Appeal No: VA18/4/0075

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020

Coolmine Healthcare Ltd t/a as Millbrook Manor Nursing Home **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 5015720, Nursing Home at Slade Road Coolmines, Saggart, County Dublin

B E F O R E

Dairine MacFadden - Solicitor	**Deputy Chairperson**
Michael Brennan - BL, MRICS	**Member**
Annamaria Gallivan - FRICS, FSCSI, MPhil SEE	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4th DAY OF AUGUST, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 31st day of December 2018 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 €315,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"New Nursing Home, Not as established as others yet rated per bed, competing against larger establishments. Grouping all nursing homes in the area @5,000 per bed space is unfair. These nursing homes received a higher bed price from HSE. Millbrook has the lowest fees in the area".* Further, the Appellant stated in the Notice of Appeal that the valuation of the Property ought to have been determined in the sum of €215,000.

2. VALUATION HISTORY

2.1 On the 21st day of September 2018 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 €315,000.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 30th day of November 2018 stating a valuation of €315,000.

3. THE HEARING
3.1 The Appeal proceeded by way of an oral hearing held remotely on the 30th day of May 2022. At the hearing the Appellant, Mr Gerry Gallen, represented the Appellant and the Respondent was represented by Mr Herbert Mulligan, MSCSI, MRICS 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:

4.1.1 The Property is a modern purpose-built nursing home. The building comprises of a part 2 storey and part single storey building. There is also a basement. Parking is provided to the front of the nursing home. There are a total of 63 bed spaces provided made up of 59 single bedrooms and two twin bedrooms. The Property is located on the outskirts of Saggart Village.

4.2.2 The agreed floor areas of the Property are as follows:

Level	**Use**	**Area Sq.M**
0	Nursing Home	1847.57
1	Nursing Home	732.96
-1	Nursing Home	187.44
		Total 2767

4.2.3 The tenure of the Property at the relevant revision date was freehold.

5. ISSUES
The Property is located within the rating authority area of South Dublin County Council. All properties in that area were revalued with reference to a valuation date of the 30th day of October 2015. Following that revaluation, the Property was constructed, and a revision exercise was conducted by the Respondent pursuant to s.28 of the Act. A proposed valuation certificate issued on the 21st day of September 2018 and the final certificate issued on the 30th day of November 2018. The net issue for determination in this case is the Net Annual Value (NAV) of the Property on revision.

6. RELEVANT STATUTORY PROVISIONS:
The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

"(1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as

appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

7. APPELLANT'S CASE

7.1 Mr. Gallen confirmed that the occupier was Coolmine Healthcare Ltd trading as Millbrook Manor Nursing Home.

7.2 The Property had been built over six years ago and was much smaller compared to the older nursing homes within the relevant area. He referred to three nursing home comparisons as follows:

Comparison 1: PN 2179116, which he said was located 5.8 kilometres from the Property and was being paid a weekly sum of €1,298 per bed under the National Treatment Purchase Fund (NTPF).
Comparison 2: PN 447589, which was located 1.2 kilometres from the Property and was being paid a weekly sum of €1,275 per bed under the NTPF.
Comparison 3: PN 5002189 which was located 2 kilometres from the Property and was being paid a weekly sum of €1, 257 per bed under the NTPF.

7.3 The three comparison nursing homes were larger than the Property and they were being paid at a much higher NTPF rate per bed than the Property, which was being paid a weekly rate of €1225 per bed. The other nursing homes were being paid in the region of €30 to €50 per week per bed more than the Property. The NTPF set the price and he said that the Property was being paid an average price based on the prices in Dublin.

7.4 It was Mr Gallen's evidence that there was an expectation of the same rates as these much larger nursing homes which had been established for a number of years prior to the Property and which were also getting paid a greater weekly rate per bed from the NTPF compared to the Property. It was his opinion, due to economies of scale, that the costs of the Property were higher than those of the other larger nursing homes, as it is more cost effective to have 100 plus beds. It was his evidence that it is difficult to compete with these much larger nursing homes which were all located within a radius of 5-8km. He asked the Tribunal to look at the costs of the Property compared to those of the larger nursing home comparisons he had referred to with 100+ beds. It was his evidence that these were more cost effective to manage than the Property with only 63 beds, as they had the same requirements in relation to laundry, kitchen, person in charge and management. The Appellants had no control over the price per bed as this was set by the NTPF.

7.5 Under cross examination by the Respondent's representative, he said that his opinion was that the Property was overrated by 10% and that he was seeking an NAV of €283,500 which he confirmed would amount to €4,500 per bed space. He confirmed the current rent being paid on the Property as returned on the Commercial Lease Register, was €929,000 per annum for a term of 27 years and that the tenant was responsible for repair, maintenance and insurance. He accepted that the price per bed was a matter of negotiation and agreement with the NTPF but that there were four criteria which were looked at when setting prices, namely value for money, the local area price, the average price for the County and whether it was a reasonable price. However, he said that was not always taken into account and the average price for the County of Dublin in general and that the price offered is the local average price when you are starting off. Further negotiations occur at intervals of 18 months to 3 years but the average increase of prices in the Dublin area would be in the region of €20 - €25 per bed space but that negotiations would never allow the Property to catch up with the NPTF rate of the three nursing homes to which he had referred. Further, because the Property was an independent nursing home, it was more difficult to negotiate than if it was part of a larger group. He had submitted the prices per bed being paid for all nursing homes in Dublin and very few were at the same level as the Property. If the Property did not accept the prices set by the NTPF then they would not get any admissions under the Fair Deal Scheme and would be at a disadvantage. He accepted that he was not party to any of the negotiations with the NTPF in relation to the other nursing homes and would not know how the prices for those other nursing homes were set. He accepted that the valuation of the Property was to be done by reference to the tone of the list, pursuant to s.49 (1) of the Act. It was put to him that he had only provided details of the NTPF rates for 2022 and he was asked what the relevance of those prices was relative to the valuation date of 30th October 2015. He responded that in 2016, the Property was already behind the price per bed being paid in respect of the other three nursing homes he had referred to. Those prices were always €70 more per bed than the Property. Going forward into next year, he said that the Property would never be on parity with the three other nursing homes he had referred to but would always be behind. No nursing homes were paid at the same level as their neighbours; each nursing home had its own NTPF rate per bed. He referred to a report on nursing homes which had been done by La Touche over two years ago and which had identified discrepancies in the NTPF rates being paid, with some being treated better than others. No nursing homes being paid on a uniform price. He accepted that he had not provided any information in relation to the Property's income and expenditure as he did not think that it was relevant.

7.6 He was asked by the Tribunal if he could expand on the additional costs incurred by the Property, compared to the other nursing homes. He responded that it was well known in the industry, that the average wages bill for the smaller nursing homes was in the region of 62% of income whereas for larger nursing homes with beds in excess of 100/120, the margin would be in the region of 54 to 55% of income. He continued to explain that a nursing home with 100 beds would require only one Director of Nursing, but that one Director of Nursing was also required for the smaller nursing home with 64 beds. Similarly, the same number of cooks/ chefs and the same administration would be required for a 64-bed nursing home as would be required for a nursing home with 100 beds. The labour costs for smaller nursing homes were much larger; that was why a number of smaller nursing homes had expanded including the three now larger nursing homes he had referred to, as it was more cost effective given that the labour costs did not increase. He was asked if he could say what was the difference in the net profit margins between the Property and the 100+ nursing homes and responded that for the Property, it was in the region of 8-10%.

7.7 In summary, Mr. Gallen referred to the difficulties encountered by new nursing homes in the first 3-5 years of operation and the bigger cost implications of newer nursing home because of increased set up costs as they were required to have a higher standard of fit out than the older nursing homes. He hoped to achieve a valuation in the €4,500 mark.

8. RESPONDENT'S CASE

8.1 Mr. Mulligan on behalf of the Respondent referred to previous tribunal decisions which he said established that the onus of proof rested with the Appellant. He also made reference to s63(1) of the Act which provided that the statement of value as appearing on a valuation list was deemed to be correct until it was altered in accordance with the Act. As this was a valuation on a revision, the method of valuation was as provided for in s. 28(4), by reference to the tone of the list i.e., the valuations on the list of other comparable properties in the same rating authority area. All modern purpose-built nursing homes in South County Dublin had been valued at the rate of €5,000 per bed space.

8.2 Mr. Gallen's estimates of the distances between the Property and the comparators he had referred to were correct if you measured in a straight line. However, his estimates took into account the routes which would have to be actually travelled.

8.3 He gave evidence of the following comparators:

Comparison 1: PN 445208, a nursing home with 74 bedspaces which had been valued on the revaluation in October 2015, at €4,750 per bed space and which was located 13.6 km from the Property. He distinguished this from the Property in that it was not a modern purpose built nursing home, but was a converted and extended period house, and also had only 31 ensuites rooms compared to the Property which had all ensuite rooms. This had been appealed but had then been agreed prior to hearing.

Comparison 2: PN 5023165, a modern purpose-built nursing home, with 92 bedspaces which had been valued on a revision in 2021, at €5,000 per bed space, being the same level applied to the Property. This was located approx. 9 km from the Property. It comprised of 82 single and 5 double rooms, all of which were ensuite. This would not have been on the valuation list at the time of his inspection as it had not been constructed at that time, but he was including it by way of context. It had not been appealed.

Comparison 3: PN 447589 (Appellant's number 2), a modern purpose-built nursing home originally built in 1988 and extended in 2012, with a total of 112 bedspaces which had been valued on the revaluation, at €5,000 per bed space, being the same level applied to the Property. This was located approx. 3 km from the Property. Most of the rooms were ensuite. It had been appealed but the hearing had not yet taken place.

Comparison 4:PN 2179116, (Appellant's number 1), a modern purpose-built nursing home, with a total of 117 bedspaces which had been valued on the revaluation, at €5,000 per bed space, being the same level applied to the Property. This was located approx. 8 km from the Property. Most of the rooms were ensuite. It had been appealed and a hearing on a preliminary issue had taken place with a judgment issued and which was now the subject of a further appeal. It was his understanding that quantum was not in issue.

Comparison 5: PN 456346 a nursing home with 43 bedspaces which had been valued on the revaluation, at €4,500 per bed space and which was located 10.3 km from the Property. He distinguished this from the Property in that it was not a modern purpose-built nursing home but was a converted and extended house. It had been appealed and a hearing on a preliminary issue had taken place with a judgment issued and which was now the subject of a further appeal.

8.4 The Property had been valued in accordance with s. 49(1) of the Act and in line with his comparisons 2, 3 and 4, which were purpose-built nursing homes. Comparisons 1 and 5 comprised of converted period houses and were valued slightly below the level of the purpose-built nursing homes. He requested that the Tribunal affirm the valuation of the Property determined by the Commissioner of Valuation as representing its NAV in accordance with s. 48 of the Act. He submitted that the valuation of €315,000 was fair, reasonable and equitable.

8.5 Under cross examination by Mr. Gallen in relation to the valuation of PN 5002189, Mr. Mulligan responded that there were 139 bed spaces in that nursing home which were valued at €5000 per bed space resulting in a NAV of €695,000. It was put to him that in relation to his comparison 1, that the price per bed, exceeded that of the Property but that it was revalued at €250 less. He responded that in respect of that comparison it was being revalued on a revaluation and that consequently regard was had to the accounts and market evidence and not only to the NTPF rates.

8.6 In response to questions from the Tribunal:

8.6.1 as to whether the valuation was the same for a twin bed room as for a single room, he said that it was his understanding that the NTPF rate was per bed space and not per bedroom.

8.6.2 to respond to the Appellant's submission that smaller nursing homes had higher operating costs and whether that had been taken into account when valuing the Property. He referred to s. 49 (1) of the Act which he said required that the valuation be done by reference to the tone of the list. The scheme of valuation showed that all nursing homes which were purpose built were valued at €5,000 per bed space. The costs referenced by the Appellant had not in fact been substantiated but notwithstanding, his duty was to look at the tone of the list. He said that he also had regard to the slightly smaller nursing homes that he had included in his comparisons, PN 445208 with 74 bed spaces and PN 456346 with 43 bed spaces which were closer in size to the Property but in his view were inferior in terms of not being modern purpose-built nursing homes. Having looked at the tone of the list, it was his opinion that the €5,000 per bed space was fair and reasonable.

8.6.3 whether it was the case that once a nursing home was modern purpose built, that no distinction was made to allow for a smaller size. He responded that he had not made a distinction in the case of the Property.

8.6.4 noting the reduction from €5,000 per bed to €4,500 in the case of his comparator 5, he was asked how that adjustment had been arrived at and in particular whether the reduction was because of higher operating costs or the age of the building. He responded that it was an older building with less ensuites. He was then asked whether that meant that it was getting a higher NTPF rate or was costing more to run. He stated that the NTFP rate for that property in 2016 was €1,040 and the rate set in 2022 was €1,218, which it was pointed out to him was only €7 less than the Property but which was being valued at €500 less per bed space, to which he responded that the valuation date was October 2015. It was put to him that the €500 difference in value per bed space between the Property and comparator 5 was unlikely to be because of the difference in the NTPF rate per space, when regard was had to the fact that the 2022 rate showed only a difference of €7 per week per bed space in favour of comparator 5; he responded that the relevant NTPF rate were the ones in place at the valuation date.

8.7 In summary he stated that the Appellant had relied on the NTPF rate in respect of three other nursing homes in the South Dublin County Council area. However, details of how those prices had been agreed had not been given or the revenue and expenditure of these operators had not been provided. Further, there was also a 6 year differential between these prices and when the revaluation occurred; It was his opinion, if the 2022 rate was to be taken into account that would bring into question the contrasting proposed valuation of €315,000 compared to the passing rent of €925,000. He said that he valued the Property in accordance with the tone of the list and s.49(1) of the Act and by reference to a number of purpose-built comparators which were all valued at €5,000 per bed space. The subject was purpose built and was valued at €5,000 per bed space. There was no evidence put forward by the Appellant to support a lower valuation due to size differences. He asked the Tribunal to affirm the valuation of €315,000.

9. SUBMISSIONS

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 South Dublin County Council.

10.2 The Property is being revalued on a revision, the Property having been constructed after the general revaluation which occurred in South Dublin County Council in October 2015 and following the exercise by an officer of the Commissioner, on appointment, of their powers under s.28 of the Act. As such it falls to be valued in accordance with the provisions of s.49 of the Act which requires a determination of the net annual value by reference to the values of other comparable properties appearing on the valuation list for South Dublin Council at the time of the revision. This is to be contrasted with a revaluation, where the determination of the net annual value is set out in s.48 of the Act and is based on the rent for which one year with another, a property might, in its actual state, be reasonably expected to let from year to year and on certain assumptions as set out therein. Further the provisions of s. 19(5) which require equity and uniformity of value between properties on a valuation list apply only to valuations/revaluations arising on a general revaluation. However, given that on a revision the valuation is made by express reference to comparable properties on the list, this ensures also that there is equity and uniformity. It is important therefore that the comparable properties on which the Commissioner to seeks to rely on in a revision are established in the valuation list and are not subject to challenge by the occupiers by way of appeal to the Valuation Tribunal.

10.3 Mr. Mulligan's evidence as regards the scheme of valuation for nursing homes in the area of South Dublin County Council is that all purpose-built nursing homes in that area are set at a value of €5,000 per bed space. He relies on the tone of the valuation list to support this save in respect of two of his comparisons where allowances were made because said properties were not purpose-built but converted period homes. Comparison 1 was appealed, and an agreement reached prior to a tribunal hearing and said property is now established on the valuation list. However, comparison 2 was not on the valuation list at the time the Property fell to be revised and although the Commissioner's representative at the hearing volunteered this information and that he was providing it for context, it is the Tribunal's view that because it was not on the list at the time of the revision, it does not fall within the terms of s.49(1) and consequently the Tribunal disregards it for the purposes of its determination. As regards comparisons 3, 4, and 5 and given that they are all under appeal, it is the view of the Tribunal that in those circumstances, they cannot be regarded as setting a tone for the valuation of the Property. It is also the Tribunal's view that one comparable property (comparison 1) is also insufficient to set a tone of the list for the valuation of the Property.

10.4 In determining the NAV of the properties above referred to which are being appealed, the tribunal hearing those appeals will have to determine the NAV with reference to s. 48(1) of the Act and look to market evidence to establish what the hypothetical tenant is likely to pay. They will also have to take into account equity and uniformity. At the time the Property fell for revision, it was held by way of freehold tenure and there is no market rental evidence available to the Tribunal to indicate what the hypothetical tenant would pay for the Property. Further, although it was the evidence of the Appellant's representative at the hearing, that it was more cost effective to operate a larger nursing home, the Appellant had not furnished any income and expenditure accounts or any of the reports referred to in his oral evidence to the Respondent consideration. However, of critical interest to any hypothetical tenant is the potential income to be derived from a property under consideration for rental. The Appellant's unchallenged evidence was that as between the Property and his three comparators, there was a difference of €73 (PN 2179116), €50 (PN 447589) and €32 (PN 5002189) respectively which resulted in those three properties being in receipt of greater income than the Property. It is clear from the evidence of the Respondent's representative that in arriving at the NAV for the Property no consideration was given as regards the amount being paid per bed space by the NTPF to the occupiers of the Property or to any differences in that NTPF bed space rate compared to that paid to other nursing homes within the South Dublin County Council area, as they simply relied on the "tone of the list". It is the Tribunal's view that the NAV of the Property proposed by the Commissioner should be discounted by 10% set at €4,500 per bed space resulting in a NAV of €283,500 to reflect the difference in the NTPF rate between the Property and the comparators.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €283,500.

63 bedspaces @ €4,500 per bed space = €283,500