

Appeal No. VA00/1/007

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Royal Dublin Society

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Conference Centre and Stadium at Map Reference 5B.7 to 19/1, Merrion Road, Ward: Pembroke East, County Borough of Dublin.

Exemption - Charitable and public purposes

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Rita Tynan - Solicitor

Member

Con Guiney - Barrister at Law

Deputy Chairman

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF OCTOBER, 2000

By Notice of Appeal dated the 19th day of April 2000, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £4,100 on the above described hereditament.

The grounds of appeal as set out in the said Notice thereof are that "the rateable valuation is excessive, inequitable and bad in law and a portion of the property should be exempt from rates."

1. The appeal proceeded by way of an oral hearing at which Mr. Owen Hickey B.L. instructed by Eugene F. Collins & Company Solicitors appeared on behalf of the Society with Mr. Brendan Conway B.L. instructed by the Chief State Solicitor appearing on behalf of the Commissioner. The Rating Consultant was Mr. Frank O'Donnell B.Agr. Sc., F.I.A.V.I., M.I.R.E.F. and the Appeal Valuer was Mr. Tom Stapleton. Mr. Kevin Bright, the R.D.S. archivist gave evidence as to historical fact. The parties prior to commencement of the hearing had exchanged their précis in accordance with practice and had submitted the same to this Tribunal. The valuers, as did Mr. Bright, gave evidence in accordance with their said respective précis. All parties were cross-examined, submissions were made and judgment was reserved.

2. **Valuation History**

In 1911 there was a rateable valuation fixed by the Courts of £1,400 including £125 on land, placed on the hereditaments as these existed at that time. In 1926 there was the revision in circumstances more extensively detailed later in this judgment. As a result of that revision part of the property was exempt and was shown in the Valuation list as offices and rooms used for the purposes of Agricultural Science and the Fine Arts. In 1927 the R.V. of £300 which had been placed on the exempted part was increased to £525 with a further increase to £765 taking place the year following. There was no further revision on this part until 1966 when the R.V. was increased to £960, a figure unchanged in the 1967 revision. Some 30 years later, in 1997 as a result of a request from Dublin Corporation, the Rating Authority, the Commissioner of Valuation revised the entirety of the RDS property at this location. The Commissioner removed the exempted status from the part previously distinguished, he amalgamated this part with the balance of the property and separately valued sections of the hereditament which were then in the occupation respectively of Fitzers Restaurant, G & T Crampton Ltd. and the Showjumping Association of Ireland. Originally at Revision a valuation of £4,500 was placed on the totality of this property.

In December of 1997 the R.D.S. appealed on both the question of quantum and rateability. In March 2000 the results of the first appeal appeared with the quantum being

reduced by agreement to £4,100 of which £750 was appropriated to the part previously shown as distinguished. The Commissioner however refused to continue the exemption previously granted. From that decision the appellant society appealed to this Tribunal in April of this year. In these circumstances therefore the sole issue for our determination is whether or not the part previously distinguished should or should not be distinguished in accordance with the Valuation Acts.

3. The premises, the subject matter of this appeal is located on the Merrion Road, Ballsbridge in the city of Dublin. The overall hereditament and the activities carried on therein and therefrom are known and recognised both nationally and internationally and thus for this reason and also because quantum has been agreed it is unnecessary in our view to refer in any detail to the individual segments of the property. It is sufficient to say that the disputed parts consist of the Concert hall, the Member's room and the Library. The concert hall which has a separate entrance, was erected about 1924 and fronts onto the Merrion Road. It is also used as a lecture hall/conference centre. It was refurbished in recent years to a relatively high standard. The area is over 14,000 sq.ft. and has a capacity for about 1,000 people. The members room with an area of about 13,000 sq.ft. has accommodation comprising reception, bar, café, meeting room, kitchens, stores and toilets. The individual membership costs in 1997 was £200 per annum with the numbers being almost 7,000. The Library is attached to the member's room at the rear and is a large and significant building. It has approximately 8,590 sq.ft. and having been refurbished was opened officially in 1966 by the then President, Mr. Eamon de Valera.
4. In order to understand the basis upon which this exemption is sought it is necessary to refer to and detail the history of the R.D.S. and its buildings throughout the city of Dublin. The evidence in this regard as given by Mr. Bright and as summarised by Mr. O'Donnell was not, in any way seriously challenged.

The birth of the R.D.S. took place in the rooms of the Philosophical Society in Trinity College on the 25th June 1731. The Society received its Royal Charter on the 20th

February 1749. The National Museum, Botanic Gardens, National Gallery, National Library were all founded by the R.D.S. in the 18th Century. The R.D.S. is the oldest body of its kind in Europe. For a number of years this society was housed in a variety of premises. The Society prospered and eventually acquired premises in Macklenburgh Street, (Railway Street) and later in Shaws Court, north of Dame Street. In 1763 the Society built its own premises in Grafton Street. In 1796 they moved to Hawkins Street. The question of acquiring Leinster House first arose in November 1814 with the first meeting being held there on the 1st June 1850. In all the Society occupied Leinster House for over a century circa 114 years.

This society was in full occupation of the house until 1877 when the Dublin Science and Art Museum Act was passed. This Act had the effect of transferring the buildings and functions of the National Library, Museum and Gallery to the Government. In return the R.D.S. received in payment £10,000 and other considerations which included occupancy of Leinster House free from rent, rates and taxes. The move to Ballsbridge first began in 1879 when the R.D.S. leased fifteen acres. At the time the Society continued to share Leinster House with the Department of Science and Art. In 1922 the Minister for Finance of the day, the late Mr. Michael Collins examined various premises in Dublin as a prospective home for the Dail and thought the R.D.S. Lecture Theatre at Leinster House was the most suitable.

A committee was appointed by the Government to examine the possibilities of temporary housing for the Houses of the Oireachtas. The Committee reported however that ultimately they might be compelled to seek to occupy the remainder of Leinster House. This proposal to take over Leinster House was met initially with some concern if not alarm by the R.D.S. but eventually they agreed to the request as a national necessity. The problem then arose as to where the R.D.S. were to be housed. The Government sought to locate alternative accommodation for the R.D.S. Suggestions were made to temporarily house the various faculties separately in locations at Merrion Square, Molesworth Street and Ballsbridge. This proposal proved unacceptable to the Society. The Government then offered the alternative of a monetary compensation for the purposes of erecting new

buildings. The R.D.S received, we think about £68,000 in settlement of their right to occupy the premises and for any damages done during the years the Government had been in occupation.

5. In addition discussions took place regarding *inter alia* the question of rates. These discussions and the results thereof play a pivotal role in determining the central basis upon which the aforesaid claim for exemption is based. The documents, which contain a record of these negotiations, are firstly the Report of the Council for the year 1924, secondly, an extract from the Dail debates on the 9th of December also of that year, thirdly, from the minutes of a meeting held on the 5/02/1926 between the Society and the Commissioner of Valuation. No point has been taken about the admissibility of these documents or about the accuracy of those parts thereof which are relevant to this judgment. Therefrom the following appears;

- (i) On the 7th October 1924, a Mr. Brennan on behalf of the then Minister of Finance wrote to the Registrar of the R.D.S., offering as compensation for vacating Lenister House either a site in Kildare Street plus an monetary amount or in the alternative an increased monetary sum of £63,000 without any such site. As appears from page 14 of the report the letter continued. *“In the event of the Society accepting this offer in either of the alternative forms explained above, it would be understood that the Government would henceforth bear no liability of any description in respect of the premises of the Society and that in particular the Society would make its own arrangements as regards rates, maintenance, insurance etc”*.

This offer was rejected and negotiations continued, with the Society being represented by the late Mr. Justice Wylie.

- (ii) A second letter dated 15th October 1924 is also referred to in the Report. In that letter written again on the Minister’s behalf, the Society’s request for £70,000 was rejected but an increased sum namely £68,000 was offered on the same terms and

conditions as that contained in the letter of the 7th October. That sum was accepted by the Society.

- (iii) In addition as appears from p.16 of the report it is recorded. *“In conveying the final award the Ministry of Finance intimated that should the Society decide to erect the necessary buildings at Ballsbridge, the Commissioner of Valuation who had discussed this subject with the Government had suggested that the educational and administrative work of the Society, for which the new additions were mainly required, would be taken into consideration and the Society might therefore proceed with a feeling that there would be no serious increase (if any) on the existing assessment of the Society’s property at Ballsbridge”.*
- (iv) When seeking approval for the arrangements made between the Society and the Government, the then Minister for Finance, Mr. Blythe in the Dail Chamber on 09/12/1924 said *“I believe from investigations that I made and from enquiries addressed to the Valuation Office that perhaps it might be able to get certain exemptions for part of its premises devoted strictly to scientific work. There was no exemption in respect of those premises here although certain parts were devoted to scientific work. It might get a certain reduction in valuation. The rates will be down a bit and the Society having its premises all together will save something by concentration and I feel that the sum we offer and which they, with some reluctance, accepted, will compensate them fairly well”,* and
- (v) Finally at the meeting held on the 5th February 1926 the Society was represented by a Mr. Edward Bohane, a Director of the Society and by its Registrar, a Mr. Moran. The Commissioner was there in person and was accompanied by a number of persons including his Chief Valuer. Discussions took place about the rateability of the premises at Ballsbridge as well as what had been the situation when the Society occupied Leinster House. In conclusion the minute records that *“Mr. Bohane asked the Commissioner to consider the Society’s case sympathetically and assured him, that the Society would abide by his award as*

they did not wish to embarrass the Government". As it transpired exemption was allowed in 1926 and continued right through until 1997.

6. Against this background the following issues arise for consideration:
 - (a) Whether in the absence of a change in circumstances it is now open to the Commissioner almost sixty years after first exempting the subject property, to revise the hereditament in the manner in which he has.
 - (b) Whether arising out of the Dublin Science and Art Museum Act 1877, the exemption from rates enjoyed during its occupation of Leinster House was carried over to and thereafter applied to the Ballsbridge property.
 - (c) Whether arising from the aforesaid negotiations and discussions there exists in relation to the disputed items a Contract or an Arrangement howsoever enforceable under and by which this Society is entitled to exemption,
 - (d) Whether apart from a Contracting setting there is a Legitimate Expectation in the Society that the state of exemption originally given in 1926 should continue permanently into the future,
 - (e) Whether the charitable status of the Society as given for the purpose of the Income Tax Acts is sufficient to obtain exemption under the Valuation Code, and finally,
 - (f) Whether the premises in question are entitled to exemption under the heading of "public purposes" as defined within the proviso contained in Section 63 of the 1838 Act.
7. It is unfortunate that the Commissioner of Valuation has been unable to find or produce the old Notebooks, Records or Report in relation to the revisions mentioned at paragraph

4 above. It would undoubtedly have been of great help to ascertain his reasoning in granting the first exemption back in 1926 and thereafter on several diverse occasions in continuing it. But apparently, despite searches, no such documents, records, files can be located. We are quite satisfied, however, that there is nothing of note in his inability to so identify such documents and whilst their availability would have been of interest to us we must in their absence make do with the documents available.

8. In our opinion it is slightly to misunderstand the role of the Commissioner in making a challenge to his jurisdiction to embark upon the revision which gives rise to this appeal. The Commissioner has certain statutory powers, functions and duties, which he can and on occasions must perform. In this case he was requested by Dublin Corporation to revise the entirety of the hereditament upon which originally an R.V. of £4,500 was placed. Having received this request he was duty bound to invoke the valuation process. Equally so, once the appellant lodged its first appeal, likewise he was bound to so determine it. Accordingly, not only did he have the power to look again at those parts previously distinguished, he was in our view mandated by the appropriate statutory provisions to so do.

This proposition in our opinion cannot be sensibly challenged. It will be recalled that the disputed items were revised in 1927, 1928, 1966 and 1967. No person has suggested seriously or otherwise that all or any one of these revisions was *ultra vires*. Of course the R.D.S did not do so because the exemption originally granted was continued. But if otherwise valid and lawful, the Commissioner's decision on any of those revisions could in our view have been to the opposite effect. Once he had jurisdiction to embark upon the revision he had jurisdiction to decide one way or the other in accordance with law. In any event this Society by lodging a valid notice of appeal before this Tribunal has itself invoked the provisions of the 1988 Act under which we as the appellant body are now obliged to hear and determine this appeal.

9. This involves a full hearing where all of the facts and the relevant case law are given and recited. We must therefore come to a decision on the material before us. In so doing we

must be free to make up our own minds and whilst the historical position of the Commissioner is unquestionably of evidential interest, it on its own, cannot be conclusive and cannot usurp the function imposed upon us. So even with missing documentation and even in the absence of a change in circumstance, we are quite satisfied that we have jurisdiction to deal with this appeal.

10. The second point relates to the Dublin Science and Art Museum Act of 1877 and to the occupation by the Society of those parts of Leinster House which it formally did. It will be recalled in the evidence given above that this occupation was free of local authority rates. In our opinion there is nothing in that Act or in any of the other documentation seen by us which could possibly have the effect of carrying over or applying that same exemption to the new premises in Ballsbridge. Accordingly, we do not believe that the rights *vis-a-vis* rates which the Society enjoyed in occupying parts of Leinster House, have any application to the Ballsbridge property.

11. There is no doubt but that when the agreement of 1924 was being reached, discussions were held about the future of the rating status of certain parts of the relatively new Ballsbridge property. Those discussions took place in the context of the agreement reached between the Government and the Society. That agreement it seems to us or perhaps more accurately or at a minimum the Government's position is embodied in both letters above mentioned. Referring to the 7th October letter, it is clear that if agreement was reached the Society would have to make its own arrangements as regards rates, maintenance and insurance etc. Those conditions were repeated in the later letter of the 15th October. Whilst it may well be that a more formal document or documents later came into existence, nonetheless, perhaps inescapably so, it seems to us from these letters, and also indeed from other parts of the 1924 Report, that it must follow that no contract or agreement, binding or enforceable in law came into existence whereunder the Society would be entitled to claim or insist upon an exemption from rates in relation to disputed parts of the Ballsbridge property. Indeed we ask who could make such an arrangement, the Government or the Commissioner of Valuation, but how could either do so? The Government as a matter of private law could, we suppose, give the Society an

indemnity regarding rates but neither it nor the Commissioner could as a matter of public law grant exemption if otherwise the Valuation Code did not so permit. In the absence of a statutory amendment we do not see how the Society can be successful in this argument namely in seeking exemption from rates on the disputed portion of the Ballsbridge property.

- 12.** The concept of legitimate expectation and its associate doctrine of estoppel is comprehensively dealt with at page 858 and following of Hogan and Morgan on Administrative law. It is unnecessary for us to repeat any of the relevant principles in this judgment. Disregarding for the moment the difficult question, which is by no means settled of whether or not that doctrine has or could have any application to the facts of this case, could we again look at the evidence above recited to see whether or not an expectation was created back in the early 1920's and if so whether that expectation could continue to be enforced to this day. There is nothing in the letters above mentioned directly on this issue. At page 17 of the Report to Council it is stated that the educational and administrative work of the Society would be taken into consideration and that the Society might therefore proceed with the feeling that there would be no serious increase if any on the existing assessment of its rating situation at Ballsbridge.

The Dail debates say that the Society might be able to get exemption for part of its property devoted strictly to scientific work. There are no stronger statements contained in either of these documents relevant to this point. In our view this evidence falls far short of amounting to or creating an assurance which can now be relied upon. Any such assurance could not in our opinion be given in face of the statutory obligations on the Commissioner. In any event who could give such assurance, who could or would be bound? There was no private agreement and certainly no amendment to the 1852 Act. In the absence of either and in particular in the absence of the latter we cannot see how any case can be made for suggesting that in the context of the Valuation Code, this doctrine of legitimate expectation could now confer on the Society an entitlement to exemption on those parts of the Ballsbridge property. Indeed in our opinion this view was shared by the Society itself when as recorded in the minute of its meeting with the Commissioner of

Valuation, it wanted its case to be sympathetically considered but in any event it stated clearly and unambiguously that it would abide by his decision. So as Mr. Justice Blayney said in *Wiley -v- The Revenue Commissioners* [1994] 2 IR 600, whilst it is possible to say that the Society may have had an expectation that the situation would not change, they could not have that expectation converted into a legitimate one for the purposes of this doctrine. Accordingly, we do not believe that exemption can be granted under this heading. In addition there can be no question of a legitimate expectation in circumstances where the making and levying of a rate is an annual process and where the valuation of property can now be made or challenged at any time.

13. The next point for our consideration is whether the charitable status conferred on the Society by the Revenue Commissioners is sufficient to grant exemption under the Valuation Code. In many cases coming before this Tribunal where exemption is claimed by reason of user for charitable purposes, it is frequently urged upon us that because the Revenue Commissioners have conferred charitable status on the occupiers of such hereditaments, then it should follow that a similar status of exemption should be granted under this Code. This submission in our view fails to fully appreciate the distinctive codes under which, on the one hand the Revenue Commissioners operate and on the other hand, the Valuation System works. Exemption from the payment of different taxes on the grounds of charitable status is granted by the Revenue Commissioners under the provisions of the Tax Code. The grounds for the granting of exemption therein set out are significantly more extensive and more elaborate than the proviso contained in Section 63 of the 1838 Act which section is the only statutory provision upon which in general exemption can be obtained for Valuation purposes. Accordingly, since the respective statutory grounds of exemption can be wholly distinguished one from the other, it is of little evidential value before this Tribunal for an occupier to argue that the existence of a certain tax status should in itself lead to the granting of an exemption.
14. The next ground advanced on behalf of the Society was that the disputed items were used for or dedicated to public purposes within the meaning of the proviso contained in Section 63 of the 1838 Act and therefore were entitled to exemption on that ground. This

test of public purposes was referred to and defined authoritatively by this Tribunal in the decision of *Forbairt –v- Commissioner of Valuation VA97/4/030*, judgment given on the 17th November 1998. On page 11 of that decision the Tribunal said “the Tribunal considers that the decisive test in this case in establishing the exemption is whether the occupation of the subject premises is dedicated to or used for public purposes. The Tribunal further considers that the terms of this test were most ably articulated by Kenny J. in his judgment in *Trinity College –v- Commissioner of Valuation [1919] I.R.* at page 519. Kenny J. stated “*that in all the Irish authorities where the question of the meaning and application of the words “used for public purposes” or “altogether of a public nature” or “used exclusively for public purposes” has arisen, it has been uniformly determined that the user essential in order to establish exemption must be available for all the subjects of the realm; the purposes must be purposes in which every member of the community has an interest; and the premises must be used for the public benefit of the whole community and not for the private or exclusive use of any members or any particular class or section of it*”. This Tribunal respectfully agrees with that enunciation of the law and accordingly proposes to apply it in this judgment.

15. In particular the Tribunal notes that the member's room, comprising reception area, bar, café and meeting room are accessible only to members of the Royal Dublin Society. Use of the member's room is described in the literature as a benefit of membership of the Society. The library is attached to the member's room. Lending from the library is restricted to members of the Society. Access to the library is limited to members of the Society and *bona fide* scholars only. The concert hall is used to provide facilities for exhibitions, fairs concerts etc and the annual Feis Ceoil. Recently refurbished, it is available for commercial hire. In essence it is not available to the public at large but only to sections of it which pursuant to permission from the R.D.S., would have access to it. There cannot be any question, noting the evidence given in relation to the purposes and use and those who are admitted to the three items of property in dispute, that these come within what was defined as meaning “public purposes” in the case just cited. There is in our view a lack of access to the public at large and accordingly we cannot see how, under this heading, the user of these items of property can be granted exemption.

- 16.** In conclusion we note that the Society has not to date applied for a certificate under the Scientific Societies Act of 1843 which of course is an avenue open to them. If such a certificate was granted then of course exemption under that Act would follow. However, in our concluded view on the grounds so advanced, the Society is not entitled to exemption from rates on those parts of the disputed property and we so determine.

Issue of Costs

Arising out of this judgment, Mr. Conway on behalf of the Commissioner of Valuation, sought an order of costs which has been resisted by Mr. Hickey on behalf of the R.D.S. The grounds of the resistance are that firstly the subject property has been exempt from rates from 1926 to 1997. Secondly, there has been no change in circumstances, which would merit a reversal of the Commissioner's position in 1977. Thirdly, in the absence of documentation it is not possible to get a concluded view as to why the Commissioner had originally granted exemption and later altered that position to remove the distinguished portions from the Valuation Lists and in these exceptional circumstances, Mr. Hickey feels there should be an order for costs.

As both parties will know there is a strong precedent within this Tribunal in relation to the question of costs. When there is a rateability issue and unless there are special circumstances, the successful party whether he be the ratepayer or the appellant or the Commissioner will get his costs. The question of costs is dealt with in the schedule to the 1988 Act and in particular paragraph 12 which however allows us a discretion if there is a good reason for costs not following the event. There is no doubt in this case but that in 1926 the relevant hereditament was exempted. That exemption continued even though revisions took place on I think 4 or 5 occasions between then and 1997. In 1997 the property was revised and the distinguished parts removed from the list. In our view it was legitimate for the R.D.S. to seek at that time from the Commissioner reasons why originally it was deemed exempt but more significantly why in the context of its long history of exemption he had now altered that status and indeed had removed the exempted position from the hereditaments in question. The Commissioner was not in a position to assist as the old records and information, despite searching, were not available. Therefore the ratepayer was not in a position to get or obtain, analyse or consider reasons why this change had taken place. In our view it was reasonable in such circumstances for the R.D.S. to pursue then an appeal through the first appeal process and onto this Tribunal in order to determine whether or not the position adopted by the Commissioner for the past 60 or 70 years was correct in the view of this Tribunal. Given that situation and given what we believe was a reasonable course adopted by the R.D.S. in the context of there being no documentation available from the Commissioner in these special circumstances which will not create any precedent for future decisions of this Tribunal, we would propose to make no order as to costs.