Appeal No. VA08/4/008

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Carrylane Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2193675, Hotel, Grounds at Lot No. 2F, Powerscourt Dem, Enniskerry, Rathdown 2, County Wicklow.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb **Deputy Chairperson**

Mairead Hughes - Hotelier **Member**

James Browne - BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF OCTOBER, 2012

By Notice of Appeal received on the 26th day of November, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €9,495 on the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Holbrook House, Holles Street, Dublin 2, on the 25th day of June, 2012. The Appellant was represented by Mr. Owen Hickey, SC, instructed by Ms. Sonja Price, Solicitor at Treasury Holdings Ltd., together with Mr. Brian Bagnall, FRICS, FSCSI, Principal of Bagnall & Associates, Surveyors & Valuers, Property & Rating Consultants and Mr. Dermod Dwyer, Chairman of Carrylane Ltd., trading as the Ritz Carlton Powerscourt Hotel. The Respondent was represented by Mr. David Dodd, BL, instructed by Mr. Michael Collins, of the Chief State Solicitor's office and Mr. Patrick McMorrow, MSCSI, a valuer in the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence, including an addendum by the Respondent and an additional précis in response thereto by Mr. Dwyer 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 respective précis and supplementary submissions as being their evidence-in-chief. This evidence in turn was supplemented by additional evidence given either directly at the hearing 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.

(A preliminary issue in this appeal was addressed previously by another division of the Valuation Tribunal and a determination issued on 12th May, 2009 with respect to same.)

The Property

The subject relevant property is a newly constructed 5-star hotel fitted out to a very high standard and specification. In summary, the hotel comprises the following:-

- 200 guest rooms which include 107 suites, 23 club level rooms and 17 club level suites. Typical room facilities include walk-in dressing room, large marble bathroom, individual room touch-panel controlled air conditioning/temperature control, electronic curtains and room safe. Room sizes vary from *circa* 47 sq. metres up to *circa* 68 sq. metres. The largest presidential suite measures approximately 227 sq. metres and features two bedrooms, living room, a private sauna & steam bath and a rooftop terrace with hot tub.

- Spa and leisure facilities including 20 treatment – or beauty therapy – rooms, 2 private spa suites and a 20-metre pool.
- Three restaurants, including a Gordon Ramsay restaurant which features floor to ceiling windows providing views of the Sugarloaf mountain.
- 2 public lounges.
- Function rooms and meeting rooms with a capacity for up to 600 persons or 400 seated.
- A club bar which is available for residents only.
- Extensive surface and underground parking.

Other facilities of the hotel include secretarial services, video conferencing and a helicopter landing pad. Two Powerscourt championship golf courses are located in close proximity to the subject hotel.

Location

The subject property is located in a rural extensive parkland, setting within the Powerscourt Estate, just outside the village of Enniskerry and *circa* 30 km south of Dublin city centre. It is situated approximately 15 minutes' drive from the Main Dublin – Wexford Road and there are no commuter services/bus links to the city centre.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer, broadband/wifi.

Tenure

The hotel is operated under a management contract with Ritz-Carlton LLC., a subsidiary of Marriott International Inc. Fees are paid to the management company on revenue generated at the property with Carrylane Limited bearing all operating costs.

Areas

The following gross external areas were agreed between the parties as follows:-

Main Hotel Building:	32,746.65 sq. metres
Basement Store:	13.00 sq. metres
Total Area:	32,759.65 sq. metres

Valuation History

Oct. 2007	Hotel opened.
Feb. 2008	Proposed Valuation Certificate issued with RV€9,495.
Mar. 2008	No change to RV on foot of representations made on behalf of appellant.
Mar. 2008	Final Valuation Certificate issued with RV€9,495.
May 2008	Section 30 Appeal to the Commissioner of Valuation on behalf of appellant.
Nov. 2008	Commissioner of Valuation made no change to RV.
Nov. 2008	Appeal lodged with the Valuation Tribunal against the Commissioner's decision.

Appellant's Case

Mr. Dermod Dwyer took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission, making the following points:-

- Referring to his written précis of evidence dated 21st June, 2012, as noted above, he provided the Tribunal with a summary of his experience nationally and internationally within the hospitality sector, his qualifications and active participation in and various contributions made to various hospitality industry related bodies, including the Irish Hotels Federation and the National Tourism Policy Committee.

- He then outlined the history of the development of the subject property and the aspirations of Treasury Holdings as its developer. He explained that the development model was not based on the provision of a conventional hotel but rather on a development undertaking which anticipated the sale of rooms within the property to individual purchasers who may be attracted to the property, its quality, location, management structure and available capital allowances or tax reliefs.

- Mr. Dwyer explained that the commencement of the sales marketing programme of the hotel rooms regrettably coincided with the downturn in the Irish property market resulting in a reversal of fortunes for the developer on the project, when instead of earning an anticipated substantial profit on sale, conversely endured a substantial loss which had to be carried forward on the operation of the hotel from the opening date together with very significant cost overruns and associated financing and interest costs.

- Mr. Dwyer stated that the development model cited above resulted in a property which was not well suited to normal hotel operations and management systems, as:- common areas were too large, as were rooms and suites, the number of rooms were disproportionate to and exceeded market requirements, facilities were of a range and quality reflecting a burden on the ability of the hotel to trade profitably, all such matters posing very substantial challenges on the efforts of the hotel managers to compete profitably in a low margin, 5-star hotel market.

- Mr. Dwyer rebutted the arguments made in the Respondent's précis of evidence, as submitted earlier by Mr. McMorrow, but agreed when challenged by Mr. Dodd to withdraw the following reference on page two of his précis: "[…] *Mr. McMorrow's presumption that because of the nature of the building which comprises the Ritz Carlton Hotel its potential to trade profitably is superior to that of the other hotels in Co. Wicklow he refers to is not correct."* Mr. Dwyer acknowledged that such statement was not accurate.

- Mr. Dwyer informed the Tribunal that it was his understanding that the valuation of the subject relevant property would be linked to its letting value on the assumption of being vacant and to let, unfurnished and without loose fittings.

- He stated that because of the development model employed by Treasury Holdings Ltd. on the subject property, its potential letting value, when compared with conventional modern hotel models and in particular those cited as comparison properties by the Respondent, was substantially compromised and, in his view, the subject hotel would not present an attractive proposition to a hotelier considering renting it to trade as a conventional hotel.

- He repeated the scale of capital losses incurred by Treasury Holdings on the sale of rooms, the oversized nature of the property in all respects, the excessive quality and extraordinary high level of services and facilities provided in the hotel, all elements of the development model to attract purchasers for the 200 rooms. He concluded that the property had few comparators, which in his view were limited to the K Club in Straffan, Co. Kildare, Ashford Castle in Co. Mayo and Dromoland Castle in Co. Clare.

- He added that the comparison properties cited by the Respondent in his précis had many advantages over the subject, e.g. He was of the opinion that Druid's Glen, being a former 5-star Marriot Hotel with 140 rooms and two golf courses within the estate, a smaller leisure complex, ballroom and meeting facilities and accordingly, would have lower fixed operating costs. He also expressed the view that the Brooklodge Hotel, with its golf course, may be the most profitable in the Respondent's submission but the Glenview Hotel is better located and its trade is enhanced by its curb-side appeal.

- He advised that the subject property should be considered as an "island" site within a circa 1,000 acre estate. He reiterated that the subject hotel or its developer does not own the two golf courses on the Powerscourt estate.

- He stated that the Ritz Carlton is the third largest full-time employer in Co. Wicklow and is a very expensive hotel property to manage.

- In response to questions raised by Mr. Hickey, he stated that the hotel is losing large amounts of money, before meeting interest and tax obligations, on a daily basis and if the subject valuation were to be affirmed by the Valuation Tribunal, the rates charge would compound the losses by approximately an additional €2,000 per day.

- He stated that when the property was revised for valuation purposes in March 2008, the economic outlook in Ireland was very bleak and continuing so since the hotel opening date in 2007 and he noted that the global economic downturn had also already commenced.

- He stated that the fit-out costs expended on the hotel amounted to a sum of between €11 million to €13 million and expressed an opinion that a hypothetical tenant would have required such a sum as a contribution payable to him by the landlord to induce him to rent the property in the first instance.

- He advised the Tribunal that the RevPar for the hotel forecasted to year end 2012 amounted to €74.80, contending that such was a clear indicator that the hotel could not trade profitably.

Cross-examination of Mr. Dwyer

Mr. Dodd referred to a copy extract of the subject property's website and Mr. Dwyer confirmed that the subject is described as the best hotel property in Wicklow. However, Mr. Dwyer explained that the high-end and potentially profitable MICE (Meetings and Incentive Conference Events) market for which the hotel won the prestigious *Condé Nast Johansens Award 2011,* has since migrated to other locations around the world.

Appellant's Case – Evidence by Mr. Brian Bagnall

Mr. Brian Bagnall then took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission.

- He explained that the main purpose of his précis was to demonstrate the relevance of the trading profitability of the property, or absence thereof, as the basis on which the valuation should be determined, rather than on the so-called "per square metre basis" adopted by the Commissioner of Valuation.

- Mr. Bagnall informed the Tribunal that he had viewed the accounts of other hotels and contended that comparisons with other properties for rating purposes should only be made by reference to profitability, expressed as a percentage of turnover.

- He stated that he considered the subject property to be substantially and materially different in many to those properties cited as comparison properties by the Respondent, i.e., differences associated primarily with the size of the property, the number of rooms and the sale and range of common areas and services offered to the subject hotel's guests. He further stated that the subject is two to three times larger than the overall size of the Druids Glen property and added that the average size of the Ritz Carlton hotel rooms is approximately twice that of Druids Glen. Nevertheless, he stated that he had tried to value the subject relevant property on the "tone of the list" basis.

- Mr. Bagnall accepted that the Receipts and Expenditure Method of Valuation for rating purposes was not applicable to the instant revision appeal.

- Referring to his written submission, Mr. Bagnall noted a few typographical errors in his original submission which had been corrected and such amendments received by the Valuation Tribunal on 7th June, 2012, correcting: a) average room rates per sq. metre calculated on the Brooklodge Hotel on page 4 b) an adjustment to the floor area and apportioned rate per sq. metre in his more detailed devaluation of the Brooklodge Hotel property, namely Comparison No. 3 in his Appendix 2, and c) the same rate per sq. metre adjustment indicated on his comparison summary at the end of his same Appendix 2.

- Mr. Bagnall stated that the profitability of luxury hotels in Ireland at the end of March 2008, as outlined in Appendix 4 of his précis, i.e., a copy of the Horwath Bastow Charleton Hotel Industry Survey 2009, indicated a range of approximately 50% of the level achieved at that time for so-called average hotels. He added that room revenue levels in luxury hotels at that time amounted to not more than 5% over the average room revenue being achieved in all hotels in Ireland.

- He noted that the current RV assessed on the subject Ritz Carlton hotel is over twice the rates apportioned on a per room basis when compared with the Druids Glen hotel, and between three to almost eight times those charged on a per room basis, for its 4-star hotel competitors, notwithstanding that in his opinion, 5-star hotels operate at a lower level of profit than their counterpart 4-star graded properties.

- He contended that the net annual value or rent in the instant appeal should be a product of profitability and that any attempt to link the calculation to a rate per sq. metre basis in a comparison exercise with other hotels is, in his opinion, neither fair nor just.

- Mr. Bagnall stated that the fit-out costs on the subject property actually amounted to a sum of €13.2 million.

- He contended that the Powerscourt Ritz Carlton hotel is a property not currently capable of trading on a profitable basis, is oversized and disadvantaged because of the additional burden of costs it has to carry to service not only the quantum of additional floor area but also the exceptionally high cost facilities and specifications of the building, when compared with other hotels within the Co. Wicklow area.

Appellant's Comparison Properties

Mr. Bagnall analysed the rateable valuation of the five comparison properties outlined below, by reference to average room revenue achieved per sq. metre and the rateable valuation per room.

<u>Comparison No. 1: Druids Glen Hotel</u>

The Druids Glen Hotel is located 2 kilometres from Newtownmountkennedy and *circa* 30km from Dublin City. It has a total of 148 bedrooms and a full range of conference and leisure facilities including bars, restaurants and function areas. It also has two championship golf courses, one of which has hosted the Irish Open.

Rateable Valuation:	€3,375
Area:	13,406 sq. metres
Average rate:	€50.35 per sq. metre

RV per room: €22.80

Comparison No. 2: Glenview Hotel, Glen of the Downs

This hotel is located in a prominent position overlooking the main Wexford road *circa* 40km from Dublin City and *circa* 15km from the subject relevant property. This hotel consists of 74 bedrooms, restaurants, bars, conference and leisure centre including swimming pool and function rooms.

Rateable Valuation:	€1,160
Older hotel buildings:	3,507 sq. metres @ €44.56 per sq. metre
New hotel buildings:	1,316 sq. metres @ €48.22 per sq. metre
Average rate:	€46.39 per sq. metre
RV per room:	€15.68

Comparison No. 3: Brooklodge Hotel

The Brooklodge Hotel is located *circa* 60km south of Dublin city centre. It has a total of 58 bedrooms, spa, function room and golf course.

Rateable Valuation:	€832
Area:	6,402 sq. metres
Rate applied by the VO:	€27.33 per sq. metre (excluding stables & workshops)
RV per room:	€14.34

Comparison No. 4: Tinakilly House Hotel

This hotel is located *circa* 60km south of Dublin City and has 51 bedrooms, several private dining rooms, conference facilities etc. It is located just outside Rathnew Village in Co. Wicklow.

Rateable Valuation:	€431.71*
Area:	2,594 sq. metres (this includes a mixture of both old and new buildings with the new buildings dating from the early 1990s).
Average rate:	€33.29 per sq. metre
RV per room:	€8.46

*As determined in **VA93/4/022 – William Power, Warcham Investments t/a Tinakilly House Hotel.**

Comparison No. 5: Tulfarris Hotel & Golf Resort

This is a 4-star Hotel containing 60 bedrooms and designed around a championship golf course. It is located *circa* 40km south-west of Dublin City. It has been in receivership for a number of years and is currently being run by the receiver.

Rateable Valuation:	€380.92
Area:	2,171 sq. metres
Average rate:	€35.09 per sq. metre
RV per room:	€6.35

Valuation by the Appellant

Based on the foregoing, Mr. Bagnall concluded that the valuation of the subject, in accordance with Section 49(1) of the Valuation Act 2001, should be determined as follows:

Bedrooms: 200 @ €20 per room = €4,000 or

32,759.65 sq. metres @ €24.42 per sq. metre: €800,000 @ 0.5% = RV €4,000

Cross-examination of Mr. Brian Bagnall

In response to questions put by Mr. Dodd, and members of the Tribunal, Mr. Bagnall stated or confirmed, as follows:-

- The subject hotel was designed and built to a 5-star standard.
- There was no dispute between the parties on the calculated floor area.
- The spa has 21 treatment rooms.
- The property is promoted as a world standard luxury hotel.
- The property is considered as the most outstanding hotel property in Wicklow and one of the outstanding hotels in Ireland.
- He considered profitability as the primary basis to determine the valuation of the subject.

- Section 49 of the Valuation Act 2001, applies.
- Equality between hotel ratepayers is achieved by adopting the profitability basis of comparison.
- Rates are not a tax on profits and the purpose of rating is to burden the value of the property by reference to its net annual value and in so doing consider its profitability and how it compares with other similar properties.
- He acknowledged that the Mount Juliett hotel in Co. Kilkenny and the K Club in Co. Kildare, referred to earlier by Mr. Dwyer, are located beyond the boundaries of the subject rating authority area.

Respondent's Case

Mr. Patrick McMorrow then took the oath and formally adopted his précis and the addendum thereto as his evidence-in-chief.

The location, description and accommodation details provided by the Respondent were common case to those provided above by the Appellant.

He then provided the Tribunal with an overview of his submissions and noted that the subject property is considered to be "head and shoulders over" any other hotel property in Co. Wicklow.

Mr. McMorrow explained that the RV was assessed as a percentage of net annual value taken in line with the basis adopted for the determination of other revised properties in Co. Wicklow. He stated that the valuation was made by reference to the values of comparable properties appearing in the valuation list for the Wicklow County Council area, adding that the list was examined comprising 34 hotel properties and the two most appropriate comparisons were chosen, being the Marriott Druids Glen 5-star hotel and the Glenview 4-star, both within a distance of 15 kilometres from the subject, the details of which are set out below.

Respondent's Comparison Properties

Comparison No. 1: Marriott – Druids Glen, Newtownmountkennedy, Co. Wicklow

RV:	€3,375
	(2002 First Appeal – agreed with Donal O'Buachalla & Co.)
Basis of Valuation:	Gross External Area
Main Hotel Buildings:	12,457 sq. metres @ €52 per sq. metre
Basement Stores:	949 sq. metres @ €27 per sq. metre
Grade:	5*

Comparison No. 2: Glenview Hotel, Glen of the Downs, Co. Wicklow

RV:	€1,160
	(1995 First Appeal/1997 Revision)
Basis of RV:	Gross External Area
Old hotel buildings:	3,705 sq. metres @ €44.56 per sq. metre
New hotel buildings:	1,316 sq. metres @ €48.22 per sq. metre
Grade:	4*

Valuation by the Respondent

Based on the foregoing, Mr. McMorrow concluded that the valuation of the subject should now be determined as follows:-

Gross External Area:	
Main Hotel Building:	32,746.65 sq. metres @ €58 per sq. metre
Basement Store:	13.00 sq. metres @ €29 per sq. metre
	= €189,968.27
RV @ 0.5%	= € 9,498.41
Say RV €9,495	

Cross-examination of Mr. McMorrow

In reply to various questions asked by Mr. Hickey and members of the Tribunal, Mr. McMorrow responded that:-

1) The purpose of Section 49(1) of the Valuation Act, 2001, is to establish relativity between the values of similar properties within the same rating authority area. He added that a rental value set back in 1988 is not the correct basis of comparison.

2) Profit earning ability is a basic means of determining value, as set out in Section 48 of the Valuation Act, 2001. (In this regard, Mr Hickey cited **Rosses Point Hotel Company Limited -v- Commissioner of Valuation,** Barron J, High Court, Unreported 28th January 1987, viz. *"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.")*

3) A hypothetical tenant in the instant case would consider the burden of costs associated with fitting out the hotel in the context of all outgoings, including possible ground rent charges. Mr. McMorrow accepted the appellant's evidence that approximately €13.5m had been spent by the landlord on fit-out, fixtures and fittings and that such expenditure was not considered in the determination of value by the respondent.

During cross-examination Mr. Dodd interjected by referring the Tribunal to page 3 of the aforementioned **Rosses Point** case where, in the final paragraph, reference is made to the judgment of Kingsmill Moore J. in **Roadstone Limited -v- Commissioner of Valuation [1961] I.R. 239** concerning the application of the profits method. Mr. Dodd declared that such a method is no longer permitted since the introduction of Section 49(1) of the Valuation Act, 2001.

Summations

Both the Appellant and the Respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions employed by them in both their précis of evidence and adduced at hearing.

Mr. Hickey acknowledged that Section 49(1) of the Valuation Act, 2001, frequently referred to as the "tone of the list" is the governing provision within the Valuation Act, 2001 to establish the value of properties at revision but argued that for certain classes of properties, including hotels, it is established practice to determine their letting value from their potential to trade in accordance with the principles enunciated in the **Rosses Point** case.

He concluded that the task is to trace back the potential net annual value of the subject, as at 1988, and those of the comparison properties and identify a link to the date of revision and the economic circumstances prevailing as of that date. He emphasised that it is an imperative to establish a relationship between the net annual value of the subject property as at November, 1988 and its physical nature and letting value as at the revision date.

Mr. Dodd summed up by concluding that the task is not one to value the business, noting that rates are not a tax on the undertaking, but determined as a tax on the value of the property. He emphasised that Section 49(1) of the Valuation Act, 2001, only applies in this case and there is no latitude within the statute to look further.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing. Having considered carefully all of the oral and written evidence produced by the parties and the arguments adduced, the Tribunal finds that:

1. The Valuation of the subject property falls to be determined in accordance with Section 49(1) of the Valuation Act, 2001.

2. A number of properties comparable to the subject property are located in the relevant rating authority area.

3. The property known as "*Druids Glen"* was put forward by both parties as their number one comparison property.

4. Economic circumstances or cognizance of the actual rent being paid by the Appellant cannot be taken into account as criteria in this revision exercise. Rather the Tribunal must have regard to the overall nature and type of the subject property and to the "tone of the list" in determining a valuation on same.

5. The relevant methodology for valuing the subject property is that with which the comparable properties on the valuation list have been valued.

6. The Appellant stated that a fit-out cost of €13.2 million was expended on the subject property and this matter was not disputed or challenged by the Respondent. Accordingly, the Tribunal finds that a fit-out allowance of 10% should be allowed on the subject property and applied on the rate per sq. metre calculation.

Determination

In reaching its determination, the Tribunal has been required to consider only the evidence submitted and adduced. In so doing, the Tribunal has made the foregoing findings and in light of those findings determines that the valuation of the subject property should be calculated as follows:

Main hotel building	32,746.65 sq. metres @ €58 per sq. metre	=	€1,899,305.70
Less 10% fit-out allowance:		=	€1,709,375.20
Basement Store	13 sq. metres @ €29 per sq. metre	=	€ 377.00
Total NAV		=	€1,709,752.20
RV @ 0.5%		=	€8,548.76

Say RV €8,549

And the Tribunal so determines.