

Appeal No: VA15/1/011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

D.L.R. LEISURE SERVICES LTD

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5004421, Leisure at Meadowbrook, Dundrum, Broadford Road, Ballinteer
County Dublin.

B E F O R E

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

Eoin McDermott - FSCSI, FRICS, ACI Arb

Member

Barra McCabe - BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF MARCH, 2019**

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of February, 2015, the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €394,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

“On the basis that the NAV as proposed is excessive & inequitable. Additionally the occupiers believe thy should be excluded from the List in accordance with Schedule 4 (S16) Valuation Act 2001 as already advanced to the Commissioner”.

1.3 The issue of an exemption was addressed at a previous oral hearing and the Tribunal determined that the appellant is not a charitable organisation as defined by section 3 of the Valuation Act 2001 and therefore cannot avail of paragraph 16 of Schedule 4 due to the fact that the Appellant's Memorandum and Articles of Association does not state as its main objects, any charitable purpose and further by reason that the Properties the subject matter of these appeals are not used exclusively for charitable purposes.

2. REVALUATION HISTORY

2.1 On the 24th day of January, 2014 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €399,000.

2.2 A Final Valuation Certificate issued on the 5th day of March, 2014 stating a valuation of €399,000.

2.3 Being dissatisfied with the valuation, an appeal was submitted to the Commissioner in relation to the valuation. Following consideration of the appeal, the valuation of the Property was reduced to €394,000 and a Valuation Certificate issued on the 11th day of December 2014.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 7th day of November, 2018. At the hearing the Appellant was represented by Mr Eamonn S. Halpin BSc (Surveying) MRICS MSCSI and the Respondent was represented by Susan Dunlea BSc. Hons of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their précis as evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property comprises a single detached building made up of three parts, a single storey swimming pool constructed in 2009; a ground floor entrance and reception area incorporating seating and vending machines also constructed in 2009; together with an older two storey structure formerly in use as a swimming pool and now used as a gymnasium (ground floor) with fitness and spinning studios overhead, together with offices. The latter part was refurbished in 2009. There are also three Astro pitches and limited surfaced car-parking on site. Neither the pitches nor the car spaces form part of this appeal.

4.3 The property is held under a related parties lease.

4.4 The areas are agreed on a Gross External Area as follows: -

Use	Area (M2)
Swimming pool	1,898.92
Link corridor	39.93
Ground floor gym	443.22
First floor	270.87
Plant	193.06

4.5 The NAV of the Plant area is agreed at €50 per M2

5. ISSUES

The issue that arises in this appeal is the quantum of value of the subject property and how it can be affected by the location and characteristics of the property.

6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) 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.”

7. APPELLANT'S CASE

7.1 Mr. Halpin, on behalf of the Appellant, opened his evidence by describing the location of the property. He noted that the property was in a predominantly low and middle income residential area and argued that, accordingly, a hypothetical tenant would discount a rental bid to reflect the fact that the membership fees that could be charged for such a facility were limited by the socio-economic profile of the catchment area. He stated that the centre was currently being run at a loss.

7.2 Mr. Halpin went on to describe the layout of the property, using photographs contained in his précis. He described the property as a Community Leisure Centre with a modern swimming pool and an older gymnasium in an industrial style building. He argued that the buildings were effectively two different structures and that a hypothetical tenant would not pay the same rent per M2 for both.

7.3 Mr. Halpin put forward four Tone of the List comparisons as follows

No.	Property	Use	Area	NAV M2	NAV	Total
1	Glenalbyn Social & Athletic Club	Swimming Pool	1,172	€100.00	€117,200	€117,200
2	Monkstown Pool & Fitness Centre	Gymnasium	1,350	€110.00	€148,500	€148,500
3	Westwood Club Leopardstown	Sports and leisure Sports and leisure Sports and leisure Sports and leisure	5,662.60 1468.00 7,200.00 1.00	€110.00 €60.00 €25.00 €44.00	€622,886.00 €88,080.00 €180,000.00 <u>€44.00</u>	€891,000
4	Total Fitness Blackglen Road Sandyford	Gymnasium Plant	9,080.43 746.00	€130.00 €50.00	€1,080,455.90 €37,300.00	€1,217,700

He noted that the swimming pool and gymnasium elements of the Glenalbyn, Monkstown and Westwood properties were all valued at between €100 and €110 per M2 and queried the logic of the Respondent applying €145 per M2 to the subject property. He further noted that in the

case of Westwood, the Valuation List showed differing NAVs per M2 for the swimming pool and gymnasium areas (€110 per M2), children’s play area (€60 per M2) and indoor tennis courts (€25 per M2) and argued that this showed the Commissioner was prepared to apply different NAVs for different buildings within the one complex, as he was arguing for the subject. Finally, he noted that the Total Fitness property was significantly larger than the others on the list and stated that in his opinion it was not directly comparable.

7.4 The Appellant sought an NAV of €210,400 made up as follows: -

Use	Area	NAV/M2	NAV
Swimming pool & link area	1,898.92	€110.00	
Link corridor	39.93	€60.00	
Ground floor gym	443.22	€60.00	
First floor	270.87	€60.00	
Plant	193.06	€50.00	263,775
Discount for location		10%	<u>€26,377</u>
			€210,398
Say			€210,400

7.5 In response to cross-examination by the Respondent, Mr. Halpin confirmed that he had access to the accounts of the facility which was how he knew that it was running at a loss. He confirmed that the Glenalbyn property comprised a swimming pool only with no gymnasium and was unable to confirm whether the property was still operational. In response to a query on the Monkstown property he advised that it was constructed in the 1960’s and subsequently refurbished in or around 1997. He confirmed that he was not aware that the Valuation Tribunal had determined the Westwood valuation as he had been under the impression that it had been agreed. He accepted that the children’s play area in Westwood was in a different building but argued that it comprised a single complex. He accepted that the Westwood facility had operational restrictions on days that horse-racing took place in Leopardstown. Finally he accepted that the Total Fitness property was significantly larger but disagreed that it was located in an emerging area, pointing out that it had good access from the M50.

8. RESPONDENT'S CASE

8.1 Ms. Dunlea, on behalf of the Respondent, gave evidence on the location and layout of the property, using photographs contained in her précis. She described the property as a single structure in use as a leisure centre and said that the property had been extended and completely modernised in 2009 with the addition of the new swimming pool and changing facilities within the newly constructed section.

8.2 Ms. Dunlea put forward three Tone of the List comparisons as follows

No.	Property	Use	Area	NAV M2	NAV	Total
1	Total Fitness Blackglen Road Sandyford	Gymnasium Plant	9,080.43 746.00	€130.00 €50.00	€1,080,455.90 €37,300.00	€1,217,700
2	Westwood Club Leopardstown	Leisure centre Childrens play area Aerodomes	5,662.60 1468.00 7,200.00	€110.00 €60.00 €25.00	€622,886.00 €88,080.00 €180,000.00	€891,000
3	Monkstown Pool & Fitness Centre	Gymnasium	1,350	€110.00	€148,500	€148,500

She noted that her comparisons 1 & 2 were both Valuation Tribunal decisions and, in respect of comparison 2, that the occupier had difficulty in gaining access to the property on race days.

8.4 The Respondent requested the Tribunal to affirm the NAV of €394,000, made up as follows: -

Use	Area	NAV/M2	NAV
Sports & leisure facility	2,652.94	€145.00	
Plant	193.06	€50.00	€394,329
Say			€394,000

8.5 In response to cross-examination by the Appellant, Ms. Dunlea acknowledged that allowances had to be made for different factors when considering valuations but confirmed that this had been done in this case. She noted that the desirability of a particular location was a subjective matter but also noted that the subject property was primarily new build in 2009. She accepted that the Valuation Tribunal had valued various parts of the Westwood comparison at different levels but argued that those were different buildings. She did not accept that the older portion of the subject comprised a simple industrial size building, arguing that it was a sports hall. She accepted that the sports hall was constructed differently to the remainder of the subject property but argued that it comprised a single complex.

In response to further queries from the Appellant, Ms. Dunlea accepted that the Total Fitness comparison was of a different size and scale to the other comparisons and the subject property. It was noted that this was now being taken over by a national organisation. She accepted the Appellants contention that the subject and the other comparisons relied upon were more representative of what one might expect of a suburban facility. The Appellant then queried whether this did not indicate that the Tone of the List for such facilities was €110 per M2, as per Westwood and Monkstown, but Ms. Dunlea disagreed, noting that Westwood was substantially larger than the subject while Monkstown was significantly older. When pressed again on the question of whether it was unreasonable to value two significantly different structures at the same level, she accepted that in some cases it may be.

9. SUBMISSIONS

9.1 There were no legal submissions

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Dun Laoghaire Rathdown.

10.2 The issue that arises in this appeal is the quantum of value of the subject property and how it can be affected by the location and characteristics of the property.

10.3 The Appellant laid particular emphasis on the location of the property and the effect that this might have on the rental bid of a hypothetical tenant. A 10% reduction was sought on that basis. There the matter was left. No attempt was made to examine the issue more thoroughly, to consider membership fees across various categories against competitor properties or to show that the clientele using the facility came from the immediate area.

The Tribunal believes that properties such as the subject are destinations in their own right and therefore location is not a significant factor in the valuation. The Tribunal has made no allowance for location in its determination.

10.4 The Tribunal accepts the Appellants argument that the Tone of the List indicates a value of €110 per M2 for swimming pool premises, applying as it does to both Westwood and Monkstown. It is noted that Glenalbyn was valued at €100 per M2 but both parties pointed out that that property comprised a swimming pool only. The Tribunal therefore finds that the rate for the swimming pool (including the reception area) should be €110 per M2.

10.5 The Tribunal accepts the Appellants argument that it can be unreasonable to value two significantly different structures at the same level. It does not accept the figure put forward by the Appellant of €60 per M2 for what the Appellant describes as the gymnasium or old building. This appears to be based on the Valuation Tribunal decision in the Westwood case, where different arguments were made. The Tribunal finds that the gymnasium building should be valued at €90 per M2.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €287,000.

Use	Area	NAV/M2	NAV	
Swimming Pool	1,898.92	€110.00	€208,881	
Link corridor	39.93	€110.00	€4,392	
Ground Floor gym	443.22	€90.00	€39,890	
First Floor sports & leisure	270.87	€90.00	€24,378	
Plant	193.06	€50.00	€9,653	€287,194.60
Say				€287,000.00

And the Tribunal so determines.