

Appeal No. VA11/5/171

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

**International Leisure Group**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2151085, Gymnasium/Fitness Centre at 8 The Pavilion, Royal Marine Road, Dun Laoghaire, County Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Joseph Murray - BL**

**Member**

**Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 20TH DAY OF FEBRUARY, 2012**

By Notice of Appeal received on the 24th day of August, 2011 the appellant appealed against the determination of the Commission of Valuation in fixing a valuation of €11,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

*"The valuation is excessive both in relation to actual passing rent and comparison in the area and the industry / No regard has been made to profitability."*

The appeal proceeded by way of an oral hearing which took place at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 19th day of January 2012. The Appellant was represented by Mr. Conor McCormick BSc. (Surv), MSCSI, MRICS, ACI Arb of McCormick Estate Agents and Mr. Stephen Pearse, Financial Controller of International Leisure Group (who would give evidence only if necessary) and the Respondent by Mr. Paul Ogbebor, BEng. (Hons) Civil Engineering, a Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given both directly at the hearing and via cross examination. From the evidence presented, the following emerged as being the facts relevant and material to this appeal.

### **The Property**

The subject property trading as Crunch Fitness Premier, Dún Laoghaire, occupies part of a basement of a mixed-use development, consisting of 7 retail units, 5 of which are restaurant units at ground level, with a theatre, public house and residential units at the upper levels. The property consists of a fitness centre and the accommodation includes an 18m swimming pool, gym, changing rooms and office accommodation. The property is accessed from the Marine Road, by steps from pavement level to the entrance level, and a further 14 steps from sub pavement level to the gym reception. There is a tolled public car park with spaces for 300 cars within the Pavilion Complex.

### **Location**

The subject property is located at No. 8, the Pavilion Complex on the Marine Road, Dun Laoghaire, in close proximity to the Dart Station and the adjoining Dún Laoghaire Shopping Centre.

### **Tenure**

The subject relevant property is understood to be held on a 20 year lease with 5 year rent reviews. The rent was reviewed in May 2005 and increased to €290,000 per annum. It is understood that the tenant is currently paying a reduced rent of €204,000.

### Floor Areas

The agreed floor areas, measured on a net internal area (NIA) basis, are as follows:

<b>Level</b>	<b>Block</b>	<b>Use</b>	<b>Area Sq. Metres</b>
Main area	a-d	Fitness Centre	1,341.77 sq. metres
Main area	g-h	Swimming Pool	441.35 sq. metres
Mezzanine	e-f	Office/Fitness area	788.34 sq. metres
<b>Total Area</b>			<b>2,571.46 sq. metres</b>

### Basis of Valuation

The property was the subject of a revaluation as one of all rateable properties in the Dun Laoghaire Rathdown Rating Authority area. The Valuation Order for Dun Laoghaire Rathdown specifies 30<sup>th</sup> September, 2005 as the valuation date. Valuation levels were derived from the analysis of available market rental value 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

- September 2010: A valuation certificate (proposed) was issued at NAV €49,000.
- October 2010: Representations were lodged with the Commissioner of Valuation. Following consideration, the valuation was reduced to €611,000 . This was based on a reduction in the level applied to the fitness and swimming pool areas from €450 per sq. metre to €290 per sq. metre, the mezzanine area from €250psm to €120psm and removal of a 5% quantum adjustment.
- February 2011: Appeal submitted to the Commissioner of Valuation. Following consideration the valuation remained unchanged.

August 24<sup>th</sup>, 2011: The appellant appealed this decision to the Valuation Tribunal by Notice of Appeal.

### **Appellant's Case**

Mr. Conor McCormick took the oath and adopted his précis with two changes, as his evidence-in-chief. The two changes in his précis are as follows:

- Page 9: the first sentence should read 'turnover and rates' not rent.
- Page 14, Section 3.2.3 should read 'valued at €100 per sq. metre not €267.88'.

Mr. McCormick then provided the Tribunal with a review of his submission which included the following points regarding the subject property:-

- The property has wheelchair access via a fire escape but there is no lift service from street level.
- The net internal floor areas are agreed.
- A profitability table showing the relationship between turnover and rates in the relevant property and other units operated by International Leisure Group, illustrates that the industry ratio of rates to turnover is in a range from 2.85% to 4.23% and has a mean of 3.69%. It was contended that the NAV suggested by the respondent would be 2.22 times greater than the average percentage, and further contended that the current economic circumstances do not permit any operational cost to be increased by 222%.
- Mr. McCormick stated that the NAV of the subject property as at 30<sup>th</sup> September, 2005 should be €200,000 and offered the following analysis:

Main Area	1,783.12 sq. metres @ €90 per sq. metre	= €160,480.80
Mezzanine	788.34 sq. metres @ €50 per sq. metre	= <u>€39,417</u>
Total		= €199,896
Say €200,000		

- The consultant valuer then proceeded to outline the factors influencing his valuation of the subject property. He contended that the subject property is a basement property with limited visible frontage (3.7 metres) and advised that demand is very limited for such units. He gave an example in the second phase of the Pavilion development, citing a basement unit of 845 sq. metres. This unit is located approximately 50 metres south of the subject property on Marine Road. It has been available for letting since mid-2005 and

remains vacant. It has a superior street side frontage of 8 metres when compared to the subject.

- Mr. McCormick added that the subject relevant property has no adjoining car parking facility as the Pavilion car park is 100 metres away by external walk and argued that this is a deterrent to potential users of the property as there are a number of competitors in the area with on-site parking.
- He stated that there is a strong commercial presence in the area, but that the local residential population is sparse.
- Mr. McCormick also stated that the size of the property is very large compared with local commercial units and is approximately twice the size of the comparable properties. He argued that there is a case to be made for a quantum allowance on the subject property.

### **Appellant's Comparison Properties**

Mr. McCormick gave examples of four comparison properties

1. Monkstown Pool and Fitness Centre, Monkstown Avenue, Monkstown, Co. Dublin.
2. 311, St Michael's Mall, Dun Laoghaire Shopping Centre.
3. Glenalbyn Swimming Pool, Stillorgan, Co. Dublin.
4. Friarsland Leisure and Fitness Complex, Roebuck Road, Dublin 14.

The consultant valuer submitted that the Monkstown Pool and Fitness Centre is an example of a purpose-built health and leisure facility in a similar location within 2 km of the subject property and is his prime comparator. He advised that it has a superior profile all at ground level, with additional external activities and on site parking. He added that the subject property is twice the size of this property which is 1,350 sq. metres. This Monkstown property is valued at a level of €10 per sq. metre.

His second comparison property is a unit occupied by Dubray Books and is located on the 3<sup>rd</sup> floor of the Dun Laoghaire Shopping Centre. He noted that this property had been valued at a rate of €267.88 per sq. metre which is 7.5% lower than the rate applied by the respondent on the majority of space in the subject property. He added that this unit is a retail unit, fronting two malls within a shopping centre and merely 100 metres from the subject property. The subject property is 20 times larger than this comparator, which is 127 sq. metres, and is also in a basement with frontage of 3.7 metres.

His third comparison property, Glenalbyn Swimming Pool, is primarily a swimming pool with tennis courts and ancillary facilities. It is a purpose built facility with on site parking for 100 cars and it is argued that it is in a better location with a strong residential catchment area. The subject property is twice the size of this property, which is 1,172 sq. metres. This property is valued at €100 per sq. metre.

Mr. McCormick described his fourth comparison property, Friarsland Leisure and Fitness Complex, as a stand alone gym facility, of timber construction with on site parking for 50 cars. The subject property is 1.75 times larger than this unit, which is 1,464 sq. metres, and which is valued at €4 per sq. metre.

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

In response to questions asked by the Tribunal and Mr. Ogbebor, Mr. McCormick advised or confirmed that:-

- His valuation analysis is in accordance with section 48(3) of the Valuation Act, 2001.
- A prospective tenant would consider his comparison properties 1, 3 and 4 as having similar use to the subject property, and they are valued from €4psm to €10psm, though he acknowledged that no. 4 is of timber frame construction.
- He emphasised the importance of car parking which is available on-site at Friarsland Leisure and Fitness complex, in contrast with the subject.
- The Tribunal should consider profitability in their deliberations with regard to the subject property. Mr. McCormick referred again to the turnover rates and ratios and the importance of taking expenses, including costs of repairs, insurance and other expenses into account when considering the value to be applied to the relevant property. However, on further questioning and with reference to section 48(3) of the Valuation Act, 2001, he accepted that valuing by reference to profitability has no basis in rating practice and acknowledged that the evidence submitted in this regard should be disregarded.
- He did not know why the NAV was reduced following representations from €49,000 to €11,000.
- He valued the main area of the subject property at €90 per sq. metres and the mezzanine which comprises office accommodation and lounge area at €50 per sq. metre. He confirmed there was no direct comparison for the mezzanine area.
- He accepted that three of his comparators were located in primarily residential areas and pointed out that comparison property 3 (Glenalbyn Swimming Pool) is also located close

to Stillorgan Shopping Centre.

- The vacant unit referred to in his précis (page 11, paragraph 1) is not submitted as a comparable property, but is chosen by him to illustrate the difficulty in letting basement property in the Pavilion complex. He confirmed that that unit is also accessed by steps.

A discussion then ensued with regard to the frontage of the subject property. Mr. McCormick stated that the subject has a frontage of 3.7 metres and the respondent concurred.

The cross-examination of the appellant continued and Mr. McCormick responded to questions raised as follows:-

He identified the landlord and confirmed that he had acted for him as a professional advisor but clarified that his relationship with him is at arm's length.

He based his estimate of NAV on his comparisons and accepted as previously stated, that the Tribunal could disregard page 9 of his précis.

He did not accept that the subject warrants a higher NAV than comparators 1, 3 and 4, because it is claimed to be a superior property. He did, however, accept that comparisons 3 (Glenalbyn Swimming Pool) and 4 (Friarsland Lesiure and Fitness Complex) are inferior in fit-out terms. He suggested comparison 1 (Monkstown Pool and Fitness Centre), is as modern as the subject and that all his comparison properties are superior when compared with the subject as the latter is at basement level and they have on-site car parking and are approximately half the area of the subject property.

He did not dispute that his comparison 3 opened in 1973, but did not accept that it was an inferior property as it had undergone refurbishment and repeated that his comparison 1 was as modern as the subject which was built in the late 1990s.

He noted that the Valuation Office had applied a NAV of €290 per sq. metre to the subject property and a shop, (comparison property 2, 311, St Michael's Mall, Dún Laoghaire Shopping Centre), which is 20 times smaller, is rated at a rate of €67.88 per sq. metre or 7.5% lower. He accepted that this retail unit is dissimilar to the subject but was selected by him to show the value per sq. metre applied to retail space in the vicinity of the subject.

He was aware that his comparison 2 was valued in terms of Zone A but he did not analyse the valuation on the property from that point of view.

He would not acknowledge that he had failed to demonstrate the valuation to be incorrect.

The subject property was fitted out by the tenant at his own expense and in the pre-letting negotiations the tenant requested further space for a pool which the landlord installed. The rent review was completed at arm's length.

Mr. Stephen Pearse then took the oath.

He responded to questions from the Tribunal as follows:

- He stated a substantial amount would have been spent on fit-out of the relevant property, but he did not have the exact figures.
- When the tenant took the property on a "shell & core" basis, he estimated the fit-out costs in the region of €2 million.
- Rent agreed in 2005 reflected market conditions in the area.
- The lease is at arm's length, between the landlord and tenant.
- The main section of the gym was built initially and the pool followed within two years.
- His predecessor addressed and replied to all lease queries to the Valuation Office.

### **Respondent's Case**

Mr. Paul Ogbebor took the oath and adopted his précis as his evidence-in-chief.

He described the subject as a property finished to a very high standard and referred to photographs of the interior included with his précis.

He confirmed that the property is located in an established area in Dún Laoghaire, comprising a mix of property types. It is situated about 14 km from Dublin city centre and is well linked by bus, train and Dart services.

The areas of the subject were as stated above and agreed.

Mr. Ogbebor advised that the property is held on a 20 year lease with five-yearly rent reviews



at an annual rent of €90,000 fixed on June 1<sup>st</sup> 2005. This equates to €18.42 per sq. metre for the gymnasium and €100 per sq. metre for the mezzanine office. The rent does not include fittings, plant and equipment and the subject relevant property was fitted out by the occupier.

Mr. Ogbebor advised that the property was the subject of a Revaluation Order as one of all rateable properties in the Dún Laoghaire County Council area. The Valuation Order for Dún Laoghaire County Council specifies September 30<sup>th</sup>, 2005 as the valuation date. Valuation levels were derived from the analysis of available market rental values of available properties and applied to the subject property. The valuation of this property on appeal was determined by reference to the values of comparable properties stated in the Valuation List in which they appear, complying with section 48(3) of the Valuation Act, 2001.

Mr. Ogbebor confirmed the basis of valuation and valuation history as outlined above, and contended for the following valuation:

Ground Floor Gymnasium	1,341.77 sq. metres @ €90 per sq. metre =	€389,113.30
Ground Floor Swimming Pool	441.35 sq. metres @ €90 per sq. metre =	€127,991.50
Mezzanine Office	788.34 sq. metres @ €120 per sq. metre =	<u>€ 94,600.80</u>
Total NAV		= €611,705.60
NAV (rounded to)		€11,000

Mr. Ogbebor advised that the levels applied by the Commissioner of Valuation were consistent with and reflected those set on three comparable properties, details of which are set out below:

### **Respondent's Comparison Properties**

Mr. Ogbebor's comparison properties were:

1. Unit 9, Leopardstown Shopping Centre, Ballyogan Road, Dublin 18.
2. Unit 5, Leopardstown Retail Park, Burton Hall Road. Sandyford, Dublin 18.
3. Unit 5, Block 13, Rockfield, Balally, Dundrum, Dublin 14.

1. Unit 9, Leopardstown Shopping Centre, Ballyogan Road, Dublin 18

Mr. Ogbebor stated that his first comparison property is occupied by Figure 8 Fitness for Women and the valuation date is also 30<sup>th</sup> September, 2005, valued as follows:-

Use	Level	NIA(sq. m)	€sq.metre	NAV €
Gymnasium	0	123.17	280	34,487.60
NAV €34,400				

He added that representations were submitted by the occupier and the valuation issued unchanged. No appeal was lodged with the Commissioner of Valuation.

2. Unit 5, Leopardstown Retail Park, Burton Hall Road, Sandyford, Dublin 18

Mr. Ogbebor reported that his second comparison property is occupied by Curves and also has a valuation date of 30<sup>th</sup> September, 2005, valued:-

Use	Level	NIA(sq m)	€sq.metre	NAV€
Gymnasium	1	110.45	270	29,821.50
NAV (rounded to) €29,800.				

No representations or appeals were submitted on this property.

3. Unit 5, Block 13 Rockfield, Balally, Dundrum, Dublin 14

Mr. Ogbebor added that his third comparison property is also occupied by Curves and is held on a 25 year lease with five-yearly rent reviews at an annual rent of €2,000 fixed on January 1<sup>st</sup>, 2008 (FRI basis) which equates to €251 per sq. metre, valued:-

Use	Level	NIA (sq.m )	€sq.m	NAV €
Gymnasium	0	129.04	260	33,550.40
End Allowance				- 3,557.00
Total NAV				29,993.40
NAV (rounded to) €29,900				

Again, no representations or appeals have been submitted.

**Cross-Examination of the Respondent**

In response to questions from the Tribunal and the appellant, Mr. Ogbebor stated the following:-

- Comparisons 1 and 3 are ground floor properties and no. 2 is at first floor.
- The subject relevant property is located near a T-junction and the road gradient falls in the direction of the harbour. He referred to the second photo on page 3 of his précis and confirmed that the pool, gym and mezzanine are below grade.
- He did not have a section drawing of the relevant property.

Mr. McCormick explained that the pool and gymnasium are at one level within the subject property and together with the mezzanine area, all are below grade.

Mr. Ogbebor continued and contended that the 5 star rating and high specification of the gym is relevant to its valuation. He said that he was not aware prior to the hearing that €2 million was spent by the tenant on fit-out. He assumed at the time of valuing that rent included fit-out and based his valuation on this rather than valuing the shell.

He referred to section 31(b) of the Valuation Act, 2001, and noted that the appellant had not previously declared to the Tribunal the level of funds spent on fit-out. He contended that the appellant should have provided complete information and this had not apparently been the case. He also added that the Notice of Appeal document to the Valuation Tribunal requires the appellant to specify his/her grounds of appeal.

He stated that the subject relevant property was initially valued at €450 per sq. metre in line with retail units in the Pavilion complex. Between representation and first appeal, it was agreed to reduce the valuation to bring it in line with other gyms in the area. The 5% quantum adjustment was accordingly removed.

With reference to the suitability of his comparators, he accepted that nos. 1 and 2 do not have pools, no. 3 is 5% the area of the subject property and he had provided rental details of no. 3 only, as he did not have such details on the others. Just one of his comparisons went to representation stage and none was appealed. He added that it was difficult to identify suitable comparison properties as the subject is a modern facility and of a high standard. He did not offer a comparable gym and pool in his précis. He stated his comparison properties are rather basic facilities and could be adapted for other purposes but the subject property may not.

He agreed that there was no similar facility below grade in the Dún Laoghaire Rathdown area. He did not accept that there was an issue with regard to valuing a below grade property with similar properties at ground and first floor levels. He gave an example to support his argument of a Georgian property consisting of three floors over basement where a value of €250 per sq. metre was applied overall.

He stated that all his comparators have on-site parking but acknowledged that the subject is served with shared parking.

Mr. Ogbebor advised that consideration was not given in the valuation exercise of the subject to the limited frontage of the subject property, as it is not valued as a retail unit.

He stated that the block plan describes the pool and gym area as ground floor level and that the subject is not completely below grade.

Both parties approached the bench with copy plans and a discussion ensued regarding whether the subject property is at ground level or below grade. It was eventually agreed by the parties that the subject property is below grade. The respondent was offered the opportunity to consider this matter and following same, advised that he was not authorized to consider making a settlement offer.

Cross-examination resumed and the respondent advised that:

- He accepted the subject is not a ground floor property.
- His valuation method was comparison-based.

He did not know how many car spaces serve his comparison no. 1 (Unit 9, Leopardstown Shopping Centre), but he estimated fewer than 300. He would not consider it was adjacent to Dunnes Stores, Leopardstown. He agreed it had adjoining restaurant and retail units similar to the subject. He accepted that the subject has no dedicated parking and is approximately 20 times larger in area than Unit 9, Leopardstown, valued at €280 per sq. metre but felt this was reasonable as the subject has a higher standard of fit-out.

He agreed that his second comparison property (Unit 2, Leopardstown Retail Park), was similar to the subject, while accepting that it possibly has a free car parking arrangement for 120 cars, is in a retail park with Woodies DIY as the anchor tenant and the subject is approximately 23 times its floor area. He added that the value applied to the subject reflects the higher standard of facilities and fit-out, compared to the level of €270 per sq. metre applied to this second comparison property.

- He stated that he did not consider providing a quantum allowance in his calculations.
- He was not aware of how many car parking spaces were available in his comparison no. 3 (Unit 5, Block 13, Rockfield, Balally, Dundrum). He stated this property had an inferior fit-out to the subject and accepted that the subject was approximately 20 times its floor area.
- He defended his selection of comparators, stating he chose from within retail units and not stand-alone properties.
- He did not accept that an allowance should be made to the subject property because of the absence of on-site parking. He contended that this was not required as there is car parking available, within a short walking distance, to the rear of the subject property.
- He expressed his confidence in the valuation of €290 per sq. metre for the main area of the subject, stating this was a fair and equitable valuation given the standard and fit-out of the subject. He repeated that €450 per sq. metre had been assessed on a retail unit adjacent to the subject, for rating purposes.

### **Summation by the Appellant**

Mr. McCormick concluded by stating that the calculation of the valuation by the respondent is flawed as the subject is not a ground floor property and a quantum allowance must be considered given the size of the subject property. He argued that he had carried out a correct analysis of his comparison properties, requested that the subject relevant property be valued at a lower level and again proposed a NAV of €200,000.

### **Summation by the Respondent**

Mr. Ogbebor stated the onus is on the appellant to prove that the value on the list is incorrect and that he has not done so. He requested that the Tribunal uphold the valuation of the subject property.

## Findings and Conclusions

The Valuation Tribunal thanked the parties for their efforts, their written submissions, arguments and contributions at the hearing.

The Tribunal finds that:-

1. The evidence supports the argument that the subject property is below grade and is not a ground floor property and this fact impacts on its value and needs to be reflected in the valuation.
2. The comparison properties 2 and 3 submitted in evidence by the respondent were not subjected to either representations or appeal. The respondent's comparison 1 was not appealed to the Commissioner of Valuation.
3. Access to the subject relevant property via steps, and the absence of adjoining car parking, restrict the use of the facility (for some) and would be seen by the hypothetical tenant as negative issues.
4. The subject property may not be suitable for other uses and this would also influence the consideration and decision of a hypothetical tenant.
5. The scale of facilities of the relevant property is unlike those of the comparison properties submitted.
6. The location of the subject in a commercial and part-residential area offers an advantage over its comparators.
7. The Tribunal has regard to the range and scope of services on offer at the premises and considers that same would be viewed as positives by the hypothetical tenant.

## Determination

The foregoing considered, the Tribunal determines that the valuation of the subject property be computed as follows:-

Main area	1,783.12 sq. metres @ €188.50 per sq. metre	=	€36,118.12
Mezzanine	788.34 sq. metres @ €78.00 per sq. metre	=	<u>€ 61,490.52</u>
Total NAV		=	€97,608.64

NAV say €98,000

And the Tribunal so determines.