

Appeal No. VA09/1/013

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

**Westpoint Sports & Leisure Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**RE: Property No. 2192217, Sports Centre at Lot No. 1A (fl 0 and 1), Westpoint, Carrigrohane, Ballincollig, Cork Lower, County Cork.**

**CERTIFICATE OF CHAIRPERSON**

Pursuant to Rule 32 of the Valuation Act, 2001 (Appeals) Rules, 2008 I, Sasha Gayer, Chairperson of the Valuation Tribunal, hereby correct the original determination as follows:-

The penultimate sentence in the Judgment of the Tribunal issued on the 31<sup>st</sup> of August, 2009 is hereby amended so that it now reads:

“The Tribunal allows the appeal and directs that the valuation of €500 in respect of the entire premises, be reinstated.”

**DATED: 16<sup>th</sup> Day of July, 2013**

**Sasha Gayer S.C. - Chairperson**

Appeal No. VA09/1/013

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO RULE 32 OF THE  
VALUATION ACT, 2001 (APPEALS) RULES, 2008**

**Westpoint Sports & Leisure Limited**

**APPELLANT**

**and**

**Commissioner Of Valuation**

**RESPONDENT**

RE: Property No. 2192217, Sports Centre at Lot No. 1A (fl 0 and 1), Westpoint,  
Carrigrohane, Ballincollig, Cork Lower, County Cork.

BEFORE

**Sasha Gayer S.C.**

**Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**DECISION OF THE CHAIRPERSON IN RESPECT OF  
AN APPLICATION PURSUANT TO ORDER 32 OF  
THE VALUATION ACT, 2001 (APPEALS) RULES, 2008  
ISSUED ON THE 16th DAY OF JULY, 2013**

By Notice of Appeal dated the 4<sup>th</sup> day of March, 2009, the Appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €725.00 on the above described property.

The grounds of Appeal as set out in the Notice of Appeal were:

“The current valuation is excessive and the 1<sup>st</sup> floor use has recently changed. The rent has been decreased thus resulting in a material change of circumstances. The property could not sustain the original rents.”

The Appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 8<sup>th</sup> day of June, 2009. Ms. Sinead Curtis, B.L., instructed by Messrs Daly, Derham, Donnelly, Solicitors, represented the Appellant and Mr. Terry Dineen, B Agr Sc, a District Valuer with the Valuation Office represented the Respondent.

The division of the Tribunal which heard the Appeal was chaired by Michael P.M. Connellan Esq., then a deputy chairperson of the Tribunal, and the remaining members of the division were Aidan McNulty, solicitor, and Michael F. Lyng, valuer.

**The Judgment of the Tribunal:**

The Judgment of the Tribunal in respect of the said Appeal issued on the 31<sup>st</sup> of August, 2009. This Judgment sets out fully the valuation history and characteristics of the property, the subject matter of the Appeal. The property is a two storey detached complex, used as a sports centre, on a large site on the eastern side of Ballincollig’s link road in Co. Cork. The ground floor has a gross external area of 2,018 square metres and contains an extensive play area for children with multi level cages and mazes, a reception area, a restaurant, coffee dock and toilets. The first floor has a gross external area of 1,782 square metres and consists of an artificial ice rink, a training rink, store, a party room and games area. In addition, there are 247 car spaces in a car park and seven uncovered soccer pitches. The property comprised in the sports centre was valued in two steps. The ground floor of the main building and the car park was valued at RV €500 and

the certificate in relation to this valuation issued in October, 2007. This certificate relates to property number 2192217. The property was then valued, to include the first floor, and this was done on the 30<sup>th</sup> of June, 2008, resulting in a valuation of €725. The Valuation Certificate in respect of this is dated the 6<sup>th</sup> of April, 2009.

**The Hearing of the Appeal:**

At the hearing of the appeal the Appellant argued that the Respondent had erred in law in purporting to revalue the property in 2008. It was submitted by the Appellant that the property comprised in the sports centre had one occupier and that the issuing of the second Valuation Certificate amounted to a revision of the valuation of the property which the Respondent was precluded from carrying out in the absence of a material change of circumstances.

The Respondent's evidence, adduced by Mr. Terence Dineen, a district valuer in the Valuation Office, was that when a valuation of the property was first carried out in 2007 a view was taken by Mr. Dineen that the first floor of the premises was not capable of beneficial occupation and accordingly the value of same was not taken into account. Mr. Dineen could not give evidence of what was comprised in the first floor when the property was initially valued in 2007. Mr. Dineen confirmed in evidence that when he had been asked to revalue the first floor of the property in approximately February/March, 2008 he had taken into consideration the value of the ground floor.

The Decision of the Tribunal:

The Tribunal found in its determination that the Appellant had taken possession of the entire premises as a shell and did a complete fit-out between January and August, 2007. Having regard to the facts as set out above, the Tribunal determined that the Appellant had been in full beneficial occupation of the entire premises at all times from the date of its Lease, the 31<sup>st</sup> of August, 2006. Further, there had been no material change in circumstance of the property as defined in Section 3 of the Valuation Act, 2001 and accordingly "the Respondent is precluded from revising the valuation of the entire property."

The Judgment concludes with the sentence “The Tribunal allows the Appeal and directs that the valuation on the ground floor of €500 be applied.”

**The Application Pursuant to Rule 32:**

Following the above determination of the Tribunal the Respondent issued a Certificate dated the 17<sup>th</sup> of June, 2010, in respect of the first floor of the premises only, which assigns a valuation of €220 to same. This Valuation Certificate refers to property number 2205522.

On foot of this valuation Cork County Council has now demanded local authority rates in the sum of €16,445. The Appellant has continued to pay rates in respect of the valuation of €500 referred to in the Judgment of the Tribunal, but, has not paid any rates in respect of the Certificate issued on the 17<sup>th</sup> of June, 2010. Consequently, the local authority has issued legal proceedings in respect of the monies due to it pursuant to the said Valuation Certificate and these proceedings are presently before Cork District Court. The case stands adjourned to the 24<sup>th</sup> of July next, pending the determination of the Chairperson of the application which has now been brought by the Appellant.

The Appellant now brings this application pursuant to Rule 32 of the Tribunal Rules which allows the Chairperson of the Tribunal to, by a Certificate under his or her hand, correct any mistake in a determination of the Tribunal. The Appellant seeks a deletion of the words or phrase “on the ground floor” in the penultimate sentence of the Judgment of the Tribunal which issued on the 31<sup>st</sup> of August, 2009.

The application pursuant to Rule 32 was listed for hearing on the 22<sup>nd</sup> of April, 2013. The application was heard by the Chairperson of the Tribunal sitting with Aidan McNulty and Michael F. Lyng, both of whom were members of the division of the Tribunal which adjudicated on the Appeal. Michael P.M. Connellan, solicitor, the Chairperson of that division, is no longer a member of the Valuation Tribunal.

Both the Appellant and the Respondent were represented by solicitors and counsel.

**The Appellant's Submissions:**

The Appellant submitted that the inclusion of the phrase "on the ground floor" in the sentence: "The Tribunal allows the Appeal and directs that the valuation on the ground floor of €500 be reinstated." was manifestly in error. The Appellant argued that the sentence as it appeared was inconsistent with the determination of the Tribunal, but, that when the words "on the ground floor" were excised from the sentence in question the finding became perfectly consistent with the determination of the Tribunal.

When asked about the obvious delay in making this application, counsel for the Appellant indicated that the Appellant was unaware of the effect of the alleged ambiguity in the Tribunal's determination until receipt of the Certificate dated the 17<sup>th</sup> of June, 2010 relating to property number 2205522. Legal advice in respect of the matter was not sought by the Appellant until the local authority commenced debt collection proceedings against it. At that point in time the alleged ambiguity in the determination of the Tribunal became apparent to the Appellant's solicitors and they entered into correspondence with the Tribunal with a view to obtaining a Certificate of Correction.

**The Submission of the Respondent:**

The Respondent was also represented by counsel. It was submitted, *inter alia*, on behalf of the Respondent, that because the Tribunal, dealing with the Appeal, had found that there was no material change of circumstances prior to the second valuation of the property carried out in June, 2008, the effect of the determination was that the 2008 "revision" was set aside and the status quo (pre 2008) was restored. This meant, the Respondent argued, that the entry in the valuation list which arose following the 2007 valuation should have been restored. It was submitted by the Respondent that this was in fact the effect of the Judgment delivered by the Tribunal in that the rateable valuation of €500 was restored in respect of the ground floor of the premises. Therefore, the Respondent argued, it was open to the Commissioner to proceed to value the first floor of the premises, as it did in 2010. The Respondent further submitted that the Valuation

Certificate dated the 17<sup>th</sup> of June, 2010 referred to property number 2205522, whereas the property, the subject matter of the original appeal, was property number 2192217. Therefore, it was argued that the Tribunal had no jurisdiction to deal with the valuation of property number 2205522 in the context of this Appeal. The Respondent noted that no Appeal had ever been lodged against the Valuation Certificate relating to property number 2205522.

The Respondent denied that it had taken “advantage” of the alleged ambiguity in the determination of the Tribunal and submitted that no such mistake had occurred in the said determination. The Respondent further relied on the length of time which had elapsed between the issuing of the Tribunal’s Judgment and the Appellant’s application to correct same.

**The Determination of the Chairperson:**

The two members of the Tribunal who were part of the division which dealt with this Appeal and issued a determination in respect of same, Mr. McNulty and Mr. Lyng, have confirmed that the intention of the Tribunal in determining the Appeal was to find that the valuation of €500 was applicable to the entire property so that it comprised a valuation in respect of both the ground and first floor. For that reason the Tribunal determined that the Appellant had been in full beneficial occupation of the entire premises at all times from the date of its Lease, the 31<sup>st</sup> of August, 2006. Consequently, the issue of the Valuation Certificate on the 30<sup>th</sup> of June, 2008 increasing the rateable valuation of the property to €725 amounted to a revision of the valuation of the property. As there had been no material change of circumstance the Tribunal intended to find that this purported revision was invalid and that the valuation of €500 be reinstated in respect of the entire property.

It is clear, therefore, that the Judgment as issued contains an error or mistake in the penultimate sentence.

There is no time limit contained in Rule 32 during which an application must be brought. However, the Chairperson of the Tribunal, when exercising his or her discretion whether to issue a Certificate to correct a mistake in a determination of the Tribunal, must take into account any delay which has elapsed between the issue of the said determination and the application and consider whether there is any reasonable explanation for same. In the instant case a significant delay has occurred, but, the Appellant has by way of explanation indicated that it did not appreciate the difficulties caused to its position by the mistake in the Judgment until legal proceedings were issued against it by the local authority. It appears that the Appellant did not receive legal advice about the mistake in the Tribunal's Judgment and the possibility of applying to amend same when the Judgment initially issued.

When dealing with an application of this kind, it is not open to the Chairperson to look at the issue which arose on the appeal again on the merits. Instead, the Chairperson must determine whether or not the determination of the Tribunal contains an error which can be corrected and whether there are any grounds for refusing to make the corrections sought.

The Appellant's position has been adversely affected as a result of the error in the Tribunal's determination and in the circumstances the Chairperson is satisfied that it is appropriate to exercise the discretion contained in Rule 32 and issue a Certificate to correct the penultimate sentence in the determination of the Tribunal dated the 31<sup>st</sup> of August, 2009 so that it now reads:

“The Tribunal allows the Appeal and directs that the valuation of €500, in respect of the entire premises, be reinstated.”

AND the Chairperson so determines.