

Appeal No. VA05/3/001

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

Dublin Public Service Radio Ass. Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 128-130a/unit 6a, East Wall Road, North Dock B, North Dock,
County Borough of Dublin.

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF DECEMBER, 2005

By Notice of Appeal dated the 1st day of July, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €100.00 on the above described relevant property.

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

"The description should read Community Hall. The property is a community hall and therefore should have been excluded from the valuation list."

At issue

Description of the relevant property and rateability. The Appellant contended that the Valuation Office erred in not describing the subject relevant property as a Community Hall which, in the Appellant's view, should accordingly not be rateable.

The appeal proceeded by way of an oral hearing, which took place at the Offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23rd September, 2005. At the hearing the Appellant was represented by Mr. Sean O'Gorman, Solicitor, and by Ms. Margaret Roche, Chairperson of Dublin Public Services Radio Association Ltd. who also gave evidence on behalf of the Appellant. The Respondent was represented by Mr. Brendan Conway, B.L. instructed by the Chief State Solicitor. Mr. Paschal Conboy, a Valuer Grade 1 in the Valuation Office gave evidence on behalf of the Respondent.

In advance of the hearing written legal submissions were prepared by Mr. Conway and Mr. O'Gorman, submitted to the Tribunal and mutually exchanged by the parties. Précis of evidence were also submitted and exchanged by the parties. From the evidence and submissions so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

The property is a ground floor unit identified as Unit 6a, located within the gated Docklands Innovation Park, East Wall Road, Dublin 3. It is part of a two-storey unit. The accommodation comprises: a main entrance and reception area shared with the occupiers of the first floor; a plant room off the reception area; ladies, gents and handicapped persons' toilet facilities; a Green Room; a kitchenette; an editing room; an office at the rear of the Green Room; the following partitioned units: a front open space; a corridor; two control rooms; two talk-back rooms and a rear open space. The control rooms and talk-back rooms, considered as studios, are air-conditioned, have low ceilings and are soundproofed. The office to the rear of the Green Room is high ceiled with full-length glazing on the back wall and is air-conditioned. The agreed gross external area of the subject unit, excluding toilets and stairwell, is 289.56 m². Mr. Conboy surveyed some of the internal areas as follows:

Reception	10.7 sq. metres
Toilets and corridors	NA
Plant room	NA

Green Room	32.9 sq. metres
Kitchenette	5.62 sq. metres
Editing room	10.28 sq. metres
Office	56.10 sq. metres

Open space in front of studios	13.15 sq. metres
Control Room 1	17.78 sq. metres
Studio No. 1	16.45 sq. metres
Control Room 2	16.37 sq. metres
Studio No. 2	17.78 sq. metres
Corridor outside studios	26.32 sq. metres
Rear office/open space	19.27 sq. metres

Tenure

The property is held under a licence agreement from a body known as the Bolton Trust. A copy of the Licence Agreement was furnished to the Tribunal. The terms of the Agreement set out the obligations of the Grantor and the Licensee and the relevant space of the subject property. They contain a number of definitions and confirm the “permitted use” of the “work area”, the “license fee” and “services fee” to be paid by the Licensee, the “commencement date” and the “period” of the License and various other commercial and legal provisions applicable thereto.

Valuation History

The unit was first valued in 1982 when it formed part of a new development of 23 units by the Industrial Development Authority. A valuation of IR£92 (€16.82) was fixed at First Appeal in 1982. The property was the subject of a revision in 2004 at which time the Revision Officer sub-divided the premises into two relevant properties. The ground floor, i.e. the subject property, was then valued at €100 and the first floor offices overhead, occupied by I.C.R., were valued separately at €15. Following submissions to him by the Appellant, the

Revision Officer held the opinion that the property was rateable. Following First Appeal stage and further submissions the Commissioner affirmed the valuation at €100.

Appellant's Case

At the invitation of the Tribunal Ms. Margaret Roche assumed her position in the stand, took the oath, formally adopted her précis as her evidence-in-chief and provided the Tribunal with a review and synopsis of it. In doing so she outlined the origins of Dublin Public Radio Association Ltd., from its commencement in 1988, its operation through a temporary Broadcasting License and then its advancement through registration with the Companies Office and enrolment of members of many bodies such as clubs, residents associations, drama and musical societies, youth organisations, women's groups and various community bodies. With the benefit of a renewable annual Broadcasting License permitting the Association to broadcast to Dublin city and county, the station was formally established with the assistance of grant support from Dublin Corporation and Dublin County Council, and began broadcasting from an earlier location on Grafton Street, in November of 1991. The structure of the company provides for membership, represented by the following categories:

- a) Individual membership
- b) Community associations (Clubs, resident groups)
- c) Business and local businesses
- d) Local Authority (Dublin City Council)
- e) Statutory Bodies (Dublin Docklands Development Authority)

Ms. Roche described the ethos of the station and its broadcasts to the community and outlined the schedule, frequency and mix of programmes offered. These include:

- A dedicated schools programme of interest presented by Transition Year students representing eight local schools in the area with the involvement of their teachers;
- A law programme dealing with family law and relationships;
- A relationships discussion programme for local students;
- Historical interest programmes;
- An engineering programme;
- An astrology programme;

- Political, weekly review and news/current affairs programmes covering local/national issues;
- Programmes on computers for all age groups;
- Young adult programmes on sport and entertainment;
- Arts and music programmes;
- Sports programmes;
- A variety of programmes on women's issues, book reviews, retirees' interests, language and culture, traffic information, special abilities programmes, children's interests and programmes dedicated to the interests of peoples of various ethnic origins.

Ms. Roche explained to the Tribunal that the relevant property is occupied by Dublin Public Service Radio Association Ltd., generally known and broadcasting as Dublin City Anna Livia FM.

Mr. Séan O'Gorman, Solicitor, representing the Appellant addressed a number of questions to Ms. Roche in relation to the subject property, and in response to same, Ms. Roche urged the Tribunal to consider the space occupied by Anna Livia FM to be similar in character and function to a Community Hall facility located in Ennistymon, Co. Clare, which apparently offers a multiplicity of community facilities and services from within a multi-storey complex and which, she said, was excluded from the Valuation List and was referenced in a document submitted by her titled Schedule of Analogous Facilities Exempted from the Valuation List (see copy at Appendix 1 hereto).

Ms. Roche stressed the nature of engagement by Anna Livia FM with the community it serves by offering a broadcast forum to express concerns on matters of public interest, through the direct participation of its members and the constituents they represent, all with the sole purpose of contributing to the well-being and development of that community.

Cross-examination

Mr. Brendan Conway commenced his cross-examination of Ms. Roche by querying the description of the rear part of the subject premises earlier described as "a large assembly hall". Ms. Roche replied that it was the larger room at the rear of the unit but that,

operationally, they ascribed the term “office” to that large room, and that in general terms, the rooms within their premises are not labelled with names. In response to further questions from Mr. Conway, Ms. Roche also stated that all of the activities within the subject premises were linked to broadcasting, whether or not a programme followed, and further said that the premises were used from time to time for meetings and discussions relating to the content of possible or actual broadcasting, and for nothing else, i.e. that all the meetings and discussions related to the administration and operation of the said Anna Livia FM. She confirmed that none of the rooms within their premises were rented, hired to or used by third parties such as football clubs but that the Radio Station would be happy to facilitate requests by local clubs and organisations to avail of their premises for the purpose of meetings. However, she said she was not sure if the Appellant company carried adequate or necessary insurance cover to provide for same.

Mr. Conway cited (i) the above referenced License Agreement with the Bolton Trust and specifically the limitation of permitted use being only “office use” and (ii) the first item in the appellant’s document titled Schedule of Analogous Facilities Exempted from the Valuation List which refers to a swimming-pool and changing rooms in Buncrana, Co. Donegal. He pointed out the difference in uses to which Ms. Roche replied that her point in referring to the Buncrana property was that the swimming-pool there was deemed by the Valuation Office to be a Community Hall and that the subject premises should also be considered a Community Hall and therefore exempt from rates. This was the case with the Ennistymon facility, though the latter was multi-storeyed and many times greater in area, whereas the subject occupied a much smaller space on a ground floor only. She acknowledged that the Ennistymon community facility integrated a large hall capable of accepting large groups of people for competitions such as basketball, for dances and such activities, which were often attended by hundreds of ticket paying patrons.

She offered her view that the subject property was capable of accommodating a group of between 70 – 80 people, and noted that in excess of 30 persons recently attended the Radio Station’s AGM. She confirmed to the Tribunal that Dublin City Council, i.e. the Rating Authority in this case, was also a member of the Association of the Station.

Respondent's Case

Mr. Paschal Conboy then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. Mr. Conboy, from the outset, confirmed that the subject premises was used as a broadcast centre for a radio station and the words labelling the various uses of the rooms were those extrapolated from the Layout Plan 2.4, as provided by Anna Livia FM to the Valuation Office, and as contained in page 5 of his précis of evidence and copied hereto at Appendix 2. He indicated that the Green Room is separated from the rear office area by stud partition and provided a summary of the following ceiling heights:

a) Green Room	3.22 metres
b) Kitchenette	2.44 metres
c) Editing Room	3.32 metres
d) Office Area (rear)	3.16 metres
e) Corridor	2.46 metres

The general dimension taken from the underside of the overhead concrete deck to the floor below was 4.12 metres offering maximum headroom of 3.56 metres. He also stated that the back room was fitted with full-length glazing. He said that he could not describe either of the rooms, i.e. the Green Room and/or the rear office area as a hall and offered his opinion that though “meeting rooms” and “halls” may be used for similar purposes, they do not have the same intended meaning, but acknowledged that there may exist certain crossover in the interpretation given to these words. He offered the further view that a Community Hall is generally of a traditional type, which might include a Sports Hall which might also be used for dancing and other community activities. He stated that although the Green Room here was used for reception purposes, there existed a separate reception area to the front of the subject property.

Cross-examination conducted and arguments adduced by Mr. O’Gorman

Mr. O’Gorman referred to Page 2 of a copy of Mr. Conboy’s Appeal Report dated 2nd June 2005, which he handed in at the Hearing. In particular, he referred to that part of Page 2 which commenced in the 7th paragraph with the statement;

“There is undoubted involvement/participation by inhabitants of Dublin City. There is undoubted “community” involvement”.

Mr. O’Gorman then also drew attention to what he considered to be some contradiction to that statement on the same page of Mr. Conboy’s report, indicating that he (Mr. Conboy) did not believe that:

“...the occupier permits the subject premises to be used for purposes which involve the participation by inhabitants of the locality generally..”

and that he believed that:

“...inhabitants with a specific interest in broadcasting use the premises...”

and further that:

“...the purposes are recreational or otherwise of a social nature..”.

Mr. O’Gorman drew Mr. Conboy’s attention to the Valuation Office **Standard Operating Procedure – No. 5 Community Halls** (a copy of which is attached hereto as Appendix 3) and in particular to the final bullet point under paragraph 2 (Practical Application) of that document. He then sought Mr. Conboy’s view as to whether the use of “etc” within the parenthesis at the end of that last bullet point might be construed to include community radio operations. Mr. Conboy would not agree to such an interpretation.

Mr. O’Gorman then referred to the Ennistymon Community Hall which he said he had visited in recent times and Mr. Conboy stated that, though he had not visited it himself, he had reviewed a copy of one of his colleague’s reports on same, who had in turn visited the property.

Mr. O’Gorman provided the Tribunal with a summary of his written legal submission attached hereto as Appendix 4 and then drew attention to Mr. Conway’s written legal submission and with particular reference to Page 5 of same (submission attached as Appendix 5 hereto), under the heading of “Exclusivity of User”, and challenged the statement therein by Mr. Conway that the subject premises is “never” used as a Community Hall. Mr. O’Gorman stated that the subject premises should be considered as a Community Hall in the same manner inasmuch as a similar facility could be used by the Ancient Order of Hibernians, the Orange Order, a Sailing Club, or such like, and contended that the use by Anna Livia FM as a radio station serving a community should satisfy Rule No. 5 in the guidance notes for Valuers in the Valuation Office contained in Standard Operating Procedure – No.5. Mr. O’Gorman contended that, per Henchy J. in the Supreme Court Judgement in the **Inspector of Taxes –v- Kiernan [1981] IR 117** (“the Kiernan case”), the colloquial mode satisfies the interpretation

and he accordingly concluded that Standing Operation Procedure - No. 5 effectively estopps the Valuation Office from listing the property for rating purposes.

Arguments adduced by Mr. Conway

Mr. Conway, in his submission, reminded the Tribunal of the earlier evidence provided by Ms. Roche who, he said, had repeatedly stated that the subject premises was never used except for purposes of radio broadcasting, and that all meetings held therein were related to the production of programming. Mr. Conway therefore contended that, with the exception of the Anna Livia Group, no grouping from the community had used the premises to date, and therefore the sole and exclusive user of the subject property was the Appellant, namely Dublin Public Service Radio Association Ltd., broadcasting under the name of Dublin Anna Livia FM, for its sole purpose of broadcasting. He stated that the user and usage of the premises is crucial to the argument as it must be seen for the single purpose of broadcasting, (and not purposes) and as not for “ordinary use for purposes of participation by the community generally”. He stated his view that the premises is not in general use by the community and that people coming in to the premises are not doing so on community business.

He then proceeded to address the physicality of the premises citing the Valuation Act 2001 provision, which contemplates that the premises, if exemption is to be granted, must be a “hall or similar building”, and reminded the Tribunal that Ms. Roche, in her direct evidence earlier, had agreed that the Green Room and rear office area could not be considered as a hall. Mr. Conway stated that Mr. Conboy correctly referred to the natural and ordinary meaning of words under the Act, and he also cited Henchy J. in the **Kiernan case** - that words should be given their ordinary or colloquial meaning. “Hall”, he said, had to be given its ordinary, colloquial meaning which would include, for example, “*large building*”, “*high ceiling*”, “*available to the community for multiple usage*”. He argued that actual usage, (and not potential usage), must be considered very different and distinct from a singular use, e.g. a bingo hall or a convent hall. He also contended that the element of community was critical to the case being argued, as it would imply that a number of participation purposes would actually feature and not just a single use or purpose such as radio broadcasting. He said that the Ennistymon Hall was used for many purposes offering participation to a large number of community groups.

Findings & Conclusion

The Tribunal has carefully considered the contents of the written submissions made by both parties to the Appeal and, in so doing, has reached the following findings and conclusions.

The grounds of appeal in this case are that the subject property is a “community hall” and accordingly is relevant property not rateable within schedule 4 paragraph 15 of the Valuation Act, 2001. Paragraph 15 provides that “any building or part of a building used exclusively as a community hall” is relevant property not rateable. A “community hall” is defined in section 3 of the 2001 Act on page 9.

Statute Law – Valuation Act, 2001.

Section 3 of the Valuation Act, 2001 sets the legal framework as to the meaning of a “community hall” within the meaning of the Act. We all may have our own ideas as to what constitutes a community hall. However, for the subject property to be exempt it must be a “community hall” within the meaning of the Act.

A “community hall” means or is understood under the following criteria.

- A hall or similar building
- The occupier ordinarily uses it or ordinarily permits it to be used for purposes which
 - Involve the participation of the inhabitants of the locality generally and
 - Are recreational or otherwise of a social nature
- The building or part of the building must be used exclusively as a community hall

Negative test

- The community hall cannot be the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904
- Cannot be used primarily for profit or gain

Comments

We look to the concept of a community hall from two aspects

- Physical attributes
- Use or uses.

Case Law

First of all we look to Irish case law for the interpretation of statute law. The **Kiernan case** is helpful. The Supreme Court set 3 guiding principles in the interpretation of the word “cattle” as to whether the term should include pigs. Two principles are relevant in this case:

1. If the statutory provision is directed at the public at large rather than a particular class, then the word or expression should be given its ordinary and colloquial meaning.
2. The Judge should rely on his own experience before resorting to dictionaries.

In this case the term “community hall” is directed to the public at large, rather than a particular class such as a professional body of people. Accordingly, the term “community hall” must be understood in its ordinary and colloquial sense. In other words what the man in the street would understand by the term “community hall”.

It could mean a large hall or chamber which can accommodate a considerable number of people and is available for use by the local community for a variety of purposes which could include concerts, meetings or recreational uses.

Physical Attributes – “Community Hall”

The configuration of the building or shape of the hall is not material. However, proportionality in the physical sense as to what we understand by “community hall” is important. The main emphasis is on hall or large room and this of course may also have ancillary rooms such as toilets, kitchen, tea room, or changing rooms. The focus is on a “hall” or large chamber for the community as understood in its ordinary sense or meaning with spatial area greater than other ancillary units in the building. The hall is the dominant feature. This does not take from the fact that a “community hall” could well be an integral part of a large building which is used for other purposes. The “community hall” itself has to be used exclusively as such.

Usage - “Community Hall”

Words we have to consider in this regard are:

- **Ordinarily** - The occupier must ordinarily use it as “community hall” or ordinarily permit it to be used as a “community hall”. Use must have a custom or habit and not just for “ad hoc” use.
- **Purposes** - This indicates multiplicity of use. This would make it more communal and open to the community generally.
- **Generally** - This relates to the point above that the community generally should be involved and not just a section of the community.

It appears to the Tribunal that the subject property is primarily a radio station and does not meet the physical attributes of a community hall. In fact the subject property has a substantial part of its internal space area occupied as studios and control rooms for the purpose of the transmission of sound broadcasting. We have to consider the building as a whole, being the subject property, not just part of the building. It is in fact a building used as a radio station, not a “community hall” as understood colloquially as referred to above. The main purpose is that of a radio station. In the building the radio station is the dominant feature, not the hall. The building underwent non structural changes to make it more suitable for broadcasting. There are two halls, and one serves as a waiting room (Green Room) for people about to participate in radio programmes. This hall would be ancillary to the purpose of a radio station.

Conclusion

There is absolutely no doubt in our minds that the radio station brings great benefits to the community with the spectrum of radio programmes available with regard to entertainment, sport, news, current affairs, history, family law matters and relationships, social issues, music and cultural matters, with programmes geared for the young, mature and older listeners. We acknowledge the fact the radio station engages in community work with eight local schools in the Docklands Development area by participation in radio programmes which must enhance their self confidence and educational development.

However, having considered all these activities and how they benefit the community, they nevertheless come under the umbrella of broadcasting which while it may be recreational or social is nevertheless a single purpose being that of broadcasting. Moreover the building is ordinarily used for such a purpose.

The Act uses the word “purposes” which, to give it its literal interpretation, involves a multiplicity of uses which involves the participation by the inhabitants of the locality “generally”. While sections of the local community may participate in radio programmes we believe, in view of the aforesaid, that this does not satisfy the requirements of the Valuation Act which indicates to us multifunctional uses, open to the local community generally.

Even if the subject property was to be considered a “community hall” in the colloquial sense, it is certainly not used exclusively as such as the Act requires, as it is used as a radio station.

Accordingly, the subject property which is used primarily as a radio station and is not a building or part thereof used exclusively as a “community hall” cannot be deemed to be relevant property not rateable under the Valuation Act, 2001. It is therefore rateable and the Tribunal hereby affirms the determination of the Commissioner of Valuation.