

Appeal No: VA17/5/261

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

ÉIRE ÓG GAA CLUB

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 2203602, Leisure at Floor: 0,1, 19C/1 Carlow (Pt Of), Carlow, County Carlow.

B E F O R E

Hugh Markey – FSCSI, FRICS

Deputy Chairperson

Frank O'Grady – MA, FSCSI, FRICS, FIABCI

Member

Annamaria Gallivan – MRICS, MSCSI, BSc Hons, TRC

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH JUNE, 2019.**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th day of November, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €28,900.

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 :

“1. The valuation of the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its potential rental value.

2. The subject property is a clubhouse in a GAA club and falls to be valued in line with the provisions of Schedule 4, Section 4 of the Valuation Act 2001 as amended.

4.-Land developed for sport.

4A. (1) Any building or part of a building used exclusively for community sport, and otherwise than for profit and not being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904.

(2) In this paragraph 'community sport' means sport, the principal participants in which are-

- (a) inhabitants of the locality in which the building concerned (or part of the building concerned) is situate,
- (b) inhabitants of localities neighbouring the first-mentioned locality, or
- (c) in the case of sporting activities involving teams and with the consent of those responsible in the first-mentioned locality for organising sporting activities in that locality, persons from any geographical area.

4B. (1) 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.

(2) In this paragraph 'community sport' has the same meaning as it has in paragraph 4A of this Schedule but with the modification that, in the case of subparagraph (1)(b)(iii) of this paragraph, the definition of that expression in that paragraph 4A shall be read as if for 'the principal participants in which are-' there were substituted 'the principal participants in which are, ordinarily-'.]

It seems to the appellants that the principle issue regarding the valuation of club premises is the Commissioner's confusion between the terms 'rateable' and 'valuable'.

The Act calls for the commercial sections of a Club premises to be valued, but it does not prescribe a method to valuing these items.

The starting point, needless to say, is rental analysis of said. The appellants are aware of 4 rents for golf club premises in the counties which are part of Reval 2017:

1) Athlone Golf Club (PN 87879). Licenced at €0 to the operator.

2) Roscommon Golf Club (PN 131547). Licenced at 18.5% of Turnover, resulting in rents of €3,317 in 2015 and €3,899 in 2016. Club pays all outgoings – light, heat, rates etc. which technically means a negative net rent.

3) New Forest Golf Club Bar. Let on a 2 year lease a €10/annum from the 5th August 2015 (see attached)

4) Killerig Golf Club (PN 2189747). Let at €25,000 per annum for the entire facility i.e. the golf course and the club house. This devalues at €20,000 per annum on the course and €5,000 per annum on the clubhouse.

The application of the legislation must follow the intention of the legislation. That is to say, the legislation was intended to vastly reduce the liabilities of community sport facilities across the country. Indeed, it has been the Commissioner's argument since 1988 that the reason sports clubs cannot be exempted completely is that if they have a bar which competes with other bars and hence it would be inequitable for the Commissioner to suggest that the club bars should be treated differently in valuation methodology to standard bars.

The appellants see absolutely no reason not to follow the rental evidence, and failing this, the turnover of the bar in order to assess this portion of commercial activity since this is what he does in all other bar premises. What is more, this will also give the Commissioner leave to appropriately assess such clubs which do benefit from their geographical and economic circumstances. There is also precedent for this as determined by the Valuation Tribunal and, we believe that the Commissioner is now assessing clubs by his own volition on a turnover basis in South Dublin.

The Commissioner must avoid simply measuring around the outside of club house structures as this exercise will never equate to fair value. Indeed, it has the potential to under-assess clubs just the same as over-assessing them. Moreover, assessing the properties on a turnover method eliminates the difficulties encountered by the Commissioner and the Tribunal in regards to the physical property. Since the change in legislation in 2015, sports club exemption cases have been brought forward to the Tribunal revolving around physical property and rateability, such as whether the toilets connected with the bar were rateable or the passageway linking them with the changing rooms etc. The pre-occupation with physical property is a waste of everyone's time and effort as fighting[sic] about the rateability of each square metre has very little to do with the Net Annual Value of a property. By contrast, if the turnover method was adopted it would not matter in the strictest sense whether the item was rateable or not. For example, the bar toilets produce no turnover and hence it would no longer matter whether they were deemed rateable or not. It would also solve the serious

question of the sports club dance/sports hall – an often very large room with very limited actual value. Under a rate m² assessment such halls tend to account for a very large portion of the assessment but under a turnover bases approach they could be correctly considered in the context of the whole.

In regards to shops, be they pro-shops or otherwise, the appellants suggest that a retail or office approach is taken to these areas, depending on which is most appropriate in the circumstances. The Commissioner has an abundance of retail rental information that can be easily discounted back to achieve a fair rent for the shop in a club.

For the avoidance of doubt, in a standard club, the appellants consider the Bar, its stores, its kitchen and its toilets (if connected with the bar) to be rateable (all to be considered on the basis of rental value and/or turnover) and the pro-shop (if applicable, to be valued on the basis of relative retail value). The appellants do not consider any changing room facilities to be rateable. Indeed, even if they are used by ‘guests’ these guests are ‘day members’ and as such these areas fall exempt under the provisions of section 4B.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €17,500.

2. REVALUATION HISTORY

2.1 On the 11th day of 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 €28,900.

2.2 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €28,900.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of 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 the 20th day of May, 2019. At the hearing the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate), BA. (Mod) and the Respondent was represented by Mr. Terry Devlin BSc., MSCSI, MRICS 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.

The property the subject of this appeal comprises the ground floor bar and first floor function room/bar with toilets. These form part of a larger GAA sports complex located on the O'Brien Road, Carlow Town which also includes changing rooms; meeting rooms; stores and playing pitches; all of which are exempted property.

The floor areas, on a gross external basis, have been agreed:

Ground Floor 250.92 sq. m.

First Floor 276.19 sq. m.

5. ISSUES

5.1 The issue in this appeal is one of 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 The Appellant’s case centred on the appropriate method for arriving at the rateable value of the property. They suggested that the appropriate method of valuation was Depreciated Replacement Cost (DRC) which took account of the construction cost of the facility; the site cost and an allowance for depreciation. Mr Halpin referred to the Tribunal’s decision in VA17/5/265 (Tullow Rugby Club) and accepted the Tribunal’s determination in that instance that the Receipts and Expenditure (R&E) method of valuation, with reference to actual rental transactions, was not appropriate in the case of clubhouses associated with such sporting facilities. The Appellant therefore relied on the Contractor’s Method of valuation in the instant case.

7.2 Mr Halpin’s evidence was that the Tribunal’s determination in the above case was that construction costs of €1,000 per sq. m. be applied; that the Respondent had adopted a rate of €1,500 per sq. m and the correct figure should be less than the €1,400 per sq. m. suggested as the construction cost of cinemas by Linesight construction cost consultants. In this context, Mr Halpin posited that an appropriate rate to adopt in this case was a rate of €1,50 per sq. m.; higher than the €1,000 per sq. m. determined in the Tullow Rugby Club appeal.

7.3 Mr Halpin suggested that a rate of 50% be applied to the construction cost of the first floor. He found support for this viewpoint in various decisions of the Tribunal in which various first floors were valued at the rate of 50% of the ground floor.

7.4 The appellant did not dispute the Respondent’s application of a rate of €45,000 per ha to the subject site and adopted a site area of 0.5ha for the purposes of the exercise.

7.5 Having considered the Respondent’s approach to the depreciation rate to be applied and having considered other clubhouses, the Appellant accepted the rate of 25% as being appropriate.

7.6 Factoring the above into the contractor’s method of valuation led Mr Halpin to propose a rate of €40 per sq. m. to be applied to the ground floor facility with a rate of €20 per sq. m. applied to the first floor.

7.7 Mr. Halpin put forward 6 comparisons to support his case. Three of these were clubhouses in Carlow town which when considered on a NAV basis devalued at €40 per sq. m.

A fourth located in Tullow was valued at €24 per sq. m. but Mr Halpin accepted that it was of a poorer standard than the subject.

His adduced a further comparison, that of a golf clubhouse in Co. Carlow. He suggested this modern clubhouse was valued at a rate of €50 per sq. m.

His final comparison was that of a modern golf clubhouse in Bunclody, Co Carlow which he described as being the ‘best clubhouse in all of Carlow’. This devalues at a rate of €50 per sq. m.

7.8 The Appellant’s comparisons are contained in Appendix 1.

7.9 Mr Halpin suggested the following was the appropriate methodology to adopt in arriving at the NAV of the subject:

| Description | Area m ² | Rate €/m ² | Totals |
|---------------------------------|---------------------|-----------------------|---|
| Ground floor Clubhouse | 250.92 | €1,150 | €288,558 |
| 1 st floor Clubhouse | 276.19 | €575 | €158,809 |
| Site Cost (hectares) | 0.50 | €45,000 | €22,500 |
| Sub-total | | | €469,867 |
| Less Depreciation | | -20% | -€93,973 |
| Net after depreciation | | | €375,894 |
| | | | |
| Allow 5% to arrive at NAV | | 5% | €18,794 |
| Equivalent to €/m ² | | | €48.31 (Ground floor) €24.16 (1 st floor) |

| | | | |
|--|---|--------------------------|---|
| Adopt 'stand back' adjustment based on VO approach | -25% | Gives NAV m ² | €36.23 (Ground floor) €18.11 (1 st floor) |
| Clubhouse Building assessed at | 250.92 (ground floor) 276.19 (1 st floor) | €36.23 €18.11 | €9,091 €5,002 |
| Sub-total | | | €14,093 |
| Rounded to: | | | €14,090 |

7.10 As a check method to support the above, Mr Halpin suggested that applying a rate of €40 per sq. m. to the ground floor and 50% thereof to the first floor resulted in an NAV of €15,560.

7.11 In support of his contention that the first floor should be valued at 50% of the rate applied to the ground floor, Mr Halpin drew the Tribunal's attention to other Divisions of the Tribunal in applying this rate in supermarkets and retail warehouses.

7.12 Mr Halpin contended for a revised NAV of €14,090 (€36.23 on ground floor and €18.11 on first).

8 CROSS EXAMINATION OF MR HALPIN

8.1 Mr Halpin, in response to a question from Mr Devlin, accepted that the facility was in a densely populated area on the edge of Carlow Town. He further accepted that there were clubhouses in the town valued at rates higher than €40 per sq. m. including one at €50 per sq. m. for a purely first floor facility.

8.2 He accepted that his opinion of the construction cost of €1,150 for the ground floor was not 'fact based' but was an opinion. He suggested the adoption of a rate of 50% of first floor construction costs was a 'general approach'. Mr Halpin confirmed that he had no evidence to support his approach.

In response to a query from the Tribunal, he confirmed that his suggested methodology of applying a rate of 50% to the construction costs was not adopted in residential situations.

8. RESPONDENT'S CASE

8.1 Mr Devlin, on behalf of the Respondent, having briefly described the property under appeal and its locational characteristics, outlined how there was a paucity of rental evidence for the type of property under appeal; that there were 18 clubhouses in Carlow valued at levels in the range €40-€55 per sq. m. and the Contractor's Method had been employed in the initial assessment of clubhouses in order to establish a tone.

He submitted that 4 clubhouses made representations and the subject was one of 4 under appeal to the Tribunal. Each of the other clubhouses under appeal are outside the town of Carlow. He went to state that 2 golf clubhouses, both subject of appeals, had been settled at €50 per sq. m., while the third, Tullow Rugby Club had been determined at a rate of €24 per sq. m., following an appeal to the Tribunal.

8.2 Mr Devlin introduced seven NAV comparisons in Carlow. Four of these were at €40 per sq. m; 2 at €50 per sq. m and one at €55 per sq. m. He introduced two further comparisons; each at €50 per sq. m. which had been agreed at Tribunal stage. Mr Devlin's comparisons are included in Appendix 2.

8.3 Mr Devlin posited that the NAV of the subject, as of the relevant date, was €28,900, based on a rate of €55,000 per sq. m.

8.4 He evidenced that, due to the lack of rental comparables, the Respondent had considered the Contractor's Method; the same rate of €55 per sq. m. was applied to each of the two levels in the property.

9. SUBMISSIONS

9.1 No legal submissions lodged.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar 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 The parties were in agreement as to the floor areas to be valued.

10.3 The parties were also in agreement that the Contractor's Method was the most appropriate method to adopt in arriving at the Net Annual Value of the premises under appeal.

10.4 The Respondent placed significant reliance on the fact that the great majority of clubhouses in the county had been agreed at rates in the range €40 - €55 per sq. m.; the exception being the Tribunal's determination in the case of Tullow Rugby Club which was valued at €24 per sq. m. It was accepted by the Appellant that this was an inferior property to the subject.

10.5 The Appellant suggested that a rate of 50% be applied to the construction cost of the first-floor accommodation; this is clearly flawed as was evidenced by Mr Halpin's response to a question from the Tribunal in respect of residential property, which he accepted was valued at the same rate for reconstruction, irrespective of the number of floors.

10.6 The onus is on the Appellant to prove that the valuation placed on the property under appeal was incorrect and should be corrected. The Tribunal regarded the Appellants methodology to be flawed insofar as he discounted the first-floor construction by 50%. Neither did he take enough cognisance of the rates agreed for other clubhouses in the county.

10.7 Similar functions are carried on each floor and the application of the same rate is supported by the rate applied to a first floor clubhouse in the town and also in the case of the Respondent's Comparison PN 2203526 which had been agreed with the Appellant's valuer and where the same rate was applied to both levels

10.8 The tribunal believes there is sufficient evidence of clubhouse valuations to allow it make a determination in this matter, subject to an adjustment to the rate adopted by the Respondent, to reflect the differing characteristics of this property.

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 €25,000.

Ground Floor 250.92 sq. m. @ €47.50 = €11,919

First Floor 276.19 sq. m. @ €47.50 = €13,119

€25,038

Say, €25,000

And the Tribunal so determines.