Appeal No. VA10/3/024

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Donoughmore Family Resource Centre Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2201635, Crèche at Lot No. 6.7a8a, Fornaght, Gowlane, Macroom, County Cork.

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Brian Larkin - Barrister	**Member**
Niall O'Hanlon - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF FEBRUARY, 2011

By Notice of Appeal received on 16th day of August , 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €36 on the above described relevant property.

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

This appeal proceeded by way of an oral hearing at the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 19th day of October, 2010 and the 1st day of December, 2010. Ms. Karen Wynne BL, instructed by Ms. Margaret Lucey, Timothy Lucey & Co. Solicitors, appeared on behalf of the appellant and Ms. Rosemary Healy-Rae BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Mr. Dan Donovan, Valuer in the Valuation Office, also attended. Mrs. Eilish O'Hanlon, Crèche Manager, Ms. Kathleen Crawley, Crèche Co-ordinator, and Ms. Helen O'Hanlon, Crèche employee, also attended on behalf of the appellant.

The Subject Property

The subject property is located in Fornaght, Donoughmore, Co. Cork.

The appellant's first set of written submissions state, at paragraph 2.05, that the subject property comprises three large rooms, which are used for pre-schools, whilst the fourth large room is used as a full day care facility with two sleep rooms, two changing rooms, a laundry room, and that the remainder of the building has an office, kitchen, reception area and toilets.

The Valuation History of the Subject Property

The property was the subject of a revision in 2009. A proposed Valuation Certificate issued on 11th August, 2009, with a valuation of €140. A Valuation Certificate was issued on 5th October, 2009, which became effective on 12th October, 2009. An appeal was lodged with the respondent on 9th November, 2009. The appellant claimed that the valuation of €140 was excessive. The appellant also claimed exemption from rates as a charitable organisation as defined in section 3 of the Valuation Act, 2001 (hereinafter "the 2001 Act") and as an educational institution under Paragraph 10 of Schedule 4 of the 2001 Act.

Having considered the appeal the respondent fixed a rateable valuation of €91 on the subject property. The respondent further considered that part of the building should be excluded from the valuation by virtue of it being "relevant property not rateable" pursuant to Paragraph 10 of Schedule 4 of the 2001 Act. The respondent concluded that the part of the building which was not used exclusively for the provision of educational services was rateable at a valuation of €36. The respondent further concluded that the appellant was not a charitable organisation as defined in Section 3 of the 2001 Act and that the subject property did not fall to be

described as “relevant property not rateable” pursuant to Paragraph 16 of Schedule 4 of the 2001 Act.

By Notice of Appeal lodged with the Tribunal on 16th August, 2010, the appellant appealed against the determination of the Commissioner of Valuation.

Written Submissions

Written submissions and written supplemental submissions were received by the Tribunal from both the appellant and the respondent.

The Issues Arising on this Appeal

At the first oral hearing in respect of this appeal on 17th October, 2010, the appellant advanced the position that the subject property should be exempt from rates as the services provided by the Donoughmore Family Resource Centre fell under two of the allowable exemptions of the 2001 Act, namely education and charitable.

However, at the hearing of 17th October, 2010, Counsel for the respondent raised an issue as to whether or not the appellant satisfied the statutory criteria, set out in Section 3 of the 2001 Act, to be considered a charitable organisation. In particular, the respondent submitted that neither the Memorandum or Articles of Association 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* […] *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”*, a necessary requirement to be considered a charitable organisation pursuant to the 2001 Act.

In supplemental submissions received on 17th November, 2010, it was acknowledged on behalf of the appellant that the terms set out in the preceding paragraph were not contained in either its Memorandum or Articles of Association and in the circumstances the appellant opted to pursue its appeal solely on the ground that it comes within the terms of Paragraph 10 of Schedule 4 of the 2001 Act.

In supplemental submissions it was helpfully acknowledged by the respondent that the only issue remaining between the parties to the appeal was whether the subject property was used exclusively for the provision of educational services as required by Paragraph 10 of Schedule 4 of the 2001 Act.

It was common case between the parties that the other requirements of Paragraph 10 of Schedule 4 had been met. Further, Counsel for the respondent indicated, and Counsel for the appellant acknowledged, that the appeal was confined to the question of exemption from rating, and that no appeal had been lodged against the quantum of the valuation or against the apportionment used to arrive at the rateable valuation figure.

The Evidence adduced on behalf of the Appellant

Mrs. Eilish O'Hanlon, manager of Donoughmore Family Resource Centre, gave evidence on behalf of the appellant at the hearing on 17th October, 2010. Her evidence was helpfully summarised by Counsel for the appellant (which summary was not objected to by the respondent) in the supplemental submissions of the appellant.

Mrs. O'Hanlon indicated that the Donoughmore Family Resource Centre grew out of the Donoughmore Preschool and that it was constructed, with funds from the Department of Health and Children, with a capital grant of one million euro, which was administered through Pobal. It was a community based project, supported by the entire community and a local landowner had donated the site.

Mrs. O'Hanlon explained, using charts, the High Scope Method of learning for very young children, including babies as young as six months. The curriculum, which involved age-appropriate development work, involved, *inter alia*: listening and responding to music; communication and language; identifying, filling and emptying space; learning the concept of time; learning a sense of self and others. She stated that High Scope had an active participatory learning technique and described the "Plan Do Review Method" which involved the child planning or choosing an activity, acting on it and subsequently repeating it.

Mrs. O'Hanlon stated that three of the rooms were used for preschool children and that the only room in contention was the crèche area. Evidence was given as to how the crèche was

used as an after-school facility. Children who came after school were helped with their homework and all the facilities available at the Centre, including computers, were used to assist such children with their school projects. Evidence was given that the Centre also takes in children with special needs.

Mrs. O'Hanlon stated that no person who had applied to the Centre had been refused. The parents of some of the children paid full fees, but these were less than the market rate. Evidence was given that the facility employed 15 people, of whom nine worked in the crèche area. Evidence was given of the qualifications of those working in the crèche and the fact that some of those employed there were on work experience from third level institutions.

The Evidence adduced of on behalf of the Respondent

When asked by Counsel for the respondent, at the hearing on 1st December, 2010, if it would be necessary to call evidence on behalf of the respondent, the Chairperson indicated that since the quantum of the valuation was not an issue there would appear to be little point in receiving Mr. O'Donovan's evidence in this regard.

The Relevant Legislation

Section 15 (2) of the 2001 Act provides that, subject to conditions, relevant property referred to in Schedule 4 shall not be rateable.

Paragraph 10 of Schedule 4 provides:

> *"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).

The Submissions on behalf of the Appellant

The appellant submitted that the building, or part thereof, in question, was used exclusively for the provision of educational services as specified in Paragraph 10 of Schedule 4 of the 2001 Act. The appellant further submitted that, given that the 2001 Act failed to provide a definition of education, the Tribunal must therefore look to former precedents, the Constitution and European comment for guidance. It was the position of the appellant that the High Scope curriculum must be viewed as an educational programme which all of the children attending the Donoughmore Family Resource Centre must follow. The appellant argued that the curriculum that was implemented in the crèche satisfied the definition of educational services as established by previous case law, UN comment and the Constitution.

In particular the appellant referred to Article 42.1 of the Constitution in support of the proposition that education is not confined to those services that can be categorised as scholastic or of a schooling nature, but must also include all aspects of the development of a child. The appellant also cited the decision of the Supreme Court in **Ryan v Attorney General [1965] IR 294** on the distinction between education and nurturing. The appellant pointed out that the Tribunal itself has accepted that education is not confined to the classroom alone and must be viewed in the broad sense and referred to the decision of the Tribunal in **VA04/1/075 - UCD Student Centre Ltd**.

The appellant argued that if the Tribunal was satisfied with the definition of education as advanced by it, all aspects of the services provided within the crèche could be accepted as educational. In those circumstances, the entire Resource Centre should be regarded as relevant property not rateable for the purposes of valuation. The appellant emphasised that it was not just a caring organisation and that every child from six months of age upwards was involved in a program of development/education whilst in the care of the crèche.

The appellant also argued that should the Tribunal find that all of the activities carried out in the crèche facility were not exclusively educational, the appellant was still entitled to exemption as the service was an integral part of the educational institution and both necessary

and ancillary to its core purpose. The appellant argued that even if the Tribunal was of the view that the part of the building under appeal was used for mixed purposes, that as the predominant function was the supply of educational services, it could still be regarded as a relevant property not rateable under the 2001 Act. The appellant referred to the decision of the Tribunal in **VA09/3/036 - Muintearas Teo**. The appellant noted that if the respondent's position were to be applied generally then every sports hall, dormitory or canteen in a school or college would have to be rateable.

The Tribunal notes that the appellant's first set of written submissions state, at paragraph 2.09, that the main object for which the Centre was established was for the purpose of providing quality, accessible, affordable childcare, education, training, support to families, support to children, and support to the local primary schools, secondary schools and training colleges. The said submissions go on to state, again at paragraph 2.09, that it is the strongly held view of the management of the centre that children, particularly in a crèche, would not just receive good care, but that they would be stimulated by an educational programme of care.

The Submissions on behalf of the Respondent

Whilst the respondent accepted that part of the building occupied by the appellant was used exclusively for the provision of educational services and in particular that the provision of pre-school facilities by the appellant came within the exemption provided in Paragraph 10 of Schedule 4 of the 2001 Act, the respondent argued that the part of the building the subject of the appeal was not used exclusively for the provision of educational services.

The respondent further submitted that the word exclusively denotes "only" or "to the exclusion of others" and that where the building, or part of the building is used for mixed purposes the exemption cannot apply. The respondent stated that the Tribunal had previously decided that crèche facilities do not qualify for exemption under Paragraph 10 of Schedule 4 of the 2001 Act and referred, *inter alia*, to the decision of the Tribunal in **VA09/3/032 - Regina Bushell**.

Findings

The issue that arises for determination in this appeal is whether that part of the subject property to which a valuation of €36 has been assigned by the respondent comes within the terms of the exemption provided for in Paragraph 10 of Schedule 4 of the Valuation Act, 2001.

In order to determine this issue it is necessary to consider whether that part of the subject property to which a valuation of €36 has been assigned was used exclusively by the appellant for the provision of educational services.

Although extensive evidence was adduced on behalf of the appellant, and submissions were made by both parties, in relation to the question of what constituted educational services within the meaning of the 2001 Act, the first question that the Tribunal must determine is whether the appellant provides services, other than educational services, in that part of the subject property to which a valuation of €36 has been assigned.

The Tribunal notes that it was the appellant's evidence that the Centre was established was for the purpose of providing, *inter alia*, quality accessible affordable childcare. The Tribunal further notes that it was the appellant's evidence that the subject property comprises *inter alia*, a large room that is used as a full day care facility with two sleep rooms, two changing rooms and a laundry room and that the remainder of the building has an office, kitchen, reception area and toilets.

Counsel for the appellant pointed out that the term "education" is not defined in the 2001 Act and referred the Tribunal, *inter alia*, to the decision of the Supreme Court in **Ryan v Attorney General [1965] IR 294**. In that case Ó Dálaigh C.J. noted, at page 350:

> *"Mr. MacBride contends that the provision of suitable food and drink for children is physical education. In the Court's view this is nurture, not education. Education essentially is the teaching and training of a child to make the best possible use of his inherent and potential capacities, physical, mental and moral. To teach a child to minimise the dangers of dental caries by adequate brushing of his teeth is physical education for it induces him to use his own resources. To give him water of a nature*

> *calculated to minimise the danger of dental caries is in no way to educate him, physically or otherwise, for it does not develop his resources."*

The Tribunal notes that the Centre has a full day care facility and that it has sleep rooms, changing rooms and a laundry room. The Tribunal further notes that the Centre was established for the purpose of providing, *inter alia*, quality accessible affordable childcare. The provision of childcare facilities by the Centre constitutes, in the view of this Tribunal, nurture not education.

The appellant has also asserted that it provides an educational programme of care, and it has advanced the proposition that, even if all the activities carried out in the crèche facility are not exclusively educational, it is still entitled to exemption, as the service is an integral part of the educational institution and both necessary and ancillary to its core purpose.

Leaving aside the potential inconsistency between the assertion on the one hand, that the services provided by the Centre are exclusively educational and the assertion on the other hand, that the Centre provides an educational programme of care, this Tribunal can find no support for the proposition that even if the activities carried out in the crèche facility are not exclusively educational, that it is still entitled to exemption under Paragraph 10 of Schedule 4 of the 2001 Act.

Paragraph 10 provides that a building must be used *exclusively* for the provision of educational services, the concession that services provided are not exclusively educational is in the view of this Tribunal, fatal to the proposition advanced by the appellant. This Tribunal finds further support for its view in this regard insofar as Paragraph 10 provides exemption for any building, *or part of a building*, used exclusively for the provision of educational services. The Act clearly envisages that it may be the case that not every part of the building of a body referred to in Paragraph 10 will be used for the purpose of providing educational services.

Determination

Having considered the evidence and submissions of the parties, the Tribunal holds that the part of the subject property which is not used exclusively for the provision of educational services is rateable.

The Tribunal notes that the appeal was confined to the question of exemption from rating, and that no appeal has been lodged against the quantum of the valuation or against the apportionment used to arrive at the rateable valuation figure.

Accordingly, the Tribunal is satisfied that the rateable valuation of the part of the subject property which is not used exclusively for the provision of educational services should be fixed at €36.

And the Tribunal so determines.