Appeal No. VA08/5/081

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Kay Ingham & Sylvia Kelly **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 391309, Creche at 11 Lugnaquilla Avenue, Greenpark, Walkinstown, County Dublin

B E F O R E

John O'Donnell - Senior Counsel	**Chairperson**
Joseph Murray - B.L.	**Member**
Aidan McNulty - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF MARCH, 2009

By Notice of Appeal dated the 4th day of July, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €52,700 on the above described relevant property.

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

"Creches should be exempt from rates due to social needs of families who use facilities"

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th day of October, 2008. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), MRICS, MIAVI, of Eamonn Halpin and Co. Ltd. The appellants also attended. Mr. Anthony Mulvey, BSc (Hons), a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Declan Lavelle. Managing Valuer in the Valuation Office, also gave evidence on behalf of the respondent.

BACKGROUND

The subject property under appeal was a house which had been converted into a crèche, owned and occupied by the appellants. The valuation contended for by the respondent arose out of a revaluation process within the area where the subject property is situate.

PRELIMINARY ISSUE

By way of preliminary issue, Mr. Mulvey contended that the Notice of Appeal filed contained only one ground i.e. the contention that the property in question was exempt from rates. He noted that the letter of 26th September, 2008 from Mr. Halpin to the respondent and to the Valuation Tribunal withdrew that ground (although it indicated the appellant was retaining "*the original ground*" in relation to quantum.). Mr. Mulvey contended that the Notice of Appeal did not, therefore, clearly specify clearly the ground of appeal relied on. Therefore the appeal should not be entertained by the Tribunal.

On behalf of the appellant, Mr. Halpin contended that the issue of quantum had been raised at first instance and had also been clearly identified as being a matter in contention at all material times. He pointed out that the appellant had acted for themselves until relatively recently and would not have been familiar with the requirements of the Tribunal Rules and Guidelines in relation to the Notice of Appeal.

Having considered the submissions and the documentation in question, the Tribunal notes that while the Rules required the Notice of Appeal to set out the grounds of Appeal, the same Rules (and in particular Rule 11) entitled the Tribunal to waive compliance with the Rule or excuse non-compliance with the Rule if the Tribunal considered that to do otherwise would be to cause injustice or unreasonable expense or inconvenience. The Tribunal took the view in the particular circumstances of this case that, having regard to the fact that the appellant

was a lay litigant until relatively recently, the fact that the issue of quantum had always been "*live*" and having regard also to the fact that the letter withdrawing the Notice of Appeal maintained that quantum was in issue, it was appropriate in the circumstances for the Tribunal to excuse non-compliance with the particular Rule in relation to the Notice of Appeal here.

THE EVIDENCE

The Appellant

On behalf of the appellant, Mr. Eamonn Halpin gave evidence and adopted his précis as being his evidence-in-chief. It was noted that the appeal process had led to a slight reduction in the floor area contended for by the respondent, as the area of the premises had been remeasured. Mr. Halpin contended that an appropriate valuation based on the premises in question of 247.97 sq. metres would be the sum of €34,600.00.

He accepted that the process of revaluation meant that the old rules did not apply in relation to the use of comparators, or the "tone of the list" as had applied in other valuations. In outlining the history of the building, as far as his clients were concerned, he indicated that the building had been acquired in the year 2000 and had changed to use as a crèche in or around 2001. Planning restrictions mean that the operators are not allowed to accommodate more than 50 children despite having space to accommodate more and despite being permitted by the HSE to allow up to 65 children on the premises. In his view, this was a significant matter for any willing hypothetical tenant. The planning permission also restricted the number of children who would be permitted to play in the garden. In addition, Mr. Halpin indicated that the HSE stipulated that children under 3 would not be permitted to play or carry out activities upstairs and in the circumstances this restricted the first floor usage. He indicated that the house itself had been constructed in the late 1970s and that an annex had been added.

Mr. Halpin referred to the appellant's case in relation to quantum. In his view, the building in question was not in an affluent area. The building itself was modest compared to other comparators. He noted the restriction on the number of children and the restriction of garden use. In his view also a hypothetical tenant would regard a rateable valuation of €52,700.00 as rendering the rental of the premises uneconomic. In his view, therefore, the rental value of €52,700 should be regarded as suspect.

He noted that in the first of his comparators, the levels had been agreed at €146.00 per square metre for a comparable property in a commercial development. In his view, therefore, the levels contended for by the respondent were too high. It is admitted that the "*tone*" had been arrived at by the respondent with limited financial information. He noted that archive information requested by him had only been furnished to him very late and he had had to pay for same. He contended that respondent assumed that all crèches should be treated the same. In Mr. Halpin's submission, this was an inappropriate way in which to deal with the matter. Such an approach gave insufficient allowance for actual characteristics.

Mr. Halpin then analysed the four main comparators provided by him. In comparator no. 1, it was clear that the rate of €146.00 per square metre had been agreed. Comparator no. 2, he maintained, was a crèche in a better location but had its rateable valuation reduced on first appeal. The third comparator was a top quality space which would be useful commercially in a shopping area. The fourth comparator he felt may not be as useful.

In cross examination, Mr. Halpin accepted that his comparators 1 and 3 were first floor facilities in shopping centres without gardens. He accepted that the garden had not been valued as being of use here. He accepted that comparator 4 had been purpose built and contended that while the rateable valuation of comparator 4 had not been challenged on appeal, he was concerned that others had been reduced whereas this one was not. He contended that he should have been given a lower value for the first floor because of the restrictions in terms of use and value though he accepted that some of his comparators had first floor values equal to the values given for the ground floor. He was not aware of any valuation in respect of crèches that took account of the number of children permitted to attend.

In answer to the Tribunal, he accepted that the premises were more valuable as a crèche than as a residence.

The appellants gave brief evidence of the rates charged by them per week for the various categories of children who attended. They were anxious to make clear that these rates were at the lower level of fees chargeable by crèches.

The Respondent

On behalf of the respondent, Mr. Anthony Mulvey adopted his précis as his evidence-in-chief. He contended that the respondent had identified a particular type of crèche, i.e. the type of crèche that is a house converted into a crèche. They did not look at other types of crèche when analysing grounds/properties. In his submission, the five comparators used by him were all houses which had been converted into crèches. He noted that three of the five comparators had rateable valuations at the same level for the upper and lower floors. He contended that some of the comparators used by the appellant were not valid as they did not compare like with like. He also made it clear that no attempt had been made to value the premises based on the number of children who could attend or on the basis of the profit and loss accounts of the premises.

In cross examination, he contended that he had looked at a number of houses converted into crèches. There appeared to be some 57 in the South Dublin area. Some were rented. He contended that two of the five comparators had rental figures which were taken into account. He accepted that a significant change appeared to have taken place in respect of comparator no. 3. However he did not believe that these differences meant that the other properties should have their rateable valuations revised.

In his view, houses converted into crèches often fared better because it was not necessary for users to drive to commercial shopping centres and contend with difficulties arising out of parking, set down and collection. He accepted that commercial space was generally easier to rent out than a residential premises. In his view, the subject property had better parking and better access than many other properties. He made it clear that he had no regard to the audited accounts of the company. He expressed the view that while planning permission did impose certain somewhat restrictive conditions, these did not affect the valuation in any significant way. He expressed the view also that an open market hypothetical tenant might well apply to convert the premises in question into e.g. a doctor's surgery.

In response to the Tribunal, he indicated that the valuation date was 30th September, 2005, being the "*base*" date. He accepted that some of the rates had jumped in a manner which might appear high.

Mr. Declan Lavelle gave evidence briefly also on behalf of the respondent. He is a Managing Valuer in the Revaluation Unit of the respondent. He indicated that the respondent had categorised crèches into:

(a) Retail Crèche, i.e. high street units and shopping centres.
(b) Purpose built Crèche, "*state of the art*".
(c) Office Crèche, i.e. an office in use as a crèche.
(d) House Crèche, i.e. domestic house property converted or extended into a crèche.

His evidence was that of the 70 crèches in South Dublin, 57 were of the house crèche type. He said that he had attended a number of meetings with valuers to try and explain the nature of the revaluation in question.

Mr. Lavelle was of the view that where property is converted from e.g. a house crèche to a surgery, and no material change in circumstances occurs, then the rate stands. Mr. Lavelle said that the respondent did consider the rental figure when supplied. His view was that the levels applied to house crèches would reflect rental figures where available.

Turning to the availability of information, he contended that the revaluation list is accessible from the respondent's website. It is also possible to obtain historical information through the respondent who will permit use of their computers in certain circumstances. He contended that the €91.00 charge was charged for copying significant amounts of data and is a charge prescribed by statute. Mr. Lavelle emphasised the provisions of Section 63 of the Valuation Act, 2001 which he said the respondent took extremely seriously. He accepted that some rates had increased in a manner which might prove painful for occupiers but contended that the old values may well have been outdated.

In cross-examination he accepted that the premises had been valued in 2001 and had increased in rate significantly since then. He indicated that a hypothetical tenant will look at optimising the value of the premises in question.

In response to the Tribunal, he expressed the view that the rate of €200.00 per square metre was the absolute base benchmark for the ground floor in premises such as this.

While the valuation currently in the Valuation List is €52,700 the respondent contended for a valuation of €49,590 before the Tribunal.

THE LAW

As both parties accepted, this appeal comes before the Tribunal by way of revaluation. Section 63, in such circumstances, is of considerable significance. Section 63(1) provides:

> "*A statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act*".

This is an important statutory presumption in favour of the respondent which the appellant must rebut in order to supplant the value put forward by the respondent.

It is perhaps appropriate to point out that, up until now, valuations on appeal have been determined in accordance with Section 49 (i.e. the tone of the list or comparable method of valuation). However, the revaluation process does not look simply at other properties and the tone thereof. In appeals arising out of the Revaluation of South County Dublin, a valuation of property concerned will be determined in accordance with Section 48. Net annual value is defined in Section 48(3). This definition is "*the rent for which one year with another property might in its actual state be reasonably expected to be let from year to year ...*". This definition is akin to open market value on a full repairing and insuring basis. When determining net annual value, the best guide is the actual rents being paid in the open market at or about the relevant valuation date. If the property was let at or about the valuation date and the actual rent being paid is in line with those being paid for similar properties in the same location, then that evidence is obviously the best evidence of net annual value.

It is not clear what rental evidence is available in respect of houses converted into crèches. However, the respondent contends that such rental information as was available has been taken into account. While it is suggested on behalf of the appellant that the respondent had made insufficient allowance for the individual characteristics of each individual crèche, we are of the view that the categorisation described by Mr. Lavelle of the types of crèches considered is a careful and clear-sighted attempt to analyse the subject property in a proper manner by comparing "*like with like*".

In the rating appeal process, the onus of proof invariably lies with the appellant. In a revaluation situation, the provisions of Section 63 obviously take on an added significance because of the presumption contained therein. It is our view that the Tribunal must, in the first instance, be satisfied that the case being put forward by the appellant demonstrates through strong prima facie evidence that the valuation in the list is incorrect. We note the considerable work and careful analysis carried out by Mr. Halpin on behalf of the appellant. However, we are of the view that the presumption as to the correctness of the valuation of the subject property as it appears in the Valuation List under the revaluation process has not been rebutted here. We are of the view that the property has been compared with other similar properties. We note slight discrepancies in some properties between the upper and lower floors. We note also that there is some evidence in relation to rental, though this is of perhaps limited use in the instant case. On balance, we do not see sufficient evidence to justify our reaching the conclusion that the valuation provided for in the Valuation List is wrong.

In the circumstances, therefore, we are of the view that the respondent's valuation is correct. We are obviously sympathetic to the financial consequences which this will have for the appellant. It may be that the rating authority will be able to facilitate the appellant in relation to terms and timing of payment. However, we have no power to waive the obligation on the appellant to pay on grounds of hardship.

DETERMINATION

The valuation in the Valuation List, as amended by the respondent at Tribunal from €52,700 to €49,590, is correct. The appeal is dismissed.

And the Tribunal so determines.