

Appeal No: VA19/5/0751

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Westwood Club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2171446, Leisure at Westmanstown, Dublin 15, County Dublin

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Martin Connolly - MAgrSc, MSc, MSCSI, FCInstArb Member

Rowena Mulcahy – Solicitor, C.Arb., FCIArb.

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 2ND DAY OF DECEMBER, 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 (the “Subject Property”) was fixed in the sum of €567,000

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 it from similarly categorised properties on 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 €307,000.

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 €567,000.

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 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 €567,000.

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 the 18th day of July, 2022. At the hearing the Appellant was represented by Mr. John Algar MSCSI, MIRCS 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 a modern gymnasium/fitness centre located approximately 12.5 km northwest of Dublin City Centre; 2.6 km north of Lucan, which is the point of access to the N4; 2.0 km south of Clonsilla; and 3.5 km from Blanchardstown. It is in a predominately rural location in an area mainly developed for sporting use, with a mix of agricultural land and residential housing also. The Subject Property is close to a large population base in the surrounding areas and adjoins Westmanstown Sports and Conference Centre which includes the Westmanstown Golf Club, a Rugby Club, a GAA Club and Lawn Bowling Club. It is served by a relatively infrequent local bus service.

4.3 The Subject Property comprises a purpose built two-storey gymnasium/fitness centre, with accommodation that includes a reception area, swimming pool, sports hall, a Kids Activity Centre, coffee shop, treatment rooms, changing rooms, showers and offices on the ground floor and an open plan gymnasium with two aerobic studios and a running track on the first floor. The facility was built in 2002/3 and refurbished internally in 2017 at a cost of over €4 million. Neither witness was able to provide details of the refurbishment. However, from the

photographs provided it is clear that the Subject Property is finished internally to a high standard and is also very well equipped. The Subject Property is in excellent condition and is described on the Appellant’s website as “a 5-star family fitness club.” Location maps and plans were provided, and the floor areas were agreed as follows:

Floor	Use	Area (m²)
0	Reception, sports hall, coffee shop, changing rooms and plant	3,205.45
1	Gymnasium/voids	1,524.57
Total		4,730.02

Customer carparking is available to the front of the Subject Property and to the front and side of the adjoining Sports and Conference Centre.

4.4 Tenure: The Subject Property is held under the terms of a long lease the details of which are set out in Appendix 1 (n/a to public).

4.5 It was agreed by both parties that there is a dearth of Open Market rental evidence for Gymnasiums/Fitness centres similar to the Subject Property in the Fingal Rating Authority area.

5. ISSUES

The sole issue in this appeal is quantum.

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 provided a copy of the lease under which the Appellant occupies the Subject Property and stated that the rent payable under the lease had been re-negotiated between the Landlord and the then Tenant, the Appellant’s predecessor in title, in 2015 as part of an Examinership of the then, Tenant. The Appellant acquired the Tenant Company in June 2016 and took over the Lease from that date. Mr Algar also provided details of the reduced rent that he stated had been agreed between the Landlord and the then Tenant in 2015. Details in relation to the Lease, including the rent payable under the Lease, and the reduced rent which Mr Algar stated had been negotiated in 2015, between the Landlord and the then Tenant are set out in Appendix I (n/a to public).

7.2 No written evidence of any variation in the terms of the lease was provided save that Mr Algar provided copies of three invoices from the landlord addressed to the Appellant’s predecessor in title, International Leisure Group, which he stated were invoices for the reduced monthly rent of €25,000 that had been negotiated between the landlord and the then tenant in 2015. Copies of the said invoices for the months of July 2017, September 2018 and March 2019 respectively are exhibited in Appendix II (n/a to public)..

7.3 Mr Algar submitted that the reduced rent that had been agreed between the Landlord and the Appellant’s predecessor in title in 2015 was the best evidence of the rental value of the Subject Property at the Valuation Date.

7.4 Mr Algar presented evidence of a similarly renegotiated rent for PN2171174, a property at Applewood, Swords details of which are set out in Appendix III (n/a to public)..

7.5 Mr Algar also put forward two NAV comparisons on behalf of the Appellant:

(i) PN305622, Westmanstown Sport and Conference Centre, which adjoins the Subject Property and which he described as a Leisure Facility and Club House with conference suites, bar restaurant, offices and changing/locker rooms for the adjoining sports clubs. The NAV is €65.00 per m²; and

(ii) PN344981, ALSAA, Sports Club, Old Airport Road, Tobberbunny which is a private members club with a range of sporting facilities. Some areas of the property have been excluded under Schedule 4 of the Act. The NAV is €50 per m².

7.6 Mr Algar contended that the passing rent on the Subject Property is the best evidence of the market rental value for the Subject Property as at the Valuation Date, 15 September 2017. He also contended that the re-negotiated rent for PN2171174 was evidence of the market. He contended that in that case and in the Subject Property, if there was a prospect of achieving a better rent, the landlord could have taken back the premises and re-let it at a higher rent.

7.7 Mr Algar also cited the Tribunal decision in VA19/5/0756 where regard was had to a revised rent which he stated supported his contention that passing the rent is the best evidence of the rental value of the Subject Property on the Valuation Date.

7.8 Mr Algar stated that in his opinion, the correct NAV for the Subject Property was €307,000.00, calculated as follows:

	Sq. M	Basis	€/Sq. M	NAV
Gymnasium-Ground Floor	4,730	GIA	€65.00	€307,450
Total				€307,450
Rounded				€307,000

7.9 On questioning by the Tribunal, Mr Algar stated that he had been informed by the Appellant that a reduced rent for the Subject Property had been agreed between the landlord and the then tenant, International Leisure Group but he had not seen any written Deed of Variation or any side letter recording any agreement to amend terms of the lease nor had he seen any receipt for rent from the landlord. He had been advised and he understood that the rent had been reduced for the time being but he accepted that under the lease, the landlord had the right to demand payment of the rent specified in the lease at any time.

7.10 When questioned by Mr Power, Mr Algar accepted that open market transactions, where available, are better evidence but that in the absence of rental information, a Deed of Variation can provide an indication of the market.

7.11 On cross examination by Mr Power on behalf of the Respondent, Mr Algar rejected Mr Power's contention that the two NAV comparisons put forward by Mr Algar on behalf of the

Appellant were not of assistance because they were registered clubs with parts of both comparator properties excluded under Schedule 4 of the Valuation Act 2001. Mr Algar submitted that the remaining parts of the comparator properties are valued in accordance with s 48 of the Act. He also submitted that the Subject Property is a registered club albeit it is being operated for profit by a private company. Mr Algar also stated that he did not provide details of other similar properties from the list as comparators because he was not familiar with the other properties on the Fingal list. Furthermore, he pointed out that the Tribunal had held in VA19/5/0756 that since only one of the properties on the list had professional representation, the Tribunal was not convinced that the adopted unit value was universally accepted .

8. RESPONDENT'S CASE

8.1 Mr Power contended that in the absence of rental information, as in the present case, other valuation methods are used to determine NAV. Thus, leisure facilities in Fingal County Council Revaluation were assessed using the Contractors Method in accordance with s 50 of the 2001 Act to determine the NAV in accordance with s 48. Under questioning by the Tribunal, Mr Power accepted that, unlike in the previous revaluation in Fingal County Council, individual assessments of each property were not carried out in 2017 but rather a generic model was developed on which the Valuation Scheme was based.

8.2 Mr Power contended that the Valuation Scheme developed using the Contractors Method for the seven Gymnasium/Sports Centres in Fingal, which included a “*a stand back and look*” element, was correct. There were two appeals and no other representations. The Scheme had been accepted by the Tribunal in the case of Prime Fitness and the Commissioner of Valuation, (PN2171174) VA19/5/0776. Based on this, the NAV proposed for the Subject Property of €120/m² meets the requirements of the Act for correctness, equity and uniformness.

8.3 When questioned by Mr Algar on the basis of the NAV, Mr Power explained that the NAV was determined under s 50 of the Act and thus meets the requirements of s 48. He had regard to the rental evidence provided but felt that the two pieces of rental evidence that emerged at Representation stage, namely a re-negotiated agreement based on a turnover rent and a re-negotiated agreement with no written basis provided, were not strong enough to vary the existing Valuation Scheme.

8.4 When asked about the absence of calculations in his precis and how the Tribunal could know how the figure of €120/m² was derived, Mr Power re-iterated his direct evidence that the Valuation Scheme had been developed with allowance for age of the property, location, site

value and decapitalisation. Only two sets of representations had been received when the Valuation Scheme had been developed and the Scheme had been accepted by the Tribunal in VA5/19/0776.

8.5 In response to Mr Algar’s assertion that other than the two who had appealed, none of the other occupiers had made any representation to the Commissioner and none of them had been professionally represented. Mr Power stated that it was not possible to make the assertion that none of the other occupiers had been professionally represented; many of those other occupiers may have taken advice before deciding not to make representations. Furthermore, the onus was on the Appellant to prove the absence of such professional representation.

8.6 Mr Power put forward six comparable properties in support of the Respondent’s case. These are listed in the table below:

No	Property No	Address	Area (m ²)	NAV/m ²	NAV
1	2171174	Applewood Village, Swords, Co. Dublin	2,680.23	€120	€321,000
2	2185580	Northwood Park, Santry, Dublin 9	5,331	€120	€639,000
3	1040912	River Road, Castleknock, Co.Dublin	6,031	€120	€723,000
4	1141417	426 Blanchardstown Centre External, Navan Road, Dublin 15	4,365	€120	€523,000
5	5002562	Coast Road, Malahide, Co. Dublin	589.6	€120	€70,700
6	2199463	Boroimhe Shopping Centre, Forest Road. Swords, Co. Dublin	473.25	€180	€85,100.

With the exception of comparator No 6 which has an NAV of €180/m², all the other comparators have an NAV of €120/m².

9. SUBMISSIONS

9.1 There were no legal submissions.

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 finds that use of the Contractors Method as provided in s 50 of the 2001 Act is a suitable method of determining the NAV as required by s 48 (3) for a property where rental information is not available.

10.3 Eight NAV comparators were put before the Tribunal; two by the Appellant and six by the Respondent. Both comparators put forward by the Appellant and comparator No 6 put forward by the Respondent were not considered to be of assistance to the Tribunal. The latter, MI Gym Fitness Centre Ltd, PN 2199463, is not a purpose-built gym but rather is located on the second floor of a shopping centre in Swords, Co. Dublin and comprises a workout gym with changing facilities and offices. Its NAV, €180/m², is assessed on the basis that the property is more akin to a retail property than a Gymnasium/Fitness Centre. The two comparators put forward by the Appellant, namely Westmanstown Sports and Conference Centre, Westmanstown, Co. Dublin, PN 305622 and ALSAA Sports Club, Old Airport Road, Toberbunny, Co. Dublin, PN 344981 are both registered clubs and are distinguished as such on the list, with NAVS of €65/m² and €50/m² respectively.

10.4 The Tribunal finds that comparators Nos 1 to 5 presented by the Respondent provide evidence of a consistent tone of the list. The evidence of Mr Power was that the relative merits and disadvantages of each were considered to develop a Valuation Scheme that was equitable. The Scheme was affirmed as such by the Tribunal findings in VA19/5/0776.

10.5. The Tribunal has considered the rental evidence put forward by Mr Algar. In the absence of a Deed of Variation or side letter agreeing to a variation of the terms of the lease under which the Appellant occupies the Subject Property and in the absence of oral evidence of the terms of any such agreement, the Tribunal finds that there was no evidence before it on which it could base an estimate of the market rent of the Subject Property on the Valuation Date.

10.6 The decision of the Tribunal to have regard to a re-negotiated rent in VA19/5/0756, Prime Fitness (Drogheda) Limited trading as Gym Plus and the Commissioner of Valuation, was put to the Tribunal. That case can be distinguished from the present one in that the Tribunal in that case was presented with a Deed of Variation of the lease on which it could form an opinion. No such evidence was provided in the present case.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the assessment of NAV by the Commissioner at €567,000.

RIGHT OF APPEAL

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.