

Appeal No. VA00/1/033

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Dept. of Social Community & Family Affairs

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Map Reference 4/1, Market Lane, Kinsale, Co. Cork
Rateable Occupation

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Tim Cotter - Valuer

Member

John Kerr - MIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF MARCH, 2001

By Notice of Appeal dated the 25th April 2000, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £20 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "this is a public office occupied under a contract on behalf of the Department of Social, Community and Family Affairs".

The appeal proceeded by way of an oral hearing which took place on the 24th day of January 2001 in the Council Chamber, Cork County Council, Victoria Cross, Cork. The Appellant was represented by Marjorie Farrelly B.L., instructed by P.J. O'Driscoll & Sons, Solicitors, 73 South Mall, Cork. The Respondent was represented by Colm MacEochaidh B.L. instructed by the Chief State Solicitor Office with Mr. Frank Twomey, District Valuer in the Valuation Office. Mr. Twomey exchanged his written submissions with the appellant prior to the hearing which submissions he had also given to the Tribunal.

The appellant Mr. Lane gave evidence in relation to his position as Branch Manager.

Material Facts

The quantum of £20 is not under appeal. The only issue before the Tribunal is a claim for exemption under the provisions of Section 63 of the Poor Relief (Ireland) Act 1838.

Mr Lane was appointed Branch Manager of the employment office in Kinsale by the Minister for Labour with effect from the 30th of October 1972. The Government Department under which Branch Managers now operate is the Department of Social, Community and Family Affairs.

The terms and conditions of Mr. Lane's appointment were set down in some detail in the letter dated October 1972 and provided for a fixed annual allowance and at paragraph 1(c) therein an annual premises allowance of £150. These two annual allowances to be subject to variation by reference to the numbers appearing on the live register in the Kinsale area.

In accordance with paragraph 2 of the 1972 letter, Mr. Lane was obliged to provide a number of facilities and services to be approved by the Department notably in the context of this appeal:

2. (a) "suitably furnished office accommodation of adequate size which must be fitted with counters and shelving and which forms no part of the premises licensed for betting or for sale of intoxicants, the premises to be maintained in good order and condition both internally and externally.

- (b) the services of a competent Deputy to be in regular attendance during office hours as occasion may require and
- (c) the provision of any clerical assistance which may be considered necessary for the efficient performance of the work of the Department.”

Paragraph 3 provided that the allowances set out at paragraph 1 of the 1972 letter were to be subject to variation from time to time. Paragraph 4 of the letter provided for the termination of the Branch Manager’s appointment by three months written notice given by either side but subject to the proviso that the Minister may, in certain circumstances terminate the appointment summarily or suspend the holder of the appointment from duty and pay.

Paragraph 7 of the letter stated “the office must be open from 10 am till 12 noon and 2 p.m. to 4pm on Monday to Friday inclusive. These hours are however liable to modification by the Department. The office must be available during office hours as occasion may require for the use of an officer or officers of the Department in connection with any of his or their official duties.”

In accordance with paragraph 3, the allowance had been varied on several occasions by way of Agreed Recommendations “issued by the Branch Manager’s Conciliation Committee, the most recent of which submitted to the Tribunal is number 81 and dated the 5th July 1999. This document provided for the payment of a basic remuneration based on claimload and a variable cost payment also based on claim load together with a tiered service allowance agreed in December 1998 by “Agreed Recommendation Number 79”. Under this latter Recommendation, Mr. Lane is in receipt of a tiered allowance of £10,000 per annum subject to the maintenance of “an adequate standard of accommodation that is intended to cover all operational costs.” The standard of accommodation provided to be comparable to that provided by the department in its own local offices.

Before moving to the subject property four years ago, Mr. Lane operated out of an office, which the department considered to be unsuitable. When he had identified the new offices he had to first get the approval of the department which inspected the site both before and during the

construction program. The department had a hand in the design of the internal layout of the accommodation and its furnishing, which was provided at the cost of Mr. Lane. In the event of any dispute arising the Department's view prevailed. Notification of the move to the new office was carried in the national press at the cost of the Department.

The offices are subject to regular inspection and control checks by the Department to ensure that the Branch Manager is adhering to the standards laid down by the Department. The inspections are carried out without prior notice.

Mr. Lane is responsible for cleaning the offices and the payment of all out goings including heating and lightening etc.

The offices are owned by Mr. Lane personally funded by way of a mortgage so that no rent is being paid by him. In addition to himself the office is staffed by one full time and two part time Assistants who are paid by Mr. Lane out of his allowances. All staff appointed are approved by the Department and are required to sign the Official Secrets Act.

The duties of the Branch Manager is the processing of claims under the social welfare code and the dissemination of information in relation to the benefits payable under the various enactment's and regulations. The processing of claims is restricted to those resident within the Kinsale area but the dissemination of information is available to the public at large. Completed claims are forwarded to the Department for determination and any payments arising are forwarded direct to the applicants without further reference to the Branch Manager. There is a computer and e-mail link from the office to the Department for the tracking of records etc. which are provided by the Department which also provides the necessary staff training.

In addition to the Branch Manager's functions the offices are used on a weekly basis by investigating officers of the Department and on occasions this use requires that the offices are used outside normal office hours and sometimes as late as 8 p.m. Apart from this occasional use the premises are used solely as the offices of the Branch Manager who is also the sole key holder.

The Appellant's Submission

Ms. Farrelly submitted in the first instance that the subject property is in fact occupied by the Department of Social Community and Family Affairs as a licensee pursuant to the terms and conditions of its contract with the appellant. The degree of control exercised by the Department in relation to the location and design, internal layout and use of the subject property supports the contention that the appellant is in occupation solely as a servant of the Department. In effect she contended that the Department is the occupier as defined in Section 124 of the Poor Relief (Ireland) Act 1838 and hence the subject premises should be exempted from rating as it is being used exclusively for public purposes.

In the alternative, Ms. Farrelly submitted that exemption should be granted under Section 63 of the Poor Relief (Ireland) Act 1838 on the basis that the branch office was being used for the relief of poverty by virtue of the fact that it provides a service which is not restricted to or limited to any class of individuals but available to the public at large.

The Respondent's Submissions

Mr Mac Eochaidh submitted that the premises should not be distinguished as being exempt for a number of reasons:-

1. The appellant is required to provide an office in accordance with the terms and conditions set out in the 1972 letter from which he is to operate and provide services to the Department.
2. The appellant is paid a service allowance to cover all accommodation costs and the maintenance of the accommodation to an adequate standard. The appellant's position as Branch Manager is as an independent contractor to the Department and the measure of control exercised by the Department is not sufficient to render the appellant an employee.
3. Whilst the paramount use of the offices is for Branch Manager purposes, there is no restriction on his using the premises for his own use subject to the express exclusion of use as a betting office or for the sale of liquor.
4. The appellant in fact is the occupier and by virtue of the fact that he is the owner of the property he derives private profit therefrom i.e. the accommodation allowance and the remuneration he receives by nature of his contract with the Department.

5. The profit is used to defray the cost of the mortgage.
6. Whilst the Branch Manager's office provides information services to persons other than those living in the Kinsale area who may be eligible for various social security allowances, the paramount use of the property is in relation to services which are limited to those living in the Kinsale area and not to the public at large.

Findings

Having carefully considered all of the evidence submitted and the arguments adduced the Tribunal makes the following findings:-

1. Rates are a tax based on the occupation of property raised locally in order to defray the cost of providing a range of public services. Section 71 of the Poor Relief (Ireland) Act 1838 provides that the rate is to be paid "by the persons in the actual occupation of the rateable property". At Section 124 of the same Act, "occupier" is defined as "including every person in the immediate use or enjoyment of any hereditament valued under the Act whether corporeal or incorporeal".
2. If there is to be rateable occupation, the rateable property must be capable of occupation and such occupation must be actual, exclusive, beneficial and have a degree of permanence. In relation to the subject property, there is no dispute that the occupier, whosoever that may be is in rateable occupation of the subject property.
3. The letter dated October 1972 sets out in some detail the contract between the appellant and the department, which includes the provision of "a suitable furnished office accommodation of adequate size."
4. The document entitled Agreed Recommendation Number 66 of the Branch Managers Conciliation Council Accommodation (Premises) Allowance increased the accommodation allowance with effect from 1/1/91 subject to the offices meeting criteria set down in the appendix attached to the agreed recommendation. The criteria to be applied included provisions in relation to size, layout, furnishing, maintenance, cleaning and heating etc. and provided for periodic inspection without notice in order to ensure that the required standards were being maintained and that the accommodation provided is comparable to that provided by the Department's own

local offices. The accommodation allowance under Agreed Recommendation Number 79 dated the 18/12/98 refers to a tiered service allowance “payable subject to the maintenance required by the branch manager of an adequate standard of accommodation and is intended to cover all operational costs.” This allowance varies from £10,000 per annum to £13,000 per annum dependent upon claimload in paragraph 1.

5. The primary role of the Branch Manager is more restricted now than heretofore and is limited to the processing of claims only under the social welfare code. The Branch Manager has no role in determining the outcome of any claim nor in the payment of any benefits that may be awarded. Claims may only be taken from persons resident within the area assigned to the Branch Manager. However the Branch Manager also provides an ancillary information service which may be availed of by any member of the public who calls to the office.
6. The subject premises are owned by the appellant and are approved by the Department as being suitable for branch office activities. Accordingly therefore, the appellant is entitled to the appropriate tiered service allowance in respect thereof until such time as the Department may determine.
7. Under the terms of the 1972 letter as amended by the various agreed recommendations issued by the Branch Manager’s Conciliation Council, the appellant is in receipt of two annual payments - an all inclusive salary payment and a tiered service allowance both of which may be varied depending upon the claimload. Out of these monies the appellant pays the wages of his support staff and all property outgoings and the remainder is retained by him. The appellant for tax and social security purposes is considered to be self-employed.
8. The property is used solely as a Branch Manager’s Office but there is nothing in the agreement that would preclude the appellant using it for other purposes outside the normal business hours of the branch office except those purposes which are specifically excluded i.e. used as a betting office and for the sale of liquor. Never the less any other use would be “*de minimus*” and the principal or paramount user would be as a branch office.
9. The statutory basis for exemption rests on Section 63 of the Poor Relief (Ireland)

Act 1838, Section 16, Valuation (Ireland) Act 1852 and Section 2 of the Valuation (Ireland) Act 1854 which provide for exemption where the hereditament in question is dedicated to or used for public purposes. The test that premises are used for public purposes as set out in Mr. Justice Keane's book entitled "The Law of Local Government in the Republic of Ireland" page 197 is if:

1. "It belongs to the Government;
2. Each member of the public has an interest in the property.

It is clear from the facts that the property which is the subject of this appeal does not meet the first test. It is also clear that the primary or paramount purpose of the office is limited to those persons resident within the Branch Manager's area. Accordingly therefore the premises do not meet the second test, notwithstanding the fact that the office does provide an ancillary information service which is available to the public at large without restriction to the locality from which they may come.

10. Section 63 of the Poor Relief (Ireland) Act 1838 states "provided also that no chapel, church or other building exclusively dedicated to religious worship or exclusively used for the education of the poor nor any burial ground or cemetery nor any infirmary, hospital, charity, school or other building used exclusively for charitable purposes nor any building, land or hereditament dedicated to or used for public purposes shall be rateable except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use."

The matter of what constitutes charitable purposes was dealt with in some detail in the Supreme Court Case of "Barrington's Hospital v Commission of Valuation". In his judgement Kingsmill Moore J sought to expand upon the scope of the term "charitable purposes" and at page 324 of the Irish Reports 1957 said the following- "From the authorities cited the following conclusions emerge: -

- 1) The care of the sick of the community in general or of any limited portion of the community is a charitable purpose within the fourth class mentioned in Pemsel's case.
- 2) It is no less a charitable purpose if the sick persons benefited are rich as well as poor.
- 3) It is no less a charitable purpose if the care is not given gratuitously, provided that the institution in or by which it is afforded is not so conducted as to show habitually a surplus of receipts over expenditure.
- 4) The mere fact that some patients pay more than the cost of their treatment or that a portion of the institution is so run as to show a profit does not prevent the institution from being one which is solely devoted to charitable purposes if the profit is applied for the benefit of the poorer patients and the institution as a whole does not show a profit".

He went on later in his judgement at page 333 to make the following propositions;

- (1) "Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory and buildings belonging to certain societies instituted for purposes of science, literature or fine arts) the grounds for exemption from rates must be found in the proviso to S.63 of the Act of 1838.
- (2) "Charitable purposes" in S.63 has a meaning less extensive than the meaning given to those words in Pemsel's case. How much less extensive has never been decided but at least there must be excluded from the denotation of "charitable purposes" in the section any charitable purpose, which is mentioned expressly in the section.
- (3) Neither the wording of S.63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to "charitable purposes devoted exclusively to the benefit of the poor".
- (4) The word "exclusively" in no way alters or modifies the meaning of "charitable purpose". It does ensure that in order to qualify for exemption a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable some non-charitable, it is not exempt though if the purposes are carried on in different buildings or in different parts of the same building s.2 of the Valuation Act 1854 gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes".

11. In recent cases before this Tribunal, “charitable purposes” has been examined in some depth and the Tribunal has come to the conclusion that the definition of the term “charitable” should not be narrowly construed for the purpose of exemption from rates. Indeed the expressions “charitable purpose” and “relief of poverty” should not be restricted to concepts prevailing in the mid ninetieth century but should take into account and reflect modern thinking as to what constitutes poverty and the poor in modern society.
12. Nonetheless an examination of the facts in this appeal does not support the contention that the premises are used for charitable purposes i.e. the relief of poverty. It is clear from the appellant’s evidence that these premises are primarily used for the processing of claims under the social welfare code. The determination in respect of these claims is not made by the Branch Manager but elsewhere in the offices of the Department which then makes arrangement for payment of the appropriate allowances to the successful applicants without reference to the Branch Manager. Claims handled by the Branch Manager include unemployment relief, pensions, children allowance etc. some of which may not necessarily be for the relief of property but mainly constitute entitlements under the social welfare code or other enactments without reference to the means of the recipients.

Determination

1. The subject hereditament is occupied solely by the appellant as Branch Manager as part of his obligation under the contract between him and the Department of Social Community and Family Affairs.
2. The occupation by the Appellant is not for charitable purposes as provided for in Section 63 of the Poor Relief (Ireland) Act, 1838.
3. The Rateable Valuation is affirmed at £20 and is not exempt.

Cases referred to at the Hearing

- 1. Carroll v Mayo County Council 1967 IR 364**
- 2. Reed v Cattermole 1937 1 KB 613**
- 3. Westminster Council v Southern Railway Company and W.H. Smith and Company Limited 1930 AC511**
- 4. Aer Rinta v Commissioner for Valuation and Tedcastle Aviation Fuels Limited and the County Council for the County of Clare (Notice Parties) High Court (Unreported) Mr. Justice Lavan 30th July 1992**
- 5. London County Council v Wilkins 1957 AC 36**
- 6. Dublin County Council v Westlink Toll Bridge 1996 1 IR P. 487**
- 7. Guardians of Londonderry Union v Londonderry Bridge Commissioners 1868 2 IR 577**
- 8. Kerry County Council v Commissioner of Valuation 1934 IR 527**
- 9. Cork Corporation v Commissioner of Valuation 1916 2 IR 77**
- 10. Kearns v Dillon 5 1TR**
- 11. O’Sullivan v Revenue Commissioner 5 ITR 570**
- 12. Maynooth College v Commissioner of Valuation (1956) IR189**
- 13. The Mayor of Limerick v Commissioner of Valuation IR 6 CL 420**
- 14. The Provost, Fellows and Scholars of Trinity College Dublin v Commissioner of Valuation (1919) 2IR 493**
- 15. Dublin Corporation v Parks and Docks Board**
- 16. Powerhouse Bolton Trust Enterprises v Commissioner of Valuation VA94/3/071**
- 17. Royal Hospital Kilmainham Dublin v Commissioner of Valuation VA92/1/008**
- 18. Lough Corrib Angling Federation v Commissioner of Valuation VA89/0/103**
- 19. Bantry and District Resource and Service Development Group Limited v Commissioner of Valuation VA94/3/055**
- 20. Forbairt v Commissioner of Valuation VA97/4/030**

