Appeal No. VA10/5/100

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Harvey Healthcare **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No.292795, Nursing Home at Riverside Nursing Home, Toberburr Road, St Margaret's, County Dublin

B E F O R E

John Kerr - Chartered Surveyor	**Deputy Chairperson**
Michael Connellan Jr - Solicitor	**Member**
Veronica Gates - Barrister	**Member**

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

By Notice of Appeal, dated 31st day of August, 2010, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of €114,000 on the above described property.

The Grounds of Appeal as set out in the Notice of Appeal are:
"The current valuation is excessive and the buisness could not survive such a valuation."
"The home will loose bed spaces, due to HIQA regulations, which in turn will affect turnover. For no apparent reason the valuation increased between the valuation cert, and appeal cert being issued."

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 31st January, 2011. At the hearing the appellant was represented by Mr. John Kenneally of Kenneally McAuliffe & Co., Estate Agents, Surveyors Commercial Property and Rating Consultants. The respondent was represented by Mr. Christopher Hicks, Valuer with the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, 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 is a single-storey purpose-built nursing home on a circa 3.3 acre site, which was constructed in 1992. The home is registered for 26 patients and accommodation comprises the following:-

11 No. Single Bedrooms, three of which are en-suite.
3 No. Twin Bedrooms, with en-suite.
3 No. Three Bed Bedrooms, two of which are en-suite.

The above noted en-suite bedrooms comprise w.h.b. and w.c. No showers are provided.

Location

The subject property, known as Riverside Nursing Home, is located in an area known as St. Margarets, about 5 kms north of Dublin Airport, in a rural setting.

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 €114,000 on the subject property.

Appellant's Case

Mr. John Kenneally, having taken 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 property was registered in late 1991 and following the 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.

Mr. Kenneally advised that Riverside Nursing Home is operated by a pool of about 30 full and part-time staff members, including one Director of Nursing, nurses and carers, and that all administrative /H.R./I.T., accounts and audits service are provided from resources off-site by head office. He identified the registered service provider as Mr. Seamus Brady, owner of Harvey Healthcare. It is understood that the current owners purchased the property in 2007. Trading figures for the previous owners were provided to the Valuation Office for y/e 30th June, 2005, and 30th June, 2006, and management accounts were provided by the current owners for y/e December 20009.

Mr. Kenneally provided a brief overview of the nursing home industry and the prevailing National Quality Standards set down by HIQA since 2009, and in particular, changes which will apply to this property in accordance with Standard 25. He noted that the property is generally outdated and that, in order to maintain and comply with the foregoing HIQA Standard, the property will likely lose at least five bedrooms, and possibly one other, as three-bedded rooms will need to convert to twin rooms, and the operators will also be required to provide a treatment room and visitor room and possibly one more single bedroom. He stated that as a consequence to these changes, the income potential of Riverside Nursing Home will be severely impaired. 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.

With the concurrence of the respondent, the Tribunal was informed then that, essentially, there was only one area of dispute between the parties which was leading to the differential between their respective valuation calculations, with the appellant seeking a reduction on the NAV assessed by the Commissioner of Valuation, i.e. €114,000, to a figure of €79,199. This area of dispute was the percentage applied to reflect the cost of wages and associated payroll burdens to include (or not) directors' remuneration, in full or in part.

Mr. Kenneally referred to his précis and the manner in which he calculated the foregoing 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 Net Annual Value, as at the relevant Revaluation Date of September 2005, he employed a summary of the R & E approach to value by establishing an adjusted turnover value to y/e 30th June 2005, based on the registration of 26 beds, and deducting from same wages and salaries, the cost of sales and allowable overheads. In order to establish the turnover figure, he took the reference year to be 2009, being the year in which he considered the income to Riverside Nursing Home had stabilised, and adjusted for inflation back to 2005.

Mr. Kenneally also carried out a similar mathematical exercise for y/e 30th June 2006 and also for y/e December 2009. The adjusted turnover figure for September 2005 was agreed between the parties, as was the percentage cost of sales and overheads to be deducted.

The split on the Divisible Balance, in the instant case at 50:50, was also common case between the parties, leaving only the percentage allocation to wages etc., as described above, to be reconciled.

Mr. Kenneally referred to various past Tribunal judgements, and in particular the valuations determined in each of the following: **VA08/5/160 – Ms. Maura Galvin**, **VA08/5/161 - Lisheen Nursing Home**, **VA08/5/162 – Stanford Woods Care Centre** and **VA08/5/165 - Lucan Lodge Nursing Home Ltd**.

In determining that the cost of wages etc., would amount to 62.76% of turnover, Mr. Kenneally took the sum of the percentages allocated to wages in the accounts over the three given years, together with the percentages allocated to the notional directors’ fees equating to a sum of €100,000 or 1.5 x the annual cost of a director for years 2005 and 2006.

Cross-examination by Mr. Hicks

In reply to questions asked by Mr. Hicks, Mr. Kenneally stated that the foregoing sum of €100,000 p.a. as notional remuneration paid to directors, was in his opinion fair and reasonable having regard to the services required and provided by the owners of the subject nursing home and the time they allocated to the operations in their capacity as hypothetical tenants. Mr. Kenneally disagreed with Mr. Hicks that such a small nursing home would not require any more management than that provided by the Director of Nursing, whose wages were already included in the accounts provided.

An exchange ensued then between the parties as to the role and management function and contributions made by the previous owners who were three members of one family, and some speculation followed as to the degree of their involvement with the management and operation of other nursing homes, to which Mr. Kenneally stated that, to his knowledge, up to recent times that family was involved in the management of only two nursing homes, and not four, as claimed by Mr. Hicks.

Mr. Kenneally would not agree with Mr. Hicks that the owner’s time and remuneration should be allocated to landlord functions and accordingly not reflected in the R & E exercise.

Mr. Kenneally confirmed that Harvey Healthcare, the current operators of the subject nursing home, is involved in the operation of approximately 125 nursing home beds in various properties.

The consultant valuer confirmed that in his computation of Net Annual Value tables on pages 11 and 12 of his précis, he had made no adjustment to the percentages applied for wages during 2009, which were noted to be approximately 6% higher than those of the previous year.

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 the 15 nursing homes and to devise a "scheme" of valuation which would be clear and produce equity for all nursing home operators.

Mr. Hicks then noted agreement with the appellant's consultant on the allocation of 20% to the non-wage costs, as outlined in page 12 of the Appellant's précis, and also confirmed that as the subject is considered a small nursing home, the tenant's share should be computed at 50% of the Divisible Balance, explaining that such would result in a valuation equivalent to 12.5% of the turnover. He also confirmed agreement between the parties on the value of the adjusted turnover, as at September 2005.

To support his argument, Mr. Hicks cited the valuation methodology set out in Tribunal judgement **VA08/5/053 - Griffeen Valley Nursing Home** and also the four abovementioned cases to which Mr. Kenneally had referred. He also referred to an approach 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 similarly to hotels, with rental values in the range of 50% to 70% of earnings before interest, tax, depreciation and amortisation (EBITDA). Mr. Hicks further referred to three hotel properties revalued in South County Dublin, which had been the subject of appeals to this 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 referred to the Horwath Bastow Charleton Survey conducted in 2005, and to the four South County Dublin nursing home cases heard by the Tribunal, and noted that the appellant's précis submitted to the Tribunal in those cases had directors'/family members' fees/remuneration included in the wage costs.

Mr. Hicks stated that he could not make sense of the percentage allocated to wages by the appellant and argued that the appropriate figure should be 55% of the turnover adjusted to 2005. The valuer repeated his opinion that, as there was a full-time manager employed at the subject nursing home, i.e. a qualified nurse functioning in the role of Director of Nursing, he could not understand the apparent need or argument made by the appellant to support the cost of remuneration for any other director in this case. He also made mention of the four nursing home cases referred to by Mr. Kenneally above, and again concluded, that having regard to all of the submissions made and the arguments adduced in those cases, including submissions from Carroll & Associates, Accountants and Auditors, on same, and the findings of the Horwath Bastow Charleton report, which issued following a national survey of over 100 nursing homes in 2005, the appropriate percentage to apply to wages should, in the instant case, be 55%.

In reaching his determination of value the respondent 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 the room rate per week, by 52 weeks.

Mr. Hicks explained that the turnover figure agreed between the parties was determined by him by taking an average of the amounts set out in the accounts to y/e June 2005 and 2006. He also deduced that the 2009 turnover figure indicated an increase of 21.5% in the four years from mid-2005, which provided him with an adjusted income figure, as at y/e 2005, on the current income per week, per bed. He analysed the turnover by reference to a 95% occupancy level on beds generating €715 per week and secondly, in 90% occupancy, at a rate of €750. He concluded his evidence by referring to Valuation Tribunal decision **VA08/5/053 - Griffeen Valley Nursing Home** of similar size with 25 beds on which the value was determined equivalent to a sum computed by taking 12.5% of the turnover.

By such method he estimated the NAV on the subject premises at €114,000.

Cross-examination by Mr. Kenneally

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

1. He did not consider 57% as an appropriate share of turnover to apply to wages, as in his view, such would include, by reference to the Carroll & Associates submissions on the aforementioned nursing home cases which came before the Tribunal, all staff costs, including directors.
2. He did not agree that the Horwath Bastow Charleton survey may have provided unreliable results, as a number of nursing homes are managed by sole traders who may not always declare drawings as wages or fees in the management accounts, though he did not dispute such accounting practices, acknowledging that sole traders are typically remunerated by drawings taken from revenue surpluses.
3. While acknowledging that wage percentages may vary in circumstances when the management of nursing homes elect to provide contract catering, food service and possibly laundry through out-of-house contract arrangements, Mr. Hicks was of the view that the influence on the accounts relied upon in the R & E Method would not be material and, accordingly, would result in a minimal impact on the wages percentage.
4. He viewed potential changes and loss of bed income associated with the implementation of the HIQA Standard as a matter which would not have been known to the hypothetical tenant in 2005, and accordingly should not be considered in the task, and any changes to the building resulting from same would be costs to be borne primarily by the landlord.

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 summary of the history, issues, applicable legislation, appropriate valuation methodology to apply in revaluing nursing homes, together with the influences and effect of the 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* (aka the RICS Guidance Note) published by the Joint Professional Institutions' Rating Valuation Forum in 1997.

2. Noting agreement of the parties on turnover, non-wage costs and Divisible Balance shares in this case, the Tribunal has given considerable consideration to the specific case and the appropriate percentage of wage costs which should apply, having regard to the accounts.

3. 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 Riverside Nursing Home as at 2005, would not factor the inclusion of the burden of remuneration for one or two additional directors to assist with the management of Riverside Nursing Home.

4. The Tribunal believes that the hypothetical tenant would be satisfied with the calculations and figures relied upon by the Respondent in this case, mindful of the 50:50 split of the Divisible Balance, as agreed between the parties.

Determination

The Valuation Tribunal is satisfied that the Net Annual Value of the subject property has been calculated correctly by the Commissioner of Valuation, and so affirms the valuation at €114,000.

And the Tribunal so determines.