

Appeal No. VA05/3/057

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

**St. Joseph's Foundation**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Restaurant/Cafe at Lot No. 43, Broad Street, Rathgoggan Middle, Rathluirc, Charleville, County Cork.

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Leonie Reynolds - Barrister**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 27TH DAY OF JANUARY, 2006**

By Notice of Appeal dated the 27th day of July, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €0.00 on the above described relevant property.

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

"The valuation is inequitable, excessive and bad in law. In our opinion, under Schedule 4, Part 14 and Part 16 (a) of the Valuation Act 2001 this property is Relevant Property Not Rateable and as such should be exempted."

The Appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 19<sup>th</sup> of October, 2005. At the hearing the appellant was represented by Mr. Owen Hickey, B.L. instructed by Messrs. James Binchy & Son, Solicitors. Mr. David Doyle, Manager, Adult Services, St. Joseph's Foundation gave evidence on behalf of the appellant. Mr. Martin O'Donnell of O'Donnell Property Consultants, acting for the appellants, also attended. Mr. Brendan Conway, B.L., instructed by the Chief State Solicitor, represented the respondent. Mr. Peter Conroy, Valuer in the Valuation Office gave evidence on behalf of the respondent.

### **The Issue**

The only issue before the Tribunal in this case is the question of the rateability of the subject property.

### **The Property**

St. Joseph's Foundation was founded in 1968 and provides a variety of services to both adults and children with intellectual disability. The Forge Centre, which incorporates the subject property, provides a Training, Employment and Social Skills Programme as part of its Vocational Education Programme, which includes training programmes in the coffee shop, the subject property herein. Other training programmes are carried out at the Craft Shop and Printing Workshop located in the Forge Centre also. These workshops are already exempt and the only issue is in respect of the rateability of the coffee shop.

### **Appellant's Evidence**

Mr. David Doyle, Manager, Adult Services, St. Joseph's Foundation, gave evidence under oath on behalf of the appellant as set out in his précis of evidence.

He described the activities of the Forge Centre, in particular those of the coffee shop.

The coffee shop is used primarily to train, rehabilitate, educate and empower persons with mental and/or physical disabilities with a view to enabling them to fulfil their potential and access outside employment. Mr. Doyle advised that the staffing levels in the coffee shop are extremely high and that all staff are trained in disability awareness, abuse and protection. The trainees are educated in the procedures of working in a coffee shop ranging from hygiene standards to food preparation etc. Each trainee receives a weekly pocket allowance in the

sum of approximately €10.00 to €15.00 per week. The coffee shop opens between 9am and 4pm from Monday to Friday, and in its first six months of operation generated a loss of €140,000.

Under cross-examination by Mr. Brendan Conway, Mr. Doyle reiterated that the primary function of the Foundation was to care for its members and to train, rehabilitate and educate them. He stated that the coffee shop was part of the Foundation and that it facilitated the charitable purposes of the Foundation. In response to Mr. Conway's assertion that the coffee shop was a commercial venture, he disagreed with this and advised that if it was a commercial venture its opening hours would be longer and it would have a weekend trade. Mr. Doyle also advised that it lost in excess of €200,000 in the last twelve months, all the money generated from the coffee shop went back into the Foundation and it was not a profit generating enterprise. He further confirmed that the Foundation's funding was primarily from state funds.

### **Respondent's Evidence**

Mr. Peter Conroy having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal. He described the coffee shop as a very pleasant premises which also provided an area for a craft display. Having visited the premises, he stated that he was unaware of the high staffing levels and was of the view that its activities appeared similar to that of any ordinary commercial outlet. However, he did accept that some of the staff in the kitchen had noticeable disabilities. He also accepted on cross-examination that the people in the locality were aware that the coffee shop was run as a training centre by the Foundation.

### **Appellant's Submissions**

Mr. Owen Hickey, opened the Appellant's Submissions, a copy of which had previously been furnished in writing to the Tribunal prior to the hearing. His submissions were effectively two-fold.

1. The coffee shop, the subject property, qualified as a Relevant Property Not Rateable pursuant to the provisions of paragraph 16, Schedule 4, of the Valuation Act, 2001. Mr. Hickey submitted that it was clear from the evidence adduced by Mr. Doyle and also from the Memorandum and Articles of Association of St. Joseph's Foundation

that the Foundation was a charitable organisation using its premises exclusively for charitable purposes. Mr. Hickey submitted that there was no legal distinction between the instant case and Appeal Ref. **VA90/3/003 - Limerick Youth Services Board** and that accordingly the premises constituted a Relevant Property Not Rateable.

2. The subject property qualified as a Relevant Property Not Rateable pursuant to the provisions of paragraph 14, Schedule 4 of the Valuation Act, 2001. Mr. Hickey submitted that it was manifestly clear from the evidence of Mr. Doyle that the purpose of the Foundation was to care for its members who suffered from physical and/or mental disabilities and to rehabilitate and educate them. He further submitted that it was abundantly clear that no private profit was being made from the coffee shop business and that its funding was primarily being provided for by the Exchequer. In all the circumstances he therefore submitted that the subject property constituted a Relevant Property Not Rateable.

### **Respondent's Submissions**

Mr. Brendan Conway opened the Respondent's Submissions, a copy of which had previously been furnished in writing to the Tribunal prior to the hearing. Mr. Conway submitted that it was clear from Mr. Conroy's evidence that the subject premises had all the appearances of a commercial outlet. He submitted that the premises could not be exempt pursuant to the provisions of paragraph 14, Schedule 4 of the Act on the basis that the building was used as a commercial restaurant and could not be said to be a building occupied for the purpose of "caring" for any category of persons within the meaning of paragraph 14, Schedule 4 of the Act.

It was further submitted on behalf of the Respondent that the instant case was distinguishable from Appeal Ref. **VA90/3/003 - Limerick Youth Services Board** in that the subject premises was operated as a commercial venture in a commercial environment.

Mr. Conway also refuted Mr. Hickey's submission that the premises was exempt pursuant to the provisions of paragraph 16 (a), Schedule 4 of the Valuation Act, 2001. Whilst he accepted that the Foundation was a charitable organisation with charitable purposes, he did not accept that the subject premises was used exclusively for charitable purposes in that its primary function was that of a coffee shop.

Mr. Conway concluded that the Appeal should be refused and relied on the Tribunal's determination in Appeal Ref. **VA04/1/008 - Clones Community Forum Ltd.** in this regard.

### **Findings**

The Tribunal has carefully considered all the evidence and legal argument adduced by the parties and makes the following findings.

1. The Tribunal finds that the appellant is a charity in relation to its Memorandum and Articles of Association and further that the subject premises are used by the appellant exclusively for charitable purposes.
2. The Tribunal finds that there is no legal distinction between the instant case and Appeal Ref. **VA90/3/003 - Limerick Youth Services Board.**
3. The Tribunal finds that the subject property is occupied by the Appellant for the purpose of caring for handicapped or disabled persons and that the Appellant is a body which is not established for profit and does not make a profit from the provision of such care, and whose expenses are defrayed wholly or mainly from moneys provided by the Exchequer.

### **Determination**

In view of the aforesaid the Tribunal concludes that the subject property is Relevant Property Not Rateable pursuant to the provisions of paragraphs 14 and 16 (a), Schedule 4 of the Valuation Act, 2001 and is accordingly exempt from paying rates.

And the Tribunal so determines.