

**Status of Judgment: Ready**

Appeal No. VA01/1/018

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

**Cowper Care Centre Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Nursing Home at Map Reference: 31a Cowper Road, Rathmines East C, County Borough of Dublin

**B E F O R E**

**Tim Cotter - Valuer**

**Deputy Chairman**

**John Kerr - MIAVI**

**Member**

**Michael Coghlan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 12TH DAY OF MARCH, 2002**

By Notice of Appeal dated the 20th day of April 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of €799.94 (£630), on the above described hereditament. The Grounds of Appeal as set out in the Notice of Appeal are:

"We wish to appeal against the revised valuation on the grounds that the valuation is excessive, inequitable and bad in law when rental levels and other factors are taken into consideration and having regard to the Valuation Acts. This hereditament should be exempt from rates".

This appeal proceeded by way of an oral hearing which was held in Dublin on the 26<sup>th</sup> day of October and 7<sup>th</sup> day November 2001. The Appellant was represented by Mr Owen Hickey BL., instructed by William Fry Solicitors. Mr. Brian Bagnall, ARICS, ASCS, Principal of Brian Bagnall & Associates, gave valuation evidence of behalf of the appellant. Mr Seamus Shields, General Manager of the subject premises also gave evidence.

The Respondent was represented by Mr. Dan Feehan BL., instructed by the Chief State Solicitor. Mr Terry Dineen, District Valuer in the Valuation Office gave valuation evidence on behalf of the respondent.

### **The Property**

The property, known as Gascoigne House comprises a new detached single storey 44 bed nursing home situated on Cowper Road, Rathmines, Dublin.

### **Valuation History**

The property was revised in May 2000 at RV £630. No change was made at First Appeal in March 2001. Both the quantum and the rateability of the premises are at issue.

### **Tenure**

Site : The site of almost one acre is held from November 1999 on a 99 year lease from Dublin Corporation at a rent of £5,000 per annum because of charitable status. The building is owned by the appellant company which is a registered charity.

### **Evidence of Mr Brian Bagnall**

Mr Brian Bagnall gave evidence in relation to the quantum of the premises. He adopted his précis of evidence as his evidence in chief given under oath. He described the premises as set out above and said that it was built in 1999. He said that the charges per week were in line with charges in the Dublin area at £440 (€558.68) but that for patients needing intensive nursing care there could be additional charges.

He assessed the Net Annual Value on the premises, as set out in his written submission at page 4, on a square metre basis as follows:

1857sq.m @ £29.60 ( <del>£37.58</del> / sq.m)	=	NAV £54,967 ( <del>£69,793.69</del> )
@ .63%	=	£346.29 ( <del>£439.69</del> )
Say	=	RV £345 ( <del>£438</del> )

He gave the Tribunal two comparisons, Talbot Lodge, Nursing Home, Malahide and Marymount Nursing Home, Lucan details of which are set out in Appendix 1 to this judgment He said that the comparisons are of similar construction and size to the subject and that he had adopted the higher levels in assessing the subject premises. He said that charges for patients were not location sensitive. Mr Bagnall made the following comments on the respondent's comparisons,

- **VA95//4/029 – Monfield Nursing Home and VA98/2/047 – Ashbrook House** were assessed for valuation on a rate per room basis. He said that if the valuation of Cowper Care Centre Limited was assessed on the same basis, it would produce a rateable valuation of between £199 (~~£252.68~~) and £212 (~~£269.14~~). He said that he was not relying on this method of valuation.
- **Douglas Nursing Home and Bishopscourt Nursing Home**, are located in Cork, are less than half the size of the subject and the greater rate per metre squared being applied was justified by the difference in area.
- **Ailesbury Nursing Home**, was less than a third the size of the subject and the level of valuation adopted was not comparable to that applied on the subject.
- **Bloomfield Hospital** was a hospital / nursing home and an analysis of the new part of the nursing home produced an NAV per sq.m. of £48.43 (~~£61.49~~) which is less than the rate applied by the respondent to the subject premises. He said that the rate per sq.m. on the old building was £16.14 (~~£20.49~~) which gives a mean rate between the two of £25.80/ sq.m. (~~£32.76~~) i.e. 15% less than the rate he has applied to the subject premises.
- **Clara House** was a guesthouse and not a nursing home and less than a third the size of the subject and in his opinion was not a relevant comparison.

In relation to the contractor's method also used by the respondent, Mr Bagnall said that it was a method of last resort and not appropriate where comparisons are available.

Under cross-examination he said that the capital value was not relevant and the contractor's basis was a method of last resort. He did not accept that the net annual value should be dependant on location in the case of nursing homes. He agreed that a site in the city centre might cost three times that of one in a peripheral location. He estimated the difference as being in the region of for example £400,000 per acre in Lucan and £1.2m per acre in Cowper Road. However he did not accept that this would affect the NAV of a Nursing Home. He said that his comparison in Lucan had a dementia section with coded access. He said that the presence of a dementia section should not result in a higher NAV. He accepted that many nursing homes are commercial in nature, based on the figures adduced in his submission by the respondent, of 88 nursing homes valued in Dublin only 23 are exempt.

In reply to the Tribunal Mr Bagnall said that the subject premises is located to the side of the McGeough home and that it is accessed through the main gate off Cowper Road through the grounds of the McGeough home. He said that he had no information on the history of the ownership of the land on which the premises was built. He said that he had no rental evidence as most nursing homes were owner occupied.

### **Evidence of Mr Shields**

Mr Shields said that he was the General Manager of the subject premises and that the subject was a registered charity with the Revenue Commissioners. Certificates of charitable status were handed in to the Tribunal. Counsel for the Appellant referred Mr Shields to the Memorandum and Articles of Association of Cowper Care Centre Limited and in particular to the principal objects for which the company was established i.e. "to advance charitable purposes including without limitation the following:

- (a) to establish, develop and manage one or more care centres... for the relief of persons (in particular members of the Church of Ireland and their families), who

have need of accommodation facilities by reason of their age, infirmity, disablement or social or economic circumstances. ....”

Mr Shields said that at the present time the home has 44 residents, 17 Church of Ireland, 4 other and 23 Roman Catholic. He said that the home provided care to people with the highest physical, mental or social need. He confirmed that no beds were allocated to private patients only. He said that currently there were 12 sufferers from dementia in a closed-door unit and 32 people in a general care environment. He said that the home catered for a small number of people who are relatively independent in care terms to people with terminal cancer. He said that all patients in the nursing home were ill and that most patients were in their mid 70s.

In relation to funding of residents he provided the Tribunal with a breakdown of the funding which detailed the three categories of residents as follows:

- Fully funded – only contribution from this group was two thirds of their old age pension. This group had no assets or income of any sort and no family to support them). The pension was retained by the Eastern Health Board who then gave the person back an allowance equal to one third of their pension. Currently there were seventeen residents in this category.
- Part- funded – This group had some resources themselves in addition to the old age pension. This group was entitled to assistance from a charity and, subject to a dependency and means test, to some subvention from the Health Board. He said that ten of the part-funded group in the home were getting some subvention. All were self-nominating or nominated by their family.
- Pay full charge – There were three residents in the home who were in a position to fund themselves elsewhere and another three who could only afford the fees of the Cowper Care Centre Limited.
- One resident was a complete charity case being ineligible for Eastern Health Board assistance. The percentage therefore of fully funded persons was about 41% of residents.

In response to a question from Counsel, he confirmed that he would class the home as an infirmary on the lines of county homes run by Health Boards such as St. Mary's Hospital Phoenix Park and St Clares in Ballymun in that they all provide a high level of nursing care but no invasive therapy.

In relation to revenue from fees he said that the gross cost per person is £475 per week and less charitable receipts it would be £440 net. He said that their charge was £440 per week for maximum care.

In cross examination by counsel for the respondent, Mr Shields said that the EHB and acute general hospitals had the right to nominate people for what he described as the "contract beds" i.e. beds for people of no means. At the moment they had 16 such beds. He said that the decision on who would get one of these contract beds is agreed with the nominating bodies within agreed criteria and if necessary the decision would be based on a clinical assessment. He agreed that patients in any nursing home would be entitled to apply for a subvention from the Health Board. He said that the dementia unit was there to provide confused patients with an area in which they could wander unimpeded, in contrast to the situation in ordinary nursing homes where such patients are totally sedated or confined to what he described as a Buxton chair. He said dementia was a condition found in about 10% of older people. Such people were previously cared for in psychiatric hospitals. He said that at the present time five of the twelve persons in the dementia unit were nominated by the Eastern Health Board.

In relation to the accounts he confirmed that any surplus must be applied to the promotion of the principal purposes as laid down in the Memorandum and Articles of Association, that no private profit is available and that any surplus would be directed at bringing charities operating facilities in older premises under the one roof in modern premises.

In reply to the Tribunal he said that the subject premises was the only charity operated by the Church of Ireland in Dublin and that the McGeough home was an independent trust. He confirmed that a Trustee of the McGeough home was also a Director of the Cowper

Care Centre Limited and added that it was appropriate that there should be a liaison between the two homes. He said that the Cowper Care Centre Limited would give a priority to the McGeough home if they needed a place and also to persons from the local area. Only five persons to date have come from the McGeough home or been nominated by a Church of Ireland or Protestant Charity. In addition he said that the home takes only adults in need. He confirmed that there was no one in the building who was not on medication of one kind or another.

He confirmed that the site on which the subject premises was built was compulsorily purchased by Dublin Corporation under the Derelict Sites Act. It was deemed to be landlocked but the appellants got a right of way from the McGeough home in addition to a metre of the garden at the back of the houses for a footpath. One access only exists from Cowper Road through the main gates of the McGeough home.

### **Respondents Evidence**

Mr Dineen gave evidence in accordance with his written submission in relation to the net annual value of the premises. Mr Dineen's assessment of rateable valuation was as follows:

Valuation Office Estimate of Rent/NAV      £100,000.00 (€26,973.80)

Gross Area      1,857sq.m. @ £53.80/sq.m. (~~€~~8.31) = £99,906 (€26,854.45)

RV @              0.63%                              = £630.00 (€799.94)

Or

Capital cost £2,850,000.00 in 1999 (~~€~~3,618,753.53)

Convert to 1988 levels using SCS construction cost index (index 122 to index 179)

£1,942,458.00 (€2,466,412.88)

[The SCS tender cost index only commenced in 1998.]

NAV @	6%	= £116,547.00 ( <del>€147,984.16</del> )
RV @	0.63%	= £734.00 ( <del>€32.30</del> )

**Valuation Office Valuation                      £630.00 (~~€799.94~~)**

He said that the location of a premises was very important in assessing the net annual value. He referred the Tribunal to two articles in his written submission referring to changes in the nursing home business moving from single operators to professional operators. In relation to his valuation at page 8 of his written submission, he said that he assessed the premises as vacant and to let at 1988 and estimated the rent an operator would pay for the property. In that context he said he has used the capital cost as a guide to what the rent might be as there was no rent on the premises. Mr Dineen said that the site cost must be taken into account in assessing net annual value. He said that in his opinion nursing homes were location sensitive and that because of the cost of sites in areas such as the subject, it was logical to assume that net annual values would also be greater. He said that the site was acquired compulsorily by Dublin Corporation under the Derelict Sites Act.

He said that his calculation of the rateable valuation on the subject premises in his second method did not include a site value. He said that if he was to add for the site and if you estimated the site rent at £100,000 (~~€126,973.80~~), which if the land value was £2m (~~€2.5~~) would represent 5% of that as a site rent, that would give £100,000 (~~€126,973.80~~) per acre as an assessment of the commercial site rent. Reduced to 1988 figures by 50% would give a site rent of £50,000 (~~€3,486.9~~) and an RV of £320 (~~€406.31~~) alone. Applying the figures to the valuation of the subject on his method 2, if you took £300 from the valuation for the site value, then the RV on the buildings only came to RV £330 (~~€19.01~~).

He said that the fact that Cowper Care Centre Limited paid a reduced rent to Dublin Corporation, should be disregarded, as it was peculiar to the occupier and did not affect



the calculation of net annual value. In the subject property the charges per patient are lower than normal as the site is subsidised and the capital expenditure was not borrowed but came from charitable sources. Funds for construction of the premises came from:

- Sale of Gascoigne House a nursing home in Camden Row
- Sale of investments in connection with Gascoigne House
- Millennium committee contribution
- Charitable contributions
- Bank borrowings

In relation to the charge per week as a basis for assessing net annual value, he said the question was not what is being charged but what could be charged. He considered that the rate charged in a nursing home was very relevant but not the actual rate. As a consequence of the funding of the construction of the home the centre could afford to charge lower rates. He further added that the fact that the subject had charitable status from the Revenue Commissioners had no implications for the assessing of the net annual value.

In relation to the size of the facility he said that the larger the premises the more efficient it was and therefore should attract a higher net annual value. He said that it was necessary to have at least 28 beds to provide for the recommended level of care

In response to Counsel for the appellant, Mr Dineen said that he valued many nursing homes every year and that he was aware of the market for nursing homes from conversations with nursing home operators. He did not accept that there was a general quantum principle that the larger the premises the less the rate per sq.m. In relation to quantum for nursing homes he said that he did not agree that quantum would necessarily apply and said that there was an optimum size for a nursing home in that a larger home was more efficient. He said that he had used two methods of valuation, both the comparative method of valuation and the contractor's basis and that the contractor's basis was a proper method for arriving at net annual value and that the method took the site value into account. He said that he accepted that two of his comparisons, at page 4 of his

written submission, were assessed on a value per bedroom basis but he said that he did not agree with that basis. In relation to the contractor's method he said that it was a check on the other method and he did not accept that it was an unreliable method in the subject case. He did not accept that the comparisons in Cork were not relevant but said that his comparisons presented a range of values and that it was for the Tribunal to determine the relevance.

In relation to his comparison 4, he said that it was going to be developed and a new nursing home provided on the site and that it was likely that the level of valuation established on the subject premises would be applied to any new facility developed.

He said that his comparison number 5 was the least relevant.

In relation to the question about the lack of access and its impact on net annual value, Mr Dineen said that there would be no business without access. He said that the rating hypothesis would assume that the current access continues and is permanent and unrestricted. He said that the appellant had not made a case to him on the impact of access on the net annual value of the subject premises

### **The Tribunal hearing resumed on 7 November 2001.**

The Tribunal addressed itself to the title and right of way issues at this resumed hearing.

Title documents were presented to the Tribunal in relation to the subject site and the Way Leave agreement. The Way Leave agreement indicated a grant from four sets of Trustees two of whom were Bank of Ireland and AIB respectively and two of whom were individuals connected with the Church of Ireland. The Grantee was the Cowper Care Centre Limited. Both documents were unsigned but the Tribunal was informed that the documents presented to it were the title documents and the substantive Way Leave agreement.

Mr Shields in further evidence to the Tribunal confirmed that the documents produced were the title document and the Grant of the Way Leave and that both documents had

been signed by the trustees of the appellant company. He confirmed that he knew the trustees and could confirm that the signatures were those of the named trustees.

Mr Shields confirmed in answer to the Tribunal that the grant of a right of way was particular to Cowper Care Centre Limited and was not generally assignable and that it was the intention in the drafting of the way leave to restrict it to the use of Cowper Care Centre Limited, being a charity. He also confirmed in relation to the lease from Dublin Corporation of the site, that it was stipulated that the site was to be used for charitable purposes.

Mr Feehan for the respondent objected to the introduction of the above described documents into evidence before the Tribunal as the documents were not signed.

The Tribunal allowed the matter to be introduced into evidence as the Tribunal had asked for the information to be produced to it and accepted that in the short time available, the appellant was unable to obtain the signed documents and undertook to provide same to the Tribunal when they were to hand. The Tribunal considered that it had been presented with *prima facie* evidence that the documents were signed.

Mr Bagnall, in further evidence to the Tribunal, amended his valuation taking into account the fact that the way leave agreement was particular to Cowper Care Centre Limited and that its grant could be withdrawn.

Mr Bagnall submitted that a tenant would look for a reduction in the net annual value of 50% taking into account the restrictions on the grant of the Way Leave. He therefore proposed an RV of £172.50 (€19). He said that he would not take into account the close relationship that existed between the parties in this instance and that in these circumstances a hypothetical tenant would only pay 50% of the rent and that a charitable tenant would have the same view. He accepted that he was not aware of the restrictive nature of the access until now. He also confirmed that there were no other access points that could be used for the subject premises.

Mr Dineen in further evidence in relation to quantum on the subject and the discount now being applied by Mr Bagnall, said that the essential point was that the problem with access was only a potential problem and had not arisen to date. The discount should be considered when the net annual value had been established and not at this stage. He said the right of way in itself in certain circumstances could be a rateable hereditament. In relation to the level of discount to be applied, Mr Dineen said that if access was denied the discount would be 100% but that in the context of *rebus sic stantibus*, no discount should be given in the present circumstances. He maintained that where there was a discretionary right of way, it should not affect net annual value in accordance with the rating hypothesis and that in such a situation it was likely that a rent would be re-negotiated subject to the access being available and that a bid might also be made for the right of way. He accepted that in a general sense the net annual value of a property, where there was an issue about the right of way, for example being held by a third party, would be less than that of a property without such constraints. However Mr Dineen submitted that in the rating hypothesis, the actual occupier and actual tenant are irrelevant as are any legal arrangements between them.

In relation to the grant of the right of way, Mr Feehan on behalf of the respondent, submitted that the McGeough home would be estopped from enforcing the covenant and that Cowper Care Centre Limited would never have been developed without the Way Leave. He submitted that as the Way Leave had been granted, a court would enforce a similar right on any successor to Cowper Care Centre Limited regardless of how they conducted their business. He submitted that there was no basis for an alteration in the appellant's net annual value.

### **Submissions on behalf of the Appellant in relation to exemption**

Mr Hickey BL on behalf of the appellant submitted that it was common case that the basis for exemption for charitable purposes in Irish law was in the proviso to Sec. 63 of the Poor Relief (Ireland) Act 1838. The seminal case is the Barrington's Hospital case

1957 IR. The subject fell within the parameters laid down by Kingsmill Moore J. in the above judgment. Firstly in the subject hereditament:

- Persons received care.
- All were either ill, infirm or aged and distressed.
- 41% of patients were fully assisted.

In the Barrington's Hospital case it was held that the terms "used exclusively for charitable purposes" included a hospital even if not used for the poor. He submitted that the subject premises although not a hospital was a nursing home and provided some degree of medical care for all residents. He submitted that a trust for the care of the sick is a charity. He submitted that even patients paying the most in the subject premises were in receipt of some subvention. In accordance with Barrington's judgment he argued that people receiving care in the subject are properly an object of the charitable purpose of the statute and the case law.

#### **Submissions for the Respondent in relation to exemption**

Mr Dan Feehan BL on behalf of the respondent submitted that the situation in the subject hereditament was fundamentally different to that pertaining in the Barrington's Hospital case. In the subject case, he said that although some patients are objects of charity, the nature of the institution is such that it provides care for citizens nominated by the Health Boards. If one is entitled to assistance from the Health Board it is not a charitable entitlement but a statutory one. He referred to the evidence of the appellant that 16 of the 44 residents in the centre were nominated by the Health Boards and that while Mr Shields has a possibility of refusal, it was clear that they accept a certain number of patients on the basis of subvention from the Health Boards and that the service provided was not, in respect of those patients, a charitable service but was merely facilitating the Health Boards in meeting their statutory requirements. Therefore the subject premises could not be looked at in the same light as Barrington's Hospital. The whole basis of Cowper Care Centre Limited, was that they provided services to the State as well as, incidentally, providing services to members of their community in certain circumstances. Therefore the premises was not *exclusively* used for charitable purposes as required by the statute and was therefore a rateable hereditament.

### **Findings and Determination**

The Tribunal has considered both the Appellants and Respondents précis of evidence and the submissions of Mr. Hickey B.L. for the Appellant and Mr. Feehan B.L. for the Commissioner. The Tribunal has also noted the evidence of Mr. Shields and Mr. Bagnall for the Appellant and Mr. Dineen as Valuer for the Respondent. The Tribunal has carefully considered the arguments presented and has noted the submissions of Counsel on the issue of exemption.

Notwithstanding the fact that the parties chose to argue the issue of quantum first at the commencement of the hearing and left their arguments as regards exemption to its end, the Tribunal feels that this determination may be set out in more concise terms when dealing with the issue of exemption at first instance.

Applications for exemption upon grounds similar to those in this present appeal have been made to the Tribunal on many occasions. It is common case when dealing with appeals seeking exemption on the grounds of user for "charitable purposes" that one must go back to the benchmark case of Barrington's Hospital and City of Limerick Infirmary - v- the Commissioner of Valuation and to the decision of Mr. Justice Kingsmill Moore delivered in the Supreme Court in 1953. Mr. Hickey has relied upon the decision as laid down in that case upon the basis that it deals with a similar property to that in the present case. He further submitted that the points dealt with by Mr. Justice Kingsmill Moore affectively cover the circumstances grounding his present application. Mr. Hickey has cited extracts from Mr. Kingsmill Moore's judgement deemed relevant to the present case. He has argued that, though not a hospital, the subject premises is one where members of the public are receiving medical care and attention. Mr. Hickey has gone on to quote from the judgement of Mr. Justice Kingsmill Moore when seeking to establish that the subject premises need not satisfy the Tribunal as to its use "*exclusively for charitable purposes*".

Mr. Feehan has suggested to the Tribunal that the provision of beds under contract to nominees of the Health Board takes the subject out of the ambit of "charitable works" as defined.

Having considered the arguments on this point and having noted the particulars of the learned Judge's decision in the Barrington case, the Tribunal is minded to agree with the contentions of Mr. Hickey in this respect.

The Tribunal has noted the existence of a Lease between Dublin Corporation and the Trustees of the Cowper Care Centre Limited, and a Way-Leave agreement had between Cowper Care Centre Limited and the Trustees for the McGeough Home. The composition of these documents and the constraints placed upon Cowper Care Centre Limited by virtue of the terms and conditions, covenants and restrictions contained within the lease and the Way-Leave agreement, deprive the subject property of an open market rental value and are consistent with a determination on the part of all the parties concerned to ensure that the subject premises continue for the foreseeable future to be operated as a charity and for the provision of charitable works as in the various statutes so defined. This evidence in the view of the Tribunal serves to corroborate the arguments of Mr. Hickey even though no direct connection is adduced.

In the present case the Appellant has submitted that the Memorandum and Articles of Association are essentially charitable in nature and this has not been disputed by the Respondent.

Taking the foregoing points together the Tribunal is of the view that the Appellant's activities and aims as outlined in this case are "charitable purposes" as defined. Accordingly, the Tribunal determines the subject premises to be exempt from rateable assessment.

By virtue of the foregoing the Tribunal makes no findings as regards the quantum on the premises.