

Lindisfarne College Council v Valuation Department

Land Valuation Tribunal Napier
4 September, 12 October 1981
Judge Sheehan, AR Wilson

Objection – School property revalued – Relevance of possibility that land turned to purpose other than zoned or designated purpose – Approach to valuation

The property of Lindisfarne College was revalued and the college objected. The Department made a compromise offer which was not accepted. The value was assessed by the Department on the basis of the continued use of the land for the designated purpose, that is a private school with a comparison of sales of rural land with an allowance for the property being within city boundaries. The college objected that there had been a gross overvaluation of the land bearing in mind the land values of other colleges in the area; that the Department had allowed too much for the possibility that the land could be turned to purposes other than the zoned or designated purpose.

Held, The likelihood of change to the designation was very remote. The proper course was to inquire what was the value of the land on the basis that there was no possibility of a change of zone or designation and then to add any extra amount which should be allowed for any chance of securing permission for some other use.

The prospect of a change in designation is much greater in the case of a private school than in that of a public school.

Cases mentioned

Arbitration between Auckland Hospital Board and Auckland Rugby League Inc [1966] NZLR 413

Dilworth Trust Board v Auckland City Council (1980) 7 NZTPA 198

McKee v Valuer-General [1971] NZLR 476.

Valuer-General v Addington Raceway Ltd [1969] NZLR 327.

Valuer-General v Treadwell [1969] NZLR 320.

Judge Sheehan and A R Wilson: This objection arises out of the five yearly re-valuation of Hastings city by the Valuation Department. In the course of that re-valuation the land value of the property of the College at Pakowhai Road was valued at \$200,000. The effective date of the valuation was 1 October 1979. Consequent on the objection being lodged by the College the Department made an offer of \$165,000 as a compromise figure for the land valuation. The offer was not accepted. The Tribunal is now asked to resolve the dispute.

The College property is situated in the residential suburb of Frimley, on the northern outskirts of Hastings city. It once formed part of the Frimley Estate. The main access to Frimley is off Pakowhai and Omahau Roads, which are the main access routes to Hastings. The Frimley suburb is recognised as one of the prime residential areas in Hastings. It is just over 2 kilometres by road from the main Hastings city centre and the total area of the College property is 7.8584 hectares (19 acres 1 rood 27 perches).

The land has the usual school buildings thereon including a gymnasium, two dwellings, pool and tennis courts. Other improvements include paths, driveway and fencing.

The zoning is designated for Other Community Uses (Private School) with the notation "Lindisfarne College, Private" and has an underlying zoning of Residential 1. The latter zoning provides mainly for open character, single family, detached and semi-detached dwellings at lower densities than other residential zones. A dwelling and up to two units are allowed as a predominate use.

On the question of zoning the Hastings City Council records that its council has recognised that various "private" designations provided for within the Scheme have been invalidated by the provisions of the Town and Country Planning Act 1977. "In furtherance of this recognition the Council has resolved that various remedial modifications should be investigated. Modifications envisaged by the Council would be either, zoning of the land concerned in accordance with underlying zoning, or, establishing specific identification of the sites concerned to the effect that uses currently being carried out are specifically recognised and protect (in effect a special zoning)." The City Council further advises that the Council proposes to discuss the matter with the Board of Trustees of the College so as to have the Trustees indicate their preference as to the alternatives (but, presumably, with the Council having the final decision on the matter).

The value of the improvements of \$800,000 is not in contention.

In assessing the land value of the College in terms of section 2 of the Valuation of Land Act 1951 the Department advises that it has regarded the land as vacant land proceeding on the basis that it may not be used for any purpose other than as used or designated. To this figure the Department has added a further figure representing the change of permission being obtained for a change in designation or for some other use of the College in the future. As indicated, the Department appreciates that private designations, as in this instance, are due to be replaced by either a specific identification or alternatively a zoning in accordance with the present underlying zone. The Department considers a specific identification to be of no real difference to a private designation and believes that the same principles of valuation should apply as if the land were designated.

The Department produced figures to justify a land value of \$175,000 but, in considering absolute parity with other similarly used or designated properties, has reduced the figure to \$165,000.

Very well, the valuation has been assessed by the Department on the basis of the continued use of the land for the designated purpose, that is, a private school. The Department has arrived at the figure by comparison with sales of rural land on the fringe of Hastings city but with the addition of a 10% allowance by virtue of Lindisfarne College being situated within the city boundaries. The land value as designated is shown at \$95,000.

In this assessment of the unencumbered market value (the value of the land based on its underlying zone of Residential 1) a figure based on sales evidence was assessed at \$200,000. The Department then examined the potential or the difference between the value of the land as designated and its unencumbered market value. By deduction the resulting figure was \$105,000. The Department then considered the question of the prospects or success of the uplifting of the designation. The Department concluded that there would be little difficulty in uplifting the designation for private school purposes. It allowed a 75% chance in that respect. That 75% of the \$105,000 difference or potential amounts to \$79,000. The value as designated of \$95,000 is then added by the Department to the figure of \$79,000 to arrive at the land value. This comes to \$174,000 which has been rounded to the sum of \$175,000. The summary of the valuation is succinctly set out on page 3 of Schedule 1 annexed to the written report or evidence of valuer Kenneth Parker.

The Department has then considered the aspect of uniformity in respect of other sites designated for private school purposes. Their figures in that respect are set out on page 3 of the said Schedule. The Department, as a result of review of those figures, considers that by comparison, an overall rate per hectare of \$21,000 to the College would be fair and reasonable. Therefore on the basis of this figure of \$21,000 per hectare the figure of \$165,000 is arrived at for the 7.8584 hectares.

It is on the basis of the foregoing figures that the Department considers its valuation to be fair and reasonable.

Mr Gallen QC, for the objector College, in submitting that there has been a gross overvaluation of the land of the College, points to the disparity between the land valuations of the adjacent Hastings Girls High School and Lindisfarne College. The 1974 valuations showed the same figure in respect of the land value of each of the two schools, but the 1979 figures show that the Hastings Girls High School land figure has increased by little more than 8% while that of the College has

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increased by 86%. He is unable to see any reason or justification for the disparity. The valuations should still be identical. Both properties have the same kind of designation and are similarly affected. Admittedly the designations can be changed or removed but the prospects of so doing would be just as difficult in the case of the College as in the case of the Hastings Girls High School. Moreover the Girls High School site has greater residential potential. In any event there is little prospect of any change in designation by the College. In the 1982 year the College can no longer accept further pupils as the school roll is full. The grounds are fully committed for educational purposes and the College has no desire to subdivide any of its land for residential use. The College is confident that its school will be a place of education for many years to come and see the day when the land will be used for residential purposes. Not only would there be objections from those associated with the school to any changed designation, but there would be objections from the residential property owners living in the properties adjacent the College.

Mr Gallen referred the Tribunal to various authorities including *McKee v Valuer-General* [1971] NZLR 476, *Valuer-General v Treadwell* [1969] NZLR 320 and *Valuer-General & Another v Addington Raceway Limited* [1969] NZLR 327.

Mr Gallen referred to the *McKee* case as being the highest authority for the proposition that town planning restrictions or zoning restrictions require to be taken into account when assessing the value of land. The headnote of that judgment (which is a Court of Appeal decision) states, *inter alia*, that the restrictions which the zoning of a town planning scheme imposed upon land . . . within a zone are to be taken into account in assessing the unimproved value of the land within the zone.

The Tribunal was also referred to the case of the Auckland Hospital Board and the Auckland Rugby League (the full title being an *Arbitration between the Auckland Hospital Board and the Auckland Rugby League Incorporated*, 1966 413). That case states that in making a valuation of land under the provisions of a lease for the purpose of assessing the rental payable thereunder, town planning restrictions limiting the purposes for which the land in question may be used must be taken into account. The possibility of such restriction being removed must also be kept in view and allowed for.

Mr Gallen submits that the principles in the various cases show that the land must be valued having regard to the purpose for which it is zoned but potential requires to be taken into account in the sense that to the value of that land there must be added a figure based on the possibility of the land being turned to other than the zoned or designated purpose. The question, according to Mr Gallen, is how much extra should be allowed for such chance? In other words, said Mr Gallen, how real is the likely changing in designation in respect of the College land, how real is the potential and what figure is a fair figure for such potential.

The tenor of Mr Gallen's submissions is that the Valuation Department has obviously allowed too high a figure for such potential. He points out that a zoning or designation removal requires a hearing by the Council. Almost certainly there would be objectors to the change. It would be by no means a certainty that, even if the College itself decided to sell the land or subdivide it for residential purposes, the change would be allowed. That point has to be taken into account in assessing the valuation.

Mr Gallen, in referring to the decision of the Wellington Land Valuation Committee in the *Samuel Marsden Collegiate Trust Board* case, the 1972 case (LVP 48/71), (a copy of which decision was later given the Tribunal by Mr McGuire for the Department), pointed out that with Lindisfarne College there was no demand for the site by other schools, either public or private. Further, there were the reasons already advanced why the College wished the property to continue to be zoned or designated for school use purposes (the heavy roll and the certainty that the place will be a place of education for many years to come).

Mr Gallen called Mr Terrence Rawcliffe, a registered public valuer. He produced a report based on the uniformity of the College valuation in relation to other designated school sites within Hastings city, in particular in relation to the adjacent Girls High School property. The report also

covered various aspects of investigations by Mr Rawcliffe concerning the possibility of the College property being used for any purpose other than that for which it is currently designated.

His analysis of the 1979 Government Valuation was annexed to his report and his figures indicate that the valuation represents \$10,700 per hectare or 72.5% added potential for the likelihood of change of use by relation to comparable public school lands.

Mr Rawcliffe's comparative land value assessments state that the most comparable property would be the adjoining Hastings Girls High School which also abutted onto Frimley Park but to a slightly smaller area of the park. The Girls High School property is of better shape and enjoys both full corner influence and a wide frontage to a popular residential street, Frimley Road. He maintains that the Girls High School land would have greater value than that of Lindisfarne College.

As to the likely demand for designated school site within Hastings city he concludes from enquiries made that there is a 2% per annum decline in public school rolls which is being projected to equate with a climb of 20% over the next ten year period. On recent roll levels (from March 1981 to August 1981) Hastings Girls High School has shown a decline in the region of 11%. Further enquiries made indicate there is little prospect of the Roman Catholic Education Management Board seeking any land, or further land, in the Hastings area. He concludes there is little evidence of demand either from the public or private sector for the purchase of further school sites in the area.

On page number 4 of his report he deals with the possibility of potential and he concludes that after taking the various factors listed by him into consideration, there would be little practical likelihood of the College favouring the prospects of subdivision or disposal within the foreseeable future.

Next, on page 5 of his report, he deals with the question of the uplifting of designations. It is not proposed to repeat the various points made by him as they are set out succinctly and precisely on that page. However his conclusion is that there is factual evidence of a number of designations being uplifted in respect of both private and public designated land in the Hastings area. However, he says there would appear to be little demand from any other source for the purchase of existing school sites and there is little likelihood of the College contemplating partial or total disposal of the College property. The evidence shows there to be equal scope, he says, for the uplifting of private or public use designations and, accordingly, similar valuation principles to the two school properties should be applied. In view of those factors, he contends that the 1979 land value assessed for Lindisfarne College should be consistent with similarly designated school sites and, in particular, that of the adjoining Hastings Girls High School.

Mr McGuire, for the Department, states that it begs the question that the College has no intention of changing its use. The question for the Tribunal is the likelihood of an approved change of designation, if sought. In the *Samuel Marsden Collegiate* case a 100% chance was allowed by the Land Valuation Committee for uplifting the designation for private school purposes. In this case a figure very considerably less than 100% has been adopted. As stated, he says that the fact that the school had no intention of changing its use is largely irrelevant. In the *Auckland Hospital Board and Auckland Rugby League* case the League Board would no more consider allowing Carlaw Park to be subdivided for residential use than Lindisfarne College would consider changing its designation or use. The question is the likelihood of approval of a change of designation if sought. The Tribunal was referred to the *Dilworth Trust Board v Auckland City Council*, (1980) 7 NZTPA 198.

Mr McGuire states there is nothing so special about Lindisfarne College as to restrict the rights of the Board of Trustees to deal with the land as private owners and that if the question of assessing the chance of a change in designation were considered, then the Board of Trustees would be no more fettered than if other property owner in obtaining a change of designation to residential land. Mr McGuire went on to say that the community had more at stake in the Girls High School property. It was Crown land. If the use were changed the community would be much more likely to object because of the question of general community use. The community, generally, would not have the

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same rights or powers for opposing any change of designation sought by the College Board of Trustees.

Mr McGuire places considerable stress on the words of Perry J in the *Auckland Rugby League* case where the learned Judge, in remitting the matter back to the arbitrator, gave the following direction:

"The law requires you to take into account in your valuation the chance, if any, of permission being obtained for some other use at some future time and to value such chance and to add such figure (if any) to the valuation otherwise reached on the assumption that there is no possibility of its being used for any other purpose than as designated."

Mr McGuire's contention is that the reference to the chance of some other designation being approved has to be viewed in the sense of what the chances would be if the Board of Trustees sought the designation rather than what changes are there of the Board of Trustees seeking a change in designation and of such designation being approved.

In his closing remarks Mr Gallen states that the point is wider than that made by Mr McGuire. All the aspects of the possible change in designation require to be taken into account. Accordingly if it were more correct that the Hastings Girls High School designation would be unlikely to be changed because of the objection thereto of the Minister of Education, yet there was before the Tribunal the evidence that the likelihood of change to the designation was most remote. In effect, both schools are on all fours. Indeed, the likelihood that there would be more objection to the College change of designation because of the likely objections of residents of the houses backing onto the school property, there being no such residents in the case of the Girls High School. Mr Gallen states that all the Tribunal can do is to arrive at a base figure and add something for potential. The valuations of the two schools should be arrived at on the same basis. The Girls High School land is, if anything, more attractive. Taking all factors, balancing and counter-balancing, into account, the valuations should be the same.

In considering all the foregoing submissions (both for the objector and for the Department) the Tribunal goes back to the *Auckland Rugby League Incorporated* case of Perry J. At page 423 of that case, when considering the question of the potentiality of the land and how such potentiality must be taken into account, Perry J went on to say that the parties were in agreement that if the parties were in agreement that if the land were not a designated area it would be of greatly enhanced value as industrial land. The parties were in further agreement, he said, that such potentiality could only arise if the designation were removed. He then went on to say as follows:

"It seems to me then that the next question must be: 'What additional sum would a hypothetical purchaser, whether a sports body or any other person, be prepared to pay for the chance of having the restriction removed and being able to explore its potential as industrial?'"

Perry J referred to the approach of Kitto J in the *Royal Sydney Golf Club* case, 1957 CLR 379:

"I think the proper course is to enquire first what was the value of the land on the footing that there was no possibility of its ever being turned to other than recreational purposes and then how much extra should be allowed for such chance as there was of securing permission for some other use at some future time."

Very well, accepting that is the way the problem should be examined the Tribunal first records the following points:

- 1 No evidence was adduced to dispute the Department's value of \$95,000 for the value of the land as designated for a private school.
- 2 Similarly, no evidence was adduced to dispute the \$200,000 figure for the residential value of the land which requires to be regarded as vacant land.
- 3 As indicated, the land must be valued having regard to its zoning but, at the same time, the potential for change of zoning for a higher use must be assessed.
- 4 Accordingly, the only assessment in contention is the Department's figure of 75% in respect of the "chance" of uplifting the restrictive designation.

5 Boards of Trustees of private schools do change. So too do their policies change from time to time. While there is no present intention of changing the use as a school there is no future certainty in that respect.

6 In the *Samuel Marsden Collegiate Trust Board* case the Land Valuation Committee had evidence that there had been, and could still be, a demand at market price for land for schools, even private schools, which would not be affected by the designation. Further the Committee had evidence that there would be no difficulty in uplifting the designation, if such were required. In the case now before us, while the evidence shows that there is not at present a demand for land for either State or private schools in the Hastings area, the Tribunal accepts there would be comparatively little difficulty in uplifting the designation if such were requested (notwithstanding any opposition coming from the nearby residents – as well as others likely to be affected by a change in designation).

7 The Valuation Department has obviously taken the foregoing point into consideration, at least, having reduced the chance of uplifting the designation from 100% to 75%. It has then further reduced the valuation by a further \$10,000 on the basis of overall parity with other sites designated for private school purposes.

8 There is evidence of uplifted designations in both public and private spheres in the Hastings area.

9 The prospect of a change in designation, if sought, is notwithstanding the points made by Mr Gallen, much greater in the case of the objector, a private school, than in the case of the Hastings Girls High School. The land value of the latter, incidentally, has an inbuilt 20% figure in respect of potentiality.

The Tribunal is drawn to the conclusion that the Department has done all it needed to do to meet the original objection in this case. Its assessment of 75% for the "chance" of uplifting the designation is, in the light of the evidence and in the light of the principles in the *Samuel Marsden* case, most fair and reasonable.

It is appreciated that here is a considerable disparity between the land valuation figures of the Girls High and of the College. However the values require to be looked at from the point of view of the true 1979 values and not by way of comparison with the 1974 values or by way of an equal proportionate increase in those values.

The Tribunal is satisfied that the objector has not discharged the burden imposed on it by the Act to show that the Department's value is incorrect. The figure of \$165,000 has not been shown to be other than fair and reasonable.