

Appeal No. VA09/3/032

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

**Regina Bushell**

**APPELLANT**

and

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2198215, Crèche at Lot No. 42F/1, Monksland, Athlone West Rural, Athlone 2, County Roscommon.

B E F O R E

**John Kerr - Chartered Surveyor**

**Deputy Chairperson**

**James Browne - BL**

**Member**

**Michael Connellan Jr - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF FEBRUARY, 2010**

By Notice of Appeal dated the 13th day of August, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €74 on the above-described relevant property.

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

"Valuation of the property is excessive bearing in mind the location of the property. The basis of valuation used by the Valuation Office is flawed. New building. Educational establishments should not be rated. Comparison with other childcare facilities in Co. Roscommon as the property included as a comparison was a playcentre and has since closed. Large areas of the property cannot be productively used in the childcare service i.e. sleep areas, toilets, kitchen, staff room & changing areas. Childcare regulations limit the numbers of children which can be catered for by only measuring the actual rooms in use in providing the service."

**At issue**

Quantum and Rateability.

The appeal proceeded by way of an oral hearing, which took place in the Tribunal offices, Ormond House, Ormond Quay, Dublin 7, on the 4<sup>th</sup> day of January, 2010. The appellant, Mrs. Regina Bushell, represented herself at hearing, together with the assistance of her advisor and husband, Mr. Ronan Bushell. The respondent was represented by Mr. Noel Norris, B. Comm., MIAVI, ASCS, a District Valuer with 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. In addition, the respondent exchanged a revised and updated version of the Commissioner's submission immediately prior to the hearing on 4<sup>th</sup> January, 2010. The changes were additions to the initial version and addressed the issue of rateability or "exemption" raised by the appellant in her submission, which in turn resulted in two changes within the foregoing respondent's submission, specifically on page 2 and page 6 thereof.

At the oral hearing, both parties, and Mr. Bushell, having taken the oath, adopted their respective 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.

**Description & Location of the Property**

The property is described as a two-storey purpose-built crèche, with the ground floor dedicated to such purpose and the upper floor deemed exempt from rates liability by reason of its residential use. The property is served with parking to the front, used primarily for the drop-off and collection of children.

The parties agreed that the facility was a modern crèche in good condition, located at Monksland, off the old Tuam to Athlone road, near the Gateway Business Park and Shopping Centre, Athlone Springs Hotel & Leisure Centre, and the Corran Riada and River Village housing developments.

Trading as Grovelands Childcare, the crèche provides care for children aged from 3 months to 12 years, including full day care, part-time, morning and afternoon care, some after school, and out-of-school care, with typical trading hours extending from 07.45 to 18.30 hrs, Monday to Friday.

### **Accommodation**

The facility is licensed for a maximum of 60 children. The parties agreed to the area of the crèche, measured internally (excluding toilets areas) at 362 sq. metres and the overhead residential accommodation at 61 sq. metres.

### **Valuation History**

November 2008:	Following inspection of the subject property by the Revision Officer, in the company of the appellant, a draft Valuation Certificate is issued with an RV of €74.00.
23 December 2008:	Valuation Certificate issued with an RV of €74.00.
January 2009:	Appellant appeals the valuation to the Commissioner of Valuation.
July 2009:	Commissioner of Valuation issues result of the First Appeal with the RV unchanged.
August 2009:	Appellant appeals the Commissioner's decision to the Tribunal by Notice of Appeal dated 13 <sup>th</sup> August 2009.

### **Appellant's Case**

Mrs. Regina Bushell provided the Tribunal with a review of her submission. With the assistance of Mr. Bushell, she outlined the basis of their case by referring to, reading from and providing supplementary oral evidence to their written submission. The main points discussed were as follows:

1. Their opposition to the rating of childcare facilities, which they argued should qualify for exemption as educational establishments.
2. They contended that the proposed introduction of the Early Childhood Care and Education Scheme (ECCE) in the 2009 Budget contemplated certain relief from rates liability. The appellant stated that such a measure would discriminate against existing full

day crèche service providers which provide a wider scope of services than those contemplated by such a scheme and argued that, at a minimum, the areas within participating existing crèches which will offer the ECCE scheme should be exempt from rates.

3. The nature and design of childcare facilities operating pursuant to the Child Care (Pre-School Services) (No. 2) Regulations 2006, the appellant claimed, restrict the use of the space within such facilities. She claimed that the regulations create inefficiencies in the use of floor space, resulting in limited areas available to serve educational purposes and conversely substantial areas of a typical crèche layout employed for domestic activities and use, such as sleeping and changing areas, toilets, kitchen and various utility areas. In support of her case, Mrs. Bushell referred to the Valuation Tribunal judgment **VA08/3/024 – Bernie Moran**.
4. Not all crèche facilities operate under the guidance of the foregoing regulations and accordingly, the subject is disadvantaged.
5. The aforementioned regulations place restrictions on the number of children which may be accommodated and the space and resources dedicated to each child is predicated on their age. The resultant staffing ratio and utilisation of space directly impacts profit potential, as the regulations advise that the increase in staffing is directly proportionate to the age of the children, the greater number required as the children get older.
6. The Valuation Office failed to consider such a restricted trading environment and the changes to staffing ratios under regulations which came into effect in September 2007.
7. The proposed Government subvention rate, to be paid per child under the proposed ECCE Scheme, is inconsistent with the substantial rates liability being faced by crèche service providers who operate within the regulations and who are accordingly disadvantaged by other unregistered child care service providers. The appellant repeated her contention that at least that part of the facility to be dedicated to the ECCE Scheme should be rates exempt.
8. The residential development adjoining the subject property, known as Corran Riada, was built primarily in 2006, with many of the residential units sold successfully, but most of the adjoining commercial units remain vacant.
9. The foregoing matter would be considered by a hypothetical tenant, noting that most childcare facilities require 4 to 5 years of well-managed operations before they achieve profitable returns.

10. Due to the economic downturn generally and reduction of gross incomes specifically, the value of the subject has declined in recent times.
11. Grovelands has not yet turned a profit.
12. The internal and external design and layout of the facility was not efficient or matched to current regulations.
13. The Valuation Office did not consider the rates levied on other providers within the Local Authority Rating Area, in general.
14. Roscommon County Council has not rated all crèche facilities around the county and, accordingly, this results in a lack of fairness and justice. The appellant stated that currently there are 35 notified private children services in the county, while it appears that only 6 are published on the Valuation List. Mrs. Bushell also advised that there are 14 private crèche service providers within a 10 mile radius of her facility, with only 2 rated, and further, that there are 7 private facilities in her immediate area, of which Grovelands at Corran Riada is the only one rated.
15. This apparent inequity has been brought to the attention of the Minister for Children by the representative body known as the National Children's Nurseries Association.
16. The appellant feels the Valuation Office should refrain from valuing childcare facilities until a fairer system can be introduced.
17. The implementation of Planning Guidelines, first introduced in 2001 by the Department of Environment for childcare facilities applicable in the Roscommon County Council area, created an over-supply of places in the childcare sector, whereas the Regulations of 2006 and the imposition of rates by the local authority has created unfair trading conditions for registered service providers.
18. The Planning Guidelines applicable to the subject property, Mrs. Bushell stated, would not permit a change-of-use of the premises for any other purpose.
19. The subject premises do not enjoy a good profile to the public road.
20. All of the foregoing, the appellant argued, regardless of the business acumen and experience of the operator, and in particular the imposition of regulations and inability to change the use of a building, cannot, in her view, be ignored in the rating of childcare facilities.

The appellant also contended that one of the two comparison properties introduced by the Commissioner at First Appeal, namely Tickety Boo Play Centre, was not an appropriate comparison, as it was not a crèche but a child drop-in, play and adventure centre and was not

registered under the above noted Child Care Regulations of 2006. Mrs. Bushell noted that the Valuation Office has not cited Tickety Boo as a comparison property at the Tribunal appeal.

In conclusion, the appellant sought consideration by the Valuation Tribunal to reduce the rateable valuation of the subject property to a figure of €40.00.

The appellant did not provide details of any other comparison properties and/or basis of calculation of net annual value to derive a requested rateable valuation figure of €40.00. She did, however, append details of the ECCE Scheme and a proposed rates exemption for sessional services to be provided hereunder, at Appendix 1 and 2; together with an Assessment of Regulation 5 of the Child Care (Pre-School Services) Regulations 2006, issued by the HSE and Donegal County Childcare Committee (DCCC) as Appendix 3; two photographs of the external front elevation ground floor of the subject premises as Appendix 4; Appendix 5 comprising a copy computer printout from the HSE website of a list of pre-schools in Co. Roscommon, dated 13<sup>th</sup> November, 2009; Appendix 6 appearing as a copy, again of a computer print out of 13<sup>th</sup> November, 2009, of a Valuation Office list of properties, described as crèches which appear on the Valuation List, and finally, Appendix 7 providing the NCNA submission to the Office of the Minister for Children and Youth Affairs. All of the foregoing are attached as Appendices 1 – 7 to this judgment.

### **Cross-examination by the Respondent**

In reply to questions put by Mr. Norris to the appellant on the two comparison properties listed in the respondent's written submission, namely Nature's Best Crèche at Tarmonbarry and Frenchpark & Districts Childcare Ltd., Mr. Bushell acknowledged that, though those two properties were granted planning permission as crèches, there were no restrictions imposed by the Planning Authority with respect to future possible change-of-use applications, whereas Grovelands at Corran Riada could, in his view, only be used as a crèche and no other uses would be considered or permitted by the Planning Authority.

Mr. Bushell also noted that the subject premises did not have the floor area measured in a manner consistent with other crèches, to which Mr. Norris replied that the Commissioner adopted normal and accepted methodology following established practice guidelines for the

measurement of such properties, allowing relief for the residential area on the upper floor and the toilet areas on the ground floor.

Mrs. Bushell again contended that the sleeping rooms, kitchen, baby feeding and sleep areas should not have been included in the area assessed for rates.

### **Respondent's Case**

Mr. Norris took the oath and then adopted his précis as his evidence-in-chief and reviewed his submission. He summarised the valuation history, methodology, assessment and the calculation of NAV for the two comparison properties, namely Nature's Best Crèche at Tarmonbarry and Frenchpark & District Childcare Ltd. facility at Frenchpark, the ground floors of which were assessed at a level of €41 per sq. metre. Both properties, he advised, are located some considerable distance from major urban centres, in village settings on the N5, one west of Longford town and the other north of Castlerea. Mr. Norris expressed the view that he considered the property as relevant in accordance with Schedule 3 of the Valuation Act, 2001. He stated that he considered his approach and calculations fair and reasonable.

### **Cross-examination by the Appellant**

Mrs. Bushell reminded Mr. Norris that when looking at comparisons at First Appeal, the Valuation Office had erred in considering Tickety Boo as a crèche, which was apparently assessed also at a level of €41 per sq. metre. The appellant repeated that Tickety Boo was a play centre and not bound by the aforementioned regulations applying to registered crèches. Mr. Norris acknowledged and reiterated that his submission to the Tribunal offers two comparisons only, namely, Nature's Best at Tarmonbarry and the Frenchpark crèche. In response to a query on the basis of measurement employed by the Commissioner, Mr. Norris confirmed that the Gross Internal Area of the ground floor of the subject relevant property measured 422.97 sq. metres but was adjusted by a reduction factor of 61 sq. metres to result in the net area of 362 sq. metres.

Following further discussions to clarify where those adjustment areas were identified within the premises, the appellant, with the consent of the respondent, and following a brief adjournment, provided the Tribunal with a marked up copy of a ground floor plan prepared by Moss & Company Architects Ltd., which also labelled the proposed uses for each of the areas within the property. Mr. Norris sought to clarify the location of the toilet areas deducted from his calculations by explaining that they were taken from each of the three

notional blocks. He confirmed that the following areas had been calculated and reduced from the internal floor area:

**Block 1**

1. Disabled Public Staff W/C.
2. W/C and lobby.

**Block 2**

1. Staff W/C.
2. Lobby, W/C 5, W/C 6 and nappies area.

**Block 3**

1. W/C 1, W/C 2, W/C 3, W/C 4 and W/C.

**Findings & Conclusions**

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.

1. The Tribunal is satisfied that the subject is a relevant property, as set out within Schedule 3 of the Valuation Act, 2001.
2. Though the Tribunal is mindful of the apparent inconsistencies in the practice of rating of childcare facilities throughout the country, it does not have jurisdiction to comment any further on same.
3. The pertinent Valuation Date is the date the relevant Valuation Certificate issued, i.e. 23 December 2008.
4. The Tribunal's considerations are limited to the provisions of the Valuation Act, 2001 and, in particular, the basis of valuation, as set out in Part 8 thereof.
5. Having reviewed the copy floor plan drawing provided, the Tribunal is satisfied that the areas allowed for by the respondent, as deductions from the internal floor area, were reasonable, fair and consistent with rating practice and measurement guidelines for similar properties.
6. While acknowledging that the appellant argued for an RV derived and calculated by reference to the import of rates per sq. metre levied to reach an NAV of other similar properties on ground and first floor locations, the Tribunal was not given sufficient

reason or calculations by the appellant to consider or lend support to such an approach or adopt such a “blending” technique.

7. The Tribunal was not provided with written evidence to confirm that a planning application seeking a change-of-use would be denied or refused for the subject property.
8. The Tribunal was not provided with empirical evidence or any comparison properties which might support a variation or consideration of an alternative level of €41 per sq. metre as used by the respondent to calculate the net annual value of his two comparison properties.

Accordingly, the Tribunal does not consider a change or adjustment to the RV of €74.00 as established by the Commissioner of Valuation, and the Tribunal so affirms.

And the Tribunal so determines.