

Appeal No. VA04/1/003

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Eden Fitness Club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Eden Fitness Club, Ward: R.D.:Clondalkin Monastery, Townland: Fox & Geese Common, Lot No. 6Bab, Dublin

B E F O R E

Fred Devlin – FSCS.,FRICS.

Deputy Chairperson

John F. Kerr – ASCS.,MRICS.,FIAVI

Member

Michael Lyng - Valuer

Member

JUDGEMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31st DAY OF MARCH, 2004

By Notice of Appeal dated the 2nd February, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €438.00 on the above described property.

The Ground of Appeal as set out in the said Notice of Appeal is that:

(1) The assessment is excessive, inequitable and bad in law.

At issue

Quantum

The appeal proceeded by way of an oral hearing, which took place in the Hearings Chamber of the Valuation Tribunal, located on the first floor of Ormond House, Ormond Quay, Dublin, on the 31st March, 2004. The Appellant was represented by Mr. Terry Devlin, B.Sc., MIAVI., of Frank O'Donnell & Company, Valuation, Rating and Property Consultants, and the Respondent by Ms. Olivia Bellamy, B.Sc., MIAVI, Valuer in the Valuation Office.

In accordance with the rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their précis of evidence and submitted them to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

Eden Fitness Club, a three storey brick faced building located at Killeen Road, Dublin 12, comprises the following;

Ground floor: Reception, Ladies and Gents Changing Rooms with Sauna & Sun Room:	274.50 m ²
First Floor: Gymnasium	308.15 m ²
Second Floor: Exercise Classroom and vacant floor area:	<u>223.25 m²</u>
Total agreed Net Internal Floor Area:	805.00 m²

The customer lift within the building is not operational. Parking for 17 cars has been provided to the front of the building. Planning Permission was granted in 2002 by South Dublin County Council to permit the building to be used as a Health and Fitness Centre, though apparently it was not initially designed as such. There are 300 registered members of the Leisure Centre.

Tenure

The property is held on a 25 year lease from October 2002, with Rent Reviews every five years.

Annual rent for year 1 and 2 =	€143,070
Annual rent years 3, 4 and 5 =	€162,278

A fit-out allowance equivalent to free rental period for the first 11 months was granted by the landlord.

The average annual rent therefore with an adjustment for the free period of the first 11 months in year 1 amounts to a sum of €128,365 per annum, which devalues at €159.46 per square metre.

The property is at a location adjacent to the M50/Naas Road close to Park West and Western Business Park.

Valuation History

A Valuation Certificate issued on the 10th September, 2003, in the amount of €438.00.

An Appeal was lodged on 17th October, 2003, and no change was made. An Appeal was filed with the Valuation Tribunal on 2nd February, 2004.

Appellant's Case

Mr. Terry Devlin, having taken the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review and synopsis of his submission.

Mr. Devlin advised that the net internal floor area as outlined in his submission had been adjusted with the consensus of the Valuation Office, to 805 sq. metres. He also advised certain corrections or adjustments to be made to the square metre method calculations set out on page 5 of his submission, which should now read as follows:-

1. Square Metre Method

<u>Details</u>	<u>Area (Sq.m) NIA</u>	<u>Rate(€/SM)</u>	<u>N.A.V.(€)</u>
Ground Floor	274.5 m ²	61.48	16,876
First Floor	308.15 m ²	61.48	18,945
Second Floor	<u>223.25 m²</u>	47.82	<u>10,676</u>
Total	805.90 m ²		46,497

R.V. @ 0.63%

€292.93

Say

€290.00

Mr. Devlin confirmed that these adjustments have been agreed with Ms. Bellamy of the Valuation Office.

The arguments proffered by Mr. Devlin to the Tribunal were reflected in his précis of evidence, and having regard to the above noted amendments. He emphasised the requirement on the Valuation Office to adopt the “tone-of-the-list”, cited various previous decisions of the Tribunal and sought to bring focus to the task and obligation of devaluing properties of similar use.

Ms. Bellamy, on behalf of the Valuation Office, commenced her cross-examination of Mr. Devlin. Prefacing her remarks with a reference to Section 49(2) of the Valuation Act 2001, Ms. Bellamy drew attention to page 9 of the submission by Mr. Devlin. She queried why the majority of Comparison properties outlined on Page 9 of his submission, per attached Appendix A, were drawn from other Local Authority areas namely Finglas and Dún Laoghaire/Rathdown. In reply Mr. Devlin indicated that his Comparison properties were chosen as a result of some previous restructuring of Local Authority boundaries and a failure by the Valuation Office to provide suitable comparable statistics to him for similar type properties within the area of the subject Eden Fitness Club, i.e. South Dublin.

Ms. Bellamy then suggested that the Appellant’s Comparisons no’s 2, 3, 4 & 5 should be considered inappropriate in accordance with provisions of the 2001 Act in so far as they were not located in the same rating area. She then queried if the subject building was built, and initially promoted, for office use. Mr. Devlin replied by indicating that his client had previously concluded that the building, the subject herein, could not be economically leased as an office as there were no interest or evidence in the market for such demand. The Appellant’s consultant surmised that it would therefore be debateable, that if the building had indeed been occupied as an office, it might possibly have generated enhanced rental levels, compared with those employed in his submission to the Tribunal. In further response to Ms. Bellamy’s cross examination, he suggested that if

the subject property had hypothetically first been used as an office and later changed to a gymnasium, he was not satisfied that the hypothetical resultant rent might change accordingly. He stated that the rent currently being paid corresponds closely with office lettings in the area and questioned why factors relating to the rateability of the subject might accordingly be determined by its current use as a gymnasium. Ms Bellamy addressed the principles set out in Section 49 of the 2001 Act, and Mr. Devlin in turn referred the Tribunal to Section 48 of the Act, drawing attention to the requirement of the parties to value the subject “in its actual state”. He contended that as such, reference should not be made to office use in this particular case and that comparisons should only be made with other gymnasia.

Ms. Bellamy contended and Mr. Devlin agreed that the subject premises could not accommodate 300 persons, all together in the building, at any one time.

Respondent’s Case

Ms. Bellamy, having taken the oath, formally adopted her précis as her evidence-in-chief and reviewed her submission. She commenced by seeking the attention of the Tribunal to two amendments on the bottom line of page 5 and page 10 of her submission, the former now to read “average rent of €128,365 devalues at €159.45 per sq. metre”, and the latter on page 10, second last line, “rent €57,505.30 per annum devalues at €153.74 per sq. metre”.

Ms. Bellamy’s review of her précis-of-evidence closely followed her written submission. She advised the Tribunal that she had valued the subject in its current use, as a gymnasium. In reply to a query from the Tribunal, she indicated that she would apply approximately a notional $\frac{1}{3}$ premium of value on the subject over the property identified as Comparison No. 1, of Section 7 in her submission, per attached Appendix 2, i.e. the West Park Fitness Centre, at Tallaght. She also confirmed that this notional premium in her view would apply on a 50:50 ratio in terms of location and quality when comparing that of the subject with the latter Fitness Centre.

Mr. Devlin commenced cross-examination of Ms. Bellamy drawing her attention to page 5 of her submission. In reply to his queries she confirmed that the subject property is actually used as a gymnasium. He then challenged her description of the location of the

subject, i.e. “commercial” by referring to a copy zoning map, which indicated the location is designated as Industrial. He queried the location and proximity of residential developments to the subject. Ms. Bellamy confirmed that the West Park facility in Tallaght was not purpose built. She also agreed with Mr. Devlin that the agglomeration of local services, parking facilities and good signage, assist trading activity at the West Park location. Mr. Devlin suggested that this appeared to conflict with Ms. Bellamy’s earlier view that the subject Eden Fitness Club carries an approximate 16½% premium in value in terms of location, if compared with the Tallaght facility.

He then drew attention to the Valuation Office Comparison No. 2 located at Lucan, as outlined in Ms. Bellamy’s submission, suggesting that its floor area is only 28% that of the subject. He then queried if Ms. Bellamy had provided for a quantum allowance in her Valuation calculations on the subject property. She confirmed she had not, and went on to advise the Tribunal that Comparison No. 2 at Lucan was indeed valued as a gymnasium and not as an office, which is its current use. She also affirmed that her Comparisons 1 and 2 were not in her view considered as modern gymnasiums and that her Comparison No. 3 is in fact a modern office.

Mr. Devlin questioned why she had used the Comparisons in her submission when the Valuation Office apparently had a number of comparable gymnasiums within the subject Local Authority area to refer to and use. Ms. Bellamy indicated that though available, she did not consider them as particularly useful or relevant comparables.

The Tribunal drew Ms. Bellamy’s attention to what appeared to be an inconsistent approach in her choice of comparisons. On one hand she had asked that a number of Mr. Devlin’s comparisons be set aside as they were not located in the same rating authority area as the subject. On the other hand Ms. Bellamy’s Comparison No. 2 was located in a different rating area to that of the subject whilst her Comparison No. 3 is a building in office use. Ms. Bellamy agreed that in the circumstances of this appeal the only relevant comparison is her comparison No. 1 i.e. the Westpark Fitness Centre.

Ms. Bellamy also summarised and concluded her submission and re-stated her views that the subject property should be considered of better quality and in a better location to that set out in her Comparison No. 1, being the West Park Fitness Centre at Tallaght. She also confirmed during the course of the hearing that her primary Comparison was No. 1, and

acknowledged that her Comparisons No's 2, and 3 might now be considered inappropriate as they were outside the Local Authority area and one was in use as an office .

Findings & Determination

The Tribunal having carefully considered all the evidence both written and oral adduced by the parties makes the following findings.

1. In evidence both parties relied primarily on the valuation of the West Park Fitness Centre, The Village Green Centre, Tallaght, which is located in the same Local Authority area as the subject property and was valued at €209.51.
2. Ms. Bellamy in her evidence considers the location of the property which is the subject of this appeal to be better than that of the West Park Fitness Centre. Mr. Devlin thought otherwise and considers the location of the West Park to be superior.
3. Ms. Bellamy said she considers the subject property to be superior to West Park in terms of design, quality of construction and the availability of dedicated car parking facilities. Mr. Devlin did not agree with this opinion.
4. During the course of this appeal difficulties arose regarding the suitability of the comparisons put forward by both parties. Mr. Devlin introduced 5 comparisons, 4 of which are located in a different local authority area. Ms. Bellamy also introduced 2 comparisons, 1 in a different rating authority area and also included a building in office use. The 2001 Act is clear in its direction that
“a relevant property shall have its valuation determined (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). Effectively the only relevant comparables are those of a similar mode or category or use located in the same rating area. Where there are no relevant comparisons section 49(2)(a) applies.
5. The Tribunal accepts that the most, and indeed the only, relevant comparison is the West Park Fitness Centre which both valuers included in their list of comparables.

6. The Tribunal does not accept Ms. Bellamy's contention that the subject premises occupies a better location but does accept that it is a better appointed building with the benefit of dedicated parking facilities.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property which is the subject of this appeal as set out below:

Net internal Area of Subject

Ground Floor	274.50 m ²	x	€65 per m ²	=	€17,842.50
First Floor:	308.15 m ²	x	€65 per m ²	=	€20,029.75
Second Floor:	223.25 m ²	x	€55 per m ²	=	<u>€12,278.75</u>
NAV =					€50,151.00.
RV @ 0.63% =					€315.95
Say					€16.00

And so the Tribunal Determines.