf suites”, 115 of which are 3-roomed and 25 are 2-roomed. The apart-hotel is now fitted out as 395 bedrooms.

There is a lounge/reception area on the ground floor as well as a bar and restaurant. There is a second open lounge area on the first floor and a large parking area in the basement with accommodation for 100 cars. There are lifts to all floors. The commercial areas are vested in a Common Areas Management Company and the restaurant has been leased to an outside restaurateur. The restaurant has been separately valued.

The standard of construction and fit-out is good. There is free access for the owners of the apartments to the two golf courses and the leisure centre in the Hotel. There is no on-site management staff. The premises is serviced only by domestic staff from the main hotel. Access to management is through a phone at the reception desk. The reception area and bar are normally unattended (floor plans and location maps were furnished).

Location

The Citywest Hotel is located off Garters Lane which links Saggart to the Naas dual carriageway. The apart-hotel is located 250 metres to the rear of the Citywest Hotel with access to it through the hotel entrance and grounds. There is no passing traffic. There is a right of way through the hotel grounds.

General

Planning permission for the apart-hotel was for the construction of an apart-hotel comprising 140 apartments. The current usage is as hotel bedrooms which are used by the hotel. The

premises was built with a proposed 6,000 seat conference centre in mind. No planning permission has been granted for such a conference centre.

Appellant's Case

Mr. Mahon's Evidence

Mr. Richard Mahon, Financial Controller of the appellant company, under oath, stated that he had read Mr. Hennigan's précis and confirmed that it was correct. He said that the hotel company built the hotel first. They then built the apart-hotel (now called the Citywest Golf Hotel) with the intention of building a large conference centre later. It was their expectation that when the conference centre was built, the apart-hotel would be vital to its success.

The main hotel had meeting rooms, several bars and a conference centre (capacity 4,000), he said, but there was nothing in the apart-hotel only the basics. The entire complex, hotel, golf courses and apart-hotel was owned by the one company. At the valuation date of 3rd December, 2004 the occupancy rate in the Citywest Hotel was about three and a half times that of the apart-hotel. Because of this low occupancy of the apart-hotel the profitability of the company was much reduced.

Cross-examination

Mr. Mahon said that he was not aware that the hotel and the apart-hotel were considered as one entity for rateable purposes. He was not an expert on rateable valuation.

He agreed that the building of the apart-hotel was tax driven – it was an allowance to investors to write off tax on bedrooms. The building of the conference centre was a vital part of the development and it was expected that it would be built within 6 months of the building of the apart-hotel. The apart-hotel was opened in April 2003. It was more modern than the hotel. There was no room service in the apart-hotel.

Mr. Hegarty's Evidence

Mr. Gavin Hegarty is a planning adviser to the appellant company, employed since the building work started on the hotel. He said that the valuation date was 3 December, 2004 and that on that date they did not have planning permission for the conference centre. He also agreed that he was not an expert on rateable valuation. The company had the hope and

expectation that the conference centre would be built. He also said that there was a good chance that the company might not get planning permission for the conference centre.

Mr. Hennigan's Evidence

Mr. Patrick Hennigan adopted his précis as his evidence-in-chief. He went through his précis in detail. He confirmed that the apart-hotel was operating as a 395-bedroomed hotel at present.

There was no exit whatsoever to the Naas dual carriageway.

Cross-examination

Mr. Hennigan confirmed that the RV on the hotel was settled and agreed at €10,000. There was no actual planning permission for the conference centre on the valuation date.

He also pointed out that with an average occupancy rate of around 18% since it opened for business in 2003, the usage of the apart-hotel was clearly unprofitable in the absence of the proposed conference centre. Profitability was a factor that must be taken into account in any estimate of net annual value and he referred to the High Court judgment in **Rosses Point Hotel Ltd.** given on the 23rd January, 1987. He further said that it was difficult to determine what the economic circumstances might be in the future but in the meantime the premises must be valued in their actual state as per **VA93/1/009 - Castletroy Park Hotel**. He maintained that at the present time the economic status of the apart-hotel was parlous and no prudent lessee would view a letting of the premises in the same light as they would view a letting of the Citywest Hotel.

Respondent's Case

Mr. Briain O'Fhloinn, having taken the oath, adopted his précis as his evidence-in-chief. He said that the apart-hotel was a large building built around a courtyard. It had good natural light with an elegant reception area. The corridors were quite wide and there was good natural light in all the bedrooms. There were four floors with a fifth dormer floor. The bar was well fitted out. There was an ample car park and a large basement area which was generally used for storage.

His impression was that the building was of very high quality and that it was carefully thought out. It was, in his opinion, better laid out than the main hotel which was added to “piecemeal” over the years.

There were no rooms in the apart-hotel which were disadvantaged. His assessment was carried out on the basis of the provisions of Section 49 of the Valuation Act, 2001. The comparison used by him was the main hotel which in turn was based on comparable properties in the same rating authority area.

He applied the same rate per sq. metre to the apart-hotel as was levelled on the main hotel, as it was essentially part of the same unit. It was, in his opinion, appropriate to continue with this rating.

In relation to the fact that there was no room service in the apart-hotel he said that this was a management decision.

The conference centre was at an advanced stage at the date of inspection in August 2004. (He produced photographs to show that this was so.)

He said that he was told about the planning difficulties at that time. He said that he formed the opinion that the conference centre would go ahead. He further said that he felt that he was dealing with people who had long experience of the planning laws. They had a reasonable expectation that the application would succeed. He was aware of the 4,000 seater conference centre in the main hotel.

He looked at the main hotel and apart-hotel as one unit. He was pleased with the quality of construction, the ample car parking facilities and adequate storage. In his opinion, the apart-hotel was a superior part of the entire unit and the standard of fit out in it was superior to that in the main hotel.

Cross-examination

Mr. O’Fhloinn maintained that the conference centre was at an advanced stage when he saw it. He agreed that he had heard Mr. Hegarty’s evidence in full. He refuted the suggestion that

a hypothetical tenant would have huge concerns that the conference centre would be built at all.

He said he was given to understand that there was a concern and he accepted this.

He agreed that he would value the apart-hotel at the same rate as the main hotel even if it were valued separately. It was right beside the Executive Golf Course. He repeated that he looked at the entire unit and not at actual profit. Potential profit was a factor which should be considered.

He again said that he looked at the main hotel as a comparison because of the reasons already given by him. He did not agree that there should be other comparisons outside the hotel premises.

Mr. Hickey submitted that the comparison used by Mr. O'Fhloinn was not sufficient to comply with the provisions of Section 49 of the Valuation Act, 2001. He said that there must be comparisons outside the hotel complex and that no such comparisons were given either in Mr. O'Fhloinn's précis or in his evidence. This was a clear breach of the Act and he submitted that the revision should be struck out.

Mr. Conway submitted that he could not agree with Mr. Hickey's submission. Mr. O'Fhloinn had fully complied with the requirements of the Act. He did not rely on one comparison. He relied on the comparison of the Citywest Hotel which was there at the time. Its valuation was based on comparable properties in the same rating area. These were referred to in Mr. Hennigan's précis (page 11) wherein he stated that an agreement in relation to the hotel was reached by reference to other comparable hotels in the vicinity viz. Bewley's Hotel at Newlands Cross, the Red Cow Hotel and the Green Isle Hotel.

He further maintained that Section 49 of the Valuation Act, 2001 gave statutory recognition to the "tone of the list". The tone of the list, he said, was not a mathematical formula but had to do with apprehension, colour, previous practice etc.. The tone of the list was complied with by using the Citywest Hotel as a comparison for the reasons already given.

He also stated that he relied strongly on the Tribunal Judgment in **VA93/1/009 - Castletroy Park Hotel**.

Findings and Determination

1. The relevant property, property number 1545454, consists of a hotel, the Citywest Hotel and a standalone apart-hotel, the Citywest Golf Hotel. The Citywest Hotel was valued in 2003 at RV €10,000 or €61.98 per sq. metre, by agreement. Following the building of the apart-hotel a request for revision was made by the South Dublin County Council in March 2004. A rateable valuation of €18,030 was assessed to include the new apart-hotel. On appeal the Commissioner for Valuation reduced the valuation to €17,628. The overall property covers an area of 43,000 sq. metres approximately. In assessing the correct valuation the Tribunal looks to the property as a whole. However, the valuation on part of the subject property has already been agreed, that is the €10,000 on the Citywest hotel and this amount is not in issue. What is in issue is the balance of €7,628 on the apart-hotel.
2. The fact, if it is a fact, that the subject property is a development encouraged by tax driven incentives or capital allowances available to investors is not material to the issue of valuation for rating purposes. What is material to the Tribunal is the valuation itself and it is the Tribunal's responsibility to ensure the valuation is just and fair and in accordance with law prescribed by the Valuation Act, 2001.
3. It was said by the appellant that it is the duty of the Commissioner of Valuation to value the unit as a whole, and not to put the value of the main hotel "on the back" of the apart-hotel. We look to the subject property as a whole valuation unit and recognise that the value of the main hotel or Citywest Hotel is already a fait accompli with a value agreed at €10,000. Accordingly, our concern is to assess if the valuation of the remainder of the unit, which was assessed at €7,628 on the apart-hotel, the Citywest Golf Hotel, was just and fair.

Actual State

4. The Tribunal must value property in its actual state or the rent which the hypothetical would be prepared to pay one year with another in accordance with section 48 of the Valuation Act, 2001. The relevant date in this case is the 3rd December, 2004 when the

final valuation certificate was issued. We look to the circumstances surrounding the Golf Hotel at this time. While a zoning decision may have been made by South Dublin County Council, no planning permission for a conference centre had been obtained at the material time, and evidence was given that the conference centre might never be built. Accordingly, the Tribunal cannot consider the possibility of a conference centre being built and its possible effects on occupancy rates in the Golf Hotel. We look to the subject property for valuation purposes on the principle of *rebus sic stantibus*. There was concern whether the conference centre would be built at all.

Occupancy and profitability

5. The subject property is one unit from the point of view of valuation, but two economic units from the point of view of profits. Occupancy in the Golf Hotel is about one third that of the main hotel. In 2003 the main hotel had approximately 67% occupancy while the apart-hotel had 24% occupancy. We take profitability into account in assessing valuation. In **Rosses Point Hotel – v – The Commissioner of Valuation [1987] IR 143** Mr. Justice Barron said “*Profit earning ability is the basic element in determining the net annual value. It is based not on actual profits but on what the prospective tenant would anticipate would be his profits.*”

6. We do accept that the subject property can be used as its own comparison but not of course in isolation by itself without reference to other comparisons. The Tribunal accepts that the principle of law referring to values appearing on the valuation list has been complied with as stated in section 49. The NAV on the Citywest Hotel at €61.98 per sq. metre was settled by agreement with reference to Bewleys Hotel at Newlands Cross, The Red Cow Hotel and the Green Isle Hotel, all in the same rating authority area. We accept these as comparisons within section 49 of the Valuation Act, 2001 and thereby acknowledge that the respondent has furnished more than one comparison. The respondent also stated that the tone of the list had to do with “apprehension, colour, previous practise...” The Tribunal sees the tone as something much more significant than that. We, in fact, see it as a guide which is of considerable assistance in adjudicating upon what the correct NAV should be – see **VA96/4/035 – Ray Murray Ltd.**

7. We recognise the high quality of standard and fit out of the apart-hotel. However, the level of services available is not the same as in the main hotel as there is no room service

or breakfast service for which patrons have to go to the main hotel some 250 metres away. Yet, we find it strange that patrons pay the same price per room in the apart-hotel as in the main hotel.

8. On the question of accessibility, the apart-hotel is not accessible from the main road and, like the main hotel, has to be approached from Garters Lane but is, however, some 250 metres further back behind the main hotel. Accordingly, it is not as customer friendly as the main hotel from an access point of view.

9. The Tribunal is aware of the fact that, technically, there is a difference between a hotel and an apart-hotel although both are similar in that they both provide accommodation services. An apart-hotel unit is more for long term customers and may have a greater degree of privacy than the main hotel, which is mainly used for accommodating short term guests in single or double rooms. The apart-hotel may also be used for domestic purposes and as such may be rated for limited periods under the Valuation Act, 2001. In the present case the apart-hotel is converted to hotel use, yet there is uncertainty about its future, i.e whether it will revert back to private use after 7 years or remain in hotel usage. This would affect the judgement of a hypothetical tenant and looking to the subject property as a whole it might be difficult to find a hypothetical tenant.

10. While acknowledging that the apart-hotel is a building of high quality and fit-out, the Tribunal, however, finds that it cannot apply the same rate to it as that applied to the main hotel building having considered: the elements of occupancy and profitability; location, being some 250 metres away from the main hotel; level of services which is not on a par with the main hotel as there is no main restaurant or room service in the apart-hotel; and also considering that of the 395 rooms in the apart-hotel 26 of them have no natural light. Taking into account the overall size of the subject property, some 43,000 sq. metres, we ask ourselves what rent the hypothetical tenant would be likely to pay when we consider these factors and we come to the conclusion that he would pay considerably less than for the main hotel.

11. Accordingly, the Tribunal determines the net annual value (NAV) and the rateable valuation (RV) of the subject property as follows:

Apart-hotel

Floor 1 (Basement)	3414.8 sq. metres	@ €16.40 per sq. metre = € 6,002.72
Floor 0 (Store Refuge)	67.7 sq. metres	@ €16.40 per sq. metre = € 1,110.28
Floor 0 (Ground)	3408.23 sq. metres	@ € 49.58 per sq. metre = € 168,980.04
Floor 1 (First)	3699.08 sq. metres	@ € 49.58 per sq. metre = € 183,400.39
Floor 2,3,4	11268.62 sq. metres	@ € 49.58 per sq. metre = € 558,698.18
		Total NAV = €68,191.61
		RV @ 0.63% = €6,099.61

Say RV	€6,100
Add agreed RV of main hotel	<u>€10,000</u>
Total RV	€16,100

And the Tribunal so determines.