Appeal No: VA18/4/0004

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020

GERARD RAHILL **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 5014361, Sports & Leisure Centre at Local No/ Map Ref 2D, Aclint, Clonkeen, Ardee 1, County Louth

B E F O R E

Hugh Markey – FSCSI, FRICS **Deputy Chairperson**

Claire Hogan - BL **Member**

Eamonn Maguire – FRICS, FSCSI, VRS, ARB **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MAY, 2021.

1. THE APPEAL

1.1. By Notice of Appeal received on 16 October 2018, 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 €20.

1.2. The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

a) *"The correctness of the value and the uniformity of the value between properties on the valuation list, no astro turf pitches were included.*
b) *50% used for agricultural purposes - Remainder being used as changing rooms & showers*

c) *As the business is in a rural area and depends on local support to sustain itself which is very limited and any further costs will lead to the closure of this amenity and will decimate its viability."*

1.3. The Appellant considers that the valuation of the Property ought to have been determined in the sum of €1.

1.4. The Appellant submitted a further document to the Tribunal on 9 April 2021, in which he claimed that the Property ought to have been exempt from valuation pursuant to section 4A(1) of Schedule 4 of the Valuation Act 2001 (as amended), as it was used *"exclusively for community sport, and otherwise than for profit".* The Respondent highlighted that there was no reference to community sport in the Appellant's Notice of Appeal, and highlighted that this was a new ground of appeal.

2. VALUATION HISTORY

2.1. On 2 August 2018 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the 2001 Act") in relation to the Property was sent to the Appellant indicating a valuation of €20.

2.2. A Final Valuation Certificate issued on 17 September 2018 stating a valuation of €20.

2.3. In his submission of 9 April 2021, the Appellant made reference to a revaluation of the property which took place in 2019. The revaluation process forms no part of the revision appeal which is before the Tribunal, and all arguments made about the revaluation process are wholly irrelevant and will not be detailed in this decision.

3. THE HEARING

3.1. The Appeal proceeded by way of an oral hearing held remotely, on 23 April, 2021. At the hearing the Appellant represented himself and the Respondent was represented by Mr Mark Prendiville of the Valuation Office. Ms. Rosemary Healy Rae BL appeared as legal counsel on behalf of the Respondent.

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 been affirmed, adopted his précis as his 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 is located in Co Louth approximately 9km north west of Ardee & 8km south of Carrickmacross.

4.3. The subject property is a clubhouse and changing rooms. The total Gross External Area of the clubhouse is not in dispute; it is 148m2.

5. ISSUES

5.1. The main issues for the Tribunal are:

(i) whether the Property is rateable; and

(ii) if so, whether the Property has been valued at the correct level.

6. RELEVANT STATUTORY PROVISIONS:

6.1. 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. In his submission of 9 April 2021, the Appellant made reference to a revaluation of the property which took place in 2019. The revaluation process forms no part of the

revision appeal which is before the Tribunal, and all arguments made about the revaluation process are wholly irrelevant and will not be detailed in this decision.

7.2. Mr Rahill gave evidence that the pitches generate all of its income. He stated that the clubhouse is not a free-standing building, in the sense that it is merely ancillary to the pitches. He stated that the clubhouse would not exist were there no pitches.

7.3. Under cross-examination, Mr Rahill was questioned about the sign for the subject property submitted in evidence by the Respondent which states, *"we cater for football, hockey, birthdays, parties, coaching, leagues"*. He was asked to confirm that the clubhouse could be rented for birthdays and parties. In response, Mr Rahill stated that his charge of €5 per head was purely for the use of the pitches; i.e. for sport, and that there was no charge for ancillary use of the clubhouse. He stated that the rooms merely provided added comfort, for storage of kit, for team talks etc.

7.4. Counsel for the Respondent asked Mr Rahill whether people might go elsewhere if there was no clubhouse facility. Mr Rahill stated that there was nowhere else in the area which had comparable facilities. Mr Rahill stated that the parties always involved sport; for example a group of children would play a game of football and then have something to eat in the clubhouse afterwards. Mr Rahill confirmed that his business is a for-profit one. However, he sought to specify that only the pitches are for profit.

8. RESPONDENT'S CASE

8.1. Mr Prendiville referred to comparable properties (Section 5 of his Précis of Evidence). He relied on three properties that share similar characteristics and are located in the same Local Authority area to support the valuation on the Subject Property.

8.2. Comparison No. 1 (Property Number: 2135220) was a driving range in Newtownstalaban, Drogheda, with an office/reception valued at €34.17 per square metre.

8.3. Comparison No. 2 (Property Number: 1292728) was a golf course in Monasterboice, Co Louth, with a clubhouse valued at €34.18 per square metre.

8.4. Comparison No. 3 (Property Number: 1280494) was a GAA Club in Carrickmacross, Co Louth, with a clubhouse valued at €34.16 per square metre.

8.5. Mr Prendiville argued that all three comparable properties are used as leisure facilities, and have the clubhouse element valued at approximately €34.17 per square metre, which clearly signifies that the tone is well established. He said that in valuing the subject property, he adopted a lower level of €27.33 per square metre to reflect the basic nature and physical attributes of the subject property. He stated that the valuation of €20.00 per square metre was fair, reasonable and equitable.

8.6. Mr Prendiville commented on the community sport argument put forward by the Appellant. He stated that if this exemption had been put forward at an earlier stage he could have examined the exemption and explained the criteria to Mr Rahill. His position was that the Appellant could not avail of the exemption as the business was for profit. He stated that sporting organisations with a constitution which prevents distribution of assets on winding up could avail of the exemption.

9. SUBMISSIONS

9.1. The Appellant confirmed that his two main arguments were that the Subject Property was exempt from rates as it was used for community sport, and secondly he relied on a "co-location" argument, and called in aid the case of ***St. Vincent's Healthcare Group Ltd v Commissioner of Valuation*** [2009] IEHC 113 113 (hereafter the ***St.Vincent's Hospital*** decision).

9.2. Counsel for the Respondent prepared written submissions for the hearing, but remarked that the approach of the Appellant rendered these irrelevant, as some arguments were no longer pursued at hearing (for example, those relating to the use of the Property as a farm building), and some new grounds were being argued. On this point, the Respondent wrote an email to the Tribunal, copying the Appellant, on 22 April 2021 in which it was stated that for the sake of avoiding any further delays to the hearing, the Commissioner was willing to proceed with the hearing and was prepared

to deal with the new ground of appeal by way of oral evidence and submissions on the day by Counsel. The Respondent also attached accounts for the Appellant's business in respect of the year ended 31 December 2017.

9.3. Counsel for the Respondent argued in her oral legal submissions that in accordance with ***Nangles Nurseries v Commissioner of Valuation*** [2008] IEHC 73, exemptions are to be interpreted strictly against the rate payer. She argued that the Subject Property was used for a business operated for profit and that the exemption was simply inapplicable on this ground. She argued that the ***St. Vincent's Hospital*** decision was of no application also as it concerned a different legal question.

10. FINDINGS AND CONCLUSIONS

10.1. As the revaluation process forms no part of the revision appeal which is before the Tribunal, all arguments made about the revaluation process are wholly irrelevant and will not be detailed in this decision.

10.2. 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 Louth.

10.3. The Tribunal deprecates the practice of new grounds of appeal being added in submissions, as it is unfair for a Respondent to have to meet what in effect is a moving target. However, the Tribunal allowed the Appellant, who was not represented, to make the new argument relating to community sport at the oral hearing, and the Respondent met the new arguments which were made. Therefore, the Tribunal does not propose to rule the new ground of appeal inadmissible.

10.4. However, the Tribunal is not persuaded that the exemption for community sport, as set out in section 4A(1) of Schedule 4 of the 2001 Act (as amended) is applicable to the Property. It provides an exemption for: *"Any building or part of a building used exclusively for community sport, and otherwise than for profit and not being the*

premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904." [Emphasis added]

10.5. The Applicant gave evidence that his business is for profit. The accounts in respect of the year ended 31 December 2017, submitted by the Respondent, show this to be the case, albeit that a loss was incurred that year according to the figures provided. Furthermore, the Property can be used for parties, and therefore not exclusively for community sport.

10.6. The Appellant's reliance on the ***St. Vincent's Hospital*** decision is also misplaced. This case concerned the car park of that hospital and whether it was a *"relevant property not rateable"* in accordance with Schedule 4 of the Act. This Tribunal had ruled that it was rateable. However, that ruling was overturned by the High Court. Part 8 of Schedule 4 exempts the following property: *"Any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital…"*. The issue in dispute between the parties was whether the car park of St Vincent's Hospital qualified under that definition. Cooke J observed as follows, at [36]:

> *"When the correct test is applied namely, that of ascertaining the purpose of the appellant in using the structure as a car park, the Court considers that its use clearly comes within the scope of heading No. 8."*

10.7. The Tribunal agrees with the Respondent that this case has no relevance. The pitches were not rated because of the exemption in section 4 of Schedule 4 – they are *"land developed for sport"*. It is not possible to seek to include the clubhouse under the definition of *"land developed for sport"* on a plain literal interpretation of the words . Whereas a hospital cannot function properly without a car park, the pitches can function without a clubhouse. It is in fact clear from Mr Rahill's own evidence that there are no comparable facilities in the area – there are pitches which do not have a clubhouse.

10.8. As regards the level at which the Property has been rated, the onus of proof is on the Appellant to challenge the correctness of the valuation. Mr Rahill did not adduce any evidence in support of the discharge of this onus of proof.

10.9. The Tribunal is satisfied that the Respondent has shown that the tone of the list for clubhouses is set at approximately €34 per square metre and that the Subject Property received a fair reduction to €20. This level should not be disturbed.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.