

**Appeal No: VA19/2/0012**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Philip Peat (Trustee) - Old Court Castle Boat Club**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5018169, Marina at Terryglass, Borrisokane, County Tipperary.

**B E F O R E**

**Dairine Mac Fadden - Solicitor**

**Deputy Chairperson**

**Michael Brennan - BL, MSCSI**

**Member**

**Gerard O'Callaghan - MRICS, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 19<sup>TH</sup> DAY OF OCTOBER 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 6<sup>th</sup> day of June 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 €8.

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 28(4) of the Valuation Act 2001 (“the Act”) because: *“Old Court Castle Boat Club is a private club of eight members which has no income. Old Court Castle Boat Club is a boating club of eight members and moorings - facility for eight boats. We do not have any source of income except for our annual subscription paid by our members decided at our AGM. We do not have any industrial, commercial or business transactions. We are a recreational boating club and have no commercial boating facilities.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

## **2. VALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of April 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €8.

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 not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 16<sup>th</sup> day of May 2019 stating a valuation of €8.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 5<sup>th</sup> day of September 2022. At the hearing the Appellant was represented by Mr. Gregory Whelan, of Old Castle Court Boat Club (“the Club”). The Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor’s Office; Ms. Angelina Scanlan, Valuer, of the Valuation Office gave evidence 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 taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

#### 4. ISSUES

The issue to be determined is whether the Property is relevant property not rateable under Schedule 4, paragraph 4A of the Act.

#### 5. RELEVANT STATUTORY PROVISIONS:

5.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Act (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.*

5.2 “building” is defined in section 3 of the Act as including “a structure, whatever the method by which it has been erected or constructed”.

5.3 Schedule 4 of the Act is headed “Relevant Property Not Rateable” and includes at paragraph 4A.

*(1) “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.*

*(2) In this paragraph ‘community sport’ means sport, the principal participants in which are—*

*(a) inhabitants of the locality in which the building concerned (or part of the building concerned) is situate,*

*(b) inhabitants of localities neighbouring the first-mentioned locality, or*

*(c) in the case of sporting activities involving teams and with the consent of those responsible in the first-mentioned locality for organising sporting activities in that locality, persons from any geographical area.*

## **6. APPELLANT'S CASE**

6.1 Mr. Whelan said that he was an incoming trustee and member of the Club. There were eight families involved in the club, with each family having a berth. The Club was appealing on the grounds that the valuation was excessive and inequitable.

6.2 He stated that the Property was in use for sport, which is conducted on inland waterways, of which there was only one in the middle of the country. They engage in a sporting activity, and they are members of the Inland Waters Association and members participate in boat manoeuvring and navigation activities held regularly by the Association throughout the boating season.

6.3 The Club is not registered as a club under the Registration of Clubs (Ireland) Act 1904 and does not make a profit; any monies are used to upgrade and enhance the Property and to meet associated costs. The Club does not engage in commercial activities and the rules of the Club prevent commercial activity by individual members

6.4 The Property is used by inhabitants of the locality generally as provided for in the rules. Mr. Whelan said that he lives approximately 20 minutes away from the berths and some members live a little further away. There was only one river Shannon and one Lough Derg and he submitted that it was very difficult to participate in water sports if you were in a landlocked County.

6.5 The Club is one of a number of similar clubs in the County but he said that none of the others had been selected by Tipperary County Council for a rateable valuation. He submitted that the Club was being singled out.

6.6 There was also what he described as a secondary issue. The request for listing issued by Tipperary County Council was erroneous as it had the name and address of a neighbouring harbour. He submitted that this error created uncertainty as to which premises was selected for valuation and was unequitable treatment of the citizen in public administration. He submitted that it was unusual that the VO relied on a letter from a neighbour in whose interest it was to assert that the Property was not theirs. There was no evidence of checks having been made with

the Local Authority. The notice had been sent to an incorrect recipient and there were data breaches in that regard.

6.7 The Club was relying on the exemption set out in schedule 4, paragraph 4A (1) of the Act, being land developed for community sport. There was only one central waterway and as not everyone could have water on their back door, the term “community” had to be given a wider interpretation.

6.8 Under cross-examination by Mr. Dodd BL for the Respondent, he accepted that the berths were for the use of members, family and guests, but for what he described as “sporting activity”. He accepted that on the death, expulsion or resignation of a member, and in the circumstances outlined in rule 2.7 of the Club’s Rules, there was a procedure for the valuation of a member’s interest at market value, which Mr. Dodd submitted was indicative of a private property interest. He accepted that this was a return but said that this was because the property had been purchased privately in 2003 and there was a value to it, which was held by the members. He agreed that the description of the Club as set out at no. 7(d) of the Notice of Appeal, was “*private club*” and “*a recreational boating club*” but said that his interpretation of what was meant by “recreational” was different to that of Mr. Dodd’s. He accepted that the list of members appended to the Notice of Appeal was correct save that there had been a change of membership since then, in that the third named members were no longer members and he had replaced the sixth named members listed. He accepted that the first named member lived approximately 35 km away from the Property, that the second named member was from Co. Kildare, that the fourth named member was from Co. Cork, that the fifth and seventh named members were from Co. Dublin, and that the eight named member was from Co. Laois. He accepted that he himself lived approximately 22 km from the Property but said that he was in the “next parish over”.

6.9 In his summing up, Mr. Whelan stated that recreation was a sport. The Property was a gateway to the water world. There was no evidence that the Appellant was the correct body to be selected for listing.

6.10 In his closing statement, Mr. Whelan stated that it was the view of the Appellant that the Respondent’s comparators were not similar as they were commercial in nature. There was a disagreement between the parties as to whether recreational sport constitutes sport. Terryglass was in County Tipperary and was a gateway to the water world, which the members were using,

and which was not available in Kildare or Cork. The Appellant had a concern as to whether they were the correct body to be selected for listing.

## **7. RESPONDENT'S CASE**

7.1 Ms. Scanlan having adopted her précis as her evidence in chief gave no further evidence.

7.2 Under cross-examination by Mr. Whelan, it was put to her that there was no evidence to say that the Property had been correctly identified by the Council for listing. Ms. Scanlan responded that the Council had given the planning reference number and that this related to the Property. She was asked whether a check had been made with the Council following on from the letter from the neighbour to whom the first certificate had issued. She responded that she had not been the valuer who had dealt with it at the initial stage.

7.3 Under questioning from the Tribunal, regarding the NAV's that had been relied on, she said that as this was a legal issue, she had not included any, but she gave the range relied on, being one in Nenagh, rated at €200 per berth, one in Ballina, at €225 per berth and one in Walterstown, at €254 per berth.

## **8. APPELLANT'S LEGAL SUBMISSIONS**

8.1. Mr. Whelan submitted that recreational boating includes sport and referred to the fact that a number of the members participated in competitions. On the issue of the locality, he submitted that there was only one waterway and that it could not be in everyone's back garden, that the Act, was silent on the meaning of "locality", and that it should be interpreted as meaning the citizens of Ireland.

8.2. It was the duty of a public body to be fair and equitable to citizens and the reasons for the selection of a private club for rating were not clear. The Council had not levied rates on any other boating clubs within the County. The listing report had named a person who was never an owner and there did not appear to have been any investigation as to how this had happened or the follow on from that.

## **9. RESPONDENT'S LEGAL SUBMISSIONS**

9.1 Mr. Dodd BL said that the onus of proof was on the Appellant. In accordance with the principles set out in various High Court and Supreme Court decisions and in particular in the case of *Nangles Nurseries v Commissioner of Valuation* [2008 IEHC 73], he said that

exemptions were to be interpreted strictly against the rate payer and any ambiguities in an exemption were also to be interpreted against the rate payer.

9.2 He submitted that the Appellant did not meet the conditions for the exemption claimed and as set out in paragraph 4A of Schedule 4 of the Act.

9.2.1 Firstly, the Property, being fixed moorings, did not in the Respondent's view, constitute buildings for the purpose of the exemption relied upon. However, having regard to the definition of "building" in section 3(1) as including "*a structure, whatever the method by which it has been erected or constructed*", he did accept that this was an arguable point, but was of the view that if the Oireachtas had intended for fixed moorings to have been included in the exemption, that they would have been specifically mentioned. He reiterated that it was the view of the Commissioner that "fixed moorings" were not a "building" within the meaning of the Act.

9.2.2 Secondly, he submitted that the Property was not being used "exclusively" for community sport" as required under the exemption sought. The word "exclusively" did not mean "mainly" or "predominantly" but meant "only".

9.2.3 Thirdly, the Property was being used for "berthing, boating and cruising" as set out in the Rules of the Club. The Club was a recreational boating activities club as described in the Notice of Appeal. He submitted that neither hobbies or recreational activities constituted sport. The Appellant had referred in his oral evidence to some members participating in competitions, but this had not been mentioned in either the Notice of Appeal or the précis. While the term "sport" was not defined in the Act, he submitted that there were some indicia of "sport" such as rules, scores, other players and participation in events such as the Olympics or events at National level. Recreational sporting activity did not have any of these.

9.2.4 Fourthly, the exemption required that the principal participants were inhabitants of the locality in which the property in respect of which the exemption was being claimed, was situate or inhabitants of neighbouring localities. The locality was Terryglass, Co Tipperary and not the waterway as claimed by the Appellant. Mr. Dodd submitted that the facts are that as per the list of members at the time the decision was made and as set out in the Notice of Appeal, the members of the Club did not live in the locality or in the neighbouring locality. The first named member lived in an area which while within the same County as the Property, was 35 km away and the locality was, he submitted, a locality rather than a county. The second named member was from Co. Kildare. The third, fifth and seventh named members were from Co Dublin. The

fourth named member was from Co. Cork, the sixth names member was approximately 22km away and the eighth named member was in Co. Laois, which was 105 km away. The list of members was that which was in place at the date of the decision and not as it might currently appear.

9.3 He submitted that the Club was a private members' club, and that the Appellant did not meet the required conditions for the exemption being sought.

## **10. FINDINGS AND CONCLUSIONS**

10.1 The Tribunal in this case must decide whether the subject property should be excluded from the valuation list because it falls within Schedule 4 paragraph 4A of the Valuation Act, 2001, as amended by the Valuation (Amendment Act) 2015.

10.2 Having assessed the evidence, provided by the parties, the Tribunal makes the following findings of fact.

10.2.1 The Property is located on Roberts Harbour on the shores of Lough Derg, adjacent to the village of Terryglass, Co. Tipperary. It comprises a fixed mooring marina with accommodation for 8 berths, located to the west of the Terryglass public harbour.

10.2.2 The Property is "Relevant Property" as defined in section 3 of the Act Act and in particular under paragraph 1(d) of Schedule 3, "*harbours, piers, docks and fixed moorings*".

10.2.3 The Property is privately owned by the Club with the objective of providing facilities for its members for berthing, boating and cruising on the inland waterways of Ireland.

10.2.4 The Club is not registered as a club under the Registration of Clubs (Ireland) Act 1904.

10.3 The Appellant's Rules provide at rule 1.2 that the objective of the Club shall be the provision of facilities for its members for berthing, boating and cruising on the inland waterways of Ireland. In their Notice of Appeal at no. 7. (d), it is stated that the Appellant is a private club of eight members and that "*we are a recreational boating club*". Rule 2.7 which provides for the valuation of a member's interest, in the Tribunal's view, underlines the private nature of the Club. Further, in the Tribunal's view, berthing, boating and cruising as described



in the Rules and in the Notice of Appeal cannot be regarded as a sport and having regard also to the indicia of sport described by Mr. Dodd BL in his submissions. The Tribunal also finds that even if the activities could be regarded as “sport” having regard to the Appellant’s submission that some of the members were involved in boat manoeuvring and navigation competitions, that does not meet the test of “exclusively” set out in paragraph 4A (1) of Schedule. 4.

10.4 Furthermore, they do not fall within the definition of “community sport” given the requirement that the principal participants must be inhabitants of the locality in which the property is located or inhabitants of neighbouring localities. The facts are that at the time the appeal was lodged, of the eight members, only two had addresses in the Local Authority’s area and they were 35km and 22 km respectively away from the Property. Having regard to the principles of statutory interpretation, the ordinary and plain meaning of the words are to be strictly applied in the interpretation of the Act. The Tribunal notes that the Oxford English Dictionary, 6<sup>th</sup> Edition, defines the word “locality” as “1. an area or neighbourhood. 2. the position or site of something” and thus considers that to be its ordinary meaning. The Tribunal does not accept the submission of the Appellant that a wider interpretation of “locality” should be given to extend to the citizens of Ireland as this would be a wholly contrived interpretation and contrary to principles of statutory interpretation as set out in by MacMenamin J in *Nangles Nurseries v Commissioner of Valuation [2008 IEHC 73]*. In light of the Tribunal’s findings on these issues, it is not necessary for the Tribunal to determine whether the reference in paragraph 4A (1) to “Any building or part of a building...” includes fixed moorings.

10.5 The Appellant also submitted that it had been unfairly selected for listing and further that there was no evidence of checks having been carried out to confirm that the Property had been correctly identified for listing. The Tribunal has no judicial review jurisdiction (under Order 84 or otherwise) and does not carry out a supervising function over the Commissioner of Valuation or the Local Authority. The Tribunal is an appeal body dealing with the merits of decisions of the Commission of Valuation. It hears appeals from decision concerning issues such as whether the quantum is correct, whether a subject property is entitled to exemption, whether a material change of circumstances exists.

10.6 In his closing statement, Mr. Whelan stated that it was the view of the Appellant that the Respondent’s comparators were not similar as they were commercial in nature. However, the Appellant’s Notice of Appeal contended for full exemption and proposed a valuation of zero.

The argument was not advanced for an alternative valuation in the event that their case for exemption failed, which it has, and no comparator properties were advanced by the Appellant which would be required to support any argument for a reduced valuation.

**DETERMINATION:**

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

<b>Use</b>	<b>No. of</b>	<b>€/per berth</b>	<b>NAV</b>
<b>Berths</b>	8	€200	€1600
<b>Total NAV</b>		<b>€1600</b>	
<b>Reducing Factor 0.005</b>		<b>= €8</b>	
<b>Rateable Valuation</b>		<b>€8</b>	