

Appeal No: VA19/5/0776

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Prime Fitness Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Subject Property No. 2171174, Leisure at Floor (S) -1/0/1 0 Applewood Village, Dublin,
County Dublin

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Raymond J. Finlay - FIPAV, MMIL, ACI Arb, TRV, MCEPI, PC

Member

Eamonn Maguire - FRICS, FSCSI, VRS, ARB

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH 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 Subject Property was fixed in the sum of €321,000.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“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 believe that correctness of value has been achieved between comparable properties as I believe the Subject Property has unique considerations which differentiate it from similarly categorised properties in the list including an inferior location and restricted parking facilities. 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 Subject Property ought to have been determined in the sum of €209,000.

2. REVALUATION HISTORY

2.1 On the 15th 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 Subject Property was sent to the Appellant indicating a valuation of €321,000.

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 manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €321,000

2.4 The date by reference to which the value of the Subject 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 14th of February 2022. At the hearing the Appellant was represented by the Mr John Algar MSCSI, 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

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

4.2 The Subject Property is located 2 km north of Swords Village Centre in Applewood Village, off the Balheary Road, a residential suburb of Swords, developed around 2002.

4.3 Swords is the main commercial centre of Fingal County Council with a population recorded as 42,738, in the 2016 census.

4.4 The Subject Property comprises part ground and first floor together with basement plant rooms, in a four storey over basement commercial mixed-use building, called Broadmeadow Hall.

4.5 Car parking is provided at surface level to the front and side of the building and in the basement.

4.6 The Subject Property is held under a long-term lease. The tenants entered into examinership which led to a Deed of Variation on the lease. The revised rent agreed was set at a base level lower than the passing rent (details in the appendix), or a percentage of the turnover rent (whichever is the greater).

4.7 The floor areas of the Subject Property agreed between the parties are as follows:

Description	Floor level	Sq. m.
Gymnasium	Ground floor	1,371.35
Gymnasium	First floor	1,173.79
Plant room	Basement	135.09
Total		2,680.23

5. ISSUES

5.1 The sole issue in dispute is the quantum of the valuation.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Subject 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 Subject Property shall be determined under this Act by estimating the net annual value of the Subject Property and the amount so estimated to be the net annual value of the Subject 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 Subject Property, the rent for which, one year with another, the Subject 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 Subject Property in that state, and all rates and other taxes in respect of the Subject Property, are borne by the tenant.”

7. APPELLANT'S CASE

7.1 Mr Algar, for the Appellant, having made his affirmation, adopted his précis as his evidence-in-chief before giving oral evidence.

7.2 Mr Algar in adopting his methodology and rationale stated that the rental evidence concerning the Subject Property, available at the Valuation Date, 15th September 2017, offered the best evidence of market value.

7.3 Mr Algar states that at the time the Deed of Variation was agreed between the parties, the landlord had two options, take possession of the Subject Property and re-let it at the open market rent, or agree revised lease terms and rent with the existing tenant.

7.4 Mr. Algar states that he was informed by his client that the base rate was calculated based on their forecast of annual turnover in August 2015, which turned out to be quite accurate given the actual rent paid 12 months later.

7.5 Mr Algar submitted in evidence; the following NAV comparable.

1) PN 344981 - Toberbunny, County Dublin - comprising sports centre measuring 4,071 square metres which the Commissioner has valued at €50 per square metre. Mr Algar describes this comparable Subject Property as a private members sports club, with a broad range of sporting facilities, a member's bar and café/restaurant, and with extensive surface car parking.

7.6 In contending for a reduced NAV, Mr. Algar set out his opinion of the NAV on 15th September 2017, as **€222,000**, arrived at, as follows:

Description	Floor level	Sq. m.	€/Sq.m.	NAV
Gymnasium	Ground floor	1,371.35	€85	€116,564.75
Gymnasium	First floor	1,173.79	€85	€99,772.15
Plant room	Basement	135.09	€42.50	€5,741.33
Total				€222,078.23
Rounded				€222,000.00

7.7 In cross examination, Mr Algar was asked in terms of hierarchy of rental evidence which would rank higher, an open market transaction or a reviewed rent, which occurred in this situation. Mr Algar replied that he would rank open market transactions higher.

7.8 Mr Algar was asked why he did not introduce similar NAV comparisons to the Subject Property, rather than that of a private members club, which was not a commercial business for profit. Mr Algar replied that if the comparable is rated and comes under Schedule 3 of the Act, it did not matter how they were operated, and the exercise involved valuing them as vacant and to let. Mr Algar also stated that he did not introduce any further evidence as the case of the Appellant was based on the revised rent of the Subject Property as per the Deed of Variation.

7.9 Mr Algar was asked what was unique about the Subject Property that made it inferior to other gymnasiums on the Valuation list. Mr. Algar responded that the Subject Property was on the northern fringes of Swords, as opposed to the Respondent's comparisons, which he stated were located along the M50 or the Dublin side of the M50. Mr Algar also stated that it was a mixed-use development.

7.10 It was put to Mr. Algar by the Respondent that the initial lease rent on the Subject Property would suggest that it was not very isolated. Mr. Algar responded that the initial rent was never sustainable, evident from the subsequent examinership and the revised rent agreed.

7.11 Mr. Algar was asked by the Respondent, why he had not valued the basement plant room on the same overall rate as the balance of the Subject Property, as was the norm and whether he had evidence to support this approach. Mr. Algar stated that he did not have supporting evidence but that the plant rooms were ancillary to the balance of the accommodation and that in any event, it was the overall NAV figure that he was concerned with.

7.12 Mr. Algar was asked to explain his rationale for valuing the Subject Property at a higher rate per square metre, than that of his NAV comparable evidence. Mr. Algar stated that the comparable Subject Property was of older construction and by virtue of its location, access was more car dependant.

8. RESPONDENT'S CASE

8.1 Mr Power, for the Respondent, having made his affirmation, adopted his précis as his evidence-in-chief before giving oral evidence.

8.2 Mr. Power stated that in the absence of market 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.

8.3 From analysis of information received and various individual valuations previously based on the Contractor's Method, the Revaluation scheme was developed. Mr. Power stated that a specific valuation level per square metre was arrived at of €120 per square metre, taking into account allowances for location, age of Subject Property, and site value.

8.4 Mr. Power stated that in the case of the Subject Property the valuation level of €120 per square metre applied was in line with other similar type properties.

8.4 The Subject Property valued, was among seven gymnasiums/sports centres of various standards throughout the Fingal County area. Mr. Power stated that the subject is one of two of these properties, which has been appealed to the valuation tribunal.

8.5 Mr. Power stated that whilst the rental evidence provided by the Appellant was considered, the Appellant appears to have based his estimation of the NAV solely on that information. That rent was agreed between existing parties and the Subject Property was not made available to the open market. It may have been easier to agree the rent reduction than to break the lease. The rent variation agreed is also subject to a turnover element, which could fluctuate the rent considerably, from year to year.

8.6 Mr. Power stated that in his opinion the Appellant has not provided sufficient evidence to show that the Subject Property has unique considerations which differentiate it from similarly categorised properties located in the Fingal County Council area.

8.7 Mr. Power stated that his comparisons submitted, have been valued as gymnasiums/sports centres in Fingal County Council and all bar one, have been valued at €120 per square metre.

8.8 In support of his contention that the Subject Property's NAV is correct, Mr Power provided details and photographs of six NAV comparables from the Valuation List:

PN 2185580 – Santry, Fingal – Ground floor gymnasium measuring 5,331 square metres valued at €120 per square metre. Built in 2004/2005.

PN 1040912 – Castleknock, Co. Dublin – Gymnasium measuring 3,700 square metres on the ground floor and 2,331 square metres on the first floor, both valued at €120 per square metre. Built in 1997 with some minor subsequent extensions.

PN 1141417 – Blanchardstown, Dublin 15 – Ground floor gymnasium measuring 4,365 square metres, valued at €120 per square metre. Built in 1997.

PN 5002562 – Malahide, Co. Dublin – Ground floor gymnasium measuring 394.35 square metres, office measuring 32.19 square metres, locker room/w.c measuring 133.95 square metres, hall measuring 13.13 square metres, store measuring 5.39 square metres, canteen measuring 10.59 square metres, all valued at €120 per square metre.

PN 2199463 – Swords, Co. Dublin – Second floor gymnasium measuring 443.04 square metres valued at €180 per square metre and offices of 30.21 square metres valued at €180 per square metre. Part of a new district shopping centre anchored by Supervalu.

PN 2171446 – Lucan, Co. Dublin – Ground floor gymnasium measuring 4,730 square metres valued at €120 per square metre. Built in the 2000's and renovated in 2017.

8.9 In his Precis of Evidence, Mr Power sets out his opinion of the NAV on 15th September 2017, as **€321,000**, breaking back as follows:

Description	Floor level	Sq. m.	€/Sq.m.	NAV
Gymnasium	Ground floor	1,371.35	€120	€164,562
Gymnasium	First floor	1,173.79	€120	€140,854
Plant room	Basement	135.09	€120	€16,210
Total				€321,626
Rounded				€321,000

8.10 Under cross examination, Mr. Power was asked how the value of €120 per square metre was arrived at. Mr Power stated that in previous Revaluations all of the sports centres would have been done on the Contractors Method, individually.

In the case of his first NAV comparable, it was previously valued at €768,000 and the second NAV comparable was valued at €870,000. For this Revaluation to keep it in equity and uniformity, the level of €120 per square metre was decided upon, as a fair and equitable value per square metre, reflecting the Contractors Method. No specific exercise under the Contractors Method was done in the case of this Revaluation.

8.11 Mr Power stated that this valuation level was generally accepted and that the first three NAV comparables, all sizeable properties, had not been appealed to the Tribunal.

8.12 Mr. Power further stated that in the case of the Subject Property, there could be a case to advance that it would be a more expensive build than most of the NAV comparables, as it was part of a mixed-use scheme, with a higher specification of construction.

8.13 Mr Power was asked in the case of the NAV comparable evidence submitted, was there any adjustment made for age, size, location and site value. Mr. Power stated that it was adjudicated that the comparables were all similar in terms of location, and there were no disadvantages attached to the subject premises, to adopt a lower valuation level per square metre.

8.14 Mr Power was asked whether rental evidence could be considered in applying a reduction to the rate adduced by the Commissioner using the Contractors Method. Mr Power accepted that it could, where there was a sufficient quantum of evidence but that the rental evidence submitted by the Appellant was not sufficient to justify an adjustment on its own.

8.15 Mr Power was asked whether there was any other rental evidence considered by the Commissioner. Mr Power stated that in the case of one of his comparables, a Deed of Variation was entered into by the parties.

8.16 Mr Power was asked in the case of his first NAV comparable, whether he would agree that it was situated 10.5 km away from the Subject Property. Mr Power said he would accept that it was, but he did not see that as any advantage, as the Subject Property was still within the environs of Swords, with a population of 42,000 people and with a similar type of catchment area.

8.17 Mr Power was questioned about the individual size of the floor areas of his comparable properties, in particular those of four and five, which were smaller. Mr Power stated that the Subject Property was neither the largest nor the smallest sized premises compared to the comparable properties submitted, and as such he was comfortable with the rate of €120 per square metre adduced.

8.18 Mr Power stated that an allowance was made in the case of his sixth comparison, (as set out in the appendix). That allowance was made to reflect the fact that the Subject Property was situated at second floor level and located in a shopping centre. Mr Algar noted that this comparable NAV was currently being appealed to the Tribunal.

8.19 Mr Power was asked how the Commissioner decided on whether to treat a Subject Property as a private members club. Mr Power stated that the facility must be a registered club, falling under the club licensing act. The comparable submitted by Mr Algar was handled somewhat differently, in that some of its floor area was taken out of its valuation, because it was treated as a club house. In the case of the other comparables evidence submitted by Mr Power, none of the floor area could be taken out, because he stated that they were all commercial operations, for profit.

9. SUBMISSIONS

9.1 No legal submission was made.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Subject Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Subject 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 Fingal County Council.

10.2 The Tribunal has examined the details of the Subject Property and considered the written and oral evidence adduced by Mr Algar who contended for a revised NAV of €222,000 and that adduced by the Mr Power defending the NAV of €321,000 as fair and equitable in the circumstances.

10.3 The Tribunal finds that the case for the Appellant rests on the evidence of the Deed of Variation entered into by the existing parties to the lease, on the subject premises. In considering the rental evidence submitted by Mr. Algar, the Tribunal finds that the Deed of Variation, did not concern an open market transaction, the revised rent agreed included a turnover element and did not constitute a sufficient quantum of market evidence to assist the Tribunal.

10.4 In terms of the NAV comparable submitted in evidence by Mr Algar, the Tribunal finds from the evidence, that the comparable property is of very dated construction compared to the Subject Property. In addition, the comparable property is situated in a location with access more reliant on private and public transport, compared to the Subject Property. The Tribunal finds this comparable of less assistance.

10.5 In reviewing the evidence submitted by the Respondent, the Tribunal finds that the valuation level of €120 per square metre deduced by the Commissioner, is appropriate in the context of age of construction, floor size and location.

10.6 Under Section 20 of the Valuation (Amendment) Act 2015 the Tribunal is required to achieve a determination of the value of the Subject Property, the subject of the appeal, that accords with that required to be achieved by section 19(5) namely (i) correctness of value, and (ii) equity and uniformity of value between properties on that valuation list and section 37(2)(ii) provides that in accordance with the matters set out in section 19(5), the Tribunal may increase or decrease a valuation as stated in the valuation certificate.

DETERMINATION:

Accordingly for the above reasons, the Tribunal disallows the appeal and confirms the valuation of the NAV by the Commissioner at **€321,000**, and the Tribunal so determines.

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