

Appeal No. VA02/5/013

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

HEAnet LTD.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices & Carpark at Lot No. 158C (flr 0), Sundry Townlands, Pembroke West B,
Dublin, County Borough of Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF OCTOBER, 2004

By Notice of Appeal dated the 26th day of November, 2002 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €628.00 on the above described relevant property.

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

"The property is occupied by HEAnet Limited, a company whose activities comply with Sections 10; 11 and 12 of Schedule 4 of the Valuation Act 2001."

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 on the 19th May 2003 and on the 9th June 2003. At the hearing the appellant was represented by Mr. Seamus O'Tuathail, SC, instructed by solicitors Messrs Edge Manning & Company. The respondent was represented by Mr. Colm Mac Eochaidh, BL, instructed by the Chief State Solicitor.
2. The subject property comprises part of the ground floor of Brooklawn House, a modern five-storey office building at Crampton Avenue off Shelbourne Road, Dublin 4. The offices occupied by the appellant have an area of 569m² and four car parking spaces and are sub-leased from the Higher Education Authority. The premises are occupied under a 25-year full repairing and insuring lease from December 2001 at a rent of €310,936 per annum and €2,539.48 per car parking space.
3. The relevant rating history is that the subject property was first valued at the 2000/2 revision and assessed at a rateable valuation of €628. At first appeal stage the appellant sought a reduction in the rateable valuation and to have the property distinguished as exempt in the Valuation List. The appeal was refused on both counts and it is against this decision of the Commissioner of Valuation that HEAnet brings this application before this Tribunal. The quantum is not now in dispute.
4. As the result of a preliminary hearing held on the 7th April 2003 it was agreed that this appeal would proceed under the rating code prior to the implementation of the Valuation Act 2001. Accordingly therefore exemption is being sought under the provisos contained in section 3 of the Poor Relief (Ireland) Act 1838, sections 12 & 16 of the Valuation (Ireland) Act 1852 and section 2 of the Valuation (Ireland) Act 1854. The basis of the claim for exemption is that the purposes of the appellant at the subject property are of a public nature and are dedicated to or used for public purposes or alternatively are charitable in their use and are used for the advancement of education and learning.

5. At the oral hearing Mr. John Boland, director of HEAnet and Ms. Ann Hardy, Network Operations Centre Manager, gave evidence in relation to the establishment, funding and general operations of the appellant company. Documentary evidence provided included a copy of the company's Memorandum and Articles of Association and the annual report and financial statements for the year ending the 30th September 2001. From the evidence so tendered the following facts emerged.

6. Facts Found by the Tribunal

HEAnet is a company limited by guarantee that has as its main objective:

“

- (a) *To support the advancement of education by the Higher Education Authority, Dublin City University, St. Patrick's College Maynooth, Trinity College Dublin, University College Cork, University College Dublin, University College Galway, University of Limerick, Dublin Institute of Technology, The National College of Industrial Relations, Athlone Regional Technical College, Carlow Regional Technical College, Cork Regional Technical College, Dundalk Regional Technical College, Dun Laoghaire Regional Technical College, Galway Regional Technical College, Letterkenny Regional Technical College, Limerick Regional Technical College, Sligo Regional Technical College, Tallaght Regional Technical College, Tralee Regional Technical College, Waterford Institute of Technology, The National College of Art & Design, Tipperary Rural & Business Development Institute, The Royal Irish Academy, their successors and assigns and other educational, academic, cultural and State authorities involved in the advancement of education, by way of the provision of and the continuous enhancement of quality network services to the establishments concerned.*

- (b) *Subsidiary and ancillary to the foregoing and for the purposes aforesaid:-*
- (i) *To liaise with and provide similar network services to State and community enterprises associated with the advancement of*

education, the generation of enterprise and employment and the promotion of arts and culture.

- (ii) To represent the networking interests of the Irish education and research community nationally and internationally and to promote and develop networking expertise among its members.*
- (iii) To engage in research and development activities and to participate with others in the promotion and development of network services on an international basis, on behalf of its members.*
- (iv) To establish and maintain computer hardware and software facilities and to support and maintain information centres, lecture rooms, libraries and other educational and ancillary facilities which may enhance the services provided by the company.*
- (v) To join with any person, firm, company, government department, local, public or statutory authority, university or school in promoting the objects of the Company and in particular the conduct of research and development and in the giving of lectures.*

The company shall have the following enabling powers:

- (vi) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal estate which may be deemed necessary or convenient for the objects of the Company.*
- (vii) To enter into any contract to construct, maintain and alter houses, buildings, computer works, plant and equipment necessary or convenient for the objects of the Company.*
- (viii) To make, draw, accept, endorse, issue, discount and otherwise deal with promissory notes, bills of exchange, cheques, letters of credit, certain notes and other mercantile instruments.*
- (ix) To improve, manage, service, develop, exchange, lease, licence, mortgage, enfranchise, dispose of, sell, turn to account or*

otherwise deal with all or any part of the property or rights of the Company as may be deemed expedient and to do all or any of the above things either as principal, agent, contractor, trustee or otherwise, and by or through trustees, agents, subsidiaries or otherwise if the same may be seen directly or indirectly to benefit the purposes for which the Company is established.

- (x) *To take or otherwise acquire, and to hold, shares and securities of any company and to sell, hold, reissue, with or without guarantee, or otherwise deal with same.*
- (xi) *Generally in the discretion of the Company to provide for the furtherance of education and research.*
- (xii) *To apply the whole or any part of the property vested in the Company whether as capital or income*
 - (i) *in or towards payment of the expenses of the Company or*
 - (ii) *for or toward all or any of the purposes aforesaid*
- (xiii) *To borrow or raise money in such manner as the Company shall think fit and in particular by the issue of debentures or debenture stocks perpetual or otherwise and to secure the repayment of any money borrowed raised or owing by mortgage charge or lien upon the whole or any part of the company's property or assets whether present or future and also by a similar mortgage charge or lien to secure and guarantee the performance by the Company of any obligation or liability it may undertake. Provided that no mortgagee or other person or company advancing money to the company shall be concerned to enquire into the necessity or propriety of raising money or as to the amount required or the application thereof.*
- (xiv) *In furtherance to the main objects of the Company, to make loans and give guarantees and indemnities to and in respect of any persons or companies.*

- (xv) *To invest any monies requiring investment in any manner which may be thought fit and whether trustee investments or otherwise or in the purchase of freehold or leasehold properties with power from time to time to vary such investments.*
- (xvi) *To procure public funds and such other Grant Aid as may be required in pursuance of the Objects of the Company.*
- (xvii) *To do such other things as may be deemed incidental or conducive to the attainment of the main objects.”*

7. The members of the appellant company are the Higher Education Authority, the Universities and other major educational institutions and other academic, cultural and State authorities involved in the advancement of education, learning and research. Many if not all of these bodies and institutions have the benefit of exempt status under the rating code.
8. HEAnet which was established in 1997 is Ireland’s national educational and research network and primarily provides high quality internet services to the staff and the students in Ireland’s Universities, Institutes of Technology and other educational and research organisations. Some but not all of HEAnet’s services are also available to the public. As Ireland’s only national research network HEAnet is represented on a number of likeminded international bodies.
9. The affairs of HEAnet are managed by a board comprising of members drawn from third level education institutions, the Higher Educational Authority and the Department of Enterprise Trade and Employment. The company is a non-profit making organisation and has been afforded charitable status by the Revenue Commissioners. HEAnet has 21 employees paid directly from the company’s funds. Board members are not remunerated for their services to the company.
10. HEAnet’s operating costs are met from charges to the company’s members according to their level of usage, grants for specific projects and grants from the Higher Education Authority and funding under the National Development Plan. Client charges do not reflect the full costs of providing the services tendered and are in fact heavily subsidised.

11. HEAnet exclusively services the education and research community within Ireland and operates a national network dedicated solely to supporting education, learning and research so as to ensure that Irish educational organisations can fulfil their role as educators. It also facilitates connection to and collaboration with other international networks of a similar nature for educational and research purposes.
12. HEAnet acts as a dedicated internet portal for higher education information in Ireland and provides an excellent electronic library service to its members and the general public which operates on a 24 x 7 basis. The library services provided include:
- direct access to the library of all the main academic institutions in the State.
 - access to Web of Science, an online database containing 8,500 research journals (access to the web is restricted to participating bodies).
 - access to the library catalogues of all national third level institutions.
 - access to the National Information Service which provides education, learning and research facilities including more than 1,000 references to further services, information on relevant seminars and conferences and an extensive database focused on Irish education and research material.
13. HEAnet currently has a client list of approximately 40 institutions all of which are publicly funded either in whole or in part. Clients pay an annual sum based on usage. Services are not provided to private Universities as they are engaged in profit-making activities and are not publicly funded.

14. The Appellant's Submission

Mr. O'Tuathail SC, on behalf of the appellant, submitted that the occupation of the subject property by HEAnet is of a public nature and dedicated to or used for public purposes within the meaning of section 63 of the Poor Relief (Ireland) Act 1838 and sections 12 & 16 of the Valuation (Ireland) Act 1852 and section 2 of the Valuation (Ireland) Act 1854.

15. HEAnet, Mr. O'Tuathail said, was established and mainly funded by the Higher Education Authority and its primary object was to support the advancement of all the major educational establishments in the State by providing quality network services. HEAnet derived no profit from the provision of the services the cost of which was heavily subsidised by grants from the Higher Education Authority and other projects. Many but not all of the services were provided to members of the public at large free of charge.
16. In support of his submission for exemption Mr. O'Tuathail relied upon the findings of this Tribunal in the case of **University of Limerick v Commissioner of Valuation (VA95/5/010- 014)**. In particular Mr. O'Tuathail drew the Tribunal's attention to paragraph 13 of the judgment where after an examination of the various cases relating to exemption the Tribunal set down criteria for use in measuring whether or not exemption should be granted.

“ Educational Establishments:-

13. *The ground under consideration for exemption in this case, namely "public purposes", was considered by Courts in this jurisdiction in the context of educational establishments as far back as 1904 and indeed earlier. See **The Pembroke Urban District Council v. Commissioner of Valuation [1904] 2 IR 429, University College Cork v. Commissioner of Valuation [1911] 2 IR 593 and the Trinity College [1919] 2 IR 493.** From these cases it can be said that the following have been considered as relevant and material in deciding whether or not any particular establishment is dedicated to or used for public purposes:-*

- (a) whether the institution itself has been constructed by public monies so raised under statute or otherwise,*
- (b) whether that institution is maintained either in whole or in part by public monies,*
- (c) whether the occupier has any personal beneficial interest in that institution,*
- (d) whether that occupier derives any private profit or use therefrom,*
- (e) whether that institution is open to all comers without*

- discrimination as to class, locality, creed or otherwise,*
- (f) whether the institution is of a public nature,*
 - (g) whether the teachers and staff, including administration staff, are in whole or in part publicly funded,*
 - (h) whether the subjects on which tuition is given are of a public nature and/or of a public purpose,*
 - (i) whether any income, derived by fees or otherwise must be, by obligatory trust, applied for the sole and exclusive benefit of that institution,*
 - (j) whether the accounts must be submitted to the Comptroller and Auditor General,*
 - (k) whether that institution has been established under a Statute of General Public Utility, and*
 - (l) whether, altogether, the institution is of a public nature and used exclusively for such purpose.”*

17. Mr. O’Tuathail submitted that the relationship between the Higher Education Authority and HEAnet was analogous to that which existed in the case between **Aer Rianta CPT and Tedcastle’s Aviation Fuels Limited and another party v The Commissioner of Valuation (Supreme Court Decision 333/92)**. In that case he said that the Supreme Court had concluded that the facilities (a tank farm for aviation fuel) were in the occupation of the Minister for Transport and accordingly exempt from rates. The appellant in this case is a sub-tenant of the Higher Education Authority and moreover the Memorandum and Articles of Association were specifically drafted to further the specific objectives of the policy and interests of the Higher Education Authority in combination with the Universities and other educational institutions in promoting the advancement of learning in the electronic age.
18. Mr. O’Tuathail also referred to the comments of **Keane. J.** in the matter of the **Trust of Worth Library (1995) 2 IR.301**. These comments he said indicated a more relaxed approach to the definition of what types of academic research and advancement of learning can constitute a good, laudable object sufficient to gain exemption.
19. Having regard to all the references above cited Mr. O’Tuathail submitted that HEAnet should be accorded exempt status by virtue of the fact that the

20. **The Respondent's Submission**

Mr. Mac Eochaidh, BL, on behalf of the respondent, submitted that HEAnet did not qualify for exemption as claimed by virtue of the fact that the purposes pursued by the company at the subject property are not of a public nature nor dedicated to nor used for public purpose. Equally a claim that the purposes are charitable and or used for the advancement of education and learning could not be sustained.

21. In regard to the claim that the premises were dedicated to or used for public purposes Mr. Mac Eochaidh referred the Tribunal to **“The Law of Local Government in Ireland”** by **Ronan Keane** wherein Mr. Justice Keane analysed the judicial authorities interpreting the exemption of valuation on the basis of public purposes. Mr. Keane summarised the authorities in the following terms

“It now seems clear, however, that property is “used for public purposes” where and only where:

- 1. it belongs to the Government; or*
- 2. each member of the public has an interest in the property”*

22. Mr. Mac Eochaidh submitted that since the subject property was not owned by the Government but was leased by a company limited by guarantee of which the State is not a guarantor the first portion of the test is not met. Equally since the services and assistance HEAnet supplies are not available to the public at large the second portion is not met. In support of his submission Mr. Mac Eochaidh relied upon the words of **Kenny. J. at page 519 in the case Trinity College Dublin v Commissioner of Valuation (1919) IR**

“in all the Irish authorities where the question of the meaning and application of the words “ used for public purposes,” or “altogether of a public nature,” or “used exclusively for public purposes,” has arisen, it has been uniformly determined that the “ user,” essential in order to establish exemption, must be available for all the subjects of the realm; the “ purposes” must be purposes in which every member of the community has an

interest; and the premises must be used for the public benefit of the whole community, and not for the private or exclusive use of any members, or any particular class or section, of it.”

23. Mr. Mac Eochaidh further submitted that the public at large did not benefit from the HEAnet occupation of the subject property. The only class of persons benefiting from the occupation were the Higher Education Authority, the Universities and other educational and academic, cultural and State authorities involved in the advancement of education and learning. Accordingly he contended HEAnet were not entitled to exempt status.
24. Mr. Mac Eochaidh further submitted that while educational establishments may be entitled to exemption under the provisions of section 63 the property in question must be used exclusively for the education of the poor or exclusively used for charitable purposes or dedicated to or used for public purposes. It was clear from the facts in this case that the appellant’s use of the subject property is for none of the above stated purposes.
25. Mr. Mac Eochaidh in his submission made reference to the criteria set down at paragraph 13 in the judgment of this Tribunal in the case **University of Limerick v Commissioner of Valuation** previously referred to. Mr. Mac Eochaidh submitted that HEAnet cannot be likened to a university or educational establishment and hence the criteria set down at paragraph 13 do not operate.
26. Mr. Mac Eochaidh submitted that a claim for exemption in accordance with the provisions of section 63 on the basis that the subject property was used exclusively for the education of the poor could not succeed as it was clear from the facts that it was not so used.

27. **Determination**

The subject property is occupied by HEAnet under a sub-lease from the Higher Education Authority. The premises are occupied solely by HEAnet for their purposes and this occupation is such as to meet the four tests of rateable occupation i.e. the occupation is actual, exclusive, beneficial and not for a transient period. Under no circumstances therefore can the Higher Education

- Authority be considered to be the occupier. Such being the case the findings in the **Aer Rianta** case cannot be relied upon in the furtherance of a claim for exemption.
28. HEAnet Ltd. is a creature of the Higher Education Authority, the universities and several other third level institutions engaged in the pursuit of education, learning and research. The fact that these bodies enjoy exemption from rates does not of itself entitle HEAnet to exemption from rates. Exemption can only be granted if it can be proved conclusively that the activities of HEAnet in the subject property are such as to bring it within the scope of statutory provisions i.e. section 63 of the 1838 Act, section 16 of the 1852 Act and section 2 of the 1854 Act
29. HEAnet is not an educational establishment in the accepted sense of that expression. As stated elsewhere HEAnet's primary purpose is to support the advancement of education "by way of the provision of and continual enhancement of quality network services" to the establishments concerned. It is, in short, a provider of internet services to its members which pay for the services provided albeit at a heavily subsidised level of charges. In the circumstances therefore the tests set down in the **University of Limerick** case do not apply.
30. The test that property is of a public nature and dedicated to or used for public purposes is set out by **Mr. Justice Keane** in the book entitled "**The Law of Local Government in the Republic of Ireland**" at **page 297**. In regard to the first test the Tribunal holds for the respondent in that the subject property does not belong to the government but is leased by a company limited by guarantee in respect of which the State is not a guarantor.
31. In regard to the second test the main objects of HEAnet are as set out in the Memorandum and Articles of Association as previously referred to. In furtherance of these objectives the appellant provides a quality internet service to its members and by extension to the staff and students in the universities and other third level educational establishments and research bodies throughout the State. HEAnet also provides to its members a high-speed national network with direct connectivity to other networks in Ireland, Europe and the rest of the world. It is therefore one of the largest internet service providers in the country

- notwithstanding the fact that it is geared to meet the needs of the academic and research communities. Some but not all of the services are available to the public at large free of charge. The Tribunal considers the decisive test in this appeal as to whether or not occupation of the subject property by HEAnet is for public purposes is as set down by **Kenny J.** in the case **Trinity College Dublin v Commissioner of Valuation (1919) 2 IR 519** as referred to by the respondent.
32. Having regard to the facts as found in this appeal the Tribunal concludes that the occupation of the subject property is primarily if not indeed exclusively for the benefit of a section of the community only i.e. the members of HEAnet and the staff and students of the universities and other third level educational establishments and research bodies in the State. Accordingly the Tribunal determines that the subject of this appeal should not be distinguished as being exempt under the provisions of section 63 of the Poor Relief (Ireland) Act 1838.
33. Under section 63 educational establishments may be entitled to exemption if the subject property is a building used exclusively for the education of the poor. From the evidence tendered in this case it is clear that the property which is the subject of this appeal is not so used and hence any claim under this heading cannot be sustained.
34. The appellant did not canvass for exemption on the grounds that the subject property was used for charitable purposes although it was alluded to by the respondent. In the **Pemsel** case charitable purposes were classified into four principal divisions
- (i) The relief of property
 - (ii) The advancement of education
 - (iii) The advancement of Religion
 - (iv) Other purposes beneficial to the Community not falling under any of the preceding heads.
35. The absence of a precise definition of “charitable purposes” means that each application must be decided on the facts of each appeal or precedent. In Ireland the courts, at least since 1957, have taken a more restrictive view of what “charitable purposes” means and the Supreme Court in the **Barrington’s** case

36. It is accepted by the Tribunal that whilst HEAnet is not an educational establishment in the strict understanding of that term, it does nonetheless have a role in the education process. However, the Tribunal is of the view that this role is not sufficient to satisfy the requirements of section 63 which, from well-established precedent, must be narrowly interpreted. The true role of HEAnet is more akin to that of a support function or support activity than one which could be properly categorised as charitable.
37. Having regard to the foregoing the Tribunal finds that the use of the subject property by HEAnet is not of a nature sufficient to meet the requirements necessary to gain exemption in accordance with the statutory provisions. Accordingly the appeal is dismissed.