

Appeal No. VA95/1/013

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

United Arts Club Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Clubrooms at Map Ref: 3, Upper Fitzwilliam Street, Ward: Mansion House,
County Borough of Dublin

Quantum - Method of Valuation, Adjournment request refused

B E F O R E

Liam McKechnie

S.C. Chairman

Brid Mimmagh

Solicitor

Fred Devlin

FRICS.ACI Arb.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF MARCH, 1996

By Notice of Appeal dated the 10th day of April, 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £170 on the above described hereditament.

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

- "(1) the valuation is excessive and inequitable.
- (2) the valuation is bad in law".

The Property:

The property consists of a four storey over basement Georgian house with a small yard to the rear. It is constructed of brick walls, with slated roof on the main buildings and flat felted roof on part of the rear buildings.

The property is situated on Upper Fitzwilliam Street close to the junction with Baggot Street.

The accommodation of the premises is as follows:-

Basement	-	Stores
Ground Floor	-	Kitchen, Dining Room, Sitting Room and Toilets
First Floor	-	Functions Room and Bar
Second Floor	-	Office, Four Bedrooms, Store and Toilet
Third Floor	-	Games Room, Two Bedrooms and Bathroom

The property is held under a long lease and all main services are connected to the property.

Valuation History:

Prior to the 1993 revision the property was valued as a private residence and described in the Valuation Lists as "house and yard" with a rateable valuation of £60.00. The premises was listed for revision in 1993 to "amend property description and revise as appropriate". The valuation was increased to £170. The appellant appealed this to the Commissioner of Valuation but no change was made at First Appeal. It is against this determination of the Commissioner of Valuation that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 22nd December, 1995 from Mr. Des Killen, FRICS, FSCS, IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited with 32 years experience as a valuer on behalf of the appellant.

In his written submission, Mr. Killen described the property, its location and valuation history. Commenting on the property itself, Mr. Killen said that the club was founded in

1910 by Mrs. Ellie Duncan and that the primary objective of the club was, as stated in the Memorandum and Articles of Association "to establish and maintain a non-sectarian and non-political club for the cultivation and study of the arts of literature, music, painting and allied arts, sculpture and drama, and the doing of such things are as incidental or conducive to the attainment of the above objects or any of them".

Mr. Killen also stated that the club should be distinguished from the typical social club as the Memorandum also stated, that "the income on property of the club whensoever derived, shall be applied solely towards promoting the objects of the club, as set forth in this Memorandum of Association, and no portion thereof shall be paid directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the club".

Mr. Killen said that the club encouraged, supported and promoted the graphic and performing arts and that it provided space for artists to practise, teach and exhibit art and that it actively encouraged artists to join the club and avail of these opportunities.

Finally, Mr. Killen said that the club is a non-profit making institution whose subscription levels were kept deliberately low so as to make the club and its facilities available to a wide segment of Irish society.

Mr. Killen said that in arriving at his estimate of rateable valuation he had had regard to these factors and prepared his estimate on the accounts basis as there were no social clubs within the City Centre area, which had been recently revised and therefore he had no direct comparative evidence. Mr. Killen said that in his opinion, on this basis, the correct rateable valuation is £50.

A schedule of Dilapidation's and Report on the United Arts Club Limited compiled by Ms. Gabriel T.F. Downey, B.Arch, BA, ARIBA, MSDI was also submitted by Mr. Killen on behalf of the appellant. The said report outlined the condition of all the individual rooms and said that generally, the house was in need of extensive repair.

A written submission was received on the 21st December, 1995 from Mr. Tom Cuddihy, B.Agr.Sc., a District Valuer with 28 years experience in the Valuation Office on behalf of the respondent.

In his written submission, Mr. Cuddihy described the property and its location and gave the valuation history as outlined above. Commenting on the appellant's grounds of appeal, Mr. Cuddihy said that the rateable valuation was in line with other recently revised properties in the area, that is, the valuation was approximately .63% of the net annual value.

Mr. Cuddihy set out his calculation of the rateable valuation as follows:-

"Valuation:

Basement	-	Blocks 1 to 5	-	708 ftsq	@	£3	=	£ 2,124
		Blocks 6 to 12	-	540 ftsq	@	£1	=	£ 540
Grd Flr	-	Blocks 1 to 5	-	1342 ftsq	@	£7	=	£ 9,394
		Blocks 6 to 13	-	282 ftsq	@	£3	=	£ 846
1st Flr	-	Blocks 1 to 12	-	1362 ftsq	@	£6	=	£ 8,172
2nd Flr	-	Blocks 1 to 11	-	1032 ftsq	@	£4	=	£ 4,128
3rd Flr	-	Blocks 1 to 6	-	725 ftsq	@	£3	=	<u>£ 2,175</u>
								£27,379

Est. N.A.V.	=	£27,000	X	.63%	=	£170.10
				R.V.	=	£170"

Mr. Cuddihy set out details of six comparisons as follows:-

(1) The Fitzwilliam, 41 Upper Fitzwilliam Street, Dublin 2

Guesthouse with 13 bedrooms. No lift. Rateable Valuation £180.

Net Area	-	Grd Flr-	633ftsq @ £11	=	£ 6,963
		1st Flr	- 779ftsq @ £8	=	£ 6,232
		2nd Flr-	731ftsq @ £6	=	£ 4,386
		3rd Flr	- 747ftsq @ £4.50	=	£ 3,361
		Grd Flr Return	- 76ftsq @ £8	=	£ 608
		1st Flr	- 50ftsq @ £6	=	£ 300
		2nd Flr-	40ftsq @ £4	=	£ 160
		Basement	- 791ftsq @ £8	=	<u>£ 6,328</u>
					£28,338

$$\text{Est. N.A.V.} = £28,338 \times .63\% = £178.00$$

$$\text{RV} = £180$$

(2) Georgian House, 19-21 Lower Baggot Street, Dublin 2.

Guesthouse with 38 bedrooms. Bar. No lift. Rateable Valuation £560.

Gross Area	-	17,392ftsq @ £5.10ftsq	=	£88,699
Est. N.A.V.	-	£88,700 x .63%	=	£558.61
				R.V. = £560.

(3) Longfield House, 9 & 10 Lower Fitzwilliam Street, Dublin 2.

Guesthouse with 26 bedrooms. Bar and lift. Rateable Valuation £445.

Gross Area	-	9,310ftsq @ £7.60ftsq	=	£70,756
Est. N.A.V.	-	£70,756 x .63%	=	£445.75
				R.V. = £445.

(4) 6, Upper Fitzwilliam Street, Dublin 2.

Offices on ground floor leased monthly from June, 1992 at £4,000p.a.

Rateable Valuation £21.

<u>Offices (Ground Floor)</u>	237ftsq @ £14/ftsq =	£3,318
Est. N.A.V.	£3,300 x .63% =	£21.00 RV

Offices on ground floor (rear) leased from June, 1992 for two years and nine months at £90 per week. Rateable Valuation £24.

<u>Offices (ground floor rear)</u>	323ftsq @ £12/ftsq =	£3,876
Est. N.A.V.	£3,000 x .63% =	£24.00 RV

Second floor offices leased from May, 1993 at £5,500p.a. for two years and nine months. Rateable Valuation £26.

Offices (2nd floor)	517ftsq @ £8/ftsq =	£4,136
Est. N.A.V.	£4,136 x .63% =	£26.00 RV

Third floor offices leased monthly at £2,766p.a. Rateable Valuation £17.

Offices (3rd floor)	323ftsq @ £6/ftsq =	£2,388
	75ftsq @ £5/ftsq =	<u>375</u>
		£2,763
Est. N.A.V.	£2,763 x .63% =	£17.00 RV

(5) The Order of the Friendly Brothers of St. Patrick, 22 St. Stephen's Green, Dublin 2.

Private club. Rateable Valuation £280.

Ground Floor	-	1362ftsq	@	£15	=	£20,430
First Floor	-	1045ftsq	@	£8	=	£ 8,360
Second Floor	-	826ftsq	@	£8	=	£ 6,608
Third Floor	-	920ftsq	@	£6	=	£ 5,520
Basement	-	530ftsq	@	£6	=	<u>£ 3,180</u>
						£44,098
Est. N.A.V.		£44,000	x	.63%	=	£277.20
				R.V.	=	£280.

(6) The Bankers Club, 92 St. Stephen's Green, Dublin 2.

Revised in 1983. Rateable Valuation £225.

Basement	-	957ftsq	@	£5	=	£ 4,785
Ground Floor	-	957ftsq	@	£10	=	£ 9,570
First Floor	-	1,248ftsq	@	£8	=	£ 9,984
Second Floor	-	796ftsq	@	£6	=	£ 4,776
Third Floor	-	979ftsq	@	£4	=	£ 3,916
Yard at Rear			Say		=	<u>£ 2,500</u>
						£35,534
Est. N.A.V.		£35,500	x	.63%	=	£223.65
				R.V.	=	£225.

Note: Balance of Bankers Club valued as 93 St. Stephen's Green at £200 RV - 1972 Revision.

Oral Hearing:

At the oral hearing held in Dublin on 10th day of January, 1996 the appellant was represented by Mr. Desmond M. Killen and the respondent was represented by Mr. Tom Cuddihy. Ms. Gabriel T.F. Downey also gave evidence on behalf of the appellant.

Mr. Killen's written submission was adopted by him as forming the basis of his evidence in chief, which having taken the oath was elevated to the status of sworn evidence. In his remarks to the Tribunal Mr. Killen traced the history and development of the United Arts Club. The Club was he said a registered club under the 1904 Act and had a current membership of 644. The present level of subscription was £105 and £70 for city and country members respectively, with artists being entitled to a 50% abatement. In addition there was a once off entrance fee of £50.

Mr. Killen said that when faced with the task of determining the net annual value for the purpose of this case he could find no evidence of rental value, for licensed private members clubs in the city area, nor any evidence of such premises having recently been valued for rating purposes. In these circumstances therefore, he was forced to rely upon the accounts method and arrived at his opinion of net annual value on a conventional divisible balance basis. He also expressed the view that the Club had limited opportunities to increase its level of income and this was reflected in the accounts as contained in his written submission. He submitted that the operation of the rule of '*rebus sic stantibus*' dictated that the valuation of the subject hereditament must reflect its actual use and that in any event no permission existed for any other use. The state of repair of the building must also be taken into account and in this regard the club had commissioned a Schedule of Dilapidation's and Report prepared by Ms. Gabriel Downey, an architect, who advised that the building was in need of extensive repairs.

Mr. Killen then called Ms. Gabriel Downey, to give evidence in relation to the state of repair of the building.

Ms. Downey having taken the oath confirmed that she had inspected the property in early 1994 and had prepared a report dated April of that year. A copy of this report was made available to the Tribunal and Ms. Downey requested that this be adopted as her evidence in chief regarding the state of repair of the subject hereditament. This request, with the consent of the Commissioner of Valuation was agreed to.

The written submission prepared by Mr. Cuddihy on behalf of the respondent was adopted by him as being the basis of his evidence in chief. Again having taken the oath the evidential part thereof now had the status of sworn evidence.

Mr. Cuddihy said that in his opinion there was nothing to distinguish the United Arts Club from any other licensed members club and that the accounts method of valuation was not the appropriate method to use in order to determine net annual value in this instance. Nonetheless, he accepted Mr. Killen's point that there were but a few private members licensed clubs in the city centre, that had been valued in recent times. No. 22, St. Stephen's Green occupied by the Order of the Friendly Brothers of St. Patrick was an exception to this. The valuation of this property was agreed at £280 at First Appeal stage within the past couple of years. In arriving at his opinion of the net annual value of the subject hereditament he had relied on the above assessment and the valuations attributable to other buildings in the vicinity as set out in his list of comparisons.

In response to questioning from Mr. Killen, Mr. Cuddihy said that he understood that 22, St. Stephen's Green was valued by comparison with other buildings nearby which were in office use. He further added that he had not inspected No. 22 nor indeed did he have any information regarding its membership or the state of repair of the building.

Mr. Killen referred to three comparisons listed by Mr. Cuddihy and asked why he had not responded to a letter seeking further information regarding these properties. Mr. Cuddihy said that he did not have sufficient time to respond but in any event the information requested was given to the Valuation Office in confidence and hence could not be revealed. Mr. Killen said that the information sought was relevant and necessary for him if he were to prosecute

this appeal properly and asked the Tribunal to grant an adjournment so that the information could be made available. In refusing Mr. Killen's request for an adjournment the Tribunal indicated that it would take into account the fact that information regarding the purchase price and the cost of works in relation to the three properties, that is, 41 Upper Fitzwilliam Street, 19/21 Lower Baggot Street and 9/10 Lower Fitzwilliam Street was not available.

Under further cross examination regarding the properties contained in his list of comparisons Mr. Cuddihy agreed that only one of them was strictly comparable, the rest being either superior quality guest houses or offices. However, he said that he had introduced this evidence not for the purpose of direct comparison but as a guide to the general level of values in the area. This the Tribunal accepts. He agreed that if the subject property were to be used as offices, alterations would be necessary and that whilst the accommodation at ground and first floor levels was reasonably good the rest could best be described as mediocre. He also agreed that if the property was to be valued as offices, the areas set out in his submission would need to be adjusted in line with the Code of Measuring Practice which code had been agreed by all relevant professional bodies.

In his closing remarks, Mr. Cuddihy reiterated his contention that the accounts method of valuation was not appropriate in this instance. The subject ought to be valued in the same manner as other clubs and the fact that the members appeared to have a policy of keeping the annual subscription at a low level was not relevant in determining the appropriate net annual value. In arriving at his opinion he had looked at a cross section of properties in the area which were occupied for different uses and used this information as a guide. He accepted the point that the building was not in first class condition and had reflected this in arriving at his valuation.

Mr. Killen in his closing submission stated that the United Arts Club was different from other private clubs such as golf clubs which had alternative sources of income other than members annual subscriptions. The information provided by Mr. Cuddihy in relation to 22, St. Stephen's Green was in his opinion of little assistance and as for the rest of Mr. Cuddihy's comparisons, these varied from guest houses with bars attached to offices all of which were

different in use to the subject property. If the subject was to be used as offices it would be necessary to spend about £100,000 to bring the accommodation up to acceptable standards. In its present physical state and circumstances he opined that the net annual value of the subject in office use would be in the order of £16,000 giving a rateable valuation of £105.

At the conclusion of the oral hearing Mr. Killen requested the Tribunal to inspect the premises so that they could fully appreciate the poor state of repair of the building.

Determination:

Immediately after the oral hearing the Tribunal inspected the subject property and would like to express its thanks to the staff of the Club who afforded it the opportunity of a full and thorough inspection.

The Tribunal has listened carefully to both the evidence and the arguments advanced by each party to this appeal and having analysed and examined all such evidence and all such arguments, make the following observations and findings:-

- (1) The United Arts Club is a private members club whose affairs are in the hands of its appointed trustees and members, which persons are both responsible for and have the sole power of fixing the annual subscription and entrance fee.
- (2) It is not and has not been the practice to value members clubs on an accounts basis. Unless therefore there are compelling and substantial reasons, supported by sustainable evidence as to why, in any particular case involving a members club, the accounts method should be used, that approach will not be adopted by this Tribunal. In this case there are no such reasons and no such evidence. Accordingly this method of valuation will not be utilised.
- (3) The question before the Tribunal in this appeal is no different from that which usually confronts it, which is, what rent would a hypothetical tenant reasonably expect to pay for the subject hereditament in its present state and circumstances at the valuation date.

The rent so determined assumes that the premises are vacant and let subject to the rule of '*rebus sic stantibus*'.

- (4) This rule, insofar as it is applicable to this appeal, may be stated as follows, namely that the subject premises must be valued "in its existing physical condition" and "to the mode in which it is actually used". See Ryde on Rating (13th Edition) page 449/460.

Given both the antiquity and importance of this rule there are, as one would imagine, many reported decisions on its precise application to the facts of any given case. Some of these decisions have issued from the courts but many have also emanated from the Lands Tribunal in both England and Northern Ireland. For present purposes it is sufficient to refer to one authority only namely the Lands Tribunal decision in *Midland Bank Limited v. Laham (Valuation Office) [1978] R.A. 1*. In its decision the Tribunal, in affirming its view that the hereditament, as of the valuation date, must be valued in its existing state and condition went on to deal with and comment on what "uses", might be permissible within the rule '*rebus sic stantibus*'. It held that alternative uses might also be taken into account if such uses were within the same mode or category as the existing use. It elaborated on this by adding that all such alternative uses to which the hereditament in its existing state could be put in the real world, and which would be in the minds of competing bidders in the market, are to be taken as being within the same mode or category where the existence of such competition can be established by evidence.

- (5) Where, in any particular case, a suggested method of valuation is novel to that case or is without established and well defined precedent it is essential that the party, who puts forward that method, should also put forward the more accepted and traditional method associated with that subject premises. Unless this is done the Tribunal, if it rejects the novel approach, may be left in the position of having no evidence, other than that of the opposing party, upon which to make its determination. In such circumstances mere reliance on cross examination may afford the party concerned little or indeed no comfort.

Having regard to the above the Tribunal holds that Mr. Cuddihy's valuation method is correct in that he had regard to the valuation of a members club on St. Stephen's Green which had recently been revised. He also examined the valuations of a number of properties in the area,

which admittedly were in other uses, but did so in order to get a broader view as to what rent a hypothetical tenant might reasonably expect to pay for the subject property for use as a private members club. On the other hand Mr. Killen had used the accounts method which, as he told the Tribunal, he had never used before in valuing private members clubs and which, as above stated, this Tribunal does not accept as being the correct method in valuing the subject premises. In addition however Mr. Killen for the first time via his closing submissions offered to the Tribunal his opinion of net annual value in the sum of £16,000 which he based on rental evidence of offices in the vicinity.

Having examined the evidence in relation to the various properties listed by Mr. Cuddihy, the Tribunal finds that the evidence given in relation to No. 22, St. Stephen's Green to be the most relevant. The evidence in relation to the Bankers Club is of no assistance whatsoever in that it is not a recent valuation within the meaning of the 1986 Valuation Act. The rest of the evidence, material to this point, is of limited assistance but nevertheless does give the Tribunal a wider and broader view of rateable valuations in the vicinity.

Assessing all of this evidence and making the appropriate deductions therefrom and having heard and considered the arguments adduced by both parties this Tribunal, in accepting as it does the approach adopted by Mr. Cuddihy, is unable to identify or accept any evidence or submission on behalf of the appellant which would show or indicate that the valuation put on the subject premises by the Commissioner of Valuation was either excessive, inequitable or unfair. In its opinion and notwithstanding the cogent manner of Mr. Killen's presentation it cannot, on the evidence available, do otherwise than to hold and determine that the correct proper and fair valuation for the subject premises is £170. Accordingly it so determines.

