

**Appeal No: VA19/5/1308**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**BALLMOONEY PROPERTIES LIMITED**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of Property No. 2184426 at Unit 9, Porters Road, Coolmine Business Park, Dublin 15**

**B E F O R E**

**Carol O'Farrell – BL**

**Chairperson**

**Liam Daly - MSCSI, MRICS**

**Member**

**Brian Meldon – FSCSI, FRICS, Reg. Val., Arb.**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL ISSUED ON THE 4<sup>th</sup> DAY OF JULY 2023**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 14<sup>th</sup> October 2019 the Appellant appealed against the determination of the Respondent pursuant to which the above relevant Property was valued at €194,200.
- 1.2 The Appellant contended that the valuation of the Property does not accord with that required which is required to be achieved by section 19 (5) of the Valuation Act 2001 as amended ('the Act') by reason that:
- i. *The tone is incorrect.*
  - ii. *The rental evidence and history of the unit conflicts with the NAV.*
- 1.3 The Appellant considered that the Property ought to have been valued in the sum of €100,000.

**2. VALUATION HISTORY**

- 2.1 The Valuation Order for the rating authority area of Fingal County Council was made on

the 6<sup>th</sup> of October 2017. Pursuant to that Order the date by reference to which the values of relevant properties were to be determined was the 15<sup>th</sup> of September 2017.

- 2.2 On the 15<sup>th</sup> of March 2019 a proposed valuation certificate was issued in relation to the Property indicating a valuation of €194,000.
- 2.3 Despite written representations to the valuation manager in April 2019 that valuing the first floor of the Property at €150 psm was excessive when the ground floor of PN 2194076, a nearby car showroom in Unit 6, had been valued at €84 psm a final valuation certificate issued on the 10<sup>th</sup> of September 2019 confirming the Property's valuation at €194,200.
- 2.4 The Property is described on the valuation certificate as a retail warehouse in use as a motor showroom.
- 2.5 The valuation list for the rating authority area was published on the 17<sup>th</sup> September 2019.

### **3. THE HEARING**

- 3.1 The Appeal proceeded by way of a remote hearing via the Zoom platform on the 18<sup>th</sup> November 2022. At the hearing the Appellant was represented by Mr Brian Bagnall FSCSI FRICS and the Respondent was represented by Mr. Terry Devlin.
- 3.2 In accordance with the Valuation Tribunal (Appeals) Rules 2019, the parties' valuers exchanged their respective précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal.

### **4. THE RELEVANT FACTS**

- 4.1 From the evidence adduced by the witnesses, the Tribunal finds the following facts.
- 4.2 The Appellant is the owner of the Property. Flyefit Fifteen Limited entered a Lease agreement with the Appellant on the 22<sup>nd</sup> of August 2019 for a 20 year term from the 16<sup>th</sup> August 2019 at an annual rent of €100,000; the first five months' were rent free. The Lease includes a four yearly rent review clause.
- 4.3 The Property is located within Coolmine Business Park approximately 1.5km east of Blanchardstown Shopping Centre. It is situated on the edge of the industrial estate with good road frontage and is accessed via Porters Road.
- 4.4 The Property is the largest industrial unit in the industrial estate. It is a two storey structure with a large, glazed frontage and exterior cladding. It is a purpose built car showroom. The ground floor was used for the parking of vehicles.
- 4.5 The Property is in use as a gymnasium over two floors. The ground floor accommodation comprises changing facilities and a small area used for group fitness class. The first floor

has lift access and good quality gymnasium fitout. The Property is in excellent condition throughout.

4.6 The floor areas are agreed between the parties as follows:

Ground Floor : 1,025.56 sq.m.

First Floor : 1,025.56 sq.m.

## **5. ISSUE**

5.1 The sole issue between parties is the value of the Property assessed in accordance with s. 48 of the Valuation Act 2001.

## **6. RELEVANT STATUTORY PROVISIONS**

6.1 The NAV of the Property must be determined in accordance with the provisions of s. 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."*

S.48(3) of the Act provides for the factors to be considered 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 average 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 Bagnall is fellow of both the SCSl and the RICS. He is a former employee of the Valuation Office and has over 40 years' experience in rating valuations. He is now a consultant with Bagnall Doyle MacMahon, a firm he founded in 1986.

7.2 Under oath, Mr Bagnall adopted his précis of evidence as his evidence in chief. He described the Property and its location.

7.3 He said the Property was originally designed and intended for use as car showroom but the concept never worked. The two previous car showroom tenants failed to operate successfully from the Property. Mr Bagnall considered that two factors contributed to their lack of success, namely, the presence of other car showrooms in the general locality and the fact that the Property is at the rear of an industrial estate with no "pull in" off the main road.

7.4 He said the Property was valued off €150 per m<sup>2</sup> despite the fact that it mainly comprised first floor space albeit accessible via a lift. He gave evidence that property valuations within Coolmine Business Park range from a maximum of €84 psm for ground floor showrooms to €26 psm for first floor offices.

7.5 He provided in Appendix 3 of his Précis (n/a to public) copies of valuation certificates issued in respect of units within and which he considered represented the tone within the industrial estate:

**Comparison 1** PN 5011857 - Unit 6

First Floor Mezzanine Office of 123.87 m<sup>2</sup> at €28.00 psm

NAV €3,460

**Comparison 2** PN 2194078 - Unit 6

Showroom of 311.76 m<sup>2</sup> at €84 psm

Mezz Showroom of 159.12 m<sup>2</sup> at €36

NAV €630,000

**Comparison 3** PN 2193755 - Unit 7

Warehouse of 246.53 m<sup>2</sup> at €70 psm

Office of 81.11 m<sup>2</sup> at €70 psm

Mezzanine office 18.34 m<sup>2</sup> at €28 psm

Mezzanine Store 125.43 m<sup>2</sup> at €14 psm

NAV €25,200

He said the first floor area of a property is not as valuable as ground floor area. The Property measuring in excess of 2,000 m<sup>2</sup> is the largest unit within the industrial estate. The ground floor area with limited head room of 2.3 m and virtually no natural light was originally used for parking cars as evidenced by the photographs.

7.6 The yard area should not have been valued as it forms part of the car parking for the industrial estate. While paragraph 6 of the Second Schedule of the Lease grants the lessee the right to use exclusive use at all times of the car parking spaces numbered 1 to 73 inclusive it is a matter for the lessee and not the landlord to enforce that right.

7.7 The Property was let by the Appellant in 2019 when the market was improving on 2017 rental values. He considered that the passing rent was good evidence of the Property's value. Mr Bagnall analysed that rent (as set out below) to arrive at what he considered the NAV ought to be:

First Floor	973.28 m <sup>2</sup>	@ €70 psm	€68,129.60
Ground Floor Lobby	31.243 m <sup>2</sup>	@ €70 psm	€ 2,187.01
Ground Floor Store	989.64 m <sup>2</sup>	@ €30 psm	€29,689.20
Total			€100,005.81
Say €100,000			

7.8 Under cross-examination, Mr Bagnall accepted that the Property is currently in use as a

gymnasium and that none of his comparisons he relied upon were so used. He did not, however, accept that the Property should be valued in line with other gymnasiums as the Property was not a purpose built gymnasium and when valuing on the comparable basis a valuer is required to value like with like. He considered that the location of a property has a significant impact on the level of rent achievable in the market and was unwilling to accept that it was appropriate to value the Property by reference to gymnasiums in other locations. When it was put to him that the rate of €80 psm was too low for a modern gymnasium he said that the Property ought to be valued within the range of values of the other units in the industrial estate rather than simply by reference to its use. He pointed out that the Property had been vacant for approximately 5 years between 2008 and 2013 prior to being purchased by the Appellant. Following purchase it was used as a Ford showroom for approximately 2 to 3 years. It had then lain vacant for a further 3 years prior to being let as a gymnasium.

## 8. **RESPONDENT'S CASE**

- 8.1 Mr Devlin adopted his Précis of evidence as his evidence in chief under oath. He described the Property its condition and location by reference to the photographs in his Précis. He said the current use for the ground floor is changing facilities while a small area is used for group fitness class. The first floor has lift access and has a good quality gymnasium fitout.
- 8.2 He pointed out that Mr Bagnall provided no comparable evidence of gymnasiums operating in the rating authority area, of which he said there are many, and that his comparison properties are in use as industrial warehouse, offices and showrooms. The Property is a well fitted out gym and must be valued as such. Mr Devlin said that properties which are 'similarly circumstanced' are considered comparable. Similarly circumstances properties invariably share similar characteristics in terms of use, size, location and construction. Mr Devlin said the Property was valued as a car showroom over two levels by that as the car showroom use has ceased and is now occupied by a gym operator, it had to be valued having regard to its mode of use. The rate psm proposed by the Respondent would bring the Property line with other similarly circumstanced properties on the valuation list.
- 8.3 Mr Devlin contended that his comparable evidence demonstrated that equity and uniformity of value and correctness had been achieved in valuing the Property at €246,000 because gymnasiums are valued at a standard level of €120 psm over all floors.

### **Comparison 1 – PN 1040912 Junction 6, River Road, Castleknock, Dublin 15**

Ground Floor	3,860 m <sup>2</sup>	at €120 psm
First Floor	2,331 m <sup>2</sup>	at €120 psm
Additional Items		at €2,400
Total NAV €723,000		

This property was described as an older style property with an inferior profile.

### **Comparison 2 - PN 2171174 Broadmeadow Hall, Applewood Village, Swords, Co. Dublin**

Ground Floor Office 1,371.35 m <sup>2</sup>	at €120 psm
First Floor Gym 1,173.79 m <sup>2</sup>	at €120 psm
Additional Items	at €16,210.8
Total NAV	€321,000

This property was described as a purpose built leisure facility with indoor swimming pool. Modern gymnasium in good location.

**Comparison 3** - PN 2185580 Northwood Park

Floor Area 5,331 m<sup>2</sup> at €120 psm  
Total NAV €639,000

Ground Floor Office 1,371.35 m<sup>2</sup> at €120 psm  
First Floor Gym 1,173.79 m<sup>2</sup> at €120 psm  
Additional Items €16,210.8  
Total NAV €321,000

This property was described as a modern style gymnasium with good profile

**Comparison 4** - PN 1141417 Blanchardstown Centre, Navan Road

Floor Area 4,365 m<sup>2</sup> at €120 psm  
Total NAV €523,000

This property was described as a purpose built gymnasium, older than the appeal Property.

**Comparison 5** - PN 5011846 Unit 9 Coolmine Industrial Estate, Blanchardstown

Floor Area 684 m<sup>2</sup> at €78 psm  
Total NAV €53,400

Comparison 5 adjoins the appeal Property on the first floor as it is located in part of the former car showroom.

- 8.4 Mr Devlin stated that the Property as a gymnasium measured on a gross external area basis is now valued in line with comparable gyms in Fingal. He said that the yard valuation had been removed as parking is communal within the industrial estate. He requested the Tribunal to confirm the Property's valuation at €246,100 as it reflects the current use of the Property in line with comparables. He requested that a valuation of €246,100 be entered in the valuation list as representing the Net Annual Value in accordance with s.49 of the Valuation Act 2001 as amended

## 9. FINDINGS AND CONCLUSIONS

- 9.1 It is important to stress that under this appeal the Property falls to be valued in the context of the Valuation Order made under s.19 of the Act. This means that s. 49 of the 2001 Act has no application to the valuation exercise as the procedure for revision only arises if a

material change of circumstances as defined in the Act occurs since the last revaluation under s.19 was carried out or since the last previous revision exercise. It may be that Mr Devlin's invocation of s. 49 of the Act in asking the Tribunal to confirm a revised NAV of €246,100 was a mere 'slip of the pen'.

9.2 The valuation list was published by the Respondent on the 17<sup>th</sup> of September 2019. At that time the Property was entered on the list as a retail warehouse with a valuation of €194,200. The Appellant appealed the valuation under s. 34 of the Act and in compliance with s.35 of the Act set out the grounds why it is considered that the value of the Property is not a determination that accords with the requirements of s.19 and why the Property ought to have been valued at €100,000.

9.3 S. 63(1) of the Act provides that:

*"The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.*

Nonetheless the Respondent seeks to use the Appellant's appeal as a vehicle to increase the valuation of the Property because it is in use as a gymnasium and was leased for such purpose on the 22<sup>nd</sup> August 2019, prior to the issue of the valuation certificate, a fact not known to the Respondent at that time.

9.4 Normally the burden of proving that the valuation amount entered on the list is incorrect lies upon the appellant ratepayer. However, on this appeal, the Respondent proposed a revised higher NAV of €246,000. The onus of proof is therefore, on the Respondent to establish the correctness of this new determination.

9.5 The valuation of every relevant property is determined by reference to the valuation date specified in the Valuation Order for the rating authority area and s.48 (3) of the Act makes clear that the Property is to be valued "*in its actual state*". S.19 (5) of the Act requires the valuation list to be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned.

9.6 Mr Devlin did not adduce any rental evidence or any market evidence as to the respective rental differentials between purpose built gymnasiums and non-purpose built gymnasiums. He relied solely on the fact that gymnasiums were valued at the rate of €120 psm.

9.7 He gave evidence of four comparisons. In his Précis he stated that properties which are 'similarly circumstanced' are considered comparable but did not in fact identify any property that is close in its physical characteristics to the appeal property or its location. Comparison 1 is three time larger than the appeal Property. Comparison 2 is not at all comparable as it is a purpose built leisure facility with an indoor swimming pool. Comparison 3 is more than double the size of the appeal Property. On the valuation list the gymnasium area is stated to be 5321 sqm at ground level. Even if the gymnasium is

located on the first floor only, it is 42% smaller in size than the appeal Property. C4 is a purpose built gymnasium in a far superior location at the Blanchardstown Centre and is also more than double the size of the appeal Property. Properties put forward as comparisons should be close enough in their material physical respects in terms of nature, type, age, method of construction and locality to indicate the rental value of the property to be valued. The more unlike a comparable is, the less useful it will be.

- 9.8 Mr Bagnall did not adduce any rental evidence other than that relating to the Property, the letting having been made in August 2019 at €100,000 per annum. He contended that industrial buildings have lower rental levels than purpose built gymnasiums and that the characteristics of the Property at ground floor and its particularly poor location at the rear of an industrial estate had a depressing effect on rental value apart from the general locational disadvantage that any industrial building would be for a non-industrial use. He relied upon the NAV valuations of three properties within the same industrial estate which he described as comparisons. Comparison 1 is a much smaller mezzanine office property that bears little comparison to the appeal Property. His second and third Comparisons are of similar size but are considerably smaller than the appeal property and are also put to different use. The only characteristics these properties have in common with the appeal Property are age, construction type and location.
- 9.9 The Tribunal has to determine the rent at which the Property might reasonably be expected to be let on the statutory terms at the valuation date. Mr Bagnall gave uncontradicted evidence that the Property was let at a *bona fide* rent in August 2019 at a time when the market was improving on 2017 rental values. The actual rent, although not conclusive, is a relevant consideration. The Tribunal is of the view that it should have been apparent to the Respondent that the valuation it is now proposing is unrealistic having regard to the rent of the Property, even though it was fixed some 23 months after the valuation date. The import of Mr Bagnall's evidence is that if the Property had been let on the statutory hypotheses on the valuation date, the letting would have been achieved at a rent lower than that agreed by the Appellant in August 2019.
- 9.10 The Respondent's position appears to be that the Property should be valued at the same NAV rate as other gyms regardless of the nature of the property or its location. That is not the correct approach. There is no tone for gyms in industrial estates. The Tribunal is satisfied that the Property should not be valued at the same level as the comparables relied upon by Mr Devlin. The Respondent failed to have any regard to the rent agreed in respect of the Property and failed to adequately reflect that the Property is a warehouse type building disadvantaged by an inferior ground floor with limited head room and limited natural light and a location that is at the back end of an industrial estate which is not an obvious place to locate a gymnasium and where the use and occupation of the other units within that locality. Furthermore no regard was had to the fact that the two floors of the Property are different and if, separately let in the open market, they would attract different rental values. The Respondent ought to have reflected those factors in the valuation of the Property.
- 9.11 In the opinion of the Tribunal the best evidence before us of the value of the Property to



its occupier is the rent which was agreed in August 2019 and the NAV of Comparison 5 in Mr Devlin's précis. Comparison 5 is the only property in use as a gym that is situated in an industrial estate. It is a first floor gym valued at the NAV rate of €78 psm. Though smaller than the appeal Property, the Tribunal considers Comparison 5 to be the best comparison as it is immediately adjacent to the appeal Property in the same industrial setting and is used for the same purpose. The NAV assessment of Comparison 5 at €78.00 psm is a very strong indicator that the first floor of the appeal Property should be assessed at the same level. The Tribunal takes into account and accepts the view of Mr Bagnall that the disabilities of the ground floor of the Property namely, the restricted headroom and limited natural light, would influence the hypothetical tenant's rental bid and those disabilities, in our judgement, justify an allowance of 30% in respect of the ground floor.

#### 10. 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 €135,800 calculated as follows:

Level	Use	Area in Sq.m	NAV € per sq. mtr	Total NAV
0	Gymnasium	1,025.06	€54.60	€55,868.27
1	Gymnasium	1,025.06	€78.00	€79,954.68
				<b>€135,822.95</b>
<b>SAY €135,800</b>				

#### 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.

