

Appeal No. VA12/2/019

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

**New Start Addiction Centre Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 590943, Shop at Lot No. 15, Windsor Avenue, Clontarf West D, Clontarf West, County Borough of Dublin.

**B E F O R E**

**John F Kerr - BBS, FSCSI, FRICS, ACI Arb**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**Patricia O'Connor - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 4TH DAY OF DECEMBER, 2012**

By Notice of Appeal received on the 7th day of June, 2012 the appellant appealed against the decision of the Commissioner of Valuation in determining that no material change of circumstances had occurred in relation to the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

*"That New Start is a limited company by guarantee and a registered charity No. CHY17818 in which their non-profit making clause set out in our articles and memorandum." [sic]*

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal on the third floor of Holbrook House, Holles Street, Dublin 2, on the 11<sup>th</sup> day of September, 2012. The appellant was represented by Mr. Clifford Sullivan of Law Plus Solicitors, and Mr. James Dunne, a director of the appellant organisation, gave evidence to the Tribunal. The respondent was represented by Mr. Angus Buttanshaw, BL, instructed by the Chief State Solicitor. Mr. Neal Murphy, a valuer at the Valuation Office, was also present and gave evidence.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

### **At Issue**

Whether a material change in circumstances had occurred.

### **The Property**

The subject property is located on the ground floor of a two-storey mid terraced unit and operates as a retail premises.

### **Location**

The subject property is located at 15 Windsor Avenue, Fairview, Dublin 3. Windsor Avenue is just off Fairview Strand.

### **Valuation History**

- The subject property has an existing valuation of €20.32 which dates from 1991.
- 9<sup>th</sup> September, 2011 - The appellant submitted an application to the respondent for revision of valuation.
- 13<sup>th</sup> September, 2011 - Mr. Neal Murphy was appointed Revision Officer.
- 5<sup>th</sup> October, 2011 - The respondent sent a Notice of No Material Change of circumstances to the appellant.

- 14<sup>th</sup> November, 2011 - The appellant lodged an appeal against this decision with the Commissioner of Valuation.
- 11<sup>th</sup> May, 2012 – The appellant's appeal was disallowed and a Disallowed Appeal Notice was issued to the appellant.
- 7<sup>th</sup> June, 2012 – The appellant lodged a Notice of Appeal with the Valuation Tribunal.

### **Appellant's Case**

The parties agreed to an extension of the grounds of appeal and the admission of further written submissions by the appellant. Mr. James Dunne, having adopted his précis, gave evidence, confirming that the charity was founded in 2003 and that the Memorandum and Articles of Association were subsequently amended in 2009. Mr. Dunne stated that the charity operated a residential rehabilitation programme and had rented a house at Falcarragh Road, Cabra for this purpose. He further stated that the charity was in a position to accommodate five people in the house at one time and that hundreds of people had passed through the programme since its inception. He confirmed that the company also operated an outreach programme and that the length of the stay of each client would depend on each person's progress. He said that the charity operated from the local area and as such took referrals from various agencies and the drugs task force. Mr. Dunne admitted that times were difficult at present and that the charity was not in receipt of the same amount of funding as previously. He said that this was part of the reason why they believed that they had to do something themselves and stated that the charity had always believed in the concept of rehabilitation and integration, which was the purpose of the shop. Mr. Dunne said that from the beginning the clients had worked in the shop in its refurbishment and setting up and thereafter they also worked as volunteers in the shop on an ongoing basis. Mr. Dunne said that it was vital from a rehabilitation point of view that their clients would move into the community and that the charity was able to see the difference in the clients. Mr. Dunne confirmed that all items sold in the shop were donated from the local area. At this point Mr. Dunne submitted draft income and expenditure figures up to 31/12/2011 which were agreed. Mr. Dunne confirmed that the charity had previously relied on church contributions but that these had ceased prior to August 2011. He further confirmed that at the moment the appellant was struggling to make ends meet and disclosed that they were at present behind in their property rental obligations. Mr. Dunne stated that their 2010 accounts had been audited and that the Revenue Commissioners were satisfied that all monies made had been put back into

the running of the rehabilitation centre. Mr. Dunne confirmed that the charity had no employees and that the shop was staffed by volunteers from the house and also local people. He stated that presently two of their clients were working in the shop.

### **Cross-examination of the Appellant**

On cross-examination Mr. Dunne confirmed that the name on the Lease Agreement for the house in Cabra was incorrect. Mr. Dunne explained that clothes, books and DVDs were the items mainly donated to the shop and that some of the donations would be collected either by him or by some of their clients. He confirmed that the shop was open from Monday to Saturday from 10am to 5pm and that various people held keys to the premises, including the volunteers and one particular client at present. Mr. Dunne confirmed that he and his wife were responsible for the staffing roster and the shop was never open without either him or his wife or a volunteer present. With regard to the present clients, Mr. Dunne confirmed that only one of them was on the staffing roster but made the point that all of the clients were at various stages of rehabilitation and that they could probably be working in some particular areas of the business. Mr. Dunne also accepted that some clients may never be suitable to work in the shop. Mr. Dunne said that since the shop opened there would have been some clients present there either sorting or helping out at the back but not necessarily serving. Mr. Dunne confirmed that there was competition with other charity shops and again made the point that the charity was just getting by financially. When asked if the charity would close the shop if it operated at a loss, he replied that at this stage he would say no as it was so vital for helping clients than for funding purposes. He re-iterated that the shop had two purposes, being rehabilitation and funding, and that it was critical to the rehabilitation programme that the clients worked in the shop.

Under questioning by the Tribunal Mr. Dunne confirmed that the Memorandum and Articles of Association were changed in 2009 in line with the focus of the charity at that time. He confirmed that they would not close the shop unless they were forced to. Mr. Dunne also stated that the charity received HSE rent allowance supplements in the region of €60 per week in respect of each of the clients residing in the house, which sum was paid directly to the Landlord of the residence. He also said that in addition each client paid the sum of €50 per week to the charity in respect of the running costs of the house.

### **Respondent's Case**

Mr. Neal Murphy adopted his précis as his evidence in this matter but pointed out that the reference on page 4 of his précis under at Section Number 15 (3) of the 2001 Valuation Act should in fact refer to the Section 15 (2) of the Valuation Act and that page was amended accordingly.

### **Cross-examination of the Respondent**

Mr. Murphy agreed with Mr. Sullivan that the charity was engaged in retail activity in the shop and stated that he was in no position to contradict any of the evidence given by Mr. Dunne. Questioned by the Tribunal he confirmed that he was the appointed Revision Officer in this case. He stated that the shop was used for commercial activity and that there was no material change in circumstances and that the appeal was accordingly disallowed.

### **Closing Statements**

Mr. Sullivan made a closing submission pointing out again the prohibitions placed on the charity by its objects clause in terms of distribution of income etc. He reiterated that the object of the charity was a community-based one for those affected by the consequences of drug addiction. He pointed out that the lease on the shop was for the purpose of funding residential accommodation but that the shop was also a platform for rehabilitation of the clients. Mr. Sullivan made the point that this shop has a distinction over other charity shops in that there is no paid employee in the shop and it is entirely volunteer-run. He argued that all of these considerations placed the subject property clearly within Category 16 Schedule 4 of the Valuation Act 2001, citing the **Oxfam v City of Birmingham District Council [1975] 2 ALL ER 289** at page 4 paragraph 4.8 as the seminal case to be followed in this regard. Mr. Sullivan also accepted that the shop was being used for the purpose of funding but was very clear that this must be distinguished from general fund raising as the funds were raised with a specific purpose, being rehabilitation.

### **Summaries**

Mr. Buttanshaw for the respondent accepted that there would be a human response to a charity but pointed out that notwithstanding same the law must always be applied. He also accepted that the appellant was a charitable organisation and that no private profit was made. However, he argued that the use of the premises was a retail/business one and that this does not fall within the charitable context. He agreed that the **Oxfam** case as cited in **VA89/0/229**

- **Rehab Lotteries Limited** was so firmly established that it could not really be questioned. Based on those cases he argued that the use of premises for administrative purposes is charitable and offered the analogy that the provision of soup in a soup kitchen is a charitable purpose but raising funds to buy the soup does not constitute use for charitable purposes. Mr. Buttanshaw further accepted that a property used for rehabilitation as per its objects serves a charitable purpose, citing the judgment of Mr. Justice Cooke in **St. Vincent's Healthcare Group Ltd. v Commission of Valuation [2009] IEHC 113**. Mr. Buttanshaw was of the view that the problem which arises here was in the use of the word "exclusively". It was further his view that given that the dual purpose of the shop was rehabilitation and funding, there could be no conclusion that the premises were used "exclusively" for rehabilitation. He went on to say that in his opinion it did not matter in what proportion the division occurred but in effect once there was any dual purpose, then the element of "exclusively" was gone. Having said that, Mr. Buttanshaw also pointed out that it was telling that there were clients working in the shop two days out of the six when the shop was open and he could not accept the argument that the subject property was used "exclusively" for charitable purposes.

Mr. Sullivan responded by saying that the appellant had been very clear in stating what the predominant purpose of the subject property was for their client programme. He further pointed out that Mr. Justice Cooke in the **St. Vincent's** case had stated the test was not the use of the property and he did not think that it was fair to say that there was a blanket ban on retail activity in such instances.

## Findings

1. The appellant confirmed the following:
  - (a) the charity occupied the premises;
  - (b) the organisation has control of the premises as key holders;
  - (c) the premises are used for the purpose of receiving donated goods and products which the organisation then offers for sale;
  - (d) the organisation has rental obligations on the subject premises as advised at hearing in the sum of €1,150 per month to a Landlord.
2. The appellant furnished a draft income and expenditure report for the 12 month period ending the 31<sup>st</sup> July 2011 which indicated a deficit between income and expenditure in the amount of €850. The appellant confirmed that trading difficulties during the

recession are ongoing but that New Start Addiction Centre Ltd would continue trading from the subject premises at least on an interim basis even if trading losses persist.

3. The respondent in his arguments was guided by/relied upon Mr. Justice Cooke's decision delivered on the 26<sup>th</sup> February 2009 in **St. Vincent's Health Group Ltd** (reference 06/2/93 and subsequently appealed to the High Court).

The Tribunal is particularly mindful of paragraphs 36 through 41 inclusive of Mr. Justice Cooke's decision as follows:

- “36. When the correct test is applied namely, that of ascertaining the purpose of the appellant in using the structure as a car park, the court considers that its use clearly comes within the scope of heading No. 8. The car park is solely provided and located because the hospital is situated in a built up urban area and attracts large volumes of traffic by those using or visiting the hospital. It may not be “necessary” in the literal sense, to provide car park spaces in order to care for the sick or treat illnesses, but it may well be a highly necessary part of the efficient management of the hospital as a whole to ensue that traffic in and out of the hospital, including ambulances, is efficiently accommodated and organized. The car park exists and is so located because of the hospital and not otherwise. It is there because the hospital is there. In that sense therefore, the use of the car part is not “remote” from the main activity of the appellant. It is used predominantly by those having business at the hospital and staff alone account for 50% of its user. While no figures are given by way of breakdown of other users it is probably significant that there does not appear to have been any evidence before the Tribunal of any material use by drivers having no business whatsoever at the hospital notwithstanding the emphasis placed in argument on the fact that the spaces are available to the general public on a first come first served basis.
37. The court also considers that the Tribunal's determination appears to have been heavily influenced by the fact that users are charged a fee by time for use of the car park and that while staff have a preferential rate they have no

*allocated spaces. This has led the Tribunal into drawing what the court considers is an erroneous inference to the effect that ;-*

*“This activity has all the elements of a commercial activity and is so remote from the provision of medical services as to be not capable of being considered related to the main object of the appellant”.*

38. *The court considers that it does not necessarily follow from these charging arrangements that the operation of the car park is a commercial venture on the part of the hospital which is distinct from its activity in providing medical services. No doubt any surplus revenue is welcome when applied to the purposes of the hospital but it does not appear to follow from the facts before the Tribunal that a conclusion was warranted to the effect that the construction and operation of the car park had a speculative commercial objective apart from that of accommodating the cars belonging to staff, patients, visitors and others coming to the hospital. As with all metered parking in urban areas, the primary function of a periodic charge for parking is to discourage the use of private transport and to encourage a rapid turnover in the use of available spaces.*
39. *The mere fact that a charge is made does not of itself warrant a conclusion that the car park is provided and operated as a commercial venture in the sense of one undertaken for the primary purpose of making a profit. Moreover and in any event, it appears to be accepted that the appellant is a body which qualifies under one or both of paras. (a) and (b) of heading No. 8 and that it is not a body which is conducted for the purpose of making a private profit from its medical services. The fact that a charge is made for the use of a particular facility of the hospital and any surplus over the cost of providing the facility accrues to the benefit of the hospital and its activities does not deprive the property of its entitlement to exemption under Heading No. 8.*
40. *The court cannot, therefore, accept the argument made with considerable emphasis by counsel on behalf of the respondent to the effect that this car park is taken outside the ambit of headings 8 and 16 by the distinguishing*



*characteristic that it is “open to all comers” in return for a commercial charge and must thus be distinguished from a non- medical facility as a nurses’ residence provided for the exclusive use of staff working in the hospital.*

41. *Counsel for the respondent also submitted that the findings of fact made by the Tribunal disposed of the case and, as primary findings of fact, could not be overturned by this Court. Reliance was placed upon the dictum to that effect of Kenny J. in Mara v Hummingbird Ltd (1982) 2.I.L.R.M. 421. In particular, it was submitted that the Tribunal had found as a fact that the construction and operation of the car park was a commercial venture on the part of the appellant which took it outside its status as an exempt body by making the car park available to all comers in return for a fee. “*
4. Mindful of the foregoing, the Tribunal is satisfied that the subject premises is remote from the main activities of the appellant and is predominantly used by members of the public. The Tribunal accepts the charity’s occupation of the premises and while it is deemed “a charitable organisation” as defined in the Valuation Act 2001, the Tribunal finds that occupation of the premises may not be necessary in the literal sense of the appellant’s charitable pursuits.
5. Both parties agreed to the broadening of the grounds of appeal. The Tribunal finds that there was no material change in circumstances and affirms the decision of the respondent.
6. The Tribunal finds that the appellant does not qualify for exemption under Schedule 4 of the Valuation Act 2001.

### **Determination**

The Tribunal determines that the subject property is rateable property. The appeal is dismissed.

And the Tribunal so determines.