

Appeal No. VA04/2/035

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

**First Citizen Residential Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Nursing Home at Lot No. 2ABCD, Ballyleague, Cloontuskert, Roscommon,  
County Roscommon

**B E F O R E**

**John Kerr - BBS. ASCS. ARICS. FIAVI**

**Deputy Chairperson**

**Joseph Murray - B.L.**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 26TH DAY OF OCTOBER, 2004**

By Notice of Appeal dated the 16th day of April, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €496.00 on the above described relevant property.

The grounds of Appeal as set out in the said Notice of Appeal are:

“The property is not a Nursing Home. These properties are residential units and therefore should not be rated. The property comprises 56 stand-alone individual residential units fully equipped with their own kitchens, bathrooms, bedroom etc. Residential accommodation is exempt from rates, and therefore we feel it is incorrect that these residential units be rated.”

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 23<sup>rd</sup> day of September, 2004. At the hearing, the appellant was represented by Mr. Lyndon McCann, Senior Counsel, instructed by Mr. David Fowler, Solicitor, of Shiels, Solicitors, Clanwilliam Terrace, Dublin and Mr. Dan Duggan, M.R.I.C.S., A.S.C.S., M.I.A.V.I., B.Sc., D.B.S., of Spain Courtney Doyle. Mr. James Devlin B.L., instructed by the Chief State Solicitor, appeared on behalf of the respondent and Ms. Ciara Marron, B.Sc. Property Management & Valuation, Dip. in Property Valuation & Management, MIAVI, a Valuer with the Valuation Office was also present. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

### **The Property**

The property comprises 54 self-contained single rooms and 2 double rooms, all of which are en-suite, all located within a single storey building of circa 3,030 sq. metres, located in the village of Lanesborough, adjoining the River Shannon and located equidistant between Longford and Roscommon towns. The village of Lanesborough, with a population of approximately 1,500 people, is small with an electricity power station dominating its skyline. The structure has been newly built of concrete block construction with plastered and painted walls, double glazed wooden framed windows, pitched slated roofs, and has been laid out essentially in a 'U' configuration, with the link section of the structure principally dedicated to kitchens, administration offices, nurses' station and storage. There are 77 car spaces serving this property.

Each of the rooms has been fitted out and decorated to a high standard with facilities in each for cooking and washing, and feature the following. Own:-

- Door
- Letterbox
- Telephone
- Kitchen
- Bathroom / w.c.
- Living Room / Bedroom.

Each room is carpeted and painted. Power is not metered individually to the units.

### **Tenure**

Freehold

### **Valuation History**

An rateable valuation was assessed on 28<sup>th</sup> July, 2003, by the Valuation Office and fixed at €496.00. Following a period of representations and negotiations, an appeal to the Commissioner failed to secure a change to the proposed rateable valuation. As noted above, an appeal was filed earlier this year to the Valuation Tribunal, which sought to challenge (a) the rateability of the subject property and (b) the manner or use of the comparison method employed by the Valuation Office in establishing a proposed rateable valuation.

### **RATEABILITY**

#### **Appellant's Legal Submissions and Evidence - Summary**

- Applicant stated that the First Citizen property was not a nursing home and that it was a residential property where residents are encouraged to fend for themselves. It has a pro-active philosophy based on a Finnish model.
- Occupiers of the home are viewed as residents and participants and it is therefore different from a typical nursing home
- Appellant claimed that the subject property was a dwelling. Apart from the **Kerry County Council v Kerins - Supreme Court 1996 3 IR 493** case, the appellant cited cases on “dwellings” in relation to Acts not concerned with rating.
- Units self-contained. Common room 13% of ground floor area. Administration 10% does not affect dwelling aspect, and does not constitute a “significant extent”. Premises are accordingly not a mixed building but are domestic premises, within the meaning of the 2001 Act.

#### **Respondent's Legal Submissions and Evidence - Summary**

- Property is registered as a nursing home.
- Capital allowances are allowed on a Nursing home and may be availed of by appellant.

- First Citizen is not using units as private dwellings, but for the purposes of carrying on a business.
- Not accepted by the Commissioner that the premises are used as a dwelling.
- If the Tribunal finds that it is a “dwelling” then it is further submitted that the property falls to be regarded as “mixed premises” within section 3 of the Valuation Act, 2001.

### **Analysis and Conclusions – on Legal Submissions**

In view of the evidence and submissions adduced by the parties the Tribunal has come to the following conclusions in law.

#### **1. Domestic Premises**

The first question that must be asked is: is First Citizen a “domestic premises” within section 3 (1) of the Valuation Act, 2001? The Act clearly states that domestic premises means “any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel”.

Accordingly, there is a positive test

- The premises either in whole or in part must be used as a dwelling.

and 2 negative tests

- The premises cannot be a mixed premises
- Nor cannot be an apart-hotel

The apart-hotel question is not in issue. The question we have to address is whether the subject matter is a “mixed premises” within the meaning of section 3(1) of the Valuation Act, 2001.

#### **2. Mixed Premises.**

The classic example of a mixed premises under previous legislation would have been the doctor’s house, i.e. half of the house is used for domestic purposes and the living room/garage converted as a surgery and chiropody practice. Valuation of the property would have been apportioned between domestic and non-domestic use.

### **Valuation Act, 2001**

Mixed premises means “a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.” The following concepts have to be examined:

- Whole or part of a building. Building is the key word.
- Partly used as a dwelling or partly used for another or other purposes (non dwelling purposes).
- Use must be to a significant extent in either case.
- From the above it is clear that there is a dichotomy between dwelling purposes and non dwelling purposes and this dichotomy may apply to the whole or part of the building. Building is the key word. In this case we must look to the whole building and not just part thereof as the subject premises concerned is the whole building occupied by First Citizen Residential Ltd. We must look to the dwelling aspects and the non dwelling aspects.

### **Dwelling Purposes**

The 56 self-contained residential units or dwellings do not constitute a building in themselves but are an integral part of the whole building occupied by First Citizen. Just like the doctor’s surgery mentioned above, it is an integral part of the whole building.

### **Residential units**

These units are self-contained dwellings. They have

- Own door
- Letter box
- Telephone
- Kitchen
- Bathroom
- Living room
- Bedroom

The subject property has a dwelling use with the 56 self-contained dwellings units just like the 12 chalets in **Kerry County Council V Kerins**. Both properties are similar as regards:

- The dwelling purpose: i.e. 56 self-contained units and 12 chalets, respectively.
- Use of dwelling: there is no requirement for an occupier to make private use of the dwelling and it may be used for a commercial purpose subject to planning constraints.

However, they differ in important aspects as follows.

- The 12 chalets were built as 6 detached building blocks, each comprising 2 self-contained fully furnished houses capable of being separately let. This contrasts with the 56 dwelling units which are not separate buildings in themselves, but an integral part of a single building which is the subject premises. It is important to bear in mind that as regards mixed premises the Act uses the word “building”.
- The 12 chalets were used for one purpose only, namely “dwellings”. They had no other use and accordingly could not be referred to as mixed premises. This as we shall see contrasts with the subject premises.
- The chalets came within the definition of “domestic hereditaments” under the Local Government (Financial Provisions) Act, 1978. Accordingly they were exempt from rates.
- The subject premises is a building which is used for dwelling and non dwelling purposes and is a “mixed premises”. The facts will show if it is a mixed premises within the Valuation Act, 2001.

### **Non Dwelling Purposes.**

The subject premises was registered as a nursing home under the Health (Nursing Homes) Act, 1990. Section 2 provides that a “nursing home” means an institution for the care and maintenance of more than 2 dependent persons. The appellant contends that this is not a typical nursing home but more of a residential property based on the Finnish model whereby residents are encouraged to fend for themselves in the form of cooking, cleaning, washing and socialising. The residential aspect of the property is not in doubt, but we have to look at the non dwelling aspects.

The ground floor plan provided in evidence indicates:

- Administration office / reception

- Activity room for clients
- Staff room
- Manager's office
- Male and female changing rooms.
- Nurses' station
- Reception area
- Common room
- Kitchen area
- Chef room
- Laundry room
- Notional sitting and dining areas.
- Linen store room
- Staff toilets.
- Plant room

Services for the residents, as noted in the extract from the website; include the provision of:

- Long stay care
- Respite care
- Intermittent care
- Convalescent care
- Day care where clients are non-residents.
- Chaplaincy services.
- Medical care
  - Chiropody
  - Physiotherapy
  - Occupational therapy.
- Other facilities.
  - Hairdressing and shop service
  - Computers and Internet facilities.
  - Library

It is clear from the above facts that the subject property has both dwelling and non dwelling uses and that it is a mixed premises. However, the next step is to show that the

premises is mixed to a “significant extent” within the meaning of the Valuation Act, 2001. In view of the facts of this case the Tribunal concludes that on the balance of probabilities that the subject property is a mixed premises to a “significant extent” with regard to both dwelling and non dwelling purposes within the meaning the Act. Accordingly, the subject premises is not a “domestic premises” under the Valuation Act, 2001. In these circumstances there is no provision for relief and the subject premises is liable for rates.

## **QUANTUM**

### **Appellant’s Case**

At the invitation of the Deputy Chairperson, Mr. Duggan assumed his position in the stand and provided the Tribunal with a review and synopsis of his submission, dealing with quantum matters, which followed a verbal summary of his career experiences.

Mr. Duggan drew the attention of the Tribunal to his views that the subject units are the largest residential type properties within current use in this country, which he described as own door, self-contained, residential units. He acknowledged that the own door was located internally, providing ingress and egress to each unit from internal corridors within the structure. He confirmed that each unit was fitted with a fridge, washing machine/dryer, microwave oven, sink, kitchen, shelving, bathroom, own letterbox, direct line telephone service and own television with licence fee paid directly by the occupier. Mr. Duggan also advised that the complex provides a communal dining facility and seating area. He stated that the administrative area occupies about 12% of the gross building area and the communal area about 13%, again of the gross building area. He emphasised that the residents within the subject property do not require full time medical care or assessment, there are no restrictions on visitors and each occupier has a dedicated letterbox. While confirming that the complex was built with the benefit of planning permission to a nursing home and that the complex has since been registered as a nursing home in accordance with relevant legislation, Mr. Duggan suggested that, in the absence of any other legislative label or identity available for a complex such as the subject and to qualify for certain capital allowances as well as weekly operating allowances, the owners of the complex had no choice but to register and accordingly adopt in name only, the term of nursing home.

Mr. Duggan indicated that, in his view, the Valuation Office had increased the number of comparisons introduced in their appeal document to the Tribunal over and above those employed by them during revision and appeal. He stated that the Commissioner had overlooked the issue of quantum and potential profitability. He contended that the current occupancy level is approximately 30% and urged the Tribunal to consider an approach to valuation based on the financial contribution made per patient. This turnover method, in Mr. Duggan's view, was more appropriate than the use of the comparison method, the latter which he considered to be unfair, particularly when compared to other properties which are 90 – 100% occupied. Whilst he accepted the initial 2 comparisons introduced by the Valuation Office at First Appeal, namely the Curley and O'Connor properties, as noted in the Appendix attached, Mr. Duggan rejected the analysis conducted by the Valuation Office, stressing that the subject comparisons are, respectively, from 4.4 to 6.8 times smaller than the subject, and that the Valuation Office had erred by not, apparently, applying a quantum allowance to the rateable valuation of the subject to reflect such differences in areas. He stressed that the dramatically different functionality of the subject, taken together with its operational dynamics, meant that it should not be valued exclusively on the comparison method, as there are, in his opinion, no comparable properties to relate to.

In analysing the Valuation Office's Valuation Reports provided on the Curley and O'Connor properties, being nursing homes at Ballymonagh and Boyle, Co. Roscommon, respectively, Mr. Duggan concluded an applied rent per sq. metre of €33.01 and €38.04 on each of the 2, again respectively; deduced an apparent quantum discount of 13% on the former; and suggested that the Valuation Office had not been consistent in applying such a quantum allowance on the First Citizen property. Noting the difference in floor areas of 57% between the Curley and O'Connor properties and the 13% quantum discount referred to earlier, Mr. Duggan affirmed that his client's property is approximately 680% larger in floor area than O'Connor's, and yet apparently does not qualify for any quantum discount by comparing the €33.01 assumed rent on the larger of the Valuation Office's comparisons, property No. 1, to the €33.90 assumed rent applied on the First Citizen property.

Mr. Duggan's comparisons included, for the purpose of supporting his argument, 2 properties to support his quantum claim, each in the Dublin region. Declaring the absence of any comparable property to the subject, Mr. Duggan then outlined the

turnover approach adopted by him, based on a 9% available yield for rent backdating by a multiplier of 35% to calculate an NAV based on 1988 rentals. He then applied a threefold multiplier to the notional rateable valuation to reflect an increase from the current low level of 30% occupancy to an optimum trading level of 90% producing a resultant proposed rateable valuation of €162.21.

Mr. Duggan then explained a valuation technique titled by him as the “patient method”, which concluded with a proposed rateable valuation of €108. He concluded his review of his submission by highlighting the ethos and unique philosophy of his client’s operation at Lanesborough, stressing the unique differences between it and all other residential facilities in the country more particularly described as nursing homes. He emphasised the residential nature of the property, the self-dependent ethos espoused by the owners of First Citizen Residential, the nobility of their approach in terms of self care, dignity and personal esteem and urged the Tribunal to support either one of 2 proposed rateable valuation calculations made by him, calculated initially by the turnover method at €162.21, or if necessary, a combination of his comparison, turnover and patient methods, which would produce a proposed rateable valuation figure of €128.

Mr. Devlin commenced cross-examination of Mr. Duggan by having the latter confirm that capital allowances could be claimed by the developers of a registered nursing home. Mr. Devlin outlined the primary function of a nursing home as one providing care and maintenance to dependent persons. Mr. Duggan, in reply to questions, confirmed that when a Health Board is involved, the weekly patient charges are €400, and when not involved, the sum increases to €500 per week. He also stated that he was unaware of any other residential units within the state charging similar levels of weekly fees. In reply to observations made by Mr. Devlin in relation to the support and care of residents who are aged and following accidents, Mr. Duggan contended that the people are cared for at First Citizen Residential well beyond the limits of accidents or the provision of food and shelter. He confirmed that if needed, the residents are provided with medication and may get specific nursing attention.

Mr. Devlin then introduced a copy of a print-out downloaded from the First Citizen Residential website and highlighted a number of statements or claims made therein, including their use of the term nursing home to describe their product, the underlying

philosophy of their approach to the provision of care and support for their patients, the range of specific care and services provided including day-care, which by definition is noted as non-residential and the recreation programmes offered by First Citizen Residential. In response, Mr. Duggan proclaimed that many of the services offered are so done by virtue of the size and scope of the subject property. He stated that he had examined about 15 nursing homes and though qualifying his role as a Valuer and not as a Health Care worker, expressed the view that the residents in the subject property are encouraged in a unique way to act and care for themselves.

Mr. Devlin challenged the use of the turnover method or approach to valuation adopted by Mr. Duggan. He referred to Section 49 of the 2001 Act. Mr. Duggan stated that there are only 2 other similar type properties in existence and not the 5 which appear to be scheduled on the first page of the website. He then accepted that the Valuation Office use of the comparison method was in his view the best approach, but retained his view that the turnover method employed by him should be considered relevant in this particular case. Mr. Devlin stated that Section 48 of the 2001 Act is used to assess the rates payable on a new property, not yet on the List, which calls for the application of net annual value. He explained that, as comparisons were available, the Valuation Office was not required to consider any other provisions or method of valuation within the context of the 2001 Act. Discussion ensued on matters relating to the application of quantum allowances and the tone of the list, and Mr. Duggan, in reply to Mr. Devlin, stated that, in his view, the rigours of the valuation process should apply at all levels up to and including Tribunal Hearing. Mr. Duggan questioned whether or not the Valuation Office had considered, and if so, applied, a quantum allowance. Mr. Devlin drew attention again to the apparent all en-suite layout and finishes of each of the rooms and assured Mr. Duggan that the Valuation Office had made some allowance for quantum at First Appeal stage, which was evident when looking at the Valuation Office's comparisons, which measure 694 sq. metres and 443 sq. metres respectively.

Mr. Duggan acknowledged that the turnover method may not be the actual method to be used in this circumstance but contended that it remains useful for reference purposes. In challenging the proposed rate of €10 per sq. metre, which Mr. Duggan might apply, Mr. Devlin stated that such a rate would in fact be less than an average rate applicable to an industrial unit.

**Respondent's Case**

Ms. Marron then assumed her position in the stand and commenced the review of her submission, also confining herself to matters of quantum. She drew attention to the description of the relevant property as noted by her in page 4 of her submission and advised the Tribunal that the car spaces were not valued separately.

She indicated that there are 14 nursing homes in Roscommon and her comparisons were those most recently revised. With reference to comparison No. 1, she affirmed that the applied rate of €30.75 per sq. metre resulted from an analysis following an appeal of this Ballyleague Nursing Home and drew attention to the fact that this smaller property of circa 630 sq. metres comprises of 7 single and 18 double rooms, none of which are served with en-suite bathrooms, and noting it to be in the same village as the subject relevant property. She reported that upon inspection of her comparison No. 2, being the Oakwood Nursing Home in Roscommon, only 12 rooms had been completed and the valuation, which was not appealed, was carried out on circa 917 sq. metres, but the complex has been designed to approximately 1, 940 sq. metres in total area. She stated that the rate of €41 per sq. metre was considered fair, highlighting that property's location in Roscommon and noting a correction in her text to reflect its distance of 0.9 miles from Roscommon County Hospital and 20 miles from the subject property. Ms. Marron stated that the finish in the Oakwood Nursing Home was broadly similar to the subject, but in a superior location, and therefore commanding €8 higher per sq. metre of applied rental value, reasoned by her on location and not quantum.

On the issue of quantum Ms. Marron said that, if the subject was smaller in area, she would have valued it higher. She also reviewed the details in her submission in relation to comparison No. 3, noting its transition from a former convent to a guest house and more recently to a nursing home and confirmed that the rate of €33.76 resulted following an appeal to the Commissioner. She also referred to her comparison No. 4, which was also appealed to the Commissioner, and in common with Mr. Duggan's comparison No. 1, which was assessed at a rate of €33.01 per sq. metre, which is at the same level as the subject, but this property is smaller in area, with en-suites fitted to the single rooms only, and she expressed the view that the subject property is better finished and fitted to a higher standard than this particular comparison. Ms. Marron also

declared that, in her view, none of the 4 comparisons offered should be considered as primary. She addressed the appellant's comparison property No. 2, i.e. O'Connor's Nursing Home in Boyle, and focused on the assessed rent level of €38.04 per sq. metre, and informed the Tribunal that it is a mixed, 2 storey building, comprising nursing home, store, laundry and private residence located on the outskirts of Boyle town, and in her view, inferior to the subject.

Mr. McCann commenced cross-examination of Ms. Marron focusing on the 2 nursing home properties outlined in Mr. Duggan's précis of evidence, and stated from the outset that they were not the sole comparisons used to reflect and analyse the rateable valuation of the subject. In reply, Ms. Marron stated that the comparisons chosen by the Valuation Office were in accordance with Section 49 of the Valuation Act, 2001 and attributed a fair level or rate to the subject. In reference to her comparison No. 1, she stated it was not the only relevant property and having reviewed the characteristics unique to all of the buildings she reviewed, she concluded that the comparisons offered by her were selected on the basis that they are each nursing homes and comparable to the subject. Ms. Marron acknowledged the issue of self-dependency addressed by the appellant relative to the management ethos of the subject for its occupiers, but declared that she would not consider herself a health care specialist. She expressed the view that few nursing homes offer own kitchen facilities, but many offer own door and private television viewing. She acknowledged that the cooking facilities were limited to a microwave oven in each of the subject rooms and that many of the occupants possibly have food cooked for them on a daily basis. She acknowledged that, in her experience, most nursing homes do not provide private telephone lines in the occupier's name to each of the rooms, or indeed private letterboxes. She stated that, in her opinion, there would typically be a larger area of the building dedicated to common, nursing, administration use and so on, whereas the subject apparently has a greater overall residential component or area. In response to a question Ms. Marron stated that she does not accept the principle of application of a quantum allowance in this case. Mr. McCann again raised the matter of €10 per sq. metre as referred to and proposed by Mr. Duggan earlier, and in reply to a question, Ms. Marron stated she had valued some industrial units previously at a rental rate equivalent to €20 per sq. metre.

### **Findings & Conclusion**

Having regard to all of the matters addressed in both submissions, together with the evidence adduced during the Hearing, the Tribunal finds the following facts to be relevant and/or material to the appeal.

1. The relevant property is registered, and trades, as a nursing home.
2. The relevant property has been constructed and fitted to a high standard throughout, of design, layout and finish.
3. Whilst the ethos of care at the subject property by the appellant appears to be both laudable and noble in so many ways, taking as it does an holistic view of the care, needs and well-being of its occupiers, the Tribunal considers the relevant property to be a nursing home, in accordance with the Health (Nursing Homes) Act, 1990, and per application applied for by the appellant and subsequently granted Planning Permission by the Local Authority.
4. The Tribunal is mindful of the apparent low level of occupancy achieved to date, and though sympathetic with such and the concerns of the appellant's Valuer, with regards to the use and application of the comparison method of valuations, it is not authorised in the Valuation Act, 2001, to give consideration, in this case to a turnover and/or per patient approach or method of valuation, as proposed by the appellant.
5. The Valuation Act, 2001 clearly specifies both procedures and methodologies to be employed to reach and establish a fair rateable valuation on relevant properties and considers, in this case, that the Valuation Office has complied with all of the relevant provisions of the said Act.
6. The appellant failed in this case to effectively challenge or provide alternative evidence to the comparison examples tendered by the Valuation Office.

### **Determination**

Having regard to the foregoing and in particular to the findings above, the Valuation Tribunal finds that the property is rateable and that the rateable valuation of €196.00 calculated and assessed by the Valuation Office is fair and equitable.

And the Tribunal so determines.