

Appeal No. VA02/4/054

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

Leitrim County Childcare Committee

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Map Reference 29b Drumshambo, Carrick-on-Shannon, County Leitrim

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

John Kerr - FIAVI

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF OCTOBER, 2003

By Notice of Appeal dated the 12th November 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €18 on the relevant property above described.

The Grounds of Appeal as set out in the Notice of Appeal are that:

"We are a voluntary group providing training and education, support and development work for childcare providers and we are based in a community based building.

We provide support and assistance and training and education for childcare providers within the county."

This appeal came before the Tribunal by way of an oral hearing held in the Courthouse, Carrick-on-Shannon on the 7th March 2003. At the hearing the appellant was represented by Ms. Deirdre McCaffrey, BL and the respondent by Mr. Thomas Fitzpatrick, BL.

The Property

The subject property comprises office accommodation occupied by the appellant company in Drumshambo, Co. Leitrim. The offices are within a building occupied by several other bodies some of which have exempt status under the rating code. The accommodation has a floor area of approximately 34m².

Valuation History

The relevant valuation history is that the subject property was first valued at the 2002/2 revision and assessed at a rateable valuation of €18. At first appeal stage the appellant sought exemption under the Valuation Code. This claim for exemption was rejected by the Commissioner of Valuation and the appellant lodged a further appeal to this Tribunal. The quantum of €18 is not under appeal.

The Appellant's Case

Ms. Aedamar Gillespie, the Coordinator of Leitrim County Childcare Committee, gave evidence on behalf of the appellant. She said the company was established in 2001 as a company limited by guarantee and the subject premises were occupied solely for administration purposes. She said the primary objective of the company was the promotion of universal quality childcare that is affordable and accessible to all in the County of Leitrim.

Ms. Gillespie said childcare policy in County Leitrim was in a crisis situation in the late nineties and children did not have access to adequate childcare services and the appellant company was established to address this situation. The Childcare Committee is funded by the Department of Justice, Equality and Law Reform, the North Western Health Board and the National Development Plan. The Committee currently has four employees – a coordinator, a childcare development officer, an administrator and a part time childminding advisory officer.

Ms. Gillespie explained that the core objective of the company was to ensure that all children in the county would be provided with quality childcare services regardless of gender, religion, ethnic background or economic circumstances and that the company worked closely with other bodies to achieve this objective. At all times the child was central to this objective and the aim was to ensure that all children reach their full potential in education and social attainment. The view of the committee was that childcare and education were inseparable concepts and in its day-to-day activities the committee offer training and support to childcare providers in furtherance of its objectives. The Committee, she said, carried out research among children so as to identify special needs and how they could best be provided.

Ms. Gillespie said that there were instances where the Committee gave direct financial support to those who are economically disadvantaged and coordinated with other childcare services to this end. The Committee on occasion also gave some financial assistance to childcare providers.

Under cross-examination Ms. Gillespie confirmed that the Committee assisted 31 childcare services 10 of which were full-time services (8 private and 2 community) and 21 sessional services i.e. playgroups and after-school facilities. Ms. Gillespie agreed that the objectives of the Committee were met by direct liaison with the primary childcare providers and by offering assistance to better develop the services to meet the needs of children. The committee did not provide primary childcare services nor was the subject property used for providing childcare services.

The Respondent's Case

Mr. Christopher Hicks, a valuer in the Valuation Office, gave evidence on behalf of the respondent. Mr. Hicks said he acknowledged the fact that the Committee offered a very worthy service but not a charitable one within the Rating Code. In the absence of a definition of charitable purposes in the Valuation Act 2001 regard must be had to the existing body of case law. In his opinion the Committee did not qualify for exempt status. He agreed that charitable purposes were more defined in income tax law but it did not necessarily follow that exemption from income tax gave rise to exemption under the Rating Code.

Submissions

Ms. McCaffrey BL, on behalf of the appellant, submitted that exemption was being sought principally on the grounds of education in the wider definition of that word to include not just teaching in class but the provision and support of services to that end. Accordingly, exemption was being sought under paragraph 16 of Schedule 4 to the Valuation Act 2001 and not paragraph 10 which was restricted to;

“a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services...”

From the evidence tendered it was clear that the objectives and activities of the committee were child-centred and not those of childcare providers. It was also clear that the activities of the committee are broadly educational in nature and of benefit to the community at large and not confined to any section thereof. In support of her contention that the role of the committee was primarily educational and hence charitable Ms. McCaffrey relied upon a number of income tax exemption cases, details of which are set out in Appendix 1 attached to this judgment.

Mr. Fitzpatrick BL, on behalf of the respondent, submitted that the primary role of the Committee was as a facilitator for the provision of childcare services and not that of a provider. It was not disputed that the aims and objects of the Committee were laudable but that did not necessarily mean that they should therefore be granted exemption. One of the activities carried out by the Committee was research, the findings of which were passed on to the primary childcare providers (a large percentage of whom were commercial undertakings) so that they could tailor their services to meet the needs of the children. On that basis alone the committee could not sustain the argument that their purposes are solely charitable in nature. In support of his submission against exemption the respondent relied upon the findings of two cases decided by this Tribunal, details of which are set out in Appendix 2 attached to this judgment.

Determination

The Tribunal has carefully considered all the evidence adduced and the submissions made by Ms. McCaffrey for the appellant and Mr. Fitzpatrick for the respondent.

At the outset the Tribunal would like to commend the erudition and depth of research brought to this appeal by counsel for both parties which was of great assistance to the Tribunal in its deliberations.

This is the first appeal to come before the Tribunal seeking exemption under the provisions of the Valuation Act 2001. Under the Act a charitable organisation is defined as follows:

“ “charitable organisation” means a company or other body corporate or an unincorporated body of persons which complies with the following conditions-

- (a) in the case of a body corporate which is not a company, or of an unincorporated body of persons, there exists a constitution or deed of trust in relation to it that-
- (i) states the full name of the body,
 - (ii) provides who are to be its trustees or who are to be the members of its governing board or committee,
 - (iii) states, as its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects,
 - (iv) states its powers,
 - (v) provides for rules governing its membership and procedures to be followed in relation to meetings and the discharge generally of its business,
 - (vi) provides for the keeping of accounts and the auditing thereof on an annual basis,
 - (vii) (I) provides for the application of its income, assets or surplus towards its main object or objects,
(II) prohibits the distribution of any of its income, assets or surplus to its members, and
(III) prohibits the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it),

- (viii) makes provision for its winding up, and
- (ix) provides for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of this Act), the main object or objects of which is or are similar to its main object or objects or, if the body receives a substantial proportion of its financial resources from a Department of State or an office or agency (whether established under an enactment or otherwise) of the State, to such a Department, office or agency,

and

(b) in the case of a company-

- (i) the memorandum of association or articles of association, as appropriate, of the company comply with the conditions specified in *subparagraphs (iii) and (vii) of paragraph (a) of this definition* (and, for this purpose, the reference in *clause (III)* of that *subparagraph (vii)* to trustees or other persons shall be construed as a reference to the directors or any other officer of the company), and
- (ii) there is contained in that memorandum or those articles a provision, with respect to a case of its being wound up, that is similar to the condition specified in *paragraph (a) (ix) of this definition*;

"Commissioner" means the Commissioner of Valuation and includes the current Commissioner (within the meaning of section 9);

"community hall" means a hall or a similar building, other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904, which—

(a) is not used primarily for profit or gain, and

(b) is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which—

- (i) involve participation by inhabitants of the locality generally, and

(ii) are recreational or otherwise of a social nature;

"company" means a company within the meaning of the Companies Act, 1963;"

Schedule 4 of the Valuation Act 2001 sets out a list of relevant properties which are not rateable and paragraph 16 (a) is of particular relevance to this appeal.

“16.-Any land, building or part of a building which is occupied by a body, being either-

(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit ...”

Whilst “charitable organisation” is defined in the Act “charitable purpose” is not. Under the repealed legislation the grounds for exemption were to be found in provisos to Section 63 of the Poor Relief (Ireland) Act 1838 and Section 2 of the Valuation (Ireland) Act 1854. Neither of these Acts contained a definition of “charitable purposes” and it was left to the Courts to shed light on how these words were to be construed. In the case *Barrington’s Hospital v Commissioner of Valuation* (1957) IR 299, Kingsmill Moore J. expressed the view that “charitable purposes” in Section 63 had a meaning less extensive than the meaning given to those words in the *Pemsel’s case* (1891) AC 531,583.

Over the past several years a number of claims for exemption have come before this Tribunal under the now repealed legislation and in the case *Cork City Partnership v Commissioner of Valuation* (VA97/5/011) the Tribunal drew attention to the distinctive codes under which the Revenue Commissioners and the Valuation system operate. The fact that the Revenue Commissioners have conferred charitable status on the occupier of a property does not automatically entitle that occupier to exemption under the Valuation Code. Exemption under the rating code can only be obtained under the statutory provisions.

Whilst Section 63 of the Poor Relief (Ireland) Act 1838 has been repealed it does not necessarily mean that the body of case law including the decisions of this Tribunal dealing with exemption on the grounds of occupation for charitable purposes are no longer relevant. Indeed in the

absence of any definition of “charitable purposes” in the 2001 Act it would be foolhardy in the extreme to ignore or set aside these long established and widely accepted precedents.

The appellant in this appeal is a company limited by guarantee and in its Memorandum and Articles of Association has as its main objective:

“to promote and develop universal quality childcare that is affordable and accessible to all in the County of Leitrim.”

An examination of the Memorandum and Articles of Association indicates that they are in a form sufficient to comply with paragraph (b) of the definition of “charitable organisation” contained in the Valuation Act 2001. Thus if it can be shown that the primary objects of the appellant company are “charitable purposes” within the meaning of the Act and that the subject properties are exclusively used for those “charitable purposes” then exemption from rates must follow.

For the purposes of this appeal the appellant submitted that its objectives were primarily educational in nature in the wider sense of that word and that those objectives were “charitable purposes” in accordance with sub paragraph (3) of the definition of “charitable organisation” contained in the Valuation Act 2001. The appellant also contended that the subject property, although used for administration purposes, was nevertheless used exclusively for “charitable purposes” and hence should be exempt from rates in accordance with paragraph 16 of Schedule 4.

The appellant contended that the “child” is central to its role and while it is not directly engaged in childcare services it is engaged in the furtherance of education of the children in the county of Leitrim regardless of sex, creed, economic or ethnic background. The appellant is also engaged in child-based research, the results of which were provided to the primary childcare providers so as to improve the range of services provided by them and thereby enable the children in the county to achieve their potential and advance their social development. The appellant acknowledged the fact that many of the childcare providers operated on a commercial basis but nonetheless contended that this did not detract from the charitable nature of the appellant’s work. Among the main objectives of the committee was the development of a coordinated approach of

a high quality to childcare throughout the county and this was being achieved by close liaison with the primary providers of child care and, where necessary, provision of education and training to parents and others engaged in childcare activities.

The Tribunal is satisfied that a significant proportion of the activities of the appellant is educational in nature. The giving of advice, training and assistance to childcare providers is beneficial to all concerned and presents, in our opinion, a provision of education to the recipients in question. However, it is clear that this educative role is not confined to the “poor” as referred to at pages 326 & 327 in the Barrington’s Hospital Case and in particular the words of Kingsmill Moore J.

“an examination of section 63 of the Act of 1838 and of the other earlier rating statutes led coercively to the conclusion that, so far as educational charities were concerned, exemption could only be claimed where the property was used exclusively for the education of the poor.”

The Tribunal concludes from the evidence that the Committee acts mainly as a catalyst or facilitator in the provision of childcare services and that its educative role is one of support and not that of a direct provider.

The Tribunal fully accepts that the appellant fulfils an important role in the provision and promotion of childcare activities to the highest standards throughout the county of Leitrim. The Tribunal also acknowledges that the primary objectives of the appellant are child based and that their services are available to all engaged in childcare whether on a voluntary or fee-charging basis. Regrettably however, in the light of the findings of the Barrington’s Hospital case, the Tribunal finds that the appellant’s objectives and activities are not “charitable purposes” within the meaning of the Rating Code. This Tribunal is bound by Irish Law and the more restrictive view of what are “charitable purposes” as enunciated in the Barrington’s Hospital case and cannot give the same extensive and broad meaning of “charitable purposes” as the English and Irish Revenue Authorities appear to.

Accordingly therefore the Tribunal refuses the application for exemption.

VA02/4/054

VALUATION TRIBUNAL APPEAL

LEITRIM COUNTY CHILCARE COMMITTEE

V

COMMISSIONER OF VALUATION

References referred to by the parties.

1. Re Worth Library [1995] 2 IR 301,334
2. Pharmaceutical Society of Ireland v Revenue Commissioners 1 ITR 542
3. IRC v White 55 TC 651
4. Incorporated Council of Law Reporting for England and Wales v AG 3 ALL ER 1029, 47 TC 321
5. Re Dupree's Deed Trusts [1944] 2 All ER 443
6. Royal Choral Society v IRC 25 TC 263
7. Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531, 583

Cases referred to by the Respondent

8. Barringtons Hospital v Commissioner of Valuation (1957) IR 299
9. Barbara Hegarty t/a Comhláimh v Commissioner of Valuation VA95/3/015
10. Wallaroo Playschool Limited v Commissioner of Valuation VA00/2/059