

Appeal No. VA11/3/006

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

Grand Canal Theatre Company Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2207051, Theatre at Lot No. 110/South Block (Grand Canal Theatre),
Pearse Street, South Dock, South Dock, County Borough of Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF JANUARY, 2012

By Notice of Appeal received on the 13th day of July, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €6,250 on the above described relevant property.

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

"The valuation is excessive and inequitable; it does not reflect the tone of the list - without prejudice to primary ground of appeal that it is not rateable." "The property ought to be excluded from the relevant valuation list or distinguished therein as not rateable per Schedule 4 of the Act." "Non-rateable status."

This appeal came before the Tribunal by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 8th day of November, 2011. At the oral hearing, the appellant was represented by Mr. Owen Hickey, SC, instructed by Mr. John Walsh of John Walsh & Co. Solicitors. The appellant's expert valuation witness was Mr. Alan McMillan, FSCSI, FRICS, ACI Arb, a Director of GVA Donal O Buachalla. Mr. Stephen Faloon, the General Manager of the Grand Canal Theatre, gave evidence in relation to the operation of the theatre and the market in which it operates. The respondent was represented by Mr. David Dodd, BL, instructed by the Chief State Solicitor's Office. The respondent's expert valuation witness was Mr. Tomás Cassidy a Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, both parties submitted to the Tribunal and exchanged a précis of the evidence they proposed to adduce at the oral hearing. From the evidence tendered under oath at the oral hearing, the following facts relevant to and material to the appeal were agreed or are so found.

The Property Concerned

It is common case that The Grand Canal Square development is a key element in the redevelopment of the South Docks area being carried out under the aegis of the Dublin Docklands Development Authority. It is also common case that The Grand Canal Theatre is the focal point of the development which also provides a hotel, several office buildings and a new water front public square designed by Boston Landscape Architect Martha Schwartz.

The Grand Canal Theatre building extends to five levels, over a basement and was designed and fitted out in order to accommodate major ballet, orchestral, musical and opera productions. Internally, the space was designed in such a manner as to provide a classical three-tiered theatre auditorium with uninterrupted views of the stage from all sections and a seating capacity of 2,013. In addition to the extensive foyer and merchandising space, the theatre provides a comprehensive range of bars, corporate entertainment areas, roof-top restaurant and all the other features required and expected by patrons and artists alike. The large stage area includes a comprehensive flying system to meet the demands of large scale theatrical productions. Mechanical, electrical and

acoustic services are designed to accord with the most up to date modern design standards for a theatre of this size and nature.

Accommodation

It is agreed that the theatre area has a total floor area of 11,748.45 sq. metres measured on a gross internal area basis. It is also agreed that the seating capacity is 2,013 and that there are 10 car parking spaces at basement levels.

Valuation History

On foot of a request to carry out a revision of valuation in accordance with Section 28 of the Valuation Act, 2001 the rateable valuation of the property known as the Grand Canal Theatre was entered on the list at a rateable valuation of €6,250.

In accordance with the provisions of the Valuation Act, 2001 the value of the property concerned was determined on the basis set down in Section 49(1) of the Act which states as follows:

“49.—(1) If the value of a relevant property (in subsection (2) referred to as the ‘first-mentioned property’) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

In other words the valuation is to be made by reference to the tone of the list.

The appellant challenged the valuation at representations stage and on further appeal to the Commissioner of Valuation under Section 30 of the Act but without success and in due course lodged an appeal to this Tribunal in accordance with Section 34 of the Act.

Appellant’s Evidence

(A) Mr. Stephen Faloon

Mr. Stephen Faloon is the General Manager of The Grand Canal Theatre and has held that position since October, 2009, some six months before the theatre opened in March, 2010.

In his direct evidence, Mr. Faloon said he was responsible for the day to day management of the theatre and for the programming of shows with a view to ensuring maximum use of the theatre facilities. In this regard, he considered the Olympia and Gaiety theatres to be his primary competitors in the market, not just for customers but also for potential shows and performers. From a competition point of view, Mr. Faloon said the O2 and The Helix complex operate in different sectors of the overall entertainment market – the former being a mainly rock music venue and The Helix being more of a suburban classical music venue with a strong connection with DCU and the students. To that extent, Mr. Faloon said, neither of these two venues could be considered comparable to The Grand Canal Theatre from a business or commercial point of view. When asked by Mr. Hickey to compare the subject property with the Olympia and Gaiety theatres, Mr. Faloon said that The Grand Canal Theatre was a new state of the art facility and whilst the other two were much older, smaller and had somewhat restricted fly space and stage areas; they were nonetheless similar in many respects and represented serious competition in the market place. The fact that The Grand Canal Theatre, he said, had a greater seating capacity and provided much better and more comfortable and extensive facilities for patrons and performers meant that the day to day running costs were considerably higher. The older and smaller venues, he said, were more cost effective and their inner-city locations meant that they benefited from “walk-up” business which The Grand Canal Theatre did not.

Under cross-examination, Mr. Faloon agreed that The Grand Canal Theatre was a state of the art venue and its design had already attained iconic status. He further agreed that it provided not just a greater seating capacity, but a much more comfortable and user friendly environment within the auditorium area, with greater aisle widths and greater leg room by comparison to that found in the Olympia and Gaiety theatres. He further agreed that the bars, merchandising areas and corporate hospitality areas in the subject were vastly superior to that to be found in the Olympia and Gaiety.

When asked why The Helix was not comparable in some respects to the property concerned, Mr. Faloon said that the absence of fly space meant that it could not stage major musicals or operas. The Helix complex was limited in the range of activities it could cater for whereas The Grand Canal Theatre was specifically designed to cater for major international shows, operas, musical and orchestral performances. In this regard,

Mr. Faloon said, seating capacity was the crucial factor in ensuring an economic return on the production costs.

(B) Mr. Alan McMillan

Mr. Alan McMillan, having taken the oath, adopted his written précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief.

In evidence Mr. McMillan said that he had carried out an overview of all the entertainment venues in the Dublin City rating authority area and had come to the conclusion that the Olympia and The Gaiety theatres were the only relevant comparisons, in as much as they were multi-purpose venues operating in the same general entertainment market as the property concerned. Furthermore, they were both similar to the property concerned in terms of auditorium layout and range of ancillary services provided for patrons and performers. The fact that they were older and smaller and thus limited to some extent in the scale of the shows and musicals that they could accommodate did not mean that they were not comparable in the true sense of the word. Indeed, as far as he was concerned they were the only two truly relevant comparisons on the valuation list within the true meaning of Section 49(1) of the Valuation Act, 2001. Details of Mr. McMillan's comparisons are as follows:

Gaiety

"The Gaiety Theatre is Ireland's first established theatre, operating since 1871, hosting plays, concerts and pantomimes.

The Gaiety is an attractive classic Victorian theatre, which can cater for 1,185 patrons. It incorporates a three tier auditorium comprising the Parterre, Dress Circle, Upper Dress Circle, Grand Circle and 15 boxes.

In addition to the main auditorium there are a number of bars accessible to patrons including The Red Room and Plaza Bar at ground floor level, the Dress Circle Bar at first floor level and the Sky Bar located on the third floor.

Back of house areas include the stage door reception, storage areas to the rear of the stage, the Green Room, nine dressing rooms, changing cubicles offices, boardroom and basement cellar.

The Gaiety, although obviously not modern, benefits from the ambience created by its architectural splendour and history. It is (sic) also has the advantage of a superior location to the subject being positioned at the top of Grafton Street, opposite St Stephens Green Shopping Centre and adjacent to H & M and Zara. Due to this prime pitch, there is an obvious walk-in trade which boosts sales at the on-site box office.

The Gaiety valuation was fixed in 1980 on a per seat basis and affirmed on appeal in 2002.”

“The table below sets out the Rateable Valuation analysed on a per seat basis and on a Gross Internal Area (GIA) basis”

		RV					
Property	RV	Capacity	per seat	Description	Area	€psm	NAV
Gaiety	€889.00	1,165*	€0.76	Ground floor	1,415	@ €50 per sq. m	= €70,750
PN 787105				1 st floor	929	@ €45 per sq. m	= €41,805
				2 nd floor	783	@ €30 per sq. m	= €23,490
				3 rd floor	370	@ €15 per sq. m	= €5,550
					3,497	@ NAV	€141,595
						RV	€892

**Seats increased to current 1185 since last Revision due to removal of central aisle.”*

The Olympia

“The Olympia Theatre, located on Dame Street, is also an attractive Victorian three tier theatre dating from the late 1800s, with a maximum seating capacity of 1,262 patrons (per VO) or 1,700 to including standing (when stall seating removed). It presents an eclectic schedule of variety shows, musicals, operettas, concerts, ballet, comedy, drama and in more recent times has proved a popular venue for live bands performances.

The auditorium comprises seating at the Stalls (519), Dress Circle (421), Upper Circle (300) and 12 boxes. There are two bars, Sheridan’s Bar and Maureen’s Bar at ground

floor level, the Circle Bar at first floor level and Upper Circle Bar located on the third floor.

Back of house facilities include the Green Room, stores, kitchen, 5 dressing rooms, MCD Production office, administration offices, wardrobe, showers, WCs and fly gantry.

The layout is clearly detailed in the floor plans attaching to the VO property report at Appendix 9.

There is a self-contained box office fronting onto Dame Street and in addition to the main entrance from Dame Street, the theatre can also be accessed from Crampton Court Lane and Sycamore Lane.

The Olympia also benefits from a superior location adjacent to Temple Bar compared to the Grand Canal Theatre. Furthermore the ground floor seating is removable which allows the theatre considerable flexibility in particular in terms of hosting standing music gigs.

The Rateable Valuation was agreed in 1992 based on the principal passing rent for the buildings (which was reviewed in November 1988)."

"The table below analyses this RV on a per seat basis and also on a GIA basis.

<i>RV</i>							
<i>Property</i>	<i>RV</i>	<i>Capacity</i>	<i>per seat</i>	<i>Description</i>	<i>Area</i>	<i>€psm</i>	<i>NAV</i>
<i>Olympia</i>	<i>€393.62</i>	<i>1,262</i>	<i>€0.31</i>	<i>Ground floor.</i>	<i>882.50</i>	<i>@ €44.40 =</i>	<i>€39,183</i>
<i>PN 852261</i>				<i>1st floor</i>	<i>428.70</i>	<i>@ €30.75 =</i>	<i>€13,183</i>
				<i>2nd floor</i>	<i>311.10</i>	<i>@ €20.50 =</i>	<i>€6,378</i>
				<i>3rd floor</i>	<i>57.50</i>	<i>@ €13.70 =</i>	<i>€788</i>
				<i>Scenery</i>	<i>92.90</i>	<i>@ €30.00 =</i>	<i>€2,787</i>
					<i>1,772.70</i>	<i>NAV</i>	<i>€62,318</i>
						<i>RV</i>	<i>€393"</i>

Other City Centre Theatres

"It may also assist the Tribunal to note the (per seat) valuations attached to city centre theatres including the Gaiety and Olympia as detailed in the table below."

<i>Property</i>	<i>VO No.</i>	<i>RV</i>	<i>Capacity</i>	<i>Analysis per seat</i>		<i>Last valued</i>
				<i>NAV</i>	<i>RV</i>	
<i>Theatres</i>						
<i>Gaiety</i>	<i>787105</i>	<i>€889.00</i>	<i>1,165</i>	<i>€120.63</i>	<i>€0.76</i>	<i>2004</i>
<i>Olympia</i>	<i>852261</i>	<i>€393.62</i>	<i>1,262</i>	<i>€49.20</i>	<i>€0.31</i>	<i>1995</i>
<i>Tivoli Theatre</i>	<i>802113</i>	<i>€298.39</i>	<i>447</i>	<i>€106.35</i>	<i>€0.67</i>	<i>1997</i>
<i>Vicar Street</i>	<i>1546335</i>	<i>€482.50</i>	<i>1,000</i>	<i>€76.19</i>	<i>€0.48</i>	<i>2000</i>
<i>Academy</i>	<i>731876</i>	<i>€1,206.25</i>	<i>850*</i>	<i>€225.40</i>	<i>€1.42</i>	<i>2009</i>
<i>Andrew's Lane</i>	<i>853625</i>	<i>€292</i>	<i>220**</i>	<i>€209.50</i>	<i>€1.32</i>	<i>2009</i>
<i>Exempt Theatres</i>						
<i>Abbey Theatre</i>	<i>732272</i>	<i>€888.82</i>	<i>628</i>	<i>€241.26</i>	<i>€1.52</i>	<i>2007</i>
<i>The Axis Centre</i>	<i>2168913</i>	<i>€1,183.00</i>	<i>380</i>	<i>€493.65</i>	<i>€3.11</i>	<i>2007</i>
<i>Gate Theatre</i>	<i>740730</i>	<i>€292.04</i>	<i>413</i>	<i>€112.7</i>	<i>€0.71</i>	<i>2010</i>
<i>Smock Alley</i>	<i>1318725</i>	<i>€350</i>	<i>200</i>	<i>€277</i>	<i>€1.75</i>	<i>2009</i>
<i>Subject ***</i>		<i>€6,250</i>	<i>2,013</i>	<i>€492</i>	<i>€3.10</i>	<i>2010</i>

**Standing and seated capacity*

*** Removable seating in place*

**** Amended to reflect seating capacity of 2,013 and not 2,100 as originally stated by Mr. McMillan.*

Mr. McMillan said that it was clear from the evidence presented by him there was no consistent pattern in the valuation of non-exempt entertainment venues in Dublin on a per seat basis. Valuations for non-exempt venues range from €49.20 to €225.40 on a per seat basis, as compared to €492 per seat as proposed by the Valuation Office in relation to the

property concerned. Similarly, he said, there was no consistent pattern or tone of the list when the values of entertainment venues were analysed on a rate per square metre basis. In the circumstances, he said it was extremely difficult to arrive at what he considered to be a proper rateable valuation of the property concerned, but in relying upon the valuations of the Olympia and Gaiety theatres which were truly comparable in many respects he had arrived at what he considered to be a fair and proper valuation.

Mr. McMillan's Valuation

Having regard to the valuations of the Olympia and Gaiety theatres and other relevant factors, Mr. McMillan put forward his opinion of the net annual value of the property concerned in accordance with Section 49(1) of the Act as follows:

Theatre – 2,013 seats @ €158.73 per seat	= €19,524
Car parking, Say as per V.O. =	€6,350
Net annual value	€25,874
Rateable valuation @ 0.63% =	€2,053
Rateable valuation, Say	€2,050

Under examination by Mr. Hickey, Mr. McMillan said that he did not consider the comparisons put forward by Mr. Cassidy on behalf of the respondent – ie. The Helix and The 02 to be valid comparisons in accordance with Section 49(1) of the Act. In this regard, he made the following observations:

The Helix

The Helix complex, he said, was not a commercial theatre in the true meaning of that classification. It differed in so many important respects to the property concerned, The Olympia and The Gaiety, to such an extent as to render it unreliable as a comparison. In particular, Mr. McMillan referred to the following factors in order to distinguish The Helix from the property concerned.

- It was not a theatre in the true sense of the word
- Not configured as a theatre
- Layout more akin to The National Concert Hall
- Small stage with choir stalls at the rear

- No room for fly space
- Not all seating was fixed
- Seating could be altered for different events
- Suburban location
- Part of university complex
- Small bar area and lack of corporate hospitality facilities

The 02 building

Mr. McMillan said that this was essentially a single purpose venue, designed mainly to cater for large rock concerts and the like. Essentially, he said, the concert area was a large open plan area with no fixed seating. The nature and scale of the performance for which it catered dictated the seating arrangements. Under no reasonable circumstances could it be considered a valid comparison to the property concerned in accordance with Section 49(1).

Under cross-examination, Mr. McMillan agreed that the Grand Canal Theatre could be truly described as a state of the art entertainment venue and that in architectural terms it was an iconic building. He also agreed that the Olympia and Gaiety Theatres were typical mid 19th century music halls but contended that they were both better located premises and well suited for their present use which was roughly similar to that of the Grand Canal Theatre. Furthermore, he said, they occupied prime city centre locations and hence benefited from what Mr. Faloon described as “walk-up” business.

When asked why he did not have regard to The Helix or 02 buildings, Mr. McMillan said that he did not consider them to be relevant comparisons for a number of reasons as previously stated by him. Similarly he did not consider other entertainment venues in the city, such as The Tivoli and other cinemas and theatres to be relevant comparisons and hence as far as he was concerned, he was not overly concerned about how their valuations were determined as they were of no great import from a comparison point of view.

In response to further questions from Mr. Dodd regarding The Helix, Mr. McMillan said he accepted that the Mahony Hall within the complex was in the general sense a theatre. That said, however, it was significantly different from the Grand Canal Theatre in that it

had a small stage area without fly space and hence not suitable for theatrical performances. Furthermore, he said it occupied a suburban location within the campus area of DCU which exercised a degree of control over its use. Hence, in his opinion it was not a relevant comparison.

The Respondent's Evidence

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

In his evidence Mr. Cassidy emphasised the iconic design of the building and the range and quality of the accommodation and facilities provided therein. He, like Mr. McMillan, had carried out an overview of the valuations of all entertainment venues in Dublin and had come to the conclusion that the only relevant comparisons were The Helix and 02 building. In arriving at this conclusion, he had regard to the fact that like the subject property they were new venues and that their valuations had been recently agreed following negotiations with well regarded and established rating consultants which, in his opinion, gave their valuations added weight.

Valuation

Mr. Cassidy said that having regard to the above he had arrived at the following valuation:

Theatre – 11,748.45 sq. metres	@ €33.90 per sq. metre	= €85,694.96
Cars – 10 Car Spaces	@ €635.00 per space	= € 6,350.00
Net annual value, say		€92,044.95
Rateable valuation @ 0.63%		
Rateable valuation, say		€6,250.00

In support of his valuation Mr. Cassidy relied on two comparisons, details of which are set out below:

Comparison No. 1

Property No. 2171317

Lot; 2Aa/6

RV; €3,450.00

Occupier; UAC Management Ltd.

“This Helix Theatre is located on the DCU college campus, which is situated approximately 4 miles north of Dublin city Centre. At the time of construction it was regarded as a state of the art theatre. It comprises three separate venues within one facility. When assessed in 2003 The Mahony Hall, The Theatre and The Space were quoted as having a seating capacity for 1260, 450 and 145 persons respectively.

Valuation: Theatre – 9,123 sq. M @ €60.00 per sq. M

The Valuation of €3,450 was determined at Tribunal Stage (pre-hearing agreement)”

Comparison No. 2

Property No. 757049

Lot; 95B

RV; €10,200.00

Occupier; Apollo Leisure (UK) Ltd.

“This property is the 02 venue3 (formerly known as The Point) which is located on North Wall Quay at the junction with East Wall Road. The 02 is a state of the art venue after extensive recent redevelopment. Original buildings were retained and improved with additional space added. The venue can accommodate between 9,000-13,000 patrons depending on the seating/standing arrangements. No parking. The Luas line to The 02 venue was not built at the time of valuation.

The Valuation of €10,200 was determined at Tribunal Stage (pre-hearing agreement). No breakdown of the valuation was agreed. The valuation below is presented broken down on an overall rate Per Sq. M.

Valuation Devalues: Theatre – 19,446.00 Sq. M @ €83.26 Per Sq. M”

“Summary”

“The three comparisons (which includes the subject) highlighted in this précis offer the most appropriate guidance to The Valuation Tribunal. While no comparison should be ignored, The Helix Theatre is the most compelling piece of evidence. It is the other

similarly sized, purpose built theatre in the relevant Local Authority area. In my view The Grand Canal Theatre is a superior property than The Helix Theatre and merits a higher rate Per Sq. M, as adopted in the subject valuation.”

It is my opinion that all factors have been appropriately accounted for in the valuation figure.

I submit that the valuation of €6,250.00 is not excessive and ask that the Valuation Tribunal affirm it.”

In direct evidence Mr. Cassidy said that the Grand Canal Theatre occupied a slightly off centre location not dissimilar to that of the 02 building. He said that in valuing the property concerned on an overall basis of €83.90 per sq. metre he had regard to the fact that the Mahony Hall element of the Helix complex had been valued at €60 per sq. metre and the 02 building at €83.26 per sq. metre.

Mr. Cassidy said he made what he had considered appropriate allowances to reflect the material differences between these properties and arrived at a valuation of the property concerned which he felt was fair and reasonable and in accordance with Section 49(1) of the Act. He emphasised the particularly high building specification of the Grand Canal Theatre with state of the art mechanical, electrical and other services and the quality of accommodation provided for attendees and performers.

Under cross-examination Mr. Cassidy said he had listened to what Mr. Faloon said about the Olympia and Gaiety Theatres and that he, (Mr. Faloon), considered them to be in direct competition to the Grand Canal Theatre and did not dispute what he said. Under close examination by Mr. Hickey as to what constituted the tone of the list, Mr. Cassidy agreed that the values of the Olympia and the Gaiety Theatres were relevant comparisons. However, Mr. Cassidy said that they were not necessarily the only or the best comparisons. In his opinion The Helix and the 02 buildings were better comparisons in that the valuation of these properties had recently been agreed whereas the valuations of the Olympia and the Gaiety were determined several years ago before the introduction of the 2001 Valuation Act. In any event, Mr. Cassidy said the Olympia and the Gaiety were

old and somewhat dated and hence were distinctly different in many significant respects to the property concerned.

When questioned about the Helix complex, Mr. Cassidy agreed that it was a three venue complex consisting of The Mahony Hall, The Theatre and The Space all located within the DCU campus. He further agreed that The Mahony Hall was the only element that could under any criteria be considered comparable to the property concerned in as much as it was a theatre with fixed seating for about 1,260 persons. The other elements of the complex, he said, were completely different and hence their valuations were of no relevance under Section 49(1). Mr. Cassidy acknowledged that whilst The Helix had a very full calendar of events throughout the year, Mr. Faloon had said that it was not considered to be in competition with the Grand Canal Theatre. When asked if this meant that The Helix should be ruled out as a relevant comparison by virtue of the fact that it was not in a similar use as the property concerned as per “**VA06/2/045 - Orange Tree,**” Mr. Cassidy said that he did not agree. As far as he was concerned, The Helix was a newly built entertainment venue and in many respects was physically similar to the property concerned and to that extent was a valid comparison. Mr. Cassidy said that in arriving at his valuation of the property concerned, he had regard to the overall tone of the list and like Mr. McMillan had carried out an overview of the values of a number of venues and concluded that The Helix and 02 were the most relevant comparisons for the reasons already stated. In this regard he was aware of the findings in **VA95/5/006 – Abbey Cinema Group** case referred to him by Mr. Hickey. In carrying out his overview Mr. Cassidy said no entertainment venue in Dublin was valued solely on a per seat basis other than The Olympia upon which Mr. McMillan was relying. Mr. Cassidy said that most cinemas and other entertainment venues in Dublin were valued on a square metre basis and this indicated to him that this was the preferred method in order to value the property concerned in accordance with Section 49 of the Act.

Mr. Hickey asked Mr. Cassidy if he had any comment to make on Mr. Faloon’s evidence to the fact that the smaller venues were most cost effective and that the corollary of this was that larger venues should not necessarily have greater valuations. Mr. Cassidy said he had heard what Mr. Faloon said but did not necessarily agree with him nor indeed did he agree with Mr. Faloon’s comment that the true measure of liability and commercial success was the ability to get “bums on seats.” Mr. Cassidy said that his function was to

value the property in accordance with Section 49(1) of the Act and this was what he had done to the best of his ability.

Legal Submissions

Closing Submissions

Mr. Dodd in his closing submissions said the Tribunal's determination in the "Abbey" case was important in that it concluded that the preferred method for valuing a cinema was by reference to its area – in other words the square metre basis. It was, he said, of note that the valuations of all the properties referred to by Mr. McMillan were all valued on the square metre basis, with the exception of the Gaiety, which was valued on a "per seat" basis. Mr. Dodd said the findings in the "Abbey" case could not be lightly set aside in the absence of any authorities for the use of the "per seat" basis, as employed by Mr. McMillan. It was also of some significance that the values of The Helix and the 02 building had been agreed at Section 30 appeal stage using the square metre method in line with the "Abbey" judgment.

Mr. Hickey in closing said, Mr. Dodd was not correct in saying that there was no authority for valuing cinemas on a "per seat" basis. The "Abbey" judgment, he said, specifically made reference to the "per seat" method when referring to the case **Provincial Cinematograph Theatres Ltd. v Holybrook (1969) 15 RRC 198**. Reference was also made to the valuation of the Capital Cinema in Cork and an earlier decision of this Tribunal, **VA93/4/029 – The Everyman Palace Theatre**. Furthermore, the fact that the Tribunal in the "Abbey" case preferred the square metre method should not be interpreted as meaning that the Tribunal impugned the "per seat" method.

In conclusion Mr. Hickey said the best comparison was the Gaiety Theatre, the value of which was agreed at Appeal Stage in 2002. No reliance could be placed on the valuation of The Helix Complex by virtue of the fact that it was a unique property, dissimilar in many respects to the Grand Canal Theatre; so too was the 02 building, for the very reasons outlined by Mr. McMillan in his evidence. Accordingly, he contended the only true comparisons were The Gaiety and The Olympia.

Findings

1. The Tribunal has carefully considered all the submissions made by counsel for both parties together with the authorities referred to therein. The Tribunal has also had regard to the expert valuation evidence adduced and the evidence of Mr. Faloon the General Manager of the Grand Canal Theatre and finds as follows:
2. This appeal is against a decision made by the Commissioner of Valuation under Section 33 of the Valuation Act, 2001 in relation to a revision of valuation made under Section 28 of the Act, as a result of which, the rateable valuation of the property concerned was entered on the valuation list at a rateable valuation of €6,250.
3. It is common case that the valuation was determined in accordance with Section 49(1) of the Valuation Act, 2001 which states as follows:

“49.—(1) If the value of a relevant property (in subsection (2) referred to as the ‘first-mentioned property’) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

4. The subject property is the Grand Canal Theatre and it is common case that it is the focal point of Grand Canal Square, which itself is the epicentre of the Grand Canal Complex. The theatre was designed by the world renowned architect Daniel Libeskind in association with specialist theatre architects RHWL. It is common case that the theatre has been constructed, finished and fitted out to exceptionally high standards of specification to meet all the expected norms of a theatre of its size. In other words it is a “state of the art” building.
5. The building which extends to five levels over basement is designed to provide a classical three tier auditorium space with an extensive entrance foyer and a comprehensive range of facilities including bars, merchandising areas, restaurants, administration offices, etc. The extensive interior includes ample “fly space” which is essential for the staging of

musicals, operas, ballet and other large scale theatrical events. Uniquely, the building provides an enclosed two truck loading area with direct access at stage level.

6. Dublin City is served by a wide variety of entertainment venues ranging from facilities suitable for small intimate theatrical events at one end of the spectrum to the O2 building which caters for up to 13,000 patrons at the other end. Many of the venues are by their nature suitable for a specific use whilst others such as the property concerned are suitable for a range of activities.
7. Section 49(1) requires that the value of the property the subject matter of the revision be made *“by reference to the values appearing on the valuation list.....of other properties comparable to that property.”*
8. In regard to what properties on the valuation list that are comparable to the property concerned, the valuers took diametrically different views which in truth are difficult to reconcile. Mr. McMillan put forward the view that the only true comparable properties on the list are the Olympia and Gaiety Theatres which he contended are similar in many respects to the property concerned including their use, their location, and their internal layout which provides a traditional three tier auditorium space and the range of events for which they can cater. This, despite the fact that, the property concerned is twice their size, new and capable of staging a wide range of theatrical events and performances which neither could accommodate. Mr. Cassidy, on the other hand, limited his comparisons to the two latest major entertainment venues in the city, namely, The Helix and The O2 Building - neither of which could by any stretch of the imagination be considered truly comparable to the property concerned for a variety of reasons. Firstly, The Helix is a three venue complex within the DCU campus which by virtue of its design layout and range of facilities provided could not readily cater for major musical, dance and theatrical performances. The O2 building caters mainly for major concert type promotions which would have a widespread appeal and which could not be catered for in any other venue in Dublin City or its environs. As a matter of fact the property concerned, which although similar in some respects to the Olympia and Gaiety, which are typical nineteenth century music halls, is significantly different to them in many material and important respects which would be reflected in its rental value.

9. Not only did the valuers rely on significantly different comparisons they also differed in how the property concerned should be valued. Mr. McMillan valued the property on a per seat basis and Mr. Cassidy valued it by reference to its area measured on a gross internal area basis. Mr. McMillan relied primarily on the fact that the valuation of The Gaiety Theatre was valued on revision in 1980 on a per seat basis which valuation (but not necessarily the basis of valuation) was left unaltered on appeal at the 2002 revision. Mr. McMillan submitted to the Tribunal an analysis of the valuation of other entertainment venues in Dublin devalued on a per seat basis, notwithstanding the fact that, in the main they had originally been valued on a price per sq. metre. Mr. McMillan's second comparison, the Olympia, was determined by reference to the rent determined at November 1988 at arbitration in accordance with the rent review provisions contained in the lease in respect of a part of the theatre only.
10. In the appeal **Abbey Cinema Group - VA95/5/006** the Valuation Tribunal considered how the valuations of a number of cinemas had been determined and having done so went on to say as follows.

*“As can be seen therefore from the above the task which must be undertaken is reasonably clear. It is to ascertain what the hypothetical tenant will pay as rent, for the subject premises, rebus sic stantibus taking one year with another. Having ascertained this, the rest of the undertaking is relatively simple and straightforward. This is because, it is generally accepted and in this case specifically accepted by both parties that once the rent can be related to November 1988 then, for the purposes for applying Section 5 of the 1986 Act, and for the purposes of converting that rent into an R.V., the fraction of 0.5% is adopted. The major problem however remains, that is to ascertain the rent. As was pointed out by the Court in **Roadstone Limited v. Commissioner of Valuation [1961] 1. I.R. 239** there is, in many instances, no one ideal way in which that rent can be calculated. It is of course a question in fact. It must be determined as part of the underlying exercise. But, as the nature of the unit of valuation and the circumstances surrounding such a unit are almost infinite in extent, it is not possible to establish in many cases as a matter of principle, what is the correct and most appropriate method of ascertaining a nett annual value. Hence, both as a matter of legal and valuation practice, there is available sufficient flexibility in*

the decision making body to adopt what the circumstances dictate as being the most appropriate and most helpful approach in any given case.

*It is therefore not surprising to see different methods adopted in different cases. In the case of **Rank Organisation Limited v Billet [1958] 4 R.R.C. 15** the Lands Tribunal when valuing a cinema took the view that a hypothetical tenant would be much more influenced by the accounts of the actual cinema rather than by having information about the rents or assessments of other cinemas. A similar approach was adopted in **Rank Organisation Limited -v- Priest [1996] 14 R.R.C. 1**. On the other hand in **Provincial Cinematograph Theatres Limited v Holyoak, [1969] 15 R.R.C. 198**, the Tribunal approached the method on a price per seat basis.*

*In this jurisdiction we also have a number of cases dealing with cinemas, theatres and places of public entertainment. In **Firkin Crane Development Co. Ltd. v Commissioner of Valuation (VA92/5/15)**, the Valuation Tribunal was considering what should be the correct nett annual value for a hereditament which formerly comprised the Butterley Exchange Building, located in Shandon on the north side of Cork City. As of 1992, its then use was as a cultural centre for dance, theatre, music and other forms of live entertainment. The building had been completely refurbished from a state of total dereliction. It then had facilities for a variety of uses mainly in the field of the performing arts. On behalf of the Commissioner the Appeal Valuer gave evidence of three alternative methods. The first was based on the capital value approach, the second on a price per sq. ft., and the third on a price per seat basis. The resulting valuation in all instances was about £400. The Tribunal took the view that since the subject property was in a designated area and was exempt from rates until the year 2000, it was not necessary for it, the Tribunal, to make any decision with definition, on what the correct approach might be. It was satisfied to conclude as follows:*

"While the Tribunal would not hesitate to resolve such a difficult situation normally, it is of the opinion that the valuation can be affirmed in this case without being in any way a precedent but for the purposes of clearing the way to have another opportunity for revision whenever the facts are clarified with arrangements to apply for a subsequent exemption on the

emergence of the pattern of user and potential of the premises pointing to a likely N.A.V".

It seems to us therefore that whatever indications the Tribunal may have given of a preference for approaching the valuation of that property, nevertheless we could not take the same as establishing any precedent which would apply in the instant case.

*The second decision of the Tribunal, which we wish to refer to, is that of the **Everyman Palace Theatre v The Commissioner of Valuation (VA93/4/029)**. Again this was a Cork case with the Theatre in question being located at McCurtin Street near the Metropole Hotel which is about five minutes from the city centre. From a consideration of the Tribunal's judgment it would appear that, on behalf of the Commissioner, it was argued that the correct approach was to adopt a price per seat basis. The Capital Cinema, also in the City, was offered as the most appropriate comparison. That apparently had a R.V. based on 48 pence per seat. Having heard the evidence and having considered the submissions, the Tribunal concluded that the Commissioner's approach of allowing a reduction of about 50% from the price per seat attaching to the Capital Cinema was insufficient. That cinema was fully refurbished, was fully operational as a six unit cinema and was fully commercial. It felt that the correct R.V., for the Everyman Theatre should be 20 pence per seat.*

*The third and most recent judgment is the **United Cinemas International v The Commissioner of Valuation (VA96/2/040)**. That case dealt with a major purpose built ten screen cinema development on the Malahide Road, at Coolock in the County of Dublin. Having set out what the alternative approaches might be and having stressed the importance of the IMI case, the Tribunal was satisfied that the correct approach was not one based on a price per seat basis or on adopting a capital value basis but rather by using a price per sq. ft. basis.*

As can therefore be seen the method of approach has indeed differed quite significantly in a substantial number of cases. This is not in any way surprising. The reasons are those set forth above. In addition, for the last decade or more,

*cinemas have been constructed, built and laid out to the highest standards complying with all modern requirements. These cinemas are sometimes capable of more than one use and almost always have ancillary facilities attaching to or available nearby. They tend to be located in suburban centres either close to or in the midst of large population areas. There is generally an abundance of car parking facilities available as well as a range of other retail outlets. As was said in the **United Cinemas International** case, the cinema industry, in short, had gone through and perhaps is still going through a major change which has profound implications for the owners and operators thereof and for the cinema going members of the public. Gone or close to gone are the days of the single cinema catering for a small limited and specialised market.”*

11. In the end the Tribunal in this appeal concluded that the preferred method of valuation was the rate per sq. metre basis “*making due adjustments for the difference in location, population in the immediate environs, seating capacity and total area*” It should be pointed out that the “Abbey” decision was determined in accordance with the provisions of the Valuation Act 1986 (now repealed) which did not restrict comparisons to those within the same rating authority area in which the property concerned is valued as does Section 49 (1).
12. As a general statement there is considerable merit in valuing theatres and other entertainment venues on a per seat basis. However, before embracing this method of valuation for uniform application, considerable research would need to be carried out in relation to turn over, seat occupancy rates, profitability and all other relevant factors that would be considered relevant in arriving at an estimate of net annual value in accordance with the statutory provisions set out in Sections 48 and 49 as the case may be.
13. Having regard to the valuations adduced by the valuers, the Tribunal has come to the conclusion that it would be unsafe to determine the valuation of the property concerned based on the per seat basis as put forward by Mr. McMillan, supported as it is by a single assessment made in 1980 and confirmed on appeal in 2002. In arriving at this conclusion, the Tribunal has had regard to the following comments contained in the “Abbey” judgment. “*Bearing in mind that what one is valuing is not the business carried on therein but the building itself it is our view that to adopt a price per seat*

basis would be capable of creating and resulting in a great number of anomalies not always apparent in individual cases but discoverable only by a detailed analysis, largely spread over time and geographical area. Equally so, we cannot agree that the capital value method can be elevated from its accepted status as being a method of last resort. In our opinion therefore we should approach this case by ascertaining what the correct price per sq. ft., is in relation to subject matter. Certainly when there is sufficient evidence available this is the proper approach in particular when the subject property is comparable. Certainly this is in our view the preferred method of valuation.”

14. Mr. Cassidy’s comparisons are valued on a gross external area basis and are far from ideal, by virtue of the fact that the similarities between them and the subject and indeed each other are limited. Of the two, The Helix complex is probably the better in that it includes the O’Mahony Hall (seating capacity of 1,260), the theatre (450 seats) and the space 145 seats. This complex of venues is somewhat smaller than the property concerned but it is capable of putting on a range of mainly musical and orchestral events throughout the year. Regard must be had to the vast difference in the quality of accommodation and facilities provided both for patrons and performers at the subject property and its inner city location. It is not without significance that the valuation of The Helix was agreed at Tribunal stage with a leading firm of rating consultants.
15. Mr. Faloon, in his evidence said that, in some respects the property concerned is over-specified in relation to the quality of the building and the range and extent of facilities therein provided, that have to be maintained and which may not necessarily be reflected in increased turnover, seat occupancy rates or profitability which are vital factors in arriving at an estimate of net annual value.
16. Lesser weight is attached to the O2 Building assessment, by virtue of its size and singularity of use i.e. a venue mainly for rock concert performances. Nonetheless, it is noted also in this instance that the valuation of this property was agreed at Tribunal stage with a firm of rating consultants.
17. The expert witnesses in this appeal made their respective estimates of net annual value of the property concerned using what they considered to be the most appropriate method of

valuation. The fact that they arrived at figures which were significantly different is not to be viewed as a lack of experience or understanding on their part of Section 49(1). Indeed, the problem lies with the inherent inconsistency of the valuation list which makes a valuer's (to say nothing of the Tribunal's) task to make a valuation in accordance with Section 49(1) a difficult exercise.

Determination

Having regard to the above findings, the Tribunal determines the value of the property concerned in accordance with Section 49(1) of the Valuation Act, 2001 to be as set out below:

Valuation

Theatre – 11,748.45 sq. metres @ €72.00 per sq. metre =	€845,888
Car Spaces – 10 (as agreed) @ €635 per space =	€ 6,350
Net annual value, Say	€852,000
Rateable valuation @ 0.63%, Say	€5,360

And the Tribunal so determines.