

Appeal No: VA17/5/598

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SLIGO YACHT CLUB

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1993908, Leisure at Local No/Map Ref: 26C, Rosses Upper, Drumcliff West, Sligo, County Sligo.

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 4TH DAY OF JANUARY, 2021.

BEFORE

Barry Smyth – FRICS, FSCSI, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 19th 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 was fixed in the sum of €25,600.

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 :

- The clubs bar turnover for the last 2 years has been €10,000/annum approximately. Estimating rental value at 7% of this points to Net Annual Value of only €700 or €3.11/sqm. The reality is no tenant would take a lease on the premises with the level of trade and nature of the licence.

- Notwithstanding this and having regard to market realities we are of the view that €457.82 per month would be a reasonable rent level for a premises of a somewhat comparable nature to the subject property. This equates to €24.39 per sqm per annum.
- Hence the amount the Appellant considers ought to have been determined as being the valuation of the property concerned in accordance with matters set out in Section 19(5) of the act as amended is €5,481.90.
- On a matter of fact the rateable floor area is overstated. The bar and function room areas total 224.76sqm while the valuation certificate suggests an area of 512.99sqm is rateable.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,481.90.

2. RE-VALUATION HISTORY

2.1 On the 16th March, 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 €28,000.

2.2 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 €25,600.

2.3 A Final Valuation Certificate issued on the 7th September, 2017 stating a valuation of €25,600.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 30th October, 2015.

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.

4. FACTS

4.1 The Parties are agreed as to the following facts:

4.2 The location of the property on the coast 1 kilometre west of Rosses Point, which in turn is 9 kilometres west of Sligo.

4.3 The property comprises a single storey and two-storey yacht club building constructed circa 2006 with changing rooms and other sailing facilities at the lower level, all non-rateable, and the upper level comprising non-rateable areas, including Committee room, Instruction room and Marina office and rateable areas including a bar and function room, kitchen, and ancillary stores with a store area under dispute as to whether it is rateable.

4.4 The total floor area is 913.73 sq.m. with the floor area that is rateable either 419.69sq.m or 395.08 sq.m depending on whether the store of 24.61 sq.m. is deemed rateable.

4.5 The property is Freehold.

4.6 It is agreed that the Contractor's basis is an appropriate basis for this Valuation.

5. ISSUES

The sole issue in dispute is the quantum of the Net Annual Value as that may be affected by the inclusion or exclusion of the disputed store area.

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 in his written Submission outlined the history of the Club, the current facility having been built circa 2006 to replace an earlier facility built in the late 1960’s. He noted that the natural environment at this location is extremely destructive with a serious impact on the maintenance of the building. In his opinion, the club house as built in 2006 was over ambitious for the needs of the Club, reflecting the buoyant economy at the time and that in today’s economic climate a similar project would not be considered. The Club has struggled to attract sufficient members and general activity to achieve viability. The fabric of the building has not performed well and the roof in particular has been a major problem.

He noted the following:

- The positive contribution to the development of tourism and benefit to the community of the Sailing Club in this location.
- That in practice sailing takes place only from mid-April to mid-September.
- That the assessment of NAV was based on €50 per sq. m and commented that the property is not a licensed premise i.e., Public House but has a Liquor License as a

registered Club under The Registration of Clubs Acts 1904 – 2008 with the limitations that apply.

- That there were no comparable commercial lettings within the village of Rosses Point to provide any comparisons, but he noted one sale of a property namely The Waterfront Bar & Restaurant the price for which he analysed to derive a rent for the licensed area of €24.39 per square metre.
- Two attempts by the Club to let the function room and Kitchen at a rent of €100 per week or 10% of the turnover but that neither business was viable and on the basis of the floor area this equated to €18 per square metre.
- The Tribunal judgment re Tullow Rugby Football Club in Co. Carlow.
- That the club did not have the ability to pay the current level of rates.
- That the property falls to be valued in its actual state and in the circumstances in existence at the operative date for assessment purposes and referred to the findings of the Valuation Tribunal in the case of LIDL Supermarket in Lucan VA05/2/022 where it is stated in the findings of the Tribunal that “the Hypothetical Tenant would be required to consider the property as is, where is and not for what might be”.

Based on the Contractor’s method of Valuation, he provided an estimate of an NAV of €8,550 assessed as follows:

- Construction costs of the entire Clubhouse of 987.91 Sq. mtrs in 2006: €1,528,011.
- Including demolition of the old Clubhouse and construction of a new slipway.
- By 2016, this was depreciated to €1,206,806 in the club accounts. From this he deducted the demolition costs of the old Clubhouse and the construction costs of a new slipway resulting in a figure of €1,149,806 equivalent to €1,163.87 per sq. mtr.

On this basis he set out his Valuation as follows:

| Description | Area M² | Rate - € per M² | Totals |
|--|---------------------------|-----------------------------------|---------------|
| Rateable element of the Clubhouse building | 395.08 | €1,163.87 | €459,822 |
| Site cost @ €20,000 per acre | 0.75 acres | | €15,000 |
| Sub Total | | | €474,822 |
| Allowance for depreciation due to the dilapidation of the building in harsh exposed sea side environment and roof issues | | 40% | €189,929 |
| Net after depreciation | | | €284,893 |
| Allow 5% to arrive at NAV | | 5% | €14,245 |
| Equivalent to € per m ² | | | €36.06 |
| Adopt a “stand back” adjustment | | 40% | €21.64 |
| Clubhouse building assessed at | 395.08 Rateable Area | €21.64 | €8,549.53 |
| Rounded to | | | €8,550 |

Alternatively comparing with the temporary lettings of the relevant area of 395.08 sq. mtrs at €18 per sq. mtr provided a Net Annual Value of €7,111.

The mid-point between these two valuations is €7,830 or €20 per sq. mtr and this is the opinion of Net Annual Value submitted.

In reply to the Respondent’s Submission, the Appellant reiterated that the legislation provides that the Subject Property falls to be valued in its actual state and in circumstances in existence as at the operative date for assessment purposes. He noted that the Clubhouse was not equivalent to the local Golf Club clubhouses, where there would be year-round activity, whereas the sailing season is for half the year only. He also reiterated the physical condition of the property with the faulty roof.

He said that agreement had not been reached on the floor area in dispute, the former bar store, which has had the power permanently switched off and is now used for storage of sporting related equipment and has not been used in connection with a bar since before the Valuation date.

In relation to the Contractor's method of Valuation, he differed significantly from the Respondent on the adjustment of the replacement costs for depreciation and confirmed his view that the appropriate depreciation for the building was 40% and up to 40% stand back and look reduction was also fair and reasonable.

8. RESPONDENT'S CASE

8.1 In his written Submission the Respondent noted the following:

- That the location is ideal for a Sailing Club.
- The accommodation, both rateable and non-rateable, and that the floor area of the property that is rateable is 419.69 sq. mtrs including the disputed store room and provided floor plans and a series of photographs both external and internal including the disputed store.
- The grounds of appeal and that the ground of appeal linking the Valuation to the Club's bar turnover is no longer contended for.
- That Net Annual Value determined under The Valuation Act is not parallel to capital values and as the Subject Property does not hold a Publican's Seven Day License the Waterfront Bar sale is not comparable.
- That the pop-up Cafes as comparisons relate to unsuccessful lettings of the function rooms.
- That Tullow Rugby Football Club is outside the Local Authority area of Sligo and therefore does not meet the requirements of Section 19 (5) (b) of The Valuation Acts.
- That the matter of Rates liability and the ability to pay is not a factor for the Commissioner of Valuation whose sole function is to determine the Net Annual Value of the property.
- That the information on the cost of construction of the Clubhouse in 2006 was not supplied to the Commissioner at proposed Valuation stage or at representations.
- That no evidence has been provided as to how the agent arrived at a 40% allowance for depreciation and that Tullow Rugby Club clubhouse had been constructed in the 1970s

to a relatively basic specification whereas the Subject Property was built in 2006 to a modern design and construction and therefore the 40% depreciation is excessive.

- That no evidence or reasoning has been provided as to how the appellant arrived at the 40% stand back and look allowance.
- That as there was no market information of comparable properties in the rating authority area, the Commissioner developed a Valuation Scheme from undertaking a Section 50 Contractor's Valuation on each Clubhouse in compliance with Section 19 (5) of The Valuation Act.
- That the Valuation levels adopted for the Clubhouses were either €45 per Sq. mtr. or €50 per Sq. mtr. and he set a table of all the Clubhouses in Sligo that had been valued as follows:

| Club | Rateable Area | Contractors Rate/Sq.m | Stand back & Look | Rate/Sq.m | Tone/Sq.m | NAV |
|-------------------------------------|----------------------|------------------------------|------------------------------|------------------|------------------|------------|
| St Mary's GAA | 158 sq.mtrs | €63.02 | 20% | €50.42 | €50 | €7,900 |
| Tubbercurry Golf Club | 176.14 sq. mtrs | €53.22 | 20% | €53.46 | €45 | €7,926 |
| Enniscrone Golf Club | 808.79 sq. mtrs | €53.22 | 20% | €42.58 | €45 | €36,396 |
| Co. Sligo Golf Club Rosses Point | 855.49 sq. mtrs | €53.43 | 20% | €42.74 | €45 | €38,497 |
| Strandhill Golf Club | 780.42 sq. mtrs | €66.18 | 20% | €52.94 | €45 | €35,119 |
| Mullaghmore Sailing Club | 97.5 sq.mtrs | €59.85 | 20% | €47.88 | €50 | €48.75 |
| Sligo Yacht Club Rosses Point | 419.69 sq. mtrs | €68.08 | 20% | €54.56 | €50 | €20,984.50 |

He noted that a Valuation level of €50 per sq. mtr. was applied to the subject and that if it were valued solely by reference to the Contractor's method then €54.46 would be the valuation level applied. He noted that two Clubhouses, including the subject were subject to further consideration at representation stage but the Subject Property is the only property subject to a Valuation Tribunal Appeal.

He then set out in more detail the Valuation of three comparisons included in the panel above including Co. Sligo Golf Club at Rosses Point at €45 per sq. mtr. Strandhill Golf Club, Strandhill at €45 per Sq. mtr. and Mullaghmore Sailing Club, Cliffoney at €50 per sq. mtr.

He set out the calculation of the Valuation as appearing on the Valuation List but offered a different opinion of value at Tribunal Appeal by reducing both the rateable floor area and the rate per square metre and therefore offered an opinion of Net Annual Value of €18,880 calculated on the basis of 419.69 Sq. mtrs at €45 per Sq. mtr. He set out the Section 50 Contractor's Valuation undertaken at Valuation Tribunal stage as follows:

| | | |
|-------------------------------------|-------------------|---------|
| Building area - | 918.73 Sq. mtrs - | 100% |
| Area Rateable as per the 2015 Act - | 419.16 Sq. mtrs - | 45.87 % |

Stage 1 Estimated Replacement Cost

| | | |
|--------------------------|--|------------|
| Modern equivalent 2015 - | 913.73 Sq. mtrs @ €1,400 per Sq. mtr - | €1,279,222 |
|--------------------------|--|------------|

Levels obtained from build cost (commercial, suburban offices €1,500 to €1,400 sq.mtr adjusted for location)

Stage 2 Adjusted Replacement Cost

| | | |
|---|------|-------------------|
| Functional/technical/economic obsolescence - | 0% | |
| Physical obsolescence, 9 years old, wear and tear - | 4% - | <u>€51,168.88</u> |
| Adjusted Replacement Cost - | | €1,228,053 |

Stage 3 Land Value

| | |
|---|------------------|
| Site including the area of the building – 0.8 acre @ €20,000 per acre - | €16,000 |
| | Total €1,244,053 |

| | | |
|-----------------------------------|------|---------|
| Stage 4 Decapitalisation - | 5% - | €62,203 |
|-----------------------------------|------|---------|

for 913.73 sq. mtrs = €68.08 per sq. mtr

| | | |
|--------------------|----------|---------|
| Rateable Element - | 45.87% - | €28,535 |
|--------------------|----------|---------|

| | | |
|---|-----|---------|
| Stage 5 Review (Stand back and look) - | 20% | €22,828 |
|---|-----|---------|

Valuation Scheme 419.69 sq.m @€45/sq.m = €18,886.05

Therefore, opinion of Net Annual Value at Tribunal stage €18,880

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

In this Appeal the Tribunal has to determine the value of the property so as to achieve, in so 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 Co. Sligo.

10.1 There are two areas of dispute namely, one, does the area of the store of 24.61 sq.m fall within the rateable area and two, the quantum of the Nett Annual Value. The Appellant states that the storage space has not been used in relation to the bar since before the Valuation date whereas the Respondent states that at the time of inspection there was only bar related storage and in photographs clearly shows that the property is in use, even if not awfully actively, in relation to the bar area in that the photographs taken, presumably at the time of inspection, show cold stores, ice machine, glass washer etc. rather than general storage and this allied to the location of this accommodation adjacent to the bar area, in the view of the Tribunal makes this area rateable.

10.2 All other Club buildings in the Rating Authority area have been valued on the contractor's basis and there is no reason to depart from that in this case. The derivation of a rental level from a Capital Value Sale is always problematic in that it is subjective. The information from "pop up" lettings is no guide to NAV as defined in the relevant legislation.

10.3 The building, although only nine years old, has suffered ongoing roof problems and it is noted that the roof is undergoing some emergency repairs and it may require replacement in due course. This has a bearing on the rate of depreciation utilised in assessing the adjusted replacement cost.

10.4 The sailing season is only approximately six months, as opposed to golf clubs which have a twelve-month season, and particularly in light of the location of these premises, would have an effect on the utilisation of the rateable areas.

10.5 The Contractors Method of Valuation has a well-established five stages, namely:

1. The estimated replacement cost.
2. The adjusted replacement cost, allowing for depreciation.
3. The land value.
4. The rate of decapitalisation.
5. The review, or stand back and look, of the resultant figure.

10.6 It is noted that the actual cost of construction of the Clubhouse in 2006 was not supplied to the Valuation Office prior to Tribunal stage and therefore the VO estimated the replacement cost based on commercial suburban offices adjusted for location. However, in the Appellant's case the depreciated construction costs as appearing in the club accounts is utilised as the base figure. This shows a reduction of approximately 20% on the original construction cost. The Respondents figure for the replacement cost therefore appears realistic.

10.7 The Appellant allows 40% depreciation on the already depreciated replacement cost as opposed to the Respondent making an allowance of 4% in total. The Tribunal is of the view that it is not appropriate to make a depreciation allowance of 40% on an already depreciated replacement cost but by the same token an allowance of 4% for nine years in the relatively harsh environment which has contributed to the obvious deterioration of at least part of the roof is not adequate. An allowance of 20% of the estimated replacement cost is appropriate.

10.8 The Parties noted land areas of 0.8 Acres and 0.75 Acres are to either of which a value of €20,000 per Acre is applied. The Tribunal therefore determines a land value of €15,500. The Appellant also effectively applies depreciation to the land value which is not correct.

10.9 The rate of decapitalisation is set down in the 2015 Act at 5%

10.10 The review, or stand back and look, adjustment is dependent on many factors involving professional valuation judgment but must not include factors, such as depreciation, already allowed for in the calculation. The Respondent applied a 20% reduction at this stage as applied in all other clubs on the list. The Appellant applied 40% reduction but provided no basis for this. A factor to be considered in this case is that this is a sailing club with a six month season and very reduced level of activity in the off season as opposed to the golf clubs with year round utilisation. Therefore a reduction of 30% is applied at this review stage.

10.11 Ability to pay is not a matter for the Valuation Tribunal but one for the local authority.

11. 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 €17,000. This is calculated as follows:

| | | |
|---|---|-------------------|
| Building area | 913.73 sq. mtrs. | |
| Area Rateable per the 2015 Act | 419.16 sq. mtrs i.e., 45.87% | |
| Stage 1 Estimated Replacement Cost | | |
| Modern equivalent | 913.73 per sq. mtr @ €1,400 per sq. mtr | €1,279,222 |
| Stage 2 Adjusted Replacement Cost | | |
| Physical deterioration allow 20% | | € 255,844 |
| | | €1,023,378 |
| Stage 3 Land Value | | |
| | | € 15,500 |
| | Total | €1,038,878 |
| Stage 4 Decapitalisation @ 5% | | |
| | | € 51,944 |
| Rateable Element - 45.87% | | € 23,827 |
| Stage 5 Review (Stand back and look) - 30% | | |
| | | € 16,679 |
| | Net Annual Value | say € 17,000 |

And the Tribunal so determines.