

Appeal No: VA19/5/0756

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Prime Fitness (Drogheda) Limited trading as Gymplus

APPELLANT

and

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 2197679, Leisure, at Unit U M1 Retail Park, Drogheda, County Louth.**

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Claire Hogan - BL

Member

Gerard O'Callaghan - MRICS, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 22nd DAY OF APRIL, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 2019 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 €144,000.

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 : *“I believe the valuation of the subject property is excessive and does not accord with Section 19(5) of the Valuation Act, 2001 as amended by the Valuation (Amendment) Act 2015 (the Act) as in my opinion it does not achieve both*

correctness of value and equity and uniformity of value between comparable properties on the list.

More specifically, I do not believe that equity and uniformity of value have been achieved between comparable properties as I believe that the subject property has unique considerations which differentiate from similarly categorised properties on the list including an unusual configuration and unusable space. This is supported by the rental information on the subject property and on similar properties in the area. In consideration of these specific matters, I believe a lower valuation as set out herein is more representative of a reasonable Net Annual value in accordance with Section 48 of the Act.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €85,000.

2. REVALUATION HISTORY

2.1 On the 29th day of March, 2019 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 €138,500.

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 increased to €144,000

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €144,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 8th day of February, 2022. At the hearing the Appellant was represented by Mr. John Algar MCSI, MRICS of Avison Young and the Respondent was represented by Mr. Ian Power 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

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The subject property is located on the M1 Retail Park approximately 2.7/3 kms west of Drogheda town centre just off Junction 10 of the M1 Dublin/Belfast motorway with neighbouring occupiers including Smyth's Toys, Woodies, Sports Direct, Dealz and EZ Living. The retail park extends to 24,000m² in all with parking spaces for around 800 cars.

4.2 The property comprises a leisure facility spread over three floors, ground, basement and first, being the major part of a four storey building, Mellview House, and comprises a gymnasium, 25 metre swimming pool with reception, changing rooms and other ancillary areas and with the plant room in the basement.

4.3 The floor areas have been agreed as follows:

Ground Floor	Gym	1,239.10m ²
First Floor	Gym	1,187.37m ²
Basement	Plant	<u>191.88m²</u>
	Total:	2,618.35m ²

4.4 The subject property is held under a lease as set out in detail in the Appendix to this Determination at Section C. In summary, is effectively for 5 years from 1st May, 2015 at a stepped rent which, on average, equates to € 78,000 per annum over the term of that lease. The Appellant's Surveyor has also provided details of turnover which are provided for in Section D. of the Appendix to this Determination.

5. ISSUES

The sole issue arising in this appeal is the quantum of the valuation and more especially, as advanced by the Appellant, the relevance and weighting of the rental evidence from the subject property in guiding that calculation.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 Mr. Algar, for the Appellant, contended for a valuation of € 85,000 per annum as the NAV as at 15th September, 2017 which he calculated as follows:

			€
Ground Floor	Gym	1,239.10m ² @ € 32.50 per m ²	40,270.75
First Floor	Gym	1,187.37m ² @ € 32.50 per m ²	38,589.53
Basement	Plant	<u>191.88m² @ € 32.50 per m²</u>	<u>6,236.10</u>
	Total:	2,618.35m ²	85,096.38
			Say, NAV € 85,000.

7.2 Mr. Algar relied solely on the devalued rent from the reletting in 2015 to guide his estimate as detailed in the Appendix to this Determination.

8. RESPONDENT'S CASE

8.1 Mr. Power, for the Respondent, contended for a valuation of € 144,000 (the valuation appearing in the Valuation List) as at 15th September, 2017, which he calculated as follows:

Ground Floor	Gym	1,239.10m ² @ € 55.00 per m ²	68,150.50
First Floor	Gym	1,187.37m ² @ € 55.00 per m ²	65,305.35
Basement	Plant	<u>191.88m² @ € 55.00 per m²</u>	<u>10,553.40</u>
	Total:	2,618.35m ²	144,009.25

Say, NAV € 144,000.

8.2 In support of his valuation, Mr. Power, relied on seven properties from the Valuation List as follows:

1. NAV Comparable Number 1. Property Number 1278609

(Donore Business Centre, Drogheda, Co. Louth)

This property comprises a former factory which has been redeveloped as a waterpark and entertainment centre with a total area of 11,217.09m² which is assessed at the NAV of € 635,000, which is calculated as follows:

Ground Floor	Sports & Leisure	7,086.83m ² @ € 55.00 per m ²
First Floor	Sports & Leisure	4,130.46m ² @ € 55.00 per m ²

2. NAV Comparable Number 2. Property Number 2203413

(Marley's Kane, Drogheda, Co. Louth)

This property comprises a purpose built two storey leisure centre with swimming pool, gymnasium and other facilities, with an area of 2,338.43m² which is assessed at the NAV of € 140,300 which is calculated as follows:

Ground Floor	Gym	1,612.53m ² @ € 60.00 per m ²
First Floor	Gym	725.90m ² @ € 60.00 per m ²

3. NAV Comparable Number 3. Property Number 2176645

(Felda Health, Dublin Road, Haggardstown, Dundalk)

This property comprises of a purpose built two storey gym with spa, swimming pool with a total area of 4,878.27m² which is assessed at the NAV of € 268,000 that is calculated as follows:

Ground Floor Gym	3,571.55m ² @ € 55.00 per m ²
First Floor Gym	1,306.72m ² @ € 55.00 per m ²

4. NAV Comparable Number 4. Property Number 2203747

(Integral Fitness & leisure, Newtown Business Park, Drogheda, Co. Louth.)

This property comprises of a purpose built two storey gym with swimming pool with a total area of 2,516.57m² which is assessed at the NAV of € 138,400 that is calculated as follows:

Ground Floor Gym	1,268.31m ² @ € 55.00 per m ²
First Floor Gym	1,248.26m ² @ € 55.00 per m ²

5. NAV Comparable Number 5. Property Number 1278660.

(Boyne Valley Leisure Centre, Stameen, Drogheda, Co. Louth)

This property comprises of a leisure centre with swimming pool and gym with a total area of 1,520.67m² which is assessed at the NAV of € 83,600 that is calculated as follows:

Ground Floor Gym	1,200.19m ² @ € 55.00 per m ²
First Floor Gym	320.48m ² @ € 55.00 per m ²

6. NAV Comparable Number 6. Property Number 2167756.

(Aura Leisure, St. Alphonsus Road, Dundalk)

This property comprises a purpose built gym and swimming pool with a total area of 2,276.66m² which is assessed at the NAV of € 136,500 that is calculated as follows:

Ground Floor Gym	2,276.66m ² @ € 60.00 per m ²
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7. NAV Comparable Number 7. Property Number 5016323.

(Yapstone International Limited, 2nd Floor Mellview House i.e. the subject building)

This property comprises an office on the second floor of the subject building which comprises of 1,298.85m² of air conditioned offices with shared entrance at ground floor and lift with communal parking on site. This suite is assessed at the NAV of € 155,800 that is calculated as follows:

Second Floor Offices 1,298.85m² @ € 120.00 per m²

8.3 In addition to the comparables cited, Mr. Power also asserted that:

- (a) In his opinion the property has been valued in accordance with Section 48 of the Valuation Act 2001 and the valuation order made for the Louth County Council area.
- (b) The subject property is a Gymnasium/Sports Centre and is valued as such.
- (c) The rent supplied by the agent has been taken into consideration. However, it is one piece of information. The agent appears to have based his estimation of the NAV on this information only. He is of the opinion that determining the NAV of property on a single piece of information is incorrect and goes against the ethos of any revaluation. Uniformity and equity are essential to the administration of the rating system, as they are in relation to any tax.
- (d) The property was not made available to the Open Market. It may have been easier to agree the reduction rather than to break the lease. The rent that was agreed was between existing parties.
- (e) In his opinion the subject property is not unique such that the rent can be used in isolation. No reference has been made to other similar comparisons on the Valuation List. No other rental information relating to similar properties has been provided.
- (f) He is of the opinion that the Agent has not provided any evidence to show the subject property has unique considerations which differentiate it from similarly categorised properties located in Louth County Council. He is of the view the development should be treated no differently to the comparisons cited in his precis.
- (g) Comparisons cited have been determined to be valued as Gymnasium/Sports Centre out in Co Louth. They are all valued at €55-€60 per sq.metre.

(h) In the absence of direct rental evidence the Valuation Office is of the view that the Contractor's Method would be the most suitable method of valuation. This has been the case in previous revaluations in other counties. In view of fairness and equity for the Ratepayer and bearing in mind the scheme, the Valuation Act seeks to avoid any ratepayer bearing too little or too much of the rates burden, relative to the value of the relevant property and comparable properties. A stand back and look approach was taken when deciding the appropriate levels. From analysis of information received and various individual valuations based on the Contractor's Method, a valuation scheme was developed. A specific level per square metre was placed with allowances for location, age of property, site value and decapitalisation. In the case of the subject property, it was valued in line with other similar properties which have been valued at €55-€60.

9. SUBMISSIONS

There were no legal submissions in this case.

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 Louth County Council.

10.2 The Appellant's Surveyor, Mr. Algar, bases his case entirely on the rent of the subject Property as the best evidence to guide the estimation of the Net Annual Value of the Property as at the statutory valuation date, in this rating authority area, of 15th September, 2017. His devaluation of the average rent over 5 years (derived from the Deed of Variation effective from February 2015), gives, on analysis, an overall "rounded" unit value rate per square metre of € 30.00 per m² (€78,000/2,618.35m²). His subsequent valuation of € 85,000 is compiled by adopting a higher unit value rate of €32.50 per m² which, in answer to a question at the hearing, confirmed had been to account for the movement in the property market between the effective date of the lease and the statutory valuation date. Mr. Algar did not offer rental evidence from any other properties nor did he cite any comparable assessments from the Valuation List.

10.3 The Respondent's Valuer, Mr. Power, does not offer any rental evidence but relies solely on assessments of Net Annual Value from the Valuation List. Six of these are in the broad category of leisure properties but with significant differences and one is an office suite in the same building as the subject Property. The Tribunal had enquired about other assessments in the Retail Park, by way of context, but that information has not been forthcoming. The basis of his adopted unit value rate of € 55.00 per m² is derived from a Contractor's Test method of valuation, though no calculations were offered to indicate how this method was computed. Mr. Power referred to s. 48 of the Valuation Act 2001, as amended, but appears to have based his case on s. 50. If we review the six leisure type properties he has relied on (omitting the office type property, No. 7) it is noted that only one of these has been agreed with a professional Agent. This does not persuade the Tribunal that the adopted unit value rate is universally accepted.

10.4 Both experts drew attention to the lack of other rents that might assist to guide them in valuing this type of property.

10.5 The Tribunal in a Revaluation appeal, such as this present case, is tasked to satisfy the requirements of s.19 (5) of the Valuation Act 2001, as amended, which are to achieve both (in so far as is reasonably practicable)

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list,

such that, in regard to (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

10.6 Following on from s. 19(5) above, the primary basis of valuation is dictated by s. 48 of the Valuation Act 2001, as amended, and that directs that the net annual value is the **rent** for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.

Accordingly, it is the considered view of the Tribunal that preference must be given, primarily, **where rental evidence exists**, to an estimate of rent rather than, as per s.50, a rental equivalent derived from costs (i.e. a Contractor's Test).

10.7 Where rental evidence exists and this is on terms that approximate, in broad terms, with the statutory definition, the Tribunal must carefully weigh that evidence in the light of all other evidence presented to it. Mr. Algar, for the Appellant relies exclusively on the 2015 rent as a benchmark with adjustment to guide his view. Mr. Power for the Respondent ignores the rent of the subject Property and relies on comparable assessments only. He stated in evidence that he had considered the rent of the subject Property but advances no calculations or adjustments to substantiate that statement. In this regard, one expert (Mr. Algar) could be said to be addressing part (a) of s. 19(5) and the other expert (Mr. Power) said to be addressing part (b) of s. 19(5) both acting, on the face of it, to adopt what might be conceived of as a mutually exclusive approach. The Tribunal considers that, in the absence of information to the contrary, that the 2015 rent is a good indicator of rental value as it was achieved by negotiation, and it has been established at the hearing that the Landlord was advised, at the time, by a well-known firm of estate agents. The Respondent made the case at the hearing that this rent was not achieved on the open market but with an existing occupier. That begs the question, surely, that if a higher rent could have been obtained by placing the Property on the market, is that not a route the Landlord would have taken? He chose not to do so. The more logical conclusion, therefore, is that the rent achieved in 2015 was the best obtainable at that time. However, relying totally on the adjusted 2015 rent only gives part of the solution as the other comparables in the valuation list cannot be dismissed.

10.8 The Tribunal considers that to adopt the Appellant's unit value rate of € 32.50 per m² would place the Property at a significant discount to the other leisure type properties cited by the Respondent and thus considers, that in the absence of the knowledge of a sound basis for the methodology used to derive the cost based unit value advanced by the Respondent of € 55.00 per m² but acknowledging that € 55.00/60.00 per m² has been used consistently in the rest of the rating authority area, a balance must be struck to reflect the rent of the subject Property, suitably adjusted, in the context of those other assessments.

10.9 Therefore, in the absence of any other material evidence but based on the available evidence presented, the Tribunal considers that a unit value rate of € 45.00 per m² is a reasonable compromise, given the conflicting opinions and differing bases adopted by the respective parties.

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 **€ 117,800.**

This is calculated as follows:

Ground Floor	Gym	1,239.10m ² @ € 45.00 per m ²	55,759.50
First Floor	Gym	1,187.37m ² @ € 45.00 per m ²	53,431.65
Basement	Plant	<u>191.88m² @ € 45.00 per m²</u>	<u>8,634.60</u>
	Total:	2,618.35m ²	117,825.75

Say, € 117,800.

And the Tribunal so Determines.