Appeal No. VA95/1/047

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Hotel Nuremore Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Hotel and land at Map Ref: 1Aa, Townland: Nuremore, ED: Ballymackey, RD: Carrickmacross, Co. Monaghan
Beneficial Occupation

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Fred Devlin - FRICS.ACI Arb.	**Deputy Chairman**
Marie Connellan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF OCTOBER, 1997

1. By Notice of Appeal dated the 19th day of April 1995 the Appellant Company, Hotel Nuremore Limited, appealed against the determination of the Commissioner in fixing a rateable valuation of £1,100 on the above described hereditament.

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

"**1)** the valuation is excessive and inequitable

2) the valuation is bad in law."

2. This appeal proceeded by way of an oral hearing at which both the Appellant and the Respondent were represented by Valuation Experts. As is required by the rules of thisTribunal and as is the practice, précis of evidence were, prior to the hearing, exchanged between the parties and submitted to us. Having taken the Oath, both Valuers adopted as their evidence in chief their respective précis. From the totality of the evidence so adduced the following, are the material facts agreed or so found which are relevant to the issues the subject matter of this Appeal:

3. *(a)* The subject premises originally a Victorian residence was converted into a hotel and thereafter on several occasions from the early 1960's to date, the same has been enlarged and extended, modernised and refurbished. This 4* premises is located on the outskirts of Carrickmacross, about 50 miles from Dublin, 60 miles from Belfast and almost 90 miles from Derry. Its approach is via a short avenue through grounds which front onto the main Dublin/Derry National Primary Road. Its owners, and those responsible for its development are Mrs. Gilhooley and others which included her late husband Gerry. It is in no small measure due to their personal commitment and attention to this property that the same is held in its present esteem.

(b) At the date of the appeal the accommodation available could be summarised as follows:- *69 en suite bedrooms, *a modern leisure centre, with pool, jacuzzi, steam rooms and room with gymnasium equipment, *squash courts, tennis courts, snooker room and 18 hole golf course, *dining room with 90 seats, *large foyer and lounge bar,*small private function room with a 90 person capacity, *conference room facilitating 50/60 people, *two other function rooms capable of catering for weddings of up to 100/120 persons, *ballroom and function room (referred to as the former ballroom and function room and which are again referred to in this judgment), *staff quarters.

(c) A series of redevelopments have been carried out throughout the years. These, prior to 1987 do not require any individual description. In 1987 12 bedrooms were added. In 1989/90 further improvements, funded through a BES scheme, at a total cost of £2.5m approx. were carried out. These included a new swimming pool and leisure complex, new restaurant, lounge, entrance lobby, conference room, rooms and extension to bar, improvements to existing bedrooms, addition of 26 new bedrooms and the addition of a squash court and snooker room.

(d) The following are the agreed areas:-

Hotel (including staff quarters)	81,521 sq.ft.

Stores	5,841 sq.ft.
Ballroom/Disco	19,741 sq.ft.

(e) As the oral evidence proved and as the layout plan given in evidence, shows, this building in its entirety, was, as we have said, developed over a number of years but in quite a piece meal manner. The result, though commendable, means the same is irregular in shape and that because of this the utilisation of space is less than optimal and

(f) Prior to 1988 the valuation history of the subject property is not relevant. Subsequent thereto and following the carrying out of the major redevelopment as above mentioned, this property was on the 14th March 1991 listed for revision by Monaghan County Council. In August 1992 the revised list emerged with a valuation of £1,100. There was no reduction at first appeal stage. Hence the appeal to this Tribunal.

4. On behalf of the Appellant Company, Mr. Des Killen referred this Tribunal to *Section 11 of the 1852 Act,* to *Section 5 of the 1986 Act*, to a extract from the judgment of ***Kingsmill Moore J.*** in ***Roadstone Limited v. Commissioner of Valuation, [1956]*** and finally to what Mr. Justice Barron said, in ***Rosses Point Hotel Limited v. Commissioner of Valuation, [1987] IR143****;* this with regard to the relevance and materiality of the ability of the unit of valuation to earn profit. With all of these submissions we respectfully agree. In particular there is no doubt but that Section 11 remains the fundamental Section upon which, in relation to houses and buildings, the ascertainment of the NAV is based. *Section 5 of the 1986 Act* was explained in some length by the said Mr. Justice Barron in the case of the ***IMI v. Commissioner of Valuation [1990] 2IR 409.*** In particular at p413. However, following the establishment of the appropriate fraction in converting the ascertained NAV into a resulting RV and following the acceptance of the formulae by those involved in the valuation process, that is by those who appear on behalf of Ratepayers and by the Commissioner, it is not of course necessary to further dwell on how, if this practice was not adhered to, the provisions of Section 5 should be applied. In addition, we are quite satisfied that the profit earning ability of a unit of valuation, whether it be a hotel or other establishment providing or offering a service, is both relevant and material. In this context, however, it is also worthwhile to recall the setting in which Mr. Justice Barron made these observations. He was quite careful in pointing out that the actual profits being made by the business are not material. What the prospective tenant could be affected by would be his own view of the likely profitability of the premises in

question, having regard to all material factors which he, as an informed and would be tenant, going into that business would or should be aware of.

5. Mr. Killen then went on to address what in his view was the correct method of valuation in this case. He immediately discounted rental value as he could not produce evidence of actual rent in comparative hotels - with the subject matter being owner occupied. Secondly, he declined to adopt the Contractor's Theory or Investment Method. This because both required, in the first instance a depreciated replacement cost with an appropriate return on capital and secondly evidence of return on investment capital in the hotel business. He also excluded this approach as the Tribunal had considered it inappropriate in the appeals of Amisfield Limited and the Mount Juliet Estates. The third approach, that based on comparative evidence, he adopted. On behalf of his client evidence was also adduced on the Accounts Method of Valuation.

6. The Appeal Valuer, Mr. Patrick McMorrow also felt that the absence of market rental evidence meant that this approach could not be adopted. He felt that the Investment and Profits Method could also be eliminated in this case, as there was, in his opinion, ample objective comparative evidence, which was perfectly adequate and perfectly sufficient in order to permit one to calculate what the appropriate NAV should be. On that basis he produced several comparisons as indeed did Mr. Killen, which would in their respective views, underpin their suggested NAV.

7. In the following table we set out what the respective views are of both Mr. Killen and Mr. McMorrow when one adopts the comparative evidence:-

	Mr. Killen	**Commissioner**
Hotel	£2.25 psf	£2.40 psf
81,720 sq.ft.	Total £183,873	Total £196,130
Miscellaneous	£1.00 psf	£1.00 psf
Buildings/Ancillary	Total £5,841	Total £5,841
5, 841 sq.ft.		
Function Room/Old Ballroom	Nil	£1.00 psf
19,741 sq.ft.	Total £189,713	Total £220,000
	RV £950	RV £1,100

8. As will be immediately noticed, there is no difference between the parties with regard to the ancillary/miscellaneous buildings. There is a difference of 15p psf on the hotel, but the substantial difference arises, because in the Appellant's view, no figure should be placed on the old ballroom/function rooms whereas the Commissioner has placed a figure of £1 thereon. If in fact Mr. Killen had placed that sum, namely £1 on the 19,741 sq.ft. it would have increased his figure by £100 giving a total RV of £1,050. That as against the Commissioner's valuation of £1,100. Accordingly, the first issue which we propose to determine is whether or not Mr. Killen is correct in placing no value on this old ballroom/function rooms.

9. We have had evidence to the effect that the area last mentioned was used on ten occasions in 1992 and on three occasions, almost always over the Christmas period, in each of the years 1993/94/95. It would appear that following the reorganization in 1989/90 it was decided, by management that the use of this ballroom would be so restricted. It was decided that the overall direction of the company's business would be better served by transferring the activities, formerly held in this ballroom to other parts of the hotel. It was decided that in due course this area would be demolished.

This brief summary of the evidence on this point is not challenged. Bearing in mind that the valuation date was August 1992 it is clear, that even in this unchallenged way the ballroom was used and usable at that time.

10. In these circumstances we cannot agree with the submission made on behalf of the Appellant company that this area, whether described as a ballroom or function room or otherwise but which by agreement is 19,741 sq.ft. should have a nil valuation placed thereon. This issue turns on who and what is rateable or more accurately what is excluded from being rateable. Under *Section 61 of the Poor Relief (Ireland) Act of 1838* rates may be made and levied "on every occupier of rateable hereditaments".

That rate must be paid and discharged by the person "in actual occupation". See Section 71 of the same Act. The word "occupier" in this country is defined by Section 124 as including every person in the immediate use or enjoyment of any hereditament.

These Sections and in particular the word "occupier" have been the subject matter of many judicial decisions throughout the years. See for example ***Whelan v. Fleming & Co. Ltd. [1951] IJR5*** and ***McLoughlin v. Buncrana UDC 86 ILTR23***. In ***Carlisle Trust Limited v. Dublin Corporation [1965] IR456*** an issue arose as to whether in the following circumstances the plaintiff company should still be regarded as the occupier of a unit of

valuation. Apparently during the course of the rating year the building in question was demolished and accordingly ceased to exist. The plaintiff therefore argued that since no hereditament was in existence it could not be described as the Occupier. The Supreme Court rejected this suggestion. It held that the site on which the building formerly stood was an integral part of the hereditament and accordingly the plaintiff company continued to be the occupier thereof. The question of a rates refund was entirely separate.

11. In England there is no statutory definition of the word "occupation". Four ingredients of "rateable occupation" have however over the years been identified and are summarised in *Ryde on Rating, 12th Edition p27*. These are firstly a requirement for actual occupation, secondly a requirement that such occupation must be exclusive, thirdly a requirement that such occupation must be of value or benefit to the Occupier and fourthly a requirement that the occupation must not be for too transient a period. Only the third of these requirements is of interest to us here.

12. At p248 of Keane on Local Government, the author, now Mr. Justice Keane of the Supreme Court under this heading said:-

"Occupation must be of some value or benefit to the Occupier."

He said this does not mean that the Occupier must derive a pecuniary profit from his occupation. Thus, in ***Sinnott v. Neale*** the Owner in Fee Simple of the Great Saltee Island, which was uninhabited and uncultivated produced no monetary profit and was maintained solely as a wild bird sanctuary, was held to be in rateable occupation. The fact that the Owner made no profit, as, for example, because any surplus resulting from the operation carried on at the premises must be devoted to some statutory purpose, is immaterial. But if the property, either by law or because of its inherent condition <u>is incapable of any form of beneficial occupation, it will not be rateable</u>. In the picturesque phrase used in some of the English decisions, if the land is "struck with sterility in any and everybody's hands it is not rateable:...." In Greaves Book, entitled "Valuation for Rating" at p129 the author makes the distinction abundantly clear. He points out that the confusion which undoubtedly exists, stems from and is attributable solely to the failure to keep separate and distinct the concept of beneficial occupation from that of profitable occupation. He said:-

"I fear it is attributable solely to the ignorance of the fact that it is beneficial occupation, and not profitable occupation, which is the true test of rateability.

It is a pardonable misconception of the law where it is reasonable to plead

ignorance, but not otherwise."

See also *para. 15 & 26 of Halsbury's Laws of England, 4th Edition, on Rating.*

13. In applying these principles of law to the facts of this case, it is we think quite clear that the old ballroom must be rateable. There is nothing by way of evidence before us which in any way suggests that this ballroom is by reason of its inherent condition incapable of any form of beneficial occupation. We are quite satisfied that this is not so. We are quite satisfied that whilst its condition may have deteriorated, its non-use or more accurately its limited use, has resulted, at least substantially from business decisions and management lead initiatives, and does not in any way come within the category of circumstances where it could be said that it is "struck with sterility in any and everybody's hands". It clearly is not. As Mr. J. Barron said in the Rosses Point case:-

" the profits actually being made are not material, nor is the manner in which the actual tenant uses the actual premises."

Therefore, in our opinion the ballroom must be rated.

14. That being the case, it seems to us that a figure of £1 psf should be applied to this area. That adds £19,741 to Mr. Killen's suggested NAV - £189,713. Together the resulting figure is £209,454 which gives a rateable valuation of £1,047. Say £1,050.

We will accordingly adopt these figures and judge that a correct rateable valuation on this property is £1,050.

15. By reason of our decision on the matters aforesaid, it is not necessary to consider the rateable valuation based on the Profits Method. We would like to conclude however by expressing our appreciation to the parties for the manner and way in which the evidence under this heading was accumulated and presented.