Appeal No. VA10/5/098

**AN BINSE LUACHÁLA**

**VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 2001**

**VALUATION ACT, 2001**

**Beechtree Healthcare Ltd.** **APPELLANT**

**and**

**Commissioner of Valuation** **RESPONDENT**

RE: Property No. 2179284, Nursing Home at Beechtree Nursing Home, Murragh House, Oldtown, County Dublin

B E F O R E

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| **John Kerr - Chartered Surveyor** | **Deputy Chairperson** |
| **James Browne - BL** | **Member** |
| **Frank O'Donnell - B. Agr. Sc. FIAVI.** | **Member** |

**JUDGMENT OF THE VALUATION TRIBUNAL**
**ISSUED ON THE 1ST DAY OF MARCH, 2011**

By Notice of Appeal, dated 31st August, 2010, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Valuation of €275,000 on the above-described property.

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

"The valuation as applied by the Valuation Office is excessive and the business could not sustain such a valuation."
"In order to maintain its current accommodation and to comply with HIQA Regulations, further monies will have to be expended."

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 25th day of January, 2011, and resumed on the 10th day of February, 2011. The Appellant was represented by Mr. John Kenneally of Kenneally McAuliffe & Co, Estate Agents, Surveyors Commercial Property and Rating Consultants. Mr. Joseph Walsh, owner and director of Beechtree Healthcare Ltd., also attended. The Respondent was represented by Mr. Christopher Hicks, Valuer with the Valuation Office. Mr. Declan Lavelle, also with the Valuation Office, also attended.

A preliminary procedural issue arose when Mr. Kenneally requested leave of the Tribunal to grant permission for his client, Mr. Walsh, to take the stand to provide some information with respect to his role and functions as a director of Beechtree Nursing Home. This request was set out by way of an Expression of Intent contained within a two-page document submitted to the Tribunal on behalf of Mr. Walsh, on 21st January, 2011. Mr. Hicks, on behalf of the Commissioner of Valuation, objected to the request made by Mr. Kenneally on behalf of Mr. Walsh, to provide direct evidence at the hearing.

Following two brief adjournments to consider the matter and related issues, the parties were informed by the Tribunal that the Appellant had not complied in full with Rule 17 (1) of the Valuation Tribunal, which states that:

*"At least fourteen days before the date set for hearing an appeal (the "hearing date"), the appellant shall exchange with the respondent and file with the Tribunal (4 copies) a summary of their evidence and submissions stating in a precise but comprehensive way:*

*(a) Each ground of appeal intended to be relied on by the appellant; and*
*(b) The argument intended to be relied on in support of each ground; and*
*(c) Any authorities intended to be relied on in support of each ground; and*
*(d) The facts intended to be relied on in support of each ground;"*

On the request of Mr. Hicks in the subject circumstance, Mr. Walsh was not permitted, in the absence of a précis of evidence circulated within the prescribed timeframe, to provide direct evidence at the hearing. The hearing then proceeded.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement the initial hearing and submitted same to this

Tribunal. At the oral hearings, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

**The Property**

The subject property comprises a single-storey purpose-built nursing home, which commenced trading in 2005. The nursing home is attached to the rear of an older two-storey house, which is used for the purposes of offices and as a staff area. The home is registered for 53 patients and accommodation comprises;

17 double bedrooms,
4 twin bedrooms,
11 single bedrooms.

**Location**

The subject property, known as Beechtree Nursing Home, is situated in Oldtown, in North County Dublin, in an area described as rural, approximately 8 kms north-east of Ashbourne, in the Fingal County area.

**Services**

All usual required services are available and connected to the subject relevant property.

**Valuation History**

The subject property was valued as part of the revaluation of all relevant properties in the Fingal County Council area, carried out pursuant to Section 19 of the Valuation Act, 2001.

On 1st September, 2010 a Notice of Appeal was lodged with the Valuation Tribunal, on behalf of the appellant, against the decision of the Commissioner of Valuation in fixing a Valuation of €275,000 on the subject property.

**Appellant's Case**

Mr. John Kenneally took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. The appellant's consultant confirmed that there was no dispute between the parties in their respective précis with respect to the description, location, accommodation, and condition of the subject property, which was commonly described in both submissions. He also confirmed that the nursing home commenced trading in 2005 following conversion of the two-storey former dwelling to the front and extension works to provide for the new structure at the rear, built during 2004. Following the 2007 Health Act, 2007, the nursing home was registered and inspected in accordance with the 2009 Health Information and National Standards Residential Care Settings, often referred to as Standards 25 to 25.58. Various alteration works were needed since 2009, which included works completed to the Dining and Living Rooms, the provision of a hairdressing facility, an oratory, storage areas and the installation of additional sinks. Mr. Kenneally advised that the requirement for alteration works is ongoing.

Beechtree is operated with a pool of approximately 50 full-time and part-time staff, including Director of Nursing, Ms. Nuala Walsh, and Home Manager/Finance Director and co-owner, Mr. Joseph Walsh. Staff include nurses, carers, cleaning, kitchen and administrative staff. This nursing home, registered for 53 patients, caters for both elderly and dementia patients at present.

Trading figures were supplied by R.K. Spicer Accountants, for y/e 31st December, 2008.

Mr. Kenneally provided the hearing with an overview of the nursing home industry, governing legislation on private nursing homes, commencing with the Health (Nursing Homes) Act, 1990, and in particular the Health Act, 2007 and the HIQA Standards introduced in 2009. The consultant valuer advised that, though the latter were formalised during 2009, the rules and regulations underlying same were broadly known to the industry as far back as 2005, and would have served to guide the hypothetical tenant in his consideration of what he might be prepared to pay by way of rental on the subject property, as at the relevant revaluation date of 30th September, 2005. He also noted the challenges which result from the HIQA Standards, which impose significant cost burdens on owners of nursing homes, and the downward pressure on fee income exerted by the National Treatment Purchase Fund.

Mr. Kenneally referred to his précis and the manner in which he calculated the rental value by reference to what he described therein as the “Income and Expenditure Method”, more commonly known as the R & E Method. He explained that outgoings for fully operational nursing homes are generally standardised and include wages, direct cost grouping items such as food, provisions, light and heat, activities, medical supplies, laundry, and overheads which includes rates, insurances, repairs and maintenance.

The consultant valuer outlined the training and qualification criteria for nursing home staff and management, and the requirement for all homes to have a qualified Director of Nursing in charge, in addition to a nominated Service Provider. He explained that the only source of income available to a nursing home is that generated by the number of occupied beds within, but that the weekly charge is determined by the National Treatment Purchase Fund for all patients other than private residents, which he noted typically amounted to not more than 15% of the nursing home patient population. In order to reach his calculation of Net Annual Value, he employed a summary of the R & E approach to value (referring to Valuation Tribunal determination **VA08/5/160 – Ms. Maura Galvin**), by establishing an adjusted turnover value to y/e 2005, based on the registration of 53 beds, and deducting from same direct costs, wages and salaries, and allowable overheads. Mr. Kenneally then adjusted that turnover figure back to an equivalent annual sum for y/e 2005, calculated by taking an average bed rate of €725 per week x 53 beds x 52 weeks at a 90% level of occupancy. He then deducted the foregoing costs, salaries and overheads. His deduction for wages and salaries included a notional sum of €120,000 in respect of remuneration for two working directors. Mr. Kenneally noted that the furnished accounts reflected an actual cost incurred during 2008 of €60,000 paid to the directors during 2008 and explained that that amount was not available to remunerate the directors, nor had it been paid prior to that year.

Mr. Kenneally’s précis also provided the Tribunal with costs of overheads, rent, depreciation, bank interest and allowable overheads reflected in the actual accounts of 2008, including a rental figure of €220,000 p.a. he argued that it was appropriate for his client to apply an allowance for wages and salaries, including the notional remuneration figure of €120,000 directors remuneration, amounting to 61% of the adjusted 2005 gross revenue figure. He explained that he had followed the R & E Method of Valuation and computed a Divisible Balance sum to be shared with the tenant on a first-call basis, and a remainder to produce a sum considered as the landlord’s share to satisfy liabilities as to rent and rates. The resultant calculation provided by Mr. Kenneally on behalf of his client produced an estimate of Net Annual Value, as at September 2005, in the amount of €214,000. This figure was later amended by the appellant’s consultant and reduced to €180,000.

Mr. Kenneally explained that there are no nursing homes in Fingal County Council area rented on an arms-length basis, but conversely, to his knowledge, all nursing homes in the Rating Authority area are owner-operated and each of those parties hold the freehold interest in same. Accordingly, he explained that there is no “tone-of-the-list” in Fingal for nursing homes. He stated that the operation and management of nursing homes is a very specialised business and one for which there is no recognised appropriate yield for developers and investors to consider if building or purchasing a such a facility, and added that a new owner or tenant must now apply to HIQA for consent to manage a nursing home, and must undergo rigorous inspection and registration procedures.

**Cross-examination by Mr. Hicks**

In reply to various questions put to him by Mr. Hicks, Mr. Kenneally stated that;

1. Under current rules, private nursing home owners are required to comply with Standard 25 of HIQA Regulations 2009. He advised that in certain circumstances owners may be granted a period of time up to 2015 to complete all works in order to have their premises fully compliant with the statutory specification, but that many owners, such as his client, are and have been required, since 2009, to commence and complete certain specified works, without delay.

2. He would not agree that most such works needed to comply with HIQA Standard 25 may be considered as landlord works and, conversely, stated that the majority of same should correctly be considered as duties imposed upon the hypothetical tenant, as compliance is an imperative to the generating and sustaining of income from a nursing home.

3. Noting that the weekly income room rates furnished to the Commissioner of Valuation by his client were indicative only and did not account for discounts and allowances, Mr. Kenneally stated that the information contained in the Respondent’s précis, adopting a weekly rate of €800 per room, did not take heed of the mix of room types, and appeared to be relying upon a mean value taken from the range of €760 per week to €840 per week. Mr. Hicks responded that the 2008 accounts recorded income from 48 patients, which paid an average of €1,022

4. Mr. Kenneally explained that approximately 15% of patients are private and that the remainder income generated from so-called public patients is often discounted.

5. He confirmed that the formerly notional fees of €120,000 are now being paid to the directors/owners as remuneration for their work. Mr. Hicks considered the said sum might more properly be in the region of €90,000 per annum to reflect the duties undertaken by one of the two directors, in his hypothetical role as landlord of Beechtree taking care of and maintaining the property.

6. Mr. Kenneally stated that the substantial increase in wage costs for the three years between 2005 and 2008 may have been accounted for in part by additional nursing services employed.

**Respondent's Case**

Mr. Christopher Hicks took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. He stated that his task in Fingal was to value a number of nursing homes and to devise a "scheme" of valuation which would be clear and produce equity for all nursing home operators. He then indicated that there were three issues in dispute between the parties, as follows:-

a) Adjusted revenue, per week per bed, which he estimated at €800, as opposed to €725 per week relied upon by the appellant.

b) The wages, which he estimated should not exceed 55% of the 2005 turnover to include all staff costs, including family members and directors, whereas the appellant used 61%.

c) The Divisible Balance. Mr. Hicks considered that the more appropriate split on the Divisible Balance, having regard to the landlord's investment in this case might be 45% tenant's share and 55% landlord's share.

At this time, Mr. Kenneally acknowledged a mathematical error on pages 9 and 13 of his précis, which he subsequently replaced post-hearing, which resulted in a reduction of his estimate of NAV from €214,000 to a rounded figure of €180,000. The change in his figures followed adjustment on the wages and salaries deducted from the adjusted 2005 turnover figure, by applying a percentage of 61% to same. The adjusted figures circulated and submitted by Mr. Kenneally post-hearing are attached to this judgment as a confidential appendix**.**

Mr. Kenneally argued again that the tenant's and landlord's share of the Divisible Balance should remain at 50:50, but Mr. Hicks contended that that the landlord would be in a better position if he were the owner of a purpose-designed nursing home than a landlord of a partially converted former dwelling albeit in this case with a newly extended complex. The parties agreed that the business at Beechtree Nursing Home stabilised by year end 2008.

**Resumed Hearing, 10th February, 2011.**

The hearing resumed on 10th February, 2011. Mr. Hicks referred to *The Receipts and Expenditure Method of Valuation for Non-Domestic Rating* (aka the RICS Guidance Note) published by the Joint Professional Institutions' Rating Valuation Forum in 1997, and in particular to item 5.29 therein, which sets out the manner in which salaries, and, in particular, directors' remuneration should be treated in the determination of the Divisible Balance. Mr. Hicks stated that rewards or remuneration for directors should be taken into account in the tenant's share of the Divisible Balance in R & E valuations and not as an element of the wages deducted from the turnover. Having regard to the size and scope of the subject nursing home with 53 beds, Mr. Hicks contended that there was likely sufficient work for one director only and added that the HIQA Inspection Report in 2010 indicated the full-time employment of a Miss Claire Reynolds as the Director of Nursing (Person in Chanrge), and that, presumably, the costs of her employment were included in the wages deduction figure in the accounts**.**

The Respondent concluded that the turnover figure cited by Mr. Kenneally in his précis, estimated for 2005, was understated by approximately €205,000. Mr. Hicks explained that his estimate of 2005 turnover equated to 77% of the turnover in the stabilized 2008 accounts. Mr. Hicks advised that there was no dispute between the parties with respect to the recorded amounts of direct costs or overheads outlined in the Appellant's précis.

Mr. Hicks repeated his view that the second owner/director, namely Mr. Walsh in the instant case, does not fulfil the role typically attributed to that of a Nursing Home Director, in the industry sense. He referred to a 2005 Horwath, Bastow, Charleton survey of all-inclusive staff costs, being the equivalent of 57% of turnover. Mr. Hicks concluded that at Beechtree Nursing Home, the staff costs, excluding directors' remuneration, should equate to 55% of turnover. He also repeated that if the Divisible Balance is split on a 45:55 basis, and by adopting the foregoing allocation of the costs of wages and associated charges, the rental value of this nursing home property would equate to approximately 14% of the adjusted 2005 turnover.

Mr. Hicks referred the Tribunal to page 10 of his précis, wherein he cited a CBRE opinion on the valuation of hotels and nursing homes, and extrapolated from same that the rental value of the latter should range between 12.5% to17.5% of turnover.

To support his arguments, Mr. Hicks cited the valuation methodology set out in Valuation Tribunal determination **VA08/5/053 - Griffeen Valley Nursing Home** and also the four South Dublin County Council nursing home cases **[VA08/5/160- Ms Maura Galvin, VA08/5/161 – Lisheen Nursing Centre Ltd., VA08/5/162 – Stanford Woods Care Centre Ltd. And VA08/5/165 – Lucan Lodge Nursing Home Ltd.]**, which were referred to by Mr. Kenneally in his précis. He provided additional details on the approach noted above used to value hotels, as outlined by Mr. Enda Luddy of CBRE, in correspondence addressed to the Valuation Office on 30th April, 2009, which contained the view that nursing homes may be valued similar to hotels, with rental values in the range of 50% - 70% of earnings before interest, tax, depreciation and amortisation (EBITDA). Mr. Hicks further referred to three hotel properties revalued in South County Dublin, the valuations of which gad been appealed to the Valuation Tribunal, namely **VA08/5/202 – Morans Hotel Ireland Ltd, VA08/5/224 – Kingsoak Tavern Ltd.,** and **VA08/5/225 - Q.E. Facilities Ltd. T/A Tower Hotel Dublin.**

Mr Hicks outlined the approach to valuation followed in the "Shortened Method", as described in the RICS Guidance Note which he described as the R & E Method, though considered by others to be a comparative method of valuation.

Mr. Hicks then also referred again to the Horwath Bastow Charlton Survey conducted in 2005, and the four South Dublin County Council nursing home cases heard by the Tribunal, and noted that the appellant précis submitted in those cases to the Tribunal had directors'/family members' fees/remuneration included in the wage costs.

Mr. Hicks argued that the appropriate figure to be allocated to wages by the appellant in this case should equate to 55% of the adjusted 2005 turnover figure. The valuer referred to a HIQA Inspection Report of May 2010, attached to his précis, which identified Ms. Reynolds as one of two providers holding a managerial role at Beechtree Nursing Home, whom he understands to be a qualified nurse functioning in the role of Director of Nursing. He stated that he could not understand the need for the inclusion of a sum of €120,000 for wages as remuneration for additional director support services in this case. He also referred to the four South Dublin County Council nursing home cases mentioned in an appendix to Mr. Kenneally's précis, which were addressed in correspondence from Mr. Hicks to Mr. Kenneally dated September, 2008, which concluded that, based on a devaluation of the Rateable Valuation of those four properties, the NAV ranges from a low of 12% to a high of 16%.

Mr. Hicks also made mention of the submissions made and arguments adduced in the four South Dublin County Council nursing home cases, including submissions from Carroll & Associates, Accountants and Auditors on same, and the findings of the Horwath, Bastow Charlton report, which issued following a national survey of over 100 nursing homes in 2005, which indicated that the appropriate percentage to apply to wages should, in the instant case, be 55%.

In reaching his determination of value, Mr. Hicks employed the "scheme" Valuation method which has been devised by the Valuation Office to calculate the rental value of nursing homes by reference to a percentage of turnover calculated in turn by the factor of the number of beds in the nursing home by an occupancy level ranging from 90 – 95% (typically), multiplied by the room rate per week, by 52 weeks.

Mr. Hicks explained that the turnover figure at Beechtree Nursing Home should be calculated as set out above. He analysed the turnover by reference to a 90% occupancy level on beds generating €800 per week, and concluded that, based on all of the foregoing evidence as outlined by him on behalf of the Commissioner of Valuation, the Net Annual Value should be calculated at a sum of €277,800, rounded down to €275,000, by applying a figure of 14% to the adjusted 2005 turnover sum.

**Cross-examination by Mr. Kenneally**

Mr. Hicks responded to questions from Mr. Kenneally and replied as follows:-

1. He relied upon the actual accounts turnover figure given for 2008.
2. There was no dispute on the deduction of cost figures employed by each party.
3. The Horwath Bastow Charleton survey report did not contain a specific reference to wages, including family members and directors, amounting to 57% of turnover.
4. He would not agree that the Divisible Balance, having regard to the size or other features of Beechtree Nursing Home, should be split on a 50:50 ratio between tenant and landlord.
5. He agreed that the tenant's share is always considered on a first-call basis available to him.
6. The tenant's share should amount to 45% and that the Net Annual Value at the equivalent of 14% of turnover takes account of the rather remote rural location of the subject nursing home.
7. The landlord's investment in this case is unusually high.
8. The Tenant's required capital in the instant case may not be any more than 10% of the asset value of the property.
9. The Shortened Method of valuation is correct and reliable.

**Findings**

The Tribunal refers the parties to the general conclusions and issues common to the subject case, but cited extensively in another recently issued Valuation Tribunal determination, **VA10/5/080 - Dundas Ltd**., which provides a very helpful and comprehensive reference guide of the history, issues, applicable legislation, and appropriate valuation methodology to apply in revaluing nursing homes, together with the influences and effect of the most recent legislation on the sector, particularly since the enactment of the Health Act, 2007 and the application of the HIQA Regulations and Standards in 2009.

**1.** Consistent with the foregoing, the Tribunal believes that the most suitable method to determine the value of the subject property in accordance with Section 48 of the Valuation Act, 2001 is the application of The Receipts and Expenditure Method, as set out in *The Receipts & Expenditure Method of Valuation for Non-Domestic Rating* published by the Joint Professional Institutions' Rating Valuation Forum in 1997, as mentioned earlier in this determination.

2. The Valuation Tribunal is of the view that the Respondent's determination of adjusted turnover was correctly stated and notes the agreement of the parties on non-wage costs to be deducted from the adjusted turnover figure between the parties.

3. The Tribunal has given considerable consideration to the matter of allowances which should be made to reflect all costs associated with wages and family members in this specific case, and concludes that the total amount of the deduction should be the equivalent of 57% of the adjusted turnover, as outlined above, which percentage to include an allocation of the equivalent of €90,000 for directors' remuneration.

4. The Tribunal has reached the conclusion that the hypothetical tenant, having regard to the size and nature of the property, the number of beds and the income potential of Beechtree Nursing Home as at 2005, would not factor the inclusion of a burden of remuneration to directors to the extent suggested by the appellant, but would make an allowance of a sum equivalent to 59% of the turnover, as set out heretofore and calculated by the respondent, to include all wages and related costs including remuneration to directors/family members.

5. The Tribunal accepts the argument proffered by the respondent in this case with respect to the proposed split of the Divisible Balance on a 45:55 basis, between tenant and landlord respectively.

**Determination**

Having regard to all of the foregoing and to the calculations on the attached confidential Appendix, the Tribunal has reached the conclusion that the Net Annual Value of the subject relevant property should be calculated at €226,033

**Valuation Say €225,000.**

And the Tribunal so determines.