

Status of Judgment: Distributed

Appeal No. VA01/3/082

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

Mrs. Veronica McKiernan

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Crèche at Lot No: 222a Clonkeen Road, Townland: Deansgrange, ED: Cabinteely Pottery, RD: Foxrock, County Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairman

Michael Coghlan - Solicitor

Member

John Kerr - MIAVI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF MARCH, 2002**

By Notice of Appeal dated the 17th day of October 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €152.37 (£120) on the above described hereditament. The Grounds of Appeal as set out in the said Notice of Appeal are that;

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

The oral hearing took place at the Tribunal's offices in Dublin on 11th February 2002.

Mr. Eamonn Halpin, Chartered Valuation Surveyor, represented the appellant and Mr Christopher Hicks a District Valuer in the Valuation Office with 27 years experience represented the respondent. Both valuers adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence in chief given under oath.

The Property

The property comprises a crèche in a bungalow type structure, set well back from the public road. There is a large surfaced parking area to the front and an open play area behind the building.

The premises are located close to the end of Clonkeen Road near to its junction with the N11. Having been in residential use until 1997, the property is currently in use as a crèche and Montessori school.

Agreed Area 302 sq.m. (Gross external)

Valuation History

The premises was revised in February 2001 at €168.88 and reduced at First Appeal in September 2001 to €152.37.

Appellant's Case

The appellant set out his estimate of the rateable valuation on the subject premises as follows:

Estimated NAV (1988 tone):

Creche / Montessori 302 sq.m. @ €34.17 (£29.61) /sq.m.

Or (3,251 sq.ft. @ £2.50 /sq.ft.)

NAV = €10,319.34 @ .63%

RV = €65

Mr Halpin opened his evidence by adopting his precis as his evidence in chief. He set out his valuation considerations as follows:

1. The buildings comprise of a former residential bungalow and they are in a residentially zoned area.
2. The current use as a crèche and Montessori is one of the few uses other than residential that is permitted under this residential zoning.
3. That the use of the buildings as a crèche and Montessori at this residential location does not greatly increase the NAV capacity of the property.
4. That the estimated NAV applied by the Commissioner @ approx. (£64.55/m²) €81.96/m² (£6/sq.ft.) on a gross external basis is excessive in view of the broad basket of similar type residential properties that are used for similar purpose and that have been recently reviewed and appealed.
5. That in the recent past the Commissioner has sought to increase the rate per m² applicable to the valuation of crèches and Montessori schools in the Dun Laoghaire Rathdown Districts.
6. That the Commissioner must apply a uniform approach to the valuation of all similar type properties in broadly similar areas in order to comply with the Valuation Statutes which envisage one uniform valuation as outlined in the preamble to the 1852 Act.
7. That the subject premises is not comparable with modern purpose built crèches that are located in commercial areas where other uses such as offices or retail would be permitted.

8. Mr. Halpin contended that the valuation on the property ought to be reduced to reflect the restriction on numbers permitted to attend the crèche (47).

Under cross examination Mr. Halpin contended that the premises was different from purpose built facilities such as were described within the list of comparisons adduced. He went on to explain that planning permission was required for the subject premises to be used as a crèche. One objector in particular was hostile to the change of user, hence the restriction on numbers. Mr. Halpin contended that a reduction on valuation was appropriate in the circumstances.

In support of his valuation he introduced seven comparisons, details of which are set out in Appendix 1 to this judgment.

Respondent's Case

Mr. Hicks adopted his own précis as his evidence in chief. He went on to outline and highlight the relevance of his own comparisons.

When discussing a valuation and in particular the contentions of Mr. Halpin, Mr. Hicks stated that in his view rates of £2.50 (€3.17) per sq. ft.net were industrial levels and not appropriate for crèches such as the subject. He stated that the contentions of Mr. Halpin as regards numbers, was a new feature introduced before the Valuation Tribunal.

Mr Hicks on behalf of the respondent set out his valuation as follows:

302 sq.m @ €88.08 / sq.m = RV. €52.37.

In support of his valuation he introduced five comparisons as set out in Appendix 2 to this judgment.

Under cross examination Mr. Hicks contended that if the owner of the subject premises was unhappy with the restriction to 47 attendees then an appeal of this restrictive condition in the planning permission could have been mounted.

Mr. Hicks in his oral evidence stated that he felt the appellant was unhappy with the lower figure as provided for in the planning permission granted and he had allowed for this in his valuation. Mr. Hicks said that it was possible that planning could in the future be granted for a higher number of children. Mr. Hicks considered that Mr. Halpin was applying a very low level of valuation to the subject premises and that it was akin to the levels applied to industrial buildings. Mr. Hicks stated that crèches operating from garages or rooms and such like may have had these low levels but you could not apply these to the modern crèche.

Mr. Hicks stated the crèches in Dun Laoghaire/Rathdown would be regarded as being in the upper bracket for valuation purposes.

Findings

Having carefully considered all evidence the Tribunal makes the following findings.

The property consists of a purpose adapted detached bungalow with planning for Crèche/Montessori. The property was originally part crèche, part residence. Planning was granted for total use of the property as a crèche/Montessori. The Health Board would allow for 69 children, but the planning permission granted restricted the number to 47 children. A local objected to the planning application and continues to monitor the crèche to ensure that the planning regulations are being adhered to.

Although the area is zoned residential, Mr. Halpin did agree when questioned, that it was a good place to have a crèche. There was a high density of population in the area and it was likely the appellant would draw her clientele from the area. Mr. Halpin for the appellant complained in his oral evidence that the Commissioner was not applying a uniform tone of the list as required by the Valuation Acts.

Determination

Both précis of evidence stated that the planning permission restricted the numbers in the crèche to 35. In the oral evidence it was adduced that the figure is in fact 47, but the crèche has possibilities of even higher capacity. It was not clear whether from time to time this figure of 47 was also exceeded. Mr. Halpin or Mr. Hicks could not give a definitive answer to this question.

The Tribunal rules require that précis be exchanged prior to the hearing so that among other things matters of fact such as these can be agreed. There is no point in debating such matters before the Tribunal where they are a matter of fact.

It is our request that the appellant's and respondent's valuers contact each other before the hearings to clarify matters that might be in dispute. It is a waste of the Tribunal's time to have to hear a debate on issues that it cannot possibly resolve. As the Tribunal members study the précis prior to the hearing it is a waste of the members' time if the facts therein are not accurate.

Having carefully considered all the evidence and arguments adduced at this appeal, the Tribunal is of the opinion that this property is a fully adapted crèche/Montessori. It conforms to modern day regulations.

In the light of this evidence the Tribunal is of the view that the appropriate valuation of the hereditament should be as follows.

Agreed Measurement

302 M² (gross external) @ £39.38 / €50.57 = €15,272.14

(3251 Sq. Ft @ £3.70 / €4.70)

NAV = £12,028.70 / €15,272.14

RV @ 0.63% = £75.78 / €6.22

Say €6

The Tribunal determines the rateable valuation of the subject premises to be €6.