

Appeal No. VA94/2/041

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Dominic O'Keeffe, National Basketball Arena

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Basketball Arena and Land at Map Ref: 13, Townland: Tymon North, E.D. Tallaght
Tymon, South County Dublin, Co. Dublin
Quantum - Unique premises

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Fred Devlin

F.R.I.C.S. A.C.I. Arb.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF MARCH, 1995

By Notice of Appeal dated the 26th day of July 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £500 on the above described hereditament.

The grounds of appeal were set out in a letter attached to the Notice of Appeal and appended to this judgment as Appendix I.

The Property:

The property comprises a purpose built basketball arena completed to international standards with ancillary carparking facility for over 100 cars on a 7 acre site. The buildings are of concrete block with part brick finish, insulated timber deck roof with trocal membrane on patented timber framed trusses. There are hardwood floors in the main arena area.

Accommodation:

The complex houses 3 main basketball courts with ancillary accommodation including offices, shop, soft drinks bar, locker rooms etc. Total floor area extends to c. 30,000 feet. The premises is located at Tymon Park, Tallaght approximately 1½ miles from Tallaght village and 6 miles from Dublin city centre.

Title:

The site is held on a 250 year lease from Dublin County Council at £100 p.a. (7 year rent reviews linked to C.P.I.).

Valuation History:

The property was first valued on the third quarterly revision of 1993. On 31st August 1993 the appellant lodged an appeal to the Commissioner of Valuation. No change was made at first appeal. It is against this determination of £500 that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 27th February 1995 from Mr. Tony Brooks, B.Agr.S.C., M.I.A.V.I., Rating Consultant of Tony Brooks & Company on behalf of the appellant.

In his written submission Mr. Brooks described the premises, its accommodation and services. He set out his reasons why he considered that the rateable valuation should be reduced, which were *inter alia* that the site was the third choice of the Basketball Association. He said that it had difficulty of access (it is sited approximately 2 km from the Blessington Road), and the site is subject to certain restrictions by Dublin County Council. The planning provisions prevent the use of the premises as a restaurant, bar or function room. Mr. Brooks set out his estimate of net annual value as follows:

Gross External Area of Premises:-
30,673 square feet

N.A.V.	@	£1.20 per square foot	=	£36,807 @ 0.63%
=		£231.88 say		£ 232
Rateable Valuation				£ 232

OR ALTERNATIVELY

Estimated Capital Value:-
£2 million

N.A.V.	@	1.85%		£37,000 @ 0.63%
Rateable Valuation				£ 233

Mr. Brooks offered four comparisons summarised below:

1) Westmanstown Golf Club

Rateable valuation: £500 (analyses at £1.80 per square foot)

2) St. Brigids GAA Club

Rateable valuation: £185 (analyses at £1.77 per square foot)

3) St. Vincent's GAA Club

Rateable valuation: £130 (analyses at £1.25 per square foot)

4) Innisfail GAA Club

Rateable valuation: £165.

In the written submission, Mr. Brooks also set out a submission by Mr. Noel Keating, Chief Executive of the Irish Basketball Association, giving the background of the acquisition by the Irish Basketball Association of the site. The written submission also included a letter to members of South Dublin County Council from the County Manager concerning the disposal of the land at Tymon North to the Irish Basketball Association.

A written submission was received on the 28th February 1995 from Mr. Eamonn Halpin, Chartered Surveyor with 14 years experience on behalf of the respondent. In his written submission Mr. Halpin gave details of the property, its valuation history, location, title and accommodation as set out above. Mr. Halpin said that this was a unique purpose built complex with the main arena area finished to a very high standard. He said that there was no actual letting market for this type of building. It is a specialist industrial type building and a valuation "floor" can be determined with reference to recently revised buildings of broadly similar function, with some adjustment for the higher cost of construction here. The assessed

valuation he said was moderate in the light of comparisons cited. He set out his calculation of the rateable valuation as follows:

1) Estimated N.A.V.: (Comparative Method)

Rental basis:

Offices, Locker rooms,

Reception, etc: 1,162 metres squared 12,503 square feet

Basketball arena: 1,688 metres squared 18,170 square feet

Total Area: 30,673 square feet

30,673 square feet @ *	£2.60/square foot	=	£79,750
	Say	=	<u>£ 500</u>

* To include tarmac carparking for 110 cars.

2) Estimated N.A.V.: (Contractor's Method)

Cost of Construction £73.00/square foot

Cost of Development adjusted to :

1988 prices @ appropriate rate of return: = N.A.V. @ 0.63% = R.V.

£2.4 million = £2.06 m (1988) @ 4½% £92,700 @ 0.63% = R.V. £584

He offered four comparisons which are summarised below:

1) Roadstone Sports Club

1991/4 first appeal

R.V. £395. Devalues at £2.65 per square foot

2) Portmarnock Sports & Leisure Centre

1990 first appeal

Devalues at £2.25 per square foot

3) Westmanstown Sports Complex (Garda Recreation Club)

1992/4 first appeal

Devalues at £2.00 per square foot

4) Tallaght Sports Bowl

1990 first appeal

Devalues at £5.00 per square foot.

Oral Hearing:

At the oral hearing which took place in Dublin on the 13th of March 1995, Mr. John Landy, Solicitor, appeared on behalf of the appellant. The respondent was represented by Aindrais O'Caomh, SC. Also present were Mr. Tony Brooks, Valuer, Mr. Noel Keating, Chief Executive of the Irish Basketball Association, Mr. Brian Kelly, Financial Controller National Basketball Arena and Mr. Dominic O'Keeffe, Manager National Basketball Arena.

Mr. Brooks in evidence said that the subject premises, unlike the comparisons put forward by the respondent valuer, had no kitchen, restaurant, bar or function room and further pointed out that all of the aforesaid comparisons were private members' clubs with the exception of the Tallaght Sports Bowl.

He stated that the location of the premises was not ideal and had in fact been the third choice. He said that one of the main apparent reasons for the subject premises' location was to cater for the large population of young people in Tallaght.

Replying to questions from Mr. O'Caomh, Mr Brooks accepted that the GAA clubs used by him as comparisons were 1987 first appeals and were in fact carried out on the old square metre basis.

In relation to the Tallaght Sports Bowl, Mr. Brooks said that it was built in a designated area and hence benefited from rates exemption for a 10 year period. He further pointed out that the rent on this property had been recently reduced. Mr. Brian Kelly gave evidence that the contractors price of £2.4 million referred to in Mr. Halpin's precis did not in fact reflect the actual capitalised cost which was in the order of £1.65 million. He said that amounts expended on professional fees and the like should not be described as construction costs.

Mr. Kelly further pointed out that the original funding for the project had not met expectations and that the shortfall meant that the arena had to run concerts, cabarets and basketball camps on a commercial basis, in an effort to service its debts.

Mr. Noel Keating outlined the history of the IBA and the genesis of the subject premises. He said that it had always been understood by the appellant that the rates situation would be looked on favourably by the local authority and that the rates demand came as a complete shock.

He explained that even when planning permission had been granted there was a further delay of 3 months before construction due to objections from local residents in relation to the location of the original roadway. As a result a much more circuitous entrance to the arena was constructed and this made the marketing of the building all the more difficult because it is actually difficult to find.

Replying to Mr. O'Caomh, Mr. Keating agreed that the appellant benefited from a particularly low rent from the local authority in return for certain restrictions on the proposed lease. He also agreed that the planning permission for the original road access was still extant, but suggested that this was of theoretical rather than practical application. Mr. Dominic O'Keeffe referred to the respondent's comparisons and gave evidence that of the private clubs, most of them earned by far the majority of their income from their bar trade. In relation to the Tallaght Sports Bowl, he said that it was located in an extremely densely populated area in Tallaght village, had nine shop units in its front wall, was open 24 hours a day and had a restaurant licence and snooker tables.

Mr. Halpin in evidence said that the construction costs of £2.2 million had been supplied by the appellant himself. Even accepting the revised suggested construction cost of £1.6 million the application of a very modest 5% return would result in the current R.V.

He said that the subject property was a type of industrial building. The rent per square foot of basic industrial buildings was in the region of £3 so the £2.60 applied by him to the subject property was in fact very moderate.

Mr. Halpin went on to say that he did not hold out any of his comparisons to be identical to the subject. He stated however, that basketball should not and cannot be treated differently from other sports.

He pointed out that if the basketball arena were to rent a comparable building, it would have to pay a rent commensurate with the N.A.V. of the subject at the very least.

In reply to questions, Mr. Halpin accepted that the subject property was primarily used for sport and that there was in fact no similar type property available for rent.

Submissions:

Mr. Landy submitted that the site of the subject property was not ideal and had in fact been the third choice.

He pointed out the difficulties of access which will remain with the building.

Mr. Landy referred to the various restrictions imposed on the appellant's occupation of the subject property both by reason of the conditions in the planning permission and by reason of the proposed lease.

Mr. Landy pointed out that indoor sports facilities were exceptionally expensive to maintain and explained that the floor in the subject property was not multi-purpose but had to be covered over when used for other functions.

Mr. Landy submitted that there was in the State no other national body with an arena such as the subject.

Mr. O'Caoimh submitted that the Commissioner of Valuation when valuing the premises did so not on the basis of identity of occupiers, but on the buildings themselves. He submitted therefore, that evidence in relation to the bar trade in the respondent valuer's comparisons was not relevant since the use of the bar and its licence relates only to a particular club and does not attach to property.

He further submitted that the nature and cost of construction of the facility must be taken into account when assessing valuation.

Mr. O'Caoimh explained that the main reason clubs were used as comparisons was in order to assist in comparing the costs of construction for valuation assessment purposes.

In relation to the restrictions on user referred to by the appellant, Mr. O'Caoimh submitted that the occupier had not had to purchase the lands and hence the restrictions were negligible. If the National Basketball Arena had gone for an alternative site it would have had to face the question of purchase costs.

Determination:

Both parties have seemed to agree that there is in fact no direct comparative evidence in relation to the subject premises.

The Tribunal does accept, however, that the comparisons offered are of help in the area of construction costs. Because of the particular nature of the subject premises, however, it is difficult to calculate or estimate the return one might expect from such an investment.

The Tribunal must treat the subject property *rebus sic stantibus* and it would be difficult to envisage a hypothetical tenant other than some other body with similar aims and needs to those of the National Basketball Association.

It seems therefore that the restrictions contained in the proposed lease and in the planning permission might be taken into account, this in spite of the respondents description of the subject property as an industrial type building.

There seems to be common case that the subject premises are unique and the Tribunal has assessed its valuation accordingly.

In the circumstances, and in the light of all the evidence offered and the submissions made, the Tribunal is of the opinion that the correct R.V. of the subject property is £300 and so determines.