

Appeal No. VA09/2/002

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

**Kids Aloud Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2194996, Crèche at Lot No. 16 Parkmore, Baltinglass East, Baltinglass, Baltinglass 1, County Wicklow.

**B E F O R E**

**John Kerr - Chartered Surveyor**

**Deputy Chairperson**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15TH DAY OF SEPTEMBER, 2009**

By Notice of Appeal dated the 1st day of April, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €50.00 on the above-described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

"Kids Aloud Limited is NOT a creche, it is an after-school service for primary school children i.e. "Description" is incorrect. As per Valuation Act, 2001, Schedule 4, Section 15 [KidsAloud Ltd.] "Relevant Property Not Rateable" (Subsection 10, Paragraph (b)) We are an incorporated charity, charity registration number 16000."

The appeal proceeded by way of an oral hearing held in the Tribunal offices, Ormond House, Ormond Quay Upper, Dublin 7 on 3rd June, 2009. The appellant was represented by Mr. Liam MacGabhann, Chairperson of Kids Aloud Ltd. and the respondent was represented by Mr. David Dodd, barrister, instructed by the Chief State Solicitor, and Ms. Orla Lambe BSc, a District Valuer in the Valuation Office.

The Tribunal was furnished with submissions in writing on behalf of both parties. These submissions were detailed and to the point. Both parties adopted their submissions as their evidence-in-chief at the oral hearing.

### **The Issue**

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

### **The Property**

The property comprises a crèche/playschool, "Kids Aloud Ltd." and is located in a converted dwelling within Parkmore Estate on the outskirts of the town of Baltinglass, Co. Wicklow. The net internal area assessed over the ground and first floor approximates 129 sq. metres. It was assessed by the Revision Officer at €10,041.48 on 6<sup>th</sup> March, 2009 and given a rateable valuation of €50.00, which is not in dispute between the parties.

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

Mr. Liam MacGabhann gave evidence under oath that he was the chairperson of Kids Aloud Ltd., and asked for the Tribunal's indulgence for him to refer in detail to his submission.

He stated that most of the childcare provided by the appellant company was to the poor section of the community. They are a registered charity, part-funded by the government/European Union, and reliant on voluntary contributions from the public.

He contended that the combined aims and provisions of the appellant enable people to avoid or rise above the poverty line by providing a tiered fees system that allows them to return to education or employment with affordable childcare, which is not available in private commercial services. Mr. MacGabhann also stated that Kids Aloud Ltd. provides up to 40%

of their childcare allocations to children from marginalised, disadvantaged families and to children identified as “at risk”.

He acknowledged he had originally misquoted the relevant section of the Act. However, he submitted that the appellant satisfies the requirements as set out in the Valuation Act, 2001, in that the subject property within Section 16 (a) and (b) (i) and (ii) of Schedule 4.

Mr. MacGabhann referred to **Barrington’s Hospital v Commissioner of Valuation** [1957] IR 299, which he claimed had developed the meaning of charitable purposes to include the relief of poverty or other purposes within the community.

Under cross examination by Mr. David Dodd, Mr. MacGabhann confirmed that the childcare facility opened between 7.45am and 9.00am in the morning and reopened at 1.45pm. He also stated the daily rate was €35, afternoon rate was €18 and the hourly rate was €6, with no preschool places provided for children.

Mr. MacGabhann accepted that the policies and procedures manual of Kids Aloud Ltd. did not expressly state that its services are exclusively for charitable purposes. Page 4, Paragraph 1 of the said manual states “*this service will operate on a first come first serve basis...some places will be reserved for children from disadvantaged families...*” He had originally stated that 40% of the space facility had been allocated to childcare for children from marginalised, disadvantaged families and to children identified as “at risk”, which had now increased but he was not in a position to give any further details.

With respect to services provided, he stated that some staff would have special training, depending on the social disadvantages that are highlighted. However there is no programme of education offered. Kids Aloud Ltd., he stated, also provides breakfast in the morning and a snack in the afternoon for the children. Under further cross examination by the Tribunal, Mr. MacGabhann confirmed that Kids Aloud Ltd. reduces fees in some circumstances of hardship. Mr. MacGabhann again repeated that the appellant was primarily basing its appeal on the conditions specified in Section 3 and also Schedule 4, Section 16 (a) and (b), (i) and (ii) of the Valuation Act, 2001.

### **The Respondent's Case**

Ms. Orla Lambe, adopted her submission as her evidence-in-chief, and requested that, as it had been read by all concerned, that it be adopted accordingly. She then stated that the Commissioner was of the opinion that the rateable valuation of the subject relevant property was assessed fully in accordance with the Valuation Act, 2001 and that the appeal should be dismissed.

Mr. Dodd referred in detail to his submission. He noted that in **VA05/2/034 - Mellow Spring Childcare Development Centre Ltd.** counsel for the appellant in that case had emphasised that his client was established for the “*sole charitable purpose of providing quality accessible affordable childcare, plus training, and family and childcare support to the Finglas Community especially those who are identified as being most in need.*”

He also referred in detail to pages 2, 3, 5, 6, 7 & 8 of the said judgment and to **Commissioner for Special Purposes of Income Tax v Pemsel** [1891] AC 531 which identified four broad categories of “charitable purpose”:

- (a) the relief of poverty
- (b) the advancement of education
- (c) the advancement of religion
- (d) other purposes beneficial to the community.

Mr. Dodd referred specifically to Schedule 4, Section 16, Subsection (a), which cites that:- “Any land, building, or part of a building which is occupied by a body, being either” – may seek relief from liability to rates if it can be established that “*a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit,*”.

Counsel for the respondent was of the opinion that the main object clause of the organisation would clearly have to state “for exclusively charitable purposes” in order for this appeal to be upheld. In view of the fact that the Memorandum and Articles of Association of Kids Aloud Ltd. do not meet the requirements of exclusivity as set down in Section 16, Schedule 4, the appellant’s appeal, he argued, should fail.

Mr. Dodd then referred to the Barrington's Hospital case where it was held that "*on examination of S.63 of the Act of 1838 and of the other earlier rating statutes led coercively to the conclusion that, as far as educational charities were concerned, exemption could only be claimed where the property was used exclusively for the education of the poor*".

### **Determination**

The Tribunal has considered all the evidence offered at hearing and within the written submissions made by both parties. The Tribunal finds that the subject relevant property does not qualify for exemption from rates and states the following:

1. The subject relevant property does not comply with the requirements of Schedule 4, Section 16, (a) and (b) (i) and (ii) of the Valuation Act, 2001 which states:

*"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."*

2. On the admission of Mr. MacGabhann the Memorandum and Articles of Association of Kids Aloud Ltd. and the policies and procedures manual do not contain an exclusivity clause for charitable purposes and the appellant further stated that only 40% or a little more of student place allocations are awarded to the disadvantaged and those more at risk in society.
3. The fact that the appellant is a "not for profit" organisation, and the Revenue Commissioners have conferred charitable status on it, does not automatically entitle the occupier to exemption for rates under the Valuation Act, 2001. Exemption from rates may only be claimed pursuant to current legislation.

5. The Tribunal finds that the subject property is rateable within the meaning of the Valuation Act, 2001. This appeal is therefore dismissed.

And the Tribunal so determines.