

**Appeal No: VA20/4/0011**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**VICI CAPITAL LTD T/A ENERGIE FITNESS CITYWEST**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5017884, Retail (Shops), at 1A Citywest Shopping Centre, Citywest, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 29<sup>TH</sup> DAY OF NOVEMBER, 2024**

**BEFORE**

**Annamaria Gallivan, FRICS, FSCSI, MPhil SEE**

**Member**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 14<sup>th</sup> day of November, 2020 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property was fixed in the sum of €83,200.
- 1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended ('the Act') that a material change of circumstance occurred since a valuation under section 19 of the Act was last carried out in relation to the rating authority area in which the Property is situate. Accordingly, the value of the Property must be ascertained by reference to values, as appearing on the valuation list for the rating authority area wherein the Property is situated of other properties comparable to the Property.
- 1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:

*“(a) The Valuation is Incorrect*

*In response to your rates proposal for unit I would like to appeal this proposal and make the following observations below. . Our unit is 7,100 sqft. rent per annum is 40,000 and was vacant for 10 years, unable to find a suitable tenant for outside 1st floor unit. Rent was reduced to above in order to achieve a letting. I spent circa 150,000 in fit out works internally. This valuation is grossly excessive for this location an unit in particular.*

*Covid-19 has had a huge impact on my business with the loss of hundreds of members and profits, with reluctant people willing to join due to the uncertainty of the virus.*

*My business is very limited in its capacity, and unlike a retail outlet I can only host a certain amount of customers in my gym, therefor my income is entirely limited, with limited growth regardless of the customer base or footfall. I note from your proposal you have rated this unit as a category "retail". We are not a retail unit, I offer a service to our customers and a limited service too. My property lease, service charge and rent is not based on a retail basis either, but rather a gym, which is based on our grant of planning for a change of use. I personally paid for the internal fitout works on the unit and there was no other major works required. I also note that such a unit is rated on its let ability. This unit was vacant since day 1 of the development, and it was never let due to its unsuitability for retail on the 1st floor and due to the unit being based outside of the shopping centre away from all other retail stores. I would appreciate if you could revalue the unit based on a gym and not retail please, and to also take my comments above into consideration.*

*(g) State the Value the Appellant considers ought to have been determined as being the valuation of the property concerned. Please note, this information is required in order to process your Appeal.*

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- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €40,000.

## **2. VALUATION HISTORY**

- 2.1 There is no evidence before the Tribunal as to when an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property on the basis that a material change of circumstances had occurred since a valuation under section 19 was last carried out in relation to the rating authority area of South Dublin County Council or since the last previous exercise of the powers under section 28(4) of the Act in relation to the Property, and that the valuation of the Property ought to be amended. The basis for the request to revise the valuation of the Property was came from South Dublin County Council Local Authority to revise the new development: “This property was not previously rated”
- 2.2 The valuation milestones set out at Paragraph 4.1 page 13, on Mr Donnellan’ precis indicate that in December 2019 a copy of the proposed valuation certificate issued under section 29(1)(a) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €83,600.
- 2.3 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 reduced to €83,200.
- 2.4 A final valuation certificate issued on the 21<sup>st</sup> day of October, 2020 stating a valuation of €83,200.

## **3. DOCUMENT BASED APPEAL**

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.
- 3.3 Mr David Halpin submitted a précis of evidence on behalf of the Appellant.
- 3.4 Mr Sean Donnellan, valuer Tailte Éireann, submitted a précis of evidence on behalf of the Respondent.

## **4. FACTS**

- 4.1 The parties are agreed as to the following facts.
- 4.2 The property is described as a first floor gym with own door access, not located within the shopping centre.
- 4.3 Situated just off the N7 (Naas Road) in the Citywest Shopping Centre, located between

the N7 (Naas Road) and N81 (Blessington Road). Fortunestown Luas Stop, minutes' walk from Citywest Shopping Centre location.

- 4.4 The subject property is a first-floor retail / office unit in a shopping centre currently in use as a gym.

Floor Areas:

	Floor	SQM
Retail/Office in use as a Gym	1	660.61
Total		660.61

Floor areas are not in dispute.

- 4.5 The revision request from South Dublin County Council Local Authority to revise the new development stated; "This property was not previously rated".

## 5. ISSUES

The primary issue is quantum. In addition, the Appellant contended that the Property should not be classified as retail and that the assessment of the rateable value should be based on a gym not a retail unit (due to its unsuitability as a retail unit, being on the first floor and outside the shopping centre).

## 6. RELEVANT STATUTORY PROVISIONS:

- 6.1 All references to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

- 6.2 Section 3(1) of the Act, so far as material to this appeal, defines "material change of circumstances" as meaning a change of circumstances that consists of:

*(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*

*(b) a change in the value of a relevant property caused by-*

*(i) the making of structural alterations to that relevant property, or*

*(ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or*

*(c) the happening of any event whereby any property or any part of any property **begins**, or ceases, **to be treated as a relevant property**, or*

*(d) the happening of any event whereby any relevant property begins, or ceases, **to be treated as a property falling within Schedule 4**, or*

- (e) *property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*
- (f) *property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or*
- (g) *the fact that the relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority, or*
- (h) *relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833-2011.*

6.3 If a revision manager is satisfied that a material change of circumstances as defined by section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the Property is situated, the revision manager has power under section 28(4) (a)(i) of the Act to amend the valuation of the property as it appears on the list.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained 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.*
- (2) *For purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then-*
  - (a) *In case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,*

## 7. APPELLANT'S CASE

7.1 Mr David Halpin on behalf of the Appellant, Vici Capital Ltd t/a Energie Fitness Citywest submitted a précis of evidence which included internal and external photographs of the unit and in appendices a copy of the lease.

- 7.2 It is Mr Halpin's evidence that the property is located at City West Shopping Centre. A neighbourhood centre, comprising Dunnes Stores with 35 smaller retail units on ground floor level.
- 7.3 The area of the gym is agreed at 660.61 sqm.
- 7.4 The present occupier is the only tenant of the unit completed c. 2007 and was vacant for the preceding 10 years.
- 7.5 The unit is described as a gym located on the first floor, access via a ground floor lobby. The unit is held on a 10 year lease from 20<sup>th</sup> October 2017 at €40,000 per annum or €60 /SQM. During the representation stage the occupier stated "lease, service charge and rent is not based on a retail basis either, but rather a gym, which is based on our grant of planning for a change of use".
- 7.6 Mr Halpin acknowledges that the actual rent is not the main determinant of value, but he is of the opinion that the passing rent at half the commissioners valuation should give context. He is of the opinion that there is plenty of evidence for €60.00/SQM. He points to a large variation in South Dublin from €25.00/SQM to €100.00/SQM. He is asking that the most appropriate comparisons are availed of.
- 7.7 Mr Halpin advanced three Comparisons described as most similar in type and location.

Comparison 1:

Property number	PN894462	Notes:
Address	Anytime Fitness, The Mill Centre, Ninth Lock Rd, Clondalkin, Co. Dublin	Located in a shopping centre, similar size to the subject property. Vacant for a considerable period before being let as a gym. Decision of the Tribunal.
Total floor area	633 SQM	
NAV PSQM	68.00	
NAV	43,044	

Comparison 2:

Property number	PN 2181279	Notes:
Address	Westpark Fitness, Greenhills Rd, Tallaght, Co. Dublin	Stand-alone gym in the rating area, complete with swimming pool. The value has been established as if the property were all ground floor, though the building is clearly 2 storey.
Total floor area	2,498.30 SQM	
NAV PSQM	55.00	
NAV	137,406.50	

Comparison 3:

Property number	PN 441796				Notes:
Address	Lucan Sports and Leisure Centre, Griffeen Valley Park, Lucan, Co. Dublin				Located 8km north of the subject on the edge of Lucan. This gives context around the previous generation of such
Total floor area	0	Gym	782.56	40.00	

	1	Store	17.64	40.00	properties, valued by the Commissioner at €40/SQM The appellants agree that, even as a 1st floor property, the subject is superior to this.
	0	Gym	223.20	40.00	
NAV PSQM	40.00				
NAV	40,900				

7.8 Mr Halpin contends for a NAV of €33,000

660.61 SQM @ €50/SQM

7.9 Mr Halpin for appellant, summarised his evidence. The property is a first floor Gym located at City West Shopping Centre occupied on a 10 year lease from 20.10.2017, at a passing rent of €40,000 per annum. It is his opinion that the rent passing gives context to where the property should sit in the tone of the list. Mr Halpin's chosen comparisons range from €40.00/SQM to €68.00/SQM, while acknowledging that the property is superior to €40.00/SQM, it is his opinion that the it is inferior to the other two. He has therefore settled on €50.00/SQM and a valuation of €33,000.

## 8. RESPONDENT'S CASE

8.1 Mr Sean Donnellan, for the Respondent submitted his précis of evidence which included maps, block plan, internal and external photographs.

8.2 Mr Donnellan described the location of the property as situated just off the N7 [Naas Rd] in the City West Shopping Centre, between the N7 [Naas Rd] and the N81 [Blessington Rd] with Fortunestown Luas stop being one minute's walk from the City West Shopping Centre.

8.3 The property is described as a first floor retail/office unit in a shopping centre currently in use as a gym. City West shopping centre is laid out over two floors with a strong tenant mix anchored by Dunnes stores grocery and fashion store. There are 610 free car parking spaces for customers. Mr Donnellan described the centre is having an annual footfall of 3 million.

8.4 The unit is described as retail/office in use a gym on the first floor. Total floor area of 660.61 square metres. The floor areas are not in dispute.

8.5 The tenure of the property is leasehold held under a 10 year lease from the 20<sup>th</sup> of October 2017 at a annual rent of €40,000 per annum there are rent reviews every five years the unit was let in a shell and core condition and the tenant fit out the unit.

8.6 In consideration of representations the property value was reduced from € 83,600 to €83,200. This was as a result I'm adjusting the area of the property in line with the occupiers submission. Mr Donnellan described the property as not purpose built gym and therefore cannot be valued as such the property must be valued in line with similar units on the valuation list comparisons used are first floor units within the same development. The property has been put in the category of retail and is located in a shopping centre. The use is described as a shop and gymnasium/fitness centre, a first floor unit in a shopping centre which is in use as a gym. Hypothetically if vacant and to let this unit has a variety of uses such as retail office or other

the unit has both stairs and a lift access the unit has floor to ceiling glazing to the front and side of the unit offering excellent natural light. The unit has good profile.

8.7 The Respondent states that the tenant at considerable cost of c.€150,000 fitted out the unit and therefore a fitted out and completed unit would achieve a much higher rent than the rent passing on the subject property.

8.8 Mr Donnellan put forward the following NAV comparisons:

#### **NAV COMPARISON 1**

Property Number	5001645
Occupier	Primacare Medical Ltd
Address	Unit 6&8 Citywest Shopping Centre
Total Floor Area	186.80 sq. m
NAV PSQM	€140.00
NAV	€26,100

This property is situated on the same floor level as the subject property. This property has similar characteristics as the subject property.

#### **NAV COMPARISON 2**

Property Number	5017848
Occupier	Funky Monkey Citywest Ltd
Address	Unit 29A Citywest Shopping Centre
Total Floor Area	809 sq. m
NAV PSQM	€140.00
NAV	€101,900

This property is situated on the same floor level as the subject property. This property has similar characteristics as the subject property. Quantum allowance applied to this property like the subject property.

#### **NAV COMPARISON 3**

Property Number	5001643
Occupier	MBCC Foods Ireland Ltd
Address	Unit 4 Citywest Shopping Centre
Total Floor Area	286.30 sq. m
NAV	€26,100

Level	Description	Size (sq.m)	NAV per sq.m
0	Retail Zone A	48.80	€350
0	Retail Zone B	51.80	€175
0	Retail Zone C	54.30	€87.50
0	Remainder	29.40	€43.75
1	Shop	102	€140



Total	286.30	€46,400
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The first floor element of this property is right beside the subject property. This property has similar characteristics as the subject property.

#### NAV COMPARISON 4

Property Number	5001646
Occupier	MBCC Foods Ireland Ltd
Address	Unit 7 Citywest Shopping Centre
Total Floor Area	249 sq. m
NAV	€47,600

Level	Description	Size (sq.m)	NAV per sq.m
0	Retail Zone A	44.50	€450
0	Retail Zone B	44.50	€225
1	Restaurant	107	€150
1	Deck Area	53	€30
	Total	249	€47,600

The first floor element of this property is on the same floor level as the subject property. This property has similar characteristics as the subject property.

8.9 Mr Donnellan stated the onus of proof in appeals before the Tribunal rests with the Appellant:

VA00/2/032 Proudlane Ltd. t/a Plaza Hotel,  
VA07/3/054 William Savage Construction and  
VA09/1/018 O'Sullivan's Marine Ltd.

8.10 Mr Donnellan summarised the process for the updating of a property during the lifetime of a Valuation List [known as Revision] governed by section 49 of the Valuation Acts 2001-2020. The Valuation of the subject property should be determined “by reference to values, as appearing on the valuation list, relating to the same rating our authority as a property is situated in, of other properties comparable to that property” (tone of the List) to ensure equity and uniformity as between ratepayers. The comparable properties cited are similar in characteristics to the subject property and located on the same floor level in the shopping centre as the subject property.

## 9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of South Dublin County Council rating authority area.

9.2 The Respondent describes the unit as a retail/office currently in use as a gym. Planning permission was applied for after the valuation date 30<sup>th</sup> October 2015 (planning permission would have been received for a change of use to a gym prior to letting in 2017) therefore as at

the valuation date the unit could have been let as retail/office - shell and core as that is its permitted use. The Tribunal finds the date of valuation is 30<sup>th</sup> October 2015, at that date the unit was not let, and did not having planning permission for other uses.

- 9.3 Properties which are 'similarly circumstanced' are considered comparable. This means they share characteristics such as use, size, location and/or construction. The best comparisons are those that are on the same floor level in the same shopping centre with similar construction characteristics and permitted use.
- 9.4 The Appellant makes reference to the fact that the unit was vacant prior to the letting. The Tribunal finds that the unit was unoccupied at the date of valuation in shell and core condition.
- 9.5 The Appellant makes representations in relation to the cost of fit out, but makes no further case for how that would impact the rateable valuation. There is also the fact of the actual rent passing, this letting was after the valuation date in 2017.
- 9.6 The Appellant makes reference to the impact of Covid 19 on his level of turnover/profit, but that methodology would not be utilised in a 'hypothetical letting' as a guide, because units are analysed on a rate per square metre, and calculating a level of value from that, to derive a tone of the list level of values. Covid 19 was not a factor in or around the valuation date.
- 9.7 The Tribunal finds that the Appellants comparisons become relevant after planning permission for change of use was received, however on the date of valuation the permitted uses were retail/office.
- 9.8 The Tribunal finds the Respondents NAV comparisons relevant as they are on the same floor level in the same shopping centre with similar construction characteristics and permitted use at the date of the valuation, 30<sup>th</sup> October 2015.
- 9.9 The Tribunal finds NAV Comparison No 2 the best comparison being a play centre of similar size, construction etc, and quantum allowance.
- 9.10 Therefore, the Tribunal cannot find any reasons to dispute the valuation made by the Respondent, having considered, in detail, the grounds of appeal and all the evidence submitted by the Respondent Valuer indicating equity and uniformity of his approach from the unit value rates adopted for comparable properties. The Property has been correctly assessed at the date of valuation, in the opinion of the Tribunal.

**10. DETERMINATION:**

- 10.1 Accordingly, for the above reasons, The Tribunal disallows the appeal and confirms the decision of the Respondent

**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.