Appeal No. VA02/4/066

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Moriarty Hotels Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Hotel at Map Reference: 15a Georges Square, Ward: Balbriggan Urban, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Brian Larkin - Barrister	**Member**
William K. Nowlan	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF OCTOBER, 2003

By Notice of Appeal dated 13 November 2002 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1244.34 on the relevant property above described.

The Grounds of Appeal are:-

"Excessive, inequitable, bad in law, not compared to other hotel valuations, does not consider trading position nor location of subject"

This appeal proceeded by way of an oral hearing held on 17th February 2003, in the offices of the Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 at which the appellant was represented by Mr. Des Killen, FRICS. FSCS. IRRV. of GVA Donal O Buachalla & Company and the respondent by Mr. Phil Colgan, a valuer in the Valuation Office. Mr. Chris Harmon, the Group Financial Controller of the appellant company, gave evidence of fact in relation to the trading of the hotel.

The Property

The subject property comprises a recently built hotel trading as the Bracken Court Hotel located at Georges' Square, Balbriggan. The premises first opened for business in October 2000 and was ungraded during the years 2001 and 2002 but now carries a three-star classification in the Irish Hotels Federation Guide 2003.

The building is a four-storey over basement level structure and its area, measured on a gross external area basis, has been agreed at 4,146 square metres. The accommodation provided is as set out below:

Ground Floor

Entrance lobby, bar/lounge, dining room and function room (capacity 180), kitchen, toilets and ancillary stores.

First Floor

Function Room (Capacity 180), two meeting rooms, holding kitchen, toilets and 6 bedrooms (all en suite)

Second Floor

19 bedrooms (all en suite)

Third Floor

15 bedrooms (all en suite), bridal suite and large family room.

Basement

Miscellaneous stores, staff canteen and toilets.

There is no dedicated on or off-street car parking attached to the premises.

Rating History

The premises were first valued at the 2001/4 revision and the rateable valuation assessed at £980 (€1244.34). No change was made at first appeal stage and it is against this decision that the appeal to this Tribunal now lies.

The Appellant's Case

Mr. Des Killen having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

In his evidence Mr. Killen said that whilst Balbriggan was commonly considered to be a dormitory town of Dublin this had not given rise to a significant level of development activity in recent years. In 1999 six sites in Balbriggan were earmarked for development by Fingal County Council and accorded urban renewal designation with the benefit of a wide-ranging package of tax incentives. Mr. Killen said that the only site so far developed was that occupied by the subject property and this clearly indicated the fact that Balbriggan was not perceived as being a good location for commercial development at this time.

Mr. Killen went on to say that the subject property was the only hotel in Balbriggan and when it first opened operated a nightclub in the ground floor function room area. However shortly after it opened it became obvious that the disco faced strong opposition from local licensed premises and another disco establishment nearby. In due course the decision was taken to close the disco in the hotel and to expand the lounge and bar areas.

Mr. Killen said that the bed night occupancy rate was currently 55% despite a low bed and breakfast rate of €60 per night. Moreover a high proportion of the bed nights was associated with weddings and other functions held in the hotel. Balbriggan, he said, was not regarded as being a tourist destination nor was it a town with a high level of commercial and industrial activity and this was borne out by the low occupancy rate in the subject property.

Mr. Killen said that he has examined the trading accounts and management accounts of the Bracken Court Hotel for the years ending the 31st October 2001 and 2002 respectively. It was, he said, clear from this examination that trading conditions were difficult and had worsened since the disco closed down leading to a drop in turnover of approximately €10,000 per week.

Mr. Killen said that, in arriving at his opinion of net annual value and in the absence of any relevant rental evidence, he had relied upon the comparative method of valuation. Whilst he had prepared a second valuation on the receipts and expenditure method he was not relying upon this valuation but introduced it merely to show that the respondent's assessment could not be justified in any circumstance. In arriving at his opinion of value on the comparative method he had taken into account all the locational and other factors referred to in his evidence. Mr. Killen contended for a rateable valuation of €547 calculated as set out below:

Net annual value	4146sq.m	@	€20.96per sq.m.	=	€86,900
Rateable valuation		@	0.63%	=	€547

Mr. Killen said that his opinion of value was in the nature of being an interim valuation reflecting the current trading situation which showed substantial losses on an ongoing basis. In support of his valuation on a comparative basis Mr. Killen introduced six comparisons the details of which are set out in Appendix 1 attached to this judgment.

Mr. Killen, in his closing remarks, drew the Tribunal's attention to the findings in the High Court Case Rosses Point Hotel Company Ltd. v the Commissioner of Valuation (1986 no. 603 SS).

Mr. Chris Harmon, the Financial Controller of the appellant company, having taken the oath gave evidence in relation to the trading of the hotel. Mr. Harmon said the absence of a strong locally based commercial and industrial sector was a major drawback which was borne out by the low bed night occupancy rate. Whilst the tariff room rate was €135 per night the actual rate achieved was €60 – €65 per night. When first opened, he said, the hotel had operated a disco but, due to the strength of competition in the market in Balbriggan, the decision was taken to cease this activity leading to a loss of turnover in the order of €10,000 per week. The area formerly used as the disco at ground floor level was incorporated into the bar and lounge areas. Mr. Harmon said that in his opinion the hotel would continue to lose money in the short term and the most optimistic forecast would be that a break-even situation would be achieved in or about 2005.

Under cross-examination Mr. Harmon said that another well-known firm of rating consultants had advised the company at first appeal stage. However, at no time during the negotiations with the appeal valuer had he or anyone in the appellant company given the consultants authority to reach an agreement with the Valuation Office. Mr. Harmon agreed with Mr. Colgan that the subject property had long-term potential but reiterated his opinion that the hotel would continue to lose money for the next few years. Mr. Harmon said that when the hotel was built it was anticipated that Balbriggan would be rapidly developed as envisaged in the Balbriggan Area Plan prepared by Fingal County Council. Balbriggan in fact, he said, had not yet developed and expanded as planned.

The Respondent's Evidence

Mr. Philip Colgan having taken the oath adopted his written précis of evidence which had previously been received by the Tribunal as being his evidence-in-chief.

Mr. Colgan in his evidence said that Balbriggan was an expanding dormitory town of Dublin which had the benefit of good rail and road connections. In regard to the latter the position would be vastly improved when the M1, currently under construction was completed in mid-2003. As a result Balbriggan would be less than half an hour from Dublin Airport and, in his opinion, this would be of benefit both to Balbriggan generally and the subject property in particular leading to an increase in bed night occupancy rates. Mr. Colgan said the hotel was well appointed and provided a wide range of facilities such as the bar, restaurant, disco (now closed) and compared favourably with other hotels of a similar size in the surrounding area.

Mr. Colgan said he acknowledged the fact that the hotel was in a start up situation and that consequently the first two years' accounts were showing an operating loss - indeed it would be surprising if it were otherwise. Accordingly, the receipts and expenditure method of valuation was not appropriate in this instance and he, like Mr. Killen, was relying upon the comparative method of valuation. In his evidence Mr. Colgan contended for a rateable valuation of £980 (€1244.34) calculated as set out below:

Net Annual Value	4146sq.m.	@	€47.82 =	€198,079
Rateable Valuation		@	0.63% =	€1244.34

In support of his valuation Mr. Colgan introduced four comparisons, details of which are set out in Appendix 2 attached to this judgement.

Under cross-examination by Mr. Killen, Mr. Colgan acknowledged the fact that the hotel no longer operated a disco and this had led to a substantial drop in turnover. Mr. Killen put it to Mr. Colgan that his comparisons were not truly relevant but Mr. Colgan did not agree. Three of the hotels he said were located in the same rating area whilst the Ardoyne in Navan was located in a town somewhat similar in size and nature to Balbriggan.

In relation to the purported agreement at first appeal stage with another firm of rating consultants Mr. Colgan said he had no reason to believe that they were not acting with the full authority of the appellant company. Mr. Colgan agreed that he had agreed to recommend a reduction in the valuation of the subject property as a result of these negotiations and indeed was prepared to offer a similar recommendation in his subsequent negotiations with Mr. Killen. However, in the absence of agreement he was left with no alternative but to proceed with the appeal to this Tribunal.

Determination

1. It is common case that the subject property is a well-appointed hotel with a three-star classification which offers the usual range of facilities to be found in a small to medium size premises.
2. It is also common case that Balbriggan is an expanding dormitory town of Dublin with improving rail and road links to the city.
3. It is common case that the hotel is in a start-up situation and will continue in the short term to operate in a non-profit making basis. As a consequence the receipts and expenditure method of valuation is not appropriate in this instance.

4. The Tribunal accepts the evidence of Mr. Killen and Mr. Harmon in relation to competition from other licensed premises in the town which led to the closure of the disco activity in the subject property. In such a situation it is up to the operator to allot the space available to other more profitable uses and in a start-up situation it may take some time for the optimum use of the premises to be achieved through a process of trial and error.

5. The Tribunal accepts Mr. Harmon's evidence that Balbriggan is not a town with an established or significant commercial base and that this has a limiting effect on trading opportunities.

6. The Tribunal has considered the judgment in the Rosses Point Hotel case as referred to by Mr. Killen and finds the remarks of Barron. J. to be apposite to this appeal particularly in view of the fact that the subject property is in a start-up situation and that Balbriggan is at the start of a development and improving infrastructural cycle.

> *" the question of fact to be answered is, what is a prospective tenant likely to offer by way of rent upon the basis laid down in the section. The profits actually being made are not material, nor is the manner in which the actual tenant uses the actual premises. So in the present case the offer of the prospective tenant would not necessarily be affected by the present profit record nor by the fact that the present owner is using 21 potential guest bedrooms for staff numbers nor by the fact that it can add further retrench because of difficulties with servicing, maintenance and insurance of the premises. What the prospective tenant would be affected by would be his own view of the likely profitability of the premises having regard to all material factors including economic recession and political disturbance. Since the section refers to taking one year with another, for any of these matters to be relevant it must be shown that they will be taken into consideration on such a basis. Nor is it necessary to establish that the business which has been carried in the premises or any specific part of such business had had to be terminated or drastically curtailed before any of these matters can be considered as relevant."*

A hypothetical tenant in the market at the relevant date would have regard to all material circumstances in arriving at an opinion of appropriate rental value in respect of the subject property.

7. In the absence of market rental evidence and the inappropriateness of the receipts and expenditure method the Tribunal concurs with both valuers that the comparative method of valuation be used in arriving at net annual value. The Tribunal has carefully considered all the comparisons introduced by Mr. Killen and Mr. Colgan and attaches most weight to the Neptune Beach Hotel and the Europa Hotel (Mr. Killen's comparisons 4&5) notwithstanding the fact that they are located in a different rating area. The Tribunal attaches lesser weight to the Forte Travel Lodge and Sands Hotel (Mr. Colgan's Comparisons 1& 4) by virtue of the fact that they are both substantially different in size and nature of operation to the subject property and indeed to each other. The remaining comparisons are also helpful but to a limited degree.

8. Having regard to the foregoing and taking into account all the evidence introduced and argument adduced at the hearing the Tribunal determines the Net Annual Value of the subject property to be as set out below:

Hotel 4146sq.m.	@	€35per metre	=	€145,110
Net Annual Value		Say		€145,000
Rateable Valuation	@	0.63%	=	€913

Having regard to the fact that the subject property is agreed to be in a start-up situation it would not be unreasonable if the premises were to be listed for revision after an appropriate period of time say in 3 or 4 years.