

Appeal No. VA10/5/080

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

Dundas Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 911759 Nursing Home, at Talbot Lodge Nursing Home, Kinsealy Lane, Malahide, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF FEBRUARY, 2011

By Notice of Appeal dated the 26th day of August, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €53,000 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal which is attached at Appendix 1 to this judgment

This appeal proceeded by the way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper on the 19th day of January, 2011. At the hearing the appellant was represented by Mr. Owen Hickey, SC, Mr. John Kenneally of Kenneally McAuliffe gave expert valuation evidence and Ms. Clare Carroll of Carroll & Associates, the Auditors to the appellant company, gave evidence in relation to the accounts and other relevant financial matters pertaining to the operation of the Talbot Lodge Nursing Home.

Mr. David Dodd, BL, instructed by the Chief State Solicitor's Office, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Hicks, a valuer of long standing in the Valuation Office gave expert valuation evidence in relation to the property concerned and outlined in detail the steps taken by the Valuation Office in attempting to devise a scheme of valuation which could be used when valuing all Nursing Homes in the Fingal area as part of the 2010 revaluation programme.

Prior to the commencement of the oral hearing, Mr. Kenneally and Mr. Hicks provided the Tribunal with a written précis of the evidence and Valuation they proposed to adduce at the oral hearing. A copy of each précis was made available to the other party. From the evidence so tendered and additional information received at the oral hearing, the following material facts emerged or are so found by the Tribunal.

The Property Concerned

The property concerned is known as Talbot Lodge Nursing Home and is located on Kinsealy Lane close to Malahide Castle and Demesne on the immediate outskirts of Malahide in north County Dublin. Talbot Lodge first opened in 1992 as a 26-bed unit. Since then 2 extensions have been added and it is now an 89-bed unit. The most recent extension, the Verville Wing, accommodates 37 residents who are classified as being in need of psycho-geriatric care. The remaining 52 residents are in receipt of high dependency geriatric care. The accommodation provided to the residents is as follows:

- 34 x single bedrooms
- 15 x twin bedrooms
- 7 x treble bedrooms
- 1 x 4-person bedroom

In addition to the above, the property concerned also provides adequate sitting rooms, recreational areas, dining room, treatment room, kitchens and extensive garden and other outdoor facilities. It would appear that whilst Talbot Lodge has the benefit of HIQA registration for 89 residents, it is not fully compliant with all relevant regulations, particularly those in regard to the 3-bed and 4-bed units.

Staff Levels

The property concerned is operated by a staff pool of circa 90 full-time and part-time staff, including the Director of Nursing. Suitably qualified nurses and care assistants are employed in sufficient numbers to meet HIQA standards, together with ancillary laundry and cleaning staff. There are two directors (one of whom is a consultant psychiatrist), each of whom plays an active and substantial role in the running of the establishment and in ensuring that all the residents receive the appropriate medical and clinical care and that the accommodation and staffing levels provided meet all the required HIQA standards.

Financial Information

Ms. Clare Carroll of Carroll & Associates is the Auditor to the appellant company. Dundas Ltd. operates a second nursing home elsewhere and the Directors Report and Financial Statements referred to in Ms. Carroll's evidence are in relation to the affairs of both premises. From these accounts, Ms. Carroll produced a "formatted trial balance" document for the years ending 31st August 2004 and 2005 in relation to Talbot Lodge and which were made available to the Tribunal by Mr. Hicks in his précis of evidence. Information contained in this document indicates that the gross turnover for the year ending 31st August, 2005 for the subject property was €3,101,516 and sets out in some detail all the costs and the expenses incurred including salary and wage costs, directors' salaries, directors' fees, directors' pension fund charges, rent, rates, repairs and insurance etc. Having regard to the fact that the information is of a commercially sensitive nature, the Tribunal does not propose to include the formatted trial balance sheet document in this judgment and it will refer to only those items which have a bearing on the calculation of the divisible balance.

Carroll & Associates are Auditors and Accountants specialising in the nursing home industry and, in addition to acting as auditors for the appellant company, they also act for some 80 nursing homes on a nationwide basis, offering a range of financial assistance in relation to their funding and other matters. Ms. Carroll in her evidence said she was very familiar with

Talbot Lodge, its operational ethos and the important and significant roles played by the two directors in the business. One of them, she said, was a consultant psychiatrist and it is he who is responsible for evaluating the treatment and care that is required for each resident and for ensuring that all their medical and care needs are met. The other director, she said, fulfils a facilities management role and is responsible for all administration functions, including negotiations with the HSE and other statutory bodies.

Ms. Carroll confirmed that she had prepared the “formatted trial balance” document for Talbot Lodge. She agreed that the directors’ salaries in this document were the same as those that appeared in the financial statements for Dundas Ltd., which operated another nursing home in addition to Talbot Lodge. Ms. Carroll said that in allocating the directors’ salaries in full to Talbot Lodge she had regard to the fact that most of their time was spent there and that all the administration functions in relation to both establishments were carried out at Talbot Lodge. When questioned about the level of directors’ salaries, Ms. Carroll said that in her opinion and experience they were fair and commensurate with the roles they performed at Talbot Lodge.

Mr. Kenneally’s Evidence

Mr. Kenneally, having taking the oath, adopted his written précis and valuation which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. Mr. Kenneally said that in the absence of open market evidence he considered the receipts and expenditure method of valuation to be the preferred method for valuing the property concerned. Accordingly, he had examined all the financial documents and other information made available to him by Ms. Carroll and, in particular, the “formatted balance sheet” and it was this document that formed the basis of his valuation, as set out below:

Talbot Lodge	Y/E August 2005		Y/E August 2004	
		as % of T/O		as % of T/O
TURNOVER 2005	€3,101,516		€2,862,909	
Less Cost of Sales	<u>€1,882,042</u>	60.68%	<u>€1,647,891</u>	57.50%
Gross Profit	€1,219,474		€1,215,018	
Less Allowable				
Overheads	<u>€52,316</u>	21%	<u>€92,442</u>	20.5%
Divisible Balance	€67,118		€22,576	

50% Tenants Share	€283,559	€11,288
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50% Avail. Rent	€283,599	€11,288
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Having regard to the above, Mr. Kenneally estimated the net annual value of the property concerned to be €300,000.

Mr. Hicks' Evidence

Mr. Christopher Hicks, having taking the oath, adopted his written précis and valuation, which had previously been received the Tribunal and the appellant, as being his evidence-in-chief.

In his evidence Mr. Hicks outlined in some detail the steps the Valuation Office had taken in order to devise a scheme of valuation for nursing homes in the Fingal Rating Authority Area which would be accepted by rate-payers and their advisers alike. As part of the preparatory work, the Valuation Office has sought financial and other relevant information from the occupiers of nursing homes under Section 46 of the Valuation Act, 2001 in order to assist the formation of an acceptable scheme of valuation. The response to these Section 46 requests was low but, nonetheless, the Valuation Office proceeded as best they could with the limited information they had. In their deliberations the Valuation Office examined in some detail all the information received and the findings contained in the 2005 Horwath Bastow Charleton Report on the Nursing Home industry and also had regard to the Guidance Note on *The Receipts and Expenditure Method of Valuation for Non-Domestic Rating*. In the final analysis, the Valuation Office came to the conclusion that a hypothetical tenant in the market would expect that wage and salary costs would be in the order of 55% of gross revenue. All other operating costs as envisaged under the guidance notes would come to 20% of gross income, leaving 25% to be shared between the landlord and the tenant. Having arrived at this fundamental conclusion, the Valuation Office refined the scheme so that net annual value of a specific property would be within the range of 12.5% to 17.5 % of gross income, depending upon its size, location, age, design, occupancy rates, weekly charges and all other relevant factors. Small older nursing homes, which typically would be conversions of former dwellings, would be valued at circa 12.5% of gross turnover whilst new purpose-built facilities would be valued at circa 17.5% of gross income, actual or estimated, as the case may be.

Having regard to the above scheme, Mr. Hicks valued the property concerned on the following basis:

89 beds x €800 per week x 52 x 88% occupancy rate = estimated turnover of €3,258,112

Net Annual Value @ 17% = €35,000

Mr. Hicks also prepared an alternative valuation based on the financial information made available to him by Carroll & Associates and arrived at net annual value of €41,000. Nonetheless, Mr. Hicks said he was relying solely on the valuation prepared in accordance with the scheme of valuation as set out above.

In support of his opinion of net annual value, Mr. Hicks referred to agreed valuations of two other nursing homes in the Fingal area, details of which are set out in Appendix 2 attached to this judgment

When asked by the Tribunal if they could give an estimate of the capital value of the property concerned and the initial annual rate of return a landlord might expect if the premises was let on FRI basis, Mr. Kenneally and Mr. Hicks responded as follows:

Mr. Kenneally - Capital Value - €6,000,000

Rate of Return - 6%

Mr. Hicks - Capital Value - €9,000,000

Rate of Return - 7/7.5%

In the course of a short adjournment, Mr. Kenneally and Mr. Hicks were requested to jointly examine the “formatted balance sheet” to see if it would be possible for them to indicate what the divisible balance might be. In the event they advised - albeit with some reservations on the part of Mr. Hicks - that it could be in the order of €710,000. Mr. Hicks said that, on this basis, the tenants share would be not more than 30%.

Findings & Conclusions

The Tribunal has carefully considered all the evidence adduced by the parties and the submissions, written and oral, made by counsel. These, together with the various authorities, reports and legal precedents introduced, were of assistance to the Tribunal in arriving at its conclusions and determination as set out below. At this stage the Tribunal would like to express its thanks to Counsel for the obvious efforts they made in preparing their submissions and the lengths they went to in cross-examination to ensure that all relevant information was placed before us. Similarly, the Tribunal acknowledges that, although the valuers adopted different valuation approaches, they did so with conviction and in an honest attempt to arrive at what they considered to be the proper Net Annual Value of the property concerned.

Conclusions

1. The property concerned in this appeal is one of fifteen nursing homes, valued as part of the 2010 revaluation of all relevant property in the Fingal County Council rating authority area, carried out pursuant to Section 19 of the Valuation Act, 2001.
2. Following Representations and Section 30 Appeal stages, six appeals were lodged with the Tribunal under Section 34 of the Act. All of the appeals went to full hearing, but in one instance the valuation of the property concerned was subsequently agreed and the Tribunal mutually requested to issue an order accordingly.
3. Members of this Division of the Tribunal sat on a number of the appeals, including the one which was agreed. In all of the appeals the only issue in dispute was the quantum of the valuation and, in all instances, there was much similarity in the issues raised and the arguments adduced. In the course of this judgment the Tribunal proposes to deal firstly with those issues which were common to all and then proceed to deal with those which are specific to each individual relevant property.

Common issues

4. In accordance with Section 20 of the Act, the date by reference to which the value of each relevant property is to be determined is 30th September, 2005.
5. The publication date for the new valuation list for the Fingal County Council rating authority area, pursuant to Section 21 of the Act, is 31st December, 2009.
6. In accordance with the Act the value of each relevant property is to be individually assessed in accordance with Section 48 of the Act, which states as follows:

“48.—(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.

(2) Subsection (1) is without prejudice to section 49.

(3) Subject to section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.”

7. The definition of net annual value is akin to open market rental value on a full repairing and insuring basis, and where there exists an actual rent or a body of open market rental evidence, at or about the relevant valuation date, of properties truly comparable in all material respects to the property being valued in accordance with Section 48, then that evidence should be accorded appropriate weight.
8. Nursing homes by their very nature are a category of properties which are seldom, if ever, let or, indeed, sold on the open market. Such a situation obviously poses something of a problem to rating valuers engaged in a revaluation who, in such circumstances, will have to give consideration to the use of other approved methods of valuation for rating purposes, such as the Receipts and Expenditure (R & E) method or the Contractor’s Basis.
9. While there is no statutory definition of the R & E method, or any specific mention of it in the Valuation Act, the R & E method of valuation has been accepted as the preferred method of valuation by the Irish Courts and by the Valuation Tribunal in a number of leading rating cases where other methods of valuation were not considered appropriate. When using the R & E method of valuation, the relevant gross receipts of the enterprise must first be ascertained. From this figure the proper cost of purchases and expenses necessary to sustain the gross income is deducted and the balance remaining is referred to as the divisible balance. This figure represents the amount that is available for the tenant’s share, rent and rates.
10. A Guidance Note on the R & E method of valuation, prepared by the Joint Professional Institutions, Rating Valuation Forum, published by the Royal Institution

of Chartered Surveyors in July, 1997, was made available to the Tribunal and both valuers in their evidence made several references to it.

11. The Guidance Note is a comprehensive publication which sets out in considerable detail the background to, and the criteria for, the application of the R & E method of valuation. The guidance note also contains a general outline of the methodology and the considerations to which regard must be had when using it for rating valuation purposes. Despite the depth and range of information contained in the guidance note, the R & E method requires the user to exercise care and discernment in examining the accounts and to make judgments, such as, whether they provide a reliable basis for valuing the property concerned, having regard to the rating hypothesis contained in Section 48. Judgment, care and experience will also be required in determining the proper cost of working expenses and salary costs. In particular, director's remuneration must be examined and their role in the business investigated to see if it forms an allowable expense or is an item to be considered under the tenant's share.
12. Paragraph 5.46 of the guidance note deals with the tenant's share and says that it "*has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant's capital.*" The quantification of the tenant's share must also take into account the rating hypothesis that the tenant is assuming responsibility for the "*probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property*" [cf. Section 48(3) Valuation Act, 2001] in its actual state at the relevant valuation date. It follows, therefore, that when examining the accounts, expenditure under all of the above headings is to be excluded under the general heading of proper costs of expenses. Similarly, no allowance should be made for the depreciation of the property itself as this is more properly the responsibility of the landlord. In relation to the last mentioned item, in *Port of Cork v Commissioner of Valuation* [2003] IESC 47, the High Court held that "*the Tribunal was correct in law in determining that the depreciation of assets in the accounts of the appellant should not be taken into account in calculating the rateable valuation of the ports lands, buildings and facilities.*"
13. In these appeals the appellant relied solely on the R & E method of valuation and made such adjustments to the accounts as considered appropriate in the light of information regarding directors' remuneration and their role in the business and other pertinent factors such as occupancy rates and weekly room rates. One of the

difficulties in the last mentioned item is that room rates can vary within the same establishment, due to length of stay and the date upon which the resident first entered. Nonetheless, whatever the difficulties that may be encountered in using the R & E method, the Valuation Tribunal is of the view that the R & E method when applied by valuers who have the necessary experience and understanding of the nursing home industry, provides a reliable basis for determining net annual value under Section 48 of the Act.

14. The respondent's approach to the valuation of the property concerned, in the first instance, was to obtain as much information as he could in an attempt to prepare a scheme of valuation which would be accepted by rate payers and their advisers.
15. As a first step in the process, the respondent exercised his powers under Section 46 of the Act to seek from the occupiers of all nursing homes in the Fingal Rating Authority Area audited accounts and other relevant financial information including weekly charges and occupancy rates, etc., in relation to each relevant property. It would appear that the quality and extent of information provided was below expectation but, nonetheless, the information so attained was analysed so as to obtain an overview of the industry under a number of headings, such as occupancy rates, weekly room rates, staffing levels, salary costs and directors' remuneration, etc. Why the operators of the nursing homes did not fully cooperate with the Commissioner is hard to understand, as their participation in the process would undoubtedly have been of benefit to all. The secondary source of information was the 2005 "Annual Private Nursing Homes Survey" prepared by Horwath Bastow Charleton on behalf of the Irish Nursing Homes Organisation. The purpose of the survey was to report on key issues affecting the industry under various headings, such as occupancy rates, room rates, staffing levels and salary costs on both a national and a regional basis. As part of the survey detailed questionnaires were sent to all 431 registered nursing homes in the country and the final findings of the survey were based upon 104 completed questionnaires representing a 24% response rate on a nationwide basis.
16. On the basis of their own analysis, and taking into account the Horwath Bastow Charleton Survey, the Valuation Office proceeded to value each nursing home on what is referred to in the R & E Guidance Note mentioned earlier as the "shortened method". In this regard paragraphs 7.1, 7.2 and 7.3, which are set out below, are worthy of consideration.

“7.1 It is sometimes suggested that valuations based on a percentage of gross receipts amount to a so-called ‘shortened profits method’. However, in the view of the Rating Forum, the method described below is not a profits or R & E method of valuation. It is a comparative method of valuation utilising either market transactions or comparable assessments (which may themselves have been derived from a ‘full’ R & E method valuation), interpreted or analysed to represent a proportion of gross receipts.”

“7.2 Although this is not a profits or R & E method, or a ‘shortened’ version of such a method, it is clear that, for some kinds of properties, rents are determined between the parties using this approach. In some markets – for example, in licensed property – this method of fixing rents now predominates.”

“7.3 The method is based upon the determination of fair maintainable annual receipts which are able to be derived by occupying the property and conducting the undertaking with the skill and expertise which should reasonably be expected from a hypothetical tenant of those premises.”

17. The scheme of valuation arising from the research and analysis carried out by the Valuation Office, as set out in Mr. Hick’s précis is predicated on the assumption that staff costs and other operating costs “gives an overall norm of 75% leaving 25% to share between landlord and tenant.” Having arrived at this conclusion the scheme of valuation was designed so as to apply different percentages to the gross receipts (actual and estimated) in order to reflect the age, scale and nature of the nursing home being valued. Details of the scheme were set out in the précis of Mr. Hicks in the following terms. *“The proposal therefore is to take c.15% (varying from 12.5% for small, old conversions to 17.5% for large, modern, purpose-built) of actual (or estimated as outlined above) 2005 turnover as the NAV for nursing homes generally.”* In effect, the 12.5% is equivalent to a tenant’s share of 50%, 15% a tenant’s share of 40% and 17.5% a tenant’s share of 30%.

18. From the evidence tendered a number of key issues arose which were common in all appeals, such as:

- a. Occupancy rates
- b. Room rates
- c. Staffing costs

- d. Directors' remuneration
- e. Directors' roles in the business

All of which will be addressed within the context of each appeal.

19. Having considered all the evidence introduced and arguments adduced by counsel, the Tribunal has come to the conclusion that despite the difficulties encountered in using the R & E method, it nonetheless provides a reliable basis for determining net annual value in accordance with Section 48 of the Act, particularly when applied by valuers who have the necessary experience in, and understanding of, the nursing home industry. Nonetheless, in coming to this conclusion the Tribunal acknowledges the efforts and length to which the respondent (and Mr. Hicks in particular) went in order to devise a scheme of valuation which would find widespread acceptance by all involved. In the event, and for whatever reason, the low level of co-operation by the nursing home operators, their advisers and/or agents rendered the scheme flawed to some extent. Nonetheless, the respondent, in the absence of a consensus, unilaterally applied the scheme of valuation to all nursing homes in the Fingal area and, in due course, some nine of the valuations so determined were either agreed or otherwise left unchallenged. In a number of instances the rate payers concerned were professionally represented and hence the Tribunal, at this stage in the appeal process, cannot disregard these valuations without good reason. That said, however, the availability of audited accounts and other verifiable financial information accompanied by expert evidence in relation to the operation of the property concerned, the role of the directors in the business, accompanied by an assessment of the contributions they make in monetary terms, are major factors in the determination of net annual value made by the Tribunal.
20. At this stage it might be timely to repeat some comments made by the Tribunal in an earlier judgment [VA08/5/160, 161, 162 and 165 - Ms. Maura Galvin (VA08/5/160), Lisheen Nursing Centre Ltd. (VA08/5/161), Stanford Woods Care Centre Ltd. (VA08/5/162), Lucan Lodge Nursing Home (VA08/5/165)] in relation to the preparation of schemes of valuation. *"In principle there is considerable merit for the preparation of a coherent scheme of valuation in relation to nursing homes and other categories of properties that are seldom if ever let on the open market. That said, however, any such scheme must be well founded and sufficiently researched to withstand a robust examination if it is to find widespread acceptance by rate payers and their advisers. Furthermore, the scheme must be fully transparent in its*

application and contain within it sufficient flexibility to enable it to be used right across the sector. Once again, the Tribunal would urge the Valuation Office to engage with their colleagues in private practice who have a particular expertise in the category of property concerned, as such a course of action, will in the final analysis, lead to more accurate assessments and a greater understanding of how the valuations are determined.” Despite their obvious conflicting roles in the valuation process, there is considerable merit in continuing to explore how these roles could converge without in any way minimising the rate payer’s desire to curtail his/her rates liability, or the Valuation Office’s aim to uphold their valuation of first instance. Such a convergence of ideals would ultimately serve better all stakeholders in the valuation process and reduce the amount of time spent in lengthy and contentious negotiations and the raising of minor points of law which, in the final analysis, are in the interest of neither party.

21. The nursing home industry is one of the most regulated in the State and its operation is primarily governed under the provisions of the Health Acts 1990 and 2007 and the various regulations and other statutory instruments issued thereunder. The 2007 Act provides that the premises and the service provider must be registered and registration must be renewed on a periodic and ongoing basis. Furthermore, nursing home premises are subject to frequent and routine inspections by HIQA to ensure compliance with current nursing home inspection regulations. Failure to comply could in extreme cases, lead to registration under the Act being cancelled, or being amended by the imposition of additional conditions.
22. The two key personnel in a nursing home are the Service Provider and the Director of Nursing, both of whom must meet stringent criteria in relation to their suitability and/or their professional qualification. Both of these persons are liable to criminal prosecution under the Act and, when not available for an extended period in excess of thirty days, HIQA must be advised and suitable replacements put in position *pro tem*. Statutory regulations also set down the numbers of nursing and care-staff that are to be available at various times during the day and night and the educational qualifications appropriate to their functions. Adequate care and nursing staff complements must be available on a 24 x 7 x 365 day basis and all accommodation, including sitting rooms, dining areas and kitchens, including the external environment, etc. must be in accordance with standards set down by and monitored by HIQA.

23. The nursing home industry is labour intensive and costly, given the level of care that must be available at all times. Weekly room rates since the introduction of the “fair deal” scheme are now largely controlled by the National Treatment Purchase Fund (NTPF), who negotiate fees based upon total outgoings, assuming a 90% occupancy rate. On the evidence adduced, it would appear that 85% of residents at any one time benefit to some extent from funding by the NTPF. This security of income stream is, of course, beneficial to the operator and mitigates against the possibility of any significant loss by way of bad debts.
24. When using the R & E method, it is to be assumed that the property concerned is vacant and to let and that the nature of the occupancy will be the current use. It follows, therefore, that all of the above statutory requirements and regulations will have to be met by the hypothetical tenant, who will also have to be rewarded for his risk in taking over the property, carrying on the business and will have to receive an appropriate return on the monies invested by way of tenant’s assets and working capital. All of the above and the hypothetical terms of the letting as set down in Section 48 must perforce be reflected in the tenant’s share.

Specific Issues

25. It is common case that at the relevant valuation date, Talbot Lodge provided accommodation for 89 residents of which only 34 occupy single bed rooms. It is also common case that the property is a single-storey structure and provides good quality accommodation and is in substantial compliance with all current HIQA regulations.
26. It is also common case that the gross receipts attributed to Talbot Lodge by Carroll & Associates for the year ending 31st August, 2005 was €3,101,516.
27. As stated at Paragraph 19 above the Tribunal prefers the use of the receipts and expenditure method of valuation to the scheme of valuation prepared by Valuation Office, particularly since reliable and verifiable financial information is available. Having examined the financial information, the Tribunal accepts that the items of expenditure as detailed under the heading “cost of sales” are allowable in full in compliance with the Guidance Note. The remaining items of expenditure classified as “administration expenses” contain a number of expenses that are not necessarily allowable, such as directors’ salaries, directors’ pensions, directors’ costs, directors’ fees, rent, rates, repair, depreciation, bank charges etc and hence must be disregarded either in whole or in part as they are contained in the tenants share.

28. In relation to the directors salaries the Tribunal accepts that both directors play an active and substantial role in affairs of the property concerned. The Tribunal notes that the salaries attributed to these include the services they provide to the other nursing home under their control. In the circumstances, the Tribunal proposes to allow 60% of the directors' salaries as an allowable expense, taking into account their joint responsibility to the property concerned and the other nursing home under their control and to the fact that the cost of some of the administrative functions would be included in the tenant's share.

29. During the course of the hearing, Mr. Kenneally and Mr. Hicks were requested to jointly examine the "formatted balance sheet" to see if it would be possible for them to indicate what the divisible balance might be. In the event they advised - albeit with some reservations on the part of Mr. Hicks - that it could be in the order of €10,000. During the course of its deliberations, the Tribunal has had regard to this figure and has come to the conclusion that some items of expenditure were disallowed and which ought not have been.

Determination

Having regard to the findings and conclusions above, the Tribunal determines the Net Annual Value of the property concerned at the relevant valuation date, and in accordance with Section 48 of the Valuation Act, 2001, using the receipts and expenditure method of Valuation, to be as follows:

Gross Income (as per accounts)		€3,101,516
Cost of Sales (as per accounts)		
Allowable in Full	€1,882,042	
Administration Expenses		
Allowable in accordance with R+ E Guidance Notes	<u>€425,490</u>	
Total Allowable Expenses	€2,307,532	<u>€2,307,532</u>
Divisible Balance	=	€793,984
Tenants Share @ 45%	=	<u>€357,293</u>
Amount available for Rent + Rates		€436,691
Allow for Rates @ 15c in the €	=	<u> x .87</u>

Net Annual Value €70,921

Valuation Say: €80,000

And the Tribunals so determines.