

**Appeal No: VA17/5/165**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**LIAM MCDONNELL**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1737342, Health at 11Fa Kineagh, Kilcullen, County Kildare.

**B E F O R E**

**Stephen Byrne - BL**

**Deputy Chairperson**

**Raymond J. Finlay - FIPAV, MMII, ACI Arb, TRV, PC**

**Member**

**Annamaria Gallivan - MRICS, MSCSI, BSc Hons, TRC**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 2<sup>ND</sup> DAY OF FEBRUARY, 2021**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 5th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €129,500.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follow:

- Curragh Lawn Nursing Home meets the requirements set out in the ‘National Quality Standards for Residential Care Settings for Older People in Ireland’ required by the Health Information and Quality Authority in July 2009 and the Health Act 2007;
- Curragh Lawn is a purpose built Nursing Home;
- The NAV applied per unit of €3,500 is excessive when compared with Oghill Nursing Home and Lourdesville Nursing Home;
- There are no footpaths and no street lighting. Connection to mains sewage and 3 phase electricity was funded directly by the Nursing Home rather than the County Council;
- We have 37 registered beds contained within 24 bedrooms which we think is the correct unit measurement;
- We are advised the accepted occupancy rate of all nursing homes for the purposes of rates valuation should be 90%;
- We are advised that beds paid for directly by the state (i.e. contract/ddi & transitional etc.) are not rateable;
- We are advised that our residents are legally deemed as occupiers, therefore they should have been granted the opportunity to make representations on their own behalf;
- Our fair deal rate is set up to 3 years in advance by the NTPF. The Nursing Home would be unable to meet the increased rate amount as we do not have the ability to raise our prices to cover this additional charge;
- The appellant’s opinion of value is €60,840 or €3,000 per bedroom 15.5% for state funded beds.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €60,840.

## **2. REVALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of March, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €148,500.

- 2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €129,500.
- 2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €129,500.
- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> day of October, 2015.

### **3. THE HEARING**

- 3.1 The Appeal proceeded by way of a remote hearing on the 2<sup>nd</sup> day of November, 2020. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI of Mr Eamonn Halpin & Co Ltd and the Respondent was represented by Mr Alan Sweeney BSc (Property Valuation & Management), MSCSI, MRCS of the Valuation Office.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

### **4. FACTS**

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 4.2 The subject property comprises a former domestic two storey house converted to Nursing Home c.1984 with purpose-built extensions in 1989 & 1992.
- 4.4 The subject property is located 2.5km south of Athgarvan and 4.5km west of Kilcullen. The property is 5km south of Junction 12 on the M7 Motorway.
- 4.5 Athgarvan has a population of 1,176 as per 2016 census, up 15.7% on 2011. Kilcullen has a population of 3,710 as per 2016 census, up 6.8% on 2011. The property is 6km

south of Newbridge, which is the largest population centre in the area, 22,742 as per 2016 census, up 5.4% on 2011.

- 4.6 The property was last registered with HIQA on 16th December 2016 to provide for a maximum 37 residents.

Accommodation:

13 singles

10 twins

1 four bed

- 4.7 The property has planning permission for 15-bedroom extension on first floor.
- 4.8 The floor areas are agreed, and the subject property is held freehold. The total Gross External Area (GEA) of Nursing Home is 1,382.85 square metres.
- 4.9 The subject property is presently trading as a Nursing Home. No financial information was supplied. The NTPF rate is €985.

## **5. ISSUES**

The matter at issue is quantum. The Appellant claims that the valuation of the Property is excessive and inequitable, that the NAV be reduced in line with its actual potential rental value, given the type and nature of the property, and ought to have been valued at €98,000. The Respondent contends that the valuation of €129,500 is in line with the tone of the list for the rating authority area, and requests that the Tribunal affirm same, as representing its Net Annual Value in accordance with Section 48 of the Valuation Act 2001 and the requirements of section 19(5) of that Act as amended.

## **6. RELEVANT STATUTORY PROVISIONS:**

- 6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“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.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“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 be expected to let from year to year, on the assumption that the probable 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 in respect of the property, are borne by the tenant.”

## **7. APPELLANT’S CASE**

7.1 Mr. Halpin for the Appellants adopted his Précis as his evidence-in-chief, in addition to giving oral evidence, and confirmed that he was intending to rely on the tone of the list. He described the subject property as a 37-bed nursing home (13 singles, 10 doubles, 1 quadruple) located in the townland of Kinagh, Co. Kildare. He stated this was a rural location, 4 kilometres from Kilcullen on the edge of The Curragh.

7.2 Mr Halpin’s evidence was that the subject property was amongst the smallest nursing homes in the county, being 24 bedrooms in total, with 4 ensuite rooms, it was his opinion that all rooms should be ensuite. He stated that the property was constructed c.1980 and required new windows as they are currently only single glazed, which he believed was evidence of the nature of the subject property. It was his evidence, that the business survived due to the dedication of the family which operates it.

7.3 It was Mr Halpin’s contention, that given the property’s size, location and type, the hypothetical tenant would be drawn from a small pool of operators, interested in family-run operations, in a similar manner to the Appellants. He stated that larger operators would not be interested in the subject, as they would not be able to achieve the economies of scale to be viable, and the added possibility that an alternative operator would be confronted with losing a substantial amount of bed spaces, in order to comply with HIQA regulations going forward. He stated there is no specific market analysis for the Kildare Nursing Home Market, but he is aware that since mid-2000s, the market

has become dominated by modern nursing homes of 50 plus, single ensuite rooms, and private multi-property providers.

- 7.4 It was Mr Halpin's evidence that the current operator is set to lose the quadruple room by 2021, as HIQA phases out multi-room occupancy, and in order for a major operator to run the facility, they would have to completely convert the subject property, to a majority single bed, ensuite establishment, which could result in the loss of up to 12 beds, making the entire enterprise untenable.
- 7.5 Mr Halpin said that not all nursing homes on the list were comparable, as there was a variance in the standard of finish, size, location and type. It was Mr Halpin's evidence for the Appellant that the subject property's business although appearing healthy in terms of its NTPF rate, the bottom line consumes this benefit.
- 7.6 Mr Halpin said he relied on the Valuation Tribunal determination, VA17/5/180 (Oghill Nursing Home) at €2,650/bed based on its accounts. The Appellants believe that the subject is generally similar, being a small family run nursing home. Nonetheless, the Appellants believe there is now sufficient tone of the list evidence, to weigh the subject in the context of other nursing homes in Kildare, and this approach was ultimately carried through by the Tribunal in VA17/5/257 (Hillview Nursing Home). Mr Halpin praised the Commissioner for the scheme that was in place for the valuation of nursing homes, in that, the scheme allows for variation, as although they provide the same service, they are a diverse set of buildings. It was Mr Halpin's evidence that per bed established by the list, ranged from €2,650, for the non-purpose built, extended over time type facility, to €4,000 per space, for the superior purpose-built modern nursing home.
- 7.7 Mr Sweeney for the Respondent put it to Mr Halpin that in relation to his comparison 1, Oighill Nursing Home, it was factually incorrect that there were 9 ensuite rooms, as there are 2 ensuite rooms. Further Mr Sweeney questioned Mr Halpin's opinion in relation to the NTPF rate which was €820 at the valuation date as against the subject, which was €985, being €8151 per annum per resident over and above Oighill Nursing Home. Mr Halpin disagreed saying the hypothetical tenant cannot rely on that NTPF rate. Mr Halpin said the NTPF rate had to be negotiated and does not reflect the quality

of the building as it can be historic. Mr Sweeney asked Mr Halpin what in his opinion information was required to agree the NTPF rate, Mr Halpin said in his experience, the rate was influenced by where it initially stood, the longer in the business, the higher the rate. Mr Sweeney put it to Mr Halpin, that there was a renewal pack as standard, that sets out the information required in relation to the setting of the rate.

- 7.8 In response to cross examination by the Respondent, Mr Halpin said there was no evidence, that a new operator would get any higher NTPF rate, than Oighill Nursing Home. Mr Sweeney asked Mr Halpin to look at his KRT 1, saying the rate for the new operator was the same as the original operator. Mr Halpin would not agree that it was comparable, being located in Dublin, he evidenced that the NTPF rate is low by Dublin standards, and Oighill Nursing Home was determined by the Valuation Tribunal, which is in essence superior in terms of a valuation, at €2,650 and is comparable to the subject. Mr Sweeney did not accept this, he pointed out to Mr Halpin, that he himself, had contended that a historically higher rate influenced negotiations of the NTPF rate, and he was not aware of new operators receiving less than the established rate.
- 7.9 Mr Halpin put forward the following four NAV comparisons, in Appendices of this judgement. These details cannot be published on the 'Judgments' section of the Valuation Tribunal website, arising out of requirements from Regulation (EU) 2016/679 (General Data Protection Regulation).
- 7.10 It was Mr Halpin's evidence that comparison 1 and 2 were the best comparisons to the subject. Comparison 1 was agreed by the Valuation Tribunal, with comparison 2, still under appeal, and in his opinion, significantly more valuable to the hypothetical tenant. Mr Halpin provided no rental comparisons.
- 7.11 Mr Halpin summarised his evidence, stating that the subject property is amongst the smallest nursing homes in the county, with just four ensuite rooms, is in need of replacement windows, and further that larger operators would not have interest, as the economies of scale were not evident, along with the possibility of losing bed spaces, to comply with HIQA regulations going forward. Mr Halpin stated the Appellants seek to have their NAV in line their actual rental potential, as determined by the tone of the list for comparable properties. He further stated, that the Appellants cannot rely on the

entire tone of the list, as the basis for the tone cannot be established, as there is no reference to the valuation method applied as they appear on the valuation list.

- 7.12 Mr Sweeney asked Mr Halpin, if the NTPF rates per bed differ between single and shared rooms, Mr Halpin confirmed they did not.
- 7.13 In conclusion, Mr Halpin indicated that in such circumstances, the appropriate starting point, is the Tribunal's decision in VA17/5/180 at €2,650/bed. The subject property is just 3 beds larger than this, family run and significantly older. In the Appellants opinion, there is therefore no reason to deviate from the level of €2,650/bed as determined, which results in an NAV of €98,000.

## **8. RESPONDENT'S CASE**

- 8.1 Mr Sweeney gave evidence on behalf of the Respondent. Mr. Sweeney adopted his Précis as his evidence-in-chief in addition to giving oral evidence.
- 8.2 Mr Sweeney evidenced that the key considerations in applying a fair estimate of NAV per bed space (once the market and financial information is analysed), was age/design/construction, location and any other nuances; trading or otherwise. It was Mr Sweeney's evidence, that the method for valuation of Nursing Homes was based around the National Treatment Purchase Fund (NTPF) rate, which is individually negotiated with registered Nursing Home operators, and in his opinion, was some reflection of the standard. The rate, and the duration for which the rate is payable, can vary from one property to the next. Mr Sweeney stated, that the Commissioner had grouped properties into various categories, that is, those that are modern, well located, and commanding a higher NTPF rate, as opposed to older properties, in lesser locations, with HIQA issues, carrying a lower NTPF rate. He further stated that the most recent agreement for the subject property, commenced 30<sup>th</sup> June 2017 until 30<sup>th</sup> June 2019. The agreement provided for an increase in the NTPF Rate from €1,035 in year 1 to €1,050 in year 2. The NTPF Rate was €995 prior to this agreement. The assessments have regard to both the revenue generating ability of each Nursing Home, and also the total expenditure required to achieve said revenue.



- 8.3 Evidence was given by Mr Sweeney that at the re-valuation stage, financial information was requested from every occupier of a nursing home, including audited accounts, and trading information. It was his evidence that none was received from the Appellants.
- 8.4 It was Mr Sweeney's evidence, that HIQA has standards, and regulations, which were updated 2016. He pointed out, that no documentary evidence was supplied, to support the claim that bed spaces would be lost in the subject property. He said there were no major issues in relation to the property.
- 8.5 Mr Sweeney pointed to evidence in the appendices of the precise, in relation to the subject property, which had planning permission granted for a further 15 beds.
- 8.6 It was Mr Sweeney's opinion ,that The Appellant had relied heavily on the Tribunal determination, VA17/5/180, Oighill Nursing Home, and had no regard to the NTPF rate, which he believed was an incorrect method of valuation, in this case, as no financial evidence had been forthcoming. It was his opinion, the said decision supported the Commissioners valuation of the subject, based on its lower NTPF rate (€820.00) in comparison to the subject (€985.00).
- 8.7 Mr Sweeney gave evidence that, in relation to the subject, no financial information was supplied, and had to rely on the NTPF rate, which is available online, to all.
- 8.8 Mr Sweeney relied on six Key Rental Transactions, in Appendices of this judgement. These details cannot be published on the 'Judgments' section of the Valuation Tribunal website, arising out of requirements from Regulation (EU) 2016/679 (General Data Protection Regulation).
- 8.9 It was Mr Sweeney's evidence, that in all cases, financial information was supplied in respect of KRT's. The result of the analysis of the financial information (including the carrying out of full receipts and expenditure valuations), lead to the development of the comparative approach to the valuation of nursing homes, which was required in order to ensure correctness, equity and uniformity for all ratepayers, utilised successfully in recent Dublin City, Waterford and Limerick Revaluations where all valuations have

been accepted. In respect of KRT 1, the property is currently appealed to the Valuation Tribunal, VA17/5/189.

- 8.10 Evidence of Equity and Uniformity via NAV comparison list was given (in Appendices). Mr Sweeney stated in his opinion, that 7 in number nursing homes were comparable. These details cannot be published on the ‘Judgments’ section of the Valuation Tribunal website, arising out of requirements from Regulation (EU) 2016/679 (General Data Protection Regulation).
- 8.11 It was Mr Sweeney’s evidence in the absence of financial information, which had not made available, it was estimated that revenues in subject property for 2015 & 2016 to have been in the region of €1,750,000 per annum or €47,297 per bed space. He therefore adduced that as the valuation level applied to subject, was €3,500 per bed space, this equated to 7.4% of the estimated revenues per bed space.
- 8.12 Mr Sweeney requested, that the Tribunal find for the Respondent at a NAV of €129,500.

## **9. SUBMISSIONS**

- 9.1 There were no legal submissions.

## **10. FINDINGS AND CONCLUSIONS**

- 10.1 On this appeal, the Tribunal has to determine the value of the Property, so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property, as determined by the Tribunal is relative to the value of other comparable properties, on the valuation list in the rating authority area of Kildare County Council.
- 10.2 The issue that arises in this appeal is the quantum of value.
- 10.3 The Tribunal accepts the evidence from Mr Sweeney for the Respondent, that in the absence of financial information, the hypothetical tenant would analyse the actual or historical NTPF rate, as a method of comparison which is available online to all. The Tribunal could not lend weight to the Appellants assertion without documentary evidence supplied to support it, on the future loss of bed spaces, and a HIQA

requirement for single rooms, or additional ensuite rooms in existing properties. If the number of beds is reduced since the valuation date, then this is a distinct matter, which the Appellant can pursue separate to these proceedings.

10.4 The parties are in agreement, that where there exists an actual rent or a body of open market rental evidence, at or about the valuation date, of truly comparable properties, in all material respects to the subject property being valued, in accordance with section 48, that evidence should be accorded appropriate weight. Thereafter the parties differ on the approach to be adopted in valuing nursing homes. The Commissioner favours a scheme of valuation with a blended 'rent per bed' figure, taking into account many factors including rental comparables, market information, occupancy levels, age and location of the property, NTPF rate, accounts, and trading information, and construction and redevelopment works, amongst other factors. The Appellant holds that none of the rental evidence provided by the Commissioner is relevant and therefore the subject property should be valued solely on the Tribunal decision in VA17/5/180.

10.5 The Tribunal finds, that Key Rental Transaction evidence provided by the Respondent, demonstrated a consistent approach, giving weight to the NTPF rate in comparison to the actual rent per bed and the resultant NAV. As in the recent decision of the Valuation Tribunal, *Eochiall Enterprise Ltd v Commissioner of Valuation*, paragraph 10.7 states that *"It is clear that the Commissioner has undertaken a substantial amount of work in developing the 'rent per bed' scheme of valuation and the Tribunal acknowledges the difficulty facing the Commissioner to ensure correctness, equity and uniformity across a specific and specialised type of property such as nursing homes. The Tribunal understands that the Respondent unilaterally applied the 'rent per bed' method previously in the revaluation of all nursing homes in Dublin City, Limerick and Waterford"*. The Tribunal further states in paragraph 10.9 *"the R&E Method, nonetheless, provides a more reliable and transparent basis"*.

10.6 The Tribunal finds, that Mr Halpin, having put significant weight on the Tribunal determination, VA17/5/180 Oighill Nursing Home, in that, the NAV has been fully tested, and was in his opinion truly comparable, was not in a position to make full use of same, as financial information was not put before the Tribunal, in this instance. In the determination of VA17/5/180 Oighill Nursing Home, the Tribunal found in relation

to Nursing Homes, that the most reliable and transparent basis for determining the net annual value, in accordance with Section 48, was the use of the R&E method. The method requires financial information, which in relation to the subject, was not supplied to the Commissioner to determine if an adjustment could be justified.

10.7 The Tribunal attaches weight to the Respondents assertion, that the NTPF rate is a driver of value, more especially in the absence of financial information. The Tribunal takes into consideration that the main emphasis of the Appellant was the Tribunal decision VA17/5/180, Oighill Nursing Home. Financial information and the effects of costs on the subject property, was not before the Tribunal, therefore the Appellants claim is based on the NTPF rate, location, type and number of beds. The Appellant gives no regard to the higher NTPF rate achieved by the subject, but in all other respects believes the property to be comparable in location and type to Oighill Nursing Home, on this point both parties agree.

10.8 Having considered the evidence adduced, the Tribunal consider that the subject property commands a higher NTPF Rate than VA17/5/180, Oighill Nursing Home, and accepts Mr Sweeney's argument that €3,500 per bed is consistent with KRT and NAV comparisons.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And so the Tribunal determines.