

Appeal No. VA08/4/005

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

Seamus & Majella O'Reilly

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2193458 Creche, Yard at Lot No. 14C, Kiltullagh North, Kiltullagh,
Loughrea, County Galway

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Tony Taaffe - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF APRIL, 2009

By Notice of Appeal dated the 15th day of October, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €55.00 on the above-described relevant property.

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

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 27th day of March, 2009. Ms. Majella O'Reilly represented the appellants at the hearing. The respondent was represented by Mr. Briain Ó'Floinn, a District Valuer in 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 property is a purpose-built, rural crèche first constructed in 2005. The appellants purchased the property in July, 2006 and extended it during the period 2007/2008. The property may be characterised as a rural, detached, single storey dwelling used for the purpose of operating a crèche, with off-road hardstand parking and facilities for dropping off and collecting children. There is also an external all-weather play area to the rear. The original premises comprised of a gross floor area of circa 234 sq. metres, which was subsequently extended to the rear with the addition of a further 98.63 sq. metres.

Location

The crèche is located near the small rural settlement of Kiltullagh, Athenry, Co. Galway, which is served by a shop/post office/petrol station, church, and a three-teacher national school serving the primary educational needs of between 50 and 55 children. The crèche is situated off the R348 about 10 km east of Athenry and 11.5 km north of Loughrea. Access to the subject property is provided via a cul-de-sac from the public road. The crèche is located near a recent development of twelve detached dwellings in an estate which was granted planning permission in 2006 for eleven additional homes.

Tenure

Freehold.

Valuation History

This is a new Valuation.

Relevant Dates

22 nd February, 2008:	Proposed Valuation Certificate was issued at an RV of €60.
4 th March, 2008:	Without representations made, the Commissioner of Valuation confirmed the RV of €60 and issued a Valuation Certificate.
1 st April, 2008:	Appellants appealed the valuation to the Commissioner of Valuation.
25 th September, 2008:	The Commissioner of Valuation reduced the rateable valuation and issued a Valuation Certificate confirming an RV at €55.
15 th October, 2008:	Appellants appealed the valuation to the Valuation Tribunal.

Appellants' Case

Ms. Majella O'Reilly took the oath, adopted her précis as her evidence-in-chief, and provided the Tribunal with a review of her submission. From the outset, Ms. O'Reilly challenged the nature and relevance of the comparison properties cited by the respondent in his précis contending that, generally, crèches in large urban areas are capable of achieving higher fee revenues than those in smaller rural settlements. A considerable amount of time was devoted at this time and later in the hearing to the maximum number of children permitted in the crèche and the limitations imposed by the regulatory authorities with regard to the age, hours of attendance and facilities required to serve the needs of the children. Ms. O'Reilly indicated that the maximum number of children her crèche is capable of accepting and is permitted to accommodate is 59 at any one time, though the total permitted number throughout the day may reach a maximum level of 80 children. She noted the reference by the respondent to the nearby new housing estate and informed the Tribunal that three of those twelve new dwellings remain unoccupied. Ms. O'Reilly advised that she commenced the crèche business in the subject property in mid-September, 2007, whereas the formal HSE inspection on the extended premises was not carried out until February of this year. Referring again to the comparison properties in the respondent's précis and in particular his Comparison No. 2,

Stapleton's Childcare Centre at Cosmona, Loughrea, Ms. O'Reilly noted that that particular facility remains operating at full capacity primarily because of its proximity to a sizable urban population. She also stated that when that property was revised by the Valuation Office, the entrance area, corridors, stairs, toilets, changing area and a storage area were not included in the calculation of net annual value and neither was the area of the upper first floor which remained unfinished and vacant at the time of revision. She acknowledged that CSO statistics provided by the respondent indicated an increase in population from 2002 to 2006 of 20.2% in the rural area of Kiltullagh, but no information was to hand to update the statistics to the relevant valuation date. She reiterated the grounds of appeal as set out in her Notice of Appeal and, based on her experience, concluded that parents' selection of crèche facilities was largely based on the level of fees charged and many parents in and about Kiltullagh found it more convenient to bring their young children to crèches in the nearby employment centres of Loughrea and Athenry, and remarked that there are eleven crèches operating within 10 minutes' or so drive of her facility.

Cross-examination by Mr. Briain Ó'Floinn

The respondent raised a number of queries with the appellant, in relation to the following:

1. The number of children permitted to attend the subject crèche; the age profiles and maximum number of hours for each grouping, whether full-time aged 1 and 2, part-time 2–6, 6–10 years of age or sessional aged 2–6; referring specifically to a copy of correspondence addressed to Galway County Council by O'Brien Survey & Design Services Ltd., dated 4th February, 2008, attached as Appendix 4 in the respondent's précis.
2. The absence of any competition from other crèches in the area of Kiltullagh.
3. The potential advantages which might accrue to the subject crèche when the new M6 dual carriageway currently under construction, will be completed, noting that it is designed to serve commuters travelling from Ballinasloe to Galway, and will include an access route to Kiltullagh.
4. The growth in population trends, as evidenced by the CSO statistics for Kiltullagh and other rural areas nearby including Athenry, Cloonkeen, Kilconierin, Movode and Raford, which would indicate a potential increase in demand for crèche services.
5. The appellant's rationale in purchasing the initial crèche building and then following this immediately with an application for planning to extend and enlarge the facility.

6. The number of staff employed by the appellants.
7. The knowledge and experience of Ms. O'Reilly in managing a crèche facility.

Respondent's Case

Mr. Ó'Floinn took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He noted that when he inspected the premises finishing works were being completed on the new extension. He described the village of Kiltullagh as "barely a village" when asked by the Chairperson. He described how the new M6 currently under construction will, when completed, pass nearby with an access road serving Kiltullagh. Mr. Ó'Floinn acknowledged an apparent anomaly in the manner in which crèche areas have been surveyed by the Valuation Office, with regard to the inclusion or exclusion of entrance areas, hallways, bathrooms, toilets, corridors, lobbies, stairs and so on, referring to the variations in practice and approach as outlined in the five comparison properties in his précis of evidence. He further acknowledged that the approach to survey on the subject may also have possibly excluded the entrance passage, the internal corridor, the entrance hall serving the extension and the small passage beyond which, all taken together, comprise circa 58.37 sq. metres.

Mr. Ó'Floinn explained to the Tribunal that the rate per sq. metre applied to calculate the net annual value of the subject premises took account of the "tone-of-the-list" having regard to the comparisons in the précis, and that the rate applied by the Commissioner for the internal area of the subject crèche at €35.00 per sq. metre was set at a level lower than each of the comparisons, which ranged from €41.34 per sq. metre at Head Start Montessori School in Loughrea; €42.24 per sq. metre at Stapletons, Cosmona, Loughrea, €41.00 at Mothercare, Loughrea, at €56.20 per sq. metre at Little Stars Crèche and Montessori, Moycullen, and finally €53.90 per sq. metre at Little Blossoms Crèche and Montessori at Oughterard. Mr. Ó'Floinn contended that the NAV applied to the subject was fair and reasonable having regard to all of the relevant data and circumstances.

Details of Mr. Ó'Floinn's comparisons are at Appendix 2 hereto.

Cross-examination by Appellant

Ms. O'Reilly questioned Mr. Ó'Floinn and asked why his position appeared to be guided by assumptions with regards to potential:

- a) Population increase since 2006,

- b) Advantage of the M6 to serve Kiltullagh and the subject facility when such road works are completed, and
- c) Growth and expansion of Kiltullagh as an element of a future conurbation.

Ms. O'Reilly also queried Mr. Ó'Floinn's assumption with regard to the finished state of the extension and whether it was sufficiently completed at the date of inspection for him to conclude that it was capable of beneficial occupation.

In reply to all of the foregoing, Mr. Ó'Floinn responded that such matters could not be replied to or discussed at the hearing as they had not been raised at First Appeal, citing previous Tribunal determinations.

Findings & Determination

1. The Tribunal thanks both parties who attended the hearing and appreciates the time and effort committed by both to seeking a satisfactory and equitable determination.
2. The subject property is located in a small, somewhat remote rural settlement with very limited population which impinges on its capacity to generate fee income, particularly when compared with the comparison properties at Loughrea, Athenry, Moycullen and Oughterard.
3. The Tribunal is satisfied that the trend of parents bringing their children to crèches close to their places of work, which in many circumstances are located in larger urban centres, continues to prevail and consequently impacts upon the demographic profile, numbers and fee income potential for rural based crèches, bearing characteristics similar to the subject.
4. The Tribunal is mindful that 25% of the new homes built in the current housing scheme nearby remain unsold and unoccupied and that the second phase construction programme, granted planning permission in 2006, has not commenced.
5. To maintain equity and consistency in the approach in relation to the internal areas of this crèche, the Tribunal is of the view that the aforementioned hallways, corridors and passages within the subject property should not have been included in the calculation of the total net annual value of the subject.
6. The Tribunal believes that the Commissioner of Valuation adopted a fair and reasonable rate per sq. metre to establish the net annual value of the subject, having regard to the rate

per sq. metre cited in the five comparison properties submitted and considered by the respondent as constituting the “tone-of-the-list”.

Accordingly, the Tribunal determines that the valuation of the subject relevant property should be calculated as follows:

Crèche	313.9 sq. metres		
Less areas as noted above	<u>58.37</u> sq. metres		
Total (net internal)	255.53 sq. metres @ €35 per sq. metre	=	€8,943.55
All-weather play area	92.66 sq. metres @ €2.76 per sq. metre	=	<u>€ 255.74</u>
Total NAV		=	€9,199.29
RV @ 0.5%		=	€45.99
Say RV = €46.00			

And the Tribunal so determines.