

Appeal No. VA96/2/064

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

Glen Holdings Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Hotel at Map Ref: 13 to 17 ((incl. 9.10.11.12 Griffith Row)(incl. 28.29.30 Catherine Street)), Glentworth Street, Ward: Shannon B, County Borough of Limerick
Quantum - Accounts valuation, tenant's share

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Rita Tynan - Solicitor

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MARCH, 1998

By Notice of Appeal dated the 25th day of April 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £785 on the above described hereditament.

The Notice of Appeal had 17 grounds of appeal and these are set out in a separate document annexed to this judgement.

The relevant valuation history is that a rateable valuation of £700 was agreed in 1983 at first appeal stage. An application for revision was made by the Appellant on 3rd March 1992. The subject hereditament was listed as unchanged in valuation on 9th November 1993. An appeal was lodged with Limerick Corporation on 1st December 1993. The results of this appeal were published on 25th March 1996 and the rateable valuation was increased from £700 to £785.

A number of written submissions were prepared by Mr. Desmond Killen, FRICS, FSCS, IRRV, a Fellow of the Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Co. Ltd. Mr. Killen has 34 years experience as a Valuer.

Mr. Killen's principal submission and sales brochure of the subject property in 1990 was received by the Tribunal on 23rd January 1997. The written submission adopted an Accounts Method in valuing the subject hereditament. On this basis Mr. Killen estimated the subject property to have an RV of £310. The written submission contained details of six comparisons.

The Tribunal also received three years audited accounts for the subject property on 23rd January 1997. These accounts commenced on 1st June 1991.

On the 5th February 1997, the Tribunal received another written submission from Mr. Killen in which after correspondence with the Respondent's Valuer he amended his accounts based method of valuation to give an RV of £337 for the subject property.

Again, the Tribunal received a written submission on 5th February 1997 from Mr. Alan McMillan, a colleague of Mr. Killen, stating *inter alia* that there was no bid for the property at the auction in 1990.

Finally, the Tribunal received a written submission from Mr. Killen on 21st May 1997 which commented on the Respondent's supplementary précis, number 2.

The Tribunal received a written submission prepared by Mr. Shay Aylward, B.Comm., ACCA, on behalf of the Respondent on 24th January 1997. Mr. Aylward is a District Valuer with twenty two years experience in the Valuation Office.

Mr. Aylward's written submission contained a valuation which used the Comparative Method. He valued the subject property as follows:-

41,505 sq.ft. @ £3.00 psf = £124,515

Applying 0.63% = RV £784.44

Say RV £785.

Mr. Aylward's written submission contained a schedule of four comparisons.

Mr. Aylward's written submission contained a consideration of the Profits Method in arriving at a valuation. His calculation of the rateable valuation based on the accounts for 1991-1993 produced a rateable valuation of £547.

A further written submission prepared by Mr. Aylward was received by the Tribunal on 4th February 1997. His written submission contained information on the comparisons referred to in the Appellant's précis.

A further written submission from Mr. Aylward was received by the Tribunal on 17th February 1997. This contained *inter alia* an analysis of the accounts for 1991-1993 and using respectively a tenant's share of 50%, 40% and 30% there was a calculation of a rateable valuation for each individual year.

Finally, the Tribunal received a written submission from Mr. Aylward on 1st May 1997. This was described as supplementary précis number 2. This submission dealt in detail with a consideration of the tenant's share in the application of the Accounts Method.

The oral hearing took place at the Tribunal Offices in Dublin on the 11th day of April and on the 26th day of May 1997.

The Appellant was represented by Mr. Aindrias O'Caomh S.C., instructed by Holmes O'Malley & Sexton, Solicitor. Mr. Hugh O'Neill S.C., instructed by the Chief State Solicitor represented the Respondent.

Ms. Maura O'Connell gave sworn testimony to the Tribunal. She has been 40 years in the hotel business. Seventeen of these years was in the Glentworth Hotel. For the last three years she has been the General Manager of the hotel.

She described the hotel as being 180 years old. There are 51 bedrooms in the hotel. Thirty bedrooms are twins. Five bedrooms can accommodate double beds. Nine are singles with showers. There are two single rooms with bath and shower. Finally, there is one family room. The thirty double rooms are the same size and standard. These are used for tours. Tour operators require 25 twin or double bedrooms and two single rooms. The hotel can only accommodate one tour at any give time.

Ms. O'Connell stated that the kitchen is in the basement but the main area for the consumption of food, the coffee shop, is on the ground floor. The coffee shop is serviced from the kitchen by way of a back stairs. The ballroom which is on the ground floor is serviced in the same way.

There is only one lift in the hotel for customers. There is no services lift. Luggage has to be carried up the stairs.

The back stairs is used to service the bedrooms for laundry purposes. This stairs comes through the ballroom. When the ballroom is being used staff have to go out the back door and in another door to the basement of the premises.

There were two discos in the hotel, one was in the ballroom and the other in the basement. Eventually, both discos were closed. This was due to excessive insurance premiums which resulted from an increasing number of claims arising on the premises.

The Glentworth had been a hotel for commercial travellers. This business diminished due to travellers working in their own areas and other travellers preferring hotels with leisure centres.

The management decided to go for the tour business during the holiday seasons. This was another reason for closing the disco as there was no double glazing at the front of the hotel.

Ms. O'Connell stated that there was not sufficient funds available to convert the basement and ballroom for alternative functions.

The hotel had two star status. To get three star standard the hotel would need major refurbishment. Facilities would have to be improved. Staff facilities would also have to be improved. Tour operators were now looking for three star status in hotels.

In order to retain its two star status there has to be ongoing refurbishment in this old hotel. The lift is old and has a life expectancy of two or three years. It will then need to be replaced at a cost of £60,000.

The requirements of the Fire Officer had cost £15,000 per year in the last three years. A further £10,000 had to be spent to meet the insurance company's requirements.

Ms. O'Connell described the competitive pressures from hotels in the area during the winter months. These hotels with better facilities reduced their rates in the winter and were very competitive with the subject.

Again, Ms. O'Connell stated that as the hotel did not have a garden it was unattractive for weddings. This business has declined over the years and they have only ten weddings in the year.

Ms. O'Connell stated that competitor hotels had better facilities such as conference facilities and function rooms.

She stated that the hotel had a staff of thirty and twenty 3 day full time staff. She said that because of the poor layout of the hotel it required extra staff for food service and laundry. The hotel was in the city centre and this required extra staff for security. Twenty four hour security required three staff members.

She compared the staff situation in the Greenhills Hotel where with fifty five bedrooms there was a staff of thirty to thirty five.

Ms. O'Connell referred to the competitive pressures coming from bed & breakfast establishments. They are now graded. She would charge £48 for a double room. A bed & breakfast establishment would charge £30 for the same facility.

Ms. O'Connell referred to the fact that the site for the car park was across the road from the subject and two people were employed there to provide security.

Ms. O'Connell described three comparable hotels in the vicinity of the subject stating that:

(1) Hanratty's Hotel is a smaller hotel and that they have good sized standard rooms which were renovated in the last ten years. There is a disco there and a good bar.

(2) The Railway Hotel is a smaller hotel than the subject. There is a good bar business there. It has no function facility.

(3) The Royal George has a big passing trade on O'Connell Street especially for its restaurant. It also has a big disco and a sports bar facility. There is a car park to the back of the hotel. The bedrooms are purpose built.

Under cross-examination from Mr. O'Neill she agreed that the falling receipts in the bar and restaurant were the problem areas. Ms. O'Connell did not make any other significant concessions on her evidence during cross-examination.

Mr. Killen in his sworn testimony adopted his written submission as his evidence to the Tribunal, having made some amendments to it. Mr. Killen referred to the accounts contained in Mr. Aylward's submission dated 2nd February 1997 which the Tribunal received on 17th February 1997. He said he was in agreement with Mr. Aylward as to the accounting data. The only disagreement between the parties is as to the tenant's share. Should it be either 50%, 40% or 30%.

Mr. Killen stated that the Accounts Method was the appropriate method for arriving at a rateable valuation.

In his evidence, Mr. Killen corroborated Ms. O'Connell's evidence as to the disabilities under which the subject premises was obliged to operate. Mr. Killen also corroborated Ms. O'Connell's evidence about the unsuitability as comparisons to the subject of the Royal George and Hanratty's Hotel.

Mr. Killen considered that the Accounts Method was the appropriate method of valuation with respect to the subject premises. This was so for four reasons:-

- (a) It was a recognised method of valuation
- (b) The Valuation Office use it in licensed premises

- (c) The Valuation Office proposed this method in the Ferrycarrig Hotel case (VA95/1/025) and the method was approved by the Tribunal in that case
- (d) The method reflects the operation of the premises in real terms.

Mr. Killen then dealt with the tenant's share and the components which go to make it up. There are three components. The tenant must be rewarded for his skill in management and he must also be rewarded for his entrepreneurial risk taking. Finally, he must be rewarded for the working capital provided by the tenant.

Mr. Killen stated that the landlord's share is the rent he will get for owning the premises.

Mr. Killen considered that a 50% tenant's share was appropriate in this case for the following reasons. This share was adopted in the Ferrycarrig case. Again here looking at the accounts for 1991 to 1993 the turnover was running at £1.5 million and slightly decreasing. In the circumstances any tenant would look for a 50% share.

Mr. Killen was cross-examined by Mr. O'Neill. Mr. O'Neill suggested that looking at the Profits Method on a yearly basis was unreliable as it gave a widely fluctuating result. Mr. Killen replied that in conformity with the Valuation Code he took one year with another and also looking at projected profits he arrived at an average result.

Mr. O'Neill put it to Mr. Killen that the tenants capital here was in the region of £225,000 to £250,000. In the 1993 accounts this was shown in terms of £141,000 for the furnishings and the value of the stocks and money in the bank bringing the total figure to the region of £250,000. Mr. O'Neill further put it to Mr. Killen that by May 1993 the landlord had spent over £1.5 million in generating the asset and Mr. O'Neill contrasted this with the tenant's capital of £250,000. Mr. O'Neill further put it to Mr. Killen that given the disproportionate contributions of the landlord's capital costs and the tenant's capital costs that a tenant share of 50% was inappropriate.

Mr. Killen did not agree. Mr. Killen stated that capital expenditure was a different method of valuation to the accounts method. The Accounts Method shows what the tenant will pay. The landlord spending money does not necessarily mean the tenant will pay more rent.

Under further cross-examination, Mr. Killen did not agree that the subject premises was suffering from bad management. He said that the management was making the best use of

the resources available to it. This was shown by the management decision to enter the tour business.

Mr. Shay Aylward gave sworn testimony on behalf of the Respondent. He stated that his approach to valuing the subject premises was the Comparative Method. His three main comparisons, namely the Railway Hotel, the Royal George and Hanratty's Hotel were located close to the subject premises.

None of the three comparisons have a car park included in the property valued. The Railway Hotel and Hanratty's Hotel are a similar grade to the subject.

Mr. Aylward stated that the Railway Hotel was not purpose built but assembled from a number of old buildings. The bedrooms were quite small, smaller than the Glentworth. The valuation was £240 which worked out at £3.14 psf.

Hanratty's was formed by the two adjoining houses being linked together. The front of the building is old but there was a new block at the back. The basement disco was cramped and Mr. Aylward was told it could only take 100 people.

The Royal George was now grade three but it was grade two when dealt with by the Valuation Office in 1992. There was a 1970 block of bedrooms which were more modern than the bedrooms in the subject.

Mr. Aylward stated the dining room and the coffee shop in the Royal George were located in the basement. The sports bar was on two levels. At front it was on street level and at the back of the hotel it was five feet above street level.

Mr. Aylward commented on Mr. Killen's value of £1.75 psf on the subject. He said he could find no comparative evidence for this. He had put a value of £3 psf on the subject. His comparisons of the Railway Hotel, Hanratty's Hotel and the Royal George devalued at more psf. These figures reflected the comparative advantages of these premises.

Mr. Aylward's opinion of the Accounts Method was that working on the profits figures for the years 1991-1993 gave widely varying figures for RV. Mr. Aylward's difficulty here was the continuous decline in profits over the three years. This cannot all be due to the nature of the building. Mr. Aylward referred to Ryde on Rating which he said suggested that the

tenants share would be related to what capital the tenant has to invest in the building. Mr. Aylward estimated that the tenant's capital here was composed as follows:-

Fixtures & Fittings	£175,000
Stock	£ 30,000
Cash	£ 20,000
Cash at Bank	<u>£ 25,000</u>
Total	<u>£250,000</u>

Mr. Aylward stated that the tenant's share must have some relationship to what the tenant is investing in the enterprise.

In his evidence, Mr. Aylward made a number of observations on the audited accounts for Glen Holdings Limited for the year ending 31st May 1993. The net book value of the tangible assets amounted to £1,536,617. He stated this was the hypothetical landlord's investment in the subject premises.

Mr. Aylward was of the opinion that after the abortive sale of the subject property in 1990 that the management in the years 1991 to 1993 did not have a strong commitment to a vigorous development of the property. Mr. Aylward stated that he was not accusing Ms. O'Connell of bad management.

The valuation date was November 1993 and the accounts in question were for a three year period up to 31st May 1993. These accounts reflected the efforts of Ms. O'Connell's predecessor as manager. Mr. Aylward said that the closure of the discos in 1989 and 1993 does not address the fundamental problem of the business which was a decline in the bar and catering receipts. Mr. Aylward produced an analysis of the accounts between 1991 and 1994 which showed bar receipts had fallen by 45% and catering receipts by 40%.

Mr. Aylward gave evidence on what he considered the appropriate tenant's share for the subject premises. He considered a 30% share was appropriate. In this hotel the fittings are dated. The 50% approach seems to have originated from Dublin licensed premises where fitting out a public house can cost from £60 to £100 psf. Building a new premises would cost something similar. He had been involved recently in an office development which cost £60 psf to build. In a licensed premises situation a 50% tenant's share was reasonable.

In the subject premises the landlord's capital was £1.5 million and the tenant's capital contribution was £250,000. In percentage terms the landlord's contribution was 86% and the tenant's contribution was 14%. If the tenant's capital contribution was higher then the overall return to the tenant would be higher.

Under cross-examination by Mr. O'Caomh, Mr. Aylward admitted he had no experience in management.

In his submissions, Mr. O'Neill referred to *Section 11 of the Valuation (Ireland) Act 1852* which provides that valuation should be based on the rent from one year with another and *Section 5(2) of the Valuation Act 1986* which provided that valuations should be based on comparable hereditaments.

Mr. O'Neill also referred to *Trustees of Fitzgerald Memorial Park v. Commissioner of Valuation (VA95/1/001)* which was authority for the proposition that the establishment of letting values was the appropriate way to determine the rateable valuation. Mr. O'Neill said the Ferrycarrig case was bad in law when it proposed the valuing of hotels on an accounts basis.

Mr. O'Neill said the three comparison properties in Limerick city, the Railway Hotel, Hanratty's Hotel and the Royal George in terms of their values per square foot gave a good consistent basis for establishing an NAV for the subject property.

Mr. O'Neill turned to the Profits Method. In the period 1991 - 1994 there were fluctuating profits. In Mr. Killen's précis he suggested profits should be averaged over three years. Mr. Killen arrives at an average RV for 1991/1993 of £387. Mr. Killen's average for 1992/1994 was £291. This amounts to a difference of 25% over one year. It is unrealistic to suggest that the rental value has declined by 25% over one year.

As to the tenant's share, Mr. O'Neill said that it was agreed by both parties that this was a matter of fact not law. Here the investment by the landlord was £1.5 million and the investment by the tenant by £250,000. The tenants investment here had not been challenged. Mr. O'Neill said common sense suggested that the greater the investment by the tenant the greater return he would expect.

Mr. O'Caomh in his submissions said there was no direct rental evidence in this case. Mr. O'Caomh said that Section 11 of the Valuation (Ireland) Act 1852 does not indicate how NAV is to be arrived at.

Mr. O'Caomh referred to the Rosses Point Hotel case, 1987 IR at p. 143 where there is authority for the proposition that the hypothetical rent is not to be determined in any particular manner. A judge may use any method which produces an appropriate result. Ascertainment of NAV is a matter of fact not law. Again this report states that actual profits being made are not material. What is important is what the prospective tenant can make by way of profits.

Mr. O'Caomh submitted that Ms. O'Connell's evidence had effectively contradicted the Respondent's evidence as to the comparability of the Railway Hotel, Hanratty's Hotel and the Royal George to the subject premises.

Mr. O'Caomh submitted that the Accounts Method is the appropriate method for arriving at an NAV here. There was evidence of actual trading figures. There was also evidence about the management of the hotel. There was no evidence that the hotel was badly managed. Mr. O'Caomh said in using the Accounts Method the tenant's share must be 50%.

Determination:

The Tribunal has considered the evidence and submissions made by both parties to it. The Tribunal accepts the evidence of Ms. O'Connell supported by Mr. Killen that the subject property suffers from inherent disabilities which have a negative effect on its earning potential. This evidence was not contradicted by the Respondent. Furthermore, the Tribunal accepts Ms. O'Connell's evidence that the three comparative properties relied on by the Respondent, the Railway Hotel, Hanratty's and the Royal George were not in fact good comparisons for the reasons stated in Ms. O'Connell's evidence.

Accordingly, the Tribunal considers that the Accounts Method is the appropriate one for establishing the NAV of the subject premises. The parties are agreed on the accounting information for the relevant period. The one issue to be determined is the percentage to be attributed to the tenant's share. The tenant's share includes the return on the tenant's capital, the remuneration for the work of the tenant and a reward for his risk taking.

The Tribunal considers that the appropriate percentage to be attributed to the tenant is 30%. In making this decision the Tribunal has been influenced by the relative proportions of the

capital investment of the tenant and the landlord being in the proportions of 14% and 86% respectively. The Tribunal further considers that Mr. Aylward's calculation of the rateable valuation based on the 1991 - 1993 accounts and taking the tenant's share as 30% is the appropriate one for arriving at an NAV and a rateable valuation. This calculation is continued in Mr. Aylward's précis dated 20th January 1997 at Appendix 2. This document was received by the Tribunal on 24th January 1997. Mr. Aylward's calculation therein is set out by way of a separate document annexed to this judgement. Mr. Aylward's calculation of the rateable valuation is £547. The Tribunal accordingly determines that the rateable valuation of the subject premises is £547.