

Appeal No. VA05/3/073

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

Grovelands Childcare Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Crèche at Lot No. 10F, Garrycastle, Athlone East Rural, Athlone 1, County Westmeath

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Maurice Ahern - Valuer

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY, 2006

By Notice of Appeal dated the 5th day of August, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €237.00 on the above described relevant property.

The Grounds of Appeal are as set out in the Notice of Appeal a copy of which is contained in Appendix 1 to this judgment.

This appeal came before the Tribunal at an oral hearing on the 15th November, 2005 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing the appellant was represented by Mr. Tony Brooks B.Agr. Sc., MIAVI, of Messrs. Tony Brooks & Co.. Mr. Ronan Bushell and Mrs. Regina Bushell gave evidence on behalf of the appellant company. Mr. Christopher Hicks, a Valuer in the Valuation Office, represented the respondent.

The Property

The subject property is located in the IDA Business and Technology Park, Garrycastle, Athlone, Co. Westmeath which is just off the old Dublin/Athlone road about 1.5 miles outside of the town of Athlone at the Dublin end of the Athlone by-pass. It comprises a partly two-storey, purpose-built, detached building which is used as a full day care crèche.

The ground floor accommodation includes two baby rooms, a Montessori room with changing and sleeping facilities, two toddler rooms with changing facilities, four toilets, kitchen with larder/and utility room, buggy store, boiler house, toilet and shower for the disabled, reception area and office. The first floor includes staff room, kitchenette, two staff toilets, games room and Montessori room and two children's toilets.

The building is constructed with precast concrete, aluminium framed windows and the entire is covered with a tiled roof. Internally there are carpeted and laminated floors and plasterboard ceilings. There is no lift on the premises.

Tenure

The property is held under a 999 year lease with a covenant whereby it can only be used as a crèche and for no other purpose.

Services

The usual main services of water, drainage, electricity and telephone cables are supplied and connected to the property. Heating is by means of an under floor gas-fired system.

Valuation History

The property was initially assessed at a rateable valuation (RV) €237 by way of a proposed valuation certificate issued on 4th November 2004. No change was made to the valuation either at representation or first appeal stage.

Agreed Areas

The ground floor has an area of 479 sq. metres and the first floor has an area of 197 sq. metres. The total area is 676 sq. metres and these areas have been agreed.

The Appellant's Case

Mr. Tony Brooks having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief.

1. He maintained that there was an absence of similar crèches in County Westmeath. In these circumstances he submitted that, under the provisions of Section 49(2) of the Valuation Act, 2001, regard should be had to crèches outside County Westmeath, specifically to crèches in the adjoining counties of Offaly and Meath.
2. He further maintained that there was a total absence of profile as the property was situated within an IDA Park and accessed via the internal estate road. A map showing the access was handed in by Mr. Brooks.
3. Mr. Brooks further maintained that Mr. Hicks had erred in comparing the crèche (a) with nearby business offices in the IDA Business Park namely the IDA Regional Headquarters and premises of Athpharma, Pharmaceutical Research and Development and (b) the drop-in crèche in Golden Island Shopping Centre. This, he said, was a drop-off facility for customers of the Golden Island Shopping Centre and was not a full day centre as was the Grovelands. Charges in the drop-off crèche were on an hourly rate whereas the Grovelands charges were on a monthly basis.
4. He argued that a first floor in a crèche is not ideally suitable. A crèche, he maintained, should all be on the same level from a fire and safety point of view. A hypothetical tenant would perceive the first floor accommodation as a disadvantage.

Mr. Brooks gave two comparison crèches, one in Rathoath Co. Meath which was valued at €47.49 per sq. metre. This was a modern, purpose-built, two-storey building. His second comparison was in Ashbourne, Co. Meath. This was originally a private residence which was rated in 1997 at €34.17 per sq. metre. A third comparison of a sister crèche in Tullamore belonging to the appellants was not proceeded with as it was valued in August, 2005, i.e after the valuation date of the subject.

The appellant's comparisons are at Appendix 2 to this Judgment.

Opinion of Valuation

Mr. Brooks contended for an RV of €140 based on a net annual value (NAV) of €27,716 which in turn was based on a rate of €41 per sq. metre on the total lettable area of 676 sq. metres.

Witnesses' Evidence

Mr. Ronan Bushell, husband of Mrs. Regina Bushell who runs the crèche, took the oath and gave evidence as follows:

1. The IDA Regional Headquarters referred to in Mr. Hicks' comparisons (see Appendix 3 to this Judgment) had a lift and was finished to a high standard.
2. The Eurotel marketing premises (not referred to by Mr. Hicks in his précis) was roughly the same size as the IDA premises and was valued at €100 less. That building had a very high standard of finish and also had a lift.
3. Neither of the aforementioned buildings had a high proportion of space devoted to toilets for children and staff, large kitchens, sleep rooms or nappy changing rooms within the building. Both buildings were full two-storey whereas the upstairs of the subject was built into the attic of the building and had extremely low ceiling height.
4. The subject could not be converted into offices without significant expense.
5. No allowance was made in the valuation for the absence of a lift or for the low ceilings in the subject.
6. Very large areas in the subject were taken up with stairways at either end of building for safety reasons.

7. Both Eurotel and IDA Headquarters were built in the vicinity of the roundabout as you enter the Business Park. Grovelands was, he said, tucked away in a remote corner of the Park.
8. Grovelands had a capacity for 86 children and they had an occupancy rate of about 75%.
9. In Rathoath the crèche charge was €800 per month whereas in Athlone it was €550 per month.
10. They could not have built a single storey crèche on the site because of conditions laid down by the IDA in relation to building in the Park.

Mr. Bushell, by agreement, handed in a letter dated the 1st November, 2005 from Westmeath County Council (copied in Appendix 4 hereto). This letter confirmed :

1. That the appellants' property was the only childcare facility valued in Co. Westmeath
2. That currently the Council were examining some 70 properties for valuation as childcare facilities in Co. Westmeath.
3. That 23 of these were then ready to be submitted to the Valuation Office for valuation purposes.

Mrs. Regina Bushell, having taken the oath, stated that she ran the crèche and that crèches were regulated to a high degree by the provisions of the Child Care Act, 1991. She maintained that crèches should be exempted from the payment of rates and that she and other crèche owners were lobbying the Government for exemption.

The Respondent's Case

Mr. Christopher Hicks, having taken the oath, adopted his written précis as being his evidence-in-chief.

He maintained that properties do not have to be similar in all respects in order to be comparable. Properties could be compared by a number of parameters, e.g. rent, cost, location, condition, use, size etc.

He then referred to the Tribunal decision in the **VA04/1/024 – Gerri Cobbe and Mary McGibney** (“the **Beacon Court** case”) which related to a crèche at Beacon Court, Ballaly, Dundrum, Co. Dublin and he referred in particular to paragraphs 3 and 5 of the Findings therein.

Paragraph 3 states that Section 49(1) of the Valuation Act, 2001 set down the basis for valuing properties at revision stage and dictated that values should be determined by reference to comparable properties in the same rating authority area. In absence of any definition in the Act as to what is comparable the word must be interpreted in the normal sense and mean equivalence, likeness or sameness. That being the case, comparable must be interpreted as being similar in use, location and nature of construction or any other factor which would have a bearing on value.

Paragraph 5 of the same judgment states that “no evidence was adduced to show that the price paid for the crèche was proportionately more or less than the price paid for office buildings”.

Mr. Hicks further pointed out that the Tribunal fixed a 1988 NAV on the crèche at €125.00 per sq. metre and a separate Tribunal judgment, **VA04/1/023 - BUY4NOW** fixed this same level on offices in the same development.

He contended on behalf of the Commissioner of Valuation that the property under appeal could be compared with other nearby properties that have a similar or comparable quality of finish.

Mr. Hicks contended for a rateable valuation of €237 calculated as follows:

“Creche gross internal area: 676 sm @ €70 psm = 1988 NAV €47,320

@ 0.5% = €236.60

Say RV €237”

He also provided the following alternative valuation in accordance with Section 49(2)(b) of the Act:

“2004 net annual value as per Section 48(1): 676 sm @ €170 psm = €114,920

Net annual value by reference to 1988 values at 41.5% = €47,692

Adjustment by agreed factor .5% = **RV €38**”

Findings and Determination

1. The first matter the Tribunal concerns itself with is the comparable evidence, and the concept of “comparable” within the meaning of the 2001 Act. The Tribunal understands “comparable” to include the following elements or parameters: namely, properties are similar as regards use or function, size, construction, quality, location and other factors which may affect their value. When these elements come into play with respect to two or more properties, the properties are said to be comparable.
2. The Tribunal accepts that the word “use” is an important ingredient in the concept of “comparable” within section 49 of the 2001 Act. While not specifically mentioned in the 2001 Act as it was in Section 5 of the Valuation Act 1986 which refers to hereditaments “*which are comparable and of similar function*”, yet this does not mean that it is not implied in section 49. The Tribunal is of the view that it is implied in the concept and recent case law of the Tribunal supports this.

In its judgment of 1st September 2004 in the **Beacon Court** case the Valuation Tribunal stated in paragraph 3 of the decision: “*In the absence of any definition in the Act as to what is comparable the word must be interpreted in its normal sense and mean equivalence, likeness or sameness. That being the case, comparable must be interpreted as being similar in use, location and nature of construction or any other factor which will have a bearing on value.*”

In this particular case the subject property is restricted under a 999 year lease to use as a crèche only and also the subject property by nature of its physical structure is designed to

be a crèche only and cannot easily be converted to another use without incurring much expense. The subject property has sleeping and changing facilities and four toilets on the ground floor. There is a Montessori room, children's and staff toilets and a common room on the first floor. Its structure is entirely different to that of an office. In these circumstances they are not similar for comparative purposes to buildings used as offices.

It is also helpful to refer to the Tribunal judgement of 2nd May 2003 in **VA02/5/027 – Mr. Jason Bonney t/a Bonney Baby's Crèche**. That subject property was restricted to use as a crèche by planning permission for the Clare Hall Housing Scheme. The judgement stated that it was common case that it would require physical alteration in order to render it suitable for use as a shop, if planning permission was obtained for a change of use. It further stated that the subject property had to be valued "*in its actual state*". Hence it was necessary to take into account the mode or category of use as well as the physical state and circumstance of the building. As the subject property was built, designed and used as a crèche, the Tribunal was of the view that it should be valued as a crèche and distinguished from a standard unit in the Shopping Centre in which it was located.

Accordingly the usage element is very important and the crèche should be compared to other crèches in the same rating authority area, and not with other units used as offices in the Business and Technology Park.

3. What the Tribunal finds most astonishing is that the subject premises is the only day-care crèche in County Westmeath that is valued for rating purposes. This is a very odd situation. The letter from Westmeath County Council of 1st November 2005 to the appellant confirms this. It appears to us unfair that appellant should be singled out as a rateable occupier, while occupiers of other crèches in Westmeath are not liable for rates. This creates a situation of no comparable properties in the same rating authority area. In these circumstances the appellant was entitled to go outside the rating authority area under section 49(2)(b) of the Act as there are no comparable properties within the said area and also section 49(2) further applies as we are dealing with an "existing" valuation list.

4. Comparative analysis: as there were no suitable comparisons in County Westmeath where the subject is situated, the appellant was entitled to look at crèche valuations in counties Meath and Offaly in search for comparisons. Their comparison No. 1, the Rathoath Childcare Centre, has an area of 716 sq. metres valued at €47.49 per sq. metre on a gross external basis and rated in 2000. It is a modern, purpose-built, two-storey crèche similar in size and quality to the subject. Their comparison No. 2, Tiny Tots in Ashbourne, County Meath is much smaller than the subject property with an area of 385 sq. metres valued at €34.17 per sq. metre and formerly a private home and rated in 1997. Unfortunately, we cannot consider their comparison No. 3, Grovelands Child Care Centre in Tullamore, County Offaly as it was only valued in August 2005 and therefore not available as a comparison at the relevant date.

The Respondent's first two comparisons are in the same Business and Technology Park as the subject. Comparison No. 1, the IDA office, is the regional headquarters of the IDA. It is a similar quality building to the subject but is much larger with a gross internal area of 1,449 sq. metres valued at €67.63 per sq. metre. This building is not comparable to the subject either as regards function or size. Comparison No. 2, the Athpharma building, is also not a suitable comparison as it is a smaller area of 240 sq. metres and also not similar in purpose to the subject.

The Respondent also gave comparisons from outside the rating authority area. Comparison No. 3, O'Reilly Stuart, is used as an office. It has an area of 382 sq. metres valued at €183 per sq. metre. Comparison No. 4, Lisa & Tighe Farrell, a crèche at Dunboyne, has an area of 207 sq. metres valued at €96 per sq. metre. The fees charged in Dunboyne are far higher than in Athlone, as it is far closer to Dublin city. Comparison No. 5 is the same as the Appellant's comparison No.1, valued at €47.49 per sq. metre on a gross external area of 716 sq. metres. This devalues at 609 sq. metres (on a gross internal basis) at €56.23 per sq. metre.

5. Regulations under the Child Care Act, 1991: the Tribunal appreciates the fact that crèche and pre-school services are highly regulated businesses which adds further

costs to running the businesses. Under section 50 of the Child Care Act 1991 the Minister for Health shall make regulations for the purpose of securing the health, welfare and safety of children attending pre-school services which may include heating, lighting, ventilation, cleanliness, repair and maintenance of premises, and also the repair and maintenance of equipment provided in pre-school services. Further, section 52 imposes duties on every person carrying on a pre-school service in respect of the welfare of children. Inspection of the crèche premises can be carried out by authorised persons.

6. The subject property cannot be used for any purpose other than that of a crèche as per the existing lease agreement and again this would be taken into account by the hypothetical tenant.
7. The subject property was built as a two-storey building under the policy IDA who are the owners of the Business Park. The first floor is not ideal as far as care and safety are concerned and ground level or single floor usage is more suited for the purposes of a crèche. The building is disadvantaged in that respect as it does not have a lift.

Accordingly, in view of the aforementioned facts and evidence, the Tribunal determines the net annual value and rateable valuation of the subject as follows:

Ground Floor	479 sq. metres @ €50 per sq. metre = €23,950
First Floor	197 sq. metres @ €45 per sq. metre = €8,865

Total NAV = €32,815

V @ 0.50% = €164.08

Say RV €164

And the Tribunal so determines