

Appeal No. VA11/5/134

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

**Myerscough Fitness Ltd. c/o Jamie Myerscough**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2202741, Gymnasium/Fitness Centre at Educo Gym, Main Street,  
Blackrock, County Dublin.

**B E F O R E**

**Niall O'Hanlon - BL**

**Deputy Chairperson**

**Patrick Riney - FSCSI, FRICS, ACI Arb**

**Member**

**Mairead Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF FEBRUARY, 2012**

By Notice of Appeal dated the 11th day of August, 2011 the appellant appealed against the determination of the Commission of Valuation in fixing a valuation of €38,700 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal and letter attached to the Notice of Appeal are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 21<sup>st</sup> day of December, 2011. At the hearing the appellant was represented by Mr Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI. The respondent was represented by Ms Olga Harney, BSc (Hons) Property Studies, a valuer in the Valuation Office. The Tribunal was furnished with submissions in writing on behalf of both parties. These submissions were detailed and to the point. Both parties adopted their submissions as their evidence-in-chief at the oral hearing.

### **Location**

The subject property is located on Bath Place, approximately 25 metres from the main street in Blackrock, and only a short distance from Blackrock Shopping Centre. It is circa 7 kms from Dublin city centre, is located *circa* 15 metres from Blackrock DART station, with a pay and display car park directly adjoining the subject property. The subject unit is developed to the rear of the main street and it is understood there are only a few other commercial users in this immediate vicinity. Blackrock is a busy commercial area, with good public transport links as it is serviced by regular bus routes and the DART. The primary route into Blackrock is the N31. However, it is understood that, although very close geographically to the centre of Blackrock village, the subject property is in a moderate location in terms of its relative attractiveness, as the significant footfall and retail activity is in the main street of Blackrock village and at the Frascati and Blackrock Shopping Centres.

### **Description**

The property comprises a ground floor gymnasium, with ancillary office use, kitchenette, changing rooms and a storage area at mezzanine level. The main entrance to the property is via Bath Place and the property is located at the rear of 7 Rock Hill in Blackrock village. The access to the mezzanine level is from the left side of the gymnasium, after entry from the main entrance.

### **Accommodation**

Ground Floor Gymnasium (inclusive of changing room and toilets)	107.93 sq. metres
Ancillary Mezzanine Level 47.25 sq. metres consisting of:	
○ a mezzanine kitchenette, office and changing room	32.49 sq. metres
○ unfitted mezzanine store	<u>14.76 sq. metres</u>
Total net internal area (NIA)	155.18 sq. metres

### **Basis of Valuation**

The property was the subject of a Revaluation as one of all rateable properties in the Dún Laoghaire Rathdown County Council area. The Valuation Order for Dún Laoghaire Rathdown County Council specifies 30<sup>th</sup> September, 2005 as the valuation date. Valuation levels were derived from the analysis of available open market rental information of comparable properties and applied to the subject property.

The valuation of this property, on appeal to the Commissioner of Valuation, was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears.

### **Valuation History**

1. A Valuation Certificate (proposed) was issued on 15<sup>th</sup> June, 2010. The property had a valuation of €38,700.
2. No representations were lodged for the subject property.
3. An appeal was lodged by the appellant's agent with the Commissioner of Valuation on 31<sup>st</sup> January, 2011 after which the valuation remained at €38,700.
4. An appeal was lodged with the Valuation Tribunal on 11<sup>th</sup> August, 2011.

### **Tenure**

The subject property is held under a 25-year FRI lease with provision for five-yearly rent reviews from April 2008, at an initial rent of €35,000 per annum. It is understood that the rent was subsequently reduced to €30,000 per annum from 2011.

### **Appellant's Evidence**

Mr Halpin took the oath, adopted his précis as his evidence-in-chief and confirmed that the agreed total area of the subject property was 155.18 sq. metres.

He referred in some detail to his précis of evidence and highlighted the following points:

1. The location of the subject property is very moderate being away from the commercial and retail centre of Blackrock with little footfall as a result. The subject has no profile to the main street and is located in a cul-de-sac which merely provides access to the DART station.

2. The subject is located in a multi-storey unit. All other floors in the unit can be accessed from the main street of Blackrock, but the subject cannot. He argued that this was a major disadvantage for the subject property.
3. Mr Halpin also made the point that the mezzanine level in the subject property should not be assessed at the same level as the ground floor gymnasium, which was valued at €250 per sq. metre. The mezzanine has no natural light and the ceiling height is inappropriate for office accommodation. He also made the point that it was the appellant's understanding that the Commissioner's directive for the Dún Laoghaire Rathdown Revaluation was to value mezzanine sections at a fifth of ground floor levels, and he referred to his comparison no. 3 at Beacon South Quarter.
4. He also made the point that it was unsustainable to suggest that the hypothetical tenant would pay more for this unit than for his comparisons in Dundrum, i.e. the Rock Fitness Centre, (comparison no. 1) and Unit 5, Curves at the Rockfield Centre (comparison no. 2).
5. He stated the Commissioner's approach had failed to take account of the poor location in this case. The property is located behind the main bus terminus for Blackrock DART station and is thus partly obscured for the majority of the day. The subject property also has no private parking, unlike the Rock Fitness Centre in Dundrum which is currently assessed at 12% less than the subject despite having a significant amount of private parking.
6. While he accepted that with this type of property, as with all others, there is a range of values, in his opinion this particular unit fell at the lower end of the spectrum.
7. He argued that the Commissioner's approach in this case was unfair, when all the evidence was taken into account, particularly the initial rent, which was fixed at a time of extreme optimism and has proved to be completely unsustainable.
8. The appellant is seeking to have the assessment on the subject property reduced to a fairer level, taking into account the actual location of the subject, together with the levels applied to other units, as shown by Mr. Halpin's comparisons.

Mr Halpin was of the view that the valuation of the subject property should be determined as follows:

Basement gymnasium	107.93 sq. metres	@	€230 per sq. metre = €24,824
Ancillary mezzanine	32.49 sq. metres	@	€46 per sq. metre = € 1,495

Ancillary mezzanine store	14.76 sq. metres	@	€30 per sq. metre	= € 442
				= €26,761

Estimated NAV Say €26,750

Mr Halpin referred in detail to his comparisons, as follows:

#### Comparison No. 1

Rock Fitness Centre. Ashgrove Terrace, Dundrum, Dublin 14.

This property comprises a gymnasium of 474.30 sq. metres and has been assessed at €220 per sq. metre, giving a net annual value (NAV) of €104,300. Mr Halpin stated that this property is in an excellent location, almost directly opposite the main pedestrian entrance to Dundrum Town Centre, from the main street in Dundrum. It has main road frontage and private car parking for both members and staff.

#### Comparison No. 2

Unit 5, Curves, Rockfield Centre, Dundrum.

This is a ground floor gymnasium of 129.04 sq. metres and has been assessed at €260 per sq. metre, giving an NAV of €29,900. This property is located at the main Balally LUAS stop and across the road from the Dundrum Town Centre. It has ground floor access, a frontage of *circa* 11 metres and is in a far superior location to the subject. It is currently vacant and available to let from Finnegan Menton who are seeking an asking rent of €25,000 per annum.

#### Comparison No. 3

O'Brien's, Beach South Quarter.

This property comprises *circa* 602 sq. metres which has been assessed at €310 per sq. metre and a mezzanine store of 35.2 sq. metres which has been valued at €60 per sq. metre, giving an overall NAV of €198,000. Mr. Halpin said that he included this valuation primarily to emphasise that the mezzanine store had been valued at less than a fifth (i.e. 19.35%) of the ground floor level. He argued that this was consistent with the approach of the Commissioner of Valuation to other ancillary mezzanines in the Dún Laoghaire Rathdown area. However, he accepted that levels for mezzanines could vary between 20% and 50% of the ground floor rate per sq. metre applied in some cases.

### **Cross-Examination of the Appellant**

In answering questions from Ms Harney, Mr Halpin disagreed that the subject property had considerable footfall from the main street of Blackrock and the DART station. He emphasised the subject had restricted profile due to the long-term parking of buses in the pay and display car park located immediately outside the property. When he was asked why he had no specific valuation dates for his comparisons as of September 2005, he pointed out the valuations were located in the same rating authority area and had been assessed under the current Revaluation similar to the subject property.

### **Respondent's Evidence**

Ms Harney took the oath and adopted her précis as her evidence-in-chief. She briefly went through her précis and emphasised that the subject property is only *circa* 220 metres from Blackrock Shopping Centre, is beside the DART station and is well serviced by regular bus routes.

Ms Harney was of the view that the valuation of the subject property should be determined as follows:

Gymnasium	107.93 sq. metres	@	€250 per sq. metre = €26,982.5
Gymnasium	47.25 sq. metres	@	€250 per sq. metre = <u>€1,812.5</u>
			Total NAV = €38,795
Valuation Office estimate of NAV (rounded to)			€38,700

Ms Harney spoke in detail about her six comparisons as follows:

Comparison No. 1: 2c Main Street (rear), Blackrock, Co. Dublin.

This unit is occupied by Evolve Fitness and comprises a ground floor gymnasium of *circa* 72.92 sq. metres, which has been assessed at €250 per sq. metre, giving an NAV of €18,230. Ms. Harney pointed out this property is very close to the subject property, with an entrance from Bath Place, and is similar to the subject property in terms of quality and build. It consists of a ground floor gymnasium space. The property is held leasehold. The rent was set on 1<sup>st</sup> November 2010 at €18,000 per annum, which equates to a rent of €247 per sq. metre.

Comparison No. 2: 2c Main Street (rear), Blackrock, Co. Dublin.

This unit is occupied by Evolution Internet Ltd and comprises first floor offices of *circa* 65.98 sq. metres. It is valued at €280 per sq. metre giving an NAV of €18,470. This property is located very close to the subject property with an entrance from Bath Place. The property is similar to the subject property in terms of quality and build and consists of office space at first floor level. The property is held on a 4-year 9-month lease. The rent was set on 1<sup>st</sup> November 2008 at €19,000 per annum, which equates to a rent of €288 per sq. metre.

Comparison No. 3: 2c Main Street (rear), Blackrock, Co. Dublin.

This property is occupied by Ticket Truck Ltd and comprises second floor offices of *circa* 66.85 sq. metres. It is valued at €280 per sq. metre, giving an NAV of €18,710. This property is located very close to the subject property with an entrance from Bath Place. It is similar to the subject property in terms of quality and build and consists of office space. It is held under a lease from 1<sup>st</sup> January 2007 at €16,000 per annum, which equates to a rent of €239 per sq. metre.

Comparison No. 4: 48A Patrick Street, Dún Laoghaire.

This property is occupied by Sunrise Yoga and is a ground and first floor gymnasium of *circa* 101.21 sq. metres which has been valued at €300 per sq. metre giving a total NAV of €30,800. The property is held under a lease. The rent was set on 15<sup>th</sup> January 2007 at €30,000 per annum, which equates to a rent of €301 per sq. metre.

Comparison No. 5: Rear 7 Rock Hill, Blackrock.

This property is occupied by Visor Ltd and comprises an office with floor area of *circa* 69.08 sq. metres. It has been valued at €280 per sq. metre, giving an NAV of €19,340. It is located in the same building as the subject property.

Comparison No. 6: 7 Rock Hill, Blackrock.

This property is occupied by Starbucks Coffee Company (Ireland) Ltd. This property is used as a restaurant with access from the main street in Blackrock. It comprises space of *circa* 298.84 sq. metres, which is valued at €400 per sq. metre, giving an NAV of €19,500. It is located in the same building as the subject property and consists of retail space.

### **Cross-Examination of the Respondent**

In answering questions from Mr Halpin, Ms Harney made the following points:

1. In her opinion, the mezzanine level in the subject property should be valued at the same level as the ground floor gymnasium.
2. Ms Harney accepted that her comparisons 2, 3 and 5 referred to properties which were used for offices. However, she pointed out that under the Revaluation Order for Dún Laoghaire Rathdown County Council which specifies 30<sup>th</sup> September 2005 as the valuation date, she was entitled to refer to such comparisons in accordance with section 48(3) of the Valuation Act, 2001.
3. While accepting that most of her comparisons were exceptionally small, with no mezzanine levels, Ms Harney made the point that it was very difficult to get an exact comparison for the subject, which she described as a unique property.
4. Ms Harney accepted there is a range of different levels used by the Commissioner of Valuation for valuing the mezzanines in the Dún Laoghaire Rathdown County Council area.
5. Ms Harney accepted that it would be normal to make appropriate allowances when valuing properties with restricted headroom.
6. While accepting that the Zone A level applied in the Main Street, Blackrock area was at €1,000 per sq. metre, Ms Harney did not accept that there should be a greater discount applied on the subject property.

### **Summing Up**

Mr Halpin made the following points:

1. This is a moderate location.
2. The comparisons submitted by the respondent were mainly purpose-built offices.
3. The comparisons referred to by the respondent were primarily smaller units than the subject property.
4. There is restricted visibility of the subject property due to buses parking directly outside the subject property.
5. There is no private parking available to the subject property.
6. The crucial factor is how the mezzanine level has been valued by the respondent. He argued that there was a clear pattern within the Dún Laoghaire Rathdown County Council area by which the Commissioner values mezzanine areas at levels lower than those applied to ground floor areas, and he contended that this had not been applied in the case of the subject property.



Ms Harney made the following points:

1. There was good profile and footfall at the subject property.
2. There is a car park directly outside the property.
3. This is a good location, beside the DART station in Blackrock and only a short distance from the main street in Blackrock village.
4. Ms Harney was of the opinion that the appellant's comparison no. 3 (i.e. O'Brien's, Beacon South Quarter) is not comparable to the subject property.
5. In her opinion her valuation was fair and reasonable and had been justified by the comparisons submitted by her.

### **Findings**

The Tribunal has carefully considered all of the evidence submitted and arguments adduced by the parties and finds as follows:

1. The statutory basis is set down in the Valuation Act, 2001, wherein at section 48(3) the net annual value of a property is defined as being *“the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.”*
2. The Tribunal is of the view that the most suitable comparison is the respondent's comparison no. 1, a ground floor gymnasium next door to the subject property. This is a smaller unit of *circa* 72.92 sq. metres, which is an area 50% the size of the subject property. In view of this the Tribunal considers that a suitable allowance should be applied to the ground floor area of the subject property.
3. The Tribunal considers the subject property to be located in an area with restricted profile and restricted parking facilities.
4. In view of the fact that the subject property is divided between ground and first floor mezzanine levels with internal access and restricted headroom, it is considered appropriate to apply a suitable allowance in order to arrive at a reasonable valuation.

### **Determination**

Having regard to the foregoing, the Tribunal considers the following to be a fair and reasonable valuation of the subject property:

Ground Floor Gymnasium	107.93 sq. metres @ <del>€</del> 240 per sq. metre = €25,903.20
First Floor Mezzanine:	
Kitchenette, Office, Changing Room	32.49 sq. metres @ <del>€</del> 120 per sq. metre = € 3,898.80
Ancillary Unfitted Store	14.76 sq. metres @ <del>€</del> 48 per sq. metre = <u>€ 708.48</u>
Total	= €30,510.48

NAV Say €30,500

And the Tribunal so determines.