

Appeal No. VA06/2/093

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

St. Vincent's Healthcare Group Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Carpark at Lot No. 103 - 127A (pt of), Merrion Road, Pembroke East D, Pembroke East, County Borough of Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF DECEMBER, 2006

By Notice of Appeal dated the 29th day of June, 2006, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,400.00 on the above described relevant property.

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

"The property constitutes relevant property not rateable by virtue of Schedule 4 (Paragraphs 8 & 16) of the Valuation Act, 2001. Property should be not rateable under Schedule 4. Property should be excluded under Schedule 4".

1. This appeal proceeded by way of an oral hearing in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 6th October, 2006.
2. At the hearing, the appellant was represented by Mr. Owen Hickey B.L. instructed by Mr. Colm Duggan of Arthur Cox, Solicitors. Mr. Brendan Conway, B.L. instructed by the Chief State Solicitors Office appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Cormac Maloney, the financial controller of St. Vincent's Hospital gave evidence in relation to the procurement and operation of the property concerned.

The Property

3. The property concerned in this appeal is a multi-storey car park located within the St. Vincent's Hospital and convent complex. From the evidence tendered, the following material facts emerged:
 - St. Vincent's Healthcare Group Ltd. (the Hospital) is a company limited by shares established under the Companies Act 1963-2001.
 - Pianora Ltd. is a wholly owned subsidiary company of the Hospital in which ownership of the property concerned is vested.
 - The Hospital occupy the car park under the terms & conditions of a full repairing and insuring lease from the 1st October, 2002 for a term of 9 years and 11 months subject to an initial yearly rent of €375,000.
 - Q Park Ireland Limited have a service contract to manage the car park on behalf of the Hospital.
 - The car park is a three storey structure with a total of 450 spaces.
 - Staff users of the car park are charged a lower rate than other users. Staff on average use almost 50% of the total spaces available.
 - There are no dedicated spaces to any particular class of user and spaces are available to all on a "first come first served" basis.
 - There are additional surface car parking spaces in the Hospital complex but these are dedicated to staff use only.
 - In all, the staff complement of the Hospital is about 2,500 but, due to the nature of the hospital services, most of the staff work on a shift basis.

- Construction of the car park was funded from the Hospital's own resources on foot of a long term bank loan. Cost of construction was €17 million.
- All receipts from the car park are channelled through the accounts of the Hospital and any surplus generated accrues to the benefit of the Hospital and its activities.

The Issues

4. The rateable valuation of the property concerned was first assessed in November, 2005 at a figure of €1,400. The quantum of the valuation is not in dispute and the only issue before the Tribunal is whether or not the property concerned is a relevant property not rateable by virtue of Schedule 4 (paragraphs 8 & 16) of the Valuation Act, 2001.

The Appellant's Submission

5. Mr. Owen Hickey, on behalf of the appellant, submitted that the property concerned is relevant property not rateable in accordance with the provisions of Schedule 4 of the Valuation Act, 2001. In summary, Mr. Hickey submitted that the property concerned met the criteria set down in Schedule 4 on two counts; firstly, the appellant is manifestly a body qualifying under paragraph 8(a) and/or 8(b) and the property concerned is being used by the appellant for a purpose connected with those purposes set down in paragraph 8. Secondly, and in the alternative, the property concerned is occupied by a body which is a charitable organisation as defined in section 3 of the Act of 2001 and the property concerned is being used exclusively for charitable purposes and hence meets the requirements set down in paragraph 16.
6. In support of his first submission, Mr. Hickey drew the Tribunal's attention to a number of leading cases dealing with exemption from the payment of rates. **VA04/1/008 - Clones Community Forum Ltd.** – (citing **Barringtons Hospital v The Commissioner of Valuation [1957 AR229]** and **VA04/1/001 - City of Dublin VEC** – (citing **United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council [1957 1 WLR]**) and **Aldous & Others v Suffolk London Borough Council [1968 1WLR 1671]**). In regard to the **CDVEC** case, Mr. Hickey said that the circumstances in that appeal were similar to those pertaining to this appeal. In the **CDVEC** case the Tribunal held that the administrative offices were inextricably linked to the various educational activities of the VEC. In this instance the provision of a car park

was he said, inextricably linked to the main objects of the appellant which are the caring for the sick. Furthermore, he said, there has always been car parking facilities at the Hospital and there was no valid reason for this new car park facility to be treated differently.

The Respondent's Submissions

7. Mr. Brendan Conway, in his submission said that the property concerned was a car park and was occupied solely for that purpose and not "*for the purpose of caring for sick persons*" etc. The fact of the matter was, he submitted, that the core purpose of the appellant could continue to function without the provision of the car parking facilities. The fact that the provision of the car park was desirable from a staff, visitor or patient point of view was not to say that it was essential or inextricably linked to the core activity of the appellant. In short, if the car park failed the inextricably linked test then it did not meet the requirements of paragraph 8 of Schedule 4. Similarly if it could not be shown that the car park was used exclusively for charitable purposes then it failed also to meet the requirements of paragraph 16.

Findings

1. At the hearing the parties to the appeal were represented by counsel and the Tribunal is indebted to them for the depth, quality and clarity of their submissions which brought the issues between them into sharp focus. The Tribunal has carefully considered the submissions and the various authorities and precedents referred to and concludes as follows.
2. Schedule 3 of the Valuation Act, 2001 sets down the various categories of properties which are relevant properties for the purpose of the Act. Schedule 4 contains a list of properties which are relevant property not rateable and in the context of this appeal, paragraphs 8 and 16 which state as follows are particularly relevant.

8.—*Any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital, being either—*

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer and the care or treatment provided by which is made available to the general public (whether with or without a charge being made therefor).

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.

3. The subject property in this appeal is a multi-storey car park located within the Hospital campus and is occupied by the appellant under the terms and conditions of a lease between Pianora Ltd. and the appellant at an initial yearly rent of €375,000.
4. The car park is available to staff, patients and visitors alike subject to the payment of the appropriate fee. Whilst the fee payable by staff members is less than that paid by other users, they are afforded no other beneficial treatment, insofar as the spaces are available on a first come first served basis.
5. All income from the car park is remitted to the appellants and any surplus after all outgoings, including rent, are paid is retained and used for the appellant's purposes which by common consent are those of a charitable organisation as defined in Section 3 of the Valuation Act, 2001.
6. In order to obtain relief under paragraph 8, the appellant must show that the property concerned is being used for "*the purposes of caring for sick persons, for the treatment of illness or as a maternity hospital.*" On the face of it the car park itself is not so used. However, if it can be shown that the use of the car park by the appellants is inextricably linked to the carrying out of the stated aims of the appellant, namely the caring for sick persons, then it is a relevant property not rateable as per Schedule 4. In support of this

proposition, Mr. Hickey relied on the findings of this Tribunal in the case **VA04/1/001 - City of Dublin VEC**.

7. At first glance there are undoubtedly similarities between this case and the **CDVEC** case but close investigation of the facts, we believe, indicate that there are material differences. In the **CDVEC** case, this Tribunal first found that the CDVEC was an educational institution within the meaning of paragraph 10 of Schedule 4 and then went on to find that *“the processing of application forms and the processing of grant applications”* was inextricably linked to *“the various educational programs and facilities provided by the VEC”*. In this case the circumstances are not analogous, in that the provision of car parking is not a necessary operative element of the functioning of the Hospital. Whilst it may be desirable to have car parking, it is not essential to the provision of medical services in the Hospital. In fact the car park is occupied by the Hospital solely for the purposes of providing car parking to a wide variety of users on a temporary basis subject to their paying the appropriate charge. This activity has all the elements of a commercial activity and is so remote from the provision of medical services as to be not capable of being considered related to the main objects of the appellant.
8. As previously stated the Hospital is a charitable organisation under section 3 of the Act, hence it follows that if the property concerned can be shown to be used exclusively *“for charitable purposes”* then it meets the requirements of paragraph 16 of Schedule 4.
9. In the **Oxfam and the Birmingham City District Council** case [AC 1976] it was held that premises *“used for charitable purposes”* meant directly related to the achievement of the objects of the charity. Thus if it can be shown that the user of the property concerned is wholly ancillary to or directly facilitates the carrying out of the charitable objects of the appellant, that would be sufficient for it to qualify for relief under paragraph 16. In our opinion, the test of whether or not the use of the car park is ancillary to or directly facilitates the charitable objects of the appellant is similar to that of being inextricably linked under paragraph 8. In our opinion the use of the property concerned for the provision of car parking to staff, patients, visitors and others alike is neither wholly ancillary to nor directly facilitates the charitable objects of the appellant. The fact that any surplus monies generated from the operation of the car park go to the benefit of the appellant is not sufficient to qualify for relief from the payment of rates under paragraph

16. A merely financial nexus is not sufficient to bring the user of the car park under the ambit of paragraph 16 and this finding is consistent with the findings in the **Oxfam** case, the **Polish Historical Institution Ltd v Hove Corporation (1963) 10 RRC 73** and the **Belfast Association for Employment of Industrious Blind v Commissioner of Valuation for Northern Ireland [1968] NI.21**.

Determination

Having regard to the above, the Tribunal finds that the property concerned is not relevant property, not rateable in accordance with Schedule 4 of the Valuation Act, 2001.

And the Tribunal so determines.