

Appeal No. VA99/3/013

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

Carrigaline Hotels Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hotel at Map Reference 18D Carrigaline West, ED:Carrigaline, Cork Lower, Co. Cork
Beneficial Occupation

B E F O R E

Barry Smyth - FRICS.FSCS

Deputy Chairman

Michael Coghlan - Solicitor

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF JUNE, 2000

By Notice of Appeal dated the 26th day of July 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,390 on the above described hereditament. The Grounds of Appeal as set out in the said Notice of Appeal are that;

- "1. That the valuation of £1390 is excessive, incorrect and bad at law.
2. That the rated occupier "Carrigaline Hotels Limited" was not in rateable occupation of the premises on the valuation date.
3. That the assessment of rateable valuation on the premises was premature having regard to the actual state of the premises on the valuation date.

4. That the premises was not "an hotel" on the valuation date.
5. That the premises was incapable of beneficial use as an hotel on the valuation date.
6. that the premises was not licensed as an hotel on the valuation date nor for the sale of intoxicating liquor.
7. That the premises was not registered as an hotel in accordance with the Tourist Traffic Acts at the valuation date.
8. That the property was not a rateable hereditament under the Valuation Acts on the valuation date."

The appeal proceeded by way of an oral hearing which took place in the Council Chamber, Cork County Council, Victoria Cross, Cork on the 28th day of January and was resumed on 30th March 2000. Mr. Owen Hickey BL appeared on behalf of the appellant with Mr. John A. Elliott MIAVI, of Elliott & Co., Valuers & Property Consultants.

Mr. Willis Walsh BL appeared on behalf of the Commissioner of Valuation with Mr. Peter Conroy, and Mr Terry Dineen, District Valuers in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had prior to the commencement of the hearing exchanged their precis of evidence and submitted the same to this Tribunal.

Material facts agreed or found by the Tribunal.

The Property

Three storey, 52 bedroom hotel with public bar, function room, leisure centre with swimming pool, standing on a site of approximately 2 acres with car parking for 98 cars and service vehicles. The state of completion or otherwise of the subject premises at the relevant date or dates is in dispute.

Location

The premises are prominently situated at the northern end of Main Street Carraigaline, Co. Cork, on the main Cork Road which is approximately 7 miles distant.

Title

Freehold

Licences

All necessary licences were granted on the 11th November 1998.

Valuation History

The property was first valued in 1998 @ £1,700 and the valuation was published on 9th November 1998. An appeal was lodged against this assessment and at first appeal the valuation was reduced to £1,390. The quantum having been agreed between the parties the appellant appealed the legality of the assessment only to the Valuation Tribunal.

The Appellant's Case

At the oral hearing Mr Hickey outlined the appellants case to the effect that they were not in beneficial occupation of the premises which was not completed either at the date of the revising valuer's inspection on the 27th October 1998 or the issuing of the list of revised valuations on the morning of the 9th November 1998 and that therefore the Commissioner should have placed no valuation on the premises. The following witnesses were introduced each of whom took the oath and gave evidence.

Mr Kieran Barry - Project Manager. Mr Barry stated that there was a standard form of contract between the hotel developers and the contractors and the completion date was due to be the 10th November 1998. On the 27th October 1998 there had been a site meeting and in his opinion the property was a building site and the building required a second fixing and completion works. Because of the size of the development in his opinion second fixing could have taken two months from the 27th October 1998. The building was not completed on the 9th November 1998 and in fact contractors were on site until mid January 1999 dealing with snag lists and external finishes. The Local Authority Fire Officer had inspected the premises on the 5th, 9th and 10th November 1998 in relation to the Court application for a licence. No certificate of practical completion was ever issued but in his opinion works were practically completed by the end of November, first week in December with some snagging works still outstanding at that stage. The hotel proprietors took possession on the 11th or 12th November before practical completion. In relation to the Court application for a licence he stated that the premises was suitable for use on the 11th November although technically not practically completed.

Mr David Hegarty - Quantity Surveyor. Mr Hegarty stated that the contract figure was £4.5 million and that at the 27th October 1998 site meeting, plasterers and carpenters and

many sub-contractors were still on site and the amount of money remaining to be spent was in the order of £250,000. He again visited the site on the 9th November aware that the 11th was the date due for opening. There was still work taking place and the premises was still in the second fixing stage with the main contractor getting specific areas ready. The main contractor was on site until the beginning or mid December and thereafter there were still sub-contractors on site. On the 9th November there was in the order of £125,000 remaining to be spent to complete the premises. The final payment in relation to the contract was made in April 1999.

Mr. John Elliot, MIAVI. Mr Elliot adopted his precis which had been exchanged with the other side and submitted to the Tribunal. Mr Elliot stated that he had inspected the premises on the 5th November 1998 and it was not at that stage an hotel nor was it so when the rateable valuation issued on the 9th November 1998. Carrigaline Hotels Limited were not in rateable occupation, they did not have possession. He was surprised that a rateable valuation had issued as he had never before come across the situation where rateable valuation was assessed on an hotel at that stage of construction.

On the 5th November, 9 days after the revising valuer had inspected the premises it was not a hotel and could not have been used as an hotel as the builders were still in occupation and there was no licence in existence. He submitted photographs of the premises taken on the 5th November as listed in appendix A of his precis and taken on the 9th November as listed in appendix B of his precis, indicating works outstanding at those dates. Considerable progress had been made between the 5th and 9th November as work was going on 24 hrs a day. He had taken his photographs between 12noon and 3.00p.m. on the 9th November, that is several hours after the valuation list was issued. In his opinion the premises was not capable of beneficial use or occupation as an hotel on the 9th November 1998. He accepted that the premises had opened as an hotel on the 11th November but even at that stage he stated that the premises was not completed, though virtually so.

He accepted that there had been public advertisements in October in relation to the granting of the hotel licence but felt that this was to comply with statutory requirements. He accepted that the premises was capable of being valued by the revising valuer at the date of his inspection, the 27th October 1998, on the assumption of completion and the granting of licences but that the valuation was premature and that the premises was not capable of beneficial use as an hotel. He also accepted that although the premises was occupied from the 11th November 1998 there would be no liability for rates for November or December 1998

and that the valuation would come into effect from the 1st January 1999 and that the premises was occupied for the entire of that year.

Mr Gary O'Driscoll - Solicitor. Mr O'Driscoll outlined the history of the licence application. A declaratory order was obtained. Notice of the application for the licence and extinguishment of another licence was advertised by the beginning of September before the law term commenced on the 4th or 5th October 1998. The proposed date for the court hearing was Thursday 5th November but this was postponed to Wednesday 11th November because the fire officer was not satisfied at the earlier date. The fire officer inspected the premises on the 10th November and again on the morning of the 11th November before the necessary certificate was issued. On the 5th November the fire officer's certificate was the only outstanding matter in relation to the court application for a licence and because the fire officer was still objecting, he assumed that the premises was not complete. The applicant would give evidence that the premises was constructed in compliance with the planning permission and the declaratory order. The Chief State Solicitor's offices had advised that there was no objection from the Gardai. In response to questions from the Tribunal, Mr O'Driscoll said that Mr Collins of Carrigaline Hotels Limited has given evidence on the 5th November but that the case had been adjourned pending the fire officer's certificate. Mr Collins evidence would have been that the building was constructed in compliance with the planning permission and declaratory order but the licence was not granted because the fire officer's certificate was still outstanding. The Court would not have asked if the premises was ready for beneficial occupation.

Mr John O'Flynn - General Manager Carrigaline Court Hotel. Mr O'Flynn stated that the fire officer had inspected the premises on the afternoon of the 10th November and was not satisfied with the state of the premises to issue the necessary certificate. The fire officer agreed to reinspect on the morning of the 11th November and the necessary certificate was issued that morning. The local Garda sergeant called to the premises and viewed only the bar area and asked questions re the licensing laws. In Mr O'Flynn's opinion the premises was a building site at the time of the revising valuer's inspection on the 27th October 1998 and similarly so on the 5th November 1998. He concurred with Mr Elliot's evidence on the state of the premises as a building site on the 9th November 1998 at which time there were approximately 100 people working on the site. On the afternoon of the 11th November there were invited guests only in the bar. The bar was open that evening but closed early and only

one bedroom was occupied that evening. All bedrooms were used for the first time on the 17th January 1999. From the 11th November 1998 to the 13th January 1999 he had staged their introduction on a five per week basis. On the 9th, 10th and 11th November 1998 the building was still in the possession of the builder and the electricity supply was the builder's temporary supply until Monday 16th November 1998. He stated that the hotel effectively took possession at 3.00pm on the 11th November 1998 but some areas were not available to them even then.

The Respondent's Case

Mr Willis Walsh on behalf of the respondent said that it was the respondents case that the premises were in the beneficial occupation of the appellant at the relevant date and that the Commissioner of Valuation was entitled to value the premises as an hotel.

The following witnesses were introduced each of whom took the oath and gave evidence.

Mr Peter Conroy - Appeal Valuer - adopted his precis which had previously been exchanged with the other side and submitted to the Tribunal. He stated that he had considered two issues namely rateability and quantum and that the latter was agreed. He stated that in relation to the former he was not certain that the 9th November date had any relevance other than an issue date and that in his view there was no statutory basis confirming that the revision issue date is the relevant date. In his opinion the relevant date was the 1st January of the subsequent year when the liability for rates occurs. He outlined the history of revision and issue dates and stated that the 1988 Act had introduced the process of continuing revision with four quarterly revisions but none having liability for rates until the subsequent January. In his opinion the relevant date is when the property became liable for rates which in this case was the 1st January 1999 and that it was indisputable that the premises was in the possession of the Carrigaline Hotels Group by that date.

He further stated that the appellant's argument appeared to be that the building was complete for the purpose of obtaining a licence but not for rates liability. A hypothetical tenant would not say that the building had a nil valuation and make no bid. A professional hotelier would be aware of the requirements and would reasonably anticipate the granting of a licence. Such a hotelier would also be aware of the fire officer's requirements and would have concluded that it was a completed hotel with only the fire certificate outstanding and some subsequent fitting and finishing out. He accepted that the premises was not completed on the 27th October at the time of the revising valuer's inspection but was sufficiently advanced for the revising valuer to value it. He was satisfied that the building was substantially completed on

the 9th November. In response to a question about the Harper Stores case and its reference to an unfinished house and whether or not Carrigaline Hotels Limited were using the premises on the 9th November, he responded that the relevant date is the 1st January when the rates liability occurs and when the appellant was clearly in possession.

Mr Terry Dineen - Revising Valuer adopted his precis which had previously been exchanged with the other side and submitted to the Tribunal. Mr Dineen inspected the premises on the 27th October 1998 and read from his valuer's report which had been submitted to the Tribunal. He noted that the premises was due to open on the 10th November 1998 and was due to be graded in February 2000. Lifts were not to be installed until the end of November 1998 because of an industrial dispute. In his opinion the incursion beyond the 9th November was marginal and he felt that the important date was the 1st January of the subsequent year. When valuing it did not matter to him when the completion was as no liability arises until occupation of the premises and this is a matter for the local authority. The entry of the valuation in the list was a matter for his superiors. He stated that the premises was not lettable at the date of his inspection on the 27th October 1998 although his report does not state this, other than to say that the premises was due to open on the 10th November 1998. His report described the premises as though completed. Under cross examination he stated that immediately before the 9th November 1998 the premises was not lettable.

Mr Donal O'Callaghan, Rate Collector, Cork County Council - adopted his precis which had previously been exchanged with the other side and submitted to the Tribunal. Mr O'Callaghan stated that he inspected the premises on the afternoon of Monday 9th November the purpose of his visit being to advise the County Council as to whether or not they should appeal the rateable valuation as they were aware that the list was being issued on that date although at the time of his inspection he had not seen it. His precis indicated that the main bar was ready for use but not stocked and that he was informed that a licence would not issue until a Court sitting on the Wed 11th November 1998. Various areas were almost ready including the function room, swimming pool and gymnasium. The bedrooms appeared to be ready with beds made-up. There was an amount of work including carpet fitting going on. The lifts were not operational. A number of workmen were finishing planting etc. on the outside. There were a number of hotel staff on the premises. In his opinion it was wrong to describe the property as a building site at that date. He observed no second fixing or scaffolding and the outside area was fully tarmacadamed.

Legal submissions

Owen Hickey BL for the appellant - Mr Hickey submitted that the appeal hearing was an examination of the appeal valuers determination according to the statute and according to the case law and that what was at issue was whether the appeal valuer was entitled to come to the conclusion in the work that he did that the premises were capable of beneficial occupation on the material date. He also submitted that given the evidence of the revising and appeal valuers together, that both the revision and the appeal decisions were basically flawed. He drew the Tribunal's attention to the case of Harper Stores Limited v Commissioner of Valuation (1965 No. 139SS) Judge Henchy and in particular Judge Henchy's reference to the difference between the situation in the Harper case and that of an unfinished house which has yet no rateable occupier. Mr Hickey expressed the view that that statement embraced the idea of something that is almost finished. He submitted that the Tribunal had followed Judge Hency's ruling in several cases and that therefore the revising valuer was not entitled to value these premises given the condition it was in when he saw it at the date of his inspection.

Mr Hickey submitted that it was clear from the revising valuer's report, that neither his superior in the valuation office nor the Commissioner of Valuation himself could have discerned from the valuer's report the condition of the premises on that day and therefore the Commissioner had no report on which to base the revision. He further submitted that the same situation applied to the appeal valuer. Neither the appeal valuer or the revising valuer was entitled to make the assumption that the premises would soon be finished after the material date. Where there is a material change in a property between the revising valuer's inspection and the appeal valuers inspection such that there are essentially two completely different hereditaments, the appeal valuer simply cannot do his job. He is in no position to test the revising valuer's assessment of the premises and that is why buildings in the course of construction have traditionally not been valued by the valuation office. Mr Hickey expressed the view that that is why Judge Henchy distinguished new buildings in the course of construction from a shop being repaired as in the Harper Stores Case.

Mr Hickey submitted that on the 27th October the premises were incapable of beneficial occupation and on the 9th October they were also incapable of beneficial occupation. The fact that there was a fast track completion has no bearing on the legal issue. On the 9th November they were not finished, they were not licensed, there was no fire certificate, the bedrooms were not operational and the premises were in the condition as was described by the various

witnesses. Referring further to the Harper case and the test that Judge Henchy referred to "are the corporation using the land for the purpose of their business or adventure", Mr Hickey submitted that the answer to that question on the date of Mr Dineen's valuation and on the 9th November was quite clearly no in this case.

Mr Hickey further referred to the KayfoamWolfson Case VA88/0/228 which dealt with a newly constructed extension to an industrial undertaking built towards the end of 1987. He quoted from the Tribunal's determination to the effect that the Tribunal was pressed to deal with the very net question of whether a building which was not completed on the 1st November 1987 was to be valued. The premises was completed and occupied by the commencement of the following rating year. The Tribunal distinguished this case from the Harper Stores Case and was of the opinion that the correct analogy was with the unfinished house referred to in that judgement.

Mr Hickey also referred to that the Wyeth Medica Case VA94/2/006 which concerned the rateable valuation of pre-existing premises being reconstructed and where the Tribunal held that they were not akin to an unfinished new building or a new house under construction as referred to in the Harper Case. In conclusion Mr Hickey stated that the premises were incapable of beneficial occupation on the 9th November 1998 and on the 27th October 1998 the date of the revising valuers inspection and therefore should not be rated.

Willis Walsh BL for the respondent. Mr Walsh submitted that that this hearing was not in any way a review of the appeal valuer's decision rather it was a *de novo* hearing and should be considered by the Tribunal as if it were a first instance application. Consequently it was open to all parties to introduce whatever argument they wished. Therefore the suggestion that the appeal valuer somehow had made an invalid determination or adjudication because of the inadequacy or otherwise of the revising valuer's report was irrelevant and incorrect as he had before him plenty of material on which he could make an adjudication.

Mr Walsh stated that a major inconsistency existed between the evidence that was provided to the licensing Court and the evidence that was put to the Tribunal. In his opinion the question of whether the hotel was fit to be licensed was of immeasurably more importance than the question of whether it was ready and capable of valuation. The public safety aspect if nothing else, was of vital importance to the Court in dealing with licensing applications. It was known from the evidence that from as early as the 4th November 1998 the appellants

were of the view that they could satisfy the stringent requirements of the licensing Court because they processed their application before the Circuit Court on that day and only because the fire officer was not satisfied with the state of the premises was the application adjourned until the 11th November. What the appellants are telling the Tribunal is that they were not in possession of the premises on the 4th November nor on the 11th November when the licence was granted but they obtained possession at 3.pm on the 11th November. No one can have an intoxicating liquor licence unless they are in possession of premises. This is an absolutely fundamental proof. Even with workmen on the premises and outstanding works to be carried out, the appellants were satisfied that they could indicate to the licensing Court that the premises were fit and ready to be licensed and it is not reasonable that they should withdraw from that position at this Tribunal in an attempt to find some loophole in the Valuation Acts.

In relation to the building contract, the final dated payment is dated the 24th October 1998 and the time for completion was specified as the 10th November. No certificate of practical completion was issued and he was unable to ascertain from any of the witnesses when they regarded practical completion as having occurred but he asked the Tribunal to take the view that it must have occurred prior to the date that they were granted the licence.

He outlined the statutory basis of revision and the introduction of quarterly revisions and stated that in his view the revision date, whether it be February, May, August or November is necessarily prospective and looks to the future because it is attempting to establish a future liability - that is the liability to pay rates for the following year. On that basis he contended that the effective date for a valuation is not the revision date whether it be February, May, August or November but involves the date that the list comes into effect, that is the 1st January of the following year. He submitted that this is in accordance with equity and in accordance with the general principles of rating. He further submitted that there was no doubt that the premises was in beneficial occupation on the commencement of the relevant year and there was therefore no reason why it should not be rateable. He expressed the view that the authorities cited by Mr Hickey to the effect that the valuation date and the listing date were coincidental, was a matter that was assumed rather than decided in these cases.

Acknowledging that UK law was quite different, he referred to the case of *K Shoe Shops Limited v Hardy* (House of Lords 1983) which concluded that uniformity and fairness could only be achieved if all hereditaments were valued by reference to the same date. In his view

the only possible common date was the date that the list came into force, namely the 1st January. In relation to the description of the premises as a building site he offered the view that this could not be the case if it was completed within two days. "Actual state" takes into account potentialities and disabilities as referred to in the Harper judgement.

Determination

The questions to be determined by this tribunal are:

Firstly whether the premises was capable of use or beneficial occupation or whether Carrigaline Hotels Limited were in beneficial occupation of the premises at the relevant date and secondly what is the relevant date for the purposes of establishing rateable occupation since there is dispute also as to whether the relevant date is the date of the revising valuer's inspection, 27th October 1998 in this case or the issuing of the revised list, the 9th November 1998 in this case or the date where liability for rates occurs, namely the 1st January in the following year.

To deal first with the relevant date. The date of issue of the revision list has always been regarded as the relevant valuation date and the Tribunal consider that no evidence has been adduced in this case to persuade the Tribunal that any other date is appropriate.

The question therefore to be answered is whether the premises were capable of beneficial occupation or in the beneficial occupation of Carrigaline Hotels Limited on the 9th November 1998. The respondent has claimed that since the appellants were prepared to go to the licensing Court on the 5th November 1998, albeit that the case was adjourned because of the outstanding fire officer's certificate and they did go to the licensing Court on the 11th of November 1997 only two days after the issuing of the revision lists, that the appellants must have regarded the premises as being in a state of practical completion and therefore capable of beneficial occupation on that date. It was further submitted that for the purpose of the licence the appellants had to be in occupation of the premises. This Tribunal was not represented at the licensing Court hearings nor should it have been and the evidence given and outcome of the licensing Court hearings has in our opinion no bearing on the determination of whether or not the subject premises should have been entered in the revision list of the 9th November 1998. We can only make that decision based on the evidence put before us at our hearing.

While it is accepted that the premises was in the occupation of the appellants from the afternoon of the 11th November 1998 and they were effectively trading in the entire of the premises by the commencement of the rating year, nevertheless sufficient evidence was given that on the 9th November 1998 the contractors were still in occupation of the premises and they had not been handed over to the appellants. The fact that they were in possession two days later is perhaps fortunate from their point of view and unfortunate for the local authority but is not a matter that is relevant to this Tribunal. Evidence was given that the premises was not capable of being let on the date of the revising valuer's inspection and the revising valuer also stated that immediately before the 9th November 1998 the premises was not lettable.

In the Tribunal's opinion this case is effectively on all fours with the case of Kayfoam Wolfson VA88/0/228 decided by the Tribunal on 11th November 1988. The fact that in the subject case possession was available to the appellants within a very short period after the revision date does not alter the principle of the decision.

The Tribunal therefore finds that the Commissioner of Valuation was incorrect in placing a rateable valuation on these premises and determines that the revision of 9th November 1998 should be struck out.