

Appeal No. VA05/3/072

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

**Coolock Development Council Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office(s) at Lot No. Unit 1.4.5.11, Bunratty Road, Northside Enterprise Centre,  
Kilmore C, Artane, County Borough of Dublin.

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Brian Larkin - Barrister**

**Member**

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

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 14TH DAY OF FEBRUARY, 2006**

By Notice of Appeal dated the 15th day of August, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2.00 on the above described relevant property.

The Grounds of Appeal are set out in a letter accompanying the Notice of Appeal, a copy of which letter is contained in Appendix 1 to this judgment.

The appeal proceeded by way of oral hearing held at the Valuation Tribunal, Ormond Quay Upper, Dublin 7 on the 14<sup>th</sup> November 2005. At the hearing the Appellant was represented by Mr. Padraic A. White, Chairman of the Appellant body. The Respondent was represented by Mr. James Devlin, BL, instructed by the Chief State Solicitor.

### **THE ISSUE**

Whether or not the property in question is rateable having regard to the provisions of the Valuation Act, 2001 and the Schedules thereto.

### **THE PROPERTY**

Northside Enterprise Centre is made up of 23 small units in a purpose built two-storey office building. It is located in the Northside Enterprise Centre on Bunratty Road, just off the Oscar Traynor Road in Coolock. The subject property incorporates administration offices of Coolock Development Council Limited including reception and Units 1, 4 and 5 on the ground floor as well as Unit 11 on the first floor. The total floor area is 178.87 sq. metres. The property is used for office administration and is freehold.

Both parties provided written submissions in advance to the Valuation Tribunal.

### **THE APPELLANT'S CASE**

On behalf of the Appellant Mr. Padraic White referred to the submissions filed on behalf of Coolock Development Council Limited ("CDC"). In evidence he indicated that he had been Chairman of CDC since 1991 and that Mr. John Matthews was the General Manager. He submitted that the greater Coolock area is one of the most deprived areas in the country with deprivation being felt at an extreme level. He submitted that the area was chosen as one of the areas requiring administration of special needs in order to assist the community. His contention was that the CDC's role was to run the centre in the interests of the community. The centre is responsible for 96 long term unemployed persons. 46 of those are on job initiative schemes designed to assist people who are over 35 and have been 3 years unemployed. There are two social economy schemes operated by the CDC which engage 15 people with similar requirements.

Mr. White submitted that the traditional concept of "*charity*" did not apply in today's world, the more important and appropriate concept being that of "*social inclusion*". In his

submission it is this concept which modern day charitable institutions like the CDC try to embody today. The 96 unemployed persons for whom the CDC are responsible are being helped in a real way to develop; they are not simply just being given a “*handout*”.

Mr. White pointed out that the Northside Partnership and the Northside Counselling Centres are both exempt from rates.

Mr. White then outlined the history of the Enterprise Centre. The new Enterprise Centre was set up in 2002. There were 23 units in the centre, two of which were exempt from rates (St. Michael’s House and the National Training and Development Institute). Mr. White made it clear that the property in respect of which he sought exemption for CDC was the reception area, administrative offices, canteen and tea room of the CDC. In his view the objectives of the CDC were two-fold. The aim of the CDC was to encourage small businesses and entrepreneurs; however it was also to encourage such small businesses to employ local people. He referred in particular to the Northside Enterprise Centre Licensees Statement of Intent Local Labour Charter. Licensees signing this Statement of Intent agree to employ the maximum number of people from the area (at least 20%), agree to advertise vacancies through the Northside Partnership Local Employment Services, Northside Employers Network and FAS Local Employment Services and agree to cooperate with the CDC in monitoring the commitment to the Local Labour Charter.

Mr. White contended that the primary object of CDC was to promote community enterprises and small business at all levels in Bonnybrook Parish in the north side area of Coolock. A further secondary object (to be found at paragraph 2(12)) was to seek donations, funds or other financial support for the main charitable object of the company (emphasis added). In his submission the main issue was whether or not the main objects clause complied with the requirements of the Valuation Act, 2001. He submitted that the main objects clause read together with the secondary object and having regard to the evidence showed that the activity carried out by the CDC was charitable. In his view promotion of community enterprises and small businesses was equivalent today to the older concept of charity, i.e. a community-based effort to foster self-help and self-support.

On cross-examination by Mr. Devlin he accepted that while the properties in question comprised of four units what happened elsewhere was significant. He accepted that 40% of

the business carried out in the CDC was commercial though he did not accept that the business carried out by the CDC could not therefore be described as exclusively charitable. With regard to the charter to be signed by the Licensees he made it clear that while the charter in question was a Statement of Intent it was a very clear statement of very clear intent. In submissions Mr. White made it clear that he was only seeking exemption for four units rather than for the whole centre. In his view these four units supported a sufficient range of charitable activities. Referring to the list of community projects at page 2 of his submissions (see Appendix 2 hereto) he submitted that it was hard to think of any of these projects which could not be described as charitable. As pointed out already, two of the projects were themselves exempt from rates. In effect the four rooms for which exemption was sought were used to manage these activities and to manage in effect 96 people.

Mr. White contended that while 40% of the activities carried out in the centre was commercial this was a necessity in order to try to encourage self-help. It was also necessary to try to keep the centre viable. He made it clear however that none of the occupants were paying market rent in any of the units. In addition the CDC had loans totalling some €300,000 to be paid back and obviously rental income was necessary to repay those loans. Because the profile of the centre was different the rental strategy was likewise different. He was firmly and passionately of the view that the motivation of the Board of the CDC was to benefit others without conferring a benefit on themselves. In his submission society had made a transition from what he described as “*hand-out charity*” to self-help where people were taught self-confidence and through training were provided with opportunities for themselves to take steps on the ladder in order to obtain employment.

In conclusion he made it clear that the four units in question in the new enterprise centre paid rental of €20 per sq. foot. It appears that the community projects listed on page 2 of his submission are housed in the former St. John Viannay Boy’s National School which is now the Coolock Development Centre.

## **THE RESPONDENT’S CASE**

On behalf of the Respondent Mr. Devlin indicated he would not be going into evidence but would instead be relying on submissions as this was essentially a legal issue.

Mr. Devlin firstly submitted that it was clear that the property in question was not being used exclusively for charitable purposes. It was clear that there was a licence granted and it was a condition of being a licensee that one signed the Statement of Intent. However if one did not comply with the Statement of Intent that did not mean that one would lose one's licence.

In addition it was clear that 40% of the units were being run on a purely commercial basis. Another 40% of the units were in a start-up mode and the remaining 20% could be said to be "*community projects*". Of the 23 units in the centre 4 were occupied by the CDC. The remainder were occupied under licence with two premises (St. Michael's House and the National Training and Development Institute) being exempt. Mr. Devlin submitted that the involvement of FAS was not of itself enough to render the use exclusively charitable. While he conceded that there might well be charitable elements in what the CDC did, this of itself was insufficient to allow it to be described as carrying out charitable purposes.

Mr. Devlin's second principal submission related to the requirement of the Valuation Act and the main objects clause. In his submission in order to be a charitable organisation within the meaning of the Valuation Act, 2001 the Memorandum of Association or Articles of Association must state as its main object or objects a charitable purpose and specify the purpose of any secondary objects for which provision was made to be the attainment of the main object or objects.

Mr. Devlin said that in examining the main objects clause of the company it was clear that the main object for which the company was established was "*to promote community enterprises and small business at all levels in Bonnybrook Parish and the north side area of Coolock*". In his submission the inclusion of "*small business*" was fatal to the concept of charitable purpose. Further, he contended that there was no indication of what was meant by a "*community enterprise*". There was no express reference to all or any of the traditional definitions of "*charitable purpose*". While this of itself was not necessarily fatal the absence of a reference to "*charitable purpose*" in any way created some difficulties. He contended for example that an objects clause that stated that the object for which the company was established was for the charitable purpose of "*promoting community enterprise*" might of itself be of some assistance. In his submission however a reference to community or community enterprise was insufficient. The essence of charity was conferring of a benefit to

others without a gain to oneself. In his submission it could not reasonably be said that the CDC was in the circumstances a charitable organisation entitled to exemption from rates.

## THE LAW

Section 15 of the Valuation Act, 2001 makes it clear that subject to sections 16 and 59 the relevant property referred to in Schedule 4 shall not be rateable. Paragraph 16 of Schedule 4 (headed “*Relevant Property Not Rateable*”) refers to “*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.*”

In addition Section 3 of the Act defines “*charitable organisation*”. In order for a company to be a “*charitable organisation*” it must, inter alia, in its Articles of Association, state as its main object or objects a charitable purpose and specify the purpose of any secondary objects for which a provision is made to be the attainment of the main object or objects.

It is clear that the CDC has been granted charitable status by the Revenue Commissioners. It is equally clear however that that of itself is not determinative of whether the organisation fits within the definitions set out in the Valuation Act, 2001 or the law on “*charitable purposes*” in the context of rateable valuations. In this regard the Determination of the Valuation Tribunal in **VA03/3/007 - Dance Theatre of Ireland Limited** makes it clear that the “*code*” under which the Revenue authorities decide to grant charitable status is separate and distinct from the applicable principles of the law relating to ratings.

It is also clear that in order to come within the rubric of “*charitable organisation*” within the meaning of the Valuation Act, 2001 a company must comply with the provisions of Section 3(a)(iii) of the Act. Indeed even if such a company is carrying out an activity or activities which might be regarded as being “*charitable purposes*” this will not be sufficient of itself to entitle the company to exemption from rates if it does not comply with the requirements of Section 3 of the 2001 Act. In this regard the decisions of the Tribunal in **VA04/1/008 - Clones Community Forum Limited** and **VA04/2/013 - County Monaghan Community Network Limited** are of relevance. In particular in the latter Determination the Tribunal concluded (at page 11):

*“It would appear, under the provisions of the 2001 Act, that an organisation, no matter how laudable or well-intentioned its purposes and aims may be, must, in order to be entitled to exemption under paragraph 16 of Schedule 4, conduct its affairs in accordance with a constitution which is consistent with the conditions set down in Section 3(1)(a) of the Valuation Act, 2001”*

It seems to us that the case before us raises essentially two issues:

- (i) Does the Appellant’s Memorandum and Articles of Association comply with the provisions of Section 3 of the Valuation Act, 2001?
- (ii) Is the property in respect of which exemption is sought used exclusively for charitable purposes?

(i) **Main Objects Clause**

In our view the Memorandum and Articles of Association of the Appellant company do not comply with the provisions of Section 3 of the Valuation Act, 2001. There is no express reference to a “*charitable purpose*” within the wording of the main objects clause. While it is conceivable that compliance could be achieved without expressly using the words “*charitable purpose*” within the main objects clause, it is our view that there must be considerable doubt as to whether or not the promotion of community enterprise can be regarded as a charitable purpose without further explanation or consideration. The evidence suggests that the area in respect of which the community enterprises are being fostered is a disadvantaged area. This may indeed be so. But even if the area specified is a disadvantaged area this does not of itself mean that every community enterprise which takes place in the area must be regarded as being a charitable purpose.

However even if one was disposed to consider promotion of community enterprises in the particular area as constituting a charitable purpose, it is clear that the main objects clause is not confined to this activity. The main objects clause makes it clear that the company is established not alone to promote community enterprises but also “*to promote ... small business at all levels*”. While it may well be economically sensible and even desirable to promote small businesses within particular areas, in our view

this does not render the promotion of small business a charitable purpose. While there may well be some sort of “*trickle down*” effect in the general community from the running of successful small businesses within that community, it does not appear to us that the promotion of small business can be said to be a charitable purpose.

Therefore even if the main objects clause referred only to the promotion of community enterprises in the particular area and therefore could be said to state as its main object a charitable purpose, the fact that the same main objects clause also states as its object the promotion of small business in our view means that its main objects include non-charitable purposes and it is therefore outside of the ambit of Section 3.

Therefore we are of the view that the Appellant is not entitled to exemption from rates for the reasons set out above.

(ii) **Exclusively charitable purposes:**

Even if we are wrong in relation to the first issue, it appears to us that there must be very considerable doubt as to whether or not the premises could be regarded as being used “*exclusively for charitable purposes*”. As is clear from the matters set out above the object of the CDC is, inter alia, to promote small business in the area. We have already expressed the view that this does not of itself constitute a charitable purpose. We note that 40% of the units which are administered from the Appellant’s premises the subject matter of this appeal are what might be termed commercial lettings. In addition it appears that of all the premises under the umbrella of control of the Appellant, only two are exempt from rates on charitable grounds. In these circumstances it appears to us that while there are undoubtedly laudable charitable elements in some of the work which the CDC does, there is a very substantial component which would have to be regarded as commercial rather than charitable. In the circumstances we find it hard to see how the premises the subject matter of this appeal could be said to be used “*exclusively*” for charitable purposes.

## **THE DECISION**

The Appellant’s property the subject matter of the appeal is rateable property within the meaning of the Valuation Act, 2001. The appeal is dismissed.