

Appeal No. VA02/5/029

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

National Childrens Nurseries Association

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Unit 12c, Bluebell Business Park, Old Naas Road County Borough of Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF MAY, 2003

By Notice of Appeal dated 20 November 2002 the appellant appeal against the decision of the Commissioner of Valuation in fixing a rateable valuation of €7 on the above described relevant property. The grounds of appeal as set out in the Notice of Appeal are:

"The valuation should be distinguished as exempt due to the charitable status of the occupier and the actual use of the premises in relation to this status".

The Facts

The Tribunal listed this appeal for hearing on 4 April 2003 and the Tribunal received written submissions on 21 March and 25 March from the respondent and the appellant respectively. On 31 March Mr. Eamon Halpin on behalf of the appellant informed the Tribunal and notified the respondent that the appeal was withdrawn. On 14 May 2003 the Chief State Solicitor, on behalf

of the respondent, made formal application to the Tribunal to list the matter for hearing for the purpose of applying for legal costs in relation to the appeal.

The application was heard before the Tribunal on 26 May 2003. Mr Halpin appeared on behalf of the appellant and Mr Brendan Conway BL instructed by the Chief State Solicitor appeared on behalf of the respondent.

The Tribunal has considered the submissions made by Mr. Conway and by Mr. Halpin; the Tribunal has also considered the correspondence including the office stamped copies of the submissions made by the parties in respect of the case itself. It is clear to the Tribunal that Mr. Halpin was on notice from the letter dated the 5th March 2003 that legal representation would be obtained by the Valuation Office and that costs would be sought if the case were determined in favour of the Valuation Office. It was also clear to Mr. Halpin as I am sure he was aware himself from his own expertise that the issue at the heart of the dispute between the parties was the issue of exemption, an issue which traditionally, if not universally, is the subject matter of legal submissions as distinct from submissions by the parties through their valuers.

The Tribunal has considered the cases cited to us by Mr. Conway but does not feel that they really help the Tribunal in deciding this issue, which is largely one of its own discretion in relation to costs. The Tribunal is also aware that in valuation cases the issue of costs has arisen where appeals have been withdrawn extremely late in the day, thereby giving rise to the incurring of what is described as unnecessary costs. In the view of the Tribunal in the subject appeal, the appellant was aware that legal representation would be required and that costs would also be required and the appellant was on notice that if the case was determined against him that the costs of that legal representation would be sought. In the circumstances the Tribunal believes that he was fully aware that legal costs as an issue therefore arose, and was aware of that from in or about 5th March 2003. As has been pointed out by both parties the Valuation Act 2001 itself makes it clear at schedule 2 subsection 12. (1)

“The Tribunal may order that the costs and expenses of a person concerned in an appeal to it under this Act in respect of the appeal should be paid by another person concerned in the appeal, may determine the amount of any such costs and expenses and shall, unless there is good reason for not doing so, order that the costs and expenses of a successful appellant or

respondent in an appeal to the Tribunal under this Act in respect of the appeal shall be paid by the unsuccessful respondent or appellant, as the case may be, in the appeal.”

The rules currently governing the administration of the Tribunal also make it clear, that “*the Tribunal having heard the unsuccessful appellant or respondent may determine the amount of any such costs and expenses (if any) and measure same.*”

The Tribunal notes that the parties have not in fact agreed the quantum of costs in this case. In the circumstances the Tribunal feels that there should be an award of costs against the appellant in the particular circumstances but having regard to the difficulties encountered by Mr. Halpin and having regard to the lateness in which he received advice and no blame whatsoever is to attach to Mr. Hickey in relation to this but it may in some measure be due to the lateness with which that advice was sought and of course we have no date for that.

Having regard to that fact the Tribunal feels that it would measure the costs, the contribution to costs to be paid by the appellant to the respondent is in the sum of €300.