

Appeal No. VA16/3/017

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

**Mater Misericordiae & Children’s University Hospitals Limited
& Eccles Street Car Park Limited**

APPELLANTS

And

The Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Valuation in Respect of:

Property No. 5004727, Car Park (Multistorey) at Eccles Street Car Park, Eccles Street, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8th DAY OF MAY, 2017

BEFORE:

Niall O Hanlon - BL

Deputy Chairperson

Claire Hogan - BL

Member

Hugh Markey – FRICS, FSCSI

Member

By Notice of Appeal received on the 15th day of August, 2016 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €380,000 on the above described relevant property on the grounds as set out in the Notice of Appeal at Appendix 1.

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us on the 15th day of December, 2016 by Mr. Denis McDonald SC, on behalf of the Appellants, who contended that the subject property be excluded from the Valuation List, and Mr Anthony McBride BL, on behalf of the Respondent to the appeal, who contended that the property should be rateable;

DETERMINES

That the property should be excluded from the Valuation List as relevant property not rateable pursuant to Schedule 4, Part 8 of the Valuation Act 2001 (as amended)

The reasoning being:

INTRODUCTION

1. Schedule 4 of the Valuation Act 2001 is entitled Relevant Property Not Rateable. Part 8 thereof exempts the following property:

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).

2. It is accepted by all parties that the Mater Hospital is not a private profit making hospital and that the expenses it incurs are defrayed by the Exchequer. The key issue in dispute between the parties is whether the car park of the Mater Hospital qualifies as “*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...*”.
3. The Tribunal has applied the test of “use” to the facts of the case. It considers that the use of the part of the building in question (the car park) is “*for the purposes of caring for sick persons, for the treatment of illnesses...*”. The test of “use” will be explained, followed by an examination of context, and all the circumstances of the case.

I. THE TEST OF USE AND THE FACT OF OCCUPATION BY ECCLES STREET CAR PARK LIMITED

4. First, the wording of Part 8 of Schedule 4 refers to “use” by a body for a particular purpose. The plain meaning of the section is of importance. The draftsman has employed different terminology in other Parts of Schedule 4. For instance, Part 10 speaks of occupation and use; providing as follows:

10.—Any land, building or part of a building occupied by a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services referred to subsequently in this paragraph and otherwise than for private profit, being a school, college, university, institute of technology or other educational institution as respects which the following conditions are complied with— (*emphasis added*)

5. Several other Parts of Schedule 4 use wording which refers to occupation (see *inter alia* Parts 10, 12, 16 and 17). However, the plain wording of Part 8 involves “use” by a body. The Tribunal is persuaded that this is a more elastic concept than occupation.

6. Second, the decision of Cooke J in the case of *St. Vincent's Healthcare Group Limited v Commissioner of Valuations* [2009] IEHC 113 (hereafter the *St. Vincent's Hospital* decision) is a very relevant decision to this case, and accords with a flexible "use" test. The facts of the case are very similar. The *St. Vincent's Hospital* decision concerned the car park of that hospital and whether it was a "relevant property not rateable" in accordance with Schedule 4 of the Act. This Tribunal had ruled that it was rateable. However, that ruling was overturned by the High Court.
7. Cooke J articulated the interpretation of Part 8 in the following passages [31]-[34]:

Secondly, the use of a building or part of a building does not cease to be a use for the charitable purposes of a hospital by reason only of the fact that its particular use, if treated in isolation, would not itself be regarded as involving a service of care for the sick or the treatment of illnesses. A building housing a restaurant or a computer servicing business will not attract exemption, but if one is the hospital canteen and the other is its information technology department, they may well do so.

In other words, it is necessary to ask not only what the nature of the actual user is but why that use is made by the occupier.

Heading 8 of Schedule 4 uses the words: "... used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital". Heading no. 16 uses the words: "Any building or part of a building occupied by a body that uses (it) exclusively for charitable purposes, etc."

It is therefore not just the nature of the activity carried on in the building (the user) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption.

8. It is apparent that Cooke J stresses user and use in his decision. In addition, the emphasis of the High Court in this case was on the purpose of the use. Cooke J concludes with a summary of the test, at [36]:

When the correct test is applied namely, that of ascertaining the purpose of the appellant in using the structure as a car park, the Court considers that its use clearly comes within the scope of heading No. 8.

9. The Respondent seeks to highlight references to occupation in the *St. Vincent's Hospital* decision and argues that there is a two part test. It was argued by Counsel for the Respondent that the first part is establishing, as a matter of substance, that the car park is used for the purposes of caring for sick persons or the treatment of illnesses. The Respondent accepts that this was the primary issue in the *St. Vincent's Hospital* decision, and accordingly accepts, that in principle, a car park of a hospital can be considered as being used for the purposes of caring for sick persons or the treatment of illnesses. However, the Respondent states that it also must be shown that it is used by *the occupier* for that purpose. The Respondent argues that the car park is occupied by a separate for-profit legal entity, i.e. Eccles Street Car Park Limited, and that the involvement of this company means that the *St. Vincent's Hospital* decision is not applicable because in that case, the hospital car park was in the leasehold occupation of a charitable company that owned and occupied the hospital premises proper.
10. The Tribunal does not consider that the presence of Eccles Street Car Park Limited negates the applicability of the *ratio* of the *St. Vincent's Hospital* decision. It is true that, in the latter decision, the Court said it was important to ask “*why that use is made by the occupier*”, and “*the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption*” [31]-[34]. However, the Tribunal considers that, notwithstanding the interposition of Eccles Street Car Park Limited, Mater Misericordiae & Children's University Hospitals Limited can still be considered, in a very real sense, as “*engaging in that use which gives rise to the exemption*”. In simple terms, Mater Misericordiae & Children's University Hospitals Limited is engaging in the use of the car park in order to care for sick persons and/or for the treatment of illnesses. It is irrelevant, in the particular circumstances of the case, that it has engaged another company for the purposes of facilitating this state of affairs.

11. There is no express occupation requirement in the legislation under consideration, nor does the case law mandate that the core hospital company must be in occupation of each and every part of the building which falls to be rated, or exempted, as the case may be.
12. The Respondent characterises Eccles Street Car Park Limited as a separate for-profit legal entity. In the *St. Vincent's Hospital* decision, the Court considered the fact that users were charged a fee for use of the car park. The Court held, at [38]-[40]:

The Court considers that it does not necessarily follow from these charging arrangements that the operation of the car park is a commercial venture on the part of the hospital which is distinct from its activity in providing medical services. No doubt any surplus revenue is welcome when applied to the purposes of the hospital but it does not appear to follow from the facts before the Tribunal that a conclusion was warranted to the effect that the construction and operation of the car park had a speculative commercial objective apart from that of accommodating the cars belonging to staff, patients, visitors and others coming to the hospital. As with all metered parking in urban areas, the primary function of a periodic charge for parking is to discourage the use of private transport and to encourage a rapid turnover in the use of available spaces.

The mere fact that a charge is made does not of itself warrant the conclusion that the car park is provided and operated as a commercial venture in the sense of one undertaken for the primary purpose of making a profit. Moreover and in any event, it appears to be accepted that the appellant is a body which qualifies under one or both of paras. (a) and (b) of heading No. 8 and that it is not a body which is conducted for the purpose of making a private profit from its medical services.

The fact that a charge is made for the use of a particular facility of the hospital and any surplus over the cost of providing that facility accrues to the benefit of the hospital and its activities does not deprive the property of its entitlement to exemption under heading No. 8.

The court cannot, therefore, accept the argument made with considerable emphasis by counsel on behalf of the respondent to the effect that this car park is taken outside the ambit of headings 8 and 16 by the distinguishing characteristic that it is “open to all comers” in return for a commercial charge and must thus be distinguished from a non-medical facility such as a nurses’ residence provided for the exclusive use of staff working in the hospital.

13. The commercial charge in the *St. Vincent’s Hospital* decision could not exclude the application of the exemption provision, as the Court’s focus was on nature of use, and purpose of use. Accordingly, the Tribunal’s focus in the instant case must remain on nature of use and purpose of use.
14. Furthermore, the evidence of Mr Des Lamont, a member of the Board of Directors of Mater Misericordiae & Children’s University Hospitals Limited since 1999, and the documentary evidence in the Appellants’ Précis of Evidence establishes the following propositions regarding the nature of Eccles Street Car Park Limited:
 - (i) Eccles Street Car Park Limited is a wholly owned subsidiary company of Mater Misericordiae & Children’s University Hospitals Limited.
 - (ii) Eccles Street Car Park Limited was incepted in 2003 when the Adult Hospital Extension for the Mater Hospital was being planned. The extension was being built on the existing surface car park, which necessitated the construction of an alternative car park.
 - (iii) Following controversy regarding Beaumont Hospital car park, the Department of Health and Children issued *Guidelines for the Provision of Structured Car Parking Facilities in Acute Hospitals*. These guidelines essentially provided that State funds should not be expended on car parks, and that instead, hospitals should obtain loans which could be serviced by the income derived from the car park. The Guidelines contemplated the use of subsidiary companies for the purposes of new schemes.

- (iv) The Department of Health and the Eastern Regional Health Authority/HSE communicated to all parties involved in the construction of the Adult Hospital Extension of the Mater that it would not fund the car park and, accordingly, private funding was required.
- (v) The objects of Eccles Street Car Park Limited are set out as follows in its Memorandum and Articles of Association:

“To acquire a site for, fund, develop and operate a car park at the Mater Misericordiae University Hospital”
- (vi) Mater Misericordiae & Children’s University Hospitals Limited granted a lease to Eccles Street Car Park Limited over the car park. The lease was offered as security for a loan, obtained from Bank of Ireland, for the purposes of the construction of the car park.
- (vii) The HSE’s letter of confirmation of funding for the entire hospital dated 16 January, 2009, states that approval is only valid on receipt of satisfactory proof of funding for the car park. The evidence all points to the necessity of adherence to the Department of Health Guidelines.
- (viii) Any surplus which arises from the operation of the car park, following repayment of bank borrowings, is to be donated by Eccles Street Car Park Limited to Mater Misericordiae & Children’s University Hospitals Limited.

15. All of these facts regarding the genesis and status of Eccles Street Car Park Limited make it clear that its involvement ought not to negate the application of the exemption from rates. It is merely a vehicle which was utilised by Mater Misericordiae & Children’s University Hospitals Limited for the purpose of financing the construction of the car park. The Tribunal is mindful of the fact that the Mater development complied with State Guidelines regarding car parks for acute hospitals, and adjudges it unfair and illogical to punish it for so doing.

16. It was submitted by the Appellants, as an alternative argument, that the subsidiary company could be treated as an agent of the holding company, and that it was

appropriate to treat the occupation by Eccles Street Car Park Limited, of the car park, as occupation by the hospital itself. The Respondent argued that there is no general imputation of occupation of a subsidiary company to a parent company at common law. In light of its finding that use is the paramount consideration and that occupation is not of crucial importance, the Tribunal does not consider it necessary to decide the point, nor to review the case law raised by the parties regarding the concept of occupation and agency.

17. In the *St. Vincent's Hospital* decision, Cooke J applied the nature and purpose of use test to the facts of the case, and examined a number of factors which all pointed towards a finding that the use of the car park came within Part 8. The Tribunal agrees with the identification of contextual factors, and shall do so hereunder.

II. FACTORS PERTAINING TO PURPOSE OF USE OF MATER CAR PARK

18. In the *St. Vincent's Hospital* decision, Cooke J outlined a series of factors which bolstered the conclusion that the purpose of use of the car park was to ensure that care can be provided for sick persons and treatment provided for illnesses and injuries. It was held, at [36]:

The car park is so provided and located because the hospital is situated in a built-up urban area and attracts large volumes of traffic by those using or visiting the hospital. It may not be "necessary" in the literal sense, to provide car park spaces in order to care for the sick or treat illnesses, but it may well be a highly necessary part of the efficient management of the hospital as a whole to ensure that traffic in and out of the hospital, including ambulances, is efficiently accommodated and organised. The car park exists and is so located because of the hospital and not otherwise. It is there because the hospital is there. In that sense therefore, the use of the car park is not "remote" from the main activity of the appellant. It is used predominantly by those having business at the hospital and staff alone account for 50% of its user. While no figures are given by way of breakdown of other users it is probably significant that there does not appear to have been any evidence before the Tribunal of any material use by drivers having no business whatsoever at the

hospital notwithstanding the emphasis placed in argument on the fact that the spaces are available to the general public on a first come first served basis.

19. In the case at hand, the Tribunal considers the following factors to be of importance:

- (i) The HSE required the construction of a new car park as part of the construction of the Adult Extension to the Mater Hospital, and required adherence to the the funding stipulations as set out in the Department of Health and Children's *Guidelines for the Provision of Structured Car Parking Facilities in Acute Hospitals*, as detailed at paragraph 14 above.
- (ii) The car park is part of the Mater Hospital; forming its foundation and basement levels.
- (iii) Mr. Des Lamont, on behalf of the Appellants, gave evidence, unchallenged by the Respondent, that the hospital could not function in the absence of the car park as huge numbers of people visit the hospital on a daily basis and it is in an urban built-up area with no adequate alternative parking.

CONCLUSION

20. In conclusion, the Tribunal is persuaded on the evidence that the Mater Hospital Car Park is a core part of the ospital building and that it is used by the hospital in furtherance of its objects; namely caring for sick persons, and for the treatment of illnesses. It comes within the definition of relevant property not rateable, pursuant to Part 8 of Schedule 4 of the Valuation Act 2001 (as amended).

And the Tribunal so determines.