

Appeal No. VA10/3/005

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

Glendale Nursing Home

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2203518, Nursing Home at Lot No. 37a/1, Tullowphelim, Tullow Rural, Carlow, County Carlow.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Brian Larkin - Barrister

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF JANUARY, 2011

By Notice of Appeal dated the 7th day of July, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €20.00 on the above described relevant property.

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

The appeal proceeded by way of an initial oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 21st day of September, 2010 and the 10th day of November, 2010. The appellant was represented by Mr. Henry Burrows, Managing Director of the subject relevant property, and the respondent was represented by Mr. David Dodd, BL, instructed by the Chief State Solicitor and Ms. Orla Lambe, BSc (Surveying), MIAVI, a valuer in the Valuation Office.

At Issue

In the first instance the appellant sought exemption on rateability based on legal arguments made by him pursuant to Schedule 4, Paragraph 6, and/or Paragraph 7, and/or Paragraph 8(a) and/or Paragraph 8(b) of the Valuation Act 2001. It was agreed by parties at the First Hearing that the preliminary legal issue would be addressed prior to proceeding, if necessary, with the hearing on quantum issues.

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 property comprises a new, modern, purpose built, single storey nursing home constructed to a good standard of specification and finish, internally and externally. The pitched roof is tiled, all walls are painted on rendered plaster and all windows are double glazed. Hard and soft landscaping is also completed to a high standard.

The nursing home consists of 60 single en-suite bedrooms and facilities within the complex include the following:-

- a) Family Room
- b) Hairdressing Rooms
- c) Lounge areas
- d) T.V. Room
- e) Dining Room

- f) Library
- g) Activity Room
- h) Oratory
- i) Reception area
- j) Storage Rooms
- k) Staff area
- l) General offices

Access to the bedrooms is provided by means of internal corridor doors. Residents are provided with the exclusive use of internal courtyards within the complex. Ample parking is provided on surface parking to the front of the facility. The adjoining Glendale Retirement Village is not included in the subject valuation and is deemed a “domestic property” by the Commissioner of Valuation. Glendale Nursing Home (Glendale) is a private nursing home facility, registered with the Health Service Executive (HSE). Glendale caters to the needs of short-term and long-term patients’ care needs. All rooms are fitted with satellite television, telephones and a nurse call bell. The grounds are laid out in gardens designed to provide extensive walks and activities for the residents. Residents at Glendale are provided with a wide menu selection which also caters for modified diet planning.

Location

Glendale is located on the Tullow to Shillelagh Road (R725), circa 2 miles from Tullow town, approximately 9 miles from Carlow and 50 miles from Dublin.

Services

All usual required services are available and connected to the subject relevant property.

Tenure

Assumed Freehold.

Valuation History

November 2009:	Draft Valuation Certificate issued with an RV of €457.00.
December, 2009:	Following Representations, the RV was reduced to €420.00.
December, 2009:	Final Certificate issued with an RV of €420.00 and subject property was entered in Valuation List.
December 2009:	Appeal lodged to the Commissioner of Valuation.

June 2010: After First Appeal, the RV remained unchanged at €420.00.
July 2010: Notice of Appeal received by the Valuation Tribunal.

Floor Areas

The gross internal area (GIA) for Glendale, excluding the two internal open courtyards, was calculated by the Project Architect, Mr. Ciaran Mulhall of John D. Gallagher & Associates, Architects, Dublin 18 and confirmed by correspondence dated 30th June, 2010, by him to Glendale, copy attached as Appendix 4, at 2,557.89 sq. metres, with bedroom areas accounting for about 42% only of GIA. The précis of evidence submitted by the respondent, at page 4, attached as Appendix 2, addresses the ground floor on a gross external area (GEA) basis calculated at 2,677.59 sq. metres, resulting in a difference between GIA & GEA of 119.70 sq. metres. This issue will be addressed later in this determination.

Appellant's Case

Proceedings commenced when Mr. Henry Burrows took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. Mr. Burrows commenced by referring to Schedule 4 of the Valuation Act, 2001, (2001 Act) seeking exemption on rateability on the grounds above mentioned. He stated that Glendale is *de facto* a domestic residence for its 60 residents, the address which they use for voter registration, receipt of all their mail, where they eat, sleep, relax, socialise, engage in activities and live their lives on a day-to-day basis in a manner similar as they might have previously in their former homes. Mr. Burrows explained that 59 of the beds are dedicated to the needs of long-term care patients and the remaining room for short-term respite needs, and accordingly in his view, 59 of the residents are in full time residence at Glendale.

Mr. Burrows argued that the oratory within Glendale is available for public religious worship and not merely for patients and staff of the nursing home. He explained the involvement of the Rt. Rev. Msgr. Brendan Byrne, Tullow, in the design and placement of the 1.5 tonne altar and noted that services conducted at the Oratory are advertised routinely in local churches. Mr. Burrows stated that the oratory is open to all residents, their visitors, and staff at Glendale but may not be open at all times to the public. He then proceeded to seek exemption from rating under Sections 8 and 14 of Schedule 4 of the 2001 Act, advising that the subject nursing home provides care both for the sick and for the elderly. He explained elements of the "Fair Deal" programme now administered by the HSE providing nursing home care to

those needing it by reference to both health and financial needs. He outlined that at Glendale only five of the residents are considered low dependency patients, twenty are medium dependency and thirty-five are considered maximum dependency, though not bed-bound. He explained that impairment for the latter group may be associated with reduced cognitive, physical, and other infirmities, and the degree of impairment may extend to a requirement for the provision of full-time nursing care. Mr. Burrows expressed the view that rating valuation should take account of these very pertinent issues, as they impact directly on the operation of nursing homes.

Referring then to Paragraph 8(b) of Schedule 4 in the 2001 Act, the appellant argued that the expenses defrayed by Glendale are mainly funded by the HSE, which in turn receives its funding from the Exchequer. He referred to his précis and his Notice of Appeal to the Tribunal which contained unaudited or uncertified confidential details of total income and HSE-sourced income earned by Glendale for the first 6 months of 2010. He explained that the total income received at Glendale from the HSE on foot of both the former nursing home Subvention Scheme and the new Nursing Home Support Scheme (Fair Deal) exceeds 50% of its total income, and argued accordingly that Glendale meets the criteria for Paragraph 8(b) Schedule 4, exemption from rates.

Cross-examination by Mr. Dodd

In framing his questions, Mr. Dodd noted that the actual name of the appellant is not Glendale Nursing Home above, but specifically Glendale Care Limited. He then advised that there are both public and voluntary nursing homes in Ireland, and in the instant case, informed the Tribunal that Glendale has both a nursing home and an adjacent retirement village, the latter owned and operated by a separate entity. He added that the residential units in the retirement village feature own front doors, own living space, own telephone service and are rented on the open market.

When asked to describe the features of the subject nursing home, the appellant confirmed that access to the bedrooms is solely provided via corridors, that there are no kitchenettes or living spaces within the bedrooms, that all telephone calls to the bedrooms are routed through a Glendale central PABX system, and that there are no postal boxes serving the bedrooms. Mr. Burrows also advised that the other rooms, including the oratory, lounges, library, the general

offices, etc., are there to provide facilities and services to the residents and not available for such purposes for the benefit of the wider community.

Mr. Burrows also confirmed that a CCTV surveillance system operates both internally and externally at Glendale and that visitors may be required to produce identification and sign in at reception, albeit the latter primarily as a fire safety management requirement. The appellant also confirmed that Glendale may refuse entry to persons but there is, nevertheless, open access to the reception area of the facility, though the Manager might likely make enquiries of the visitor if he did not know the purpose of his or her visit to Glendale.

Mr. Burrows also advised that the oratory is provided in fulfilment of a requirement under the Health Information and Quality Authority (HIQA) criteria applying to all compliant designated nursing homes, but added that not only residents but guests and neighbours in the community may also use the Glendale oratory as a place of worship. He expressed the ethos of Glendale in inviting in members of the community to avail, share and participate in religious services at their oratory. Mr. Burrows noted that this welcome to the public is most evident during special occasions and events when the oratory is open for community Masses and other religious ceremonies, all with the support and encouragement of the acting Bishop of the diocese. He referred to Msg. Byrne's correspondence addressed to Glendale of July 06, 2010, a copy of which was included with his Notice of Appeal, which supports the foregoing.

Mr. Dodd suggested to the appellant that Paragraph 8(a) of Schedule 4, of the 2001 Act, does not apply in this case as Glendale is in the business of seeking to make a private profit. He added that the *raison d'être* of Glendale is to take care of elderly persons, an activity adverted to in Paragraph 14, Schedule 4, of the 2001 Act. However, he stated that in order to qualify for exemption of rates under that provision, the appellant must, among other things, prove that the expenses incurred at Glendale are wholly or mainly defrayed by the Exchequer. He indicated that it must be demonstrated that more than 50% of all Glendale's expenses are defrayed by the Exchequer by means of payments made and remitted from the State, and, in this case, the HSE. Mr. Dodd then referred to Appendix 11 of the respondent's précis, namely a copy of an Information Booklet on the Nursing Home Support Scheme (Fair Deal), published by the Department of Health and Children and HSE, attached hereto as Appendix 3. He explained that the former nursing home scheme was based on the principle of subvention, whereas the "Fair Deal" introduced by the Health Act, 2009, was devised to

ensure fairness for all new applicants seeking and requiring nursing home care, regardless of their financial situation.

Respondent's Case

Ms. Orla Lambe took the oath, adopted her précis as her evidence-in-chief and reviewed her submission. She commenced by stating that the subject bedrooms were not designed to provide for ancillary living space and are not fitted with letter boxes. She confirmed that Glendale was measured on a GEA basis. She stated her view that Glendale, as a private nursing home, is operated for a private profit, and then outlined the various features in areas, other than bedrooms, at the facility and drew attention to the nursing facility made available at Glendale referring the Tribunal to Appendix 8 of her précis, titled "Extract from Glendale Nursing Home Website".

Ms. Lambe explained that access for worshippers and visitors to the oratory is through the main foyer of Glendale and that the said oratory is not generally open to the public due to internal location considerations and safety management reasons. She advised that there are no external signs on the property directing the public to the oratory but accepted that invitees are openly welcomed there by the management at Glendale.

Cross-examination by the Appellant

In response to a query from Mr. Burrows on how Ms. Lambe formed her opinion that the oratory was not open to the public at large, the latter explained that her view was formed by reference to the siting of the facility within and surrounded by the nursing home complex. In response to a query on the issue of safety raised by her, she indicated that open access for the public to the oratory would result in consequential public open access to corridors, bedrooms and so on. Questioned by the appellant as to why she did not consider Glendale a domestic premises, she replied by adverting to the accommodation details set out in her précis of evidence, page 4, and the facilities scheduled therein, and when challenged by Mr. Burrows on the possibility that all such services and facilities could also be made available in private dwellings, Ms. Lambe acknowledged in the affirmative but added that Glendale does not provide its residents with own door access to their bedrooms or living spaces from the exterior.

In summing up the legal argument on rateability of the subject property, Mr. Dodd noted four points on which the appellant was making his case under the 2001 Act, Schedule 4, as follows:-

Paragraph 6 – Domestic Premises provision

Paragraph 7 – Public Religious Worship provision

Paragraph 8 – Catering for the Sick provision

Paragraph 14 – Caring for the Elderly provision

In his List of Authorities, Mr. Dodd first referred to tab 7, citing the judgment of McMenamin, J, on **VA05/01/008 - Nangles Nurseries**, Case Stated, para 39, pages 14 and 15, and para 27 of page 11, and concluded from same that the Tribunal must apply the provisions of the 2001 Act only.

Mr. Dodd stated that the relevant property is either rateable or not, i.e. it qualifies for exemption or it does not.

Mr. Dodd then argued that Glendale is a “mixed premises” to a significant extent and in accordance with the definition of “domestic premises” provided for Section 3 of the 2001 Act, Glendale cannot be considered a domestic premises. He explained that in his view domestic premises are not rated under the 2001 Act, even if rented out. He said that a domestic premises is not simply a place where one resides, providing by way of an example, Mountjoy Prison, which he indicated might meet that criteria, but does not qualify in his opinion for specific relief from rates under the definition as a “domestic premises” as defined in Section 3 of the 2001 Act. He referred to Section 15(3), Part 4 of the same Act which he noted expressly provides that prisons and other buildings, lands etc. occupied by the State are treated as relevant properties not rateable. Accordingly, it was his view that a place of residence is not necessarily either a domestic premises or dwelling for rating purposes.

Mr. Dodd then explained that the Memorandum and Articles of Association of the operating company, Glendale Care Limited, provides and declares that the firm may pursue a private profit in the usual commercial way. He asked the Tribunal to consider the floor layout plan of Glendale provided by the appellant’s Architect, drawing attention to the many areas within the complex which are not bedrooms, and citing many similarities to a previous Tribunal

case, namely **VA04/2/035 - First Citizen Residential Ltd.** Mr. Dodd stated that the services provided at the subject and the latter are almost identical, reaffirming his view that Glendale must also be considered a mixed premises to a significant extent. He further added that in the case of First Citizen, its floor plan layout provided residents with own-type apartments, whereas Glendale offers its residents rooms off corridors, and again reminded the Tribunal of the existence and operation of the adjoining retirement village. Accordingly, he declared that there should be no exemption granted under the 2001 Act with respect to the given definition of “domestic premises”.

Mr. Dodd then addressed the issue of relief or exemption being sought by the appellant under Paragraph 7, Schedule 4 of the 2001 Act with respect to the chapel or oratory in the subject. He said that the questions to be asked to test qualification for rating exemption for the oratory are in his view as follows:-

- a) Is the subject oratory for public religious worship?
- b) Is it exclusively for the purposes of public religious worship, drawing attention to the difference between both?

Mr. Dodd referred to the New Oxford English Dictionary for the definition of “exclusively” as meaning among other, “solely”, and argued therefore that the test may read “is the oratory “solely” for public religious worship?” He concluded that the relief of Paragraph 7, Schedule 4 exemption could not be granted on private chapels or oratories, or indeed those having mixed objectives and functions to serve the needs of both private and public purposes. He said the public use of the oratory at Glendale is a concession rather than a right, and also emphasised that there is no sign external to the relevant property indicating its existence within the nursing home to the public.

Addressing the caring for the elderly provision outlined in Paragraph 14, Schedule 4 of the 2001 Act, Mr. Dodd stated that the appellant’s case could not succeed as outlined above, under (a).

Mr. Dodd then added that as the wording in Paragraph 8(b) of Schedule 4 was almost the same as in Paragraph 14(b) of Schedule 4, he concluded that, as the appellant had not proven

the required tests to demonstrate that the expenses are defrayed wholly or mainly at Glendale out of monies provided by the Exchequer, the subject property is rateable.

The appellant and the respondent then both agreed to rely exclusively on their arguments on the provisions contained in Paragraph 14 (b), Schedule 4 of the 2001 Act.

With the agreement of the parties, the hearing was adjourned to 10th November 2010, to allow the Tribunal consider the foregoing preliminary legal arguments made and to deliver its determination on the issue of rateability based on the submissions made and arguments adduced at the foregoing hearing.

All of the parties reconvened in the offices of the Valuation Tribunal, on the 10th day of November, 2010 initially to receive the determination on the legal matter, which was delivered orally, as follows:

Determination of Preliminary Legal Matter

Having regard to the matters at issue and grounds of appeal filed by the appellant in respect of the legal issue of rateability, the Tribunal acknowledges the agreement of both parties at the hearing to rely upon the provisions contained in Schedule 4, Paragraph 14(b).

Defraying, given its ordinary meaning, means, according to the Oxford English Dictionary,

1. To pay out, expend, spend, disburse (money). 2. To discharge (the expense or cost of anything) by payment; to pay, meet, settle. 3. To meet the expense of; to bear the charge of; pay for. 4. To pay the charges or expenses of (a person); to reimburse; to entertain free of charge.¹

The HSE, in making payments to nursing homes under the Nursing Homes Support Scheme Act, 2009, is, within the ordinary meaning of the word, defraying expenses of the nursing home in its purpose of caring for the elderly. The HSE for all intents and purposes is ‘the State’ as defined for the purposes of the Valuation Act, 2001, as was held by McMenamin J. in **Health Service Executive v Commissioner for Valuation**, [2008] IEHC 178 and by natural extension is therefore acting on behalf of the Exchequer when it makes a payment.

¹ *The Oxford English Dictionary*, Second Edition, Volume IV (Oxford: Clarendon Press, 1989), 392.

The Tribunal finds that the relevant property falls within the ambit of Paragraph 14(b) above, and further, that Glendale Nursing Home is a body the expenses incurred by which in carrying on an activity as a nursing home in caring for the elderly are defrayed by the Exchequer.

However, the Tribunal was not provided with sufficient evidence to establish that the aforementioned expenses are defrayed wholly or mainly out of monies provided by the Exchequer.

Accordingly, the Tribunal finds that, in the absence of the evidence, the subject property does not qualify for relief under Schedule 4, Paragraph 14(b).

Having considered the evidence, the Tribunal finds that the subject property does not qualify for relief under Schedule 4, Paragraph 6, taking into account the findings in **VA04/2/035 – First Citizen Residential Ltd.**

The Tribunal finds that, as submitted in evidence, Glendale Care Ltd, which operates the subject nursing home, is entitled to trade for profit in accordance with its Memorandum of Association and, accordingly, fails to satisfy Schedule 4, Paragraph 8(a).

For reasons cited above, but not limited thereto, the Tribunal is not satisfied that the subject property qualifies for relief under Schedule 4, Paragraph 8(b) insofar as it was not clarified for the Tribunal that expenses incurred are defrayed wholly or mainly out of monies provided by the Exchequer.

Accordingly, the subject property is deemed rateable.

Resumed Hearing

Following delivery of the above determination and a brief adjournment, the hearing resumed. Mr. Burrows again took the oath. He referred to copy correspondence dated 27th October, 2010, addressed by him to Mr. Gormley of the Valuation Office, together with attachments containing additional evidence accepted by the respondent in relation to quantum matters, which had also been submitted to the Valuation Tribunal prior to the resumption of the hearing. The attachments represented a copy of Section 6, Standard 25 of the “HIQA

National Quality Standards for Residential Care Settings for Older People in Ireland”, attached hereto as Appendix 5. Standard 25 addresses criteria of Physical Environment applicable to all designated centres and extends sequentially from number 25.1 up to and including 25.58.

Mr. Burrows referred to the details contained in such standards set by HIQA and stated that there are many changes now in effect which were not prescribed for nursing homes in the past. He referred in particular to the area of usable floor space excluding en-suite facilities for single bedrooms, which must now extend to a minimum of 9.3 sq. metres under item 25.39. He also focused on item 25.40 and emphasised the point that nursing homes operating prior to the introduction of new Standards, and subject to the discretion of the Chief Inspector, have been provided with a time-frame extending for up to a period of 6 years from the date of implementation of the HIQA requirements to bring their premises into full compliance with the foregoing standards. He added that the Chief Inspector may at his discretion extend that 6 year time-frame in certain circumstances.

Mr. Burrows explained that the operation of nursing homes has seen many changes over recent years in:-

- 1) Inspection and reporting procedures
- 2) Registration changes
- 3) Ownership changes
- 4) Funding mechanisms

He argued that the comparison properties outlined by Ms. Lambe in her précis are fundamentally different to Glendale and most particularly those nursing homes operating prior to the enactment of the Health Act 2009. Mr. Burrows expressed the view that Ms. Lambe’s comparisons were somewhat irrelevant and unhelpful. He then referred to the chart outlined on page 5 of his Notice of Appeal and explained that the average Net Annual Value (NAV) if devalued on a “per bed” basis, as computed by him at €3.23 previously, would under the new HIQA criteria apply to the subject at an equivalent sum of €7.00 per bed. Mr. Burrows contended that the rating of nursing homes should link the number of beds with the overall area of the facility and also take account of the quantum of ancillary space now required under HIQA Standard 25, which additional or incremental areas, he noted, do not generate or support additional fee income for the nursing home. He argued that it would be

appropriate for the Valuation Office to apply a certain rate per sq. metre on all bedroom areas and another rate or rates per sq. metre on non-bedroom spaces, suggesting the latter set at levels of not more than 50% of the former. By this method, and assuming 1,079 sq. metres of bed space at Glendale at a rate equivalent of €27.34 per sq. metre and 1,479 sq. metres of non-bed space at 50% (or €13.67 per sq. metre), the appellant calculated a potential NAV on the subject property of €49,724.35, which produced a proposed RV of €248.62. This was the rateable valuation figure requested in the appellant's Notice of Appeal to the Valuation Tribunal.

Cross-examination by Mr. Dodd

Commencing his cross-examination Mr. Dodd remarked that the appellant was working on an overall floor area of 2,557.89 sq. metres and the respondent on 2,677.59 sq. metres, i.e. a difference of 4.67% between the parties. In reply to questions, Mr. Burrows confirmed that Glendale was built in 2006, registered in 2007 prior to, but compliant, with the forthcoming new HIQA Standards, as advised by advance notice to the nursing home sector in Ireland. He acknowledged that as Glendale complied with these new standards, it is a much larger complex than would have possibly been designed and built in the past, that it is built to a higher specification, that it conforms to a higher overall required standard of care in terms of additional amenities and services offered to its residents, and, in general, that the subject property represents a significant enhancement on facility standards built pre-HIQA. Mr. Burrows estimated that about 95% of existing nursing homes in this country are not yet HIQA compliant but are nevertheless conforming by availing of the 6-year facility offered to them to bring them into full compliance with all of Standards 25.39 and 25.40 as noted above. He explained that the 6-year period commenced in July 2009.

Citing McMEnamin J, in reply to another question raised by Mr. Dodd, Mr. Burrows acknowledged that the rating exercise reflects a tax on property and not on income generated at Glendale and further accepted that none of the comparison properties scheduled in the respondent's précis were valued by reference to the number of beds within those properties.

The appellant acknowledged that Glendale's competitors who are managing nursing homes which pre-dated the implementation of HIQA standards will eventually need to make further investment in their properties if they wish to make them fully compliant with the aforementioned Standards. Mr. Dodd then made the point that a hypothetical investor would

have to consider his additional investment in an older nursing home in order to bring it up to HIQA standards, and conversely added that, in his view, the investor would not be faced with such investment in the subject, as it is already compliant. Mr. Burrows also acknowledged during cross-examination that the nursing homes rated by reference to bed numbers were based on cases which pre-dated the enactment of the 2001 Act. In response to additional questions put to him by Mr. Dodd on the respondent's comparisons, Borris Lodge, Beechwood House and Riverdale Nursing Home, Mr. Burrows agreed that the Lodge was built many years ago with an extension added at about 2008; that Beechwood may be less than 10 years old, and that Riverdale was also constructed in two phases, the first circa 1990 and the most recent phase about two years ago. The appellant also acknowledged that Glendale is a better facility than the preceding three as it is newer and provides a range of services and facilities not likely offered by its competitors.

Respondent's Case

Ms. Orla Lambe again, took the oath. Ms. Lambe had adopted her précis previously and recommenced her evidence by addressing the difference in floor area calculated on the subject. She explained that in accordance with Valuation Office practice in the past, she employed the GEA measurement basis which resulted in a floor area calculation of 2,677.59 sq. metres, whereas the Architect's measurements were calculated on a GIA basis. She explained that her figure, in common with that of the appellant's, excluded the two internal uncovered courtyards. Ms. Lambe stated that the valuation was a Revision exercise and accordingly she considered that Section 49(1) of the 2001 Act applied in the circumstance and she also employed a rate per sq. metre to calculate the NAV. She referred to a similar exercise followed in **VA07/1/006 – The Village Nursing Care Centre** (at Appendix 5 of her précis). She repeated that Glendale is a purpose-built nursing home with all modern facilities. She contended that her task was essentially to follow the "tone-of-the-list", i.e. Section 49(1) of the 2001 Act.

Referring to her Comparison No. 1, Beechwood Nursing Home, Ms. Lambe indicated that the rate per sq. metre applied on that relevant property of €34.17 which was apparently rounded to €34 per sq. metre, reflected a quantum allowance or discount applied on the subject of almost 8%, adding that Beechwood is also at a good location, enjoys good profile, is near a small village, but, unlike the subject, offers mixed, single and double bedroom accommodations. She also noted that her Comparison No. 2, Borris Lodge, was a 1993

revision and offered mixed, single and double bedroom accommodations also. Referring to Riverdale, Comparison No. 3, she stated that Phase 2 was completed within the last two years and represented an increase only in the number of bed spaces and accordingly the overall rate per sq. metre remained consistent with the level applied in the 1999 revision of that property of €7.34 per sq. metre.

Cross-examination by the Appellant

In response to questions from Mr. Burrows, Ms. Lambe replied that she had inspected Glendale with the full co-operation of its management and that she had valued the relevant property by reference to Section 49(1) of the 2001 Act, often referred to as the “tone-of-the-list”. Mr. Burrows noted that he had an issue with the difference of c.120 sq. metres arising from the basis of area measurement, i.e. between the GEA and GIA of the subject. Mr. Burrows drew to Ms. Lambe’s attention some apparent discrepancies in the devaluation figure set out by the respondent in Comparison No. 1, page 7 of her précis, which by his calculation, would result in a new RV figure of €33.10 per sq. metre and as a consequence requested that the Valuation Office remove the details of that property, namely Beechwood Nursing Home, from the respondent’s schedule of comparisons and ignore the NAV calculations provided in the précis.

Ms. Lambe did not agree with Mr. Burrows’ assertion that the rate applied in Comparisons No.s 2 and 3 in her précis of €7.34 per sq. metre is a universal rate per sq. metre applied by the Commissioner of Valuation on nursing homes in Co. Carlow. Mr. Burrows then asked why it was that Glendale is rated at a level of approximately €4.00 per sq. metre more than her Comparisons 2 and 3, to which Ms. Lambe replied that the subject was a superior property. She observed that Comparison 3 is some distance away and circa 1.5 miles south of Ballon village, and that its recent revision was based on completed Phase 2 works providing new bed spaces only without changes to the ancillary service areas. Ms. Lambe stated that Comparison 2 differed from the subject nursing home by reason of its single and two bed accommodation offerings to residents.

Summary Position of the Appellant

Mr. Burrows, noting that Glendale is HIQA compliant, and has larger floor areas, extra overall building footprint area without additional or incremental revenue potential, felt it was unfair to charge rates on these additional or ancillary areas at the same level as the sole

income producing areas, namely the bedrooms. He asked the Valuation Tribunal to set new law on the valuation of HIQA compliant nursing homes. He said that the respondent had incorrectly measured the floor area and concluded by stating that the Commissioner was not justified in calculating a rateable valuation of €420 on the subject.

Summary Position of the Respondent

Mr. Dodd said there were essentially three issues to consider:-

1. The area on which the RV was to be applied.
2. The appropriate methodology to value this subject relevant property.
3. The area quantum allowance, if any, to be applied on the subject noting that the Commissioner of Valuation had already applied an allowance, as noted earlier by Ms. Lambe in her direct evidence, to reflect the large-scale floor area of the subject.

Mr. Dodd said that the methodology to be applied in valuing the subject property, - even though it is a complex designed and built to a higher overall standard to, but not necessarily offering more bedroom accommodation than, nursing homes built in the past - must nevertheless employ the standard of a rate per sq. metre basis. He referred again to his Authorities List to provide the standard basis of area measurement of nursing homes. Mr. Dodd stated that, in his view, the respondent was correct in adopting the “tone-of-the-list” and as the task was a revision exercise in a rating authority area with comparison properties on the List, it was appropriate to determine the RV by reference to Section 49(1) of the 2001 Act.

Findings & Conclusions

The Tribunal thanks the parties for the quality of their submissions and arguments in the instant case and in particular the manner in which they answered questions and clarified issues of concern raised during the course of the hearings.

1. The Tribunal is mindful of the challenge faced by the appellant and respondent in agreeing a fair and reasonable rate per sq. metre figure, bearing in mind the changes resulting from the implementation of the HIQA Standards.
2. The Tribunal is also aware that a July 2009 HIQA Standard 25 fully compliant nursing home may not necessarily be considered to stand alone and apart for rating purposes from

the comparison of other nursing homes operating to pre-HIQA Standard 25 now or during the upcoming 6 years or extended remedial and updating period.

3. The Tribunal is of the view, however, in this case that a substantial change occurred with the implementation of the aforementioned HIQA Standard to such a degree that the subject may not be considered as truly comparable with other pre-HIQA nursing home properties at this time, in the subject rating authority area.
4. The Tribunal carefully considered the hypothesis proffered by the respondent that as the hypothetical tenant would inevitably be relieved of committing certain levels of capital investment when considering what he may be prepared to offer as a rental sum year on year on the subject when compared with the pre-HIQA comparison properties as outlined in the respondent's précis, but concludes that in the case of the latter consideration, the hypothetical tenant would likely adjust his bid to reflect his anticipated future investment to bring the property up to the level required for Standard 25 approval. By deduction then, the cost benefit arising in the former would be offset by a likely similar amount of funds which might be set aside in a provisional works improvement budget sum reserved by the tenant in his bid for the latter and accordingly the exercise may result in an equal and offsetting amount of money.
5. Section 49(1) of the 2001 Act applies in this case. However, the Tribunal holds a view that the other properties comparable to the subject on the Co. Carlow Valuation List are different in many ways to the subject and as such there may not be a "tone-of-the-list" to rely upon and, that, accordingly, the provisions set out in Section 49(2)(b) should also apply in this particular case.
6. The Tribunal also acknowledges that challenges for valuers to calculate and/or reach agreement on fair and reasonable rates payable on relevant properties similar to the subject may persist until such time as a reasonable and reliable number and mix of HIQA Standard 25 fully approved nursing home properties have been revised as appropriate under section 28 or valued pursuant to section 19 of the 2001 Act and the RV or ARV challenged and brought through the rigours of the appeals process.
7. The Tribunal is satisfied that based on all of the evidence submitted and adduced, that the oratory within Glendale does not qualify for exemption from rates under Paragraph 7, schedule 4 of the 2001 Act.
8. The Valuation Tribunal has no function or authority to set new rating law.

9. Having regard to all of the foregoing, the Tribunal also takes account of:

- (i) the absence of any cogent argument from the respondent supporting the difference in the rate per sq. metre applied in his comparison properties with the subject, and
- (ii) the IAVI and SCS Measurement Practice Guidance Notes adopted in December 2006 by most stakeholders in the property sector including those engaged in rating valuation practice, of measuring nursing homes in recent times by reference to their GIA.

Determination

The Tribunal calculates the NAV of the subject relevant property as follows:-

2,557.89 sq. metres GIA @ €27.34 per sq. metre = €69,932.71

RV @ 0.05% = €349.66

Say RV €350

And the Tribunal so Determines.