

Appeal No. VA06/3/010

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

**Ballymun Arts and Community Resource Centre Limited**      **APPELLANT**

**and**

**Commissioner of Valuation**      **RESPONDENT**

RE: Theatre, Office(s), Restaurant/Café at Lot No. 2C/ 1 F1-1,0,1, Axis Centre,  
Stormanstown, Ballymun C, Ballymun, County Borough of Dublin

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Leonie Reynolds - Barrister**

**Member**

**Mairéad Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 9TH DAY OF JANUARY, 2007**

By Notice of Appeal dated the 17th day of July, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,183.00 on the above described relevant property.

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

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 16<sup>th</sup> day of October, 2006. The appellant was represented by Mr. Owen Hickey, B.L., instructed by F.N. Murtagh, Solicitors, Kingscourt, Co. Cavan with Mr. Ray Yeates, Director of the Appellant Company and Mr. Joe Bardon of Bardon & Co. The respondent was represented by Mr. Colm Mac Eochaidh, B.L., instructed by the Chief State Solicitor's Office with Ms. Orlaith Ryan, B.Sc (Surveying), Dip. in Prop. Ec., MIAVI, a Valuer in the Valuation Office.

The Tribunal was furnished with written submissions on behalf of the appellant and also submissions in writing on behalf of respondent. Both parties adopted their submissions as evidence at the oral hearing.

The issue was whether or not the property in question is rateable having regard to the provisions of the Valuation Act, 2001 and the schedules thereto. Quantum was agreed and no question arises in relation thereto.

### **The Property**

The property consists of a basement, ground and first floors of a modern four storey over basement building serviced by a lift and situate at Main Street, Ballymun. The building is known as the Axis Building.

The ground floor consists of a 211 seat theatre, a café bar and a crèche. The first floor consists of a second performance area, conference facilities, training room and offices. The basement consists of recording and rehearsal studios along with plant areas. The café bar has a full seven day licence.

### **The Appellant's Case**

On behalf of the appellant, Mr. Ray Yeates, Director of the appellant company gave evidence under oath and stated he had read Mr. Bardon's précis and he confirmed that it was factually correct. He gave a description of the premises and the range of activities carried on therein.

On the ground floor there was a crèche, reception area, a 211 seat theatre and a café bar with a seven day licence. He stated that the licence was used as a theatre licence only and that the seats in the theatre could be moved back to form an additional conference hall or restaurant.

In the basement there was a recording studio and 2 band rehearsal rooms. These were used by local musicians. On the first floor there was an art gallery, dance studio and 2 art training rooms and a conference centre. The property on the 2<sup>nd</sup> and 3<sup>rd</sup> floors was separately rated and not concerned in this appeal.

There were 6,000 houses being built at present in Ballymun. Ballymun Arts and Community Resource Centre Limited (hereafter referred to as the appellant) had their centre at Main Street, Ballymun in the subject premises, known as the Axis Centre. The site for the Centre was on land granted by the city. The area was a highly disadvantaged area. The Centre provided facilities for excellence for the community in the area. The population of Ballymun was about 16,000. The appellant was trying to provide high quality artistic and social resources to the people in the area. They got funding from various sources to help run the Centre.

A dance teacher charged for classes but the Centre got nothing from him/her. A commercial rent would be €50 - €75 per hour whereas they rented the dance studio at a nominal €5.00 per hour. This covers cleaning, repairs, maintenance etc. He said that a "Community Hall" was defined in the Valuation Act and that they complied in full with this definition as occupiers. He said that the overwhelming use of the Centre was by local people, outsiders were afraid to go out to this area. There were performances of all types in the Centre - plays, bands, active citizens events, seminars on childcare etc. and all were almost exclusively for Ballymun residents.

Cross-examined by Mr. Mac Eochaidh, he said that the centre was funded by Pobal, a government agency for about 50% and the rest by the Health Boards, Children at Risk etc. The crèche charge was low, about 40% to 50% of what other crèches charged. They charged about €70.00 a week for those not subsidised. They were 40 places in the crèche, 15 were fully funded and 25 half funded.

They pay a Receptionist. The café prices were low, a cup of tea or coffee cost about €1.00 and hot meals cost less than €5. He confirmed that anyone could go to the café – there was no prohibition on anyone from outside the area using the café or the crèche but it was rare for this to happen.

The bar licence was used as a theatre licence only and prices were lower, about 50 cent to a €1.00 less than public house prices. The bar only broke even. A licence was a must for a theatre.

All theatre performances must directly benefit the community in some way. No one ever came in to make a profit. They controlled the price of theatre ticket at not more than €12 per ticket with one exception of An Taibhdhearc which wanted to charge €20 per ticket to its upcoming production. This price was still in negotiation as it would cause a difficulty for local patrons. There was a Gaelscoil in the area. Anyone could come and watch the performances.

The recording studio charged for ESB, attendance of a technician, cleaning etc. The aim was to encourage people to use it. Money did not decide who used the studios. If the proposed user was subsidised they would charge close to the market value; if not they would charge less. There was no prohibition on people from outside the area using the studios.

There was no charge for the Art Gallery.

The Centre is funded by a €605,000 contribution a year – this is for the running of the entire complex. Artists can sell their paintings etc. and can come from outside the area. On the general question of the use of the Centre's facilities by people from outside the area he stressed that the criterion was that such use must directly benefit the community.

Axis had a "fact file" and applicants must fill out a form before using the facilities. They had strong objections to imposing charges which could not be afforded by the residents of the area.

### **Legal Submissions**

Mr. Hickey opened his submissions by stating that the old law prior to 2001 was very restrictive. Pursuant to the Poor Relief (Ireland) Act, 1838 a premises, to qualify for exemption, had to be "exclusively used for charitable purposes". The 2001 Act changed all of this. It provides that exemption applies to a property which is occupied by a charitable organisation that uses the property exclusively for charitable purposes. This was a wholly different legal concept and was a very important change in the law.

Thus, he said, in the present case while it may be contended that certain temporary uses of the premises for the time being do not constitute use of the property for charitable purposes, the paramount occupier, the appellant herein, who is the rated occupier, does use the property for charitable purposes. The test was that the property was exclusively used for charitable purposes.

He then pointed out that the main objects for which the appellant company was established were *“To oversee, operate, manage and run the Community Resource Centre for the benefit of the residents in the Ballymun area, for the purpose of encouraging the future development of the social, artistic, cultural, educational and economic fabric of Ballymun life.”*

He said that Paragraph 16 of Schedule 4 of the Valuation Act, 2001 defined as “relevant property not rateable”, *“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.”*

Charitable organisation is defined in Section 3 of the Act. In construing the meaning of the words “charitable organisation” for the purpose of this appeal the seminal case was **VA04/1/008 – Clones Community Forum Ltd.** there being no distinction between the objects of the appellant in the **Clones** case and the appellant herein.

In the **Clones** case the appellant failed on the grounds that the Memorandum of Association was not in compliance with the provisions of the Act of 2001 – which is not, he said, the position in this case. The appellant’s “charitable purpose” is set out clearly in the main objects in the Memorandum of Association of the company. He pointed out further that the Tribunal in their decision stated that the fact that the Memorandum and Articles of Association of the company did not repeatedly use the word “charity” does not prevent the organisation being one established for charitable purposes if the organisation otherwise fits within the concept. The test was whether the property was used exclusively for charitable purposes.

He then referred to Lord Macnaghten’s decision in **Commissioners for Special Purposes of Income Tax v Pemsel (1891) A.C. 531**. He stated that there were in effect four types of charity:

- (i) the relief of poverty
- (ii) the advancement of education
- (iii) the advancement of religion
- (iv) other purposes beneficial to the community.

He was relying on heading number (iv). He further pointed out that Lord Macnaghten's interpretation was followed to some degree in **Barrington's Hospital v Commissioner of Valuation (1957) I.R. 299**.

He then quoted from Lord Reid in **Glasgow Corporation v Johnstone (1965) A.C. 609** wherein he stated inter alia, "*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.*"

Again in this House of Lords judgment, Lord Reid stated that "*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.*"

### **Respondent's Case**

Mr. Mac Eochaidh submitted that in order to get exemption, you had to have a charitable organisation. He said that the draftsmen had fudged the definition of a charitable organisation in the Valuation Act, 2001. It must state in the main objects of the appellant company that the objects are for a "charitable purpose". In this particular case it was not stated in the main objects of the company and therefore the appellant's contention must fail.

He then referred to Paragraph 16, Schedule 4 of the Act, 2001 quoting it in full.

He said that the definition of a charitable organisation is set out in Section 3 of the Act and that for the purpose of this appeal the relevant provision is Sub-paragraph (a) (iii) as applied to a company.

Claims for exemption under this Section must comply in full with the definition and any organisation which does not fully meet this definition of charitable organisation is not entitled

to exemption even if it is carrying on a charitable purpose (**VA04/1/008 – Clones Community Forum Ltd.**).

Again in **VA04/2/013 – County Monaghan Community Network Ltd.** the Tribunal concluded *“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.”*

He then invited the Tribunal to approach the issue of “charitable purposes” and “charitable organisation” as it did in its determination in **VA06/1/012 – Citizens Information Service.**

He said that in this case the main objects clause in the Memorandum of Association does not expressly refer to a charitable purpose and it thus falls outside the strict requirements of the Act. There must be an express reference to a charitable purpose in the main object clause and this is an essential prerequisite to meeting the definition of “charitable organisation” although the object must also be considered to see whether it is truly a charitable purpose.

### **Findings**

The Tribunal having carefully listened to and considered all the evidence, submissions and arguments adduced at the hearing by the parties, makes the following findings:-

1. The main objects of the appellant company are set out in the Memorandum of Association at Paragraph 2 (i) therein.
2. The old law prior to the passing of the Valuation Act, 2001 was very restrictive. Under the provisions of the Poor Relief (Ireland) Act, 1838 a premises to qualify for exemption had to be *“exclusively used for charitable purposes”*.

After the 2001 Act the exemption applies to a property which is occupied by a charitable organisation that uses the property exclusively for charitable purposes.

3. In this case, while it may be contended that certain temporary uses of the premises for the time being do not constitute use of the property for charitable purposes, the paramount occupier, the appellant herein, who is the rated occupier does use the property for charitable purposes.
4. Lord Reid in the House of Lords decision in **Glasgow Corporation v Johnston (1965) A.C. 609** stated *inter alia*:
  - (i) “Once the respondents had been held to be occupiers then it is their use of the premises that we must consider.”
  - (ii) “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.”

There is therefore no legal distinction between the objects of the appellant in this case and the appellant in **VA04/1/008 – Clones Community Forum Ltd.** In that case the appellant failed on the grounds that the Memorandum of Association was held to be not in compliance with the Act of 2001. In this case the appellant’s charitable purposes are set out clearly in the Memorandum of Association of the company Paragraph 2(i).

5. In the **Clones** case the Tribunal addressed the arguments made by both sides as to whether “*the Forum carried out charitable purposes*”. It went on fully therein to deal with Lord Macnaghten’s decision in **Commissioners for Special Purposes of Income Tax v Pemsel (1891) A. C. 531** where he stated that there were 4 heads of charity namely:
  - i. the relief of poverty
  - ii. the advancement of education.
  - iii. the advancement of religion
  - iv. other purposes beneficial to the community.

The Tribunal is satisfied that in this case the main objects of the appellant company as set out in the Memorandum of Association, clearly fall within heading number four “other purposes beneficial to the community”.



6. It is not necessary, in the Tribunal's view, that there must be an express reference to a charitable purpose in the main objects clause in the Memorandum of Association. This is not an essential prerequisite to meeting the definition of "charitable organisation".
7. The appellant company is non profit making and is run for the sole benefit of the people of the Ballymun area, for the purpose of encouraging the future development of the social, artistic, cultural, educational and economic fabric of Ballymun life and for no other purpose. It is for the common good of the people.
8. The Tribunal therefore finds that:-
  - i. the appellant company herein is a charitable organisation within the meaning of Section 3 of the Valuation Act, 2001.
  - ii. the main objects of the appellant company as set out in Paragraph 2(i) of the Memorandum of Association clearly constitute a charitable purpose.

Accordingly the Tribunal determines that the appellant herein performs "charitable purposes" within the meaning of Paragraph 16(a) of Schedule 4 of the Valuation Act, 2001 and that it satisfies the requirements of Section 3(a)(iii) of the Act relating to the appellant company's objects.

The property therefore is relevant property not rateable under the provisions of the Valuation Act, 2001.

And the Tribunal so determines.