

Appeal No. VA16/1/024

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

**Matthew Dwyer**

**APPELLANT**

**And**

**Commissioner of Valuation**

**RESPONDENT**

**In Relation to the Issue of Quantum of Valuation in Respect of:**

Property No. 5005954, Warehouse/Warerooms, Ward Cross Indoor Astro, Newpark, The Ward, County Dublin

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 23RD DAY OF DECEMBER, 2016**

BEFORE:

**John Stewart – FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Orla Coyne - Solicitor**

**Member**

By Notice of Appeal received on the 19<sup>th</sup> day of January, 2016 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €141,600 on the above described relevant property on the grounds as set out below. The respondent confirmed a reduction from €141,600 NAV to €133,700 before the hearing.

The Grounds of Appeal as set out in the Notice of Appeal are:

1. The subject property's estimate of net annual value is excessive and inequitable. That the planning permission expressly states that the property can only be used for indoor football pitches. The property is not a warehouse and it is not an industrial property as described by the Valuation Certificate.
2. The property is rural and could not function as a commercial entity without the operators being prepared to live on site and the annual turnover was in the region of €80,000.
3. That the subject property was constructed from a second-hand steel portal framed industrial building which had been deconstructed in the UK and moved to Ireland and that it had no concrete floor and had a basic finish with no 3-phase power and un-plastered walls.
4. That the appellants are not aware of any other Astro-park valued in the Valuation List in the local authority in Fingal. The most appropriate method to value the subject property may be section 49(2) of the Valuation Act 2001 based on its construction cost.

In the alternative if the property is to be valued by reference to section 49(1) of the Valuation Act 2001 that the only truly comparable evidence would be equestrian centres.

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Holbrook House, Holles Street, Dublin 2, on the 6<sup>th</sup> day of December, 2016. Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, represented the appellant and Mr. Sean Donnellan, a Valuer in the Valuation Office, represented the respondent.

The parties exchanged their respective precis of evidence prior to the hearing and both parties having taken the oath adopted their precis as being their evidence-in-chief, copies of which had been submitted to the Tribunal. This evidence was supplemented by additional evidence provided directly and via cross-examination.

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and from the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

**Preliminary Issue:** Prior to the commencement of the hearing the Appellants raised an issue regarding the area in dispute. Both parties had agreed the floor area of the Indoor Astro pitches at 2,021.05m<sup>2</sup>, the reception/function room area at 246.43 m<sup>2</sup> and the viewing gallery at 93.50m<sup>2</sup>, however the Commissioner contended that additional areas referred to as Block 6 & 7 of 140 m<sup>2</sup> for stores and 650 m<sup>2</sup> for warehouse should be included. These areas were separate to the main area referred to as Block 1-5. The floor areas and their inclusion had not been agreed in advance of the hearing between the parties as required by the Tribunal rules and following a short adjournment the Tribunal ruled that these areas could not be considered at the hearing but the Tribunal was prepared to address the substantive issue as it applied to the agreed areas in Block 1-5. This reduced the overall NAV from €133,700 to €99,400.

**Issue:** - Quantum

**Location:** The subject property is located at Newpark on the southern side of the R121 Finglas/Ashbourne Road and east of its intersection with the R135 at the Ward and west of its junction with the R122. It is situated on a farm east of the N2/M2 at Junction 2 Cherrywood in a mainly rural area.

**Description:** The subject property comprises a re-assembled former industrial building which had been purchased in the UK c.2006. It had an Astro Turf floor laid on a sand and gravel base. The walls were of part reinforced concrete part double skin metal deck construction under a steel portal frame which was finished externally with a pitched and ridged metal deck roof. The eaves height was approx. 7m.

The building was used for indoor football with ancillary changing rooms and a reception/function area and included a viewing gallery.

**Accommodation:** The floor areas were calculated on a gross external basis and agreed at 2,021.05 m<sup>2</sup>, 246.43 m<sup>2</sup> and 93.50 m<sup>2</sup>.

**Tenure:** Freehold.

### **Appellant's Case**

The appellant's case is based on his grounds of appeal that the subject property has been incorrectly categorised as industrial premises by the Commissioner. Mr Halpin stated that the property comprised indoor Astro football pitches with ancillary accommodation. That the pitches were contained within a reconstructed former industrial building which had been purchased in the UK and reassembled in a rural location at an overall cost of €469,000. Mr Halpin further stated that the property was in a Green Belt and that the planning permission was specific and limited usage to indoor football pitches. He described the building as basic as it did not have a concrete floor, no three-phase power and the former roller shutter doors had been boarded up.

Mr Halpin stated that the business generated was poor and that the average annual turnover was €82,655 based on a five-day week. He further stated that the indoor football was an after-work activity limited to winter months.

Mr Halpin reiterated Section 49 (1) and (2) of the Valuation Act 2001 and maintained that there were no purpose-built Astro parks in the lists for Fingal County Council. He specifically addressed Comparison 1 put forward by the Commissioner PN 284782 Indoor Football Ireland's premises which he stated was an industrial premises in an industrial estate that had been converted to provide indoor football. It had been valued as an industrial building and was not a suitable comparable to the subject property. Mr Halpin mentioned that as there was no direct comparable evidence, that the subject property could be valued by reference to the receipts and expenditure method or the contractor's method. He stated that the contractor's method was the more appropriate one in this case as the costs were known and the date was close to the valuation date. This analysis provided an NAV of €24,650. Mr Halpin contrasted this to the receipts method which provided an NAV of €28,557. He effectively discounted this method as firstly the business did not generate a sufficient profit and a hypothetical tenant would not consider such an opportunity and secondly discounting back to 2005 was too

theoretical. He stated that both methods showed that the Commissioner had over-valued the subject property by a substantial amount.

Mr Halpin contended that the property could be valued by reference to comparable property, if either the contractor's method or the receipts method was excluded but he did not accept that the Indoor Football Ireland premises was comparable. He argued that the subject premises could be valued by reference to similar basic structures utilised for sporting purposes and suggested that equestrian centres were comparable. Mr Halpin further stated that these equestrian comparables had an established 'a tone of the list'. He provided an NAV of €45,700 based on €20/m<sup>2</sup> for the football pitches, €20/m<sup>2</sup> for the reception/changing facilities and €4/m<sup>2</sup> for the viewing gallery.

Mr Halpin put forward three comparisons to support his opinion that the subject property could be valued by reference to comparable properties. The first Thornton Park Equestrian Centre PN 570114 at Kilsallaghan had an NAV of €68,400 based on an area of 1,265.99 m<sup>2</sup> at €25/m<sup>2</sup>, stables of 950.21 m<sup>2</sup> at €20/m<sup>2</sup> and modern offices of 237.44 m<sup>2</sup> at €75/m<sup>2</sup>.

The second Kilonan Equestrian Centre PN 1040631 at Cloghran had an NAV of €60,000 based on an arena of 2,049.51 m<sup>2</sup> at €22/m<sup>2</sup>, stables of 88.40 m<sup>2</sup>, 178.73 m<sup>2</sup> and 373.34 m<sup>2</sup> at €18 and €15 and €25/m<sup>2</sup> respectively with offices/toilet accommodation of 60.08 m<sup>2</sup> at €22/m<sup>2</sup>.

A third comparison Gormanston Equestrian Centre PN 1040631 had an arena of 1,699.66 m<sup>2</sup> at €50/m<sup>2</sup> and stables of 512.02 m<sup>2</sup> at €20/m<sup>2</sup>. The Appellant confirmed that he had relied on comparisons 1 and 2 as they were consistent and demonstrated a tone of the list for similar properties used for sporting purposes, but that he could not identify the location of the third comparison and questioned if it was still in existence.

The appellant referred to Planning Permission F04A/1002 dated 20<sup>th</sup> October 2004 which sought inter alia permission for 2 indoor football pitches, changing facilities, offices, and storage space at Newpark, The Ward, Co. Dublin. Permission was granted subject to 6 conditions one of which stated that the proposed building should be used for football pitches only. Correspondence dated 17<sup>th</sup> November 2016 from Fingal County Council confirmed the above user and that the site could not be used for any industry related use per the current development plan and the proposed draft development plan as the area was zoned Greenbelt.

Mr Halpin concluded his direct evidence by reiterating his opinion that the contractor's method was the most appropriate but if that was not accepted by the Tribunal that his second approach, comparison with equestrian centres was reasonable and an acceptable alternative.

Under cross examination, Mr Halpin confirmed that in his opinion there were no direct comparisons in Fingal County Council for a use such as the subject property. He did not accept that the Indoor Football Ireland premises was comparable as it was effectively a standard industrial unit with a concrete floor and had been valued in a similar fashion to the other industrial units within the estate.

When asked about alternative uses which the subject property might be put to he confirmed that due to the restrictive planning permission it was confined to the limited use as indoor football pitches. He agreed that the accounts which he had submitted had not been audited and were in fact management accounts.

After some discussion, it was confirmed that the three comparisons which the appellant had relied upon had eaves heights of 6.5m, 5.2m and 6.2m respectively. Mr. Halpin also agreed that comparison 3 was more remote and that Comparison no. 1 was in a comparable location. The respondents raised the use by the appellant of a paintball company's use of the subject property and the appellant agreed that limited use had been availed of but that this use had been paid for by way of an hourly rate and the charges had been included in the management accounts. He also confirmed that no enforcement notices had been made unlike the logistic use on the adjacent property. This concluded his evidence.

## **Respondent's Case**

Mr Donnellan on behalf of the respondents referred to the legislative background, to context, onus of proof, entries on the list and the method of determining the property's value under the Act. He highlighted the prominent location and proximity to Swords, Ashbourne, Blanchardstown and Finglas. He confirmed the basis of calculating of the floor areas and referred to various photographs included in his submission including one for the paintball usage.

Mr Donnellan described the property as a modern industrial type building and insisted that the comparisons utilised by him formed the correct basis for the valuation. His first comparison referred to Unit 5 Airways Industrial PN 284782 Estate NAV €310,000 which had been converted to use as an indoor football arena. His analysis was warehouse 3,359.53m<sup>2</sup> offices 281.45 m<sup>2</sup>, 197.60 m<sup>2</sup>, stores 20.79 m<sup>2</sup> and mezzanine store all at €80/m<sup>2</sup>. He agreed that this property was superior to the subject property which was why an adjustment of €40/m<sup>2</sup> had been made in accessing the subject property.

His second comparison comprised a three-bay warehouse PN 300807 at Newpark The Ward. It contained 634.48m<sup>2</sup> at €60/ m<sup>2</sup> and a total NAV of €31,700. This property was located adjacent to the subject property but was in poorer condition and following representations no change had been made.

His third comparison PN 300795 with an NAV of €7,410 was also located in Newpark, The Ward and comprised a workshop of 123.5m<sup>2</sup> at €60/ m<sup>2</sup>. This property was also located close to the subject property.

The respondent provided an aerial photograph which showed the proximity of the subject property to comparison no 2. He referred to a submission by Eversheds Solicitors which had not included any comparisons. He also referred to various websites which indicated uses other than football for the subject property.

On cross-examination, Mr Donnellan agreed that the basis for valuation was what a hypothetical tenant would pay for a premises with the current planning in place. He also contended that it could have warehouse usage.

In relation to his first comparison the Indoor Football Ireland premises in Santry he agreed that the premises had been valued as an industrial unit in the same fashion as others in the estate but maintained that higher values of €100/120 m<sup>2</sup> had also achieved in Airways.

Mr Donnellan maintained that the value attached to the subject property was comparable to his comparisons which had an established tone of the list. He did not accept that the subject property should be treated differently to the tone as established by his comparisons. He stated that in his opinion the equestrian buildings were not comparable to the subject property.

He conceded that he had originally assumed that the floor of the subject property was of concrete construction but claimed his adjusted valuation had adequately allowed for this. When queried as to how a unique premises could have a tone of the list applied to it he insisted that due allowances had been made to compensate for any differences. He agreed that the subject premises was basic and that he had valued it accordingly and had not attributed any value to mezzanine space below 1.5m in height. He did not accept that a rate of one fifth the ground floor rate should be attributed to the mezzanine area. This conclude his evidence.

The Appellant's summary contended that the property should be valued using the contractor's method but if this was not accepted by the Tribunal that the comparisons should be confined to similar sporting uses and not to industrial comparisons. He confirmed that he relied on his first two comparisons as they were compatible and comparable and had been treated in a similar fashion whereas the location of the third comparison in Gormanston could not be identified and the value attributable to it was inconsistent with other two. He confirmed that no rental evidence was available. He maintained that the valuation should be €24,650 if the contractor's method was accepted and if not that the value should be €45,700.

The Respondents concluded by maintaining that the property had been correctly assessed and that the appellants had not provided any certified accounts to support the receipts basis. He urged the Tribunal to accept the Commissioner's approach and his comparisons and to find in his favour and to affirm the value of €99,400.

**Findings: -**

1. The Tribunal acknowledges that the user is limited to indoor football and that the planning is restricted and will continue to be so for the future as confirmed by Fingal County Council.
2. The Tribunal finds that that the subject property does not comprise an industrial building as it does not have a concrete floor and any such use other than indoor football would be in contravention of both the planning permission granted and the zoning for the area.
3. The Tribunal noted that certified accounts had not been provided and finds that the receipts method is not suitable in this case.
4. The Tribunal also finds that the contractor's method is not the appropriate method and is persuaded that the comparative approach should be adopted.
5. The Tribunal finds that the Appellants comparisons are more persuasive particularly those from Thornton Park Equestrian Centre and Kilronan Equestrian Parks. The Tribunal is mindful of Section 49(1) of the Valuation Act 2001 which states "(i) if the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of Section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the

values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”.

6. The Tribunal did not accept that the subject property could reasonably be compared to industrial comparisons even allowing for substantial discounts.

## **DETERMINATION**

That the net annual value of the subject property be as set out below:

**€57,500** (Fifty-seven thousand five hundred euro - a decrease from €133,700).

Indoor Astro Football pitches	2,021.05m <sup>2</sup>	@	€25.00	€50,526
Reception/function area	246.43m <sup>2</sup>	@	€25.00	€6,161
Viewing gallery	93.50m <sup>2</sup>	@	€10.00	€935
				<b>€57,622</b>
			Say	<b>€57,600</b>

And the Tribunal so determines.