

Appeal No. VA10/5/073

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

**Carlton Hotel Dublin Airport Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2111846, Hotel at Old Airport Road, Cloghran, County Dublin.

**B E F O R E**

**John Kerr - Chartered Surveyor**

**Deputy Chairperson**

**Mairéad Hughes - Hotelier**

**Member**

**Tony Taaffe - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF FEBRUARY, 2011**

By Notice of Appeal dated the 25th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,190,000 on the above described relevant property.

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

" The valuation is excessive and inequitable and does not have regard to profitability or profit-making potential. Receipts and expenditure method of valuation (i.e. regard to profitability) should apply, without prejudice to submission that process is flawed and void due to dual entries in the Valuation List post 1st January 2010."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, initially on the 3<sup>rd</sup> day of February, 2011, and resumed on 17<sup>th</sup> day of February, 2011. The appellant was represented by Mr. Alan McMillan, MSCS, MRICS, FIAVI, ACI Arb, of GVA Donal O Buachalla. Mr. Owen Hickey SC, instructed by John Walsh & Co. Solicitors, Ranelagh, and Mr. Declan Meagher, General Manager of the subject hotel, also attended the hearing. The respondent was represented by Mr. Liam Cahill, B.A, ASCS, MIAVI, Valuer, and Mr. Alan Sweeney, Valuer, both with the Valuation Office, and by Mr. David Dodd BL, instructed by Mr. Michael Collins and Mr. Gavin Walsh of the Chief State Solicitor's Office, who were also in attendance at the hearing. Ms. Joanne Duggan of the Valuation Office attended as an observer on the 17<sup>th</sup> February, 2011.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of both hearings and submitted same to this Tribunal. At the oral hearings, 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 property is a 4-star purpose-built hotel constructed in 2005/2006, comprising of a four-storey structure over basement on a site of c. 1.338 hectares. The main building is a concrete frame with concrete floors. The southern and eastern elevations are part clad in reconstituted stone and the remaining elevations are rendered. The accommodation includes a foyer and reception, a bar, restaurant/bistro, 118 bedrooms with telephone, television, broadband, etc., including 7 junior suites which are air conditioned with bath and separate walk-in showers and balconies. A penthouse suite includes a sitting room. The bar and dining area, known as Kittihawk's Bar & Bistro caters to 150 diners and adjoins the kitchen. A conference centre provides banqueting capacity for 240 patrons and 17 syndicate meeting rooms also double as additional bedrooms when required, and the main function room, known as Cloud's Restaurant, provides for 160 patrons, to be served banquet style.

A 55 sq. metres gym is dedicated to guests only and together with all of the ancillary stores, launderette, staff rooms, kitchens, the total floor area, including the basement of 1,301 sq. metres, measures at 9,444 sq. metres.

### **Location**

The Carlton Hotel Dublin Airport is located on the R132 known as the Old Airport Road, and the property adjoins the QuickPark airport parking facility. It is situated about 12 km's north of Dublin city centre, in close proximity to both the M1 and the M50, and also to other hotels in the area including the Radisson Blu, and The Clarion at the Airport, Crown Plaza & Holiday Inn at Santry, Premier Inn at Airside, and Bewley's Hotel.

### **Services**

All usual required services are available and connected to the subject relevant property. In general, the principal public areas and some of the bedroom areas are air conditioned. Central heating is provided by gas fired furnace. The building is fitted with two guest lifts together with one staff/service lift and four stair cores.

### **Tenure**

One of the parties to the hearing explained that the interest in the property is held under a lease with rental payments amounting to €1,044,449 and €1,054,273 in years 2007 and 2008 respectively. However, the Tribunal was informed that there is no written form of lease to review.

### **Valuation History**

	The property was inspected under a Revaluation Order for Fingal County Council with an effective date of September 2005.
September 2009:	A draft Valuation Certificate issued with a valuation of €1,190,000.
October 2009:	Representations were submitted by an agent on behalf of appellant.
December 2009:	A Valuation Certificate issued with the valuation unchanged.
February, 2010:	An appeal was lodged to the Commissioner of Valuation.

July, 2010: The final Valuation Certificate issued with the valuation unchanged.

25<sup>th</sup> August, 2010: Notice of Appeal lodged to the Valuation Tribunal.

### **Floor Areas**

The following areas were agreed at hearing:-

Total Floor Area: c. 9,444 sq. metres (including Basement)

Total Site Area: c. 1.388 hectares

Total Car Spaces: The appellant's agent declared 250 spaces whereas the valuer from the Valuation Office informed the hearing that he physically counted 279 spaces in total.

As a preliminary matter, Mr. Hickey sought and obtained the consent of the respondent to invite Mr. Meagher, the General Manager of the subject property to answer questions specific and limited to the accounts of the hotel.

### **Appellant's Case**

Mr. Alan McMillan took the oath and adopted his précis as his evidence-in-chief.

Mr. Hickey, for the benefit of the hearing, outlined the issues to be considered, as follows:-

1. Method of valuation, indicating that the R & E method, as outlined above in the RICS Guidance Note, copies of which were provided by both respondent and appellant in their respective written submissions, is the most appropriate manner in which to carry out the valuation task to hand pursuant to Section 48 of the Valuation Act, 2001, which prescribes the appropriate approach to valuation in a Revaluation exercise. He explained that there is a very substantial dearth of rental information available on hotels in Dublin, and accordingly, the appellant was relying upon the R & E method with reference to the actual accounts provided as it happens in this case in years subsequent to the referenced valuation date of 30<sup>th</sup> September, 2005. He explained that the property must be considered as seen on the date the Valuation Certificate issued, but that the value must reflect what the hypothetical tenant would have considered as an appropriate rental, having regard to all of the matters which would influence an acceptable return to him on the subject property, looking forward to the future as of September 2005. He

explained that his client was relying upon the R & E method of valuation whereas he stated that the respondent was taking into account other factors to determine rental values of hotels by reference to functional profit and cost specified areas such as the provision of accommodation, food, beverages, conference/room hire, car parking etc., and applying percentage values to their respective estimated turnover values, and referred to the exercise outlined in the Valuation Tribunal judgements **VA08/5/224 – Kingsoak Taverns Ltd. t/a Clarion Hotel** and **VA08/5/225 – Q.E. Facilities Ltd. t/a Tower Hotel Dublin**, both of which were revalued in South County Dublin.

2. Referring to the differences between the parties on the “Add Back” figures, as noted above in the R & E calculations, Mr. Hickey noted the significant difference between the parties respective Divisible Balances.
3. The matter of the percentage value to be applied to the Divisible Balance to reflect the tenant’s and landlord’s share was also highlighted by him, noting that in his client’s case, the proposed split was carried out on a 50/50 basis, whereas the Commissioner of Valuation was seeking to apply a value of 37.5% to the tenant’s share and 62.5% to the landlord’s share.

Mr. Dodd opened his client’s case and sought to identify the matters in dispute. In response to questions put to him, Mr. McMillan confirmed that the appellant considers the level of the NAV set on the subject to be excessive and agreed that the primary function of the Valuation Tribunal is to establish if such is the case, and if so, by how much. Mr. Dodd expressed the view that the task for the Valuation Tribunal may not be to determine which is the appropriate method of valuation but to consider all methods and not necessarily to choose from competing methods, and accordingly asked the Tribunal to consider all methods. He added that the R & E method relied upon by the appellant is disputed by the respondent as either appropriate or accurate having regard to, among other things, the principle of not adding back in the management fees, differences on the level of bank charges to be added back, and lastly, the proposed split of the Divisible Balance. He referred to the Tribunal judgement on the Tower Hotel case mentioned above, and in particular Finding No. 15 therein, requiring the parties to treat accounts post the valuation date with some caution and those of future years, particularly for those properties not existing and/or trading at the relevant valuation date of September 2005.

On the invitation of Mr. Hickey, Mr. McMillan provided the Tribunal with a review of his written submission acknowledging in general terms that the matter at issue was merely quantum and that the matters of valuation history, description, location, accommodation and site area were common case to both appellant and the respondent. Mr. McMillan outlined the basis of his appeal, which he explained relied upon the application of the R & E (Receipts & Expenditure) Method, as outlined in the Receipts & Expenditure Method of Valuation For Non-Domestic Rating known as the Guidance Note, issued by the RICS in 1997, together with various other bodies and institutes having an interest in or jurisdiction over regulations pertaining to the valuation for rating purposes of various properties in the U.K. Mr. McMillan also indicated that such basis of valuation was the standard adopted by the rating profession in this country in a Revaluation exercise and in the absence of adequate and reliable rental information. He referred to Appendix 4 of his précis being a copy extract of the Revaluation Practice Note adopted by the Valuation Office, wherein it is stated under the Basis for Valuation heading that *“Profit earning ability is a key element in determining the annual rental value of a hotel. It is not the actual profits, but rather the profits that would be anticipated by a hypothetical prospective tenant which have to be considered”*.

He also declared that the R & E method, as set out in the above Guidance Note, was advised at a meeting held on 11<sup>th</sup> January, 2007, between the Valuation Office and the Irish Hotels Federation, and subsequently affirmed at a symposium jointly organised by the SCS and the IAVI dated 23<sup>rd</sup> September, 2008, and referred to in the hotel property case **VA09/4/023 - Regan Developments Ltd.**

Mr. McMillan then referred the Tribunal to the R & E calculations included with his précis which concluded with an estimated valuation figure of €83,000. He explained that the figures outlined therein were agreed between the parties with respect to turnover, cost of sales, gross profits, overhead expenses and operating profits for year ends 2007 and 2008. Addressing their “Add Back” line items, Mr. McMillan indicated that there was agreement-in-principle on the legal and professional fees, rent and rates. However, the parties disagreed on a proposed “Add Back” management fee amount of €150,000 per annum, for both years, with Mr. McMillan explaining that such sum should not be added back to the Divisible Balance as it was a sum required as part of the management and paid by the hotel to the Carlton Group. Citing the services and benefits which he stated arise for the benefit of the

hotel upon payment of that fee by referring to a one page written Definition of Management Fee, attached herewith as Appendix 2. The document seeks to summarise the benefits which accrue to the operation of the hotel upon payment of such a management fee and sets out associated competitor advantages, access to markets, brand awareness, shared reservations systems, group finance facilities, HR services, marketing, sales, purchasing schemes and programmes, group advertising and other benefits, similar in kind and purpose to those offered by franchise agreements.

Referring to a similar R & E type exercise carried out by the respondent as Appendix 18 in his précis, subsequently amended by revised calculations handed in at the hearing on 3<sup>rd</sup> February, 2011, (making adjustments on the “Add Back” for bank charges, reducing the sum each year by an amount to €2,000), Mr. McMillan acknowledged that the same amount of €2,000 should be correctly treated as an “Add Back” item in his R & E calculations. He also accepted that the subsequent deduction figures for repairs (corrected at hearing to be construed as Repairs and Renewals) for 2007 and 2008 were at variance with the R & E figures submitted by the respondent.

Mr. McMillan contended that the hotel industry was already showing signs of over capacity during 2005, and referred to a news and press release issued by Horwath Bastow Charleton, dated 23<sup>rd</sup> June, 2005, and in particular to a paragraph contained in the second page which stated as follows:

*“However, while signs for the industry are good, Horwath, Bastow, Charleton, warns that clear challenges exist for the hospitality sector, most notably the planned construction of over 200 new properties, due to be complete by July 2006, (if investors hope to avail of capital allowances). The influx of additional hotel rooms to the Irish market could represent a sharp increase in supply and represents a potentially damaging situation to the industry as a whole in the short term.”*

Mr. McMillan contended that 2007 was the peak year for the Irish hotel industry and similar to the Tower Hotel, the subject did not commence trading for more than a year following 2005. Accordingly he explained, he had regard in the R & E method to the accounts of the Carlton Hotel for the seven months year ending 2006, annualised accounts for 2006, and then the accounts for the twelve month trading periods, years ending 31<sup>st</sup> December, 2007 and 31<sup>st</sup> December, 2008. He explained that the accounts were prepared for the hotel reflecting their

position within the Carlton Group. His argument was that the hypothetical tenant would have expected 2007 trade to be stronger than that which might have prevailed in 2005 and that the accounts for 2008 show a decline in trade when compared with the average of the three years 2006, 2007 and 2008.

Mr. McMillan's précis outlined the rate of development and increase in hotel room capacity in the Dublin area from 2005 to 2009, which indicated an increase of approximately 36% available in peak season. Mr. McMillan referred to the oversupply of hotel rooms, now having reached a capacity crisis. Mr. McMillan staunchly defended the adoption of the R & E approach as the appropriate valuation methodology for Fingal Revaluation of hotel properties. He noted that the Shortened Method or "scheme approach" adopted by the Commissioner of Valuation and supported by the Valuation Tribunal arose as a consequence to a dearth of trading information in the South County Dublin Rating Authority Area on the aforementioned Tower and Clarion Hotel valuations.

He contended that the proposed 50:50 split of the Divisible Balance was fair and reasonable and consistent with former decisions made by the Tribunal including **VA95/1/025 - Ferrycarrig Castle Hotel Limited, VA93/3/048 – Berne Hotel Limited t/a Killiney Court Hotel, VA97/6/007 - Kelly's Strand Hotel, VA94/1/014 – Mary O'Neill t/a O'Dea's Hotel** cases among others. He stated that he could only recall one variation on the 50:50 split of the Divisible Balance in the past, which applied to **VA 96/2/064 – Glen Holdings Ltd.** Glentworth Hotel valuation in Limerick.

On reflection and subsequent cross-examination, he requested that the Valuation Tribunal disregard the "second look" approach employed by him on page 6 of his précis. He concluded his direct evidence by stating that there were only 250 parking spaces available for public use, the difference of 29 spaces with the Valuation Office assessment, accounted for as staff parking.

#### **Cross-examination by Mr. Dodd**

In response to additional questions asked by Mr. Dodd, Mr. McMillan confirmed his view that the NAV is excessive, that he used the R & E method, that he did not rely upon the 2006 accounts but was relying upon those of 2007 and 2008, and there existed a significant difference in the Divisible Balance between his calculations and those in Appendix 18 of the respondent's case. Mr. McMillan conceded that a significant difference arose between his



initial and ultimate calculations of valuation on the Tower Hotel case in South Co. Dublin which increased from a figure €310,000 to €455,000 when compared with the estimate of valuation determined by the Commissioner of Valuation of €376,000 and the figure ultimately determined by the Valuation Tribunal of €775,000. Mr. McMillan also declared under cross-examination by Mr. Dodd that his R & E exercise and calculation of his estimated valuation did not have specific regard to paragraphs 5.11(a) and/or (b) of the RICS Guidance Note, and the final paragraph of 5.11 therein. Mr. McMillan advised that he viewed the Carlton Hotel's 2006 and 2007 accounts in hindsight as a means of confirming the trends discernible to the hypothetical tenant as of the September 2005 valuation date. Mr. Dodd argued that in 2005, the downturn in economic trends and the problems which the hotel industry has been encountering since 2008, could not have been anticipated by the hypothetical tenant back in the middle of the last decade, to which Mr. McMillan replied that the author of the Horwath, Bastow, Charleton report, and other experts in the hotel sector, were already then expressing concerns with respect to the oversupply of new hotel bedrooms particularly in the Dublin region, and contended that the hypothetical tenant would have been aware of same as at September 2005. Mr. McMillan emphasised the point that the supply was not market led but tax driven, and that bankers and investors were increasing the supply of hotel rooms by the provision of generous credit terms and limits.

Referring to paragraph 5.56 of the RICS Guidance Note, Mr. Dodd noted that the Divisible Balance may be shared to a lower level with a tenant if the operation requires little capital, or conversely, if greater sums of capital are required by the tenant. He also referred Mr. McMillan to paragraph 5.30 of the same Guidance Note, which addresses repairs to property and notes that the hypothetical tenant is responsible for repairs to the property occupied so as to maintain it in a state to command the rent. The same paragraph also addresses a situation of where liability arises on the tenant to renewal of parts of the property and urges caution in the interpretation of such provision, and accordingly suggested that Mr. McMillan had erred by including a deduction in his R & E calculations for repairs and renewals. Mr. McMillan acknowledged that the RICS Note does not specifically provide for a percentage deduction to be applied to repairs and renewals but would not accept the argument put to him that any such figure should be removed from the exercise in the instant case.

Mr. Dodd explained that the respondent had sought information on account headings such as sundry expenses and car park revenue, together with a copy of the lease, initially dating back

to May of 2010 and following subsequent reminders, the Valuation Office finally received the information requested by e-mail from the appellant's agent dated 7<sup>th</sup> January, 2011.

Mr. McMillan explained that the figures of circa €7,000 and €9,000 representing bank charges outlined in the R & E exercise submitted by the respondent, should be reduced to €2,000 for each year, as the difference in the figures reflects and are fully accounted for as credit card and bank charges, as distinct from bank interest.

### **Respondent's Case**

Mr. Liam Cahill then took the oath and adopted his précis as his evidence-in-chief and reviewed his submission. He noted that in the Fingal Revaluation, there were 27 hotel properties initially to be valued and of that number, 10 appeals were eventually filed with the Valuation Tribunal which subsequently reduced to 8, and then to 6 properties, 4 having been settled. He confirmed that the subject hotel opened for trade in 2006 and the details of accommodation, location, tenure, description etc., were generally agreed as outlined above. He stated that he considered the estimate of valuation established by Mr. McMillan on behalf of his client at €83,000 to be out of line with all of the information to hand. He referred to page 19 of his précis which set out the basis by which the Commissioner assessed the valuation, estimated at €1,190,000.

He highlighted a substantial difference between the parties with respect to the valuation of the 279 car parking spaces, where the respondent calculated the fair maintainable annual receipts for the spaces to be in the region of €18,500. Mr. Cahill stated that his terms of reference to determine the annual revenue potential of the car parking spaces was linked to the trading accounts of the nearby circa 1,100 unit parking facility adjoining Bewley's Hotel, being property comparison No. 2 on page 22 of his précis. The revenue potential estimated there was €1,200 per annum, per car parking space. He referred the Tribunal to page 18 of his précis and added that the list of 7 hotels scheduled for appeal to the Tribunal had reduced now to 5, as the Bracken Court Hotel, Balbriggan, and Clarion Hotel Dublin Airport appeals had recently been agreed, and advised that whereas an agreement was reached on the valuations, no agreement was reached on methodology or approach to valuation between the parties.

In support of his “scheme” for the adoption of the shortened method of valuation, as outlined in the RICS Guidance Note 7, Mr. Cahill expressed the view that contrary to the earlier evidence, he felt that the capital allowance available to investors in hotels introduced in 2005 and extended subsequently by the Minister For Finance would have been received as a positive message by the hypothetical tenant at 2005 and that there was little evidence, if any, of the slow-down in the hotel trade until Q3 of 2007. He also referred to Finding No. 15 in the Tower Hotel case, as noted above, and suggested that the 2007 figures submitted on the subject referred to a period commencing just seven months following opening of the subject hotel, and accordingly should not be interpreted to reflect the full potential of the hotel’s trade. He also noted that the 2008 figures were negatively impacted by the unanticipated downturn suffered by hoteliers during that year. He expressed the view that the R & E method, as outlined in RICS Guidance Note 5.11, should look to forecasts etc., and not necessarily to be taken as a First Review backwards to calculate the net annual value. He stated that the projected profit in the accounts was set at a certain level in the 2006 accounts whereas the actual profit as reported in the 2007 accounts amounted to approximately 13.3% of that figure. Mr. Cahill maintained that the agent representing the appellant did not prepare the R & E calculations in a manner consistent with the RICS Guidance Note, and added that there is no support in the instant case for a 50:50 split of the Divisible Balance, referring in the alternative to the Glenworth Hotel Tribunal decision in Limerick, which produced a 30/70 split. He also contested the 4% reduction for repairs and renewals employed by Mr. McMillan in his submission, advising that the repairs on a new hotel would be much lower than on an older property, and argued that actual repairs should be taken as a cost to the operation of the enterprise. He also expressed the view that the management fee of €150,000 per annum, payable to the Carlton Group was an inter-company charge or payment.

**17<sup>th</sup> February, 2011.**

The hearing resumed on 17<sup>th</sup> February, 2011. Mr. Hickey queried the revenue potential of the car park, as set out in the respondent’s précis, noting that the figure of €18,500 reflects an annual revenue potential per car space on all 279 spaces of €1,500, and added that the Bewley’s Hotel car park facility being the example cited by the respondent, had an apparent revenue potential of €1,200 per annum, per space. Mr. Hickey went on to explain that the 2007 accounts of the hotel, as outlined in his R & E calculations contains a revenue figure of €130,569 for car parking, to year end 31<sup>st</sup> December, 2007 and queried if the Valuation Office Valuer had made some adjustments and/or assumptions that some of the revenue of

the car park may be included in the accommodation income figures reported subsequently. Mr. Dodd reiterated that the task is not to be concerned with the actual profits and turnover recorded, but in the alternative, on estimates of same, citing the **Rosses Point Hotel Company Limited v The Commissioner of Valuation, [1987] ILRM 512** High Court case.

Mr. Hickey disclosed an instruction from his client that the appellant had made a “without prejudice” offer of a net annual value of €850,000 to reach a settlement on the case and cancel all further proceedings. Mr. Dodd consulted with Mr. Cahill and his intending Solicitor, and advised that the Commissioner was not prepared to accept the offer figure.

Mr. Meagher then took the oath and confirmed that he was familiar with the management accounts of the Dublin Airport Carlton Hotel. He explained that 29 of the 279 car parking spaces were reserved exclusively for staff parking, leaving a balance of 250 spaces available for guest use or sale on short term arrangements. Having regard to the 118 guest rooms in the hotel, he calculated that the hotel guests would require an average of about 100 car spaces per night, leaving a residual balance of 150 to sell to public users or people who wish to pay for short term parking at the airport, on a nightly or weekly basis. He indicated that in the event this model was to work, there may be a potential car park revenue sum available to the hotel annually of approximately €12,000. He added that in order to maintain competitive advantage, the hotel offers customers room rates with free parking and accordingly when guests of the hotel avail of such rates, their accounting practice does not include a specific or any sum allocated to parking in the accommodation accounts or any other accounts of the hotel. He stated that it was not realistic to expect to earn an annual income of €1,500 per car space at the Carlton Hotel and certainly not over all 279 car parking spaces, particularly as there are only 132 to 150 spaces available per night in any event with revenue potential. Mr. Dodd asked why the foregoing computation did not match the €130,569 revenue figure outlined in the 2007 accounts attributed to parking, and Mr. Meagher replied by indicating that the revenue was not a constant item and variables such as the number of available spaces or the manner in which the charges are applied, depending on nightly or weekly rates, influenced the outcome.

In reply to a query from the Tribunal at this time, Mr. Cahill indicated that the respondent was not considering changing his view on the valuation and Mr. Cahill again resumed his position in the stand where he confirmed in reply to a question from Mr. Hickey that the

foregoing estimated revenue potential of €12,000 or the equivalent of 75 spaces generating €1,500 per annum, would not influence his mind or position taken by the Commissioner of Valuation on the parking revenue issue. Mr. Cahill also confirmed that he ascribed an annual potential revenue figure of €1,500 on the 29 car parking spaces and all of the remaining 250 spaces. Questioned by Mr. Hickey, who referred to RICS Guidance Note 7.4 and 7.5, Mr. Cahill advised that he did not look to past accounts, explaining that they did not exist, and that further, in response to a question put to him on 7.5, he advised that with the exception of the 12th Lock Hotel at Castleknock, he had no other arm's length rental evidence available on properties similar in all respects to the property under consideration. He referred again to the examples of the Tower and Clarion Hotels in South Dublin and confirmed that he was not, in this case, relying upon rental evidence of circa 100 public houses in the Dublin area. Mr. Cahill, in reply to a statement made that his valuation method in the instant case was impugned as he had not a body of rental evidence available to him, referred the Tribunal to the Rosses Point Hotel and Roadstone cases. Mr. Hickey reminded the valuer from the Valuation Office of a determination of the Tribunal requiring the parties to consider the net annual value of each property individually, referring specifically to the **VA08/5/125 - Marks & Spencer (Ireland) Ltd.** Tribunal judgment, which referred in part to a requirement in practice to value properties having regard to the size and mode of use of the property compared with others of similar uses. Mr. Cahill would not accept that the percentages applied by the respondent on the various headings of estimated revenues as outlined on page 19 of his précis, should not be used.

Mr. Hickey put it to the valuer that his précis did not conform to RICS Guidance Note 7.6, and also failed to comply with Note 7.4 and 7.5, to which Mr. Cahill replied to the contrary that the percentages, as noted above, applied to the estimate of turnover, takes account of and makes allowances for the age/type, location and type of trade of the subject property.

Replying to a further query from Mr. Hickey, Mr. Cahill agreed that the 12<sup>th</sup> Lock hotel, containing 12 bedrooms, with a substantial element of its turnover generated by non-room revenue, primarily food and drink, may be considered as an unsafe comparison property, but again referred to the example of the Tower Hotel, with its 190 beds and the methodology accepted there by the Valuation Tribunal. Mr. Hickey then drew the attention of Mr Cahill to Guidance Note 7.7. Under further cross-examination, Mr. Cahill stated that he was not fully conversant with the R & E method which was adopted widely in 1997, but having regard to

the experience of the Fingal Revaluation, is now considerably more informed of its application and the methodology.

### **Legal Submissions**

Mr. Hickey referred the parties to the often cited Roadstone case, declaring it as settled Irish Law and the **Rosses Point** case, which requires the parties to consider estimated rather than actual profits, and where it is generally accepted that a Tribunal may consider all methodologies put to it for consideration, but is not necessarily bound to accept any one. He also referred to the Valuation Tribunal case **VA05/2/007 - Independent Biomass Systems Ltd.** and in particular the paragraph headed 'Determination' therein, and the final paragraph on page 14.

Mr. Dodd took issue with Mr. Hickey's urgings to consider the R & E method only, noting that the appellant's valuer had, during the course of the hearing, requested a deletion of his "second look". Mr. Dodd explained that the appellant's valuer merely considered the actual profit, and in so doing did not comply with *Ryde on Rating*, which, he demonstrated by citing the relevant passage, requires the hypothetical tenant to consider "likely profitability". He referred to the Valuation Tribunal case **VA96/5/006 - Wynns Hotel Limited**. Mr. Dodd said that Mr. Hickey believes that the Shortened Method is flawed but reminded the Tribunal that his client was unable to obtain requested information on a timely basis, as noted earlier. Mr. Dodd also said that the Tribunal is not bound by any one methodology and referred to **VA05/2/034 - Mellow Spring Childcare Development Centre Ltd.**, Tribunal case. He explained that a High Court judge may depart from precedent only if satisfied that the previous judgement was manifestly wrong or if legislation since repealed the law or the decision was overturned by the Supreme Court. He said that the appellant should have taken the ratio from previous cases and should not change from the Shortened Method in the instant case unless or if it was proven to be manifestly wrong. To conclude he said that the appellant failed to comply with the RICS Guidance Note on the R & E method, as he took accounts commencing in 2007 and used actual accounts rather than estimates or projections.

### **Findings & Conclusion**

The Tribunal thanks the parties for the quality of their submissions and arguments in the instant case and in particular the manner in which they answered questions and clarified issues addressed during the course of both sittings of the case.

1. The Tribunal acknowledges the difficulties both parties encountered in this case to collate and proffer sufficient materials to support their respective positions, given the lack of hotel rental evidence in the Fingal Rating Authority area.
2. The Tribunal also acknowledges the efforts of both parties on a number of occasions to endeavour to secure an agreement or settlement between them prior to and during the sittings.
3. The Tribunal holds the view in the instant case, having regard to all of the circumstances and conditions outlined above that the appropriate methodology is that as set out in the RICS Guidance Note 5, items 5.1 up to and including 5.58 and also recommends consideration of the “Stand back and look” approach outlined in the same Guidance Note items 5.59 and 5.60.
4. While adopting the foregoing approach, the Tribunal is aware of the lack of estimated revenue and projected cost figures available to the valuers, and also has regard to the conflicting views expressed by them that the hypothetical tenant in 2005 may have anticipated shrinkage in hotel trade and reduced profitability resulting from possible oversupply and/or exaggerated demand forecasts, as either an event which might have been foreseeable or one which should have been foreseen.
5. The Tribunal does not in this case concur with deduction of “repairs and renewals” sum in the R & E Valuation Method to determine the Divisible Balance.
6. The Tribunal shares the view that the income potential associated with parking in this case would be considered by the hypothetical tenant, mindful of the ongoing marketing and promotion of such a facility by the management of the premises, to non guests of the hotel and accordingly includes a potential revenue figure of €130,569 per annum (which mirrors the figure provided in the accounts y/e 2007).
7. The Tribunal feels it appropriate to “add back” a substantial proportion of the management fee of €125,000 to determine the fair Divisible Balance which may be computed from the operating profit average figure of the given two years, and as agreed by the parties at hearing, has also added back an adjusted sum of €2,000 for Bank Interest Charges.

8. The Tribunal has not been offered cogent reasons to vary the split levels of the Divisible Balance in this case from 50:50.

All of the foregoing considered, the Tribunal has determined that the Divisible Balance split on a 50:50 basis, should be calculated at €865,076.

Valuation, Say €865,000.

And the Tribunal so determines.