

Appeal No. VA05/1/018

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Brindley Manor Fed. Nursing Homes Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Nursing Home at Lot No. 6A.10AB/1, Convoy Townparks, Convoy, Stranorlar, County Donegal

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JULY, 2005

By Notice of Appeal dated the 19th day February, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €381.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"On the basis that the RV is excessive, inequitable and bad in law."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 26th April, 2005. The appellant was represented by Mr. Eamonn Halpin, B.Sc. (Surv.), M.R.I.C.S., M.I.A.V.I., and the respondent by Mr. Damien Curran, M.R.I.C.S., A.S.C.S., B.Sc (Surv), a Team Leader in the Valuation Office. Both parties, having taken the oath adopted their respective précis, which had previously been received by the Tribunal, as their evidence-in-chief. From the evidence so tendered the following emerged as being the facts relevant and material to the Appeal.

The Property

The property comprises a single storey, detached purpose built Nursing Home, trading as Brentwood Manor Nursing Home. All of the accommodation is located on the ground floor and was developed to provide a 46-bed specialist Dementia Unit. The structure is finished to a good modern standard. Though some disagreement prevailed at the hearing in terms of the actual designation of areas within the complex, it was generally agreed that in addition to the 46 Bedrooms, there are 4 Dining Rooms, 6 Sitting Rooms, an Entrance Hall, Kitchen, Laundry, 3 Offices, a Visitor's Room and a dedicated Chapel.

Location

The property is located on the outskirts of the village of Convoy, Co. Donegal, approximately 25 miles from Donegal town and 5 miles from Stranorlar.

Tenure

Freehold.

Services

The Complex is connected to all mains services.

Valuation History

The newly built property was inspected by the Revision Officer in March 2004 and the RV was assessed at €381.00 on 12th July, 2004. This was appealed on 18th August, 2004 and the Commissioner issued an unchanged RV of €381.00 on 25th January, 2005. This was appealed to the Tribunal on 19th February, 2005.

Special Note:

At the commencement of the hearing Mr. Halpin noted some changes to his précis as follows:

1. He provided the mileage distance from the subject to Donegal town and Stranorlar, as noted above.
2. He noted changes to the accommodation, reflected in the description above.
3. He noted, and Mr. Curran agreed, a correction on the RV to read €354.00 based on a Net Annual Value of €70,732 resulting from an agreement reached between Mr. Halpin and the Valuation Office subsequent to the issue of the First Appeal decision, reflecting agreed area reductions calculated on the property.

Also at the commencement of the hearing, Mr. Curran, on behalf of the Valuation Office, questioned the introduction of the Chapel as a matter for consideration proffered by Mr. Halpin on page 7 of his précis, indicating that a relief now being sought by Mr. Halpin and his client on same was not raised during First Appeal and accordingly, Mr. Curran believed, same could not now be introduced for consideration by the Tribunal. The Tribunal noted Mr. Curran's concern.

Appellant's Case

Mr. Halpin summarised the contents of his written précis and indicated the following:

- a) He believed that the design of the Brentwood Nursing Home was unique, set out in four wings, each with its own Sitting Room, Living Room and Dining Room. He indicated that all of the patients resident at the Nursing Home were free to amble throughout the complex and the floor plan was designed with their specific needs in mind, including among other features: extra wide corridors, relaxation alcoves, and corridor circulation patterns designed so as to ensure that patients did not get lost and would always return to a designated location, at the conclusion of their walking exercises.
- b) He contended that the design and enlarged common area facilities of the subject property resulted in increased heating, lighting and other associated management and operating costs and these incremental costs were not recoverable through charges applying to the accommodation of the patients.
- c) That there were other incremental costs associated with compliance with Health Service Executive Guidelines and market expectations, which in this case could not be levied on the patients.

- d) That the application of more stringent regulations on newly constructed Nursing Homes, when compared to those which pre-dated the introduction of aforementioned regulations and guidelines, has rendered the returns on investment much less than hitherto for the Nursing Home sector.

Cross-examination

Mr. Curran queried the “tone-of-the list” and asked Mr. Halpin to confirm that the Net Annual Value was assessed on a rate per sq. metre. Mr. Halpin accepted that the said “tone” for Co. Donegal was employed correctly in this case and also acknowledged that the subject property may be described as a Nursing Home, albeit with specific reference to its specialist nature as a dementia unit.

Mr. Halpin also agreed under cross-examination to exclude his reference to **VA04/3/020 - Brookfield Care Services Ltd.**, as he was no longer relying upon same in support of his evidence. Mr. Curran in response referred to pages 6 and 7 of the said Judgment which, he contended, adopted the principle of employing a gross area rate per sq. metre and that, in his view, the Tribunal did not accept a request for adjustment based on use of the facility for patients suffering from dementia, but did support a reduction in the RV to reflect en-suite conditions. Mr. Halpin also indicated to Mr. Curran that in reviewing the aforementioned Judgment, his preferred method of valuation would be initially to employ a rate per sq. metre but said he would also adopt an approach to valuation which would refer to the number of beds in the facility, the area, location and quality of finish in the property, particularly if there were no useful or similar so-called comparable properties which the Act requires to be considered.

Mr. Halpin also stated that he was not sure if the comparisons referred to in Mr. Curran’s précis of evidence contained Chapels and acknowledged that the exemption previously granted by the Tribunal in **VA04/3/041 – Sisters of Nazareth** related to a Chapel which was not part of the particular property being rated. Mr. Halpin cited Schedule 4, paragraph 7, of the Valuation Act, 2001 as his grounds for seeking relief or exemption for the Chapel, but differed with Mr. Curran’s interpretation of the words employed in the Act, namely “exclusively used”. Mr. Halpin again confirmed that he was prepared to accept the Valuation Office approach using the comparisons method based on a square metre area basis. Mr. Curran identified a difference in the number of bedrooms between the respective submissions

in this case, but acknowledged that this was not material as the rate per sq. metre was the appropriate method to calculate the NAV. Both Valuers acknowledged that the variation in the room numbers, as set out in their respective submissions, was not particularly relevant, but in general terms it would appear that there were 33 single rooms and 5 double rooms resulting in 43 beds in total.

Referring to the Valuation Office comparison No. 3, Mr. Halpin accepted its description as an extended, urban located and modified residence but was reluctant to acknowledge that the subject Nursing Home at Convoy was superior to McNulty's Nursing Home at Stranorlar.

Mr. Halpin, in response to a question from the Tribunal, expressed his view that the number of beds was one basis which a hypothetical tenant would consider in his calculation of rent payable on a Nursing Home and that his view was that the proper approach to calculate NAV was to follow the provisions set out in Section 48 of the 2001 Act and then refer to Section 49 to adopt the comparative method of Valuation. He also confirmed that visitors to the Chapel within the subject property are expected to seek permission to do so at the reception area of Brindley Manor Nursing Home.

Mr. Halpin contended that the Valuation Office in the past established NAV in the first instance and then reduced it to an equivalent rate per sq. metre. He also expressed the view that it costs more to run and manage the subject specialised dementia facility than another Nursing Home, which might be compared by reference to a rate per sq. metre. The Tribunal put it to Mr. Halpin that the evidence being relied upon was that based on a rate per square metre; if he was going to use the number of beds as a method to determine the NAV then he would have to produce evidence to show that the Valuation Office used this approach; in relation to his contention that in the past the Valuation Office established an NAV in the first instance and then reduced it to an equivalent rate per square metre no evidence was given as to how the NAV was established in the first place. The respondent submitted that earlier Tribunal decisions relied primarily on the rate per square metre method and the evidence available seems to indicate this.

Respondent's Case

Mr. Curran then reviewed his submission. He affirmed that the first two of his three comparisons are in the same ownership as that of the subject. He confirmed that all were valued on a rate per sq. metre basis, which he contended was a methodology accepted previously by the Valuation Tribunal in **VA04/3/020 - Brookfield Care Services Ltd.**, and also **VA04/02/035 – First Citizen Residential Ltd.** He argued that the Chapel within the subject is not available exclusively for public worship and accordingly should not be exempted. He referred to the width of the corridors in the subject and in particular to plans, which he provided, which did not appear to support or show a difference in width in the corridors of the subject and that of the other Convoy unit, his comparison No. 2, which apparently is not a specialised dementia unit. He acknowledged that the subject property provides large bedroom areas but also stated that large areas were similarly dedicated to kitchens, dining areas, office or administration areas etc.

Cross-examination

In reply to a question from Mr. Halpin, Mr. Curran acknowledged that paragraph 3 of page 7 of the **Brookfield Care Services Ltd.** Judgment was specific to that property, but that said, he believed that the methodology adopted may be relied upon for other similar circumstances. Mr. Halpin reminded Mr. Curran that the **Brookfield** facility was partly used only for dementia requirements and that the subject, unlike other Nursing Homes, was not designed or constructed to traditional design criteria. By such reference Mr. Halpin urged the exercise of caution by Mr. Curran in his application of the term of building similarity between the subject and other Nursing Homes. Mr. Halpin stated that investors in Nursing Homes seek to make a profit and asked Mr. Curran how the Valuation Office would consider a situation if a profit & loss account were not to be considered by the investor as part of his consideration criteria. In reply, Mr. Curran stated that the Commissioner of Valuation does not consider the profit & loss of Nursing Homes in assessing a fair RV and Mr. Halpin in reply drew attention to a potential 70% premium, which he contended that a hypothetical tenant might be required to pay based on Valuation Office calculations to assume only three additional bedrooms when such criteria were applied to the adjoining Nursing Home facility. Mr. Curran responded by referring to the Valuation Act, 2001 and the basis by which the Net Annual Value is to be calculated and reiterated that the comparisons in his précis of evidence were relevant. Mr. Curran would not agree that a hypothetical tenant would look at the number of beds within the facility or the rate being paid per week by the patients.

The Chairman noted at this point the repeatedly expressed disappointment of the Tribunal with Mr. Curran's failure to provide photographic images of either the subject relevant property and/or comparison properties in support of evidence adduced at hearings. Mr. Curran was informed that the Tribunal considers photo images very useful in terms of submissions and considerations being made by the Tribunal.

Mr. Curran, in reply to Mr. Halpin, indicated that he did not see an anomaly with an RV of €81 on the subject when compared to the RV of €10 on the adjoining Convoy Nursing Home property, but did accept the principle of quantum, whereby in reference to a hypothetical example cited by Mr. Halpin of two similar units, one of 10,000 sq. metres and the other at 20,000 sq. metres, he would adopt an appropriate discount on the rate per sq. metre on the latter. Mr. Curran again reiterated that the valuation task in this circumstance is for rating purposes and that the Net Annual Value is established by other means than that suggested by Mr. Halpin.

Mr. Curran provided the Tribunal with a clarification on various points set out in his précis and specifically claimed that the calculated RV in his précis of evidence should read €54. Mr. Curran also confirmed that his comparisons were not subjected to Tribunal Appeal; that there are very few Nursing Homes for comparison purposes in Co. Donegal; that the subject, measuring circa 2070 sq. metres, should not in his view, qualify for a quantum allowance; he did not know if the Chapel served the needs of parishioners but was sure that it was not being used exclusively for public use and that access to same was through private Nursing Home property.

Mr. Curran stated, in further reply to the Tribunal, that he relied upon the tone-of-the-list which of itself in his opinion did not take into account the number of beds in a Nursing Home facility and he referred to earlier Tribunal decisions which, he indicated, had relied primarily on an assessment calculated on a sq. metre basis.

Floor plans submitted at the Hearing prepared by MH Associates, Architects & Surveyors, Letterkenny, Co. Donegal, described the subject as a proposed EMI (Elderly Mentally Infirm) Unit, and a second floor plan copy drawing, prepared by the same Architects and handed in at the Hearing, described the adjoining Nursing Home facility as a proposed Nursing Home.

Some discussion ensued as to whether an EMI Unit design would fundamentally differ from a traditional Nursing Home design. Mr. Curran did not concur with Mr. Halpin's view that the subject relevant property was purpose built to a specific design consistent with the long term care of elderly, mentally infirm persons, and Mr. Curran concluded that he was not aware of any differences in regulations or requirements to operate an EMI Unit from a standard Nursing Home care facility.

Findings

The Tribunal has carefully considered the evidence adduced, the written and oral submissions together with the arguments made at Hearing and finds as follows:

1. The subject property is a wholly dedicated EMI Unit and all of its resident patients suffer from dementia.
2. By reference to the copy floor plans provided at the Hearing, there would not appear to be a significant difference in the design width of the internal corridors of the subject compared with the adjoining Nursing Home facility.
3. In this particular case, the number of bedrooms is not the primary basis to determine Net Annual Value.
4. The floor layout and circulation pattern of the pedestrian corridors, combined with the offset alcoves and landscape treatments, as outlined on the proposed plan overall layout drawing prepared by M H Associates, suggest a design specific unit for the care of dementia sufferers.
5. No legal submissions were made or authorities cited to support the claim that the Chapel should be exempt.

Conclusions

In considering all of the evidence and submissions referred to earlier and attached herewith, and in particular:

- a) Appendix 1 - the appellant's comparisons;
- b) Appendix 2 - the respondent's comparisons;
- c) Appendix 3 - MH Associates' proposed plan overall layout for the proposed EMI Unit, Drawing No. 18800-150 dated August 02.
- d) Appendix 4 - MH Associates proposed floor plan for proposed Nursing Home at Convoy, Drawing No. 6799-002 "E" (date illegible), but noting Revision B dated December 1999.

- e) Appendix 5 - North-Western Health Board copy of Certificate of Registration indicating 33 No. single rooms and 5 No. double rooms with a capacity to accommodate 43 persons, dated 24th July, 2003.

and all of the arguments adduced at Hearing, the Tribunal is of the view that:-

- a) The approach adopted by the Commissioner of Valuation was correct and in accordance with legislation.
- b) The “tone-of-the-list” was given appropriate consideration by the Commissioner of Valuation.
- c) The Commissioner of Valuation correctly included the Chapel within the area of the relevant property being rated.
- d) The appellant was correct in identifying the rather unique nature of the facility, being a fully dedicated EMI Unit.
- e) The appellant was correct in indicating that the floor plan layout facility and design reflected the particular care needs of elderly, mentally infirm patients.
- f) The appellant was also correct in seeking to identify a certain reduction in value which a hypothetical tenant might adopt if considering the amount of rent to pay on the subject given its unique function as an EMI Unit if comparing to other nursing care facilities not bearing a commitment to such specialty carer services.
- g) The tone-of-the-list cited by the Valuation Office did not adequately take this difference in function into account.

Determination

The Tribunal acknowledges the considerable effort and well reasoned arguments committed and proffered by both Mr. Halpin and Mr. Curran in this case and recognises the scope of the challenge brought to bear on both parties to reach a fair and equitable Rateable Valuation on this property and the Tribunal thanks both gentlemen for their efforts.

The Tribunal is satisfied that the subject property has a unique function with the EMI unit while other nursing homes do not have this speciality and the Tribunal notes that the respondent did not take this difference in function into account. For this reason, and bearing all of the foregoing in mind, the Tribunal is of the opinion that the RV of the subject property should be reduced by an equivalent discount of 10%, calculated as follows:

2,070 sq. metres @ €34.17 per sq. metre = NAV €70,731.90			
Less 10% discount	=	<u>€7073.19</u>	
Adjusted NAV	=	€63,658.71	
@ 0.5%	RV	€18.29	
Say RV		€18	

And the Tribunal so determines.