

Appeal No. VA09/1/017

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

Ronan Bushell

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2195002, Creche at Lot No. 43,47/1 at Patrick Street, Mullingar South Urban, Mullingar, County Westmeath

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Leonie Reynolds - Barrister

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF AUGUST, 2009

By Notice of Appeal dated the 13th day of March, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €50.00 on the above-described relevant property.

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

The appeal proceeded by way of an oral hearing, which took place in the Offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 22nd May, 2009. The appellant represented himself at the hearing. The respondent was represented by Ms. Carol Spain, a Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

The Property

The subject is described as a new ground floor commercial unit in use as a crèche/childcare facility, within a mixed commercial and residential development trading as Market Point, off Patrick Street in Mullingar, Co. Westmeath. The property comprises an area of 247.5 sq. metres measured gross internally and agreed by both parties.

Market Point lies within the town of Mullingar and was designed as a medical park to provide the services of doctors, dentists and other specialist medical personnel, and a pharmacy. The plan also provided for the development of 270 residential units.

Valuation History

May, 2008:	Inspection carried out by the Revision Officer.
May, 2008:	Draft Valuation Certificate issued by the Commissioner of Valuation indicating a rateable valuation of €2.00.
June, 2008:	The appellant submitted representations to the Revision Officer. Following consideration the RV was reduced from €2.00 to €0.00.
July, 2008:	Valuation Certificate issued confirming RV of €0.00.
August, 2008:	Appellant appealed the valuation to the Valuation Office.
February, 2009:	Commissioner of Valuation issued result of the First Appeal with the valuation unchanged at RV €0.00.

March, 2009: The appellant appealed the Commissioner's decision to the Tribunal by Notice of Appeal dated 13th March, 2009.

Appellant's Case

Mr. Ronan Bushell took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission.

Mr. Bushell addressed the Tribunal stating that his facility, which trades as Grovelands Childcare, should be considered as a childcare facility and not termed as a crèche. He then raised a number of issues which were outlined in his précis of evidence, as follows:

1. His opposition to rating childcare facilities, which he considered educational establishments.
2. The manner in which childcare facilities are designed and built to comply with a plethora of regulations and legislative provisions which results in it being inappropriate to compare them with other rateable properties, referring specifically to the percentage of internal areas required as subsidiary to the core educational activities of such centres. He cited that in his childcare facility, approximately 132 sq. metres or over 53% of the gross internal area (GIA) of his premises is dedicated to the direct provision of educational facilities, whereas his premises was assessed for rating purposes on the 247.5 sq. metres GIA.
3. He stated that the subject Revision, Valuation and Valuation Certificate does not reflect the anomaly outlined above.
4. He claimed regulations limit the number of children who can be accommodated within childcare facilities and minimum play areas are a prerequisite determined by the authorities on a 'per child' basis.
5. He contended that profitability of childcare facilities is largely determined by legally imposed staff-to-childcare ratios, which in turn are determined by the age of the attending children; ranging from those under one, under two, under three and over three years, with one adult required for every three, every five, six and eight children for each of those groupings, respectively.

6. As a consequence to evolving regulations, the appellant indicated that Grovelands Childcare operates in a very restricted trading environment, primarily due to changing staffing ratios, noting in particular the changes which occurred from the time he and his wife purchased the premises in 2005, through 2007.
7. He noted recent Budget measures which further impacted on Grovelands Childcare to operate efficiently.
8. While acknowledging that the residential elements of Market Point sold well, he stated that there continues to be approximately 50% of the commercial space vacant within the development, which, he suggested, suffers from poor access to the town together with a poor profile to the street.
9. He contended that the value of the property and the rent which a tenant might pay for the subject premises had fallen, in part due to the failure of the development to achieve its ultimate mixed use objectives, its poor profile and the perception by local business owners of the centre's limited capacity to trade profitably.
10. He informed the Tribunal that his business did not operate profitably until its fourth year, (2008) and then only marginally so.
11. The floor plan of Block A of Market Point where the subject relevant property is located, continues to challenge efficient operation of a childcare facility, particularly when considered in the context of the recently proposed Budget measures which may require further modifications to the layout.
12. He felt the rateable valuation was unfair and not compatible with those assessed on other childcare facilities within the Rating Authority area.
13. He expanded on the foregoing point, claiming a lack of fairness and natural justice in the manner in which childcare facilities in general are rated, noting that of the 60 "Notified" private services in Co. Westmeath, apparently only 18% of those properties appear on the Valuation List, and advised that this apparent inequity has been brought to the attention of the Minister for Children by the National Children's Nursery Association.

14. He stated that planning guidelines within the Rating Authority area create an oversupply of places in the childcare sector, and restrictions imposed by the Child Care (Pre-school Services) (No. 2) Regulations 2006 together with the imposition of Rates by Westmeath County Council, when taken together, in his view, serves to create unfair and unjust trading conditions.
15. He argued that the relevant subject property could not be used for any more profitable use than that currently provided for in accordance with prevailing planning guidelines, and that a change-of-use of the premises would not be considered by the Local Authority, and felt this point should be considered in the rating of his childcare facility.
16. Finally, he noted that regulation and planning controls together conspire as inhibiting factors to the profitable operation of his facility and regardless of his business acumen and that of his wife, he felt that their childcare facility was not fairly rated.

Mr. Bushell then commented on the comparisons adopted by the Valuation Office, declaring that Property 2186129 is at a good out-of-town location and more desirable than the subject; Property 2190180 is a purpose built community facility designed to the highest standards and enjoys a significant advantage over the subject property; and Property 2179514 is located in a very well regarded suburban location, which, in his view, would carry a premium over the subject property.

The appellant suggested that the rateable valuation on the subject property should have been significantly discounted by the Commissioner of Valuation, having regard to the foregoing, to Market Point as a location and the current economic downturn, and requested an RV of €30 to be applied to the subject property.

Cross-examination by Ms. Spain.

1. Ms. Spain asked the Appellant if the aforementioned regulations apply to all “Notifiable” childcare facilities, to which the appellant responded in the affirmative.
2. The respondent confirmed that there was no change to the area of the subject relevant property since the date of valuation.

Respondent's Case

Ms. Spain took the oath, formally adopted her précis as her evidence-in-chief and reviewed her submission. She referred to her written submission and noted that the rate of €41 per sq. metre assessed on the subject ground floor premises of 247.5 sq. metres was consistent with the rate per sq. metre applied in her Comparison Properties Nos. 1, 2 and 3, which had varying ground floor areas from 145.7 sq. metres to 676 sq. metres and drew attention to her Comparison Property No. 4 (**VA05/3/073 – Grovelands Childcare Ltd.**) with the rate per sq. metre on the ground floor of that facility determined at €50. Ms. Spain also offered two further comparison properties, Nos. 5 and 6, both of which are located within the Market Point development, and are occupied as a Doctor's and a Dentist's Surgery respectively, bearing a rate per sq. metre of €82. The foregoing comparisons are attached hereto as Appendix 2 to this Judgment.

Ms. Spain concluded her direct evidence by stating that, in her view, the premises is a modern crèche, in good condition, located beside Patrick Street in the centre of Mullingar town, and the four main comparisons offered - all crèches - and the two surgeries cited in the Appendix, serve to illustrate the relative values in the same location of different uses, and concluded that the rateable valuation of €50 applied by the Commissioner, is fair and reasonable.

Cross-examination by Appellant

Mr. Bushell asked if the Valuation Office had adopted the GIA of the premises as being the basis of measurement which produced the figure of 247.5 sq. metres, to which Ms. Spain replied in the affirmative.

The appellant then stated that in his opinion, the area to be rated should have been limited to those areas within his premises dedicated exclusively to the provision of educational facilities for the children attending his childcare facility. Ms. Spain contended that this practice would not be consistent with the rating of other like facilities and would not compare with the RICS Practice Guidelines on the measurement of such.

Mr. Bushell again contended that all facilities dedicated to the provision of children's services should be measured by reference only to those areas dedicated to educational services, and accordingly, the practice cited by Ms. Spain was, in his view, measuring childcare facilities incorrectly.

Findings & Conclusions

1. The Tribunal thanks both parties who attended the hearing and appreciates the time and effort committed by both to seeking a satisfactory and equitable determination.
2. Both parties agreed that the subject premises are in good condition.
3. Both parties agreed to the measured floor area of 247.5 sq. metres, though at hearing the appellant contended that all of the floor area should not have been assessed for rating purposes.
4. The appellant referred in his précis and direct evidence to some of the comparison properties cited in the respondent's submission, but failed to provide evidence to the Tribunal of suitable comparator properties which might support his contention for a reduction in the Rating Valuation to a level of €30.
5. Though mindful of the appellant's views and representations made with respect to how childcare facilities should be rated from his perspective, and his sense of deficit in fairness associated with the manner in which the Valuation Office calculates the GIA of childcare facilities for rating purposes, this Tribunal does not have authority or jurisdiction over such matters.
6. The Tribunal is satisfied that the comparisons and the submissions made and adduced at hearing by Ms. Spain on behalf of the Commissioner, meet the requirements to reach a fair and equitable rateable valuation subject property, and accordingly, the calculations set out in the respondent's précis of evidence resulting in an RV of €50, are affirmed.

And so the Tribunal determines.