Appeal No. VA98/2/006

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Killarney Country Club Lodge Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Hostel at Lot No. 1Ac, Faha East, Ward: Aglish, Killarney, Co. Kerry
Quantum - Areas not agreed, appellant sought costs

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Barry Smyth - FRICS.FSCS	**Member**
George McDonnell - F.C.A.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF APRIL, 1999

By Notice of Appeal dated the 20th day of April 1998 the appellant company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £225 on the above described hereditament.

The Grounds of Appeal as set out in Notice of Appeal are that; "the valuation is excessive in comparison to similar properties".
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The appeal proceeded by way of an oral hearing which took place on the 23rd day of March 1999 in Tralee UDC, Town Hall, Princes Quay, Tralee. Mr. Colman Forkin, a District Valuer with over 19 years experience in the Valuation Office appeared on behalf of the Commissioner of Valuation. The appellant was represented by Mr. Nicholas McAuliffe of Kenneally McAuliffe Surveyors, Rating Consultants, Valuers & Estate Agents with Mr. McCann, Director of the appellant company. In accordance with the

rules of the Tribunal and following established practice the parties, prior to the hearing had exchanged their written submissions and submitted the same to us. At the oral hearing both valuers, having taken the oath, adopted their written submissions respectively as their evidence-in-chief.

The appellant in this case is Killarney Country Club Lodge Ltd. and it is the owner of the hereditament above described and identified and for valuation purposes has been in occupation thereof at least since July 1996 when it opened and commenced operations as a hostel. In August 1997 the revised list issued wherein the Commissioner of Valuation placed a valuation of £225 on this hereditament. An appeal was taken by way of notice dated the 8th day of September 1997 but as a result of the first appeal, which issued on the 30th March of that year, there was no change in that valuation. On 20th April 1998 notice to this Tribunal was served. The resulting appeal which has now been heard by us is confined to one question only namely that of quantum. Accordingly on that issue the following is the decision of this Tribunal.

Before dealing with the property, its location, the description of the accommodation and the valuation method adopted by the parties, there are a number of miscellaneous points, which we would like to draw attention to. In the first instance the area given on behalf of the Commissioner is 16,825 sq.ft. as well as an area of 258 sq.ft. on the store. On behalf of the appellant, Mr. McAuliffe gives the total area as 16,112 sq.ft. There is accordingly a total difference of almost 1,000 sq.ft. between the parties and certainly on the main building itself the difference is over 700 sq.ft. No explanation was given for this and no point or principle identified to explain it. In these circumstances it is quite impossible for a Tribunal like us to decide which one is right and which one is wrong. It is neither possible, desirable or feasible for us to go to and inspect the hereditament in question, or to measure it. We are therefore left in a situation, which is as hopeless and it is unacceptable, despite the fact that this has been said in numerous previous judgments. I must therefore reiterate that it is absolutely imperative for the parties to agree on areas before they come to this Tribunal. Précis have been exchanged. The issues between the parties are clear therefrom. Every effort must therefore be made prior to the hearing to agree such measurements.

If in future such areas are not agreed without satisfactory explanation we propose as a general rule to apply the following principle. The person who brings this case before the Tribunal is the appellant. The appellant is therefore charged with the responsibility of moving the appeal and hopefully on behalf of his client to obtain at least some measure of success. He is therefore the driving party involved in the appeal. In our view it is up to

him to make sure that he can satisfy us by way of compelling evidence that the areas given by him are accurate and correct or else that he has reached agreement with the Commissioner in respect thereof. In the absence of such an agreement therefore and in the absence of satisfactorily identifying accurately the areas in dispute and by explaining the continuance thereof, we will take the areas as given by the Commissioner of Valuation and accordingly place the N.A.V. and thus the R.V. on foot of these. Unless anyone should be taken by surprise at this view we do not propose to apply it in this case but in trying to deal with the appeal what we will and have been compelled to do is give a rate p.s.f. applicable to the hostel and to the store and to defer calculating what the N.A.V. should be until seven days from the date hereof during which period we are requesting both parties to come back by way of written notice to the Registrar indicating what the agreed floor area is.

Secondly, a point made exhaustively in previous judgments, if photographs or maps are being used in evidence and presented to us, it is not asking too much for the presenting party to include three sets in both the précis of evidence submitted to the Tribunal and in that exchanged between the parties. It is most unsatisfactory for these to be given in evidence for the first time during the course of a hearing. Photographs are a source of potent evidence in written and graphic form and therefore can be quite helpful to the Tribunal whose members may not individually be aufait with the hereditament in question. Accordingly whilst we would like to encourage and would welcome their use, it is critical that these be incorporated in the précis so that advance consideration can be given to them.

The Property

The property in question comprises a part newly built country club hostel, which incorporates the old stable blocks of the original country house. The buildings generally have stone facades in keeping with the rural setting and are generally two-storey throughout. The building provides services in accordance with the description, namely that of hostel. The accommodation as given by Mr. McAuliffe is acceptable to this Tribunal and includes the manager's quarters, common room, male and female toilets, kitchen, dining room, reception, office and stores. An area of difference has arisen between the parties as to the number of bedrooms and again we would like to make an observation on this. It defies our belief that two professional people can go and inspect the same property and one return with a figure of 20 bedrooms which includes 9 suites, and the other returns with a bedroom number of 40. In this case thankfully we have had the evidence of Mr. McCann, which we accept and which enables us to find, as a matter of fact the number of bedrooms within. If we did not we would not have allowed this

appeal to proceed. It is very difficult indeed to understand how there could be such a huge discrepancy all the more so given the fact that this evidence is set out in précis form, and the fact that, the general practise now is for Valuers to adopt their précis as their evidence in chief given under oath. Can we please express the hope that in the future we will not see a recurrence of such unexplained discrepancies. We find that there are 40 bedrooms, which in their design and use are flexible and are capable of being converted into accommodation for a greater number. These are also capable of being used as en-suite suites either with 2 or 3 bedrooms.

The appellant's operation is, in business terms linked with an overall enterprise involving the provision of two other and different types of services. One is self-catering cottages, the types of which are evident from the photographs in question and the second is a bar, restaurant, gymnasium including a swimming pool which is located 400 or 500 metres nearby. It would appear that this entire enterprise was originally BES driven, and that these three categories of services and use are separately owned. Therefore, for valuation purposes these would be separate hereditament. Nonetheless, since the self-catering cottages are located adjacent to the lodge and since the other facilities are within this distance of 400 metres or thereabouts, it is clear that people using the lodge can have access to these other facilities, and accordingly, on the ground and for business purposes, whilst they cannot be treated as one, certainly their interrelated use and ability should be taken into account in placing an RV on this property.

In support of seeking a reduction on the NAV, Mr. McAuliffe, through the evidence of Mr. McCann, has referred us to the accounts, to the commencement of this business, to the identification of what was believed to have been a niche in the market at the time, to the experience which the lodge has gone through since July 1996, to the fact that losses have been made in the past number of years and, to the fact that it is necessary to continue with this operation in its present form for at least two more years, principally or at least in part to satisfy BES requirements. However we have been informed that unless there is a significant turnaround in terms of surplus revenue then the operation may well have to consider in two years time a conversion of the existing use to some more profitable use, such as an enlargement of the self-catering facilities on the site.

We have looked at the accounts but it is difficult to analyse their probative value in evidential terms. There is no doubt however but that they show an accumulated revenue deficiency and an accumulated loss to 31 March 1998 of £40,000 and, to 31 March 1997 of £31,000. It should be remembered that this is a start-up situation and that the accounts

are for two years only, though from the evidence given by Mr. McCann the pattern of losses (unquantified) would appear to have continued up to March 1999.

In further support of his case, Mr. McAuliffe refers to four comparisons. The first three are hotels, number 1 being Riversdale House Hotel, Kenmare, number 2 being the Cliff House Hotel, Ballybunion and the third being the Towers Hotel, Glenbeigh. We are of the view that none of these hotels are directly comparable and can not be made so even with permissible adjustments. In fairness to Mr. McAuliffe, he did not purport to rely on any of these comparisons as his number 1 or priority comparison and indicated via his evidence that their inclusion was for the purposes of highlighting perhaps what was put as a rate per square foot on these hotels as a comparison to the rate per square foot which has been sought by the Commissioner in this case. It should also be stated of course that the areas of these hotels are significantly larger, that there is a substantial difference between the respective accommodation, facilities and common areas as there is with location. His fourth comparisons, is Hazelwood Hostel in Ballylickey, Bantry, Co. Cork.

On behalf of the Commissioner, Mr. Forkin referred us to two comparisons. The first is the adjacent hereditament, which I referred to above, namely the licensed restaurant, and gymnasium, which includes a swimming pool. We do not think that this comparison is in any way relevant. The use of the property in question is quite different from the use inherent in the operation of the hostel. Effectively the restaurant provides food and bar facilities, whilst the gymnasium and swimming pool are more in the nature of leisure activities than anything else. None of the buildings or the uses contained therein, are in anyway related to bedroom occupation, therefore we do not believe that this is of any real assistance. The second comparisons is Merleview Properties Ltd., which is a hostel in the outskirts of Killarney. We are told by Mr. McAuliffe that this case is under appeal. Whilst it is possible to refer to a hereditament under appeal for comparison purposes, it is clear from the judgment in *Irish Shell Limited (Oriel Oil Company) – VA95/1/055* that it then becomes a matter of weight for the Tribunal to determine in each individual case. Depending on the nature and particularity of the evidence given, it may or may not be possible to place any reliance on that hereditament. In our view it is very difficult to place any purposeful weight on this comparison given the factual position as presented. In addition it must be pointed out that this property can accommodate 134 people as against the maximum of 80 in the subject premises. Secondly, it is located on the outskirts of Killarney whilst the subject property is, by common consent, located in at least a rural area, though in one précis of evidence, its distance from Killarney is given as 4 miles, whereas Mr. McCann has told us that it is approximately 7 miles. One way or the other it is quite clear that a location just outside the main town of Killarney is far more preferable

and far more productive and beneficial than the location of the subject. Accordingly, for these reasons, we believe that the second comparison is not of any immediate help or assistance to us.

From the evidence so tendered we are satisfied that the best comparison is Hazelwood Hostel, Ballylickey. The floor area is not quite the same, it being 12,571 sq. ft.; the RV on it is £125, which devalues at approx. £1.98 psf. This was the result of the 1998/4 revision. There is undoubtedly some difference in location, the Ballylickey hostel is on the main road and in an elevated position overlooking Bantry Bay. Not withstanding this difference of location we believe that with some adjustment, it still is by far the best comparison that has been produced to us in evidence. Reference should also be made to the decision of this Tribunal in *Donal O'Sullivan - VA97/5/003* a hostel situated at Morrison's Island in Cork which provided 16,807 sq. ft. of accommodation. This breakdown was 55 bedrooms, 45 en-suite. It was a purpose built new modern hostel. It was situated near the South Mall, within a minute or two of all the main areas of Cork City and therefore its location was substantially better than the subject site. Nonetheless, there was a figure of £2.60 psf put on it.

Whilst we appreciate the economic difficulties that are presently encountered, in particular the staff costs, and marketing costs and the fact that there is no passing trade available for this hostel, nonetheless it is clear from the evidence and from the photographs that the accommodation is of a high standard as is the building itself. It is this building which we have to put a valuation on and not the business or use carried on therein or conducted therefrom. Whilst we are entitled to take into account the economic circumstances as per *Rosses Point v. Commissioner of Valuation* [1987] IR p143, we should only give such weight to those factors as can reasonably be taken as one looks at the overall situation.

In our view, therefore, taking the above factors into account, we propose to put a rate of £2.10 psf on the agreed area of the hostel. We propose to confirm £1.50 psf on the store area of 258 sq.ft.

Following receipt by the Tribunal of the areas agreed by both sides, the net annual value is therefore determined as follows:

Hostel	16,825 sq.ft. @ £2.10	=	£35,333
Store	258 sq.ft. @ £1.50	=	£ 387

N.A.V.	=	£35,720
R.V.	=	£178.60
Say	=	£179.00

And the Tribunal so determines.

COSTS

Decision on the application for costs.

The circumstances giving rise to this application are somewhat unusual in that according to Mr. McAuliffe, whose version is broadly I think not in dispute, following the issue of the revised list, certain negotiations took place between the revising valuer and himself. Subject to the Commissioners approval, these discussions concluded with the RV for the subject property being agreed at or approximate to what will probably be the RV resulting from the decision of this Tribunal. Being so subject to this condition, in the events which occurred the Commissioner did not so approve and hence the necessity for first appeal and appeal to this Tribunal. No case as to privilege was either raised or adjudicated upon.

There is no doubt but that it must be in the interest of ratepayers and indeed in the interest of the Commissioner himself to try and dispose, by way of agreement, of valuations on hereditaments. Such a course has distinct advantages; it save costs and time for three parties, the Appellant, the Commissioner and this Tribunal, it gives ratepayers a sense of having a direct input into the ultimate result and in our experience, where this occurs, the feeling of satisfaction or at least of acceptance is significantly higher than when an RV is imposed upon these hereditaments. It is therefore with regret that this Tribunal notes the position in this case.

This situation is not provided for in the rules of this Tribunal or in the 1988 Valuation Act. The general practice has always been that in cases of quantum no costs are awarded to either party whereas on issues of rateability or other legal issues, costs in general follow the event. This has worked well and has general and widespread acceptance. We should not lightly depart from it. We are not going to so do in this case even though we have sympathy for the submission made and we recognise the sense of grievance and frustration felt by the appellant.

Therefore, whilst Mr. McAuliffe is not successful in this application, he has certainly laid some groundwork for further applications of a similar nature. Whilst we unreservedly recognise the right of the Commissioner and by him through his team to carry out his statutory functions, in a manner felt most appropriate by him nonetheless, unless they are compelling valuation reasons present we would hope that in a great number of cases he might feel able to so approve, if that did not impinge upon his statutory functions.