

Appeal No. VA12/1/004

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

Shannon Swimming & Leisure Centre

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No.1700348, Leisure Centre, Swimming Pool (Comm), Land at Lot No. 2E, Tullyvarraga, Clenagh, Ennis, County Clare.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Veronica Gates - Barrister-at-Law

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF JULY, 2012

By Notice of Appeal received on the 19th day of January, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €370 on the above described relevant property.

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

"The Appeals Manager took irrelevant considerations into account and erred in fact and law in determining that the appellant did not fulfil Schedule 4, s.15(a) of the Valuation Act 2001."

"Further, or in the alternative, the Appeals Manager erred in fact and law by failing to consider whether the appellant satisfied Schedule 4, s.16(a) of the Valuation Act 2001."

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal at Holbrook House, Holles Street, Dublin 2 on the 20th day of April 2012. The appellant was represented by Mr. Michael McNamara, BL, instructed by Mr. Joe Molony of PF Molony & Company, Solicitors. Ms. Patricia McCarthy, Honorary Secretary, Shannon Swimming & Leisure Centre, gave evidence on behalf of the appellant organisation. The respondent was represented by Mr. Mícheál O'Connell BL, instructed by the Chief State Solicitor. Mr. David Molony, BSc, MRICS, a Valuer in the Valuation Office, gave evidence on behalf of the respondent. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

The Property

The property comprises a detached structure in use as a leisure complex. The accommodation comprises ground floor entrance, reception, café/lounge area, 25 metre swimming pool, steam/sauna, two sports halls, a games area, changing rooms and a first floor gymnasium.

The property was originally built in approximately 1975 and was extended in 2009/2010. It is of concrete block construction with pitched and lean-to metal cladding roofs. There is also car parking available. The total area is 2,149.83 sq. metres.

The property is in good condition having been well maintained both internally and externally and having been extended in 2009/2010.

Location

The property is located at Tullyvarraga, Clenagh, Ennis, Co. Clare, with a local address of Tullyglass, Shannon, Co. Clare.

Tenure

The property is held freehold.

Rating Authority

Clare County Council.

Valuation History

The property was the subject of a revision and the proposed valuation certificate, issued on the 3rd February, 2011, fixed a rateable valuation of €370. On the 28th February, 2011, the appellant submitted representations to the Revision Officer. On the 30th May, 2011, the Revision Officer issued his decision to make no change to the valuation. On the 6th July, 2011, the appellant lodged an appeal to the Commissioner of Valuation. On the 22nd December, 2011, the Appeal Officer issued his decision to make no change.

On the 19th January, 2012 the appellant lodged an appeal with the Valuation Tribunal.

Issues Arising

That *‘Shannon Swimming & Leisure Centre Company Limited complies fully with the definition within the Valuation Act 2001 as a relevant property not rateable’*, as set out on the Notice of Appeal.

More particular grounds are attached to the appeal application. The grounds of appeal can be summarized as:

- a. That Shannon Swimming & Leisure Centre Company Limited is entitled to charitable status per Schedule 4, Section 16(a);
- b. That the objectives of Shannon Swimming & Leisure Centre Company Limited are fully compliant with the definition of a Community Hall within the Act, Part 1.

Preliminary Point

At the opening of the hearing of the matter, the appellant acknowledged that they could not succeed under the charitable status provision and also dropped a potential jurisdictional complaint. In the circumstances the hearing proceeded on the sole issue of whether or not all or part of the subject property could be considered a community hall.

The Law

Section 3(1) of the Valuation Act, 2001 (hereinafter referred to as “the Act”) provides that:

“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 of 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 provides that “*Any building or part of a building used exclusively as a community hall*” is relevant property not rateable.

The Appellant’s Case

Ms. Patricia McCarthy, Honorary Secretary of Shannon Swimming & Leisure Centre Limited took the oath. The appellant did not provide any written précis to the Tribunal. Ms. McCarthy was questioned by her Counsel, Mr. McNamara.

She gave evidence that it was the public who generally used the premises. She said that there was a charge for use, but this charge was based on the subject premises being a community centre and a not-for-profit organisation. She accepted there was a range of charges depending on the type of use, whether by individuals or a group and the length of time the facilities were being used for. She stated there was a games area which had been turned into a dance studio for the purposes of dancing. She further stated that there were numerous dance classes held there for both groups and individuals. She gave evidence that there was a number of community open days, circa four times per year, which were funded by the local council. She stated this was the only indoor recreational area in Shannon.

Ms. McCarthy outlined the various rooms, sections and parts of the leisure centre, including the drying and changing area, vending machines in the café area, reception, wet and dry changing rooms, foyer, toilets, two sports halls, games area, office, swimming pool, steam/sauna room, plant room and boiler room. Detailed maps were provided and detailed explanations of the use of each of these rooms were provided by Ms. McCarthy.

Ms. McCarthy also gave evidence that the appellant organisation allows use of its shower facilities, at no charge, on request from members of the travelling community.

In relation to the pool, Ms. McCarthy pointed out that there were no restrictions on the use of the pool although some private hours were reserved for use of the pool for life-saving classes by the scuba and swimming clubs.

Ms. McCarthy was then taken through a set of accounts for the appellant organisation. She pointed out that a slight profit was made in 2008 but that any profit went back into the centre. This profit was set out as being €49,147 in 2007 and €91,863 in 2008. She then pointed out that the profit and loss accounts for 2009 and 2010 revealed losses of €19,500 and €94,834 respectively.

When Ms. McCarthy was later questioned by the Tribunal it became clear that in the two years of 2009 and 2010 in which a loss was made, the leisure centre was completely closed down for renovations for part of each of those years. This would also explain the significant drop in the cost of salaries for this period.

The renovations and extensions which were carried out in 2009 and 2010 were carried out with the help of a loan from Clann Credo, a social investment fund. The centre also received an annual grant from Clare County Council as well as donations and income.

Cross-Examination of the Appellant

Mr. Mícheál O'Connell BL cross-examined Ms. McCarthy. Ms. McCarthy was taken through the tariffs which applied to the use of the leisure centre. Ms. McCarthy pointed out that the centre reserved the right to give discount rates on each case as they arise.

She further stated that local clubs do not use the centre for structured training but rather just for get-togethers. She also stated that the dance hall is used for dance and fitness and aerobics classes, which have their own instructors. She stated there would be a maximum of 14 people in any such class. She also stated that the first floor open area was used for recreation purposes, but that it is not rated.

She stated that all profits go back into the centre.

Respondent's Case

Mr. Molony took the oath and gave evidence that the centre was not a community hall, nor any part of it a community hall. He stated that the plans provided to the Tribunal did not denote the use of the areas as a community hall. He outlined each of the areas on the said maps and set out his reasons as to why each area was not a community hall.

Mr. Molony stated that a community hall should be available to all groups for multiple purposes at a nominal charge to cover lighting and heating costs and its use should not be restricted. Clubs and groups, he said, should be free to use the building for their own activities. He was of the view that this leisure centre was only available to those who could afford to pay for the use of the facilities provided.

He further stated that the building was laid out for particular activities and was only suitable for these individual activities, and therefore overall was not available to the community as a whole for unrestricted use.

He stated that the charges were more than merely nominal.

Cross-Examination of the Respondent

Mr. Molony was cross-examined by Mr. McNamara. Mr. Molony agreed that this was a not-for-profit organisation but maintained that the use of the centre was restricted to particular activities, that the cost of the use of those particular activities was more than nominal and therefore the centre was not available to the local community generally and could not be considered to be a community hall.

Mr. McNamara then questioned Mr. Molony on the individual rooms and areas of the leisure centre and their application and use.

Closing submissions by the Appellant

Mr. McNamara referred to the legal submissions submitted on behalf of the appellant. He stated that the Revision Officer was confusing the charging of an entry fee to defray the costs of providing a facility with operating a facility for '*profit of gain*', and had failed to take account of his earlier finding in the Cav Report that the leisure centre was a not-for-profit

community facility. Mr. McNamara referred to *Barrington's Hospital –v- The Commissioner of Valuation*¹ where Kingsmill Moore J., stated that:

'(iii) It is no less a chargeable purpose if the care is not given gratuitously, provided that the institution in or by which it is afforded is not so conducted as to show habitually a surplus of receipts over expenditure.'

He said, therefore, similarly in the case of a community hall, that the fact that there was a charge should not deny its being deemed a community hall.

The appellant further submitted that the charge does not de-sway people from attending at the centre. He also referred to the Tribunal's determination in **VA05/3/001 - Dublin Public Service Radio Ass. Limited** and to pages 6 and 7 thereof. He further referred to the Tribunal's determination in **VA08/5/073 - National Basketball Arena** and to pages 9 and 10 thereof.

The appellant submitted that all the elements of the definition of a community hall are met in the present matter. It was submitted by the appellant that the swimming pool could be considered to be a community hall because it could be used for a range of activities and if not it should be considered ancillary to the rest of the building which should be considered to be a community hall of itself.

The appellant submitted that the sports hall area was in fact a community hall itself and could stand alone from the rest of the building. It was also submitted that the dance hall was similar in situation to the sports hall, and thus could also be considered to be a community hall.

In **VA05/3/001 - Dublin Public Service Radio Ass. Limited** it was stated at pages 11 and 12 that words used to define a community hall must be considered and these 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.

¹ [1957] IR 229 at 324

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

Closing submissions by the Respondent

The respondent referred to the **Dublin Public Service Radio** decision and asserted that its definitions and explanations supported its position that the subject premises was not a community hall. The respondent submitted that the area for the entire building was 2,149 sq. metres and that the pool amounted to about 480 sq. metres.

The respondent submitted that one cannot call a pool a hall as there is no floor. It is merely a hole full of water and that it had a very limited spectrum of uses and therefore could not satisfy the term ‘*multiple uses*’.

The respondent submitted that there were significant costs of use as well as membership fees and that this takes it outside the normal ‘*community hall*’ definition. He stated that the membership fee of €365 excluded a large portion of society. The respondent submitted that a sauna failed the physical description of a community hall.

The respondent admitted that the sports hall has the physical attributes of a community hall, but stated that it cannot bring the rest of the building with it. However, it submitted that while the sports hall had the physical attributes of a community hall it had limited use. Furthermore, when combined with the costs and charges of its use, it was taken outside the realm of ‘*community hall*’.

Response to Respondent’s Submissions

Mr. McNamara pointed out that the definition of a community hall does not exclude membership, or fees, or occasional use, only profit or gain.

He submitted that the totality of the use of the premises should be considered and that there was a multiple of individuals and groups who used the premises.

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following findings:

1. The appellant can and does make a profit. However, it is acknowledged that the appellant was not established to make a private profit, nor are its affairs conducted for the purpose of making a private profit.
2. While for the purposes of use of a '*community hall*' a fee can be charged, it should not be such as to habitually give rise to a surplus of receipts over expenditure.
3. The leisure centre provides a range of facilities and uses which are very specific to a leisure centre. The range of uses to which the centre can be put are far more restrictive than would be normally found in an ordinary '*community hall*'. For example, one would not normally find a gym or a swimming pool or a sauna in a community hall.
4. The Tribunal finds that the subject property is primarily a leisure centre and does not meet the physical attributes of a community hall. The Tribunal must consider the building as a whole and not just part of the building. The building is used as a leisure centre and not as a community hall. The swimming pool is a dominant feature of the subject property. The restricted range of activities to which a swimming pool can be put leaves it outside the definition of '*community hall*'. Consequently, the ancillary wet rooms cannot be considered to be a community hall. For similar reasons, the sauna area cannot be considered to be a community hall.
5. The entrance hall, reception, toilets, store, boiler house and plant rooms are all ancillary to the main uses of the leisure centre.
6. Again, the gymnasium and games room have limited use and availability to the public and therefore the Tribunal considers that they cannot be considered to be a community hall.
7. This leaves sports hall 1 and sports hall 2. As acknowledged by the respondent, these have the attributes of a community hall. There are also dry changing rooms which are ancillary to the use of the sports halls. The Tribunal has formed the

view that while the sports halls have the attributes of a community hall and therefore have the potential to be used as a community hall, the application of significant membership fees for their use and the restricted use to which they are in fact put takes the sports halls outside the definition of '*community hall*'.

8. The Tribunal finds that the services provided by the appellant are not available to the public generally due to the level of cost of accessing the facilities.
9. In the circumstances, the Tribunal is of the view that the leisure centre, or any part thereof, does not come within the definition of '*community hall*'. As no part of the leisure centre is considered by the Tribunal to be a community hall, similarly ancillary parts of the leisure centre can equally not be considered to be a community hall pursuant to the Act.
10. Even if the subject property could be considered to be a '*community hall*' or any part of it could be in the colloquial sense, it is not used exclusively as such as the Act requires.
11. The Tribunal therefore finds that the subject property is a relevant property and rateable.

Determination

Therefore the Tribunal finds that neither the subject property, nor any part thereof, satisfies the definition of a '*community hall*' as set out in Section 3(1) of the Valuation Act, 2001 or comes within the exemption provided by Paragraph 15 of Schedule 4 of the Valuation Act, 2001.

Hence, the determination of the respondent is upheld and the rateable valuation affirmed at €370.

And the Tribunal so determines.