

Appeal No. VA97/5/028

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

**I.E.H. Hotels Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Hotel, Carpark and Grounds at Map Ref: 9R Townland: Dunkettle, E.D. Caherlag, R.D.  
Cork Upper, Co. Cork  
Quantum

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**George McDonnell - F.C.A.**

**Member**

**Anita Geraghty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 9TH DAY OF JUNE, 1999**

By Notice of Appeal dated the 18th day of August 1997 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,000 on the above described hereditament.

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

"The valuation is excessive, inequitable and bad in law."

The relevant valuation history is that the subject hereditament was revised during the course of the 1996/4 revision and the rateable valuation was fixed at £1,000.

A written submission on behalf of the appellant prepared by Mr. Joseph Bardon F.S.C.S., F.R.I.C.S. Diploma in Environmental Economics, was received by the Tribunal on 6<sup>th</sup> May 1998.

Mr. Bardon's written submission referred to a number of negative factors affecting the subject including difficulty of access, bad profile, lack of signage and continuing road works in its vicinity.

The written submission contained four methods of valuation in arriving at a rateable valuation;

### 1. Capital Value Method

|                                           |                     |
|-------------------------------------------|---------------------|
| Cost of development, including site costs | £2,800,000          |
| x 7% return                               | £ 197,183           |
| Adjust to 1988 levels via CPI 517/650     | £ 156,836           |
|                                           | <u>      x 0.5%</u> |
|                                           | £ 784.18            |
| <b>Say</b>                                | £ 785.00            |

### 2. Comparative Basis

|                                               |                     |
|-----------------------------------------------|---------------------|
| Agreed floor area 43,915sq.ft. x £3.75 p.s.f. | £ 164,681           |
|                                               | <u>      x 0.5%</u> |
|                                               | £ 823.40            |
| <b>Say</b>                                    | £ 825.00            |

### 3. Rental Value Method

|                                                 |                 |
|-------------------------------------------------|-----------------|
| Passing rent 01/07/1997                         | £ 340,000       |
| Allow for value of fixtures & fittings, say 15% | <u>£ 51,000</u> |

|                                       |                   |
|---------------------------------------|-------------------|
|                                       | £ 289,000         |
| Adjust to 1988 levels via CPI 517/650 | £ 229,866         |
|                                       | <u>    x 0.5%</u> |
|                                       | £ 1,149.33        |
| <b>Say</b>                            | <b>£ 1,150.00</b> |

#### 4. Accounts Method

There was a loss of £203,127 in the period 1<sup>st</sup> July 1997 to 31<sup>st</sup> December 1997.

The written submission stated it would be pointless to use the accounts method in arriving at a valuation. Nevertheless the submission stated that the loss making performance of the hotel should be taken into account in arriving at a rateable valuation of the subject.

Therefore Mr. Bardon fixed the rateable valuation as follows:

Average of first three methods is £920.00.

Deduct 20% for negative performance. Therefore the rateable valuation should be £735.00.

Mr. Bardon's written submission stated that the three relevant comparisons were:

1. Jury's Inn, Alexander Quay, Cork.
2. Forte Travelodge, Airport Road, Cork.
3. Commons Inn, Commons Road, Cork.

A written submission prepared by Mr. Terence Dineen B.Agr.Sc. on behalf of the respondent was received by the Tribunal on 6<sup>th</sup> May 1998. Mr. Dineen is a District Valuer in the Valuation Office with twenty-two years rating experience in the Cork area.

Mr. Dineen's written submission contained two methods for arriving at a rateable valuation: The Tribunal noted and amended two errors in the analysis of rent in Mr. Dineen's précis.

### 1. Analysis of rent

The rent of £340,000 is a gross rent including fixtures and fittings. Witness considers the amount attributable to itemised fixtures and fittings should be deducted to arrive at a net rent.

To compute the deduction, witness requested from the consultant a cost figure for the items; this had not been provided at time of writing so an estimate of 10% had been made.

The supplied cost of construction was £2.2m with £300,000 for the site – a total of £2.5m. Assuming that the £2.2 million includes fixtures and fittings, £200,000 (10%) is deducted leaving net cost of buildings as £2,000,000. Adding £300,000 for site leaves total at £2,300,000.

The adjusted rent then becomes

$$£340,000 \times £2,300,000 \div 2,500,000 \text{ or } £312,800$$

This rent has to be adjusted from 7/97 to 11/88.

Using CPI 6/97 643}

£251,991.29

12/88 518}

R.V. on 0.5% fraction = £1,259.95

Using JLW 6/97 506}

£210,800

(ERV.Index) 12/88 341}

R.V. on 0.5% fraction = £1,054

## 2. Valuation – Comparative Method

|                         |                  |
|-------------------------|------------------|
| 43,915 sq.ft. @ £4.50 = | £197,617         |
| R.V. @ 0.5% =           | £988.00          |
| <b>Say</b> =            | <b>£1,000.00</b> |

The written submission contained a schedule of comparisons. In addition to the three comparisons used by Mr. Bardon the schedule contained:

1. Morrisons Island Hotel, Cork City and
2. Doughcloyne Hotel, Togher Road, Cork City.

On 19<sup>th</sup> May 1998 the Tribunal conducted an inspection of the property at the invitation of Mr. Bardon. Mr. Dineen for the respondent was also present at this inspection.

The oral hearing took place in Cork County Council Chamber, Cork City on 20<sup>th</sup> May 1998. Mr. Bardon appeared for the appellant and Mr. Dineen appeared for the respondent.

Mr. Bardon in his sworn testimony adopted his written submission as his evidence to the Tribunal having made some amendments at page 2 and three thereof.

Mr. Bardon put in evidence a copy of the planning permission with respect to the subject hereditament. He referred to conditions number 5 and 19 of the grant of planning permission, which prohibited and restricted signage in connection with the hotel. Mr. Bardon also put in evidence a copy document from the appellant showing occupancy rates at the subject together with a copy letter from Mr. Thomas Dowd, Accountant to the appellant, confirming it was making a loss.

In his evidence Mr. Bardon stated that there was a difficult situation with respect to the roads adjacent to the hotel. He said this would continue until the construction of the Lee Tunnel has been completed. Again the access road to the hotel is rather circuitous. Mr. Bardon said that the

planning prohibitions and restrictions on signage had contributed to the poor performance of the property.

In his testimony Mr. Bardon said this was a two star budget hotel, which could not be compared to conventional hotels, which have bars, restaurant and leisure facilities. A budget travel hotel provides only basic services.

Mr. Bardon referred to his three comparisons and said that in various ways they were superior to the subject.

In further testimony Mr. Bardon referred to his valuation methods. His figure of a 7% return used in the capital value method was an accepted one. As to the comparative method Jurys Hotel, Western Road, Cork a four star hotel, was valued at £3.50 p.s.f. and the Silver Springs Hotel, a four star hotel, had a value of £4.00 p.s.f. He considered it excessive to put £4.50 p.s.f. on the subject and he had put a value of £3.75 p.s.f. on the subject given that it does not have comparable ancillary facilities.

Mr. Bardon said that his rental method was obliged to use the passing rent of £340,000 although he believed the business could not sustain this rent. There was a clause in the lease that fixtures and fittings were included in the rent. He had taken a figure of 15% for their value.

The average rateable valuation produced by the capital value method, the comparative method and the rental method was £920.00. Mr. Bardon said an accounts method of valuation was only appropriate when there was a profitable situation. Here the subject was making a loss. Nevertheless it was Mr. Bardon's judgement that a 20% allowance should be deducted from the R.V. of £920 to reflect the loss making history of the hotel. This produced a rateable valuation of £ 735.

Mr. Bardon suggested that the Tribunal should put an interim valuation on the subject. When the Lee tunnel had been opened, the road situation rectified, and the signage problem resolved then the property could be listed for revision. Mr. Bardon said he had advocated an interim valuation

in the case of *Sheen Falls Estate Limited – VA92/6/119*. Mr. Bardon advanced no statutory basis for his suggestion of an interim valuation.

Mr. Alaister Smallwood gave sworn testimony on behalf of the appellant. He said he was regional director of the appellant company.

He said the appellant company opened negotiations to take the lease on the hotel in April 1997 and started trading there on 1<sup>st</sup> July 1997. He said he was surprised by the lack of signage at the hotel when he visited it. He said that he had heard reports of problems at the hotel due to its distance from Cork city and also that its location on the east side of Cork city was unattractive to tourists who were travelling to the tourist areas of West Cork.

In further testimony Mr. Smallwood said that in the period from 1<sup>st</sup> July 1997 to April 1998 there was a loss of £413,000. He said that occupancy to December 1997 averaged 25%.

Under cross-examination by Mr. Dineen. Mr. Smallwood said that the appellant had not made any approach to the landlord to rebate the rent.

Under cross-examination by Mr. Dineen, Mr. Bardon stated that the cost of the hotel was £2.8 million, which included the cost of the site amounting to £300,000.

Under further cross-examination Mr. Bardon stated the subject was sold in the middle of 1996 by the developers for a price of £3.5 million, which included fees in the region of 12%.

In further replies Mr. Bardon said the owners of the hotel had 100% tax relief spread over seven years. At this stage the owners would wish to divest themselves of the hotel therefore there was an option for the tenant to purchase, which was penal in nature. In effect the tenant pays a higher rent if it does not purchase the property. The lease provided a predetermined purchase figure of £3.87 million in six years time.

Mr. Dineen put it to Mr. Bardon that the rent of £340,000 was 12.14% of the development cost of £2.8million and 10% of the sale price of £3.5 million.

In reference to Mr. Bardon's capital value method Mr. Dineen put it to Mr. Bardon that rates of return ranging from 8% to 15% have been used.

In further replies Mr. Bardon agreed that the negative factors affecting the hotel and referred to in his written submission were all in place when the appellant agreed the rent for the hotel.

In answer to Mr. Dineen's questions about his three comparisons Mr. Bardon stated that they all had advantages over the subject. Jurys Inn had a national brand name and was in a designated area. Forte Travelodge had good access on the airport road and had the benefit of the Little Chef restaurant. The Commons Inn had developed alongside the Commons licensed premises, which traded successfully for a number of years. There was also good access to the Commons Inn from the Limerick Road.

With regard to Mr. Dineen's comparison of Morrison's Island hotel Mr. Bardon said it was a city centre location with a good trade in the restaurant at lunchtime and in the evening. It also had larger bedrooms including suites.

As to the Doughcloyne Inn Mr. Bardon said it had a good bar and restaurant trade. Mr. Dineen put it to Mr. Bardon that the bar was contiguous to a budget hotel with 50 bedrooms unlike the subject, which has 100 bedrooms.

In reply to Mr. Dineen Mr. Bardon agreed that his rental method of valuation gave a higher rateable valuation than that fixed by the Respondent. Mr. Bardon said that he considered the rent was tax driven rather than market driven.

As to the accounts method Mr. Bardon accepted that a figure for rateable valuation could not be arrived at in a loss-making situation but nevertheless account should be taken of loss making operations.



Finally under cross-examination by Mr. Dineen, Mr Bardon agreed that the lease for the subject was entered into by the appellant in the expectation of the benefits to be conferred by the opening of the Lee tunnel.

In his sworn testimony Mr. Dineen adopted his written submission as his evidence to the Tribunal. Mr. Dineen said the rent here was of paramount importance. He said that the appellant freely negotiated the lease and being a very well established operator, would not be at any disadvantage in the negotiations.

Mr. Dineen referred to the rent pattern where the option to purchase by the tenant has not been exercised. This pattern spanning the period 1997 to 2017 had been set out in his written précis. He said that the opening figure of £340,000 and the closing figure of £719,572 represent an increasing compound interest of 3.82% per annum between 1997 and 2017. Mr. Dineen concluded that the option to purchase favoured the landlord. Nevertheless Mr. Dineen considered the initial rent as reasonable given that the percentage increases do not begin to operate till the year 2002.

Mr. Dineen referred to the location of the subject hereditament. It was located adjacent to the ring road on the south side of Cork City. When the Lee tunnel was completed Mr. Dineen said that it would take ten minutes to go from Bishopstown to the subject property in contrast to a time of thirty minutes to sixty minutes at present.

Finally in his evidence Mr. Dineen calculated, that given the evidence now before the Tribunal that the subject cost £2.8 million to construct, the R.V. calculated on an analysis of the rent would be £1,250.

Under cross-examination by Mr. Bardon, Mr. Dineen was asked what was the relevance of the Lee tunnel at the valuation date in November 1996. In reply Mr. Dineen said the rent was fixed in completion of the construction of the tunnel and the Valuation Office had a statutory obligation to take one year with another.

In further replies Mr. Dineen stated that the subject was visible from the Dublin Road but only when the motorist was close to the hotel.

Under further cross-examination Mr. Dineen agreed that the lease had unusual features including the setting out of the rent for twenty years and the penalty clauses with respect to the option to purchase. Nevertheless Mr. Dineen said the rent was a pure rent. It was in line with a return of 12.14% on expenditure on the premises and a 10% return on its purchase price.

In further replies Mr. Dineen did not agree that the lease was biased towards the landlords tax shelter. The appellant was under no obligation to enter into the lease and the rent was appropriate.

When questioned as whether the loss-making situation of the hotel should be taken into account in fixing a rateable valuation Mr. Dineen stated that evidence of rental and comparative rates p.s.f., when available, should be used in preference to other methods. Mr. Dineen also stated that the valuation code does not provide for interim valuations.

Finally when it was put to Mr. Dineen that comparisons like Jurys Inn, Morrisons Island Hotel, Commons Inn, Doughcloyne Hotel and the Travelodge Hotel all had thriving restaurants and/or licensed premises to supplement business, Mr. Dineen stated that accommodation is a high margin aspect of the hotel business.

In his submissions Mr. Dineen said that there was first class evidence here to fix a rateable valuation namely a market rent. He had focused on the first five years of the lease from July 1997. Here there was a freely negotiated rent, which summarised the advantages and disadvantages of the subject property.

Mr. Dineen referred to two cases *Jafton Properties Ltd. –v- Prisk (VO) 1997 RA* at page 159 and *K Shoe Shops Limited –v- Hardy (VO)* and *Westminister CC 1983 RA* at pages 35 and 36.

The former case was authority for the proposition inter alia, that “where the hereditament which is the subject of consideration is actually let, that rent should be taken as a starting point” in determining value.

The latter case was authority for the proposition as Mr. Dineen put it that correctness should not be sacrificed for uniformity in the valuation list.

In his submissions Mr. Bardon said that hotels were difficult to value. A variety of methods are useful. Mr. Bardon suggested that rents in a tax driven situation are suspect. Mr. Bardon accepted however, that the appellant had no tax advantage under this lease.

Mr. Bardon referred to the negative factors affecting the subject including its location, access and lack of signage. Mr. Bardon said the property should be valued as at November 1996 in its condition then suffering from severe disadvantages.

Finally, Mr. Bardon said the accounts of the hotel must be taken into account. The hotel was losing money. The Commissioner of Valuation should not be allowed to use accounts when profits were being made if he refused to use accounts when losses were being made.

Alternatively if the accounts method was used then cognisance should be taken of both profits and losses.

The Tribunal has considered the written submissions of the appellant and the respondent and the evidence offered by the appellant and the respondent.

The Tribunal finds that the passing rent for the subject is a market rent. This finding is based on the evidence that the appellant freely negotiated the lease as an “arms length” transaction. Furthermore the evidence showed that in this negotiation the appellant had made a normal commercial evaluation as to the disadvantages and advantages attaching to the subject hereditament.

The passing rent is the best evidence for the N.A.V. for the subject.

In adjusting the rent back to November 1988 and using the agreed 0.5 percentage the respondent has used two different methods to arrive at an R.V. of £1,259 and an R.V. of £1,054 respectively. Mr. Bardon in adjusting the rent back to November 1988, using one of the respondent's methods (C.P.I. method) and applying the agreed 0.5 percentage arrives at an R.V. of £1,150. Mr. Bardon had made a deduction of 15% for fixtures and fittings.

The Tribunal affirms the decision of the respondent in fixing a rateable valuation of £1,000 on the subject and the Tribunal determines the rateable valuation of the subject hereditament to be £1,000.