Appeal No. VA08/5/053

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Griffeen Valley Nursing Home **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 441790, Nursing Home at Esker Road, Lucan, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Aidan McNulty - Solicitor	**Member**
Veronica Gates - Barrister	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 1ST DAY OF DECEMBER, 2008

By Notice of Appeal dated the 20th day of June, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €120,000 on the above described relevant property.

The grounds of Appeal are set out in a letter attached to the Notice of Appeal, a copy of which is attached at Appendix 1 to this Judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 17th day of November, 2008.
2. At the hearing the appellant was represented by Mr. Thomas Davenport, ASCS, MRICS, of Lisney Estate Agents, Auctioneers & Surveyors. Mr. Christopher Hicks, a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation.

The Property Concerned

3. The property concerned is a single-storey, purpose-built nursing home constructed in 1994 and extended in 1998. The premises, which is located on the east side of Esker Road at its junction with Griffeen Road approximately one mile from Lucan Village, is registered in accordance with the Health (Nursing Homes) Act, 1990 and is licensed to provide accommodation for 25 residents. The building is rectangular in configuration and is constructed around an enclosed courtyard.

Accommodation

4. The accommodation includes a reception area, living room, lounge, reading room/conservatory, kitchen, 22 bedrooms and other ancillary facilities. The bedrooms consist of:
    - 10 en-suite single rooms
    - 9 single rooms with wash hand basins
    - 3 en-suite double rooms
5. The agreed area of the building measured on a gross external area basis is 788 sq. metres.

Valuation History

6. As part of the South Dublin revaluation programme a valuation certificate was issued on 5th June, 2007 to the effect that it was proposed to value the property concerned in the sum of €122,500. Following representations by Mr. Davenport a valuation certificate in final form was issued on 12th December, 2007 at a rateable valuation of €120,000. No change was made following an appeal under section 30 of the Valuation Act, 2001 and in due course an appeal against the decision of the Commissioner's was made to this Tribunal.

The Appellant's Evidence

7. Mr. Davenport in his evidence outlined in some detail the legislative and regulatory provisions which currently govern the operation of nursing homes in this State. These requirements, Mr. Davenport said, set down rigorous standards in relation to accommodation and nursing care, which must be met in order to obtain the necessary certificate of registration issued by the Health Service Executive.
8. The 2007 Health Act established the Health Information and Quality Authority (HIQA). One of the functions of this new authority is to set down standards on safety and quality in relation to services provided by nursing homes as defined in section 2 of the Health (Nursing Homes) Act, 1990. In March, 2008 the HIQA published new national standards for residential care settings for older people. These new standards (32 in number) when applied will, Mr. Davenport said, have serious repercussions in relation to the operation of the property concerned. Firstly, it will reduce the number of licensed rooms leading to a loss of at least three bed spaces and secondly, considerable expenditure will be necessary in order to ensure compliance with these new standards. A hypothetical tenant for the property concerned at the relevant valuation date would be aware of these new standards and the financial effect their implementation would have on the business and would take this into account, Mr. Davenport said, in arriving at an opinion of rental value.
9. Mr. Davenport said that there were currently eight nursing homes in the South Dublin local authority area, all of which were owner-occupied. There was therefore no market rental evidence available as the basis for determining net annual value. To the best of his knowledge the assessments of five nursing homes, including the subject property, were under appeal to this Tribunal. Of the other three no representations were made in respect of two properties, whilst the assessment of one had been agreed at first appeal stage. In such circumstances it could not be said that there existed a valuation tone for valuing nursing homes in the South Dublin area.
10. In the absence of market rental evidence, Mr. Davenport submitted that the most appropriate method of valuation in order to assess the net annual value of the property concerned, was the receipts and expenditure or profit method of valuation. Mr. Davenport said he had obtained the trading accounts of the subject property for the years ending 31st August, 2004, 2005 and 2006 and an analysis of these indicated the following:
    a. Wages and salaries account for 68% of turnover
    b. A net profit of approximately 6.7%
    c. An average annual income of €866,965

11. In evidence Mr. Davenport introduced three valuations - two based on the profits method of valuation, and one using the contractor's basis, details of which are set out in Appendix 2 attached to this judgment. At the hearing Mr. Davenport said his preferred valuation was that annotated "method II" which was based on an average turnover of €819,000, and using national average figures for staff and non-staff costs as per the Horwath Bastow Charleton Annual Private Nursing Home Survey. This gave a net annual value of €74,000.
12. Under examination Mr. Davenport agreed that the new standards were not yet in force and indeed that it could be several years hence before they were fully implemented. When asked about how he arrived at his figure of 50% for the tenant's share, Mr. Davenport said he felt that this was the appropriate figure required to encourage the tenant to take on the risk of operating the business. He further agreed that his preferred method of valuation relied heavily on the findings of the Horwath Bastow Charleton survey, which he considered gave a broad picture of the nursing home business in this country. When asked how many nursing homes had participated in the survey carried out by Horwath Bastow Charleton, Mr. Davenport said he did not know. He said that in arriving at his opinion of net annual value he did not have regard to the assessments of the three nursing homes which were not under appeal to this Tribunal.

The Respondent's Evidence

13. Mr. Hicks having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal and Mr. Davenport as being his evidence-in-chief.
14. Mr. Hicks in his evidence said that in January, 2007 the Valuation Office had contacted the operators of all 8 nursing homes in the South Dublin local authority area seeking information in relation to occupancy levels and weekly charges. This information, he said, was then analysed and indicated that occupancy levels ranged from 95% to 85% and that the weekly charge in "one middle-of-the-market nursing home" in 2006 was €740 per week for a bed in a twin room and €780 per week for a single en-suite room. Based on the information thus provided the Valuation Office have prepared a "valuation scheme" along the following lines:

Number of beds x average annual charge x occupancy level, thus giving an estimate of potential annual turnover. The net annual value of the nursing home in question was then arrived at by applying an annual rate of return to the potential turnover figure which varied from 11% to 16%, depending upon the size and quality of the facility being valued. The 11% return would be applied, Mr. Hicks said, to the lower end of the market which were mainly converted dwelling houses with a limited number of bed spaces, while 16% would be applied to modern purpose-built nursing homes affording excellent accommodation and facilities with a large number of bed spaces.

15. Mr. Hicks said the Valuation Office also had regard to the Horwath Bastow Charleton survey which was based on the returns received from about 160 nursing homes out of a national total of 440. The Valuation Office knew of only one or two nursing homes which were rented, but these were located outside the South Dublin local authority area.
16. Under examination Mr. Hicks said that all the nursing homes in the South Dublin area were valued using the model derived from the Valuation Office analysis of the information provided to them. The fact that the resultant figures were subsequently devalued on a square metre basis did not mean that they were valued on that basis. Mr. Hicks agreed that in some instances the operators may not have fully understood the import of the information that they were requested to provide, and indeed, that some of the information was not supported by accounts prepared in accordance with statutory audit requirements because of the nature of some of the operations. Mr. Hicks also agreed that in those instances where audited figures of turnover were available it would be more appropriate to use the figures of actual turnover contained therein, as against an estimate of turnover based on the Valuation Office formula.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced, and finds as follows:

(1) The statutory basis of valuation is set down in section 48 of the Valuation Act, 2001, wherein at section 48(3), the net annual value of a property is defined as being, *"the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other*

taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant”.

(2) The onus of showing that the valuation of the property concerned, appearing in the valuation list, is incorrect is on the appellant.

(3) Nursing homes by their very nature are specialised properties which are seldom if ever let on the open market. The nursing home sector is highly regulated and all homes must achieve and maintain certain minimum criteria and it is likely that these will be heightened in the short to medium term.

(4) Section 48 requires that the property concerned be valued in “its actual state” *(rebus sic stantibus)*. In other words the property must be valued as it was found on inspection – no assumptions can be made as to what state it might be in next year or beyond, nor what state it was in last year.

(5) The key income drivers for nursing homes are occupancy rates and fee rates. The major cost drivers can be divided into staff costs and non-staff operating costs. Underpinning the income stream are the standards of accommodation and care and the demand for care beds.

(6) Under rating law and practice there are four established methods of valuation and given that all the nursing homes in the South Dublin local authority area are individual trading concerns, it follows that the most appropriate method of valuation is one based on their earnings (potential or actual) on the assumption that there will be a continuation of trading.

(7) Mr. Davenport’s preferred method of valuation was a shortened version of the receipts and expenditure method based on an estimated turnover of €819,000 per annum and using average annual staff and non-staff operating costs extracted from the Horwath Bastow Charleton survey.

(8) The Valuation Office had valued all nursing homes in the South Dublin area using a formula derived from information obtained from the nursing home operators in January, 2007. Whist the information relating to occupancy rates and weekly charges is based on actual figures, the rate of return which varies from 11% to 16% is very much a subjective exercise and represents a wide variance which was not fully explained by Mr. Hicks. It would have been helpful to the Tribunal if Mr. Hicks had provided in evidence more detail in relation to the information relied upon in regard to turnover, occupancy rates and the rationale behind the annual rates of return applied in order to arrive at net annual value.

(9) In his evidence Mr. Hicks introduced as comparisons details of the assessments of the other 7 nursing homes in the South Dublin local authority area. Of these, four are subject to as yet unheard appeals to this Tribunal. In regard to the other three, one comparison, that is comparison No. 3, was subject to an appeal to the Commissioner of Valuation at which stage its valuation was reduced by agreement from €80,000 to €70,000. The ratepayer in this instance was represented by a well known rating consultant. Neither of the other two assessments was the subject of an appeal to the Commissioner, but representations at draft certificate stage were made in relation to comparison No. 2, which like the subject property, is an older type purpose-built facility.

(10)As of now there are three assessments in the Valuation List and to some extent these are representative of an emerging tone, which will only become established once the appeal process is completed. In the circumstances this evidence must be treated with a degree of caution.

(11) Having considered the details of the valuations put forward by Mr. Davenport and Mr. Hicks, the Tribunal in principle prefers Mr. Hicks' approach but with some reservations. Firstly, in those instances where actual turnover is available this is to be preferred over estimated figures, unless it can be shown that there are valid and sustainable reasons to contend that it does not represent the level of turnover that could be achieved by a reasonably efficient operator. Secondly, the valuation is particularly sensitive to the annual rate of return applied and a variance of between 11% and 16% is quite significant, particularly in the absence of more detailed information as to how these figures were arrived at. It would have been helpful to the Tribunal if more information in this regard had been provided to it.

(12)Having regard to the foregoing, the Tribunal proposes to adopt as a starting point the actual turnover achieved for the year ending 31st August, 2005 and to apply to this an annual rate of return of 12.5% which the Tribunal considers fairly represents the nature and extent of the accommodation provided at the property concerned.

Determination

Actual turnover for the year ending 31st August, 2005 =	€842,069
	Say €842,000
Annual rate of return say 12.5% =	
Net Annual Value =	Say €105,000

Accordingly therefore the Tribunal determines the net annual value of the property concerned to be €105,000.

And the Tribunal so determines.