Appeal No. VA09/3/036

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Muintearas Teo **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2198185, Office(s), Creche at Lot No. 64a/2, Village of Teeranea, Teeranea, Gorumna, Oughterard, County Galway

B E F O R E

John Kerr - Chartered Surveyor	**Deputy Chairperson**
Aidan McNulty - Solicitor	**Member**
James Browne - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF FEBRUARY, 2010

By Notice of Appeal dated the 19th day of August, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €225.00 on the above-described relevant property.

The Grounds of Appeal are in the Notice of Appeal and a letter attached, copies of which are attached at the Appendix to this judgment.

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 7th day of December 2009. The appellant was represented by Ms. Deirdre Browne, BL, instructed by Mr. Keith O'Gorman, M G Ryan & Company and Mr. Seán Ó Coistealbha. The respondent was represented by Ms. Grainne O'Neill, BL, instructed by the Chief State Solicitor and Mr. Patrick Murphy, BSc, MIAVI, a Valuer in the Valuation Office. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

The Property

The property comprises ground floor offices, training rooms, restaurant, crèche and first floor offices.

Location

The property is located in an Údaras Industrial Estate at Tír an Fhia, Leitir Móir, Co. na Gaillimhe.

Tenure

The property is held leasehold.

Local Authority

Galway County Council.

Valuation History

The property was the subject of a revision in 2008. A proposed valuation certificate issued on 21st November, 2008 with a rateable valuation of €225.00. A final valuation certificate was issued on 19th December, 2008. An appeal to the Commissioner was lodged on 28th January, 2009. The grounds of the appeal were stated as *"We are a non-profit community project who run a wide range of interventions aimed at alleviating deprivation among disadvantaged communities. All our resources help fund these programmes and we would be seriously affected in terms of paying a large sum of rates every year. We have never been subjected to rates in the past by Galway County Council so we cannot understand why this policy has changed. We have been exempt and should remain exempt as there has been no change to*

our core activities." A letter was sent on behalf of Muintearas Teo to the Valuation Office and dated 26th January 2009. This letter stated, *inter alia,* that

"…we deal exclusively, in all our activities, with education and training." It further stated *"I enclose a cheque for €250 as required and I trust that you can favorably* [sic] *consider our appeal and maintain our exemption in terms of payment of rates for our premises."*

The decision of the Appeal Officer was given on 24th July, 2009 and the valuation and List Status were affirmed. On 21st August, 2009 a Notice of Appeal was lodged with the Valuation Tribunal. This appeal set out the grounds of appeal as "*property should have been excluded from the relevant valuation list on grounds of Schedule 4 (10) of the Act. The property is occupied by a registered school - Soil Náisiúnta an Fheachtais, enrolment no. 19825C*." Further grounds were set out in a letter accompanying the Notice of Appeal, copies of both of which are attached at the Appendix to this judgement.

The Issue

Whether the property should be excluded from the relevant valuation list on the grounds that the property is a relevant property not rateable pursuant to Section 15 of the Valuation Act, 2001 and Schedule 4(10) thereof.

The Law

All relevant law was considered, but the following sections of the Valuation Act, 2001, are of particular relevance.

Section 15(1):

> "*Subject to the following subsections and sections 16 and 59, relevant property shall be rateable*."

Section 15(2):

> *"Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable."*

Sections 16 and 59 are not at issue in the within matter.

Schedule 4(10) states:

> *"Any land, building or part of a building occupied by a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services referred to subsequently in this paragraph and otherwise than for private profit, being a school, college, university, institute of technology or other educational institution as respects which the following conditions are complied with-*
>
> *(a) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or*
>
> *(ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,*
>
> *and*
>
> *(b) in either case it makes the educational services concerned available to the general public (whether with or without a charge being made therefor)."*

Preliminary Objection

The respondent raised a preliminary objection, that the ground of appeal before the Tribunal namely that the appellant should be exempted on educational grounds, was not raised at either the stages of initial valuation or on appeal to the Commissioner of Valuation, and therefore this ground of appeal should not be considered by the Tribunal.

Findings on Preliminary Objection

The Tribunal, having heard submissions from both parties, adjourned and considered carefully the legal submissions and evidence, both written and oral. The Tribunal then made the following findings:

1. The Tribunal can only hear grounds of appeal that have been raised at first appeal stage and new grounds of appeal cannot be introduced at appeal before the Tribunal, save for in exceptional circumstances.
2. An appellant is not required to set out the specific law of the grounds of appeal on which they rely, provided the grounds are set out with sufficient detail and clarity as to enable the respondent to identify those grounds. Whether the grounds have been sufficiently identified is a question of fact.

3. That the Tribunal can consider all of the submissions made by the appellant at first appeal stage. In this respect the Tribunal noted and took into consideration correspondence sent by the appellant to the Valuation Office, dated 26th January, 2009.
4. The Tribunal found that as a matter of fact the appellant, in its first appeal, did declare, *inter alia,* that *"…we deal exclusively, in all our activities, with education and training."* The Tribunal found that the letter dated 26th January, 2009 formed part of the appellant's first appeal.
5. In these circumstances, the Tribunal found that the Commissioner has erred in finding that the appellant did not raise Schedule 4(10) as a ground of appeal.
6. The Tribunal found as a matter of fact the appellant raised Schedule 4(10) as a ground of appeal before the Commissioner at first appeal stage.
7. Accordingly, the Tribunal determined that the preliminary issue raised by the respondent, in both the legal submissions and at the hearing, was refused and the appeal should proceed.

Appeal Proper

The Appellant's Case
Mr. Seán Ó Coistealbha
Mr. Ó Coistealbha, having taken the oath, adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. He was questioned by his Counsel, Ms. Deirdre Browne.

He stated that the new building, the subject of this revision, was funded by Údarás na Gaeltachta.

Crèche facilities (Naíolann na nOiliún)
In his evidence, Mr. Ó Coistealbha stated that the crèche facilities were in fact an early education centre and he gave evidence of the type of education provided, and in particular the teaching of the Irish language to children at the facility. He gave evidence that the manager was a full-time qualified school teacher and that there was also a person employed solely for the purposes of language acquisition. A language plan is devised for the children from the locality. This plan is devised by a language specialist in conjunction with the parents. He also

gave evidence that there were eight people employed on a FÁS community employment scheme. He further gave evidence that POBAIL funds the community childcare facility. He explained that the emphasis was on learning and not on child minding.

Restaurant (An Chlúid)

Mr. Ó Coistealbha stated that the restaurant was built as part of the training programme and out of this programme two of the participants took over the facility. It opens at 10.30am and closes again at 2.30pm. It is managed by a Chef Manager and Front of House Manager who are assisted by 4-5 persons on a community programme. These were from FÁS and he gave evidence that FÁS do not allow their participants to engage in commercial activity. The primary purpose of the facility is to provide food to participants on the training course, staff, children attending the children's centre and the children's parents. He admitted that passers-by and staff at Raidió na Gaeltachta sometimes use the facility, but that was not the primary purpose of the restaurant.

Profit

He confirmed that the company does make a profit from time to time. This mainly derives from training courses provided at the facility. These courses are run for FÁS. Muintearas Teo tenders for the courses from FÁS and then provides them at their facility. They run other courses that are not statutory funded. He stated that under no circumstances was the profit a "private profit." There are 3 directors who are paid staff. He pointed out that the lease agreement and planning permission prevented any commercial activity. He pointed out that funds come from Údarás na Gaeltachta and that Muintearas Teo is a wholly owned subsidiary of Údarás na Gaeltachta, which in turn is mainly funded by the Government.

Cross-Examination by Ms. Grainne O'Neill

On cross-examination, Mr. Ó Coistealbha confirmed that the website of the company refers to a childcare facility, but that the majority of the website was in Irish and that it was not in fact a crèche. He also accepted that crèche facilities might have FETAC accredited employees, but that the FETAC people at the appellant's facility were participating on a training course and that this was a crucial difference. He further stated that he would be amazed if a private profit-making crèche could run a community employment programme funded by FÁS. He stated that the children are charged based on their parents' income and

whether their parents were attending a training course. Pobail (the Department of Community, Rural and Gaeltacht Affairs) decide how much is charged.

He explained that to run a FÁS course the appellant needed to have approved status, provide skilled people with qualifications, tender for the course, and train people to train other people. He accepted that they do share building facilities with a Teacher Centre.

He confirmed that there was no dividend and that any profit or loss was carried forward. He accepted that to get onto some of the courses provided qualifications were required.

Submissions of appellant

Ms. Browne summed-up the appellant's position. She stated the net issue as being whether the property came within the exemption provided by Schedule 4(10). It was submitted that the restaurant was educational, but even if the Tribunal found against the appellant on this, that the restaurant provided an ancillary function and did not dilute the overall educational purposes of the appellant. It was added that the primary purpose was educational and the property was certainly not run for private profit.

Respondent's evidence

Mr. Murphy having taken the oath adopted his written précis which had previously been received by the Tribunal as being his evidence-in-chief. There were no further questions. The Chairperson enquired as to whether there were any issues relating to quantum, to which Mr. Murphy replied "no."

Submissions of Respondent

The respondent submitted that for the appellant to come within the ambit of Schedule 4(10) the premises must be used exclusively by it for the provision of education services and otherwise than for profit. It was further submitted that the Valuation Act is a revenue act and therefore must be interpreted strictly. The respondent submitted that the appeal of the appellant had to fail as it did not meet the criteria of Schedule 4(10) in that it did not provide exclusively educational services within the meaning of the Act. In support of this argument, Ms. O'Neill observed that a crèche facility was provided, a restaurant was in place which was open to the public, the facility brings old people shopping, and its memorandum of

association at the objects clause includes, at Paragraph 2(1)(a), a number of non-educational objects.

It was further pointed out that the appellant, at paragraph 24 of its memorandum of association, is entitled to *"…distribute either upon a distribution of assets or division of profits among the members of the Company in kind any property of the Company, and in particular any shares, debentures or securities of other companies belonging to the Company or of which the Company may have the power of disposing."* It was submitted that this paragraph demonstrated that the appellant was established to make a private profit and therefore lost any right to an exemption. It was submitted that the FÁS courses provided by the appellant were tendered on a commercial basis and this gave further weight to the commercial nature of the appellant. It was also pointed out that not all monies were provided by the Exchequer; at page 16 and 17 of the appellant's accounts it is evidenced that the appellant charges for services, while from page 14 of the accounts it was clear that funding came from the National Lottery which, it was submitted, was not a source of Exchequer funding.

Finally, it was submitted that the services provided were not available to the public as is required of an educational institute. This was because criteria had to be met before one could gain entry onto certain courses and in particular because some of the courses were provided for teachers and not the general public.

Cases Considered

- **VA04/1/001 - City of Dublin VEC**
- **VA04/2/040 - Castle Park Primary School Ltd.**
- **VA88/0/165** - **Ebeltoft Ltd. t/a "Hunters" Licensed Premises**
- **Inspector of Taxes v Kiernan** [1981] IR 117
- **VA08/5/187** - **Kilsaran Concrete**
- **Lawlor v Flood** [1999] 3 IR 107
- **VA95/5/015** - **John Pettitt & Son Limited**
- **St. Vincent's Health Care Group Ltd v Commissioner of Valuation** [Unreported, High Court [2009] IEHC 113]
- **VA03/3/006 - The Management Committee of the Dublin West Education Centre**

- **VA96/4/039 - University College Cork**

Findings

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and make the following findings:

1. The subject property is an educational institution and is used exclusively by the appellant for the provision of the educational services.
2. The childcare facility is educational and not simply a crèche facility. Even if the Tribunal is incorrect on this point, the provision of a crèche and restaurant facilities are everyday occurrences in educational institutions. There is great demand for such facilities and they are generally expected to be provided. It is common in modern society for adult parents to continue their education. In fact, the term "life-long learning" has become a mantra in some industries. Whether it is for personal development or career advancement, people, both married and unmarried, with children, wish to continue their education and modern society actively encourages this. These facilities therefore are essential to a modern educational institution in the provision of its core services, for both its staff and students. Therefore, the Tribunal has no hesitation in concluding that these facilities are an integral part of the educational institution and both necessary and ancillary to its core purposes.
3. It is not realistic for an educational institution to prevent access by the public to its food service facilities. Educational facilities are often frequented by guests, parents or friends of staff/students, tourists, prospective students, passers-by, as well as other various people. Provided that these facilities are primarily provided for the users of the educational facility, the Tribunal does not believe that these facilities must be reserved exclusively for the staff and students of the institution.
4. That the appellant can and does make a profit. That the appellant was not established to make a private profit and nor are its affairs conducted for the purposes of making a private profit.
5. That while not all of the expenses incurred by the appellant in providing the educational services concerned are defrayed out of moneys provided by the Exchequer, they are mainly so defrayed.
6. The Tribunal finds that the educational services provided by the appellant are available to the general public. That some of the courses provided by the appellant set out criteria

which must be met before persons can be admitted to those courses. These criteria are qualifications-based. That almost every educational course provided by an educational institution sets out minimum criteria before persons can be admitted to those courses. That the criteria set down by the appellant are not arbitrary in any way and any member of the public can apply to attend the said courses provided they obtain the relevant qualifications, which in turn, are obtainable by any member of the public.

7. That the subject property comes within the exemption provided by Schedule 4(10) of the Valuation Act, 2001.
8. The Tribunal therefore finds that the subject property is a relevant property not rateable.

And the Tribunal so determines.