

Appeal No. VA10/5/099

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

Humar Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 305655, Nursing Home at Marymount Care Centre, Westmanstown,
Lucan, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Frank Walsh - Valuer

Member

Michael Connellan Jr - Solicitor

Member

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

By Notice of Appeal dated the 31st day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €13,000 on the above described relevant 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 figure."

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 27th day of January, 2011. At the hearing the appellant company was represented by Mr. John Kenneally, of Kenneally McAuliffe & Company, who also gave expert valuation evidence in relation to the property concerned. Ms. Claire Carroll FCPA, AITI of Carroll & Associates, Accountants, gave evidence in relation to the directors' report and financial statements for the year ending 31st January, 2006 and for the 14-month period ending, 31st March, 2007. Mr. Christopher Hicks, a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation and also gave evidence in relation to the valuation of the property concerned and other nursing homes in the Fingal County Council Rating Authority Area, as part of the 2010 revaluation programme.

1. Prior to the commencement of the oral hearing, Mr. Kenneally and Mr. Hicks forwarded précis of the evidence and valuations they proposed to adduce at the hearing. A copy of each précis was made available to the other party. From the evidence so tendered the following material facts were either agreed or are as so found by the Tribunal.

The Property Concerned

2. The property concerned is known as Marymount Care Centre and is located on a minor county road in a pleasant rural area close to Luttrellstown Castle golf club and convenient to Lucan and Palmerstown. The property, which is a mainly-single storey structure, was first opened for business in 1987 and, in or about 2008/2009 the original structure was substantially demolished and replaced by the present building, which now provides accommodation for 91 residents in single bed units, together with all necessary ancillary accommodation and facilities. The property concerned enjoys the benefit of HIQA registration for 91 residents.

Financial Information and Evidence

3. Directors' Report and Financial Statements prepared by Carroll & Associates were provided to the Tribunal for the year ending 31st January, 2006 and for the 14-month period ending, 31st March, 2007. These accounts were prepared at a time when the property concerned accommodated 48 residents only.

4. Humar Ltd., which owns the property, is a family-owned business and three members of the family are actively engaged in the running of the enterprise. One of the directors is the Director of Nursing and is the person responsible for ensuring that the residents are in receipt of proper care and attention at all times. Another director is the Financial Controller and is responsible for all administration and HR functions. Both of these directors are engaged full-time in the business, while the third director carries out a number of ancillary functions as and when required. Ms. Carroll in her evidence said that, in her opinion, the directors' fees were commensurate with the roles they performed and the responsibilities they assumed, which if not carried out by them would have to be fulfilled by other qualified staff, at prevailing market levels of remuneration.
5. In relation to staffing levels, Ms. Carroll said, that the nursing home industry operated on a 24x7x365-day basis and, in order to maintain HIQA requirements, this usually translated into one staff member per patient to include adequate nursing, care assistance and other ancillary staff engaged in cleaning and laundry services. Ms. Carroll said that the current practice in the nursing home business was that catering was now provided on a "contract basis" but that laundry services were still usually provided in-house. Ms. Carroll said that the average stay in a nursing home was of two years' duration, with approximately 30% being new residents coming into care in any one year. In her opinion, an occupancy rate of 90% to 92% would not be unusual and most residents would be in receipt of funding, either in whole or in part, under the aegis of the National Treatment Payment Fund. Ms. Carroll stated that, one of the difficulties in this regard was that the fund at this time did not have benchmark rates, so that each nursing home had to negotiate its own weekly rates.
6. Ms. Carroll said that, as a general statement, the nursing home industry was a stressful one and one that required key personnel to have the ability to deal with residents and their families in a caring and sensitive manner. This, together with typical HR issues, requires that senior persons engaged in the business have the relevant expertise, experience and patience necessary to provide a suitable environment for the needs of all concerned, particularly the residents and their close family members.
7. Ms. Carroll said that she had used the accounts for the year ending the 31st January, 2006 and the 14-month period ending 31st March 2007 to arrive at an estimated turnover for the

year 2005 on the basis of a 91 bed facility. She also provided estimated figures under the headings of “costs of sale” and “administrative expenses” by using the 2006 and 2007 figures above referred to, and had adjusted them upwards in the ratio of 91 to 48. In her evidence, Ms. Carroll expressed the view that the salaries attributed to the directors engaged in the business were reasonable, having regard to the specific functions that they performed, and were in line with prevailing market levels at 2005.

8. Under cross-examination by Mr. Hicks, Ms. Carroll said that nursing homes are usually operated by the owners, who in many instances have family members engaged in the day-to-day management of the facilities. While she had considerable experience in the business, Mr. Carroll said that she had no experience in devising tax-based procurement schemes. When asked if staff costs usually amounted to about 57% of gross income, as suggested by the Horwath Brastow Charleton survey, Ms. Carroll said that this would not necessarily be the case, as the survey was vague as to whether or not directors’ salaries were included under the heading of staff costs. In her opinion, the accounts of each nursing home had to be examined and analysed on a case by case basis.

Mr. Kenneally’s Evidence

9. Mr. Kenneally, having taken the oath, adopted his précis and valuation which had previously been received by the Tribunal and by the respondent as being his evidence-in-chief. Mr. Kenneally said that in the absence of open market transactions, he considered the Receipts and Expenditure method of valuation to be the preferred method for valuing nursing homes. Accordingly, therefore, he had examined the accounts for the years ending 31st January, 2006 and for the 14-month period ending 31st March, 2007, prepared by Carroll and Associates, the auditors to the appellant company. These accounts, he said, were prepared at a time when the property concerned operated as a 48 bed nursing home. Having discussed the matter with Ms. Carroll, he had estimated the turnover having regard to weekly fees prevailing at 2005 and had assumed an occupancy rate of 90%. The various items of expenditure under the headings of “cost of sales” and “administrative expenses” were derived from the 2006 and 2007 accounts, which were adjusted to reflect the increased bed capacity. Having carried out this exercise, he then proceeded to prepare his valuation as follows:

91 beds @ €890 per week x 52 x 90% occupancy rate

10. Having carried out this exercise, he then used the adjusted figures made available to him by Ms. Carroll in relation to cost of sales and administrative expenses. Mr. Kenneally's valuation is as set out below:

Adj. T/O 2005	€3,790,332 (1)
Less cost of sales	<u>€2,545,966</u> 67.17% (2)
	€1,244,366

Less allowable

Overheads & direct

Costs	<u>€692,114</u> 18.26% (3)
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Divisible Balance	€52,252
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50% Tenant's share	€276,126 7.20%
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50% Avail. Rent	€276,126 7.2%
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(1) Based on average weekly fees of €90 x 52 x 91 x 90%

(2) Based on average Cost of Sales, as shown in yrs 2006, 2007

(3) Based on average Allowable Overheads and Direct Costs, as shown in years 2006, 2007.

11. Under cross-examination, Mr. Kenneally acknowledged that the active involvement of owners/directors in the business presented problems, when using the R & E method of valuation. He also accepted, as fact, that he did not have available to him actual accounts for the property concerned as a 91 bed unit facility, as of 2005, but did not accept that this precluded him from using the Receipts and Expenditure method, on the basis outlined by him above. In his opinion, the exercise that he had engaged in with the advice of Ms. Carroll, whereby the 2006 and 2007 accounts for a 48 bed unit were extrapolated and adjusted to a 91 bed unit was a reasonable basis for rating valuation purposes. When asked what the figure of €25,000 by way of rent appearing in the accounts represented, Mr. Kenneally said he understood this to be the repayment of a bank loan on a phased basis.

12. In response to a question from Mr. Hicks, Mr. Kenneally agreed that his estimate of turnover was close to the respondent's estimate, ie. €3,790,332 as against €3,832,920. He also agreed that his (Mr. Hicks) estimate of weekly charges and occupancy rates were largely in accord with his. Mr. Kenneally also agreed that, generally speaking, weekly charges tended to be higher in large modern purpose-built nursing homes such as the property concerned, than those in smaller, older premises. When asked if the tenant's share was invariably 50%, Mr. Kenneally said that in his opinion such a figure was necessary in order to reward the tenant for the risk he would be taking in what was a highly regulated industry where, in extreme circumstances, the nursing home could be shut down at short notice by the relevant statutory authority.

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 as being his evidence-in-chief.

In his evidence Mr. Hicks outlined in some detail the steps the Valuation Office had taken in order to devise a scheme of valuation for nursing homes in the Fingal Rating Authority Area and which would be accepted by rate-payers and their advisers alike. As part of the preparatory work, the Valuation Office has sought financial and other relevant information from the occupiers of nursing homes under Section 45 of the Act in order to assist the formation of an acceptable scheme of valuation. The response to these Section 45 requests was low but, nonetheless, the Valuation Office proceeded as best they could with the limited information they had. In their deliberations the Valuation Office examined in some detail all the information received and the findings contained in the 2005 Horwath Bastow Charleton Survey of the nursing home industry and also had regard to the Guidance Note on *The Receipts and Expenditure Method of Valuation for Non-Domestic Rating*. In the final analysis the Valuation Office came to the conclusion that a hypothetical tenant in the market would expect that wage and salary costs would be in the order of 55% of gross revenue. All other operating costs as envisaged under the guidance notes would come to 20% of gross income, leaving 25% to be shared between the landlord and the tenant. Having arrived at this fundamental conclusion the scheme was refined so that net annual value of a specific property would be within the range of 12.5% to 17.5 % of gross income, depending upon its size, location, age, design, occupancy rates and weekly charges and all other relevant factors. Small older nursing

homes, which typically would be conversions of former dwellings, would be valued at circa 12.5% of gross turnover, whilst new purpose-built facilities would be valued at circa 17.5% of gross income actual or estimated as the case may be.

14. Having regard to the above scheme, Mr. Hicks valued the property concerned on the following basis:

Estimate turnover: €900 per week x 52 x 91 x 90% = €3,832,920

Alternatively: average 2005 turnover for 48 beds = €2,117,480

Increasing proportionately for 91 beds = €4,014,389

Large modern and purpose built but with c.30% of accommodation at first floor level so take 16% of turnover as rental value.

Turnover €3,832,920 @ 16% = €613,267

Net Annual Value = €613,000

(16% of turnover equates to a tenant's share of 36%).

15. In support of his opinion of net annual value, Mr. Hicks referred to the agreed valuation of two other nursing homes in the Fingal area, details of which are set out in the Appendix, attached to this judgment.

16. When asked how he had devised his scheme of valuation, Mr. Hicks said that nursing homes from a valuation point of view were not totally unique and that other categories of properties, such as hotels and public houses, were valued having regard to their turnover, the practice being to take the actual or estimated turnover and apply to it an appropriate percentage in order to arrive at its net annual value. Such an exercise, he said, was known as the "Shortened Method" under the Receipts and Expenditure Guidelines. Mr. Hicks said he had carried out extensive research over the past several years in relation to the nursing home industry and, as a result, felt that it was well within his competence to design a scheme of valuation in regard thereto. In his opinion, a tenant's share of 30% of the Divisible Balance was appropriate when valuing a modern nursing home of the size and nature of the property concerned. He said that a higher figure could be justified when valuing older and smaller premises where the turnover would be relatively low.

17. Under cross-examination, Mr. Hicks said that he regretted the low level of co-operation by the owner/occupiers of nursing homes and their advisers during the appeal process. In particular, he said, there appeared to be some reluctance in furnishing accounts and other relevant financial information. When asked why the valuation of hotels could have any relevance in the valuation of nursing homes, Mr. Hicks said they could be of assistance in assessing what the “tenant’s share” might be. When asked if he had taken into account the effect current HIQA regulations and their enforcement had on the industry when designing his scheme of valuation, Mr. Hicks said he had, and that he fully recognised the responsibilities it placed on the owners and service providers. In his opinion, the nursing home industry was perceived as being a highly profitable one and this must be taken into account when estimating the net annual value of the property concerned.

Findings and Conclusions

The Tribunal has carefully considered all the evidence adduced by the parties, both written and oral. These were of assistance to the Tribunal in arriving at its conclusions and determination as set out below:

1. The property concerned in this appeal is one of fifteen nursing homes, valued as part of the 2010 revaluation of all relevant property in the Fingal County Council rating authority area, carried out pursuant to Section 19 of the Valuation Act, 2001.
2. Following the Representations and Section 30 Appeal stages, six appeals were lodged with the Tribunal under Section 34 of the Act. All of the appeals went to full hearing, but in one instance the valuation of the property concerned was subsequently agreed and the Tribunal mutually requested to issue an order accordingly.
3. Members of this Division of the Tribunal sat on a number of the appeals – including the one which was agreed. In all of the appeals the only issue in dispute was the quantum of the valuation and, in all instances there was much similarity in the issues raised and the arguments adduced. In the course of this judgment the Tribunal proposes to deal firstly with those issues which were common to all and then proceed to deal with those which are specific to each individual relevant property.

Common issues

4. In accordance with Section 20 of the Act, the date by reference to which the value of each relevant property is to be determined is 30th September, 2005.
5. The publication date for the new valuation list for the Fingal County Council rating authority area, pursuant to Section 21 of the Act, is 31st December, 2009.
6. In accordance with the Act the value of each relevant property is to be individually assessed in accordance with Section 48 of the Act, which states as follows:

“48.—(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.

(2) Subsection (1) is without prejudice to section 49.

(3) Subject to section 50, for the purposes of this Act, “net annual value” means, in relation to a property, 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.”
7. The definition of net annual value is akin to open market rental value on a full repairing and insuring basis, and where there exists an actual rent or a body of open market rental evidence, at or about the relevant valuation date, of properties truly comparable in all material respects to the property being valued in accordance with Section 48, then that evidence should be accorded appropriate weight.
8. Nursing homes by their very nature are a category of properties which are seldom, if ever, let or, indeed, sold on the open market. Such a situation obviously poses something of a problem to rating valuers engaged in a revaluation who, in such circumstances, will have to give consideration to the use of other approved methods of valuation for rating purposes, such as the Receipts and Expenditure (R & E) method or the Contractor’s Basis.

9. While there is no statutory definition of the R & E method, or any specific mention of it in the Valuation Act, the R & E method of valuation has been accepted as the preferred method of valuation by the Irish Courts and by the Valuation Tribunal in a number of leading rating cases where other methods of valuation were not considered appropriate. When using the R & E method of valuation, the relevant gross receipts of the enterprise must first be ascertained. From this figure the proper cost of purchases and expenses necessary to sustain the gross income is deducted and the balance remaining is referred to as the divisible balance. This figure represents the amount that is available for the tenant's share, rent and rates.
10. A Guidance Note on the R & E method of valuation, prepared by the Joint Professional Institutions, Rating Valuation Forum, published by the Royal Institution of Chartered Surveyors in July, 1997, was made available to the Tribunal and both valuers in their evidence made several references to it.
11. The Guidance Note is a comprehensive publication which sets out in considerable detail the background to, and the criteria for, the application of the R & E method of valuation. The guidance note also contains a general outline of the methodology and the considerations to which regard must be had when using it for rating valuation purposes. Despite the depth and range of information contained in the guidance note, the R & E method requires the user to exercise care and discernment in examining the accounts and to make judgments, such as, whether they provide a reliable basis for valuing the property concerned, having regard to the rating hypothesis contained in Section 48. Judgment, care and experience will also be required in determining the proper cost of working expenses and salary costs. In particular, director's remuneration must be examined and their role in the business investigated to see if it forms an allowable expense or is an item to be considered under the tenant's share.
12. Paragraph 5.46 of the guidance note deals with the tenant's share and says that it "*has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant's capital.*" The quantification of the tenant's share must also take into account the rating hypothesis that the tenant is assuming responsibility for the "*probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary*

to maintain the property” [cf. Section 48(3) Valuation Act, 2001] in its actual state at the relevant valuation date. It follows, therefore, that when examining the accounts, expenditure under all of the above headings is to be excluded under the general heading of proper costs of expenses. Similarly, no allowance should be made for the depreciation of the property itself as this is more properly the responsibility of the landlord. In relation to the last mentioned item, in Port of Cork v Commissioner of Valuation [2003] IESC 47, the High Court held that “the Tribunal was correct in law in determining that the depreciation of assets in the accounts of the appellant should not be taken into account in calculating the rateable valuation of the ports lands, buildings and facilities.”

13. In these appeals the appellant relied solely on the R & E method of valuation and made such adjustments to the accounts as considered appropriate in the light of information regarding directors’ remuneration and their role in the business and other pertinent factors such as occupancy rates and weekly room rates. One of the difficulties in the last mentioned item is that room rates can vary within the same establishment, due to length of stay and the date upon which the resident first entered. Nonetheless, whatever the difficulties that may be encountered in using the R & E method, the Valuation Tribunal is of the view that the R & E method when applied by valuers who have the necessary experience and understanding of the nursing home industry, provides a reliable basis for determining net annual value under Section 48 of the Act.
14. The respondent’s approach to the valuation of the property concerned, in the first instance, was to obtain as much information as he could in an attempt to prepare a scheme of valuation which would be accepted by rate payers and their advisers.
15. As a first step in the process, the respondent exercised his powers under Section 45 of the Act to seek from the occupiers of all nursing homes in the Fingal Rating Authority Area audited accounts and other relevant financial information including weekly charges and occupancy rates, etc., in relation to each relevant property. It would appear that the quality and extent of information provided was below expectation but, nonetheless, the information so attained was analysed so as to obtain an overview of the industry under a number of headings, such as occupancy rates, weekly room rates,

staffing levels, salary costs and directors' remuneration, etc. Why the operators of the nursing homes did not fully cooperate with the Commissioner is hard to understand, as their participation in the process would undoubtedly have been of benefit to all.

The secondary source of information was the 2005 "Annual Private Nursing Homes Survey" prepared by Horwath Bastow Charleton on behalf of the Irish Nursing Homes Organisation. The purpose of the survey was to report on key issues affecting the industry under various headings, such as occupancy rates, room rates, staffing levels and salary costs on both a national and a regional basis. As part of the survey detailed questionnaires were sent to all 431 registered nursing homes in the country and the final findings of the survey were based upon 104 completed questionnaires representing a 24% response rate on a nationwide basis.

16. On the basis of their own analysis, and taking into account the Horwath Bastow Charleton Survey, the Valuation Office proceeded to value each nursing home on what is referred to in the R & E Guidance Note mentioned earlier as the "shortened method". In this regard paragraphs 7.1, 7.2 and 7.3, which are set out below, are worthy of consideration.

"7.1 It is sometimes suggested that valuations based on a percentage of gross receipts amount to a so-called 'shortened profits method'. However, in the view of the Rating Forum, the method described below is not a profits or R & E method of valuation. It is a comparative method of valuation utilising either market transactions or comparable assessments (which may themselves have been derived from a 'full' R & E method valuation), interpreted or analysed to represent a proportion of gross receipts."

"7.2 Although this is not a profits or R & E method, or a 'shortened' version of such a method, it is clear that, for some kinds of properties, rents are determined between the parties using this approach. In some markets – for example, in licensed property – this method of fixing rents now predominates."

"7.3 The method is based upon the determination of fair maintainable annual receipts which are able to be derived by occupying the property and conducting the undertaking with the skill and expertise which should reasonably be expected from a hypothetical tenant of those premises."

17. The scheme of valuation arising from the research and analysis carried out by the Valuation Office, as set out in Mr. Hick's précis is predicated on the assumption that staff costs and other operating costs "*gives an overall norm of 75% leaving 25% to share between landlord and tenant.*" Having arrived at this conclusion the scheme of valuation was designed so as to apply different percentages to the gross receipts (actual and estimated) in order to reflect the age, scale and nature of the nursing home being valued. Details of the scheme were set out in the précis of Mr. Hicks in the following terms. "*The proposal therefore is to take c.15% (varying from 12.5% for small, old conversions to 17.5% for large, modern, purpose-built) of actual (or estimated as outlined above) 2005 turnover as the NAV for nursing homes generally.*" In effect, the 12.5% is equivalent to a tenant's share of 50%, 15% a tenant's share of 40% and 17.5% a tenant's share of 30%.

18. From the evidence tendered a number of key issues arose which were common in all appeals, such as:

- a. Occupancy rates
- b. Room rates
- c. Staffing costs
- d. Directors' remuneration
- e. Directors' roles in the business

All of which will be addressed within the context of each appeal.

19. Having considered all the evidence introduced and arguments adduced by counsel, the Tribunal has come to the conclusion that despite the difficulties encountered in using the R & E method, it nonetheless provides a reliable basis for determining net annual value in accordance with Section 48 of the Act, particularly when applied by valuers who have the necessary experience in, and understanding of, the nursing home industry. Nonetheless, in coming to this conclusion the Tribunal acknowledges the efforts and length to which the respondent (and Mr. Hicks in particular) went in order to devise a scheme of valuation which would find widespread acceptance by all involved. In the event, and for whatever reason, the low level of co-operation by the nursing home operators, their advisers and/or agents rendered the scheme flawed to some extent. Nonetheless, the respondent, in the absence of a consensus, unilaterally

applied the scheme of valuation to all nursing homes in the Fingal area and, in due course, some nine of the valuations so determined were either agreed or otherwise left unchallenged. In a number of instances the rate payers concerned were professionally represented and hence the Tribunal, at this stage in the appeal process, cannot disregard these valuations without good reason. That said, however, the availability of audited accounts and other verifiable financial information accompanied by expert evidence in relation to the operation of the property concerned, the role of the directors in the business, accompanied by an assessment of the contributions they make in monetary terms, are major factors in the determination of net annual value made by the Tribunal.

20. At this stage it might be timely to repeat some comments made by the Tribunal in an earlier judgment [**VA08/5/160, 161, 162 and 165 - Ms. Maura Galvin (VA08/5/160), Lisheen Nursing Centre Ltd. (VA08/5/161), Stanford Woods Care Centre Ltd. (VA08/5/162), Lucan Lodge Nursing Home (VA08/5/165)**] in relation to the preparation of schemes of valuation. *“In principle there is considerable merit for the preparation of a coherent scheme of valuation in relation to nursing homes and other categories of properties that are seldom if ever let on the open market. That said, however, any such scheme must be well founded and sufficiently researched to withstand a robust examination if it is to find widespread acceptance by rate payers and their advisers. Furthermore, the scheme must be fully transparent in its application and contain within it sufficient flexibility to enable it to be used right across the sector. Once again, the Tribunal would urge the Valuation Office to engage with their colleagues in private practice who have a particular expertise in the category of property concerned, as such a course of action, will in the final analysis, lead to more accurate assessments and a greater understanding of how the valuations are determined.”* Despite their obvious conflicting roles in the valuation process, there is considerable merit in continuing to explore how these roles could converge without in any way minimising the rate payer’s desire to curtail his/her rates liability, or the Valuation Office’s aim to uphold their valuation of first instance. Such a convergence of ideals would ultimately serve better all stakeholders in the valuation process and reduce the amount of time spent in lengthy and contentious negotiations and the raising of minor points of law which, in the final analysis, are in the interest of neither party.

21. The nursing home industry is one of the most regulated in the State and its operation is primarily governed under the provisions of the Health Acts 1990 and 2007 and the various regulations and other statutory instruments issued thereunder. The 2007 Act provides that the premises and the service provider must be registered and registration must be renewed on a periodic and ongoing basis. Furthermore, nursing home premises are subject to frequent and routine inspections by HIQA to ensure compliance with current nursing home inspection regulations. Failure to comply could in extreme cases, lead to registration under the Act being cancelled, or being amended by the imposition of additional conditions.
22. The two key personnel in a nursing home are the Service Provider and the Director of Nursing, both of whom must meet stringent criteria in relation to their suitability and/or their professional qualification. Both of these persons are liable to criminal prosecution under the Act and, when not available for an extended period in excess of thirty days, HIQA must be advised and suitable replacements put in position *pro tem*. Statutory regulations also set down the numbers of nursing and care-staff that are to be available at various times during the day and night and the educational qualifications appropriate to their functions. Adequate care and nursing staff complements must be available on a 24 x 7 x 365 day basis and all accommodation, including sitting rooms, dining areas and kitchens, including the external environment, etc. must be in accordance with standards set down by and monitored by HIQA.
23. The nursing home industry is labour intensive and costly, given the level of care that must be available at all times. Weekly room rates since the introduction of the “fair deal” scheme are now largely controlled by the National Treatment Purchase Fund (NTPF), who negotiate fees based upon total outgoings, assuming a 90% occupancy rate. On the evidence adduced, it would appear that 85% of residents at any one time benefit to some extent from funding by the NTPF. This security of income stream is, of course, beneficial to the operator and mitigates against the possibility of any significant loss by way of bad debts.

24. When using the R & E method, it is to be assumed that the property concerned is vacant and to let and that the nature of the occupancy will be the current use. It follows, therefore, that all of the above statutory requirements and regulations will have to be met by the hypothetical tenant, who will also have to be rewarded for his risk in taking over the property, carrying on the business and will have to receive an appropriate return on the monies invested by way of tenant's assets and working capital. All of the above and the hypothetical terms of the letting as set down in Section 48 must perforce be reflected in the tenant's share.

Specific Issues

25. It is common case that at the relevant valuation date, Marymount Care Centre provided accommodation for 91 residents, in a mainly single-storey and part two-storey building in a pleasant rural location. It is also common case that the accommodation is finished to a high standard, in full compliance with HIQA requirements and regulations. The home also provides an extensive garden and other outdoor facilities for the residents and their visitors.

26. As stated at Paragraph 19 above, the Tribunal prefers the use of the receipts and expenditure method of valuation to the scheme of valuation prepared by Valuation Office, particularly since reliable and verifiable financial information is available. Having examined the financial information, the Tribunal accepts that the items of expenditure as detailed under the heading "cost of sales" are allowable in full, in compliance with the Guidance Note. The remaining items of expenditure classified as "administration expenses" contain a number of expenses that are not necessarily allowable, such as directors' salaries, directors' pensions, directors' costs, directors' fees, rent, rates, repair, depreciation, bank charges etc and, hence, must be disregarded either in whole or in part as they are contained in the tenant's share.

27. It is common case that there are no audited accounts for the years 2005 and 2006 for the property concerned as a 91 bed nursing home, since at that time the property only had accommodation for 48 residents. Mr. Kenneally estimated the September 2005 turnover to be €3,790,392, while Mr. Hicks adopted a figure of €3,832,920. The Tribunal proposes to take the turnover to be €3,800,000 – equivalent to a weekly charge of €895 and an occupancy rate of 90%.

28. Having regard to the fact that the financial information provided is of a commercially sensitive nature the Tribunal does not propose to itemize the details of expenditure contained under the general headings of “cost of sales” and “administrative expenses.” In order to arrive at its estimate of allowable expenses the Tribunal has adopted as its starting point the figures contained in the extracts from the audited accounts for the year ending 31st January, 2006 and the 14-month period ending the 31st March, 2007, and to make what it considers to be appropriate adjustments to reflect, firstly, the time differential and secondly, the increase in accommodation from 48 to 91 beds. Appropriate allowance has also been made to reflect the active role played by the directors in the running of the affairs of the business taking into account that some of the costs would be included in the tenant’s share.

Determination

Having regard to the findings and conclusions above, the Tribunal determines the net annual value of the property concerned as at the relevant valuation date, in accordance with Section 48 of the Valuation Act, 2001, using the Receipts and Expenditure method of valuation, to be as follows:

Gross income		€3,800,000
Cost of sales (estimated)	€2,536,854	
Allowable in full		
Administrative expenses (estimated)		
Portion allowable under R & E		
Guidance Note	<u>€397,489</u>	
Total allowable expenses	€2,934,343	<u>€2,934,343</u>
Divisible Balance		
		€865,657
Allow for tenant’s share @ 45%		<u>€389,546</u>
Amount available for rent & rates		€476,111
Allow for rates @ 15c in the €		<u> x .87</u>
		€14,217
Net Annual Value, Say		€414,000

And the Tribunal so determines.