

Appeal No. VA07/3/070

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

Irish Nightclubs & Leisure Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Discotheque, Licensed Shop, Night Club at Lot No: 1.2.2b (Discotheque), Bridge Street, Rathquarter, Sligo North, Sligo Borough, County Sligo

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY, 2008

By Notice of Appeal dated the 15th day of August, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €700.00 on the above described relevant property.

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

"On the basis that the RV as assessed is excessive & inequitable and not in accordance with the established tone of the list. The RV is totally at variance with the relative worth of the property when it is fairly compared with similar establishments locally."

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 24th day of October, 2007. The appellant was represented by Mr. Eamonn Halpin, BSc. (Surveying), MRICS, MIAVI, of Eamonn Halpin & Co. Ltd. Mr. Halpin introduced his client, Mrs. Mezzalie McGarry. The respondent was represented by Mr. Bríain Ó'Floinn, a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum.

The Property

The subject property is a nightclub, being a fully renovated grain store and brewery, fitted out to a high standard with accommodation provided on both ground and first floor levels. The subject trades under the name of The Velvet Rooms and has a capacity for up to 1,500 persons. This old stone renovated building, which is located in a cul-de-sac, is fitted with a lift, wide staircases, a state of the art lighting and sound system, an oval void over the dance floor, purpose designed smoking areas at both ground and first floor levels, mezzanine over the cloakroom and wash-up areas, and disco areas at both levels. In addition, The Velvet Rooms offer patrons a choice of four bars with a capacity of 900 on the ground floor and 600 on the first floor. The Velvet Rooms opened for trade on 1st April, 2006. The cost of renovation was approximately €1,093,800, of which the landlord contributed approximately €10,500. In addition, the tenant fitted the lighting and sound equipment and furnished The Velvet Rooms at a total cost of €17,291.

The building is located fronting onto Kempton Promenade adjacent to the river in Sligo town.

Tenure

Leasehold, held on a 25 year FRI Lease which commenced 1st July, 2005, with five year rent reviews, with an initial rent of €180,000 per annum for the shell in years 1, 2 and 3, rising to €220,000 in years 4 and 5. A rent-free period from 1st July, 2005 to 31st January, 2006 was granted.

Services

Connected to mains.

Areas

The total area of the subject property measures 1,119.91 sq. metres broken down as follows:-

Ground Floor

Night Club [including 'disputed' area A of 9.75 sq. metres]	109.14 sq. metres
Night Club	392.07 sq. metres
Wash Up Area	13.25 sq. metres
Mezzanine over Wash up	14.03 sq. metres
Mezzanine over Cloakroom	23.49 sq. metres
Smoking Area	86.54 sq. metres

First Floor

Night Club	87.67 sq. metres
Night Club – 'disputed' Area C	12.39 sq. metres
Office	6.00 sq. metres
Night Club [includes 'disputed' Area B, & excludes void over Dance Floor, Stairs, etc.]	333.34 sq. metres
Smoking Area	<u>41.99 sq. metres</u>
Total	1,119.91 sq. metres

Valuation History

This is a new valuation.

Relevant Dates

1 st November, 2006:	Revision Officer appointed on foot of request from Sligo Borough Council to value “Change in Character See Listing for Details”. Proposed Valuation Certificate issued with RV of €700.
28 th December, 2006:	Valuation Certificate issued confirming the RV @ €700.
January 2007:	Appellant appealed to the Commissioner.
24 th July, 2007:	The Commissioner of Valuation issued the result of the First Appeal with the valuation unchanged at RV €700.
15 th August, 2007:	The appellant appealed the Commissioner’s decision to the Tribunal.

Appellant’s Case

Mr. Halpin took the oath and provided the Tribunal with a review of his submission. He focused his case on ten points, as follows:-

1. The club trades just one night per week for various reasons.
2. The annual rent is similar to another nightclub known as Envy, also in Sligo, the latter amounting to a sum of €5,000 p.a. less than the initial passing rent on the subject relevant property but for a term which commenced June 2006.
3. The Commissioner of Valuation recently revised Envy Nightclub declaring an RV of €330.
4. The turnover of the subject is currently trading at a level 8.5% less than Envy.
5. A second comparison nightclub, known as Toffs, located opposite the subject but on a busy thoroughfare, carries an RV of €431.71.
6. With comparable properties available in the rating area, the values of which appear on the Valuation List, the Commissioner should have adopted the “tone of the list”.
7. The approach adopted by the Valuation Office in this case was neither fair nor equitable.
8. The approach by the Commissioner in this case was contrary to the Valuation Tribunal decisions in **VA95/1/108 – Dunnes Stores Limited**.

Mr. Halpin provided the Tribunal with two comparison properties, as noted above, which were common comparisons with the respondent: namely Comparison No. 1 - Envy Nightclub and No. 2 - Toffs. In addition, he offered a third comparison property, a nightclub in the

basement of the Adelaide licensed premises and restaurant, which is again located in Sligo, adjacent to the Tesco Car Park at Wine Street. The details of the foregoing were set out on page 7 of his précis, attached at Appendix 1 hereto.

Mr. Halpin, in calculating the net annual value of the subject, applied a rate per sq. metre of €109.34 on the nightclub only area of the ground floor, which he calculated at 402.7 sq. metres, and a rate of €54.68 on the nightclub only area of the first floor, which he calculated at 394.48 sq. metres. He then added the different rates for the ground floor entrance and cloakroom, the wash-up area, the mezzanine store, the mezzanine over the cloakroom, and the store, all as set out on page 9 of his précis, which had been revised, corrected and re-submitted by him at date of hearing, attached at Appendix 2 to this judgment. The foregoing exercise resulted in a net annual value on the subject premises, [but excluding toilet areas and stairs] of €72,615, producing a RV figure of €363. Mr. Halpin then reduced this figure to €330 to reflect the “tone of the list”. Contending that the Commissioner had erred by establishing an RV of €700 and that the approach adopted by the Revision Officer to calculate the net annual value and resultant RV was flawed and unfair to the appellant, Mr. Halpin reminded the Tribunal of the issues that led to a decision by the appellant to operate The Velvet Rooms nightclub for one night of the week only. He stressed that the target market is one of mature adults seeking a high level of comfort and entertainment in a safe and up-market environment, furnished, fitted and decorated to the highest of standards.

Cross-examination by Mr. Ó’Floinn

Mr. Ó’Floinn cross-examined Mr. Halpin on a number of issues, primarily relating to:-

1. The nature, location and fit-out of the three comparisons cited by him;
2. The exclusion of the areas dedicated to stairs, landings, corridors and toilet areas;
3. The rate per sq. metre approach and levels adopted by Mr. Halpin; and
4. The level of landlord contributions and scope of expenditure on the fit-out and decoration of the subject property.

In replying to these questions Mr. Halpin steadfastly argued that the Commissioner and the Revision Officer had erred by not following section 49 of the Valuation Act, 2001 and then by failing to adopt the “tone of the list” established in the rating authority area from properties whose values were on the Valuation List at date of revision.

Mr. Ó'Floinn challenged Mr. Halpin's calculation of areas within the subject premises and considerable debate ensued between the valuers, referring to the floor plan layout drawings of the premises which were submitted by Mr. Ó'Floinn during the course of the hearing. Mrs. McGarry, with the assistance of the two Valuers, explained the nature and use made of the various areas within both floors of The Velvet Rooms. The appellant contended that it was neither appropriate nor customary to include access lobbies and corridors serving toilet areas demised by soft-wall partitions, and similarly in this case, an access route to an office. The dispute over these three areas, and the inclusion of the smoking areas by the Valuation Office in calculating the net annual value, could not be resolved during the course of the hearing.

Respondent's Case

Mr. Ó'Floinn took the oath and formally adopted his précis as his evidence-in-chief and reviewed his submission. He described the design, the structure, the features and the location of the subject property, indicating its riverside frontage, its proximity to a number of nearby pubs and two other nightclubs, namely Toffs across the river, and Envy, a short distance beyond Toffs. He indicated that the latter may share a common ownership with that of the subject. He highlighted the difference of the admission fees to The Velvet Rooms, being 300% greater than those for Envy, which are set at €4.00. He outlined the various floor areas of the subject on each floor by use. He also provided the Tribunal with a summary of the leasehold interest held by the appellant, and the nature and total expenditure incurred by both the landlord and the tenant on improvements and lighting, heating, furniture, interior finishes and equipment.

He also recounted from his précis section 48(1), (2) & (3) and section 49(1) & (2)(b) of the Valuation Act, 2001 and then referring to previous agreements and comparisons made to recently revised comparable properties in the Sligo area, outlined two bases adopted by him to reach a rateable valuation figure of €700 as certified by the Commissioner on the subject property.

His first method followed an approach to determine the net annual value adjusted to 1988 levels by reference to the turnover achieved in the cloakroom, on beverages, and admissions receipts, as set out on page 7 of his précis, and concluding with a calculated net annual value of €155,250. This resulted in an RV figure of €776, which Mr. Ó'Floinn then revised down to €700 having regard to comparables cited by him.

In his second approach to calculate net annual value, the Mr. Ó'Floinn indexed the 2006 passing rent of back to 1988 levels by linking same to rental growth, evidenced on the passing rent applicable to Envy Nightclub. He then added to this figure an amount equal to 10% of the expenditure incurred on tenant improvements (less 10% for non-rateable items), and then applying a CSO index reduced this amount to 1988 values. By this method and then applying the reduction factor of 0.5% to make the NAV relative to other rateable valuations in the UD of Sligo, he concluded that the resultant RV should be €23.29. He then, for the same reason cited in his first valuation method noted above, proposed to adopt a reduced RV of €700.

The foregoing capital cost approach, he declared, was supported by the Tribunal decision in **VA97/2/009 - Ulster Bank (Terenure Road East)**. These aforementioned methods and calculations, as set out on page 7 and 8 of his précis, are attached hereto as Appendix 3.

Mr. Ó'Floinn then addressed the comparisons set out in section 5 of his précis, Appendix 4 hereto, namely Toffs with an RV of €131.71 (originally IR£340), and The Belfry with an RV of €126.97, both taken together as one comparison property. Describing them as a discotheque, snooker rooms, restaurant and bar, with a capacity for 1,200 persons, Mr. Ó'Floinn indicated that Toffs was last valued in 1999, following First Appeal, the basis of which, set out in summary in his précis, established the net annual value by adopting a rate per square metre approach. He also referred to an alternative analysis calculated by the Appeal Valuer, based on the turnover method for the bar, lounge and disco, adjusted to 1988, with an add back for the restaurant and functions areas. The resultant proposed RV amounted to a figure of €24 at the time. However, Mr Ó'Floinn advised that the Valuer at that time proposed the adoption of the foregoing lower RV.

Mr Ó'Floinn summarised similar approaches adopted in 1988 on The Belfry which has since been integrated under the combined name of Toffs, but stated that the RV remained set on revision.

Referring to his second comparison, Envy nightclub with a capacity of 1,000 persons, he stated that the changes which led to the Revision of 2005 were considered insignificant and, accordingly, the RV established in 1994 remained unchanged at €330. However, in reviewing the history and file notes, Mr Ó'Floinn indicated that, at the time the Revision Valuer first

looked at passing rent and expenditures incurred by the tenant on improvements to that premises, 50% of which was apportioned to structure and the remainder to fittings. These were then decapitalised over a twenty-five year period at a rate of 10% pa. The resultant figure was then added to the rent, producing a net annual value which, by applying the reduction factor of 0.5%, resulted in an RV of €672.96. Mr. Ó'Floinn then indicated that the Revision Valuer at the time carried out a second valuation exercise on the property by reference to a rate per square metre applying to four areas within the premises, which produced a proposed RV of €253.95. However, the Valuer then concluded that no change was necessary to the existing RV of €330 at the time.

Cross-examination by Mr. Halpin

Mr. Halpin's cross-examination of Mr. Ó'Floinn focused principally on three issues as follows:

1. Why the Valuation Office had, in his view, disregarded legislative requirement and practice by apparently ignoring the 'tone of the list' for comparison properties for which values were on the Valuation List.
2. Why Mr. Ó'Floinn included areas such as those dedicated to smoking, hallways and lobbies, which he contended were not normally included in rating valuation practice?
3. Why Mr. Ó'Floinn relied upon a valuation method based on turnover and/or capital cost methods to establish net annual values, when the examples given by him in his submissions to the Tribunal neither supported nor warranted their adoption?

Mr. Halpin also disputed and challenged the Rental Gross figures outlined by Mr. Ó'Floinn in his submission on Envy nightclub.

Concluding remarks

Mr. Halpin reiterated and summarised his earlier opinions and submissions and explained that, though an effort had been made initially to operate The Velvet Rooms twice weekly, such an undertaking was not commercially viable. He explained that the segment of the market targeted by his client is limited to mature and affluent persons seeking a first class nightclub experience in a very comfortable and high quality secure, safe and well finished premises. He queried the methodology and approach to valuation employed by the Valuation Office, and contended that the Commissioner had ignored section 49 of the Valuation Act, 2001.

Mr. Ó'Floinn stated that there was no valid reason to support exclusion of either the foregoing disputed areas, and/or the smoking areas from the calculation of total area within the building. Mr. Ó'Floinn would not accept claims made by Mr. Halpin that the Commissioner had erred or had somehow ignored the statutory requirements to establish net annual value as prescribed by the Valuation Act, 2001. He also repeated that the subject property was positioned and trades at the upper end of the market, and though there were common comparisons in the submissions made by the parties to the appeal, he had to take into account the variances, most notably the passing rent on the shell, the total expenditure on improvements and, in particular, the tenant's share of such expenditures on the building and on the lighting fixtures, finishing, furnishing and equipment.

Postscript to Hearing

After the hearing the Tribunal instructed the Registrar to write to the parties requesting that they submit in writing to the Tribunal classified and agreed areas for the subject property as stated by them at the hearing. In addition, the respondent was asked by the Tribunal to submit a recalculation of his alternative valuation set out in page 8 of his précis to take account of the revised figure of €180,000, a sum accepted by him as the correct November 2006 passing rent on the shell and landlord's improvements. Mr Ó'Floinn was also asked to provide a clarification and source of the index figure which resulted in an amount of €105,000 as "Rent Indexed to 11/88 as per Rental Growth on 'Envy' Nightclub". The Registrar accordingly wrote on 24th October 2007 to both parties seeking clarification and confirmation of the issues as outlined heretofore. Both Mr. Halpin and Mr. Ó'Floinn replied by letters dated 26th October 2007 and copied their replies to each other. The parties agreed on the total floor area but disagreed as to how much of that area should be valued. The Tribunal met to consider the parties' correspondence in the matter. Mr. Ó'Floinn subsequently wrote to Mr. Halpin, with a copy to the Valuation Tribunal, on 30th October 2007 indicating a difference of views on the classification of the smoking areas.

Findings

The Tribunal has carefully considered all of the oral and written evidence provided by the parties and subsequent written submissions, and the arguments adduced at the hearing, and makes the following findings:

1. The total area, agreed by both parties, of the subject relevant property is 1,119.91 sq. metres.
2. Agreement between the parties was not found on the total area to be considered for rating purposes.
3. The appellant valued 956.79 sq. metres. as the total area of the premises to be valued, having excluded the two smoking areas of 86.54 sq. metres and 41.99 sq. metres, and three “disputed” areas of 9.75, 12.45 and 12.39 sq. metres. The respondent valued the entire floor area of 1,119.91 sq. metres.
4. Mr. Halpin adopted an approach to valuation by reference to a rate per square metre to calculate net annual value and then computed an RV of €375, reduced to €330 to reflect his view of the ‘tone of the list’.
5. The respondent did not apply a rate per square metre to determine the net annual value, and declared an RV of €770, reduced to €700, having regard to comparables outlined in his précis of evidence.
6. Mr. Halpin’s calculations relied upon a range of five levels of rate per square metre, ranging from €27.34 in the mezzanine areas to €109.34 per square metre in the nightclub areas.
7. The rates per square metre on the common comparison of the Envy club varied between the parties in their submissions, and such differences were not explained, or how such rates were arrived at.
8. Conversely, the rates of €101.57 and €10 per square metre applied on the bar/nightclub and kitchen area respectively of the common comparison property known as Toffs, were agreed by both parties, but these rates per sq. metre did not compare with those employed by Mr. Halpin in his submission made on the subject property.
9. The Commissioner used two approaches to establish net annual value of the relevant property, firstly, a turnover method, which indicated an RV of €770, reduced as noted

above to €700, and secondly, a capital cost method which indicated an appropriate RV of €23.29, but also reduced to an RV of €700. Both methodologies appear to be at odds with the Commissioner's own comparisons which appear to have been finally valued on a rate per square metre basis, notwithstanding rateable valuations appearing to have been calculated by different methods in some cases, but not adopted.

10. The appellant's methodology is considered in this case to be consistent with the requirements of section 49 of the Valuation Act, 2001, and the 'tone of the list'. However, the Tribunal believes that the expenditures made on tenant improvements should be reflected in the applicable rate per square metre levels.
11. The Commissioner's methodologies are considered unsafe because none of the comparisons were finally valued on either the turnover or capital cost method as noted earlier. Both Toffs and the Belfry had their RV initially based on turnover, but then the Revision Officer adopted a rate per square metre calculation. At the Envy nightclub, the rent and tenant improvements were considered by the Revision Officer and resulted in an RV of €72.96, whereas a rate per square metre approach resulted in a calculated RV of €53.95, but a final RV of €30 was finally adopted.
12. This Tribunal is mindful of the decisions taken in **VA06/2/045 - Orange Tree Ltd.**, and **VA06/3/015 & 016, VA06/3/018 & 019 - Carphone Warehouse, Denholme Ltd, Power Leisure PLC, & Hickeys Pharmacy Limited.** and concurs with the conclusions adopted therein with regard to the interpretation of section 49 of the Valuation Act, 2001, and the considerations given to the 'tone of the list'.
13. The Tribunal does not agree to the exclusion of the smoking areas and/or disputed areas (A), (B) & (C) as contended for by the appellant, and accordingly considers the area to be valued for rating purposes as a total of 1,119.91 square metres.

Determination

In reaching its Determination, the Tribunal has been required to consider only the evidence submitted and adduced and, in so doing, reaches a rateable value on the subject property, as follows

1,119.91 metres @ €4 per square metre = NAV €05,271.54

€05,271.54 x 0.5% = €26.36

Say RV €25

And the Tribunal so determines.