Appeal No. VA08/5/073

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

National Basketball Arena **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 478604, Stadium at Tymon Park, Tallaght, County Dublin.

B E F O R E

John O'Donnell - Senior Counsel **Chairperson**

Patrick Riney - FSCS.FIAVI **Member**

Frank O'Donnell - B. Agr. Sc. FIAVI. **Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 15TH DAY OF NOVEMBER, 2008

By Notice of Appeal dated the 30th day of June, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €436,000 on the above described property.

The Grounds of Appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix 1 to this Judgment.

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 10th day of November, 2008. At the hearing the appellant was represented by Mr. John Landy, Solicitor. Ms. Debbie Massey, Chief Executive Officer of Basketball Ireland, Mr. Liam Lavelle, Chairman of the Irish Basketball Arena and Ms. Mary Agnew, Director of the Irish Basketball Arena Limited, gave evidence on behalf of the appellant. Mr. James Devlin, BL, instructed by the Chief State Solicitor, represented respondent, the Commissioner of Valuation. Mr. Frank O'Connor, ASCS, District Valuer in the Valuation Office, also attended.

Background

The property the subject matter of this appeal is a purpose-built arena situated in Tallaght. By way of preliminary announcement, the parties noted that the valuation of the premises had been slightly revised due to a recalculation which had taken account of depreciation.

It was agreed, however, between the parties that the preliminary issue to be decided was whether the property was or was not rateable. In this regard, the Appellant contends that the subject property is not rateable by virtue of being a "*community hall*" within the meaning of paragraph 15 of Schedule 4 of the Valuation Act, 2001, community hall being defined in Section 3 of the Act of 2001.

The Appellant's Case

On behalf of the appellant Ms. Debbie Massey, Chief Executive Officer of Basketball Ireland (the governing body of basketball in Ireland) gave evidence. She indicated that the company was a company limited by guarantee which was run by volunteers. Its members are basketball players who are aged between 6 and 60 as well as referees, coaches and other participants as one might expect in any similar sports organisation.

Ms. Massey indicated that basketball was a common part of the physical education programme from primary school level onwards. It is the biggest girls' sport in the country at post-primary level. There were some 300,000 participants in the sport. Interestingly, it has the third highest participation level of any sport in the country after Gaelic games and soccer. There are some 300 clubs in the country, though there is a need to "*grow*" participation. Ms.

Massey indicated that there were national teams from under 16s to senior level with a 50/50 split between male and female.

Ms. Massey indicated that approximately €1,000,000 a year was received by the Basketball Ireland organisation from the Irish Sports Council, which in turn is funded by the relevant Government Department having responsibility for sports at any given time.

Ms. Massey indicated that the National Basketball Arena ("*the Arena*") is the only asset of Basketball Ireland. Indeed, the company responsible for the running of the Arena is Irish Basketball Arena Limited t/a National Basketball Arena. This is a non-profit company. Its Board Members are all volunteers. It is the main home of the sport of basketball and understandably everybody involved in the game wishes to play there. The Basketball Ireland offices are also present at the Arena.

Ms. Massey indicated that the Arena is open some 340 to 350 days out of 365 days every year. It is used every day by local schools and offices. In addition, local basketball clubs use the facility on an ongoing basis. The facility is used also by clubs from Terenure and other nearby areas as well as from Tallaght itself. The Arena is used during the day and also at night. Teams in Dublin train in the Arena for 30 out of the 52 weeks of the year.

In addition, all local schools use the Arena. A Schools Coaching Programme had operated there in the past whereby schools were bussed in to use the premises during school hours. It is hoped that this will be revived.

Of the 350 or so days of the year, 15 to 20 days would be used for high profile basketball events such as the National Cup Finals in January. In addition, the Schools League and Cup Finals are held in February. Home and away internationals also take place there being approximately 5 to 6 home games per annum involving male and female teams.

Ms. Massey made it clear that the Arena has also housed events for non-Irish communities within the locality. For example, a Polish/Irish Festival was held in the summer in the Arena with a match being played within the Arena on the same day. Ms. Massey observed that there is a very sizeable Polish community in the locality in Tallaght. In addition, both the Lithuanian Basketball Association and the Phillipino Basketball League have based

themselves in Tallaght again due to the fact that there is a sizeable Lithuanian and Phillipino community within the locality. Ms. Massey also indicated that the European Wheelchair Basketball Championship had been played there.

There are 24 staff working in the premises. However, all of these staff are paid for out of monies provided by FAS or Community Employment Schemes. The company running the Arena could not afford to pay them.

Ms. Massey indicated that the Arena is funded by:-

(a) Membership fees.
(b) Subvention from the Governing Body of Basketball Ireland to the facility.
(c) Fundraising.
(d) Rental from persons paying to use the premises.

In addition, South Dublin County Council recently gave a modest grant to allow the court space to be adapted so that two courts could be fitted in the space instead. Capital funding has come from the relevant Government Department to provide for refurbishment of the premises. Such monies have in the past also been used to replace seating.

Ms. Massey indicated that the premises had never paid rates since it was built in 1993. In her view, the Local Authority had deemed it exempt because of the community nature of the activities carried on in the Arena. Her view is that the South Dublin County Council were extremely mindful of the value of the arena to the local community (Irish and Non-Irish) in Tallaght.

In cross-examination, Ms. Massey said that the main object for which the company had been established (to promote and procure the development and management of a National Basketball Arena for the furtherance of the sport of basketball and other sports among the community at large) had been achieved. She accepted that the subsidiary objects included the carrying on of activities to raise funds for the upkeep, promotion and running of the Arena. However, she indicated that fundraising was not a very significant part of the business of the Arena whose primary function was the promotion and support of the sport in question. She

accepted that one of the "*tools*" to try to make money in order to promote the sport is making available of facilities for use for the sport itself.

Her attention was drawn to the website extract contained in the submissions made on behalf of the respondent. The website made it clear that the premises was offered for hire. She contended, however, that the premises was primarily a sports hall and that much better facilities for conferences were available elsewhere. The premises had been used recently to record a concert by RTE. It had hosted a Chamber of Commerce Exhibition. The Arena is also rented on an annual basis by Tallaght IT for holding exams. She acknowledged that the website referred to a hospitality suite and a VIP balcony. However, she made it clear that the premises had no bar and no licence. It is clear that no alcohol could be served unless a special licence was applied for by the caterer. Evidence was that one such special licence was granted every year for the National Club Finals.

In re-examination, Ms. Massey contended that the premises was used for not less than 160 days for basketball training together with another 100 days for other sporting activities. She indicated that the arena had been used for Community Games; it had also been used by the Tallaght Youth Services. Ms. Massey said that the local gardaí had a programme for local children which they ran in the Arena. The National Learning Network, the Irish Wheelchair Association, the Civil Defence Forces and South Dublin County Council have all used the premises, free of charge.

Ms. Massey referred to the fact that the property in question was held by Irish Basketball Arena Limited on lease from South Dublin County Council. We were shown the Lease. The Lease is for a period of 250 years from the 1st of March 1993. A few aspects of the Lease are of particular significance.

In paragraph 2, the demise of the Lease provides that the yearly rent shall be £20,000 per annum. However, there is a clause which provides:-

> "*<u>Notwithstanding the rent so reserved</u>, as long as the premises is used for sporting, leisure, community and recreational facilities, the rent so reserved shall be £100.00 per annum exclusive of rates and all other outgoings with seven year rent reviews in*

accordance with the consumer price index, the first such review will be on the 1st of March 2000".

The other clause of significance is Clause 3.10. This is the covenant by the Lessee:-

"*Not to use or permit the Demised Premises or any part thereof to be used for any purpose other than for the provision of community, leisure, sporting and recreational facilities and the trade or business usually carried out or associated with a Leisure Club including any fund raising activities in connection with the permitted user except with the consent in writing of the Council (such consent shall not be unreasonably withheld)*".

Ms. Massey also clarified that the company Irish Basketball Arena Limited is wholly owned by Basketball Ireland. Both companies are limited by guarantee and both companies are run on a not for profit basis.

Mr. Liam Lavelle, the Chairman of the Irish Basketball Arena, then gave evidence. He has been Chairman for 3 years. There are 7 persons on the Board of Directors, 6 of whom are volunteers; the 7th is Ms. Massey herself who is full-time and is nominated by Basketball Ireland. The Board meets once a month to supervise the activities of the Arena and to set strategies in order to further the sport of basketball within the community. Mr. Lavelle said the aim of the Arena was to make the facility as available as possible locally, regionally and nationally to disabled and non-disabled persons. His primary goal is to make the Arena available to persons using the premises for the purposes of sport. He indicated that any income raised was raised in order to keep the facility open. He estimated that €400,000 per annum was needed to run the premises. While the FAS/Community Employment Schemes paid for staff (approximately €200,000), the main fees received by the Arena came from rental. He indicated that last year a rental of some €350,000 was raised to attempt to defray the €400,000 per annum required and thus there was a deficit of some €54,000 last year. He indicated, however, that in the past, on the occasions the Arena had made a surplus, any such surplus is retained rather than distributed. He indicated that the fees charged for hire (at €50.00 per hour) in the evenings are significantly discounted from what might be regarded as the normal commercial charges in other areas of approximately €70.00 per hour. In the summer, which is the off-peak season for basketball, the premises are used by Tallaght

Institute of Technology exams for some 23 days a year. In addition, the Royal College of Physicians have used the premises for similar purposes. Mr. Lavelle expressed the view that the Arena was available for hire to others provided that such hiring did not displace other sporting users.

Mr. Lavelle indicated that the flooring in the premises was sprung maple and, therefore, especially suitable for jumping. It is also suitable for Irish dancing and has been used for 20 days in the previous year by Irish dancing industries. There is no hall like it elsewhere in Dublin. He described the building as having a big hall with a lobby (the entrance facing the N81) in a two storey block. This block has an entrance hall and dressing rooms as well as equipment storage. On the upper balcony there is a meeting room described as the hospitality area. In reality, this is an open plan area with stools to sit on. Tea and sandwiches are available. There is no bar facility and in his view, such facilities that are there are "*fairly basic*". He indicated that there is probably a need to upgrade the kitchen in order to comply with health and safety requirements. The "*VIP balcony*" is a cordoned off area to allow guests to meet sponsors and local and national dignitaries. There is no bar and no television (unlike e.g. Croke Park) nor is there what might be described as comfortable seating up there. Mr. Lavelle acknowledged that the premises had been used in the past for a theatre production but indicated that this will not occur if it would displace the normal sporting users of the Arena if at all possible. He indicated that the Arena charged "*a fraction*" of what the RDS would charge for the rental of a similar space. The Governing Body of the sport pays €50,000 per annum for the hire of the premises for those events. In his view, the premises did not have the same objective as the RDS. The primary objective of the premises was for sporting and recreational use. They are not interested in letting out the hall all the time to whoever might want it. The primary goal of the Arena is to serve the basketball community. In his view, the basketball community was balanced 50/50 between men and women in terms of membership and participation. He noted the high immigrant local participation from Lithuanians, Phillipinos, Polish and Chinese.

In cross-examination, his attention was drawn to the excerpt from the website. He indicated that the premises would be "*transformed"* in accordance with the information on the website as often as the organisers could afford to do so. He said that persons seeking to use the Arena from outside the local area would not be turned down though the principal emphasis was on persons from the local area using it. He indicated that it was trying to promote the game

locally, regionally and nationally; it was a National Arena. Mr. Lavelle estimated that there was some €30,000 to €40,000 coming in every month but more going out. In addition to the community employment, there are ongoing maintenance and insurance monies to be paid.

In re-examination, he indicated that the premises was open 7 days a week, 48 out of 52 weeks of the year from 10.00 a.m. to 10.00 p.m. He would like to see the premises generating €100.00 per hour which it would need to do to break even. While the Institute of Technology in Tallaght pays some €1,700 per day, this is an exceptional fee and, in the main, the fee received is far less than might normally be available commercially for premises such as the RDS. On 5 evenings a week, users come from the locality which he included to mean Templeogue, Rathfarnham, Lucan and other areas within South Dublin. His aim and the aim of the company was to try to maximise use by local persons and by basketball players other than to use the premises for commercial purposes.

In response to the Tribunal, he pointed out again the clause in the Lease dealing with the reserved rent of £20,000 and the nominal rent of £100.00. Despite rent reviews since the commencement of the Lease this figure has not changed. In respect of rates, he indicated that South Dublin County Council had in the past not sought rates under previous legislation. However, his view was they felt they were obliged to seek rates now.

The final witness called by the appellant was Ms. Mary Agnew. She is a Director of the Irish Basketball Arena Limited. She confirmed that the persons who run the company participated on a voluntary basis "*because we love sports*".

Her evidence was that the site previously suggested for the Arena was on the City side of the M50. The current site was provided instead because it was felt that the current site would be more integrated into Tallaght and the surrounding community and would, therefore, be more helpful in trying to build up sports and other community activities within the community locality. She indicated that there was a right of way through Tymon Park to get to the Arena though there was no commercial use whatsoever of Tymon Park. She said that money had been obtained from the Government in order to build the premises. Further monies were then borrowed to put in seating, basketball hoops and other equipment. She was keen to emphasise the sense of achievement felt by the community on the opening of the premises in 1993, and in having maintained it from then to now.

The Respondent did not call evidence on the preliminary issue.

The Appellant's Submissions

On behalf of the Appellant, Mr. John Landy drew our attention to paragraph 15 of Schedule 4 of the 2001 Act as well as to the definition of "*community hall*" contained in Section 3 of the Act. It was not suggested that there was any registered club at the address in question. He accepted that the premises was sometimes used for profit or gain but suggested that the decision of the Supreme Court in **Deane v VHI [1992] 2 IR 319** was taken (and applied) in a different context. The Arena is not primarily used for profit or gain. It is not a Government Body. Its primary purpose is to encourage and promote participation by inhabitants of the locality generally in the specific sport in this Arena.

He referred to the decision of the Tribunal in **VA05/3/001 – Dublin Public Radio Ass. Ltd.** (the **Anna Livia** case). In that case, he said, the suggestion was that because a community radio operated from certain offices that made the building in question a community hall. The Tribunal took the view that the fact it was used by the community did not of itself make it a community hall. In addition, the size of the premises in question in the **Anna Livia** case meant that it could not be regarded as a hall.

Mr. Landy said that the premises were used primarily for local events. National events only took place on approximately 20 of 365 days of the year.

Mr Landy also drew the Tribunal's attention to the very special nature of the two clauses in the Lease.

Turning to the issue of "*community*", Mr Landy said the "*community*" could mean the community other than the local community. He instanced the use of phrases such as the "travelling community" and the "Chinese community". Here he said that one interpretation of community could be the Irish basketball community.

Mr. Landy also submitted that other outdoor sports playing surfaces had been excluded from rates. His submission was that the fact that basketball required a roof in order to be played should not of itself make it rateable. If basketball was played on a pitch it would not be rateable. In his submission the legislature must have been thinking of bodies such as the

Arena when enacting the 2001 Act and could not have intended to make such bodies (or such facilities) rateable.

The Respondent's Submissions

On behalf of the respondent, Mr. James Devlin submitted that if the premises was not used exclusively as a community hall it was not eligible for exemption. This, he contended, was an absolute requirement. He noted that "*community*" was not defined but that in accordance with the definition contained in Section 3, it appeared to mean the inhabitants of the locality generally.

Mr. Devlin also referred to the **Anna Livia** determination and felt that that was of assistance in considering the issue of what constituted a "*community*".

Mr. Devlin also noted the phrases "*for profit*" and "*for gain*". In his submission, the decision of the Supreme Court in **Deane v VHI** meant that a not-for-profit entity could nonetheless be regarded as being operated "*for gain*". Therefore, the fact that the Arena operated on a not-for- profit basis did not mean that it was not operating for gain.

Mr. Devlin suggested that we look at the ordinary use of the premises in ascertaining whether or not it should be exempt from rating. In his submission, the current commercial operation of the premises on an ongoing basis was the ordinary usage of the premises. He referred again to the **Anna Livia** decision which was clear that the "*use*" must be a customary or habitual use of the premises. In his submission, since the decision in 1995 in **VA94/2/041 – Dominic O'Keeffe, National Basketball Arena** the premises had moved further into the commercial sphere in order to try to increase commercial usage since then.

Mr. Devlin also examined the part of the definition of community hall which referred to "*inhabitants of the locality generally*". In his submission "*generally*" must be given some meaning. The premises must have a broad usage within the community. He accepted that "*recreational*" as contained within the definition could cover sporting activities. He noted that land developed for sport is not rateable under Schedule 4 though, in his view, this applied primarily to pitches rather than other buildings associated with the lands. In his submission, the use of the word "*social*" in the definition referred to local activities such as scouts

meetings, music recitals and other items with a local flavour. He contended that this did not extend to motor car launches, business exhibitions or other such commercial activities.

Mr. Devlin also referred to the terms of Clause 3.10 of the Lease. He noted that the Lease expressly provided for the premises to be used for the "*trade or business usually carried out or associated with a Leisure Club including any fund raising activities in connection with the permitted user*". In his view, this brought the premises outside of the non-rateable activity and into the commercial sphere.

By way of reply, Mr. Landy drew our attention to various testimonials contained in the submissions which came from local people who used the facility. He also submitted that the Competition Act definition of "*gain*" used in **Deane v VHI** was inapplicable in this context.

Both sides also provided written legal submissions which were of considerable assistance and for which the Tribunal is grateful.

The Law

Schedule 4 of the Valuation Act of 2001 provides (at paragraph 15) that, "*any building or part of a building used exclusively as a community hall*" shall not be rateable. "*Community hall*" is defined in Section 3. It 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".

In the **Anna Livia** case the determination of the Tribunal expressed the view:-

In this case the term "community hall" is directed to the public at large, rather than a particular class such as a professional body of people. Accordingly, the term "community

hall" must be understood in its ordinary and colloquial sense. In other words what the man in the street would understand by the term "community hall".

It could mean a large hall or chamber which can accommodate a considerable number of people and is available for use by the local community for a variety of purposes which could include concerts, meetings or recreational uses.

The configuration of the building or shape of the hall is not material…….. emphasis is on hall or large room and this of course may also have ancillary rooms such as toilets, kitchen, tea room, or changing rooms……... The "community hall" itself has to be used exclusively as such.

In that case, the Tribunal decided that the subject property was primarily a radio station and did not meet the physical attributes of a community hall. The subject property was a substantial part of the internal space area occupied as studios and control rooms for the purpose of the transmission of sound broadcasting. The Tribunal concluded that the building was a building used as a radio station, rather than a "*community hall*" as understood colloquially. The Tribunal also expressed the view that the activity carried out by the radio station came under the umbrella of broadcasting. While sections of the local community may participate in radio programmes, the Tribunal was of the view that this did not satisfy the requirements of the Valuation Act which indicates multi-functional uses open to the local community generally.

The decision in **VA94/2/041 - Dominic O'Keeffe, National Basketball Arena** is not of assistance, since it does not deal with the construction of the relevant provisions of the 2001 Act.

In order to constitute a "*community hall*", the subject premises has to pass through a number of hoops as it were. In our view, the following are the principal issues to be determined:-

(i) Are the premises "*a hall or a similar building*"?

In our view, the premises in question do constitute a hall or a similar building. We adopted the reasoning of the division of the Tribunal in the **Anna Livia** case in this regard. It seems to us that the primary and dominant feature of the premises is indeed

the hall or Arena. There are obviously ancillary offices and storage spaces but, undoubtedly, the principal area under consideration here is the Arena itself. Therefore, in our view, the premises do constitute a "*hall or a similar building*" within the meaning of the Act.

(ii) Are the premises, the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act of 1904?

The answer to this is no. This is not in dispute. The premises clearly have no licence of any sort to sell alcohol and are not a club within the meaning of the 1904 Act.

(iii) Are the premises used primarily for profit or gain?

It is undoubtedly the case that the premises are used from time to time to obtain funds in order to provide maintenance, insurance and other running costs of the premises. We do not believe, however, that the premises could be said to be run "*primarily*" for profit. It is true that the premises are used from time to time for what might be regarded as more commercial ventures. One example of this was the launch of a new model of car. However, we are of the view that an event such as this must be regarded as an "exceptional" rather than "ordinary" usage. We are also of the view that such events may from time to time contribute to the funds required to maintain, insure and generally run the premises. It could not be said that the holding of these isolated events constituted usage of the premises primarily for profit. We note that the premises has this year made a deficit though on occasions in the past, it has made a profit. However, in our view, that is not the primary purpose of the usage of the premises. We accept the evidence of Ms. Massey and Mr. Lavelle that the primary purpose for which the premises are used is for the furtherance and promotion of a sport which has enormous local (as well as regional and national) appeal, being the sport of basketball. We note also that the rental charge to users is very significantly lower than the commercial rates applicable elsewhere. In our view, this supports the suggestion that the premises are not used primarily for profit.

We note also the submission made by the respondent in respect of the word "*gain*". We note also the observations of the Supreme Court in **Deane v VHI**. In that case, the Plaintiffs being Trustees of a Religious Order which owned a private hospital contended that they did not constitute an undertaking within the meaning of Section 3

of the Competition Act, 1991 in that it was not engaged for gain and that, therefore, the Act of 1991 did not apply to it. The Supreme Court took the view that the true construction of Section 3 of the 1991 Act meant that the words "*for gain*" connoted an activity carried on or a service supplied in return for a charge or payment and that, accordingly, the Defendant was an undertaking for the purposes of the Act of 1991. The Supreme Court noted that if the phrase "*gain*" had been limited to "*pecuniary gain*" or "*profit*" the probable consequence in Ireland would have been that the Competition Act of 1991 would be very limited indeed in its application.

If the definition utilised in **Deane v VHI** is applied here then on one view, every community or parish hall which seeks a nominal rental for its use for a Saturday afternoon by the local arts and crafts class annual exhibition is using the premises in question for gain. Mr. Devlin in argument suggested that a charge by such a local parish hall to defray maintenance or insurance costs exclusively might be considered in a different light. But if the definition of **Deane v VHI** is applicable to this context, no such distinction can or should be made.

In our view, the context and construction of the phrase "*for gain*" in **Deane v VHI** is distinguishable from the context and appropriate construction of the phrase here, in particular having regard to the provisions of the 2001 Act. Section 5 of the 1991 Act prohibited an abuse by one or more undertaking of a dominant position in trade for any goods or services in the State. An undertaking was defined being an individual body corporate or unincorporated body of persons engaged for gain in the production, supply or distribution or goods or the provision of a service. The purpose of the Act was to prevent entities which turned over substantial sums of money (even if they did not make a profit from such turnover) from abusing a dominant position. In that sense, the policy of the Competition Act extends to entities even if they do not make a profit since they have the ability or facility to generate money by receiving funds from members of the public. The Competition Act seeks - in an absolutist manner - to outlaw the conduct of <u>any</u> such entity which, in a dominant position, abuses that position. Under the 1995 Act an entity cannot escape even if it only made a modest "gain" (and no profit).

But a far less absolutist position pertains under the 2001 Act. The purpose of the Valuation Act, 2001 is different. The Valuation Act is an Act "*to revise the law relating to the valuation of properties for the purposes of the making of rates in relation to them; to make new provision in relation to the categories of properties in respect of which rates may not be made and to provide for related matters*" (emphasis added). The Act thus expressly states as one of its aims the making of new provision in relation to categories of properties in respect of which rates may not be made. The 2001 Act does not seek to cast its net as widely as the 1995 Act; indeed, it expressly excludes some properties from its catch. One of the types of properties deemed not rateable is the community hall. In our view, it is necessary in construing the Act to consider whether or not properties such as the subject premises are operated primarily to make (in the sense of obtaining) a profit or gain (in the sense of turnover) of monies. If the property in question, otherwise being a community hall, is not established primarily in order to make or turnover monies, then it is not rateable.

Having examined the circumstances in which these definitions occur, therefore, we have considerable doubts as to whether or not the definition contained in **Deane v VHI** is applicable at all, given the very different contexts in which the Competition Act of 1991 and the Valuation Act of 2001 operate.

If we are wrong on this, however, it seems to us that an examination of the wording of the two sections makes it clear that different objectives are addressed. An undertaking is defined in the 1991 Act as meaning an entity "*engaged for gain in the production, supply or distribution of goods or the provision of a service*".

It seems to us that the phrase "*gain*" cannot be examined in isolation. The issue in considering interpretation of Section 3 of the 1991 Act is whether the entity participates in an activity which generates monies. If it does, then it is an undertaking within the meaning of the Section.

On the other hand, the definition of "community hall" in the 2001 Act allows a degree of leeway or latitude by the use (critically in our opinion) of the word "*primarily*". In this regard, it seems to us that an entity may still be a community hall within the meaning of the 2001 Act even if it occasionally or incidentally either makes a profit

or turns over income, provided that this is not the primary function or purpose of the property.

In our view, the primary function or purpose of the subject premises here is not to make or turn over money. We accept the evidence of Ms. Massey and Mr. Lavelle that the primary purpose and aim of the arena is to promote the sport of basketball within the local community as well as within the larger regional and national community more generally. Although it is obliged to charge a rental fee, the appellant clearly does not do so in order to make a profit, since otherwise it would charge significantly higher (i.e. more commercial) rental fees. We are also of the view that the fact that the premises is forced to generate a turnover by virtue of imposing hiring charges does not mean that this is its primary purpose. Again it seems to us that the fact that a local parish hall poses even a nominal charge in order to defray maintenance or insurance expense without making any profit could not reasonably be said to mean that the primary use of the premises in question is for the purposes of gain. Therefore, it seems to us that the Arena is not used primarily for profit or gain within the meaning of the 2001 Act.

(iv) **Is the premises occupied by a person who *"...ordinarily permits it to be used for purposes which involve participation by inhabitants of the locality generally"*?**

In our view, the answer to this question is yes. We have had extensive evidence of the enormous usage made by various local schools, clubs, Irish Wheelchair Association branches, Civil Defence branches, South Dublin County Council offices and local offices of the National Learning Network. In addition, it is clear that substantial numbers of local teams from Tallaght and from the surrounding areas are by far the most predominant users of the premises in question. We note also that the premises are used substantially by other local communities including Poles, Lithuanians, Phillipinos and Chinese. While the evidence suggests that from time to time events such as concerts and theatrical productions occur, it seems to us that these are exceptional uses of the premises. In our view, the premises is ordinarily used by inhabitants of Tallaght and the surrounding locality. The fact that it is also used for national competition for some 20 days out of the 340 to 350 days that the premises is open, does not in our view detract from the proposition that the premises in question are ordinarily used on a day to day basis by persons living in the area or in the locality

generally. In our view, therefore, the premises is occupied by the Appellant company which ordinarily permits it to be used for purposes which involve participation by inhabitants of the locality generally within the meaning of the Act.

(v) Are the purposes for which the premises are ordinarily permitted to be used "*recreational or otherwise of a social nature*"?

It seems to us that the answer to this question must be yes. The premises is used primarily if not virtually exclusively for the purposes of playing basketball. We do not think it could be seriously suggested that basketball would not constitute a recreational activity and we note that Mr. Devlin did not suggest otherwise. While Mr. Devlin did suggest that car launches and business exhibitions would not constitute events of a recreational or social nature, it does seem to us that these isolated uses would not constitute the ordinary use of the premises. In our view, the premises in question are ordinarily used for purposes which are recreational (and which incidentally in our view, are also of a social nature) being, in this instance, for the purpose of playing basketball.

(vi) Are the premises in question used exclusively as a community hall?

In our view, the answer to this is yes. The definition of community hall expressly confers a degree of latitude in relation to the use of the premises by the utilisation of words such as "*primarily*" and "*ordinarily*" as analysed above. It is thus entirely possible for premises such as these to come within the definition of a community hall, even if from time to time the premises are used for commercial uses. Similarly the fact that the premises generates turnover or may occasionally make a profit does not prevent it from being a community hall. This is not the primary or dominant purpose or incident of usage. Therefore, it seems to us that it is clear that the premises on the evidence, comes within the definition of community hall. In the circumstances, therefore, it is our view that the premises is used exclusively as a community hall. There is no evidence, for example, that some other entity occupies the premises for some other substantial part of the year which would mean that their occupation would be other than as a community hall. It is also clear from the evidence that no other activities appear to be carried on in the premises that are inconsistent with the exclusive use of the premises as a community hall.

Determination

The premises in question constitute a building used exclusively as a community hall (as defined by Section 3) within the meaning of Paragraph 15, Schedule 4 of the Valuation Act of 2001 and, accordingly, are not rateable. The appeal is allowed.

And the Tribunal so determines.