

Appeal No. VA04/1/008

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

**Clones Community Forum Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office No.1 & No. 3 Celtic House, Fermanagh Street, The Diamond, Clones  
County Monaghan

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**Joseph Murray - Barrister**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 15TH DAY OF JUNE, 2004**

By Notice of Appeal dated 19th day of February 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €26 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"Clones Community Forum Ltd is a community development organisation and is non-profit making."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 26<sup>th</sup> April 2004. The Appellant was represented by Mr. Walter Pringle, Chairperson of Clones Community Forum, and the Respondent by Mr. Christopher Hicks, a valuer with the Valuation Office.

The Tribunal was furnished with a brief submission in writing on behalf of the Appellant and also a submission in writing on behalf of the Respondent. These submissions were commendably brief and to the point. Both parties adopted their submissions as evidence at the oral hearing.

### **THE APPELLANT:**

The only witness to give evidence on behalf of the Appellant was Mr. Walter Pringle who is the Chairperson of the Forum and has been for the last four years. In his evidence he gave a graphic description of the effect which “the Troubles” have had on life in Clones generally. He suggested that the experience of the Troubles there was more acute in some respects in Clones than in other towns in the area. For example, at one period the town lost twenty of its businesses in its main street. For a relatively small town this was a devastating blow. Clones was briefly famous as the hometown of the “Clones Cyclone”, Barry McGuigan, the well-known boxing champion in the 1980s. But it appears that this was a brief moment of celebration in what has been an era of significant decline for the town. It is recognised that a number of different initiatives were needed to rejuvenate not simply the economic and industrial life of the town but also its social and cultural fabric. In this regard Mr. Pringle contends that there is occasionally a feeling that the community is still somewhat split along sectarian lines. Although this is less of a problem than it was, it is obviously a matter which needs to be addressed.

The Forum was set up in 1999 to act as an umbrella group to coordinate the various interest groups within the community which are trying to develop new initiatives to

regenerate the life of the town. The Forum was established in response to a survey which indicated that it was appropriate to bring what is described as “the vast array of disparate groups in the area” together in a structured and coordinated manner. Mr. Pringle informed us that the Forum focuses on social need and includes work with youth, women, heritage, education and training. It also seeks to try to provide sports facilities for the town. In the past it has also worked to support the Special Olympics programme within the town. In essence, it works by consulting with various individuals and groups within the town to try to identify the needs of the community and to address those needs. It supports the work of various voluntary bodies within the town. It also draws up plans and strategies to meet those needs. Of particular significance is its role in trying to promote reconciliation within the community and indeed on a cross-border basis. Indeed Mr. Pringle was at pains to emphasise the peace-related aspect of its enterprise which he says is central to the Forum.

The premises the subject matter of this application are refurbished office accommodation in Clones town centre. The rateable valuation is €26. The quantum is not contested. The floor area is approximately 106 sq. metres. The premises are rented by the Forum from a local landlord; the rental is €150 per week. Since the existence of the Forum is dependent upon the continued existence of funding, it has no long term lease. The Forum employs three employees; an administrator, a development worker and a support development worker. These employees’ salary are funded solely by the ADM/CPA referred to above. These staff carry out the day to day administration of the Forum; they have computers and other electronic equipment to enable them to do so. They also have use of a phone which was installed by various members of the organisation at their own cost, without funding. It is apparent that a lot of the work done by the members of the Forum is voluntary. While the administration staff implement strategy on a day to day basis, the responsibility for the devising of these strategies is of course that of the members of the Forum. The offices in question were first occupied by the Forum in the year 2000. Previously they had been derelict for ten years. The Forum had previously occupied other offices on the same street; the rates on those offices had in the past been discharged by the then lessor.

On cross-examination Mr. Pringle accepted that the Forum had not paid the rates assessed to date. He contended that the purpose of the regeneration undertaken by the Forum was not to make commercial gain. He accepted that the Memorandum and Articles of Association made no provision for the distribution of surplus assets on a winding up. He accepted also that the word “charity” was not used very frequently in the course of the Memorandum and Articles of Association. However he said this was deliberate. He did not want people to think that this was simply another organisation which would provide funding such as the Society of St. Vincent de Paul. He felt it would not be beneficial to the image of the Forum to simply have it listed as another “charity”. Nor would it be beneficial to the image of the town itself. However he contended that the work it was doing was undoubtedly charitable and in that sense it was a charitable organisation.

In response to questions from the Tribunal he confirmed that such lease as it held on the premises was renewable only on the basis of the continued availability of funding. He also said that both Catholics and Protestants sat on the various committees within the Forum and that it was a genuinely open organisation and non-sectarian.

### **THE RESPONDENT:**

For the Respondent, Mr. Christopher Hicks of the Valuation Office adopted his submission but called no other evidence. He submitted that while this was undoubtedly a worthy non-profit organisation, that of itself was not enough. He said that in order to qualify for exemption on rates the Forum must comply with the provisions of the Valuation Act, 2001. In order to do so he contended that the organisation must first constitute a “charitable organisation” within the meaning of the Act. If the organisation passes this test he contended then the next test is whether or not the land which it is occupying is being used exclusively for charitable purposes. In this regard he pointed out that some shops used by the Society of St. Vincent de Paul are rateable even though the organisation of the Society of St. Vincent de Paul is a charitable organisation; this is because the activity there being carried out was not a charitable purpose.

He submitted that the Memorandum and Articles of Association was defective having regard to the requirements of Section 3 of the Act (the interpretation section) and also Schedule 4, paragraph 16 of the Act.

In addition he contended that the word “charitable” should be given a wide definition. He noted that there was no definition of it contained in the Act and did not suggest that the definition in any other Act applied. However it is his view that charitable should be defined as “providing assistance and help to other people who may need it.” His contention was, however, that the actions of the Forum, laudable though they may be were not designed to help other people but instead to help the entire community of Clones as a whole. Insofar as this was a community activity he felt that the Act had specifically exempted from rateability certain other activities carried out by the community (e.g. hospitals, schools, care for the elderly and disabled) and in the circumstances the exclusion contained in Schedule 4 could not be interpreted as applying to an organisation which was based on trying to provide for the needs of the community. He noted that even a building used exclusively as a community hall has been exempted from rating under Schedule 4, paragraph 15. His contention is that if the Legislature had wished to exempt from rating community offices it could have done so.

In response, Mr. Pringle made it clear that there was absolutely no question of any personal benefit or gain for him or any of the other members of any of the committees of the Forum. He submitted that the Forum had been established prior to the enactment of the 2001 Act and perhaps due to the voluntary nature of the organisation had not amended its Memorandum of Association in line with the various stipulations set out in the Act. He defined charity as being “voluntary work for the needy”.

### **THE LAW:**

Section 15 of the Valuation Act, 2001 (“the Act”) provides as follows:

*“Section 15 (1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.*

*(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.”*

Schedule 4 of the Act (headed “Relevant Property Not Rateable”) provides, inter alia:

*“15. Any building or part of a building used exclusively as a community hall.”*

*16. Any land, building or part of a building which is occupied by a body, being either -*

*(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or*

*(b) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and -*

*(i) the principal activity of which is the conservation of the natural and built endowments in the State, and*

*(ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.”*

It was not contended by either party that the premises in question could be regarded as being a community hall. Mr. Hicks contended that the offices in question could not come under the heading set out in paragraph 16(b) since this had as one of its requirements the requirement that the principal activity of the body in question be the conservation of the

natural and built endowments in the State. Undoubtedly the Forum does not and could not meet this requirement. The issue therefore is whether or not it constitutes a charitable organisation that uses the property exclusively for charitable purposes and otherwise than for private profit.

The evidence of Mr. Pringle that the Forum is not operated for profit and does not make a profit was not contested.

As to whether the Forum is a “charitable organisation”, it is necessary to consider the terms of Section 3 of the Act (the interpretation section). “Charitable organisation” is therein defined. It means a company (or other body corporate or an incorporated body of persons) which complies with a variety of conditions.

The first of these conditions is specified at Section 3(1)(a)(iii). The body must state as its main object or objects, a charitable purpose and specify the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects.

At Section 3(1)(a)(vii) the Act makes it clear that such a body must provide for the application of its income, assets or surplus towards its main object or objects, prohibit the distribution of any of its income, assets or surplus to its members and prohibit the payment of remuneration (other than reasonable out of pocket expenses) to its directors or other officers.

In addition according to Section 3(i)(a)(ix) (as applied by 3(i)(b)(ii)) the Memorandum or Articles must contain a provision in the event of its being wound up providing for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of The Act), the main object or objects of which is or are similar to its main object or objects or, if the body receives a substantial portion of its financial resources from a Department of State or an office or agency (whether established under an Act or otherwise) of the State to such a Department, office or agency.

Mr. Hicks contends that the Memorandum of Association fails to state as its main object or objects a charitable purpose. He also contends that the Memorandum of Association fails to distinguish between main or primary objects and secondary objects and further fails to specify that the purposes of any such secondary object is the attainment of the main object or objects.

By way of response to this Mr. Pringle expressed the view that the main objects of the company are those set out at paragraph 2(i)(b) and (c) of the Memorandum of Association. 2(1)(b) states as an object the following:

*“To work in consultation with groups and individuals in Clones to address the social, economic and cultural needs of the community; to support the work of other voluntary and community groups in the area of Clones in the County of Monaghan and its environs.”*

Paragraph 2(1)(c) provides as an object:

*“To identify strategies to meet the needs of the community; to draw up a strategy to improve communications within the Community; to develop cross border links and projects; to encourage and facilitate reconciliation both within the community and on a cross border basis.”*

Mr. Pringle contends that these are the main objects of the organisation and that all of the other objects are secondary objects in that they are the means which the company must be empowered to use in order to achieve the two main objects.

In our view the Memorandum of Association of the Forum does not distinguish between main or primary objects and secondary objects. It does not state the two objects isolated by Mr. Pringle as being the main objects of the organisation. Nor does it specify the particular purpose of the other objects. Neither does it specify that the purpose of these



other or secondary objects is in fact the attainment of the main objects. In our view the failure of the Memorandum of Association in this regard means that the company in question cannot be regarded as a “charitable organisation” within the meaning of that phrase as set out in Section 3 of the Act. Nor does it appear that the appropriate provision is made for the application of its income in accordance with the main objects.

Mr. Hicks also contends that the Memorandum of Association contains no provision similar to that set out at Section 3(1)(a)(ix) in relation to the winding up of the company. By way of response to this Mr. Pringle says that this matter is being attended to by the Solicitors to the Forum, who propose to amend the Memorandum and Articles of Association to include such a clause.

Again it appears that Mr. Hicks is correct. While paragraph 4 of the Memorandum of Association does refer to the obligations of the members of the company to contribute to the assets of the company in the event of the company being wound up this could by no stretch of interpretation be regarded as being a provision which provides for the disposal of surplus property to another charitable organisation with similar main objects. Again the failure to include such a provision means that the body in question is not a “charitable organisation” within the meaning of the Act.

We note that no other objection to the Memorandum of Association was raised by Mr. Hicks. We note also that Mr. Hicks expressed the view that it would be open to the Forum to amend its Memorandum of Association and apply to be exempt from rating at the time of the next assessment. Mr. Hicks expressed this view in response to questioning from the Tribunal; we wish to make it clear that he did not suggest this or indeed indicate that an amendment of the sort suggested would automatically be sufficient to obtain exemption from rateability. However it may be of some encouragement to the Forum to be aware of this matter.

**CONCLUSION**

Having regard to the failure of the Memorandum of Association of the Appellant to comply with the provisions of Section 3 (a) *(iii)*, *(vii)* and *(ix)* of the Valuation Act 2001, the Appellant is not a “charitable organisation” within the meaning of the said Act. It cannot therefore avail of the exemption from rates for such bodies and is thus liable for rates.

**POSTSCRIPT: “CHARITABLE PURPOSE”**

Since we have concluded that the Forum is not a charitable organisation within the meaning of the Act because of the shortcomings of its Memorandum of Association identified above, its application that it be exempted from rating must fail. However we feel it is appropriate that we address the arguments made by both sides during the hearing in relation to the issue of whether the Forum carries out charitable purposes.

In this regard we would express the following views:

- (i) The fact that the Memorandum and Articles of Association do not repeatedly use the word “charity” does not prevent the organisation being one established for charitable purposes if the organisation otherwise fits within this concept.

- (ii) In **Income Tax Special Purpose Commissioners –v- Pemsel [1891] A.C. 531** Lord MacNaghten indicated (at 538) that there were in effect four heads of charity: the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community. This interpretation was following to some degree in **Barrington’s Hospital –v- The Commissioner of Valuation [1957] I.R. 299**. At page 320 Kingsmill Moore J indicated:

*“It is well settled that the necessity of a gift being public in order to be charitable is satisfied if it benefits an appreciably important class of the community such as the inhabitants of a parish or town, or any particular class of such inhabitants; **Verge –v- Somerville [1924] A.C. 496** at page 500. Dealing with the position of **Barrington’s Hospital** he held (at page 324):*

- “(i) *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.*
- (ii) *It is no less a charitable purpose if the sick persons benefited are rich as well as poor.*
- (iii) *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.*
- (iv) *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.”*

Kingsmill Moore J also expressed the following view at page 333:

2, “*“Charitable purposes” in Section 63[of the Poor Relief Act, 1838] 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 (O’Neill’s case [1914] 2 I.R. 447 and Scott’s case [1892] 2 QB 152 as applied to Section 63).*

3, *Neither the wording of Section 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, Section 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.”*

He continued, at page 334:

*“The payment of masters or doctors to carry on the charitable work does not prevent the building in which the work is carried on from being used exclusively for charitable purposes.”*

In that case **Barrington’s Hospital** was exempted from payment of rates.

In **Oxfam –v- Birmingham City District Council [1976] A.C. 126**, the House of Lords was asked to consider whether gift shops operated by the charity Oxfam were exempted from rates. The House of Lords took the view that on the true construction of the relevant section of the relevant Act governing rates in England, “*used for charitable purposes*” meant used for purposes directly related to the achievement of the objects of the charity, as opposed to used for the purpose of getting in, raising or earning money for the charity; and that accordingly, the charity’s shops, being used mainly for the sale of clothing given to the charity in order to raise money for use in the charity’s work overseas, were not entitled to relief.

Noteworthy, however, is the passage quoted with approval by Lord Cross from the decision of the House of Lords in **Glasgow Corporation –v- Johnstone [1965] A.C. 609**. At 621 and 622 Lord Reid expressed his Opinion as follows:

*“The second question is whether the house was “wholly or mainly used for charitable purposes” within the meaning of Section 4(2). The Appellants contended that it was used as a residence and for no other purpose. But, once the Respondents have been held to be the occupiers, I think that it is their use of the premises that we must consider. They use the house to have a servant on the spot to assist them in the more efficient performance of their charitable activities. I think that it is much too narrow a view simply to see whether any charitable activity is carried on in the house. Let me take a hospital as a case where it is obviously necessary for the nurses, servants of the charity, to live nearby. I cannot think that it would be right or that it is the intention of the Act to draw a line between the wards, where they perform their charitable function of nursing the sick, and the places where they eat, rest and sleep.*

*The efficient performance of their charitable function depends on their being properly cared for when they are off-duty, and so caring for them appears to me to be wholly ancillary to the charitable purpose of the hospital. But there is nothing to prevent a charitable organisation from conducting activities which are not wholly ancillary to the carrying on of its main charitable purpose. I do not propose to give example because this provision is new and difficult cases may arise under it. But I cannot accept the Appellant’s argument that if the Respondents succeed in this case it must follow that this provision adds nothing to the requirement that the premises must be occupied by the charity. If the use which the charity makes of the premises is directly to facilitate the carrying out of its main*

*charitable purposes, that is, in my view, sufficient to satisfy the requirement that the premises are used for charitable purposes.”*

Oxfam, therefore, is entitled to rating relief in respect of premises which it occupies and which are not being used for the actual relief of poverty or distress if – to quote Lord Reed – the use which it makes of them is “wholly ancillary to” or “directly facilitates” the carrying out of its charitable object – the relief of poverty or distress. One example of such a use would be the head office of Oxfam. As Donovan J pointed out in **United Grand Lodge of Ancient Free and Accepted Masons of England and Wales –v- Holborn Borough Council [1957] 1 W.L.R. 1080 at 1088:**

*“Every organisation setting out to advance some cause must, if it is of any size, have an office where the necessary clerical and administrative work is done, and Counsel for the Corporation conceded that any office premises occupied by Oxfam if they were wholly or mainly used for the organising and carrying out of Oxfam’s charitable activities would be entitled to rating relief.”*

It seems to us that the evidence of Mr. Pringle would tend to establish that it is appropriate to describe the main objectives of the Forum as charitable purposes. Perhaps more pertinently, the two objects identified in the objects clause referred to above likewise appear to us to be charitable purposes under the fourth heading in the **Pemsel** case, as approved by the Supreme Court in the **Barrington’s Hospital** case. This is a voluntary not-for-profit organisation. In our view its commitment to these objectives is absolutely sincere. These objectives, if achieved, will undoubtedly confer considerable benefit on a sizeable section of the community directly. Indirectly they will of course benefit the entirety of the community, as indeed must any charity. While we accept that any remarks by us in this regard must be necessarily regarded as *obiter*, we wish to make it clear that absent the difficulties relating to the Memorandum of Association, this organisation is undoubtedly a charitable organisation whose main objects are charitable

purposes and whose office premises would appear to be otherwise exempt from rating having regard to the case law cited above.