Appeal No: VA19/5/0715

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

NUA HEALTHCARE SERVICES LIMITED **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 5013517 Ardbrae, Curleyland & Mill Land, Athboy, County Meath

TRIBUNAL	**Carol O'Farrell – BL**	**Chairperson**
	Michael Brennan BL MSCSI	**Member**
	Annamarie Gallivan MRICS MSCSI B. Sc. Hons TRC	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY MAY 2023

1. THE APPEAL

1.1 A Notice of Appeal was received on the 14th of October 2019 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 €30,000.

1.2 The grounds of appeal are:

(i) The description of the Property on the valuation certificate is incorrect.

(ii) Section 15(2) of the 2001 Act provides, *inter alia*, that relevant property referred to in Schedule 4 shall not be rateable. The Property falls within the provisions of Paragraph 14(b) of Schedule 4 to the 2001 Act.

(iii) The Property is occupied by the Appellant for the purposes of caring for elderly, handicapped or disabled persons. The expenses incurred by the Appellant in carrying on the aforesaid activity are defrayed wholly or mainly out of monies provided by the Exchequer. Such defrayal does not occur by reason of the Nursing Homes Support Scheme Act 2009

1.3 The Appellant considers that the valuation of the Property ought to have been determined at a nil valuation.

2. VALUATION HISTORY

2.1 The Respondent made a Valuation Order on the 6th of October 2017 for the rating authority area of County Meath

2.2 On the 7th of June 2019 a proposed valuation certificate was issued in relation to the Property indicating a valuation of €30,000.

2.3 No representations were made to the valuation manager on foot of the proposed certificate, and on the 10th of September 2019, a final valuation certificate issued confirming the Property's valuation at €30,000.

2.4 The date by reference to which the value of the Property was determined is the 15th of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held at the Valuation Tribunal Offices in Holles Street, Dublin 2 on the 29th of September 2022. At the hearing, the Appellant was represented by Mr. Proinsias Ó Maolchalain BL instructed by Byrne Wallace LLP. Mr Niall Devereux, the Appellant's Chief Financial Officer and Deputy Chief Executive Officer and Mr John Algar MSCSI, MRICS of Avison Young were called to give evidence on behalf of the Appellant. The Respondent was represented by Ms Rosemary Healy-Rae BL instructed by the Chief State Solicitor. Ms. Orla Lambe MSCSI MRICS was called to give evidence on behalf of the Respondent

3.2 In accordance with the Valuation Tribunal (Appeal) Rules 2019 ('the Rules'), the parties filed précis of evidence and legal submissions prior to the hearing.

4. ISSUE

4.1 The key underlying issue is whether the Property is occupied for the purpose of caring for elderly, handicapped or disabled persons by a body the expenses incurred by which in carrying on such care provision are defrayed wholly or mainly out of moneys provided by the Exchequer as referred to in paragraph 14 of Schedule 4. The ground of appeal concerning the description of the Property on the valuation certificate was not pursued.

5. RELEVANT STATUTORY PROVISIONS

5.1 Section 3 in material part, provides
"relevant property" shall be construed in accordance with Schedule 3.

5.2 Section 15 of the Act, in material part, provides
(1) Subject to the following subsections and sections 16 and 59, relevant property

shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.

5.3 Schedule 4 under the heading "Relevant Property Not Rateable", in material part, provides

> 14. - Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, being either—
>
> (a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or
>
> (b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009."

6. UNDISPUTED FACTS

6.1 The Property is located on an unnamed local road (L80055) in a predominantly rural area, approximately 1.8km north of Athboy town, 17.7 km west of Navan and 14.5km northwest of Trim in the County of Meath.

6.2 The Property comprises a modern detached two storey dormer bungalow with detached garage which in use as a residential care facility. It was formerly used as a domestic premises. The accommodation consist of a communal kitchen, dining room, lounge, living room, sunroom, bathroom, utility room, sleep over room for staff members and two en-suite bedrooms at ground floor level and, at first floor, a staff office and three en-suite bedrooms, a walk-in hot press and storage cupboard. The garage is open plan with capacity for two cars. There is a self-contained apartment over the garage comprising of a living room and kitchenette, bedroom and bathroom

6.3 The Property was constructed in or about 2007 and has an area of 347 sq. m. measured on a gross external area basis. The ground floor measures 211.00 sq. m. and the first floor 136.00 sqm. It has a landscaped garden with a parking area available to the front and a security gate at the entrance. There is a tarmac driveway from the roadway which runs around the entire house. The Property is in good condition and is fitted and furnished throughout to a very good standard.

6.4 The Appellant occupies the Property under a Lease made on the 22nd of September 2016 for a period of ten years commencing from the 1st of September 2016.

6.5 The Appellant is a body corporate established under the Companies Act as a private company limited by shares and was established for the purpose of making a profit.

6.6 The Appellant is a service provider within the meaning of section 1 of the Health Act 2007 as amended. A service provider means a person who enters into an arrangement

under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Health Service Executive ("HSE").

6.7 The Appellant provides a 24-hour residential services to adults (male and female) with disabilities who have a wide range of support needs. The Property has capacity to care for a maximum of five persons (referred to in evidence as 'service users') and each person has their own bedroom and the use of the communal living rooms, kitchen and gardens. When the appeal was heard the residents were all male ranging between the ages of 20 and 41. The Property is staffed by nineteen persons and at least five members of staff are present in the Property at all times during the day and two care staff workers are present during the night.

6.8 The Property is a designated centre within the meaning of section 1 of the Health Act 2007 as amended. It is not a nursing home. The payments made by the HSE to the Appellant in respect of the residents do not arise by reason of the provisions of the Nursing Homes Support Scheme Act 2009.

6.9 The provision of residential and personal services to the five residents at the Property is wholly funded by the HSE.

6.10 The Appellant has not entered into any private law contract with any of the resident service users at the Property.

6.11 None of the residents whose living costs are funded by the HSE are required to pay Long Stay Contribution charges to the HSE towards those costs.

6.12 The specialist residential care and support services offered by the Appellant and its highly trained and experienced staff includes accommodation assisting of a private bedroom and communal living areas, meals, daily activity programmes tailored to the resident's individual needs, supports to develop living skills, manage anxieties or behavioural needs, transportation to and from medical or specialist care appointments and scheduled activities. The Appellant prepares support plans that reflect the goals and ambitions of each resident, and which are designed to assist each of them to develop their functional living, communication and social skills.

6.13 The Property as a care facility for persons with disabilities is required to be registered with the Health Information and Quality Authority ('HIQA'). The residential care services provided by the Appellant are required to meet certain regulatory standards and HIQA has responsibility for inspecting and reporting on the standard of residential services provided at the Property measured against the National Standards for Residential Services for Children and Adults with Disabilities and against relevant legislation and regulations. HIQA reports are published after every inspection.

7. APPELLANT EVIDENCE

7.1 Niall Devereux, the Appellant's Chief Financial Officer and Deputy Chief Executive Officer of Nua Healthcare Services Limited adopted his précis of evidence as his evidence in chief

following an amendment to paragraph 19 to delete the reference to DPER circular and to substitute in its stead the Code of Governance which is known as the 'Framework for the Corporate and Financial Governance of the Health Service Executive' prepared by the Executive pursuant to s. 35 of the Health Act 2004 (hereinafter referred to as 'the Code'). He gave evidence that the Appellant is a private company limited by shares and operates the Property as a supported residence providing 24-hour care to adult persons with complex support requirements. He said that the Appellant's business consists entirely of the provision of supported residential services to people with intellectual disabilities, brain injuries, autism and mental illness. The company has 67 similar care facilities nationwide currently serving the needs of approximately 273 persons. He described the Property as a care facility and said it is not a nursing home and that the Appellant does not operate any nursing homes.

7.2 The Property was initially leased by Maple Healthcare Limited and Mr Devereux explained that the Appellant and Maple Healthcare Limited ('Maple'), though separate legal entities, are connected parties. Following corporate reorganisation in January 2020, the Appellant became the sole shareholder of Maple and in December 2020, Maple assigned all its estate and interest in the Property for all the residue of the term of the Lease to the Appellant.

7.3 The aim of care facility is to support the residents in a residential care environment that promotes their health and wellbeing. The staff work with each resident on an individual basis to develop a Personal Plan that reflects their needs, clearly identifies his or her individual goals and outlines the supports required to maximise his or her personal development. All of the residents receive full multi-disciplinary team support. The Property is staffed by a Person in Charge, who is supported by a dedicated team of social care professionals. During weekdays the Care Facility is staffed by five social care staff with an on-duty manager, all of whom work on a rota basis. At the weekend (daytime), it is staffed by five social care staff and at night by two social care workers who stay overnight.

7.4 In the course of a competitive tender process, a detailed Price List is furnished by the Appellant and by other service providers to the HSE which breaks down detailed costs covering items wages , utilities, minutiae such as sheets and cutlery, depreciation, staff wages and all overheads expected to be incurred in respect of a theoretical sample of service users and if a price quoted for a care arrangement based on a theoretical profile is acceptable to the HSE, a placement is then arranged in consultation with the family of the individual concerned with the successful tenderer and a specific Costing Proposal Agreement is then agreed based upon the assessment of the actual individual to be placed in the care facility.

7.5 The residents are referred by the HSE pursuant to a Service Arrangement whereby the Appellant contracts to provide residential care, community outreach and day services to the residents at an agreed monthly rate. A redacted copy of the SLA together with Service Schedules for each resident for 2019 were appended to Mr Devereux's précis of evidence (N/A to public). He stated that the Appellant does not enter into a written agreement with any resident in relation to the payment of fees. In the course of a competitive tender

process, a Costing Proposal is furnished by various service providers to the HSE, and a placement arrangement is agreed with the Appellant only if the price quoted is acceptable.

7.6 The placement of an adult with intellectual and/or physical disability or mental illness and who requires a 24/7 residential service in the Care Facility is managed by a Disability Manager on behalf of the HSE. The Disability Manager is the link between the Care Facility, the family of the adult and the HSE contact person involved for the purposes of the initial needs assessment. All decisions regarding the placement and funding are made by the Disability Manager. Residents are placed with the Appellant or other service providers in circumstances where HSE facilities are either full or do not meet the specific needs of the adult for whom a placement is sought. The Appellant's Assessment and Admissions Manager evaluates each new referral prior to admission by reference to the relevant information and assessment undertaken by the Admissions Discharge and Transfer Department ("ADT"), a comprehensive assessment of the health, personal and social care needs of the individual is carried out as is an impact assessment of the potential impact on the care facility's current residents so as to determine minimum compatibility between the existing service users and the needs of the individual. If the Appellant decides that its care and support services are suitable for the individual concerned in line with its Statement of Purpose, the HSE requests the Appellant to submit a costing proposal for agreement which is then considered with any costing proposal submitted by any service provider.

7.7 A typical cost proposal states the funding requirement per month and may include some conditions regarding the extent of direct staffing required long term and for the period of transition from the individual's new home. If the cost proposal is accepted by the HSE, the adult is admitted. Copies (redacted) of Costing Proposal Agreements were appended to Mr Devereux's précis of evidence (N/A to public). Mr Devereux clarified that the funding specified in a Costing Proposal Agreement is fixed on the basis that the particular resident does not require any more or any less care. If it transpires that the resident needs more care the Schedule 10 'Change Control' process in the SLA permits the funding for that resident to increase if the cost of their care increases and he said this demonstrates a clear link between the expenses incurred by the Appellant and the revenue received from the HSE. The Appellant prides itself on helping residents to reduce their dependency for care and when that happens the Appellant reverts to the HSE to reduce the fees accordingly. The Appellant's costs are very clearly linked to the revenue received from the HSE and that revenue comes entirely from the HSE. Costs are not fixed and may go up or down depending on service user presentation. In 2018 and 2019 the care of each resident was funded 100% by the HSE. No other income was earned at the Property.

7.8 All funding agreements between the HSE and the Appellant for the provision of health and social care services are governed by the Code in line with Government policy and the Health Acts. They are prepared by the HSE and comprise

(a) Part 1 Service Agreement that sets out terms and conditions under which the HSE funds the service provider for the provision of the services covering a two-year period.

(b) Part 2 Service Agreement consisting of ten

(c) Service Schedules which are completed and returned by the Appellant in respect of the individual to be funded by the HSE.

7.9 Pursuant to the terms and conditions in Part 1 of the Service Agreement and Schedules 2 and 3 of the Services Schedules, the Appellant as a recipient of Exchequer funding is obliged to comply with the core principles in the administration and management of funding from Exchequer concerning Clarity, Governance, Value for Money and Fairness as required by the Code.

7.10 A Contract for the Provision of Services details the expectations arising from the services to be provided and what is expected of the vulnerable adult in terms of matters such as participation and behaviours. This contract outlines the activities to be paid from the house budget and the monthly allowance to be made available to the resident. It does not permit the Appellant to levy fees on any resident as all fees are governed by the contractual arrangements between the Appellant and the HSE and are payable by the HSE. The contract is signed by the resident or on behalf of a resident if he or she lacks the requisite capacity. A copy contract is appended to Mr Devereux's précis of evidence (N/A to public)

7.11 Mr Devereux gave evidence that the full costs of running the Care Facility are funded by the HSE and that the Appellant has no other source of income to meet the expenses it incurs in providing residential care, community outreach and day services to each of its resident. It does not receive any monies payable under the Nursing Homes Support Scheme Act 2009. The Appellant issue invoices to the HSE each month and the invoices are typically paid within 30 days, without deduction. Copies invoices issued in 2019 were appended to Mr Devereux's précis of evidence (N/A to public). The costs of the Care Facility are funded entirely by the State. The Appellant is expected to pay for all of the expenses incurred in the provision of the services from the funds provided by the HSE and a change in funding can only be sought where there is a change in dependency levels of a resident. In the event that a resident requires medical care, that is arranged by the Appellant and the cost of same is covered by the medical card held by each resident.

7.12 The residents receive Disability Allowance and Mr Devereux stressed to the Tribunal that they do not pay any money towards the cost of their care to the HSE or to the Appellant or for any damage that they may cause to the Property; any money they receive is spent on activities, treats and holidays. Each receives a weekly allowance out of the funds received by the Appellant from the HSE which may be spent on items for their own enjoyment. The residents do not receive support under the Residential Support Services Maintenance and Accommodation Contributions (RSSMAC) scheme (formerly long-stay charges), whereby a resident may be expected to contribute to the HSE towards the cost of their accommodation.

7.13 Mr Devereux stated that if rates are imposed on the Property the Appellant would have to seek increased funding from the HSE to cover that additional cost as the funding provided does not cover commercial rates.

7.14 The Tribunal was furnished on an entirely confidential basis a copy of the Appellant's Annual Report and financial statements together with a copy of the Consolidated Statement of Income and Retained Earnings and Balance Sheet Extract for the financial years ending 2018 and 2019, a turnover reconciliation which summarises the income split by Care Facility and by income provided together with an account of the total amounts invoiced to the HSE for the Care Facility for the same period ("Reconciliation") (Part 2) together with a summary profit and loss and loss account for the financial years ending 2018 and 2019 ("Profit & Loss Accounts") (Part 3). Mr Devereux drew the Tribunal's attention to the turnover figures for 2018 and 2019 attributable solely to the Property, to the fact that 97.8% of the Appellant's entire income in 2019 was due to direct exchequer funding. Across all of the Appellant's care facilities 92.4% of the turnover in 2019 was received from the HSE. Evidence was also given about the Property's running costs (for example overheads, groceries, direct and indirect wages, rent), and that the surplus of €475,000 being the difference between the turnover and the running costs was applied to cover head office costs for services rendered by professionals such as psychotherapists, behavioural specialists, psychiatrists and psychologists across all of the Appellant's care facilities.

7.15 Under cross-examination Mr Devereux explained that in terms of the Appellant's overall turnover for all of its care facilities, 97.8% of its income is received directly from the HSE, 98.2% is received directly and indirectly from the HSE and the remaining 1.8% comes from sources other than the Exchequer. Indirect income of 0.2% is received from the HSE when services are provided by the Appellant to other service providers such as Ability West or St. John of Gods. Private income of €345,000 was generated at other facilities for the care of two self-funded wards of court. Private income from that source represents 0.6% of the Appellant's turnover. The Appellant also receives 1.2% of its turnover from an Northern Ireland Trust.

7.16 When asked whether residents at the Property make payments known as Long Stay Contributions for Residential Support Services, he said that those contributions do not apply to any of the care facilities operate by the Appellant. With reference to the statement made in Schedule 6 the SLA that "*Service Users are charged a health levy by the HSE as agreed with the local health office*", Mr Devereux stated that he was unaware of any service users in the Property being charged such a levy by the HSE and to the best of his knowledge and belief no such charge is or was levied on the residents. He explained that in many cases the Appellant assists residents in the management of their financial affairs. He thought that the particular sentence might well be a reference to the Long Stay Contributions for Residential Support Services scheme. He observed that even if the HSE were to levy the full amount permissible based on the disability allowance payment of €203, it would reflect a tiny portion of the Appellant's overall revenue.

7.17 When asked whether he agreed that the HSE where funding the service users as opposed to funding the expenses of the Appellant, Mr Devereux replied that it couldn't agree as the contract was made between the Appellant and the HSE and he was unaware of any contract between the HSE and the service users. He said the HSE were providing funding on the basis of a price list provided by the Appellant determining what its expenses are and adding a mark up which forms the basis of the charge. He accepted that the HSE pays

the Appellant for services. He was referred to the provision at clause 33.11 of the SLA which states *"Each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution, implementation and interpretation of this agreement*", and he accepted that the Appellant is responsible for the costs and expenses of implementing the agreement and providing the services. He stressed that the Appellant is not contending that the HSE is responsible for defraying its expenses but rather is saying that the Appellant defrays expenses out of monies provided by the HSE for the services and if those expenses increase they continue to be discharged from funds provided by the HSE.

7.18 Evidence was also given by John Algar who adopted his précis of evidence (subject to amending the publication date on page 4 to 17th September 2017) as his evidence in chief wherein he described the Property, its location and the observations he made upon his inspection of the Property that five services users were being cared by five social care staff. He said the garage building was not used other than for storage purposes. He said the Property's valuation at €30,000 was in line with the passing rent at the valuation date. He expressed the opinion that the Property is not rateable under paragraph 14 of Schedule 4 of the Act and ought to be removed from the valuation list because the Appellant is occupying the Property for the purpose of caring for five disabled persons and is wholly funded by State. Under-cross examination he confirmed that his opinion was formed following consultation with his client and their legal advisers and that he did not examine the Appellant's accounts in any great detail.

8. RESPONDENT EVIDENCE

8.1 Ms. Lambe adopted her précis of evidence as her evidence in chief. She inspected the Property on the 12th August 2018 accompanied by Ms. Karen Gaffney, the person in charge, who talked her through the various services that were being provided. She said the Appellant provides meals, laundry facilities, heating, transport, and a social outing fund for residents and day services. This evidence struck the Tribunal as a material, but perhaps unintentional, understatement of the personal social services provided by the Appellant.

8.2 In her précis Ms. Lambe essentially recounted the information provided here by Ms Gaffney. She stated that the residents' duration of stay at the care home facility can vary from a few months to several years depending on their individual needs. She confirmed the staffing arrangements at the Property and the role of the ADT in providing information for the assessment of persons for placement within the care home. She said the HSE allocates a set number of hours to each resident referred to the care home under the Service Level Agreement with the Appellant and that the HSE pays the Appellant for a set number of hours of support in respect of each resident. The staff are employed by the Appellant and the HSE can provide their own social workers or representatives. The Appellant provides support activities assessed by reference to the needs of the residents and such activities can include independent skills, assistance in getting jobs, independent living, and social skills and the services of nurses, psychologists, psychiatrists, physiotherapists, occupational therapists, speech and language therapists, dietitians, and behavioural specialist directly themselves are engaged by the Appellant for the residents as required.

8.3 Ms Lambe expressed an opinion that the Property is relevant property in accordance with section 15 and Schedule 3 paragraph 1 (a) of the Act and stated that the Property is correctly categorised as 'Health and described as a 'Residential Care Home'. She agreed that Mr Deveraux gave evidence that the Appellant's expenses are discharged out of the monies received from the HSE but pointed out that she was also advised by Ms Gaffney that the home can also benefit from private patients. She accepted that at the time of her inspection and when the valuation certificate was issued there were no private patients being cared for at the Property but said that could change in the future. Ms Lambe agreed that if a material change in circumstances occurred a property exempt under Schedule 4 could become relevant rateable property under Schedule 3. She confirmed that she was not in a position to dispute Mr Devereux's evidence that the services of nurses, psychologists, psychiatrists, physiotherapists, and other professionals retained by the Appellant for the residents at the Property were paid for by the HSE. She stated that her opinion that the Property is relevant rateable property is based on the fact that the fee paying resident s could in the future be cared for at the Property and because similar properties providing similar care services were on the valuation list.

8.4 Under cross examination Ms Lambe acknowledged that care was being provided to disabled persons, that the Property is not a nursing home and is not occupied by a charitable organisation.

9. APPELLANT SUBMISSIONS

9.1. Counsel for the Appellant relied on the grounds set out in the Notice of Appeal. His submissions in summary were as follows:

i. The Appellant is a "service provider" for the purposes of the Health Act 2007 Act (as amended) and provides residential care services at the Property to adults with disabilities subject, *inter alia,* to the provisions of the said Act and the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013, and the Health Act 2007 (Registration of Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 to 2015 as amended.

ii. The Property is a "designated centre" within the meaning of section 2 of the Health Act 2007 and is registered with HIQA as a designated centre for disabilities.

iii. The entire costs of running the Property are funded by the HSE and there is no other source of funding for expenses incurred.

iv. The Appellant is obliged by the Code to comply with core principles in the administration and management of funding from Exchequer sources.

v. Section 15(2) of the Act provides that relevant property referred to in Schedule 4 shall not be rateable. The Property falls within paragraph 14 of Schedule 4.

vi. Paragraph 14 applies to two separate and distinct situations. The first is where a not-for-profit body occupies a building for the purpose of caring for elderly, handicapped or disabled persons, regardless of who finances that activity. The second is where a body, whether profit-making or non-profit making, occupies a building for the purpose of caring for elderly, handicapped or disabled persons, and its expenses in doing so are defrayed wholly or mainly out of moneys provided by the Exchequer. The Appellant comes within the second situation as the expenses incurred in carrying out the activities at the Property are defrayed wholly or mainly out of moneys provided by the Exchequer.

vii. The evidence of Orla Lambe on behalf of the Respondent, save for stating that there are other residential care homes are included in the valuation list, provides no rationale for her opinion that the Property does not fall to be excluded from the list in accordance with paragraph 14 (b) Schedule 4.

viii. In *HSE v. Commissioner of Valuation [2010] 4 I.R. 23*, MacMenamin J. in considering the exemption provision in section 15(3) of the Valuation Act, 2001 (prior to its amendment) concluded that the HSE is not an "office of State" but is the State. Moneys provided by the HSE constitute moneys provided by the Exchequer.

ix. In so far as the Appellant seeks to rely on the Judgment of Birmingham J. (as he then was) in *Glendale Nursing Home v. Commissioner of Valuation* [2012] IEHC 254 ('*Glendale'*), the property the subject matter of that case was a nursing home that derived in excess of fifty percent of its income from the Nursing Home Subvention Scheme paid by the HSE in compliance with the Health (Nursing Homes) (Amendment) Act, 2007 and the Nursing Homes Support Scheme Act, 2009. The evidence of Niall Devereux confirms that the operation and financing of a long-term residential care facility for persons with intellectual disabilities is fundamentally different from the operation of a nursing home and the State financial support provided under the 2009 Act to persons who avail of the Nursing Home Support Scheme. The payments made by the HSE to the Appellant are not means tested and not paid for the purpose of making up of a shortfall in the price charged to the residents.

x. There is no question of any financial support being made available to the residents. The residents do not have expenses in respect of their residence in the care facility or have only relatively minor expenses which are payable to the HSE itself. It cannot possibly be said that the HSE is defraying the costs of the residents. On the contrary, the HSE is required by statute to, "*manage and deliver services, or arrange to be delivered on its behalf, health and personal services*" See Service Arrangement Part 1, at p. 2. The Appellant is delivering services of behalf of the HSE, therefore the State, and it is entirely appropriate, and to be expected, that its expenses in so doing should be defrayed by the HSE. That is why the Service Arrangements emphasise the obligations on the Appellant to comply with the Code.

xi. Following the decision in *Glendale*, the Oireachtas amended paragraph 14(b) of Schedule 4 by section 39(c) of the Valuation (Amendment) Act, 2015. This

amendment and, in particular the words "*such defrayal*" strongly indicate that moneys provided by the Exchequer under the Nursing Homes Support Scheme Act 2009 towards the cost of caring for nursing home residents does amount to the "defrayal" of expenses out of moneys provided by the Exchequer where a building is occupied for the purpose of caring for elderly, handicapped or disabled persons, and the amendment simply clarifies that the exemption cannot be availed of where such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009.

xii. The expenses incurred by the Appellant in providing services to the HSE, which services the HSE are required by statute to provide and manage, or to arrange to be delivered on its behalf, are defrayed out of monies provided by the Exchequer.

xiii. The Tribunal in judgments delivered on the 6th of May 2022 in appeal VA18/4/0013 and appeal VA19/5/0716 found that the facts relating to the care facility the subject matter of those appeals could be distinguished from the facts *in Glendale* and found that such properties fell within the ambit of paragraph 14(b) of Schedule 4. In a judgment delivered on the 27th of October 2021 in VA18/3/0031 ("Redwood"), the Tribunal considered the *Glendale* decision could be distinguished on its facts. In that appeal the Appellant's claim for exemption under paragraph 14(b) of Schedule 4 should also succeeded.

xiv. In reply to the Respondent's oral submissions, Counsel said the general purpose of the exemption in paragraph 14 (b) is to ensure that bodies who occupy properties for the purpose of caring for disabled persons and whose costs in providing such care are wholly or mainly defrayed by the Exchequer should not be liable to rates.

10. RESPONDENT'S SUBMISSIONS

10.1 Counsel's submissions briefly summarised were as follows:

i. The Property is relevant property and is rateable pursuant to Schedule 3 of the 2001 Act. The Property does not fall to be entered as "relevant property not rateable" pursuant to paragraph 14 of Schedule 4 of the Act.

ii. The Tribunal determinations relied upon by the Appellant in appeals VA18/4/0013, VA19/5/0716 and VA18/30031 are the subject of appeals by way of Case Stated to the High Court.

iii. Although the facts of this appeal are not on all fours with those in *Glendale*, the Respondent relies on the decision in *Glendale* as the principles established in that case apply equally to the facts on this appeal. Nothing turns on the subsequent amendment of paragraph 14(b) of Schedule 4. It cannot be said that the HSE is defraying the expenses of the Appellant as Birmingham J. held that by agreeing to offer financial support to individual elderly people in need of care, it could not be said that the expenses of Glendale Nursing Home were being defrayed "wholly or mainly" out of money provided by the HSE. The High Court concluded that even if it were established that 99% of Glendale's income came from the HSE, he did not

believe that would provide a basis for concluding that the expenses of Glendale were mainly met by the HSE given that the extent to which the entire income of Glendale enabled it to meet the expenses or costs of its operation was unknown.

iv. While *Glendale* was concerned with a nursing home and the provision of State financial support or subvention by means of the Nursing Home Support Scheme the facts of this appeal are not sufficient to distinguish it from *Glendale*, which clearly has broader application. On the facts of this appeal the HSE agreed to offer financial support to individuals in need of care and, as in *Glendale*, the support payments are made directly to the Service Provider and not to the individual resident. The fact that the individuals in *Glendale* may have been required to top-up the contribution made by the HSE is not a sufficient basis upon which to distinguish *Glendale.* The HSE may impose a health levy on service users at the Property or Long Stay charges may be imposed by the HSE.

v. The SLAs between the HSE and the Appellant make provision for the supply of services to the service users and the funding provided by the HSE is made available specifically in relation to the provision of those services. Paragraph 2.1 of the SLA makes clear that the funding is payable for the provision of the services to the resident the extent of which is specified in Schedule 3 and has no correlation with any expenses incurred by the Appellant. The funding is not linked to the actual expenses of running the facility or the expenses incurred in relation to the residents.

vi. The documentation furnished by the Appellant show that payments are made in respect of each service user based on their individual needs (as opposed to simply paying for the expense to the Appellant of providing the facility). In *Glendale* Birmingham J. stated "*…I think it can fairly be said that the focus of both State support and subvention was on the individual in need of care rather than on the care provider."*

vii. Invoices issue monthly for a global charge in respect of the services provided to each service user. If an individual service user ceases to reside at the Property, the payment would clearly cease regardless of the fact that the overheads at the facility would remain the same. To echo the words of Birmingham J.:- "*In particular circumstances the income of the body may allow it meet its expenses in full and provide for a handsome surplus. In other cases the entire income of a body may not be sufficient to allow it meet its expenses and a body may find itself insolvent."* On the facts of this appeal in 2018 and 2019 the funding paid by the HSE exceeded the expenses incurred by the Appellant at the Property.

viii. The focus of the HSE is at all times on the individual in need of care rather than on any requirements or expenses of the care provider. The support provided is not designed to render the HSE responsible to discharge the expenses of a private for-profit care facility in providing care services.

ix. Over time, the approach to the provision by the State directly of care services to those who cannot afford it, has developed into a model which encourages the provision of care services to those in need by private enterprise and the market. The fact that the State is required to assist the service users to obtain the services where such individuals are not in a position to fully pay for those services does not thereby render the Exchequer responsible for defraying the expenses of the facility. The Appellant may well apply the income generated by the care facility to defray its own expenses, but it does not follow from this that the Exchequer is actually 'defraying' the expenses of the Appellant for the purposes of paragraph 14(b).

x. The income received by the Appellant may be used as it sees fit to increase the Appellant's reserves or to pay dividends to its shareholders. The Appellant's financial statements (prepared on a group consolidated basis) show quite clearly that the Appellant is part of a large scale business, which has retained profits in the region of several million. Whilst the Property is rated separately, it is quite clearly an integral part of a larger business with significant turnover in 2018 and 2019.

xi. The purpose of providing Exchequer funding to service users is structured precisely so that the Exchequer is not responsible for the expenses of the Appellant or any individual care facilities. The policy is clearly to move away from the direct subsidy of State-controlled institutions and, instead, encourage the private sector to provide the services. This is the very opposite of what the legislature had in mind in framing paragraph 14 of Schedule 4, the intention of which is to exempt institutions under State control, or at least those in respect of which the State wholly or mainly cover their running expenses where for example, the HSE provides the building and covers staff costs. The HSE has no responsibility to cover the Appellant's expenses and they make no attempt to do so. The Appellant can adjust its expenditure as it sees fit so long as it meets its requirements to provide care to the service users as specified in the Service Arrangements.

xii. The fact that the residents may not be a party to the costings proposal agreements and may not be furnished with copies of invoices is not a sufficient basis on which to hold that paragraph 14(b) applies. Regulation 24 of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations, 2013 (S.I. 367/2013) specifically requires that each resident must, where appropriate, be furnished with an agreement which specifies the fees to be charged. It is also notable that the HSE may use Out-of-State service providers to provide care services outside of the State. In *Glendale* Birmingham J. observed "*I have already pointed out that individuals are entitled to opt for a nursing home in Northern Ireland. On that basis can it be said that the expenses of Northern Ireland* nursing homes are being *defrayed by the HSE?*"

11. DETERMINATION

11.1 In reaching a decision in this appeal, the Tribunal has had regard to the Précis of evidence, the Appendices thereto, the legal submissions and the authorities of both parties. The fact that the Tribunal does not make specific reference to any particular document or submission does not indicate that it has not been into taken account.

11.2 The primary facts are not disputed by the parties. The Appellant is a "service provider" and the Property is a "designated centre" within the definitions of those terms in s.1 of the Health Act 2004. It is common case that the Property is occupied by the Appellant for the purpose of caring for five disabled persons on behalf of the HSE. Furthermore it is accepted that the Appellant is a private profit earning company and that the Appellant operates in a commercial market with commercial competitors. For that reason paragraph 14(a) of Schedule 4 does not apply. It is accepted that the Property is not a nursing home and that its residents are not in receipt of any payments under the Nursing Homes Support Scheme Act 2009. It is accepted that the funding provided by HSE to the Appellant is Exchequer funding.

11.3 By virtue of the Health Act 2004 it is the responsibility of the HSE, which is the State, subject to available resources, to ensure that those persons who by reason of age, illness, disability or any other circumstances are in need of care and services which are not otherwise available to them are accommodated and looked after through the agency of the State and at its expense if no other source of accommodation and care and no other source of funding is available.

11.4 Against this factual background, the issue in dispute is whether the expenses incurred by the Appellant at the Property in providing care for those disabled persons on behalf of the HSE are defrayed wholly or mainly out of moneys provided by the Exchequer. If the answer to that question is yes, then the Property is relevant property not rateable by virtue of paragraph 14 of Schedule 4 of the Valuation Act 2001 as amended.

11.5 The HSE provides funding to the Appellant for the provision of residential services pursuant to SLAs. The HSE's power to do so is found in s.38 of the Health Act 2004 which provision permits the HSE to enter into arrangements with a private body to provide health or personal social services on its behalf. S. 38, so far as material, provides as follows:

> *38(1) The Executive may, subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.*
>
> *(2) …*
>
> *(3) A service provider shall-*
>
> *(a) keep, in such form as may be approved by the Executive in accordance with any general direction issued by the Minister, all proper and usual accounts and records of income received and expenditure incurred by it;*
>
> *(b) submit such accounts annually for examination, and*

(c) supply a copy of the audited accounts and the auditor's certificate and report on the accounts to the Executive within such period as may be specified by the Executive.

(4) ...

(4A) The Executive may make an arrangement for the provision of a health or personal social service in accordance with this section by seeking and accepting a tender for the provision of such services.

11.6 It is not disputed that the monies received by the Appellant from its occupation and use of the Property is entirely derived from the funding received from the HSE under five SLAs. The terms and conditions attached to each SLA in respect of the funding provided for each resident service use are quite stringent and confirm that the HSE exercises considerable control over the Appellant in the provision of the services (clause 3 and Schedule 3) for which it has contracted and so as to ensure that the best value for money is being obtained in the use of its funds and the delivery of the services in a manner that "*maximises effectiveness and outcomes in the use of public funds*" (clause 7.4). The conditions of each SLA (see clauses 2 and 3.2(c)) impose upon the Appellant, who to all intents and purposes is providing on the HSE's behalf critical services to the public in line with the national health strategy, many of the responsibilities and obligations that would ordinarily fall upon the HSE. The extent to which the State, directly or indirectly, regulates, supervises and inspects the performance of the services provided at the Property is evident from the provisions of the SLAs which strongly indicate the State's concern that the accommodation and services to be provided by the Appellant must at all times meet acceptable standards given the harm that could ensue if residential care standards are not maintained, or personal services are improperly performed.

11.7 The recitals of the SLA state:

(A) The Executive is required by statute to manage and deliver, or arrange to be delivered on its behalf, health and personal social services.

(B) The Executive wishes to procure the provision of the Services and the Provider wishes to provide such services.

(C) Now therefore the Executive and the Provider enters into this Agreement for the provision of Services to Service Users on the terms and conditions specified below, as hereinafter defined, and in relation to the catchment area which may be defined.

11.8 Clause 1.1 of the SLA sets out "Definitions and Interpretation". The only relevant definitions for present purposes are that given to

"Funding" means all form of financial assistance (which may include but shall not be limited to assistance provided by the Executive permitting or providing premises to be used in connection with the Services) particularised in Clause 4 (Funding) given to the Provider to support the provision of the services and the term "funded" shall be construed accordingly.

"Services" means the services as set out in Schedule 3) Service Delivery Specification) and to be provided by the Provider in accordance with the terms of this Arrangement to the extent as is set out in Schedule 3 (Service Delivery Specification).

"*Service Users" means each person who is referred or presents to the Provider as part of the provision of the Services.*

11.9 Clause 2 is headed "Principles of Arrangement". Clause 2.1 provides

> *"2.1 The Executive (HSE) hereby agrees to give Funding to the Provider to provide the Services subject to the terms and conditions of this Arrangement and the Provider hereby accepts such Funding. For the avoidance of doubt, the parties agree that the Funding is payable for the provision of the Services and the extent of the Services to be provided shall be specified in Schedule 3 (Service Delivery Specification). The Provider shall apply the Funding exclusively for the provision of the Services."*

Clause 3(1)(a) provides that the Executive will put in place an agreed payments schedule and conditions in respect of the Funding to be provided. Clause 3.2(a)(i) imposes a duty on the Provider to "provide the Services in accordance with the specifications outlined in Schedule, the Codes of Practice in Schedule 2 and such instructions as may be issued from time to time by the HSE throughout the duration of the agreement. Clause 3.2(b) sets out the manner in which the Provider is to deliver the Services "*within the limits of the Funding payable set out in Schedule 6 (Funding*)."

11.10 Clause 4, which is headed "Funding" is at the centre of the current dispute. The relevant clause so far as material states

> *"4.1 Subject to the terms and conditions of this Arrangement and the Provider having at all times a current valid tax clearance certificate (a copy of which must be furnished to the Executive upon request), the funds to be paid by the Executive to the Provider inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services shall not exceed the amount specified in Schedule 6 (Funding)."*

11.11 The evidence overwhelmingly points to the fact that the Appellant receives Exchequer funding in respect of the care activities provided at the Property. That funding is inclusive of all duties, taxes, expenses and other costs associated with or incurred by the Appellant in the provision of the services to the resident service users. At the valuation date the Appellant occupied the Property solely for the purpose of caring for four disabled persons referred to it by the HSE and one disabled resident who was at that time under 18 years of age and was referred by TUSLA. The entire of the expenses incurred by the Appellant in carrying out care activities at the Property were defrayed out of moneys provided by the Exchequer.

11.12 Under the SLAs the purpose of the funding paid to the Appellant is solely for the purposes for which the funds are given, namely, the provision of the services. This requires the Appellant to have in place financial controls to ensure that only expenditure germane to the activities and services authorised by the SLAs are paid for from public funds. The Appellant is obliged to document and account for all the expenses and other costs associated with or incurred in the provision of the services to the residents.

11.13 The Tribunal finds as a fact that the HSE is not contributing to but is fully covering the entire cost of the services provided to the service users by the Appellant pursuant to the SLAs. The Tribunal finds as a fact that the service users at the Property are subsidized out of public funds and are not paying any contributions to the HSE or any fees or charges to the Appellant in respect of the accommodation, care or services they receive at the Property.

11.14 The language of paragraph 14(b) of Schedule 14 is clear and the ordinary and plain meaning of the expression *" a body the expenses incurred by which in carrying on an activity as aforesaid are wholly or mainly out of moneys provided by the Exchequer* does not require any complex analysis of the clear intention of the Oireachtas. When paragraph 14(b) of Schedule 4 was amended by the Valuation (Amendment) Act, 2015, it was very well known that private entities are providing health or personal social services to vulnerable persons pursuant to arrangement with, and at the expense of, the HSE under section 38 of the Health Act 2004 and paragraph 14(b) was clearly drafted with this well-known fact in mind.

11.15 Paragraph 14(b) makes clear that it was not intended by the Oireachtas to deprive profit-making bodies from availing of the exemption accorded by paragraph 14 of Schedule 4. While paragraph 14(a) clearly confirms the general exclusion of properties occupied by profit making bodies for the purposes of caring for elderly, handicapped or disabled persons from Schedule 4, the effect of paragraph 14(b) is to entitle such bodies to claim exemption from rates where they occupy properties for such purposes provided their expenses in carrying out such care activities are defrayed wholly or mainly out of moneys provided by the Exchequer.

11.16 While it is correct to say that neither the care facility nor any aspect of its operation, as opposed to the cost of the care and accommodation to the service users, is funded by the HSE, paragraph 14(b) of Schedule 4 only requires the expenses incurred in carrying out the care activity at the Property to be defrayed wholly or mainly out of moneys provided by the Exchequer. The Tribunal cannot accept the argument that the income generated by the Appellant may be used to defray its own expenses because under clause 2.1 of the SLA the Appellant is contractually obliged to apply the Funding exclusively for the provision of the Services and the expenses being incurred at the Property by the Appellant are those relating to the provision of the care and accommodation of the service users.

11.17 In support of her arguments Counsel for the Respondent relied by analogy on the decision in *Glendale* on the basis that it has which has some parallels with this case. Mr O'Maolchalain argued that *Glendale* turned on different facts distinguishable from the present case and did not provide authority for any general principle. Each case is unique and accordingly must be considered on the totality of its own facts.

11.18 There is a difference between the HSE making financial contributions to specific persons towards the cost of their nursing home care and the HSE making arrangements for the placement of disabled persons at a care facility and entering into contractual arrangements with a service provider to fund all the costs associated with or incurred in the provision of residential and specialist care services to that disabled person. In a nursing home setting a private contract is made between the resident and the nursing home provider covering his or her residence or a person will be resident in a nursing home as a result of a contract made by his or her representative or relative. In contrast, the only contract covering the publicly funded resident's placement in a care facility is between the HSE and the service provider. The five service users at the Property do not pay any contribution to the Appellant or to the HSE. The cost to the HSE of funding their care is not based on a percentage of their income and assets but rather on a detailed itemised costing provided by the Appellant which covers not just their assessed personal care, health and social requirements but every detail down to the provision of the bed linen and utensils. As an SLA is in place in respect of each of the five resident service users placed at the Property by the HSE, being the maximum number of permitted residents, the full costs incurred by the Appellant in providing for their accommodation, health and social care needs are wholly defrayed by the HSE. In the Tribunal's view the provision of accommodation, health and social care for the service users pursuant to a statutory arrangement with the HSE at public expense and in the public interest is different to the provision of State financial support under the Nursing Home Support Scheme which ensures that that long-term residential care is accessible and affordable for everyone.

11.19 If the care activities provided at the Property were provided to a number of residents who or, whose relatives had, arranged their placement and discharged the Appellant's fees themselves or the Appellant was no longer retained as a service provider by the HSE that could potentially give rise to a material change in circumstances whereby the Property would cease to be treated as property falling within Schedule 4.

12. DETERMINATION

For the foregoing reasons, the Tribunal finds that the Property ought to be excluded from the valuation list for the rating authority area of County Meath as it falls within paragraph 14(b) of Schedule 4 and is relevant property not rateable. Accordingly, the Tribunal allows the appeal.

NOTIFICATION OF APPEAL RIGHTS

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.