

Appeal No. VA98/3/073

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

Leisureworld

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Swimming Pool (comm) and land at Lot No. 2B, Rossa Avenue, Townland: Ballinaspig More, Ward Bishopstown B, County Borough of Cork.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Deputy Chairman

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF OCTOBER, 2000

By Notice of Appeal dated the 5th day of August 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £500 (buildings), £21.60 (land) on the above described hereditaments.

The Grounds of Appeal as set out in the Notice of Appeal are that "(1) the valuation is excessive and inequitable and (2) valuation is bad in law."

The appeal proceeded by way of an oral hearing, which took place on the 19th day of July 1999 in the Valuation Tribunal Offices, Dublin. The appellant was represented by Mr. Desmond Killen, FRICS, FSCS, IRRV, a director of GVA Donal O'Buachalla and the respondent was represented by Mr. Tom Costello a District Valuer with over thirty-six years experience in the Valuation Office. Having taken the oath each Valuer adopted as his evidence in chief his written submission which had previously been exchanged with the other Valuer and submitted to the Tribunal.

Material Facts Agreed or Found by the Tribunal

Valuation History

The property having been newly erected was first valued on 97/4 revision at R.V.£500. The occupier appealed the valuation and Mr Costello was deputed to inspect and report but the occupier was not represented by Mr Killen at that point in time. The valuation was unchanged at appeal and appeal was therefore made to the Valuation Tribunal. The revision issued on the 7th November 1997 and results of first appeal issued on the 6th July 1998.

Situation

The property is located at Rossa Avenue, Bishopstown, Cork City, off Model Farm road and close to the Cork Regional Technical College. It is within easy reach of large residential areas.

Premises

The property consists of a newly erected Sports Centre with two swimming pools, 25m X 13m and 13m X 8m, Gymnasium, 2 Aerobic rooms, Viewing Balcony with a capacity of 230 people, changing rooms, reception, office, manager's office, staff training room, male & female toilets, plant room.

The property is managed under an agreement between the Lord Mayor Aldermen and Burgesses of Cork and Sport-Ionad Regiunach Chorchai Teoranta and was built with funding of £2.5 million from the National Lottery. The premises is owned by Cork Corporation. The Management Company is expected to manage the complex in an effective and professional

manner and to actively promote and encourage and market the facility within the area of Cork City and County. The Management Company is to manage the complex and all its business on a self-financing, self-funding basis and on the assumption that no grants, subventions or other payments will be made to the Management Company by Cork Corporation.

The Management Company provides a wide range of individual and group activities for all age groups on a membership, season ticket and pay and play basis.

The Management Company is to pay Cork Corporation in lieu of rent the sum of £50,000 in respect of first year of agreement, £75,000 for second year and £100,000 for third year. The payments to be paid into a reserve account operated by Cork Corporation and to be available for the funding of capital replacements and for the purposes of capital for project enhancement. It is agreed between the parties that the gross external floor area is 25,454 sq. ft. or 2362.85 sq. m.

The Appellant's Case

Mr Patsy Ryan General Manager of Leisureworld stated in his sworn evidence that the appellant management company ran the operation whose ethos was to provide affordable swimming and fitness opportunity for the public. He stated that because less well off groups had to be catered for that full income potential was thereby restricted. The prices, he said, were fixed by Cork Corporation and the capital expenditure was £2.5 million which was well below what was necessary to bring the premises up to standard. He went on to say that the management company have had to spend money to bring the premises up to date and gave an instance of the tiles having to be put in the showers as there were no tiles on the walls there previously. He said the scale of the facilities were much bigger than normal and there were large circulation areas such as the 300 seat viewing area used for swimming galas which did not yield income. He stated there was a management agreement for three years rather than a lease and that payments made to staff etc. which are mentioned in the agreement must operate at 40% of receipts. He said he regarded this as very tight. He also said he was not aware of any other leisure facility in Cork, which was asked to supply the service that they supplied. He mentioned that Leisureworld charged approx. 50% of what was being charged in other facilities in Cork and that the 300 seater viewing area is not used for the purposes of hosting major galas because they

would have to close the facility down for 3 to 4 days in the event of such a gala taking place. Mr Ryan said there were no catering facilities and no bar.

Under cross-examination by Mr Costello he stated that £2.7 million was the final building figure but to put in facilities like tables chairs furniture computer etc. it cost £104,000 in lease repayments in the previous year. He said it would probably cost over £3 million altogether. He stated that Cork Corporation provided the site and the premises was built of concrete block and all external walls are brick. He said he was familiar with the Brookfield Leisure Centre on College Road, which had steel cladding, and he accepted that this would be cheaper. Mr Costello put it to Mr Ryan that the first floor area of the Brookfield Leisure Centre was devoted to a bar originally but that the locals had objected and asked him if he was aware of this. Mr Ryan stated that he understood that it was used as a gym.

Mr Ryan said that the first year rent went on re-tiling of the children's pool area because the tiles were unsuitable for children's feet and had to be replaced and in the circumstances the Corporation had paid for this. He said in the second year a new shower area was installed and £30,000 was given by the Cork Corporation to offset the expense. He stated that the monies paid to Cork Corporation was paid into a reserve fund. He said all Cork Corporation Leisure facilities in the past had lost money. He said the premises was near to the Cork Regional Technical College and he agreed that in respect of the Brookfield Leisure Centre there was a waiting list. Mr Ryan said that the subject premises catered for travellers. He said that the Management Company had received a shell of a building and the capital expenditure was £90,000 with £104,000 per annum in lease repayments.

Mr Des Killen said in his evidence that the date of valuation was November 1997 and from Mr Ryan's evidence some of the monies would have been spent post the valuation date. He stated that although he mentioned a lease in fact there was an agreement between Cork Corporation and the Management Company. The agreement specified that rates must be paid and that standards must be maintained in the Leisure Centre for the benefit of the community. He said he wished to emphasise that the control of the operation was in the hands of Cork Corporation. He said that as a valuer he questioned whether the rent was a rent or not. He said that on the

assumption that it was rent and reducing it by 40% to achieve a 1988 level he arrived at £45,000 taking an average rent per annum of £75,000. He said that taking this as net annual value and reducing by the agreed fraction of 0.63% he arrived at a rateable valuation of £283, say £285. He said he did not know of any rent payable for a Leisure Centre and not for one which operates as a public facility. In his précis he gave six comparisons details of which are set out below:

- (i) Fitzpatrick's Silver Springs RV £950 NAV £150,794
4649 sq. m. / 50,045 sq. ft. @ £3.00psf

- (ii) Leaside Leisure Centre, Metropole Hotel RV £350 NAV £55,555
Ground floor portion 7,834 sq. ft. @ £4psf

- (iii) Brookfield Leisure Centre, College Road RV £400 NAV £63,492
Devalues: Gd Floor 16,480 @ £3.09psf
 1st Floor 7,205 @ £1.50psf
Caretakers Residence 1,116 @ £1.50psf
Or Overall 24,801 @ £2.55psf

- (iv) Blarney Park Hotel V.T. Appeal Agreement
Leisure Centre 14,375 @ £4.00psf

- (v) Rochestown Park Hotel
Leisure Centre 34,679 @ £3.82psf

- (vi) Hayfield Manor
Valuation Tribunal Appeal 4,922 sq. ft. @ £3.00psf

With regard to Fitzpatrick's Silver Springs Leisure Centre he stated there was a snooker room, a squash court, a licensed bar, car park facilities, a golf course and a £10 charge for the use of the pool. With regard to the Leaside Leisure centre at the Metropole Hotel this was situated at St

Patrick's Quay, Cork. He stated he had not visited the Brookfield Leisure Centre and was not familiar with the Blarney Park premises. He said he was personally familiar with the Rochestown Park Hotel which had very good facilities. With regard to Hayfield Manor he stated that the area was 4,922 sq. ft. and he valued it at £3psf but that Hayfield was for the use of guests only. He said that with hotel comparisons you have the hotel to fall back on if the pool does not make money. He said the subject property differed as it was a public facility where the Management Company was obliged to keep prices down.

Under cross-examination by Mr Costello, Mr Killen said that the rent was not a negotiated rent and it was put into a reserve fund for future use for facility improvement and when asked if it was not really a rent he stated that it was his opinion that it should be approached with caution. Mr Costello put it to him that Brookfield was the nearest and that it had steel cladding and Mr Killen accepted that he was not familiar with the finish of the premises but stated that a better finish did not mean that you would get a better rent. Mr Costello put it to Mr Killen that the subject premises was located in a middle class area. Mr Killen replied that there was nothing wrong with the location and that there are high-tech factories in the area and it was near to the technical college.

In response to a question from the Tribunal, Mr. Killen stated that he was not relying on the rental method and was leaving his submitted valuation at £305 RV. He said he relied on the fact that because the Management Company was obliged to keep prices down that there was a significant reduction in earning potential. He referred to the agreement made on the 29th May 1998 between the Lord Mayor Aldermen and the Burgesses of Cork on the one part and the appellant of the other part which was set out Appendix A attached to his précis and in particular referred to page 22 of the agreement, paragraph A where it stated that it was a three year agreement with six months notice of termination, in the event of any material breach by either party, being necessary to bring the agreement to an end. In his précis he attached as appendices the Memorandum and Articles of Association of the appellant company.

The Respondent's Case

Mr Costello in his evidence assessed the RV on the premises as follows:

Valuation

Gross Area of Buildings = 2362.85 sq. m.
= 25,424 sq. ft.

N.A.V.

25,424 sq. ft. @ £3.12 = £79,322
R.V. £79,322 x .63% = £499.92
R.V. £500.00

He gave the Tribunal five comparisons details of which are set out in Appendix "A".

In his final submissions he referred to the *Rosses Point Hotel v Commissioner of Valuation* (1987) IR 143 decision and to Mr Justice Barron's dictum that actual profit was not the important factor but rather the anticipated profit in arriving at a valuation.

Mr Killen distinguished this by stating that this decision related to a hotel and that all the comparisons were attached to hotels apart from Brookfield which was attached to a holiday village. He stated that the Leisureworld Centre could be distinguished, as it was a stand-alone centre. He said there were further restrictions in that Cork Corporation stipulated how the centre was to be used and had control over the pricing. He said these were imposed on the Leisureworld Centre by Cork Corporation in the same way that planning restrictions were imposed on the Hayfield Manor Hotel.

Determination

The Tribunal is of the opinion that the property must be valued on the basis of the rent which would be offered by the hypothetical tenant on a year to year basis. The only valid method to derive the hypothetical rent in this case is the comparative method. The Hayfield Manor comparison, which is common to both parties, relates to a premises where a condition in the planning permission and not an agreement between related parties constitutes the restriction which consequently runs with the property. In the subject property the restrictions run with the

management agreement and therefore the Hayfield Manor comparison is not a suitable one in the circumstances. The other comparisons with the exception of Brookfield Leisure Centre are not suitable as they relate to leisure centres attached to hotels or in the case of the Leaside Leisure Company Limited a city centre premises, which is considerably smaller than the subject premises.

The Tribunal is of the opinion that the best comparison is the Brookfield Leisure Centre, which is the closest to the subject premises but is an inferior building. Both the appellant and respondent agree the valuation of the ground floor in the Brookfield Leisure Centre at £3.09psf. The respondent gives a valuation for the subject premises of £3.12psf and in the circumstances the Tribunal accepts the respondent's valuation of the premises and affirms the Rateable Valuation at £500.