

Appeal No. VA00/2/059

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Wallaroo Playschool Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Pre-School at Map Reference 10 Sunmount, Military Hill, St. Patrick's, County Borough of Cork

Exemption - Charitable purposes

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Michael Coghlan - Solicitor

Member

John Kerr - MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF MARCH, 2001

By Notice of Appeal dated the 2nd August 2000, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £28 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; " Wallaroo Playschool Limited conducts its business at 10 Sunmount, Military Hill, Cork. The premises provides a creche and childminding service for both pre-school and after-school (afternoons) children. The childminding role of the premises is to allow families and particularly lone parents and those on low incomes to take up educational and employment opportunities. The premises also provides unemployed people with a training course in childcare which is accredited to the National University of Ireland, Cork".

The appeal proceeded by way of an oral hearing which took place on the 3rd day of November 2000 in the Council Chamber, Cork County Council, Victoria Cross, Cork. The Appellant was represented by Ms Marie Baker BL instructed by Noonan Linehan Carroll Coffey Solicitors. The Respondent was represented by Ms Siobhan Lankford BL instructed by the Chief State Solicitor. Ms Jamie Barron Project Co-ordinator and Director of the appellant gave evidence on behalf of the appellant. Mr. Frank Twomey, District Valuer in the Valuation Office gave evidence of behalf of the Commissioner of Valuation. The Tribunal received a written precis of evidence from the respondent and appellant on the 20 October and 27 October 2000 respectively.

Material Facts agreed or found

The quantum of £28 is not under appeal. The only issue before the Tribunal is a claim for exemption on the grounds that the business carried on in the hereditament is dedicated to the relief of poverty.

There was no issue between the parties in relation to the factual circumstances of the subject hereditament. The property is located on the north side of Cork City on Military Road, close to Collins Barracks. The property was originally built as a residence. It comprises a two-storey building. The ground floor is used as a playschool with office, classroom and kitchen facilities on the first floor.

Appellant's Case

Ms Barron gave evidence on behalf of the appellant. She said that the Company was incorporated in 1990 as a company limited by guarantee. The premises at St. Luke's was purchased with European Fund Assistance through the NOW programme. The objective of the NOW programme was to encourage women to participate in the workplace. The Title Deeds to the building are held by the Department of Equality and Law Reform for a period of ten years from the establishment of the crèche. She said that in the Memorandum of Association the principal objective of the Company was set out as:

"the relief of poverty and disadvantage through the provision of community child care facilities and in particular without prejudice to the generality of the foregoing to

provide childminding services and support to parents who through necessity are obliged to work outside the home".

In pursuit of their main objective Wallaroo provides both morning and after school child care (sessional care) and also provides ancillary supports for parents in the form of parenting courses and other self help type courses funded through the Community Employment Schemes.

The crèche is open from 9 o'clock until 5.30pm every day, on a sessional basis. There are two sessions, one from 9 until 1 o'clock for pre school children, that is the 2-4 year olds and one in the afternoon for 4-8 year olds who are attending school or of school-going age. While at the playschool the children are engaged in various activities that will promote their social, emotional, intellectual and physical development. Most children attend three to five sessions a week because Wallaroo believe in spreading out the places instead of giving one family five full days.

In relation to the accounts that were presented in evidence to the Tribunal, Ms Barron said that the income of the company for the year ending June 1999 from fees was £24,174. She said that they operated a two-tier system in relation to fees for childcare. Half the people attending the playschool pay the standard rate of £5 for a four-hour session. The balance of people pay a subsidised rate of 50% of the standard fee. Ms Barron gave evidence that the centre maintained a ratio of subsidised places to standard rate places of about 50% to ensure that there would always be places for low-income applicants coming at the last minute.

The fees for childcare comprise about 10% of Wallaroo's funding. The balance of the funding is received from FAS, (used to pay the wages of the Community Employment Scheme workers and for materials used by them in their work) the ADM (Area Development Management) and the Department of Social, Community and Family Affairs (used to pay the wages of the full time workers and others running costs). A childcare course is also provided for Community Employment project workers involved in childcare. This course is certified by UCC. Any surplus arising at the end of the financial year is used to finance training schemes and courses provided

by Wallaroo Playschool. Ms Barron confirmed that the core activity of their work was the provision of crèche facilities.

Ms Barron said that an evaluation report carried out by them on the services provided concluded that most parents using the service would otherwise not have been able to enter or remain in the workforce. She cited examples of parents who began working on community employment schemes as childcare workers now pursuing studies to Third and Masters levels.

Ms Barron agreed that half the families availing of the service were not in any sense poor. She said that Wallaroo operated an integrated model of childcare that encouraged a mixing of families of different classes and income levels in the belief that this contributed to the relief of poverty by the reduction in marginalisation and the erosion of social and class divisions. She said that a representative of Wallaroo had been asked to sit on the Expert Working Group dealing with the development of a national childcare strategy because of the integrated model of childcare being operated by Wallaroo. She said that the Strategy Report made reference to the issue of diversity and the importance of a positive approach to dealing with diversity as being an essential element in the quality control of childcare facilities. Ms Barron confirmed that the company has charitable status for income tax purposes.

Under cross-examination Ms Barron explained that Wallaroo administered funds provided by FAS for "own time development" of persons on the community employment schemes. The courses undertaken by persons under this heading could involve driving lessons, aromatherapy, self-esteem and confidence building courses. These courses were not undertaken on the premises. At the hearing date 23 persons were facilitated in obtaining training in this way.

Ms Barron also explained that the main source of funding for Wallaroo was grants and not fee income and that there was no sense in which the fees collected from the better off parents subsidised the lower income families. The rationale for accepting children whose parents could afford to pay for childcare was to provide an integrated model of childcare. She said that integration was essential to the relief of poverty by ending the marginalisation and segregation of groups of people. She said that Wallaroo bridged the gap between families in different parts of the City and allowed friendships to grow and continue that would otherwise not have been

possible. She added that Wallaroo believed in charging a fee however small to all comers to build a partnership with the parents who felt a sense of ownership in the facility.

Ms Barron said that the company is not entitled to use the premises under their planning permission other than for the provision of childcare as a charitable organisation. On the winding up of the company any surplus must be distributed to another charitable organisation.

Submissions

Ms Baker BL on behalf of the appellant submitted that the relief of poverty must be interpreted by the Tribunal in the context of the contemporaneous understanding of "the relief of poverty" as also the relief of marginalisation and an attempt to break a poverty cycle by the provision of child care to enable parents, be they single parents or couples, to get back into the workforce and so break the cycle of deprivation.

Ms Lankford BL on behalf of the Commissioner submitted that the hereditament was an educational establishment both in its ethos and in the provision of the Community Employment training schemes. It was submitted that this appeal could be distinguished from the Tribunal's decision in Northside Community Enterprises Ltd VA97/5/027 in that in that appeal the appellant provided assistance for the long term unemployed, described by the Tribunal as the new poor. The subject hereditament provides childcare for those from all backgrounds and while the theory behind this approach is laudable it takes the hereditament outside the exemption provided under Valuation Law.

DETERMINATION:

The Valuation Tribunal has considered both the Appellant's and Respondent's precis of evidence and the submissions of Ms Baker B.L. for the Appellant and Ms Lankford B.L. for the Commissioner.

At the outset the Valuation Tribunal wishes to commend the erudition brought to this case by Counsel for both parties. The Valuation Tribunal has carefully considered the arguments presented and has noted the case evidence adduced.

Applications for exemption upon grounds similar to those to be dealt with in this present appeal have been made on a number of occasions before the Tribunal in the past. Nevertheless it may be helpful to revisit the basis for exemption and the concept of "charitable purposes" as it has developed over the years.

Exemption from liability for rates was first defined in Section 63 of the Poor Law Relief (Ireland) Act 1838 as follows:

"Provided also that no church, chapel or other building exclusively dedicated to religious worship or exclusively used for the education of the poor, nor any burial ground or cemetery, nor any infirmary, hospital, charity school or other building used exclusively for charitable purposes, nor any building, land or hereditaments dedicated to or used for public purposes shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use".

The Valuation (Ireland) Act 1852 went on to expand upon exemption at Section 16 as follows:

"For the purposes of such valuation, no hereditaments or tenements, or portions of the same, shall be deemed to be of a public nature or used for such charitable, scientific or other purposes as herein before specified, within the meaning of this Act, unless such hereditaments or tenements, or portions of the same respectively, shall be altogether of a public nature or used exclusively for such charitable, scientific or other purposes aforesaid..."

At Section 2 of the Valuation (Ireland) Act 1854 it was required that: "The Commissioner for Valuation shall distinguish all hereditaments and tenements, or portions of the same, of a public nature or used for charitable purposes ..., and all such hereditaments or tenements, or portions of

same, so distinguished, shall ... be deemed exempt from all assessment, for the relief of the destitute poor in Ireland and for grand jury and county rates".

The matter of what constituted charitable purposes was dealt with in some detail in the 1953 Supreme Court case of *Barrington's Hospital -v- The Commissioner for Valuation*. In his judgement Kingsmill Moore J. sought to expand upon the scope of the term "charitable purposes". At page 324 of the Irish Reports 1957 he said the following: "From the authorities cited, the following conclusions emerge:

- (1) The care of the sick of the community in general or of any limited portion of the community is a charitable purpose within the fourth class mentioned in Pemsel's case.
- (2) It is no less a charitable purpose if the sick persons benefited are rich as well as poor.
- (3) It is no less a charitable purpose if the care is not given gratuitously, provided that the institution in or by which it is afforded is not so conducted as to show habitually a surplus of receipts over expenditure.
- (4) The mere fact that some patients pay more than the cost of their treatment or that a portion of the institution is so run as to show a profit does not prevent the institution from being one which is solely devoted to charitable purposes if the profit is applied for the benefit of the poorer patients and the institution as a whole does not show a profit".

Kingsmill-Moore's argument was that premises which were wholly or mainly devoted to charitable purposes came within the ambit of the exemption. He did later in his judgement distinguish the *Barrington's* case from the cases of the *University Hostel -v- the Commissioner for Valuation* and the *Council of Alexandra College and School -v- Commissioner for Valuation* as these were cases where effectively the middle class was catered for even though no profit arose. At page 333 of the judgement *supra* Kingsmill Moore J. concluded by putting forward the following propositions as being warranted pursuant to the wording of Section 63 of the Poor Relief (Ireland) Act of 1838 as follows:

- (1) "Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory and buildings belonging to certain societies instituted for purposes of

science, literature or fine arts) the grounds for exemption from rates must be found in the proviso to S.63 of the Act of 1838.

- (2) "Charitable purposes" in S.63 has a meaning less extensive than the meaning given to those words in Pemsel's case. How much less extensive has never been decided but at least there must be excluded from the denotation of "charitable purposes" in the section any charitable purpose, which is mentioned expressly in the section.
- (3) Neither the wording of S.63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to "charitable purposes devoted exclusively to the benefit of the poor".
- (4) The word "exclusively" in no way alters or modifies the meaning of "charitable purpose". It does ensure that in order to qualify for exemption a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable some non-charitable, it is not exempt though if the purposes are carried on in different buildings or in different parts of the same building s.2 of the Valuation Act 1854 gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes".

Inter alia, on the basis of the foregoing the Supreme Court held that Barrington's Hospital though not exclusively charitable in its work could nevertheless avail of exemption in respect of premises, which were reserved for healing the poor.

The Barrington decision indicated that while "charitable purposes" need not be exclusive, "educational purposes" must be exclusively charitable. Barrington's Hospital satisfied such criteria but Alexandra College did not.

In more recent times the Valuation Tribunal had dealt with the matter in two 1997 cases Northside Community Enterprises Limited v Commissioner of Valuation, VA97/5/027 and Cork City Partnership Limited -v- Commissioners of Valuation, VA97/5/011. In the case of Northside Community Enterprises Limited the Tribunal's decision was to find the premises exempt as being used exclusively for "charitable purposes" namely the relief of poverty. The finding was based upon the primary purposes of the Appellant as specified in the Memorandum and Articles

of Association, the activities of the Appellant as described and the fact that the Appellant could not in any sense be described as a commercial entity depending as it was on its funding from the European Union and the Irish State.

The Tribunal's decision therein cited extracts from the Barrington's Hospital decision and in particular with reference to the word "charitable" as meaning not merely the relief of poverty. The said determination advanced the argument that the Tribunal can, as its discretion, widen the construction of the term "charitable purposes for the relief of poverty".

A similar argument was advanced in the Cork City Partnership Limited case.

These matters were next considered by the Tribunal in the case of Dr. Stephen's Centre for the Unemployed -v- The Commissioner of Valuation, VA99/3/021. In its determination the Tribunal considered a number of cases cited by the parties including the Barrington's case, Bantry and District Resource and Social Development Group Limited, VA94/3/055, Power House Bolton Trust Enterprise, VA94/3/071, Barbara Hegarty, Comhlamh, VA95/3/015 and Waldorf Education Trust Ltd., VA96/2/036. These cases were, inter alia, adduced to advance the proposition that even though the enterprise was non-profit making and funded by voluntary contribution it was not providing exclusive education or benefit for the poor. In its determination the Tribunal found that the Dr. Stephen's Centre for the Unemployed provided overwhelmingly for clients who were poor and disadvantaged being unemployed and that the Appellant's activities which were geared towards equipping its clients to find employment or continuing with their education constituted a relief or a reduction of poverty and disadvantage.

The most recent case dealt with by the Tribunal on this topic was that of Outhouse Limited and Commissioner of Valuation, VA99/4/023. In this case the Appellants ran a centre which facilitated Gay and Lesbian persons in a variety of ways. There was an icebreakers group, which facilitated those who were coming out for the first time. There was a newspaper produced. There were AA group meetings on a weekly basis. There was a youth group centre. There was a provision for two outreach workers from the Eastern Health Board who dealt with health issues in particular HIV and Aids. A FAS enterprise worker operated from the premises seeking to

direct unemployed persons towards employment. There was a free library. There was a canteen/social centre. It was contended that the persons being assisted by the centre were marginalised and disadvantaged and that in this way the centre was contributing to the relief of poverty and was deserving of exemption. In its determination the Tribunal distinguished between this present case and its two Cork predecessors in that the primary purpose of both Cork Appellants was to help the long-term unemployed gain employment and thereby reduce poverty in the community. However, in the Outhouse case, relief of the unemployed only formed a small fraction of the multi-faceted activities of the centre. The Tribunal therefore found that the Outhouse premises did not satisfy the criteria for exemption as contained in Section 63 of the Poor Relief (Ireland) Act 1838.

In the present case the Appellant has submitted that the Memorandum and Articles of Association are essentially charitable in nature. It further refers to the National Anti Poverty Strategy document wherein it is suggested that desegregation between poor and rich is a desirable social aim and helps thereby the personal development of young children.

The Appellant has referred to the Planning Legislation, which also advances the argument for the need to counteract undue segregation. It is clear from these and the other representations made on behalf of Wallaroo Playschool Limited that the aims and aspirations of the organisation are entirely commendable in their nature. The issue for the Tribunal is to determine whether the activities and aims as outlined in this case are "charitable purposes" as defined.

The term "charitable purposes" includes the relief of poverty and the education and welfare of the poor.

For an educational establishment to qualify for exemption its facilities for education must be exclusively for the benefit of the poor (see Alexandra College case above). For the said educational establishment to succeed in its claim for exemption from rateability on the grounds of "relief of poverty" it must show that its activities within a particular premises are overwhelmingly (though not exclusively) for the benefit of the poor and disadvantaged.

Regrettably the Appellant has not satisfied either of the above criteria such as to succeed in this case.

As a playschool the Appellant caters not only for the poor and disadvantaged who pay a reduced fee but also for the better off who pay a full fee for its services. Clearly, the Appellant cannot therefore show that its educational activities are exclusively for the poor particularly since it is a stated objective of the Appellant to operate on a quota system in pursuit of its aim to provide an integrated model of childcare. Whatever the objective may be the activities are of benefit to the poor and the better off alike and will so remain until the Appellant changes its quota system.

Again in a childminding mode the Wallaroo Playschool caters for a significant minority of parents whose children are in other schools and who are not in need of special relief from poverty. The fact that a policy of desegregation between rich and poor has been implemented does not lift the Appellant's case to the point whereby it would qualify for exemption under current rating law.

Accordingly, and with regret the Tribunal cannot uphold this appeal and duly determines the subject premises to be rateable and not exempt. The Tribunal also affirms the rateable valuation of the hereditament to be £28.