

Appeal No. VA96/5/019

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

Dolman Estates

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed shop under reconstruction at Map Ref: 21 to 24a.25 (incl. units 4-11 & 6-9 Cockpit Lane)(pt. ground floor, upper floors & basement), Tullow Street, UD: Carlow, County Borough of Carlow
Beneficial Occupation

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Marie Connellan - Solicitor

Member

Michael Coghlan - Solicitor

Member

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

By Notice of Appeal dated the 9th day of October 1996 the Appellant Company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £359 on the above described hereditament.

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

- "1. The RV £359 is excessive, inequitable and bad in law.
2. The RV £359 should be struck out, as the premises were incapable of beneficial occupation on the valuation date, as the development was in progress."

This appeal proceeded by way of an oral hearing held in Dublin on the 9th day of June 1997 at which the Appellant was represented by Aindrias O'Caomh, SC. Evidence on behalf of the Appellant was given by Mr. Paul Joyce, Architect, Mr. Patrick Hennigan, Chartered Rating Surveyor, Mr. John McLoughlin of the Appellant Company and Mr. Frank Lannigan, Solicitor. Brian O'Moore BL appeared on behalf of the Respondent. Mr. Tom Cuddihy, a District Valuer in the Valuation Office gave valuation evidence on behalf of the Respondent.

The appealed hereditament is located on the south side of Tullow Street close to its junction with the Potato Market in the centre of Carlow.

Evidence was given that the property was purchased by the Appellant in 1980 at which time it comprised a five star supermarket at ground floor level with a licensed premises known as the Barrow Valley Lounge at first floor level and residential accommodation on the second floor. Shortly after it was purchased the supermarket was converted into an enclosed shopping mall and the bar was closed down. Over a period of years the Appellant purchased a number of adjoining properties and in 1994 on foot of a planning permission for an extensive mixed commercial development, construction commenced on site. This new development is a two storey over basement building comprising the following accommodation.

Basement	Two sets of ladies and gents toilets, stores, cold rooms, office, staff changing rooms, fire corridors, etc.
Ground floor	Split level lounge bars, restaurant, kitchens, hotel reception, toilets and night club reception.
Ground floor mezz.	Lounge bars
First floor	Function room and toilets, night club and toilets, cloakrooms, etc.
Second floor	Ten bedrooms and breakfast room.

On the 5th day of October 1995 the Appellant's Architect issued a letter to the following effect.

Construction commenced on site in April 1994. There are a number of elements to the Appellant project with different anticipated finishing dates scheduled for the various elements.

- (a) The pub was due to open by the end of November 1995.
- (b) The night club was also due to be completed by the end of November 1995.
- (c) The hotel proper scheduled to be finished and opened by Christmas 1995.
- (d) The restaurant was due to be completed by Easter 1996.

The Appellant's Evidence:

Mr. O'Caomh on behalf of the Appellant contended that at the relevant valuation date i.e. August 1995 the appeal hereditament was in fact a building site. The original building, having been substantially demolished and a new hotel complex under construction. The Commissioner of Valuation, in carrying out a Revision can only value what actually exists at the relevant date and cannot value what may exist at sometime in the future. In August 1995 the appeal hereditament was under construction and not capable of beneficial occupation. Under such circumstances it was not open to the Commissioner to value the premises for rating purposes. Accordingly, he contended that the valuation be struck out.

Mr. Paul Joyce, the Architect of the project said that initially the proposal was to construct a public house but this was changed in mid 1994 to a hotel. As part of the development the Appellant wanted to include a large theme bar using mainly salvaged materials. This had the effect of slowing down the pace of construction as difficulties arose in sourcing suitable material.

Mr. Joyce said that in August 1995 the appeal hereditament could be best described as being a weather proof shell - the interior was substantially unfinished and no services were

available to the property, the stairs were incomplete and the hotel section nowhere near completion.

Under examination, Mr. Joyce said that the building work commenced on the site on or about June 1994 and it was due to be completed by November 1995. After he was retained, he felt that the original design was flawed and he proposed a number of changes which included a doubling of the basement area which gave rise to some planning difficulties which had now been satisfactorily resolved.

Mr. John McLoughlin of the Appellant Company said his father was the author of the entire project. Shortly after construction began in mid 1994 his father brought in Mr. Joyce as he was unhappy with the original scheme content and wanted to include a 40 bedroomed hotel in the development together with a large car park at the rear. In August 1995 the building was far from complete and in his opinion about £1 m of building works was outstanding.

Under examination, Mr. McLoughlin agreed that the planning difficulties that arose after construction had commenced had given rise to delays but was unable to quantify the time so lost.

Prior to the commencement of the oral hearing, Mr. Hennigan had submitted a summary of his evidence to the Tribunal and to the Respondent, which he formally adopted at the hearing as being his evidence in chief. In evidence, Mr. Hennigan said that the rateable valuation of £359 was arrived at by amalgamating the rating valuations of all the hereditaments which had previously existed on the site of the appealed hereditament. However, when he inspected the property on 5th September 1995, he saw no sign of the previously existing hereditaments and building works were on going at all levels to the extent that no part of the property was capable of beneficial occupation.

On examination, Mr. Hennigan agreed that the shopping arcade now formed part of the reconstructed area and that the roof over the night club area was the original roof.

Mr. Frank Lannigan, the solicitor for the Appellant Company gave evidence in relation to the purchase of the original supermarket and lounge bar premises in 1980. Even at that time he said it was the Appellant's intention to carry out a major scheme of redevelopment and during the years right up to 1996 additional properties were bought in in order to have a large site available for redevelopment purposes. In or about 1987 Architects were first appointed with the view to building a night club and a Certificate of Suitability was obtained from the Courts at that time and subsequently renewed on an ongoing basis.

In or about mid 1994 construction work commenced and as part of this the shopping arcade was reduced to a basic shell. From time to time he visited the site and he recalled particularly an occasion in June 1995 when he inspected the property with Ms. Orlaith Cassidy, BL and during that visit they had been unable to get beyond the ground floor. Indeed at that time the building was in utter chaos and it was only in October 1995 that the building started to come together and in November 1995 part of the premises were suitable for pub use.

Mr. Cuddihy prior to the commencement of the oral hearing submitted to the Tribunal and exchanged with Mr. Hennigan a précis of his evidence and at the oral hearing he formally adopted this as being his evidence in chief. Mr. Cuddihy said that he agreed with the evidence given in relation to the state and circumstance of the hereditament at the relevant date and that the valuation of £359 was an amalgamation of what was there before. Nonetheless, it was his opinion that at the relevant date the appeal hereditament was in the beneficial occupation of the Appellant.

Determination:

Based on the evidence given at the oral hearing, it is clear that at all times since the supermarket and bar lounge premises were acquired in or about 1980 that the Appellant Company had plans to carry out a major scheme of redevelopment and that right up to 1996 additional property had been bought in with this end in view. In 1987 Architects were retained to design a night club development and a Certificate of Suitability was obtained from the Courts for this project which was renewed on several occasions, the last one being granted at the Waterford Circuit Court on the 14th June 1995. The final Declaratory Order being granted on the 20th February 1996.

In early 1994 Mr. Joyce was brought on board and building works started about June 1994. Due to fundamental changes in the scheme content, difficulties with planning and the sourcing of salvage material for the bar, the pace of construction work slowed down considerably. Based on the evidence before it the Tribunal accepts that in the physical sense of the word only, the building was incapable of use as a licensed premises or hotel in August 1995 which is the relevant date for this appeal.

The question to be answered by this Tribunal is whether the appeal hereditament was in the rateable occupation of the Appellant at the relevant date. For a hereditament to be rated, the occupation must be actual, exclusive, beneficial and not transient in nature. At first glance it is obvious that the only one of these to cause any problems is beneficial and if it is held that the nature of the occupation at the relevant date was beneficial in a rating sense then the appeal must fail.

As a matter of fact the Tribunal is satisfied that from mid 1994 up to the relevant date that is August 1995 the appeal hereditament was under the control and occupation of the Appellant Company. From the evidence it is clear that the appeal hereditament was under a process of reconstruction albeit as part of a larger scheme of redevelopment. The fact that the works of reconstruction were radical in extent and extended over a protracted period of time due to difficulties associated with planning and the sourcing of salvaged material does not alter this fundamental issue.

In the *Harper Stores Limited v. Commissioner of Valuation* case Mr. Justice Henchy quoted with approval tests laid down by *Fare well L.J. in Rex v. Melladew [1907] 1K.B.192* as follows:

"The test, in a place like the present, of business premises, appears to me to be: has the person to be rated such use of the hereditament as the nature of the hereditament and of the business connected with it renders it reasonable to infer was fairly within his contemplation in taking or retaining it."

In Harper Mr. Justice Henchy quoted the above test and concluded that the period of time when the appealed premises were in the Contractor's hands was not a surrender of occupation, but a variation in their mode of continued use of the premises for the purpose of their business as retailers. During the reconstruction period, he said, the appeal premises were in occupation not for trading, but for the purpose of making structural and other changes which would enhance trading prospects. This use was to the Ratepayer's benefit and amounted to rateable occupation.

Having regard to the facts in this case, and having regard to the finding in Harper, the Tribunal finds that the Appellant was in rateable occupation of the appealed hereditament at the relevant date. The Tribunal notes that there was no dispute as to quantum and accordingly affirms the determination of the Commissioner of Valuation in fixing a rateable valuation of £359.