

**Appeal No: VA17/5/806**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**ANVIK COMPANY LIMITED**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of  
Property No. 5006583, Carthage Nursing Home, Mucklagh, Tullamore, County Offaly.**

**B E F O R E**

**Majella Twomey - BL**

**Deputy Chairperson**

**Liam G. Daly – MSCSI, MRICS**

**Member**

**Frank O' Grady – MA, FSCSI, FRICS, FIABCI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 15<sup>TH</sup> DAY OF JULY, 2020.**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 12<sup>th</sup> 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 €220,000.

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 :

- a. The Valuation is incorrect.
- b. The Physical elements of the building were not considered.
- c. The trading data/ financial information was not properly considered.
- d. The element of competition was not considered.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €125,000

## **2. REVALUATION HISTORY**

2.1 On the 30<sup>th</sup> day of March 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 €220,000.

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 of the Property remained at €220,000.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September 2017 stating a valuation of €220,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30<sup>th</sup> 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 22<sup>nd</sup> of January 2020. At the hearing the Appellant was represented by Mr. Andrew Carberry MCSCI MRICS of Power Property and the Respondent was represented by Alan Sweeney, B.SC, MSCSI, MRICS of the Valuation Office.

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 his précis as his 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 The subject property is a nursing home situate at Mucklagh, Tullamore, Co. Offaly.

4.3 The property is a single storey purpose-built nursing home with a two storey extension.

4.4. The nursing home was constructed in 1999 and extended in 2007.

4.5 The property was previously registered with HIQA to cater for a maximum of 67 residents. This was reduced to 63 bed spaces at the end of 2015.

## **5. ISSUES**

5.1 The main issue between the parties is the assessment of quantum.

## **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 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 Carberry gave evidence on behalf of the Appellant, adopting his precis as his evidence in chief. He stated that the property is a purpose-built nursing home comprising of 2,496 SqM. The initial building was constructed in 1999 as a 36-bed nursing home and there have been two

extensions since then, the most recent in 2008, adding a further 31 bed spaces. There were, initially, a number of triple rooms. These do not exist anymore due to HIQA regulations.

7.2 There were 67 beds in 2008. However, at the date of valuation, there were 63 beds. Mr Carberry said that in 2016, new regulations were introduced stating that the number of beds would have to be reduced from 63 to 59.

7.3 Mr Carberry said that the Valuation Office, when valuing the property, did not differentiate between the various room types. He said that the same rate should not be placed on a triple room as a double room. He also said that the ground floor should not be rated the same as the second floor. Mr Carberry gave evidence that the same facilities would not be available on the first floor as the ground floor. He said, for example, that the restaurant is on the ground floor. However, he did concede that there is a lift between the floors. Mr Carberry said that 34% of the rooms in the nursing home are multi-occupancy rooms. Evidence was also given that the aim of the new national standards regulations is that 80% of occupants would be in single rooms. Mr Carberry stated that the Valuation Office, when rating the property, should have looked at what was reasonably foreseeable at the date of valuation, but they failed to do so. Mr Carberry accepted that there was a gap between the date of the valuation and the national standards which he referred to. However, he said the type of room would be a factor when choosing a nursing home.

7.4 Mr Carberry argued that the property should have been rated as a 59-bed property as this was reasonably foreseeable at the date of the valuation. He stated that the current registration expired on the 18<sup>th</sup> of October 2020, and the new application for registration will be based on 59 beds.

7.5 Mr Carberry said that the subject property is over 20 years old and that the maintenance and repair will increase in the future.

7.6 At present, the rate per bed applied to the subject property is €3,500. Mr Carberry provided a number of NAV comparators, in Offaly, namely Gallen Priory Nursing Home (€1569.23 per bed), Elmgrove (€2,500 per bed) and Riada House (€1428.57 per bed). Mr Carberry said that these are considerably older nursing homes and are, correctly, in his opinion, valued at a much lower rate per bed.

7.7 Mr. Carberry said that no nursing home, in his NAV list of comparators was valued higher than the subject property. He referred the Tribunal to a property called Esker Rí nursing home in Clara, which also had a NAV of €3,500 per bed but he said that this is a new nursing home, opened in 2014, and subsequently extended from 80 to 130 beds in 2018.

7.8 Mr Carberry then went onto state that Ealga Nursing Home (€2,500 NAV), Oakdale Nursing Home (€3,500 per bed) and Eliza Lodge (€3050 NAV), were the most comparable to the subject property, in County Offaly, in terms of NAV comparators. Mr Carberry said that the Valuation Office applied the same scheme of valuation for Nursing Homes in Co. Westmeath and the bed rates in that county indicate a tone that is substantially lower than the €3,500 per bed applied to the subject property.

7.9 The evidence of Mr Carberry was that the costs of running a nursing home are rising and the turnover is flat. Mr. Carberry set out a detailed financial statement pertaining to the company at Page 21 of his precis. Mr Carberry was of the view that the gross percentage profit of the subject property fell from 34.8% in 2014 to 22.4% in 2018.

7.10 In terms of market rents as comparators, Mr Carberry said that they are very difficult to analyse as there are a lot of connected parties involved and they are not all arms-length transactions. A table of market rents was set out at page 23 and page 24 of the precis. However, Mr Carberry said that despite highlighting several rental transactions from the commercial lease register, there is no real ‘tone’ that can be reasonably extrapolated from the available information. Considering the information provided, Mr Carberry was of the view that the NAV was a more appropriate way to analyse the property. Mr Carberry accepted that the preferred method of valuing nursing homes by the Valuation Tribunal is the receipts and expenditure method. However, he said he did not have an objection to the Commissioner’s scheme of valuation on a per bed basis. He said that he had considered the R&E method in the context of accounts provided by the Appellant and he set out a table, in this respect, on page 25 of his precis.

7.11 On cross- examination by Mr Sweeney, Mr Carberry accepted that 67 beds were registered, and he said that the nursing home lost four beds in late 2015.

7.12 Mr Sweeney asked Mr Carberry if the NTPF (National Treatment Purchase Fund) rates per bed differ between single and shared rooms and Mr Carberry confirmed that they did not. Mr Sweeney asked if occupancy was an issue and Mr Carberry said that it was not.

## **8. RESPONDENT'S CASE**

8.1 Mr Sweeney adopted his evidence as his evidence in chief. He said that the method of valuation was Receipts and Expenditure and comparative. He said that this has been the approach since the re-valuations. He described it as a combination of R&E and comparative. Mr Sweeney said that he inspected the subject property in August 2016, and they were made aware that the property had gone from 67 beds to 63. However, he said, they had not been made aware of any further bed loss.

8.2 Mr Sweeney said that the directors of Anvik Ltd own the freehold and the company operates the property under two, separate, 9 year 9 month leases dating from 2007 and 2008. He said that the revenues are fairly static, and occupancy was at 95%. He also said that the company had the highest NTPF rate at €850 per bed.

8.3 Mr Sweeney said that at the representations stage, it was found that the financial information supplied on the subject property supported a higher valuation than the agent contended for. He said that it was also found that there was no market evidence to support a lower valuation.

8.4 Evidence was given by Mr Sweeney that, during the carrying out of the Offaly County Council re-valuation, the Valuation Officer requested market and financial information from each and every occupier of a nursing home, including audited accounts and trading information. However, he said that the requested information was not supplied in all cases and was supplied in 3 cases (37.5%) of nursing homes in Offaly. Six items of market information were relied upon to inform the valuation scheme and all six items were located outside of Offaly. Each of the transactions were investigated and analysed in accordance with Valuation Office policy. Mr Sweeney said that the results of these investigations combined with the analysis of financial information including the carrying out of a full receipts and expenditure valuations lead to the development of a comparative approach to the valuation of nursing homes. He said that this approach has been used successfully in recent Dublin city, Waterford and Limerick revaluations. Mr Sweeney said that the assessment has regard to both the revenue generating

ability of each nursing home and to the total expenditure required to achieve this said revenue. Mr Sweeney's evidence was that the assessments are illustrated using a comparative approach where the NAV applied per bed space is shown.

8.5 Mr Sweeney said that it was important to note that the NTPF bed rate does not differ for single and shared rooms. Mr Sweeney produced 6 Key Rental Transactions (set out in the appendix hereto) and he said that each KRT was an arms-length transaction. The KRTs are located in Dublin, Sligo, Roscommon, Limerick and Waterford and range from €3,000 NAV per bed and €4,500 per bed.

8.6 Mr Sweeney also referred to a number of NAV comparisons, many of which were the same as the Appellant's NAV comparisons. Mr Sweeney cited two of the same properties as the Appellant, as being the most comparable; those being Oakdale (NAV of €3,500 per bed) and Eliza Lodge (€3250 per bed- the Appellant said this was €3050). Financial information was not provided for Oakdale and it was provided for Eliza lodge.

8.7 Mr Sweeney concluded by saying that a valuation level of €3,500 per bed space was applied as it equates to 8.4% of 2015 revenue per bed space. The full R&E calculation for 2015, was set out at appendix G of Mr Sweeney's precis. Mr Sweeney relied upon the *Eochail Enterprise LTD case, VA17/5/180* in respect of his method of calculating the rates.

8.8 On cross-examination Mr Carberry asked Mr Sweeney if he knew that the subject property would be operating 59 beds only, going forward. Mr Sweeney said that he became aware of this in recent times but there was no documentary evidence.

8.9 In terms of the running of Anvik Ltd, Mr Sweeney accepted that there were two full times directors and that the commercial lease was not an arms-length lease.

8.10 Mr Carberry put it to Mr Sweeney that the NTPF rate was not based on the property and Mr Sweeney agreed with this, stating that financials and physicals details are part of the assessment.

8.11 Mr Carberry put it to Mr Sweeney that the occupier of the Appellant gave all its financial information and Mr Sweeney accepted this. Mr Sweeney was asked if he requested the

occupancy rate and he said that he had a letter from the Appellant's accountant. Mr Carberry asked Mr Sweeney if he had all the information which he needed to assess the valuation fairly and Mr Sweeney said that he did.

8.12 Mr Carberry then focused on the issue of salaries and he asked Mr Sweeney if he had considered issues in nursing homes in relation to the retention of staff. Mr Sweeney accepted that this is an issue. However, he said that they looked across the industry and at the finances given to them. It was put to Mr Sweeney that he would have been able to see the trend in the Directors salaries/ wages going down, but that no allowances were made for this. Mr Sweeney said that they had information from 2013/2014 at the time and they later received 2015 financials. He said that the average wage and salaries in nursing homes of this size is 60%.

8.13 Mr Carberry asked if Mr Sweeney accepted that the method of valuation for nursing homes is the R&E method and Mr Sweeney said he accepted that the recent Judgments set this out.

8.14 Mr Carberry then said that the comparative approach includes rental transactions and this approach seemed to be a hybrid approach and Mr Sweeney agreed. In terms of the KRTs, Mr Carberry said that three were lower than the subject property and two were higher. Mr Sweeney said that they do not have a huge volume of rental information. Mr Carberry then put it to Mr Sweeney for, for example, in terms of KRT 4, 96% of the rooms are single. Mr Sweeney said that this does not impact on the performance of the property.

8.15 In terms of the NAV of €3,500 per bed, Mr Carberry said he did not understand where that figure was coming from. Mr Sweeney said that certain conclusions are drawn from the accounts. He said that he did not accept that a hypothetical tenant would expect 70% of the financials to be wages.

8.16 Mr Carberry put it to Mr Sweeney that the two working Directors were full-time employees and that they had no other employment. Mr Sweeney said that in the R&E method % was always factored in for salary. He said that in some smaller nursing homes the percentage might be 65%. Mr Carberry put it to Mr Sweeney that he was not using the information given to him and that it was unfair and inequitable to disregard it. Mr Sweeney said that the Valuation Office makes very few adjustments in terms of wages/ salaries.

## 9. SUBMISSIONS

9.1 No legal submissions were put forward.

## 10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property 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 Offaly.

10.2 In terms of the number of beds to be valued, the Tribunal finds that the number of beds at the time of valuation was 63 and this is the relevant number of beds, which must be considered at the appeal stage. If this number of beds has been reduced since the valuation date, then this is distinct matter which the Appellant can pursue separate to these proceedings.

10.3 The Valuation Office, in reaching its decision, in this case, used a comparative approach. While the Valuation Office have relied upon the Receipts and Expenditure approach, this has been combined with an assessment of NAV comparators, KRTs, NTPR rates along with accounts and trading information. Mr Sweeney, in his evidence, said that this was the approach used in all the recent re-valuations but accepted that some of the recent Valuation Tribunal Judgments prefer a pure R & E assessment. Mr Carberry also stated that the recent Judgments preferred the R&E approach but, significantly, asserted that he did not have an objection to the comparative approach.

10.4 In the recent case of *Eochail Enterprise Ltd v Commissioner of Valuation, 13<sup>TH</sup> November 2019*, the Valuation Tribunal, at paragraph 10.3 states that *'The Commissioner favours a scheme of valuation with a blended 'rent per bed' figure taking into account many factors including rental comparables, market information, occupancy levels, age and location of the property, NTPF rate, accounts and trading information and construction and 12 redevelopment works, amongst other factors. The result of investigations into these factors combined with an analysis of financial information, including an R&E valuation, results in the 'rent per bed' figure adopted by the Commissioner. This scheme of valuation has been employed in valuing nursing homes in the Dublin City, Waterford and Limerick Revaluations. The Appellant holds that none of the rental evidence provided by the Commissioner is relevant and therefore the subject property should be valued solely on a R&E basis following the*

*Tribunal decision in VA10/5/080 Dundas Ltd v Commissioner of Valuation using the United Kingdom, Valuation Office Agency (VOA) guidance note updated on 5th May 2017.'*

10.5 In relation to the comparative method, the Tribunal, in Eochail, goes onto state, at paragraph 10.7, that *'It is clear that the Commissioner has undertaken a substantial amount of work in developing the 'rent per bed' scheme of valuation and the Tribunal acknowledges the difficulty facing the Commissioner in trying to ensure correctness, equity and uniformity across a specific 13 and specialised type of property such as nursing homes. The Tribunal understands that Respondent unilaterally applied the 'rent per bed' method previously in the revaluation of all nursing homes in Dublin City, Limerick and Waterford.'*

10.6 Finally at paragraph 10.9 of the said Judgment, the Tribunal states that *'having considered all the evidence introduced and arguments adduced by the Appellant and the Respondent, [the Tribunal] has come to the conclusion that despite difficulties encountered in using the R&E Method, it nonetheless provides a more reliable and transparent 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'*.

10.7 The Tribunal is acutely aware of dicta in the Eochail case and of the Tribunal decision in **VA10/5/080 Dundas Ltd v Commissioner of Valuation**, which expressly state that the R&E method is the preferred method of valuation for nursing homes. The question before the Tribunal, in this case, then is whether the Appellant has been prejudiced by the engagement of the comparative method and whether the valuation applied is equitable and uniform?

10.7 The Appellant's representative, Mr. Carberry, gave evidence that while the R&E method was the preferred method of valuation as set down in the Dundas case, he did not have an objection to the comparative method. The Appellant, therefore, did not make any strenuous arguments to suggest that the incorrect method of valuation was employed. Significantly, he expressly stated that he did not object to the comparative method.

10.8 The Tribunal, having established that Mr. Carberry did not object to the comparative method, then asked Mr. Carberry what his best NAV comparators for the subject property were and he said Ealga Nursing Home (€2,500 NAV), Oakdale Nursing Home (€3,500 per bed) and Eliza Lodge (€3050 NAV), were the most comparable to the subject property, in County

Offaly, in terms of NAV comparators. The Tribunal notes that Oakdale, is valued at the same rate as the subject property and this is a comparator which Mr. Carberry, himself, put forward.

10.9 In cross-examination, Mr Carberry was asked if the NTPF (National Treatment Purchase Fund) rates per bed differ between single and shared rooms and Mr Carberry confirmed that they did not. Furthermore, Mr. Carberry was asked if occupancy was an issue and he confirmed that it was not. The Tribunal finds that the fact that the subject property is fully occupied is significant factor when assessing the valuation of the property.

10.10 Mr Sweeney's evidence that was that the assessment by the Valuation Office had regard to both the revenue generating ability of each nursing home and to the total expenditure required to achieve this said revenue. The Tribunal notes that the Valuation Office, in this case, did not abandon the R&E completely and did, in fact assess the revenue and expenditure of each nursing home, when given, along with other factors such as NAV comparators, KRT comparators and NTPF rates.

10.11 In terms of the method of valuation employed, significantly, Mr Carberry put it to Mr Sweeney that the occupier of the Appellant gave all its financial information to the Valuation Office and Mr Sweeney accepted this. Mr Sweeney was asked if he requested the occupancy rate and he said that he had a letter from the Appellant's accountant confirming same. Mr Carberry asked Mr Sweeney if he had all the information which he needed to assess the valuation fairly and Mr Sweeney confirmed that he did. The Tribunal finds this evidence to be highly significant as it illustrates that the Valuation Office had all of the Appellant's financial information before it, in reaching its decision and it was not the case that it reached a valuation in the absence of financial information specific to the subject property.

10.12 The Tribunal notes that Mr Carberry said that the KRTs were not helpful in this case and focused more on the NAVs. The Tribunal finds that it is useful that many of Mr Sweeney's NAV comparators were the same as the Appellant's NAV comparators. Mr Sweeney, specifically, cited two of the same properties as the Appellant, as being the most comparable; those being Oakdale (NAV of €3,500 per bed) and Eliza Lodge (€3250 per bed, according to the Respondent).

10.13 While Mr Carberry made the case that the two working Directors were full-time employees who had no other employment, Mr Sweeney expressly stated that in the R&E method, a percentage, is always factored in for salary and would have been factored in, in this case also. He said that the usual figure was 60%.

10.14 Ultimately, while the Tribunal acknowledges the flaws in the methodology being utilised by the Valuation Office and while the Tribunal is cognisant of the fact that the R&E method is the preferred method of valuation for nursing homes, taking all of the evidence before us into account, the Tribunal finds that it was not presented with sufficient evidence to show that the Valuation Office lacked impartiality when considering the subject property's rateable valuation, in this particular case.

10.15 In reaching this decision, the Tribunal paid attention to the fact that the Appellant had, in fact, submitted financials to the Valuation Office, which did form part of the assessment as outlined by Mr. Sweeney. Mr. Sweeney confirmed this in his cross-examination. Furthermore, Mr Carberry specifically stated that while the R&E method was desirable that he did not have an objection to the comparative method. Finally, the Tribunal finds that some of the parties NAVs were similar and referred to the rate of €3,500, which is the final rate which the Valuation Office put on the subject property.

10.16 Taking all of the evidence above into account, along with the detailed precis of evidence provided by both parties, the Tribunal finds that the Appellant has not been prejudiced by the manner in which the assessment and that it has not made out its case for a reduction.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal affirms the appeal.

<b>No of beds</b>	<b>NAV per bed</b>	<b>Total NAV</b>
63	€3,500	€220,000

And so the Tribunal determines.