

Appeal No. VA06/3/035

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

Lightridge Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hotel, Health Studio/Farm at Lot No.1AAb2AB/2, Rathmiles, Ballybrittas,
Mountmellick, County Laois

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Leonie Reynolds - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JANUARY, 2007

By Notice of Appeal dated the 28th day of July, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,470.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, copies of which are in Appendix 1 attached to this judgment.

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 20th November, 2006. Mr. Owen Hickey, BL, instructed by Messrs Bolger, White, Egan & Flanagan, Solicitors, Portlaoise, appeared for the Appellant. Mr. James Devlin, BL, instructed by the Chief State Solicitors Office, appeared for the Respondent. Valuation evidence was given by Mr. Conor O'Clairigh, MRICS, FIAVI, ACI Arb, on behalf of the Appellant and by Mr. Ian Power, B.Sc. Property Management & Valuations, MIAVI, on behalf of the Respondent. Mr. Tom Milne, Financial Controller and Company Secretary of the subject entity, also gave evidence.

BACKGROUND

The property the subject matter of these proceedings consists of two separate properties being a hotel building and an adjoining spa and leisure building. Both buildings, although separate structures, are connected by way of an underground tunnel. The hotel and spa are part of a complex known as the Heritage Golf and Spa Resort at Killenard, County Laois. The agreed gross external floor areas of the buildings are as follows:

- (a) Main hotel building (excluding lower ground floor) 9,396 sq. metres.
- (b) Main hotel building (lower ground floor) 1,442.18 sq. metres.
- (c) Spa and leisure building 3,122 sq. metres.

The rating history of the property is that a Valuation Certificate issued in December, 2005 with an RV of €4,470. An appeal was taken by the Appellant against this assessment which however was unsuccessful, the RV remaining unchanged as a result of the appeal decision in July, 2006. An appeal was then lodged to this Tribunal.

While initially grounds of appeal included legal grounds, the appeal on legal grounds was withdrawn and therefore the only issue for resolution by the Tribunal was the issue of quantum.

THE EVIDENCE

THE APPELLANT'S CASE

On behalf of the Appellant, Mr. Conor Ó Cléirigh, Valuer, gave evidence. He adopted his précis which had been previously furnished to the Tribunal as his evidence-in-chief. He described Killenard as a small rural village with a population of 676 people. It was approximately 72 km from Dublin. The property the subject matter of the appeal was built

during 2005. It was extremely highly finished, though had not yet been graded for stars by the relevant tourism authority. The Tribunal were referred to pictures and details of the property contained in the précis.

Mr. Ó Cléirigh suggested that a number of factors should be taken into account in fixing the RV for the property in question. The first matter of concern for him was the issue of location. In his view this was a primary factor for any hotel. He acknowledged that the hotel and spa were part of a much bigger complex which included a golf course with clubhouse, a public house and a residential scheme. However, there was no signage directing people on the motorway (M7) to the property and there was thus little or no passing trade and any persons wishing to use the premises would be dependent on a motor car.

Mr. Ó Cléirigh also expressed the view that Laois could not really be regarded as a tourist destination by either the domestic or overseas tourist market. The Tribunal was referred to tourism figures for the Midland East region for the year 2005 from Failte Ireland. Certainly, the revenue generated by County Laois (€12,000,000) during the period in question compared unfavourably with other, better known tourist counties such as Kildare (€70,000,000) and Wicklow (€76,000,000). Indeed Laois generated the second lowest amount of revenue of all of the counties in this region during 2005. Laois also had the second lowest number of tourists visiting the county during this period. Mr. Ó Cléirigh also expressed the view that the hotel could find itself competing with an increasing number of similar facilities which appear to be under development at this time. There has been a huge increase in the construction of this type of facility, driven in the main by the availability of tax allowances. The tax allowances are used up by the owner/developer rather than the occupier, however.

Mr. Ó Cléirigh suggested that a lower figure be allowed for the lower ground floor of the hotel (which provided male and female changing rooms, buggy car storage, boiler house, storage, laundry, kitchen area, bottle and keg store, goods entrance and toilets) than the rate per square metre for what might be described as the main part of the hotel. However, he also suggested that a quantum allowance be given for the spa and leisure centre. While the spa and leisure centre have been finished to a high standard, in his view they were facilities which were required to promote the hotel and did not in themselves generate an economic return. He acknowledged however that other hotels with leisure centres would have those

leisure centres valued at the same rate as the main hotel. Indeed the first three hotels on his list of five comparative properties followed this practice.

Accordingly Mr. Ó Cléirigh suggested that the hotel main building should be valued at €40.52 per sq. metre, the hotel lower ground floor should be valued at €20 per sq. metre and the spa and leisure buildings should be valued at €30.26 per sq. metre, giving a total NAV of €504,038, which, multiplied by 0.5%, gave a rateable valuation of €2,520.19, say €2,520.

Mr. Ó Cléirigh then analysed the comparator properties. These were:

- (i) The Heritage Hotel in Portlaoise of which the main hotel block was valued at €40.54 per sq. metre.
- (ii) The Talbot Carlow Hotel (on the border of Laois), a four-star hotel in which the main hotel and leisure centre were valued at €38.96 per sq. metre.
- (iii) The Killeshin Hotel in Portlaoise, a three-star hotel in which the main hotel and leisure centre were valued at €36.90 per sq. metre (which property has now been demolished and a new hotel is under construction).
- (iv) The Montague Hotel at Emo, County Laois, a three-star roadside hotel without a leisure centre, which was valued at €29.20 per sq. metre.
- (v) Castle Durrow, Durrow, County Laois, an older premises with Blue Book status (but without a leisure centre) which was valued at €27.57 per sq. metre.

Mr. Ó Cléirigh focused closely on the Heritage Hotel in Portlaoise as being the most appropriate comparator. The RV of that property had been agreed prior to hearing at €2,375. In his view the property was similarly appointed and was developed by the same developers. As it was in the town of Portlaoise it had the benefit of the facilities and structures of that location. In his view it was finished to a similarly high standard, having been relatively recently constructed also.

Mr. Ó Cléirigh said his instructions were to the effect that room occupancy in the Heritage at Killenard was of the order of 45%. Only 10% of the guests who go to the Heritage Hotel in Killenard play golf. Other guests attend for the purpose of corporate launches or weddings. A number of guests also use the leisure centre. Mr. Ó Cléirigh was at pains to point out that

in his view the hotel was attempting to draw business from a wider section of the community than simply golfers. However, it is currently making a loss.

In his view it was difficult to assess the NAV by having regard to rental values since most hotels are owned by the occupier and are developer driven. His estimate would be that the hotel would obtain rental of approximately €1,000,000 per annum but he really felt that this was a difficult basis on which to value the property. In his view the “*tone of the list*” was a more appropriate basis to use to value the property for rating purposes.

Mr. Ó Cléirigh also commented on the précis of Mr. Ian Power, the Valuer representing the Respondent, Commissioner of Valuation. He noted that the first three comparators were the same as the comparators he had used. The fourth comparator is the Heritage Golf Club which is part of the complex in which the hotel and spa are located. He noted that the clubhouse of the golf club had been valued at a rate of €64.92 per sq. metre. However, in his view this rating was of no real assistance when valuing the hotel building which was a separate building providing separate facilities. Mr. Ó Cléirigh noted that Mr. Power had sought to utilise comparator properties from other counties. However, Mr. Ó Cléirigh expressed the view that his role as valuer is to look firstly at other facilities in the same county rather than to look at other counties. However, he did offer two other comparator properties from outside County Laois. He referred us to the Slieve Russell Hotel in Cavan which at its most recent revision had been valued at €41 per sq. metre. He also referred us to the Kilmore Hotel in Cavan which was valued at €36 per sq. metre.

In his view the Heritage complex was trying to create an entity which would develop its own momentum and so had created its own facilities to allow that momentum to develop such as golf and a bowling green as well as the other facilities described.

In cross-examination he accepted that although the hotel had not yet been graded it was certainly of four-star standard and would be hopeful that it would obtain five stars if the service was up to scratch. He acknowledged that the website of the hotel and of Fáilte Ireland described the hotel in question as being a five-star hotel. In his view the hotel was exceptionally well built though not unique. However, it was the only hotel in Laois in a rural location with a golf club beside it. There was some dispute as to how far the property was from the M7 but it appears to be of the order of 3.5 miles. He acknowledged however that it

was an advantage to be close to the M7 which it is; he also acknowledged that it is no different from other facilities in being denied signage on the motorway directing drivers to the property. He accepted that the revenue generated through tourism in Co. Laois appeared to have increased from €9,000,000 in 2004 to €12,000,000 in 2005.

There was some debate about the issue of tax breaks. Mr. Ó Cléirigh noted that it was the owner/developer who benefited from such tax breaks rather than the occupier. He made it clear that he did not lower his valuation of the property just because its construction was tax-driven. However, he expressed the view that because tax breaks were available to persons who wished to engage in the construction of hotels, more and more of these hotels are being built, and as a result efforts by existing hotels to make profits are hampered to an extent by competition. He accepted that for the purposes of comparison he had looked at other, what might be described as local, hotels but not at the golf club and in particular not at the clubhouse. However in his view he was valuing a hotel not a clubhouse, though he accepted that the hotel shared a common location with the clubhouse. In the course of the hearing relating to the clubhouse he agreed that the Heritage Hotel in Portlaoise had been put forward as a comparator for the purposes of that hearing.

Mr. Tom Milne, Financial Controller and Company Secretary of the subject entity, gave evidence. In his view occupancy was of the order of 44%. The hotel was not making a profit but hoped to achieve a profit in 2009. Only 9% of the people who used the hotel played golf there. The hotel is also used for weddings, corporate conferences and car launches. In cross-examination it was suggested that there could be a few people who don't register to play golf when arriving at the hotel but may subsequently play. However, he felt that such persons would be recorded by the hotel. He told the Tribunal that a guest paid a reduced green fee (of €80 down from €100) when staying in the hotel.

THE RESPONDENT'S CASE

On behalf of the Respondent Mr. Ian Power, Valuer, gave evidence. He adopted his précis as his evidence-in-chief. He described the property as being part of a large golf and country club. He accepted that the RV fixed was at a level higher than other hotels in Laois but felt that this was justified for the following reasons:

- (i) The hotel in question was a five-star hotel on a championship golf course. The course had hosted the AIB Irish Seniors Open in 2005 and would also host the prestigious Seve Trophy (Golf Tournament between Great Britain and Ireland and the rest of Europe) 2007. In his view he felt it was legitimate to compare the property with similar properties in Kildare and Kilkenny such as the K Club and Mount Juliet. They were appropriate precedents for him to follow.
- (ii) In his view the valuation of the hotel should reflect the valuation of the clubhouse which was beside the hotel and was part of the same resort.

Mr. Power then looked at the comparator properties proposed by Mr. Ó Cléirigh. He accepted that the Heritage Hotel in Portlaoise was a stand-alone hotel. However, it was not near a golf course and was only graded as a four-star hotel. In his view the subject property was a better property. He expressed the view that in valuing the subject property one could not ignore the golf club. The hotel and golf club share the same entrance and the same marketing facilities. In his view the hotel would benefit from the golf competitions which were due to be held there.

In his view the Talbot Carlow Hotel did not have the high level of publicity or profile attaching to the Heritage. Nor did it have a golf course; it was simply a stand-alone hotel. He expressed a similar view in respect of the Killeshin Hotel which in any event had since been knocked down. In his view the Montague Hotel and Durrow Castle also were not really comparable as they did not have a golf course located in the same grounds as part of the same complex.

In cross-examination it was suggested to him that he had placed undue emphasis on the valuation of the clubhouse which had been valued at a significantly higher rate than other club houses in Laois. He acknowledged that the clubhouse and hotel in Mount Juliet were valued at €68.34 per sq. metre and that the clubhouse in the K Club was valued at €68.34 per sq. metre but denied that he had simply copied those valuations for the purposes of the rating of this property (which for the main hotel he had however also valued at €68.34 per sq. metre). He pointed to the fact that the hotel in the K Club was valued at a considerably higher rating of €102.51 per sq. metre.

In his view the Heritage Hotel in Portlaoise is not the same as the subject hotel; the subject property has “*that little bit extra*”. He accepted that the physical construction of the property was probably the same.

He was asked to give a value for the subject property without taking into account the presence of the clubhouse. However, in his view this was a hypothetical question: the clubhouse was there and could not be ignored. In his view the hotel would not have been constructed there without the clubhouse. He accepted that the K Club was of a higher standard but felt that the development was similar to that in Mount Juliet. He was unable to comment on the percentage of guests playing golf in Mount Juliet or the K Club. However, he acknowledged that both of those clubs were considerably more mature and had hosted prestigious events of international status. He acknowledged that the golf club membership of the subject property was full.

He accepted that the subject property was 3 or 4 miles from the motorway and that one had to travel on a series of narrow laneways in order to get there. He also accepted that the hotel did not yet have the same reputation as Mount Juliet or the K Club but pointed out that it had hosted and will in the future host major tournaments. He accepted that the average of the first three comparators suggested by him was a rating of €6 per sq. metre but felt nonetheless that he was justified in giving the rating he had suggested of €8.34 per sq. metre. In his view the hotel was finished to a slightly better standard than the clubhouse and accordingly he was entitled to value the hotel at a slightly higher figure than the clubhouse had been valued at in the earlier hearing.

In answer to a question from the Tribunal he expressed the view that there was no reason why the spa/leisure centre should be valued at any different rate to the rate at which the main hotel was being valued and noted that this had been the approach adopted in a number of the comparators suggested by Mr. Ó Cléirigh and by himself.

SUBMISSIONS

On behalf of the Respondent Mr. Devlin, BL, referred to **VA04/1/024 – Gerri Cobbe & Mary McGibney** (being the Beacon Court determination). In his submission a “*comparable*” property meant a property which had equivalence, likeness or sameness to the subject property. In his submission the Tribunal should also look at any other factor which

may have a bearing on the value of the property in question. It was wrong to say (as had been suggested by Mr. Hickey on behalf of the Appellant) that it was unlawful to look at the clubhouse when valuing the hotel. In his submission the degree of occupancy or the presence or absence of a profit was irrelevant, particularly where the hotel had only opened last year.

On behalf of the Appellant, Mr. Owen Hickey, BL, submitted that the clubhouse and hotel were two entirely different and separate buildings. He accepted that the Tribunal was no longer confined to looking at “*comparable properties of similar function*”. However, in his submission it was more appropriate to look at other hotels in the same county rather than to go to the golf clubhouse next door to the hotel. He submitted that it was wrong to look at a property which had a different use (being a golf clubhouse) where adequate comparisons (i.e. other hotels) were available within the county. As a matter of common sense it was neither appropriate nor necessary to look elsewhere at other functions. He made it clear that the presence of the clubhouse could not be ignored but for the purposes of valuing the hotel and spa/leisure centre his submission was that the Tribunal should ignore the valuation placed on the clubhouse.

By way of reply Mr. Devlin submitted that the Tribunal does not and should not restrict itself to looking only at properties of a similar function.

In answer to the Tribunal neither Mr. Ó Cléirigh nor Mr. Power could recall any case in which a clubhouse adjoining a hotel property had been valued at a higher rate than the hotel itself.

THE ISSUE

The only issue before the Tribunal is the issue of quantum. Sections 48, 49 and 50 of the Valuation Act, 2001 set out the basis by which a property shall be valued for the purposes of rating. In essence, Section 48 directs that the net annual value of a property is deemed to be the rent for which one year with another the property might in its actual state be reasonably be expected to let from year to year. Section 49 provides a method of valuation by reference to the values as appearing on the Valuation list in relation to the same rating authority as that property is situate in, of other properties comparable to that property. Section 50 provides an alternative method of valuation being 5% of the aggregate of the replacement cost of the property (based on the notional cost of construction and providing the property in question).

For the purposes of this determination it appears there is no reality in looking at rental value. Nor has there been any suggestion that the contractors' method should be used. It is therefore appropriate to look at comparable properties and have regard to what is described as "*the tone of the list*".

The difficulty in the instant case is that while there are other hotels in the county there are no hotels attached to and associated with a golf course, bowling green and residential amenities. While there are comparable properties outside of the county such as the K Club in Kildare and Mount Juliet in Kilkenny, it is accepted that these are considerably more mature and have hosted a number of prestigious events of international status. Notably the K Club recently hosted perhaps the biggest golf event in the world being the Ryder Cup.

We note that the valuation arrived at by the Tribunal in respect of the golf club (**VA05/3/011 - Filmbridge Ltd.**) of €64.92 per sq. metre is higher than any other valuation of a clubhouse in the county. While the parties were unable to point to any instance where an adjoining hotel had been valued at a lower rate to a golf clubhouse we note that in both of the comparators to which we were referred the entities in question (being the K Club and Mount Juliet) are much longer established hotels with international reputations. We note also that while membership of the golf club in the subject property is full and the course has already hosted a prestigious event in 2005 the hotel was only completed in 2005 and is to some extent unproven as a tourist attraction. We note also the statistics in relation to the relatively low number of tourists (and low amount of revenue turnover) in Laois compared to other counties in the relevant area.

In our view the subject hotel has not as yet established the reputation or good will established by Mount Juliet or the K Club. It is located in a county which for some reason is less sought after by tourists. We note that it is a few miles from the main motorway but we do not regard this as being of any great significance. In the circumstances we are therefore of the view that there are special reasons why at present the hotel can justifiably be valued at a somewhat lower rate than that fixed for the adjoining clubhouse. Whereas the golf club is clearly thriving, the hotel business is as yet in its infancy and has yet to break even.

However, we do not believe that the subject property can be realistically compared to any of the comparator properties such as the Killeshin Hotel, the Talbot Carlow Hotel, the Montague

Hotel or the Durrow Castle Hotel. We note that the Heritage Hotel in Portlaoise was developed by the same developer. However, we do not believe that the rating fixed for that property is appropriate for the subject property. The valuation in respect of the Portlaoise property is a 2003 valuation; it thus follows that the Portlaoise hotel was built some time before this valuation took place and so the property is older. It is clearly graded as a four-star hotel whereas the subject property is regarded by its own owner and developer as a five-star property.

Lastly, and perhaps most significantly, the Portlaoise hotel does not have the adjoining facility of a championship golf course which already has a degree of national renown.

We accept that the lower ground floor of the hotel should be valued at a different rate to the rate applicable in the rest of the hotel having regard to the nature of the functions for which that part of the hotel is used. However, we do not see any justification for valuing the spa/leisure centre at a separate lower rate and, as has already been noted, the spa/leisure centre in the other comparator properties (including the Heritage Hotel in Portlaoise) have been valued at the same rate as the main hotel to which they are attached.

DETERMINATION

In the circumstances therefore we propose to value the hotel at a lower rate per sq. metre than was fixed by another division of the Tribunal in respect of the clubhouse. However we have done this for the reasons set out above and in particular because of the circumstances which pertain at this time in relation to the newly constructed hotel.

In our view the appropriate rate per sq. metre for the hotel and leisure centre is €57. The appropriate rate for the lower ground floor is €25. As a consequence the value is as follows:

Hotel and Leisure Centre - 12,518 sq. metres @ €57 per sq. metre	€13,526.00
Lower Ground floor – 1,442.18 sq. metres @ €25 per sq. metre	<u>€36,054.50</u>
Total	€79,580.50
Net Annual Value €79,580.50 @ 0.5%	€3,747.90
	Say €3,748.00

And the Tribunal so determines.