

Appeal No: VA 17/5/257

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

**HILLVIEW CONVALESCENCE AND
NURSING HOME**

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 1139129, (Health) at Floors: -1, 0, 1, 63 Tullow Road, County Carlow.**

B E F O R E

Barry Smyth - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Caroline Murphy - BL

Member

Fergus Keogh - MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 9TH DAY OF JUNE, 2020.

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €175,500

1.2 The grounds of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

- i. *The Valuation of the subject property is excessive and in equitable. The property’s value as set out by the Commissioner is not in line with its potential rental value.*

- ii. *The subject property is run by a husband and wife team and their hours of dedication are not adequately allowed for by the accounts. Even at that, the accounts do not support the Commissioner's valuation as 90% of patients are high dependency and as such incur a higher cost but on the same income.*
- iii. *The level of €3,250 per bed is excessive in view of the comparables in the tone of the list. The subject property has 9 double rooms which require a discount by comparison to a fully single bed facility.*
- iv. *The effect of additional bed spaces in the local market is not reflected in the historic accounts but will undoubtedly result in lower occupancy and would affect the hypothetical tenant's bid.*
- v. *The Commissioner's model is flawed as it derives from maximum occupancy which is incorrect in the circumstances as occupancy is likely to be significantly less going forward. This must be allowed for on a one year with another basis.*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in a sum of €126,000

2. REVALUATION HISTORY

2.1 On the 25th day of May, 2017 a copy of a Valuation Certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €175,500.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €175,500.

2.4 The date by reference to which the value of the Property, the subject of this Appeal was determined, is the 30th day of October, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation

Tribunal at Holbrook House, Holles Street, Dublin 2, on the 28th day of January 2020. At the hearing the Appellant was represented by Mr. Eamonn Halpin, B.Sc. (Surveying) MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr. Adrian Power-Kelly, FRICS, FSCSI, ACI Arb, RICS Registered Valuer on behalf of the Commissioner of Valuation.

- 3.2 In accordance with the Rules of the Tribunal, the Parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their précis as their evidence-in-chief in addition to giving oral evidence.

4. FACTS

- 4.1 From the evidence adduced by the parties, the Tribunal finds the following facts;
- 4.2 Carlow is the county town for County Carlow with a population of 24,272 (Census 2016) and is located on the R726, the N80 and is approximately 4 kms west of the M9 motorway. The subject of this Appeal is located on the N80 approximately 1.4 kms south east of Carlow town centre in the section between Friars Green and the Na Húilloird housing estate and diagonally opposite the Millennium Court housing estate. The surrounding area is in mixed uses.
- 4.3 The subject property comprises a detached mainly two-storey building that has been purpose built and is in use as a convalescence and nursing home. It is of traditional block wall construction detail with rendered and painted walls and a pitched roof. It has been set-out in a v-shape in two wings with communal areas centrally located between the wings. The property is registered with HIQUA to provide for a maximum of 54 no. residents who are accommodated 45no. bedrooms of which 36no. are single en-suite rooms and 9no. are twin en-suite rooms. Additional accommodation includes a reception area, administration offices, a doctor's surgery room, recreation and day rooms, a dining room, a laundry, kitchen, staff areas and a 'quiet' room. A passenger lift serves the upper floor. Externally there are landscaped gardens and surface car parking.
- 4.4 The Gross Internal Area of the subject is agreed as follows;

Ground Floor:	978.38 Sq. M.
First Floor:	978.38 Sq. M.
Basement:	<u>120.80</u> Sq. M.
Total	2,077.56 Sq. M.

4.5 The Tribunal was advised that the title to the property is freehold with a related party lease in place. Details of this lease are in **Appendix 1**.

5. ISSUES

5.1 The issue that arises in this Appeal is the quantum of value.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“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.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the following factors to be taken into account in calculating the net annual value:

“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 be expected to let from year to year, on the assumption that the probable 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 in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 Mr. Halpin having taken the Oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence and submitted a revised valuation to replace that in his

written submission advising that this was being done in light of a recent Decision issued by the Valuation Tribunal.

- 7.2 Mr. Halpin described the physical nature of the subject, by reference to a number of internal and external photographs and its location in relation to Carlow town centre. The Property was described as being a 2-storey 45no. bed nursing home constructed in 2003 and containing 36no. single rooms and 9no. twin rooms.
- 7.3 Mr. Halpin advised the Tribunal that the subject property has the highest number of double (semi-private) rooms of any nursing home in County Carlow and that it was constructed partly over 3-floors, having a small basement area, with the ideal layout for a nursing home being on a single level with single occupancy en-suite rooms.
- 7.4 Mr. Halpin advised that Tribunal that the Appellant was seeking to have the NAV of the subject property determined by the *receipts and expenditure (R&E)* method of valuation and further advised that he was not relying directly on the Tone of the List of NAV assessments of other convalescence and nursing homes within the rating area also noting that there was no directly comparative rental evidence for the nursing home sector in the rating area.
- 7.5 Mr. Halpin contended that the Commissioner of Valuation has assessed nursing homes on a 'price per bed' basis commenting that in theory that there is nothing wrong with this method provided that it is grounded in open market rental information and checked against the full receipts and expenditure of the nursing home. Mr. Halpin further commented that in the absence of open market rental evidence that the Appellant has solely relied on the *R&E* method of valuation in accordance with the Tribunal's previous decision in VA/10/5/080 (*Dundas v Commissioner of Valuation*) and its determinations in 15no. other nursing home decisions in the 2010 Fingal Revaluation (including but not limited to VA10/5/096, VA10/5/096, VA10/5/099 and VA10/5/100). In support of his position Mr. Halpin advised that he was relying on the Valuation Office Agency (VOA) Guidance Notes, updated in 2017 and contended that in the 4-year period from 1st April 2012 to 31st March 2016 that the maximum rent which the subject could support was €139,500 equating to €2,583 per bed space.

7.6 Mr Halpin advised that the subject is a family run nursing home with the two directors of the appellant company being integral to the day to day running of the business and that their remuneration within the accounts acts as their only salary. The Directors undertake the tasks of a Facilities Manager (25+ hours per week) and those of Head of Nursing (60+ hours per week). Such tasks would normally be done by fully paid staff. Mr. Halpin contended that for the purpose of the subject property that the hypothetical tenant would be required to allow €161,000 pa representing salaries and pension contributions for these two positions and for the purposes of the hypothetical tenant the director's cost are real and as such should be allowed in full NAV assessment.

7.7 Mr. Halpin's submission included a table setting out his analysis of the NAV of 6no. identified nursing homes in County Carlow which were analysed on an average NAV per bed space, including single and double occupancy rooms, to reflect the Tone of the List for the area. This table and the identified properties are set out in **Appendix 1** and in summary the properties are as follows;

- (i) Property No. 1 is the subject of this Appeal, a 54no. bed nursing home with 36no. single rooms and 9no. twin rooms assessed at NAV €175,500 equating to NAV €3,250 per bed space.
- (ii) Property No. 2 is a 45no. bed nursing home with 37no. single rooms and 4no. twin rooms assessed at NAV €157,500 equating to NAV €3,500 per bed space.
- (iii) Property No. 3 is a 34no. bed nursing home with 20no. single rooms and 7no. twin rooms assessed at NAV €102,000 equating to NAV €3,000 per bed space.
- (iv) Property No. 4 is a 57no. bed nursing home with 57no. single rooms assessed at NAV €185,200 equating to NAV €3,250 per bed space.
- (v) Property No. 5 is a 52no. bed nursing home with 46no. single rooms and 3no. twin rooms assessed at NAV €156,000 equating to NAV €3,000 per bed space.

- (vi) Property No. 6 is a 60no. bed nursing home with 60no. single rooms assessed at NAV €210,000 equating to NAV €3,500 per bed space.

7.8 In support of his opinion of the subject property's NAV, Mr. Halpin's submission included a table setting out his valuation of the subject property on an *R&E Basis* advising that it was carried out in line with previous judgements of the Tribunal in relation to nursing home appeals and also in line with the VOA Manual Guidance Notes 2017. This valuation indicates an opinion of value of NAV of €139,500 equating to NAV €2,583 per bed space. This valuation table is set out in **Appendix 1**.

7.9 Under cross examination by Mr. Power- Kelly, Mr. Halpin commented in relation to the layout of the subject property, it being a mainly two storey building, that the ideal layout for a nursing home was that of a single storey building despite the fact that the subject has a passenger lift.

Mr. Halpin was questioned by Mr. Power-Kelly in relation to the various constituent elements of his valuation appraisal with Mr. Halpin confirming that his preferred method of valuation was the *R&E* method as adopted in the *Oghill v Commissioner of Valuation (VA17/5/180)* and adjusted as necessary including for directors remuneration and pension contributions.

Mr. Halpin was questioned in relation to his knowledge of the operational costs of the subject when compared to the operational costs of other similar nursing homes and to the availability such information in trade surveys. Mr. Halpin advised that depending on the type of business conducted by a typical nursing home and in particular in relation the level of high-dependency residents within the nursing home, that costs can vary between 60 % - 75% of revenue.

In relation to levels of staff salaries within the Subject, Mr. Halpin confirmed that he had not made any adjustment in his valuation for the fact that salaries in the subject were approximately 68% of operational costs when compared to an industry norm of 60%.

Mr. Power- Kelly quoted from *the NHI nursing homes ireland Annual Private Nursing Home Survey 2014 /2015* undertaken by BDO in relation to industry salaries commenting that the report advised of a typical salary for a Director of Nursing being €64,000 pa. whilst Mr. Halpin indicated a salary of €100,000 / €120,000 pa. in his evidence.

7.10 When questioned by the Tribunal in relation to staff salaries and staff numbers within the Subject, Mr. Halpin advised that he was unable to provide a breakdown of staff numbers and costs in relation to each staff member, however, he undertook to revert to the Tribunal with this information

7.11 Mr. Halpin requested that the Tribunal find for the Appellant at a NAV of €139,500.

8. RESPONDENT'S CASE

8.1 Mr. Power-Kelly, having taken the Oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

8.2 Mr. Power-Kelly advised the Tribunal of the Revaluation History of the subject property. On the 25th May 2017 a Proposed Valuation Certificate was issued with a Proposed Valuation of €175,500. Following receipt of Representations on the 29th June 2017, a Final Valuation Certificate was issued on the 7th September 2017 of €175,500. This Valuation is the subject of this Appeal.

8.3 Mr. Power-Kelly described the location of the subject premises by reference to an aerial photograph in his précis and its relevant distance from Carlow town centre.
Mr. Power-Kelly described the nature of the subject by reference to floor drawings and to a number of internal and external photographs which were taken in 2019.

8.4 Mr. Power-Kelly advised the Tribunal of the steps taken by the Valuation office to assemble market and financial information in the course of the carrying out of the County Carlow Revaluation exercise which included requesting from each nursing home, pursuant to section 45 of the Valuation Act, information pertaining to floor plans, construction & re-development works and costings, licences, accounts & trading information along with lease & title information. The requested information was not

supplied in all cases with financial information being supplied in five instances of which three were at Representations stages. Based on the information supplied, turnover per bed space ranged from €30,235 to €43,684 with the majority being between €40,740 and €43,684 giving an average of €42,243. Having regard to age, design, construction detail, location and trade, a valuation of €3,250 per bed space was applied to the Subject to arrive at an NAV of €175,500.

8.5 Mr. Power-Kelly submitted four NAV Comparisons in support of his opinion of the NAV of the Subject and reviewed each one individually. Details of these identified properties are set out in **Appendix 2** and in summary are as follows.

- (i) NAV Comparison No. 1 which is located in a rural location is a modern single storey 34no. bed nursing home comprising 20no. single and 7no. twin rooms all with en-suite facilities. It has a NTPF rate of €835 and a reported occupancy rate of 88% - 77% per HIQUA reports for 2016 & 2017. It was subject to Representations and an Appeal was not lodged. The financial information supplied related to years 2014 - 2015. It has a NAV of €102,000 equating to €3,000 per bed space.
- (ii) NAV Comparison No. 2 which is located in a residential setting outside a small rural village and is a part two storey Georgian building part single storey modern 52no. bed nursing home comprising 46no. single rooms (28no. en-suite) and 3no. twin rooms. It has a NTPF rate of €830 and a reported occupancy rate of 99% per a HIQUA report for 2016. The premises formerly traded as a B&B establishment. It was subject to Representations and an Appeal was not lodged. The financial information supplied related to the years 2013 - 2015. It has a NAV of €156,000 equating to €3,000 per bed space.
- (iii) NAV Comparison No. 3 which is located in a residential setting outside a small rural village is a modern single storey 60no. bed nursing home all rooms being for single occupancy. It has a NTPF rate of €825 and a reported occupancy rate of 80% - 83% per HIQUA reports for 2016 & 2017. It was not subject to Representations or an Appeal. The financial information supplied related to the year 2015. It has an NAV of €210,000 equating to €3,500 per bed space.

(iv) NAV Comparison No. 4 is located in semi-rural setting outside a small rural village and is modern three storey former hotel building now trading as a 45no. bed nursing home comprising 37no. single and 4no. twin rooms all en-suite. It has a NTPF rate of €840 and a reported occupancy rate of 62% for 2017 and 100% for 2018 per HIQUA reports. It was not subject to Representations and a subsequent Appeal was withdrawn. The financial information supplied related to budget information for 2017 together with turnover outcome for 2017 & 2018. It has an NAV of €157,500 equating to €3,500 per bed space.

8.6 Based on the analysis of the NAV Comparisons submitted, Mr. Power-Kelly requested that the Tribunal affirm the valuation of the Subject as it appears on the Valuation List in the sum of €175,500, i.e. 54 no. bed spaces @ €3,250 per bed space.

8.7 Under cross examination by Mr. Halpin, Mr. Power-Kelly confirmed that he did not have any rental evidence for nursing homes in the rating area as none was available. He further confirmed that the Valuation Office does not solely rely on applying NAV values per bed space in valuing nursing homes and advised that valuations were based on the analysis of financial information in the possession of the Valuation Office and a number of other influencing factors including the size, nature, location, trade, and accommodation of the relevant property. The subsequent valuation was then expressed on a per bed space basis. Mr. Power-Kelly advised that he was unable to provide the financial information as it pertained to his NAV Comparisons as it was treated as being confidential within the requirements of section 68 of the Act. When requested by the Tribunal to provide this information Mr. Power-Kelly advised that he would take appropriate instructions.

8.8 In replying to questioning by Mr. Halpin, if he had made any allowance in his valuation for the fact that the subject was a two storey nursing home, on the basis that a single storey building was the optimum design layout, Mr. Power- Kelly replied that in his opinion that this was not necessary due to the subject having a passenger lift. In relation to questioning concerning the additional running costs incurred within the Subject due to the high number of high-dependency residents, which Mr. Halpin advised were present, Mr. Power-Kelly commented that he had not made any allowance in his

valuation to this issue as income reflected fees paid in such instances in compliance with HIQUA fee scales.

8.9 On completion of cross examinations and following summarising statements by the Parties, the Tribunal requested that both Parties submit the following additional information;

(i) The Appellant to provide:

- details of directors remuneration and pension contributions
- a breakdown of staff numbers, titles and remuneration levels.
- a breakdown of high dependency residency numbers.

(ii) The Respondent to provide:

- the back-up financial information used to establish the NAV values in the submitted comparisons.

The Tribunal confirms that both Parties submitted the additional information requested by the Tribunal referred to in paragraph 8.9 above and this information is set out in **Appendices 1 & 2** attached.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Subject so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Carlow County Council.

10.2 The relevant question in this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act as amended. The rent for which the Property might, in its actual state, be reasonably be expected to let is measured by the rental value on a hypothetical tenancy of the

property on a year to year basis and not by reference to the actual occupier's business or financial means or the rent the occupier actually pays.

- 10.3 It is necessary for the Tribunal to consider all of the evidence placed before it in the round. The Tribunal confirms that both Parties submitted the additional information requested by the Tribunal referred to in paragraph 8.9 above (see **Appendices 1 & 2**). The Tribunal has considered this information in its Determination.
- 10.4 The Parties in their précis and oral evidence adopted differing approaches to value the Subject. Mr. Power-Kelly advised the Tribunal that he had valued the Subject with a blended 'rent per bed' approach taking in account investigations into a range of factors including market information, occupancy levels, the age and the location of the Subject, applicable NTPF payment rates, accounts and trading information along with details of construction and redevelopment works undertaken. The results of these investigations are then considered alongside an analysis of financial information, including an *R&E* valuation to establish the NAV value.
- 10.5 Mr. Halpin in support of his opinion of NAV value, prepared on an *R&E* valuation along with referencing Tone of the List comparisons for other nursing homes in the County Carlow rating area, (see **Appendix 1**) . Mr. Halpin also referenced previous judgements by the Tribunal including VA10/5/080, VA10/5/096, VA10/5/098, VA10/5/099, VA10/5/100 and extracts from the VOA Manual Guidance Notes 2017.
- 10.6 In support of his opinion of NAV value Mr. Power-Kelly relied on the analysis of 4no. NAV Comparisons. These properties are in the same rating area as the Subject and share a number of similar features. The Tribunal notes that the 4no. NAV Comparisons adopted by Mr. Power-Kelly are also amongst those used by Mr. Halpin in his submission to reflect his opinion of the Tone of the List.
- 10.7 Having regard to the lack of direct market rental evidence for nursing homes in the County Carlow rating area as acknowledged by the Parties, the Tribunal recognises the reliance on the *R&E* method of valuation to establish an appropriate NAV value for the Subject. This method of valuation was adopted by the Appellant and was also partly adopted by Mr. Power-Kelly, as indicated in the analysis of the additional financial

information submitted by him and used to formulate the ‘rent per bed’ scheme of valuation.

- 10.8 The Tribunal, having considered all the evidence and arguments adduced by the Parties along with the additional information supplied by both and despite the differing interpretations to some constituent elements to be included in an *R&E* valuation, accepts the relevance of this method of valuation and considers that the *R&E* method of valuation provides a reliable and transparent basis for determining the NAV in accordance with section 48 of the Act.
- 10.9 In his précis, oral evidence and his *R&E* valuation Mr. Halpin contended for the inclusion of Directors salaries and pension contributions. In considering the position that would be adopted by a hypothetical tenant and having regard to the evidence of both witnesses and the additional information submitted on behalf of the Appellant and the Respondent, (**see Appendices 1 & 2**), the Tribunal finds that in relation to the preparation of an appropriate *R&E* valuation for the Subject that a 50 % allowable expense should be provided for Directors Remuneration and that no allowable expense should be provided for Directors Pension Costs. The Tribunal is of the view that, in the normal course of running a nursing home, a hypothetical tenant, would require to employ staff to cover the operational day to day work undertaken by the two Directors, and this should be factored into the valuation.”

In relation to the analysis of allowable Directors Remuneration in *Oghill v Commissioner of Valuation* (VA17/5/180) by Mr. Halpin and its subsequent application to the *R&E* valuation of the Subject, the Tribunal finds that Mr. Halpin has erred in his interpretation in that the 50% allowance should not be applied on a per bed space basis as set out in his *R&E* valuation.

- 10.10 In addition Mr. Halpin referenced the Valuation Tribunal’s decisions in a number of other quoted appeals. It is no part of this Tribunal’s task to review the correctness of the decisions of other Tribunals. Those earlier decisions, like all other Tribunal decisions, are based on the evidence before the relevant Tribunal and cannot be binding if different evidence is adduced on another occasion. The duty of the Tribunal in each appeal is to consider the evidence adduced and the arguments advanced and to arrive at a determination in accordance with section 48 of the 2001 Act as amended.

The Tribunal strives for consistency in decision-making, but, as a general rule, previous decisions on questions of fact and opinion will not be regarded as evidence of value in later cases. Such decisions do not establish precedents. However, a decision of the Tribunal setting out general guidance on valuation principles may be applied or referred to in subsequent appeals.

10.11 In his précis and oral evidence, Mr. Power-Kelly relied on NAV Comparison evidence from 4no. identified nursing homes in County Carlow to establish an NAV of the Subject. This approach failed to provide the Tribunal with any methodology or calculations as to how he arrived at the 'rent per bed space' scheme of valuation. However, having submitted the requested additional information the Tribunal is of the view that a considerable amount of analysis and investigative work had been undertaken, though producing a range of differing values in the examples provided, prior to applying this analysis to the Subject to establish his opinion of NAV value.

10.12 The R&E method based solely on the accounts of an undertaking may not give an absolutely correct NAV for the subject property when considered in light of the NAV of comparable properties in the rating authority area. It is important to note that it is not the particular business that is being valued but rather what a hypothetical tenant would pay for the property based on all the information available including the accounts and knowledge of the industry with its potential income and costs. The Respondent derived his opinion of NAV from the *R&E* method based on the accounts of a number of comparable properties. However, in the view of the Tribunal insufficient allowance has been made to the existing NAV comparisons to reflect the facts of the subject property.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the Appeal and decreases the valuation of the subject as stated in the Valuation Certificate to €162,000, i.e. 54 no. bed spaces @ €3,000 per bed space.

And the Tribunal so determines.