

Appeal No: VA18/4/0008

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Peter O'Keefe

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5011492, Gymnasium at Local No/Map Ref: F, Redforge Road, Cork, Kilbarry, Commons, Cork City, County Cork

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Claire Hogan - BL

Member

Annamaria Gallivan - FRICS, FSCSI, MPhil SEE

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF APRIL, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 15 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 (“the subject property”) was fixed in the sum of €494.

1.2 The Notice of Appeal argues that the valuation of the Property is incorrect because the level applied is excessive when other similar gyms valued at a lower level, including gyms occupied by the Appellant, are taken into account.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €175.

2. VALUATION HISTORY

2.1 On 22 December 2017 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 €711.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €494.

2.3 A Final Valuation Certificate issued on 18 September 2018 stating a valuation of €494.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing on 21 February 2022. At the hearing the Appellant was represented by Mr. Steve Barry, Managing Director, Dennehy’s Health & Fitness and the Respondent was represented by Mr. Neil Corkery BSc(Hons) Property Valuation Mgt 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 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 property is located in Blackpool Retail Park off the Commons Road, Blackpool, Cork. It is approximately 3 km north of the city centre. It is a commercial unit at ground floor level of Block F of the Retail Park, and it is in use as a Gymnasium.

4.3 The property is broadly rectangular in configuration with a glazed curved exterior finish. There is a reception area, changing facilities, a gym and fitness studio. It is serviced with an air extraction system, but it does not have an air-conditioning system or raised access floors or suspended ceilings. The upper floors of the block are in office use with a lift to all floors, and have the benefit of air-conditioning, raised access floors and suspended ceilings.

4.4 The floor area is 1,032.38M2. The areas are not in dispute.

4.5 The property is held on a leasehold basis. The term of the lease is 15 years from 1 February 2016, and the rent is €110,000 per annum.

4.6 A Proposed Valuation Certificate issued on 22 December 2017 of €711 at the office level of €109 per SQM. Representations were received, and the valuation was changed to €494, at based on a level of €76 per SQM. A final valuation certificate issued on 18 September 2018.

5. ISSUES

5.1 The sole issue for determination is the correctness of the value of the subject property, which has been set by the Commissioner at €494.

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 Mr. Barry on behalf of the Appellant stated that the company has three other facilities in the Cork area. They are as follows:

1. **Comparison No. 1, PN 2175322:** gym located in Westpoint Business Park in Ballincollig, with an RV of €123.

The area is 350 M2 on the ground floor, and 263 M2 on the first floor

It is valued at €54.67 per SQM

2. **Comparison No. 2, PN 5009274:** gym located in Douglas, with an RV of €175.

The total area is 574 M2.

It is valued at €61.50 per SQM

3. **Comparison No. 3, PN 2186218:** gym located in Penrose Dock, Cork City, with an RV of €361.

The total area is 754 M2.

It is valued at €76 per SQM

7.2 The Appellant emphasised that the subject property is very similar to the Douglas property (PN 5009274), and yet valued at a much higher level. He also noted that in fact Douglas is a more affluent area, and the footfall for the gym is higher.

7.3 The Appellant also referenced another gym in the vicinity (PN 2206776), which Mr. Barry stated has an RV of €119. His précis details that this gym is less than 1km away from the subject property, and that the subject property is *“at the edge of the business park”*.

7.4 The Appellant’s précis also details that the past two years (involving the Covid-19 pandemic) have taken a huge toll on the business and that the effect of at-home working and online shopping can be felt.

7.5 Mr Barry outlined his comparisons in brief terms, and under cross-examination by Mr. Corkery for the Respondent, he fully accepted the more precise details of the properties (in terms of property number, location, and valuation per square metre), as set out above in 7.1.

8. RESPONDENT’S CASE

8.1 The Respondent stated that the subject property is similar to other ground floor commercial units in the development in question.

8.2 The Respondent commented briefly on the comparisons relied on by the Appellant. He stated that the Douglas property (PN 5009274) was *“shell and core”*. He also stated that the

Penrose Dock property (PN 2186218) was a basement property, but conceded that it was in a better city centre location than the subject.

8.3 Mr Corkery relied on three comparable “tone of the list” properties, which he asserted shared similar characteristics and were located in the same Local Authority area, to support the valuation on the subject property.

8.4 They are as follows:

1. **Comparison No. 1, PN 5011493:** Teamwork Office on First, Second and Third floor of subject Block F, Blackpool Retail Park, Blackpool, Cork. RV €1047.
Office 1,481.9 M2 @ €109 per SQM
2. **Comparison No. 2, PN 5006553:** Energie Fitness, 2 Park Place, City Gate, Cork, RV €390.
Ground Floor Gym of 1129 M2 @ €54.6 per SQM
3. **Comparison No. 3, PN 2194800:** AIB Bank 6-7 Blackpool Retail Park, Blackpool, Cork. RV €660
Ground floor retail 349.32 M2 @ €204.94 per SQM
First floor office 474 M2 @ €109.3 per SQM

8.5. Comparison No. 1 comprises the office space over the subject property. The Respondent tendered this comparison to show that the office level is €109 per SQM. Comparison No. 2 was the subject of a Tribunal decision, whereby the prevailing office level of €95 per SQM in City Gate, Mahon was reduced to €54.68 per SQM. Comparison No. 3 was tendered to show the different treatment of ground floor space in Blackpool Retail Park.

8.6 The Respondent highlighted that the subject property is a large facility compared to the comparisons (over 1,000 M2). Mr. Corkery said the reduction adopted at representation stage was fair and equitable and reflected the characteristics of the property.

8.7 Mr. Barry for the Appellant did not have questions for Mr. Corkery.

8.8 Mr. Corkery was asked by the Tribunal to provide the rationale for the reduction to the level of €76 per SQM at representation stage. He stated that the upper floors of the subject property have suspended ceilings and raised floors which are conducive to office use, but that the ground floor does not. He also stated that the subject property has an air filtration or extraction system, and does not have air conditioning as such.

8.9 Mr. Corkery was also asked by the Tribunal about his Comparison No. 2, Energie Fitness, in City Gate, which was reduced to €54.68 per SQM in a 2016 Tribunal determination. He was asked about the difference between that property and the subject property. He stated that Comparison No. 2 was located in Mahon, which was not as good an area as Blackpool; as reflected in the lower prevailing office rate of €95 per SQM. However, he conceded that the properties were very similar, and were similar in size. He was asked whether he accepted that the reduction from an RV of €676 to €390 was established as a rateable discount. He did not accept this was an established discount. He stated that he has provided a reduction of 30% to the subject property, but that the Tribunal had discounted the Energie Fitness gym to a greater extent – almost 43%, for reasons unknown to him.

9. SUBMISSIONS

9.1 The Appellant did not make legal submissions.

9.2 The Respondent referred to three Tribunal decisions. First, he cited the Tribunal decision VA 15/4/015 *Galova Limited T/A Energie Fitness*, concerning his Comparison No. 2, the Energie Fitness gym in City Gate, Mahon. As stated previously, the Tribunal reduced the RRV from €95 per SQM to €54.68 per SQM.

9.3 The Respondent relied upon VA 14/2/004, *Momentum Financial Services Ltd v The Commissioner of Valuation*. Mr Corkery stated that in this decision, the Tribunal accepted the assertion that what is valued for rating purposes is not the use of the property but the property itself. He also cited VA 14/4/027, *Medit Ltd Vs The Commissioner of Valuation*. He stated that the Tribunal affirmed the valuation of the Gym at prevailing office levels.

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 Cork City Council.

10.2 It is common case that the onus of proof in appeals before the Tribunal rests with the Appellant (see for example VA 00/2/032 *Proundlane Ltd. t/a Plaza Hotel*).

10.3 The Appellant introduced evidence regarding two properties in particular which went unchallenged, and which the Tribunal found to be persuasive.

10.4 First, the Appellant submitted that Comparison No. 2 (PN 5009274), a gym located in Douglas with an RV of €175, was in a better area and had a shell and core finish. The Respondent did not challenge this evidence, and in fact relied on the quality of the area as justification for a lower RV in respect of one of his own comparisons (Comparison No 2, PN 5006553, the Energie Fitness gym in City Gate, Mahon.)

10.5 Second, the Appellant's Comparison No. 3 (PN 2186218), a gym located in Penrose Dock, Cork City, with a RV of €361, was also accepted by the Respondent to be located in a better city centre location than the subject property, albeit that the Respondent highlighted that it was a basement property.

10.6 The Respondent's Comparison No. 1 referred to the upper floors of the subject building. These were valued as offices at €109.3 per SQM and were referred to as fitted offices. From the evidence provided, these upper floors also had the benefit of raised access floors, suspended ceilings and air-conditioning, whereas none of these enhancements applied to the ground floor which had a concrete floor, painted walls, no suspended ceilings and an air extraction system.

10.7 The evidence produced in relation to the Respondent's Comparison No. 2 was also of particular importance. This comparison related to a Tribunal decision VA 15/4/015 *Galova Limited T/A Energie Fitness*, whereby the RV was reduced from €676, based on €95.00 per SQM for offices, to €390, based on €54.68 per SQM for a gymnasium in that property. The

Respondent stated that this maintained the relationship between the prevailing office level and the gym which he stated he had applied to the subject property. However while the principle was applied the same discount rate was not applied to the subject property, as was discussed under questioning from the Tribunal members, and outlined above in paragraph 8.9. The discount which applied was 42.5% ($€95 \times 0.575 = €54.68$ approx.)

10.8 Again, it is relevant to note that the Respondent acknowledged that his Comparison No. 2 was very similar to the subject property, including in relation to size.

10.9 Accordingly, the Tribunal finds that the proposed discount of 30% from the prevailing office level in Blackpool Retail Park insufficiently reflects the lack of features of the subject property which are required to render it suitable for office use. The subject property in Block F Blackpool Retail Park does not include the enhancements attached to the upper floors, and the Tribunal is persuaded that a discount of 42.5% would better maintain the relationship between the office level and the gym. The NAV is $€95.00 \times 0.575 = €54.63$ - NAV/per SQM.

10.10 The Tribunal calculates the valuation as follows:

Description	Area SQM	NAV/SQM	NAV
Gymnasium	1032.38	€54.63	€56,400

€56,400 x 0.63 (Cork Multiplier) = €355.32

Rounded Say €355

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 €355.00