

Appeal No: VA17/5/265

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Tullow Rugby Football Club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1207862, Clubhouse at Blackgates, Castlemore, Tullow, County Carlow.

B E F O R E

Carol O'Farrell – BL

Chairperson

Mairead Hughes - Hotelier

Member

David Gill – FSCSI, FRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 28TH DAY OF JUNE, 2018

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('the NAV') of the above relevant Property ('the Property') was fixed in the sum of €13,050.00

1.2 Briefly, the grounds of appeal are 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 Valuation Act 2001 as amended because:

- (a) the valuation is excessive and inequitable as the value applied by the Respondent is not in line with the Property's potential rental value.*
- (b) the Property is a clubhouse and only that part of the Property*

used for or in conjunction with the sale or consumption of alcohol falls to be valued in line with the provisions of Schedule 4, paragraph 4B of the Valuation Act 2001 as amended. It is inequitable that the valuation of the Property is not determined by reference to the comparative rental method of valuation or, alternatively, by the same method of valuation as that applied to licensed premises.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €6,650.00.

2. REVALUATION HISTORY

2.1 On the 11th May 2017 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 Property was sent to the Appellant indicating a valuation of €13,050.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager. 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 7th September 2017 stating a valuation of €13,050.

2.4 The date by reference to which the net annual (‘the NAV’) value of the Property was determined is the 30th October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on 24th April 2018. At the hearing Mr. David ES Halpin MSc (real estate) Ba. (Mod) represented the Appellant. Mr. Robert O’Neill BL instructed by the Chief State Solicitor represented the Respondent and he called Mr. Terry Devlin BSc, MSCSI, MRICS to present evidence on behalf of the Respondent.

3.2 Prior to the commencement of the hearing, in accordance with the Rules of the Tribunal the parties exchanged their respective reports and précis of evidence 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. Mr. Devlin gave evidence that in valuing the Property he had regard to the average construction costs table generated by Linesight. At the request of the Tribunal, the relevant excerpts from the average construction costs tables for the years 2015, 2016 and 2017 were submitted to the Tribunal and copies of same were furnished to Mr. Halpin immediately following the hearing. The Tribunal had regard to those excerpts and to Mr. Halpin’s written observations as set out in his letter of the 22nd May 2018 on the use of the average costs specified in those excerpts for the construction of a sports hall in the valuation of the Property.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts:

- (a) The Property is a purpose-built single storey clubhouse located in a rural area approximately 3.5 kilometers outside Tullow town;
- (b) The measurement of the rateable floor area of the Property is agreed at 326.26 m²;
- (c) The Property is owned and occupied by Tullow Rugby Football Club;
- (d) The relevant part of the Property comprises a function room and bar with associated kitchen and bathrooms.
- (e) The Property was built circa 1970 and is of basic cavity block construction with galvanized cladding roof.
- (f) The Property is open on Sundays during the rugby season for senior rugby home matches and on the occasions of cup matches and for hosting approximately ten social functions over a twelve-month period.

5. ISSUES

5.1 There are two issues in dispute. The first concerns valuation methodology and the issue is whether the Respondent was correct in valuing the Property on a rate per m² basis in accordance with the contractor's method of valuation rather than by the rental method or, alternatively, the Receipts and Expenditure (the 'R & E') method. The second issue is concerned with quantum.

6. RELEVANT STATUTORY PROVISIONS

6.1 The net annual value of the Property must 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.”

Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 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.

6.2 Section 15 (2) of the Act provides that subject to sections 16 and 59 (neither of which are relevant to this appeal), relevant property referred to in Schedule 4 is not rateable. Land developed for sport is not rateable under paragraph 4 of Schedule 4.

Paragraph 4B of Schedule 4 inserted by section 39 of the Valuation (Amendment) Act 2015 of the Act provides (in material part):

"Any building or part of a building used exclusively for community sport and otherwise than for profit, and being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904, but not including any building or part of a building—

- (a) used on a regular or occasional basis for the sale or consumption of alcohol or in conjunction with the sale or consumption of alcohol, or
- (b) used directly or indirectly in the generation of income, not being—
 - (i) club membership fees,
 - (ii) income received from community organisations for the use of the building or part for community purposes, or
 - (iii) income received from participants in community sport for the use of the building or part for the purposes of community sport.

7. APPELLANT'S CASE

7.1 Mr. Halpin for the Appellant was critical of the Respondent's approach to the valuation. He contended that the circumstances of the clubhouse were such that it was inappropriate and unfair to value the Property other than by reference to rental value at the valuation date or, alternatively, on the basis of a percentage of the Fair Maintainable Trade ('FMT'). He contended that the rate of €40 per m² method applied by the Respondent was not backed up by any rental evidence and did not reflect the true value the hypothetical tenant would be prepared to bid in terms of rent for the Property.

7.2 Mr. Halpin considered that the rental evidence of the comparable properties identified in his précis of evidence illustrated the nominal values that apply to clubhouse lettings. In his view, the hypothetical tenant would be influenced primarily by the income potential of the Property which he said was driven by bar sales. He pointed out that bar sales are low in clubhouses as clubhouse properties are generally located away from populated areas due to fact that land is required for their sporting activities. The disadvantages to which Mr. Halpin drew attention as being matters which would decrease the notional rent that the hypothetical tenant would pay included the following: the rural location; the absence of any passing trade; the low consumption of alcohol due to members being dependent upon their cars to get to and from the clubhouse; and the limited opening hours.

7.3 Mr. Halpin contended that the Property should be valued in line with the rental evidence pertaining to three clubhouses located in the counties of Carlow and Roscommon. He presented comparable evidence as follows:

(a) Killerig Golf club – a modern purpose-built golf course and clubhouse set on 130 acres leased on a month to month basis from 2016 at a rent of €25,000 per annum, the valuation of which is under appeal to the Tribunal.

(b) Athlone Golf Club occupied on a month to month basis the tenant paying no rent, or rates or insurance and not having any liability for repairs. The valuation of this property is under appeal to the Tribunal

(c) Roscommon Golf Club occupied on a month to month basis on foot of a rent equating to 18% of turnover which he said yielded a rent of €3,317 in 2015 and €3,899 in 2016. The valuation of this property is under appeal to the Tribunal.

7.4 In the alternative, Mr. Halpin contended that the NAV of the Property should be determined by the ‘R & E’ method of valuation. His position was that the appeal Property is a bar, little different to other rural pubs in the locality, and like them should be valued on an FMT basis. He stated that the Appellant informed him that the drinks turnover in the Property was €25,000 per annum and on that basis he surmised that the annual gross profit would barely be sufficient to cover the actual outgoings let alone provide any return to the hypothetical tenant. It was his view that it would be more advantageous for the hypothetical tenant to rent a rural public house. Nonetheless, he argued that a percentage of FMT would give rise to a more equitable valuation of the Property. He pointed out that the function room which covers approximately 50% of the rateable area of the Property is not used primarily for the consumption of alcohol and holds only a limited number of events on an annual basis carries half of the rental value as determined by the Respondent. In his opinion the hypothetical tenant would not attribute half his rental bid to this area of the Property. He considered that the larger a function area is relative to a bar in a clubhouse, the greater the inequity becomes and the further from reality the valuation gets. This he said is to be contrasted with the larger rural pub where the size of the occasional use areas has no relevance as such premises are valued on an FMT basis.

7.5 Under cross-examination it was put to and accepted by Mr. Halpin that the turnover of the Property was larger than €25,000 when he was shown a letter dated the 15th April 2016 sent by Appellant’s Honorary Treasurer to the Respondent in the contest of the revision carried out in 2016 wherein he Appellant’s turnover was stated to be in the region of €40,000 per annum. He also accepted that clubhouses are not commercial operations run to maximize profits in the same manner as licensed premises. When it was put to him that it was open to the hypothetical tenant to make an alternative use of the Property, Mr. Halpin accepted that a hypothetical tenant could rent the Property for another use, but he considered that any such letting would be at a low rent and in that regard referred to the opinion furnished by REA Dawson in June 2017 which stated that if the Property was offered on the open market it may only be attractive to local farmers for storage use at a low rent.

7.6 In his submission on the average construction costs table generated by Linesight Mr. Halpin observed that the table does not have a specific clubhouse category and that the design and construction of a sports hall would be completely different to that of a clubhouse. He pointed out

that modern sports halls by their nature are built to high specifications with minimum internal height of 8 metres whereas clubhouses would not be built remotely to the same specification and the maximum internal height is typically 3 metres per floor. Mr. Halpin expressed surprise that the Respondent had chosen an average construction value of €1,500 per m² from a range of €1,000 to €1,550 per m² in the Linesight construction costs table for 2015. He contrasted those average construction costs to the construction costs indicated in the Linesight tables for other buildings pointing out that a hypothetical landlord could build a cinema for the same price per m². It was also pointed out that the construction cost of a sports hall in 2015 (between €610 and €790 per m²), was more than twice the construction cost of warehouse accommodation, which in his view was the type of building most comparable to the Property in terms of construction. In addition, he observed that because the rating hypothesis requires the Property to be valued in its actual state, the type and nature of the construction must be considered and that the drawing of conclusions from value ranges for non-comparable newly built property is an exceptionally difficult task when valuing property by the contractor's method.

8. RESPONDENT'S CASE

8.1 Mr. Devlin confirmed that he is employed by CBRE who were engaged by the Respondent to carry out the revaluation of properties in the rating authority areas of Carlow and Kilkenny. He stated that the NAV of the Property was determined in accordance with the valuation level of properties similar in terms of construction and location using the contractor's method (depreciated replacement costs) due to the absence of any evidence of open market rents that could be relied upon to give effect to section 48 in conjunction with section 19(5) of the Act as amended.

8.2 He explained in his précis that the R & E method of valuation was not considered suitable because of the unique characteristics of the occupation of the Property and the fact that clubhouse properties operate under a different legislative regime to licensed premises. He pointed out that clubhouse properties are run on a voluntary basis for the benefit of its members, that the use of their facilities is restricted to club members and their guests, that clubhouse bar licenses are non-transferrable.

8.3 Mr. Devlin confirmed that 18 clubhouse properties in county Carlow were valued at the level of €40 to €50 per m² using the contractor's method (depreciated replacement costs) and that the Property is one of four clubhouse properties that have been appealed to the Tribunal. He set out in his précis of evidence the approach adopted in the valuation of Borris Golf Club and Leinster Hills Golf Club in addition to the appeal Property. He confirmed that the average construction cost figure of €1,500 per m² used in the valuation of the Property was extrapolated from the average construction costs table generated using Linesight's cost database by reference to a sports hall and that 30% was considered the appropriate maximum depreciation.

8.4 Under cross examination Mr. Devlin explained that having assessed each of the 18 clubhouse properties using the contractor's method the assessments ranged between €55 and €62 per m² and adopting a "stand back and look approach" the Respondent determined that to achieve equity and uniformity the appropriate overall rate per m² values for such properties ranged between €40 and €50 per m².

9. SUBMISSIONS

9.1 Mr. Halpin and Mr. O'Neill BL submitted their respective written submissions in advance of the hearing and made brief oral submissions at the conclusion of the hearing summing up the parties' respective positions by reference to the evidence that had been adduced. The Tribunal does not consider it necessary to reproduce these submissions, but the parties can be assured that they have been fully considered by the Tribunal.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal is required to determine the value of the Property to achieve, as far as is reasonably practical, a valuation that is correct and equitable so that the valuation of the 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 Carlow County Council.

10.2 There was a divergence of view between Mr. Halpin and Mr. Devlin over the most appropriate valuation method to be employed in determining the NAV of the Property. Mr Halpin contended for the determination of the NAV either by the rental method or alternatively based on the FMT that the Property could achieve in the hands of the hypothetical tenant whilst Mr. Devlin on behalf of the Respondent favoured the contractor's method.

10.3 The contractor's basis is often described as a method of last resort as it is employed in respect of properties which are not normally let and which by their nature do not lend themselves to valuation by comparison with other properties because no rental evidence exists, and which are not of the type where a valuation by the R & E method would be appropriate.

The assumption underlying the contractor's method is that, for certain types of property, a multiplier can be adopted to arrive at an estimated annual rental value based on an assumed relationship to the capital cost of providing the building from scratch. However in the absence of a proper cost analysis for the particular premises being valued there will inevitably be difficulties in applying average building cost rates based on published sample data.

10.4 The selection of the most appropriate method of valuation to be employed is a matter of valuation judgment. The Tribunal is not obliged to determine the value of the Property by reference to any particular method and may determine the value by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.

10.5 In the Tribunal's view limited weight can be attached to the rental evidence put forward by the Appellant in respect of the three golf clubhouses all of which are larger than the appeal Property and were built to a higher specification within the past 10 years. But more importantly, the occupier of the Athlone Golf Club is not paying any rent and the rental evidence given in respect of the Roscommon Golf Club also does not accord with the statutory requirements contained in section 48 of the Act. The rental evidence given in respect of Killerig Golf Club applies to both the clubhouse and the 130-acre site and, therefore, would require a significant adjustment. The

Appellant did not adduce sufficient evidence of the lease terms for an analysis of that letting which would be required if reliance were to be placed on the rent paid in respect of that property. Mr. Devlin conceded that there was no actual rental evidence to underpin the Respondent's determination of the NAV of the Property. As the Property is not leased and no relevant or reliable rental evidence of comparable properties has been adduced, the NAV of the Property must be ascertained by an alternative method of valuation.

10.6 Public houses and hotels are not usually valued on per square metre basis as their rental value is dependent upon their profit-generating capacity rather than on their size or other characteristics. In the Tribunal's view, sports clubhouses may have limited commercial value and are frequently not easily adapted to other uses. The primary purpose of a sports clubhouse is to serve the sporting activity carried on the land developed and occupied by the club for the benefit of its members.

The use of the R & E method of valuation can be problematic where the hypothetical tenant's motive for taking the tenancy is not, or is not only, for the making of a profit. Accordingly, the Tribunal is of the opinion, that the use of the R & E method of valuation is not appropriate in determining the NAV of the subject Property because the annual level of trade that the Property can be expected to achieve would not bear a consistent relationship to annual rental value.

10.7 The Tribunal considers that it was reasonable for the Respondent to approach the determination of the NAV of the Property by the contractor's method (depreciated replaced cost). Such a costing exercise should be related to the notional replacement of the actual Property. A new replacement property would be costed with modern materials and is unlikely to be identical in terms of materials and specification to the existing building.

The 2015 Linesight schedule of average construction costs are stated to apply from January 2016 whereas the valuation date is 30th October 2015. The Linesight average construction costs for a sports hall range between €1,000 and €1,550 per m². The Respondent applied an average cost at the upper end of the range for the replacement cost of a building built in the 1970's. From the photographs adduced in evidence and the descriptions of the building provided by both valuers in response to questions, it is clear that the Tullow RFC clubhouse is built to a relatively basic specification.

Mr. Halpin submitted that the figure of €1,400.00 per m² (based on a new build sports hall) adopted by the Commissioner is excessive and that a more appropriate costing would be for a warehouse type building at €610.00 per m².

In the Tribunal's opinion a lower mid-range replacement cost of **€1,000** per m² should reasonably have been adopted to reflect a variety of factors in comparing the actual Property with the "new-build" property. The rental value of the actual Property must also then take into account the impact of higher maintenance costs over time, compared to those which would be experienced with a new building and the extent to which the original design does not meet modern standards and requirements. The subject Property was built circa 1970 and the Tribunal considers that the valuation must have regard to age and obsolescence, the site location as well as the wider economic factors which would impact on the rent which would be assessed for the Property so as to arrive at a NAV which is appropriate in all the circumstances.

10.8 For the foregoing reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to **€7,830.00**, calculated as follows:

Description	Area m²	Rate € m²	Totals
Club House building	326.26	€1,000.00	€326,260.00
Site Cost (based on €45,000 per Ha.)	0.50	€45,000.00	€22,500.00
Sub-total			€348,760.00
Allow for depreciation Tullow RFC clubhouse is significantly older than Borris GC or Leinster Hill GC & a higher depreciation rate is applied		- 40.00%	- €139,504.00
Net after depreciation			€209,256.00
Allow 5% to arrive at NAV		5.00%	€10,462.80
Equivalent to € m ²			€32.07
Adopt 'stand back' adjustment based on V.O. approach	- 25%	Gives NAV m ²	€24.00
Clubhouse Building assessed at	326.26	@ €24.00 m ²	€7,830.24
Tullow RFC NAV rounded to:			€7,830.00

And so the Tribunal determines.