Appeal No. VA12/2/008

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

The Irish Parachute Club Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2210374, Club House, Airport at Lot No. 3A/1 Clonad, Clonbulloge, Edenderry 1, County Offaly.

B E F O R E

John O'Donnell - Senior Counsel	**Chairperson**
Brian Larkin - Barrister	**Member**
Aidan McNulty - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 27TH DAY OF JULY, 2012

By Notice of Appeal received on the 9th day of May, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €68 on the above described relevant property.

The grounds of appeal are set out in a letter accompanying the Notice of Appeal, copies of both of which 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, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 16th day of July, 2012. At the hearing, the appellant was represented by Mr. Victor Clarke of Clarke, Jeffers & Co. Solicitors. Mr. Eddie Duffy a Director of the appellant company gave evidence to the Tribunal. Mr. Michael O'Toole, Director of the appellant company and Ms. Sandra Murphy of Clarke, Jeffers & Co. Solicitors were also present. Ms. Grainne O' Neill BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Mr. John O'Connor, BA (Hons), a Valuer at the Valuation Office, was also present and gave evidence.

Preliminary

1. Prior to the commencement of the hearing Mr. Clarke, on behalf of the appellant, indicated that the legal issue to be considered was whether or not the property in question was rateable having regard to paragraph 15 of Schedule 4 of the Valuation Act, 2001 ("the Act"). In essence, he contended that the issue was whether or not the relevant buildings in question constituted a "*community hall"* within the meaning of the Act.

2. While a suggestion had been made in the course of submissions that the property might be relevant property not rateable under paragraph 16 of Schedule 4 (being a property occupied by a charitable organisation using the land in question exclusively for charitable purposes and otherwise than for private profit) this was not pursued at the hearing by agreement of all the parties. The only issue for determination, therefore, was whether or not the relevant buildings were a "community hall" within the meaning of the Act.

The Property

The premises the subject matter of the appeal are in the ownership of the company since 1988. The assets of the company comprise a runway, two hangars and premises, aircraft and parachuting equipment. There is also a café/canteen area, though this café/canteen area is not contained within the subject matter of this appeal as it is accepted that this property is rateable.

The premises the subject matter of the appeal comprise a members' room with a pool table, TV and toilets. This is part of the building within which is also contained the café/canteen area.

In addition the first hangar comprises an aircraft storage area, equipment storage, training rooms, manifest office and showers/toilets. The second hangar comprises an aircraft storage area which is also used for performing maintenance on the Appellant's aircraft at prescribed intervals. The lands in question are situated at Clonad, Clonbullogue, Co. Offaly.

Issue

The issue in question is one of rateability only; quantum is not in issue.

The Appellant's Case

By way of opening submission, Mr. Clarke indicated that the premises in question came within the meaning of "*community hall*" as defined in Section 3 of the Act. In this regard he indicated:

1. The premises are not registered as a club under the Registration of Clubs (Ireland) Act, 1904.

2. The premises do not make a profit in the sense of a gain; any monies made go back into the club to meet the significant costs of aviation fuel and other costs associated with the activities of the club in question. He indicated the club had made significant losses and certainly was not making a "*gain*".

3. It was submitted that the premises was used by inhabitants of the locality generally. While anyone who wanted to undertake a parachute jump would have to become a member of the club (for health and safety reasons) no-one had to be a member of the club in order to use the recreation area whether to use the pool table or to watch the television. Mr. Clarke submitted there would be evidence that a number of people within the local community did use the premises and that while usage might not be comparable to the local usage of the basketball arena in **VA08/5/073 - National Basketball Arena**, this was because the club itself had of necessity to be located in an isolated area because parachute jumps of necessity had, for obvious safety reasons, to take place in an area that was not heavily populated. In his submission the recreation area was similar to a community hall which might be situated in an otherwise sparsely populated area of e.g. the Gaeltacht.

4. In his submission the premises were indeed used for recreational purposes; he did not believe this to be an issue.

5. In his submission the property in question was used exclusively as a community hall.

The Appellant's Evidence

Mr. Clarke then called Mr. Eddie Duffy, Director and Secretary of The Irish Parachute Club ("the Club") to give evidence.

In evidence Mr. Duffy indicated he had been involved for 26 years with the Club and had been a Director for 2½ years. The primary function of the Club was to promote the sport of parachute jumping and of aviation generally. The Club had been founded in 1956; it had become a company in 1974 and in 1988 had bought the subject property.

Mr. Duffy told the Tribunal the sport pursued by the Club was a hazardous pursuit and an activity which needed the regulation provided by the Club in question. The Club carried out various checks and procedures in relation to participants and equipment before a jump could take place. He indicated the core membership of the Club was about 200 but there were approximately 1,600 charity jumps per year which were sponsored jumps raising money for charity. These were known as "*tandem jumps*". The Club provided the facilities and the aircraft out of which the jumps were made.

Mr. Duffy indicated that the clubhouse was open to all, although only members of the Club could participate in a jump. The Club was only open at weekends. He indicated anybody could walk in and use the members' room which, although called the members' room, was open to all. There was a TV and pool table in the room. He indicated that the premises in question were used not just by members but also by people from the local riding club or the local motor cycle club who would drop in from time to time for breakfast or lunch. He indicated also that on at least one occasion Mass had been held for deceased members of the Club in one of the hangars.

In cross-examination he accepted that persons such as members of the riding club or motor cycle club who dropped in did so primarily to use the café which he accepted was rateable. While he agreed he was contending that neither the clubhouse (excluding the café) nor the two hangars should be rateable, he accepted that nobody would be allowed into either of the

hangars unless they were members. He indicated that the normal price of a tandem jump was €280 though a reduction was given for charities and a person jumping for a charity was instead charged only €260. A person jumping for charity would be expected to raise a minimum of €520 so that the charity got any balance of €260 or more left after the payment to the Club of the jump fee of €260. He indicated club members could buy discounted rate tickets (10% off).

In re-examination he indicated there were no other facilities except a TV and a pool table but stressed that these were open to members of the public generally.

The Respondent's Evidence

On behalf of the respondent, Mr. John O'Connor, Valuer, gave evidence. He adopted his précis as his evidence-in-chief. He referred to Schedule 1 of his précis and described the clubhouse as L-shaped including showers, a café, a small bar area, and the "recreation area", being the area with the TV and pool table. He confirmed that the Club was well known locally; it is in a rural area and his report referred to comparator properties nearby, being Edenderry GAA clubhouse and Clara GAA clubhouse.

Submissions

As the appellant had already made submissions in opening the case it was agreed that the respondent would make submissions before giving the appellant a right of reply.

The Respondent's Submissions

On behalf of the respondent, Ms. O'Neill submitted that neither the hangars nor the clubhouse could constitute a "*community hall*" within the meaning of the Act. Dealing firstly with the hangars, she indicated it was clear nobody except members would be ordinarily permitted into the hangars, except perhaps on the one occasion on which Mass was said there for deceased members.

Ms. O'Neill then made submissions in relation to the clubhouse. In her submission, given that the Appellant accepted that the café was rateable and the showers could not be considered as anything other than ancillary to the Club, the real issue was whether the area with the pool table and the TV could constitute a community hall.

Ms. O’Neill referred us to the definition of community hall in Section 3 of the Act. She submitted that so far as the premises were used by locals from time to time, this was not the primary usage, but was rather an ancillary or occasional use from time to time.

She noted also the appellant’s contention that given the nature of the sport the concept of “*locality”* within the meaning of the Act should be expanded. However, in her view the definition of "locality" could not be expanded to mean “country” just because the sport was a minority sport.

Ms. O’Neill referred also to the decision in **VA08/5/073 - National Basketball Arena**. In her submission that case should be distinguished from the current case. In **National Basketball Arena** there was extensive evidence of usage by large numbers of local organisations and community organisations comprising a significant number of inhabitants of Tallaght and the surrounding locality. Here on the other hand the premises appeared to be used by people not primarily from the locality but from a much wider geographical range. Further, such usage as is made of it by locals is ancillary to the main object which is the parachute club. Further, insofar as locals use it to have breakfast or lunch following trips with the riding club or the motor cycle club, they were using the part of the premises which was undoubtedly rateable and in the circumstances their use of the premises could not be considered use compatible with it being defined as a “*community hall”*.

In her submissions the term “*community hall”* was directed to the public at large rather than to a particular class of persons having regard, *inter alia*, to the Determination of the Tribunal in **National Basketball Arena**.

The Appellant’s Submissions

Mr. Clarke also referred to the definition of “*community hall”*. In his submission there was nothing in the definition which required the premises in question to be “*ordinarily used”* or “*ordinarily allowed to be used”* for a particular primary object.

Mr. Clarke submitted that the sporting body whose home the premises is exists in an isolated area by necessity. In his submission the intention of the Legislature cannot have been to discriminate against such a sporting body. He emphasised that the premises is used by other clubs who he submitted did use the washroom facilities before eating. (It should be noted there was no direct evidence to this effect). In his submission the premises did not expressly

welcome members of the public but it didn’t need to since it did not exclude them. In addition, it was indicated on the website that the premises were open for “*special events”*. He indicated there was one other club, in Birr, of which he was aware.

With regard to the hangars, he submitted that the usage of the hangars was a usage incidental and/or ancillary only to the activities of the Club and he referred us in this regard to part of the Determination in **National Basketball Arena**. He submitted the hangars were used to house and protect aircraft which was ancillary only to the activities of the Club.

The Law

Section 3(1) of the Act defines "community hall" as follows:

“community hall” means a hall or a similar building, other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904, which—

(a) is not used primarily for profit or gain, and

(b) is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which—

(i) involve participation by inhabitants of the locality generally, and

(ii) are recreational or otherwise of a social nature;

Paragraph 15 of Schedule 4 of the Act includes as relevant property which is not rateable:

*“*15.—*Any building or part of a building used exclusively as a community hall*".

We are satisfied that the premises in question are premises other than a club registered under the Registration of Clubs (Ireland) Act, 1904. We are also satisfied that they are premises which are not used primarily for profit or gain. We are also satisfied that the Appellant occupying the premises permits the relevant area of the clubhouse (being the TV/pool-table room) to be used for purposes which are recreational or otherwise of a social nature. We have some doubts as to whether the hangars could be said to be used for purposes which are recreational or otherwise of a social nature, though they are undoubtedly used for purposes ancillary to the "recreation" (which, for those of an adventurous disposition, it is) of parachute jumping.

However, it seems to us the core issue is whether or not the premises are used “*for purposes which involve participation by inhabitants of the locality generally”*. We note with

admiration the ingenious argument made by Mr. Clarke that the concept of "*locality*" should be expanded because of the nature of the activity in question (which it is suggested draws people from all over the country); which, because of that nature has to be conducted in an isolated locality.

Having considered the evidence it does not appear to us that the clubhouse is used ordinarily by members of the locality generally. While there is the occasional visit from members of the riding club or motor cycle club, the purpose of this visit seems to be primarily to eat meals in the café which is undoubtedly rateable.

In the circumstances it appears that it is not the TV/pool-table room but rather the café which such locals as use the place for purposes other than parachute jumping use it at all. It should be said, however, that any such usage by persons who are members of other local clubs does not in our view on the evidence amount to use on any kind of regular basis which might suggest that their usage was the ordinary kind of usage. In reality, the persons who use the relevant part of the premises in question "ordinarily" are members (temporary or long-term) of the Club, i.e. participants in parachute jumps. While it may well be that the Club does not prevent members of the public generally from entering the premises (though they are clearly prevented from entering the hangars) the fact that they are not prevented from using the premises does not mean that inhabitants of the locality generally do actually use the premises on any kind of regular basis, although it is clear some locals use the rateable area of the café from time to time. It does not seem to us therefore that the premises are "*ordinarily used on a day to day basis by persons living in the area or in the locality generally*" as we decided in the **National Basketball Arena** case. It does seem to us there is a significant distinction between the evidence of local usage by various different local inhabitants, both singularly and in groups in **National Basketball Arena** on the one hand, and on the other hand the evidence of usage here.

We note the Determination of the Tribunal in **VA05/3/001 - Dublin Public Service Radio Association** wherein the Tribunal determined as follows:

> " *The configuration of the building or shape of the hall is not material. However, proportionality in the physical sense as to what we understand by "community hall" is important. The main emphasis is on hall or large room and this of course may also*

have ancillary rooms such as toilets, a kitchen, tearoom or changing room. The focus is on a "hall" or large chamber for the community as understood in its ordinary sense or meaning with spatial area greater than other ancillary units in the building. The hall is the dominant feature. This does not take from the fact that a "community hall" could well be an integral part of a large building which is used for other purposes. The "community hall" itself has to be used exclusively as such.

"Usage- Community Hall"

The words we have to consider in this regard are:

Ordinarily – the occupier must ordinarily use it as a "community hall" or ordinarily permit it to be used as a "community hall". Use must have a custom or habit and not just for "ad hoc" use.

Purposes – this indicates multiplicity of use. This would make it more communal and open to the community generally.

Generally – this relates to the point above that the community generally should be involved and not just a section of the community."

In our view the concept of a "*community hall"* is a concept directed to the public at large rather than to a particular class of persons, e.g. members of a club. It seems to us the community hall should be open to being used by various different people for various different activities including concerts, meetings and other recreational activities in which inhabitants of the locality participate on a regular basis.

However we are of the view that the premises in question does not qualify as a community hall. The persons who use the hall in question are not inhabitants of the locality generally; they are as a general rule members of the club. We note the respondent valuer utilised as comparators two local GAA clubhouses. In our view the subject premises is far more akin to a clubhouse of a club which, while admitting members of the public, is used principally and ordinarily by members/participants rather than by the public at large. In the circumstances we

are of the view the premises is not a community hall and so does not fall within paragraph 15 of Schedule 4 of the Act and is thus rateable.

Determination

The Tribunal determines the property is rateable property. The appeal is dismissed.

And the Tribunal so determines.