Appeal No. VA10/2/024

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Togher Community Project Group Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 1278773, Crèche at Lot No. 5a, Boycetown, Dysart, Louth, County Louth

B E F O R E

John O'Donnell - Senior Counsel	**Chairperson**
James Browne - BL	**Member**
Brian Larkin - Barrister	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 19TH DAY OF NOVEMBER, 2010

By Notice of Appeal dated the 20th day of May, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €50 on the above described relevant property.

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

"The Property is a Community Centre and the property is used for other purposes other than Creche, ie. art classes, music lessons, meetings, arts and crafts, etc. The property is a Community Centre and is used by the community for art classes, music lessons, arts and crafts and creche, etc. No other community creches in County Louth have been valued for rates."

The appellant was represented by Mr. Michael Lynch, Project Manager, accompanied by Mr. Hugh McMahon, Chairman of the Board for Togher Community Project Group Ltd. The respondent was represented by Mr. David Dodd BL (instructed by the Chief State Solicitor). Ms. Ciara Marron, MIAVI, BSc (Property Valuation & Management), Dip (Property Valuation & Management), MSc (Planning & Development), a District Valuer in the Valuation Office also appeared on behalf of the respondent. The appeal was heard in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 19th day of July, 2010.

The property in question was built originally in the 19th Century as a school. It has been renovated extensively; it has also been extended. The premises is a single storey building with various rooms inside, including a toddler, baby and pre-school room as well as toilets, a changing room, kitchen and associated internal facilities. There is also a detached building which was a former bicycle shed serving the property when it was a school; it is now an office.

The parties furnished submissions in advance. The issues to be determined between the parties are accordingly identified as:

(i) The property is not rateable because it falls within the definition of "*community hall"* contained in Paragraph 15 of Schedule 4 of the Valuation Act, 2001;

(ii) The property in question is not rateable because it is occupied by a charitable organisation which uses the land in question exclusively for charitable purposes and therefore is excluded from rating by virtue of Paragraph 16 of Schedule 4 of the Valuation Act, 2001.

The Appellant's Evidence

On behalf of the appellant, Mr. Michael Lynch referred to the documents submitted by the appellant. In his view the decision of the Valuation Tribunal in **VA05/2/034 - Mellow Spring Childcare Development Centre Ltd.** (**Mellow Spring)** mirrored the situation of the appellant. Mr. Lynch explained that the Togher Community Project Group had been established in 1992 in order to establish a community development programme. It became the

sponsor of a community employment scheme within the area at the request of FÁS. Again at the request of FÁS it incorporated itself as a company in 2000, though it is a company limited only by guarantee. Mr. Lynch explained that during the day the premises provided childcare to approximately 40 children and on any one day there were a total of 53 children on the books. There is also a waiting list. The aim of the crèche is to prepare children for primary school. The age of the children is between four months and 4-5 years and it is undoubtedly a pre-school facility. There are eleven staff working in the unit, 3 of whom are full-time permanent staff. The staff included Community Employment Scheme trainees and it was hoped that many, if not most, would go on to permanent employment. Mr. Lynch explained that the unit began life as one room but it has now been effectively converted into a four-room crèche.

In the premises, training is also provided for parents in matters such as manual handling, first aid and similar skills. In addition, Mr. Lynch said that the aim of the centre was to direct people towards employment through what he described as a "job club". It was thought that this would assist people in progressing towards employment.

Mr. Lynch explained that the centre is funded by the Department of Social and Family Affairs. It gets an allowance of €10,000 per annum with regard to meals. It also receives a childcare subvention under the Childcare Subvention Scheme. Effectively this part-pays payments for children whose parents' finances mean such subvention is required. While the full-time five day charge is €150 per week, under the scheme in question the Government pays up to €100 of that sum for the parents of the child who meet the appropriate means test. There are other lesser subventions for other persons who have a slightly greater income or who may have a medical card or are otherwise disadvantaged. Mr. Lynch emphasised that the centre is a rural, not-for-profit childcare facility. He indicated that centres in Dundalk and Drogheda would also have Governmental subvention but this centre is different because it is catering for rural needs. It has a very wide catchment area as a result. He made it clear that although the unit was not in a disadvantaged area, the catchment included people from disadvantaged areas.

Mr. Lynch indicated that parents who appear to the appellant to be most in need would get first preference in sending their child to the crèche in question. Of the children attending the crèche, he estimated that 70% of those children are receiving a subvention of some sort or

another, with 30% of them paying their own way. Mr. Lynch emphasised that the not-for-profit element was an important element of the centre. He indicated that although he was paid by FÁS in his capacity as project manager, monies were paid out of the unit to him. He indicated that the ethos of the crèche in question would not necessarily be found in the Memorandum and Articles of Association but set out in the development plan.

Under cross-examination Mr. Lynch accepted that the premises had been designed as a crèche and that the dominant and overwhelming purpose and usage of the premises is as a crèche. He accepted that there was no large hall or chamber within the subject building. He continued to assert that it was located in a rural area and that the location was in effect just a cross-roads. He accepted that it was not a severely disadvantaged or "tragic" community area. Mr. Lynch accepted that the centre in question was not the only crèche in Togher. He estimated that of the 40 parents who use it, at least 30% of the parents are from Togher. He confirmed that while he would not exclude the wealthy, he would prioritise places for people most in need. It is his belief that the income taken in by the facility is somewhere between €2,000 - €2,500 per week. Not every child comes every day for the entire day. He said this was common in other crèches also. Mr. Lynch acknowledged that a change of planning permission usage had been applied for and granted in 2004, the change being from "community hall" to "crèche". He indicated that it never had a need for charitable status in the past because it had no income. In 2004 it had just one room but this was extended and converted from 2004 onwards.

Mr. Lynch indicated that he was familiar with the Memorandum and Articles of Association and had been involved in the drafting of same. He accepted that there was no reference to alleviating poverty in sub-paragraphs (b) to (e) of the objects clause, though he contended that it was implicit in object (a) which he contended was the main object.

The Respondent's Evidence

On behalf of the respondent, Ms. Ciara Marron gave evidence. She adopted her précis as evidence. She indicated that the premises was laid out as a crèche and was not a hall. She said the rooms were divided and indicated that the detached office was stand-alone and could be used separately and could and should be valued separately. She also indicated that there was a workshop at the back of the premises which she had not included in the valuation for rating.

In her view the premises looked just like any other crèche. She did not believe there was any impediment on her or anyone else in sending her children there if she should so desire.

Ms. Marron indicated that she had considered the Memorandum and Articles of Association of the company. The objects clause did not refer therein expressly to the "relief of poverty". In her view the premises were not used for the relief of poverty. Ms. Marron noted that the premises were used for other activities in the evening but were used primarily as a crèche between the hours of 8am and 6pm. However, in the evening other activities such as guitar lessons, art and other activities took place. In her view the rateable valuation of the premises was €50.

Ms. Marron drew our attention to three comparators. She referred to premises at (a) Clogherhead, (which premises were rated at the same rate), (b) Monasterboice (which premises were also rated at the same rate, although they were in fact premises added onto the back of a domestic dwelling) and (c) premises at Dunleer, which were rated slightly higher.

Referring to the method of valuation she said that she could quite easily have applied a valuation of €51.23 to all of the rooms without discriminating, but she did not do so. She applied a lower rateable valuation to the rooms and to the kitchen though she did not feel she was obliged to do this. She also did not include the workshop in the valuation, having noted that it had not been included before and indicated that she felt it would be unfair to raise it now.

Under cross-examination Ms. Marron indicated that what she saw on examination was a commercial business. She acknowledged that the appellant company would not have to say expressly that it was established for the relief of poverty-stricken children but she indicated that she felt the Memorandum and Articles of Association should do so.

She agreed that the other uses to which the unit was put in the evening and at weekends are, in general terms, for the betterment of the community. Mr. Lynch also put to her that the premises were used as a clinic (rent-free) by Senator James O'Carroll at weekends.

Legal Submissions

The appellant did not present written legal submissions but indicated that by reference to the legal submissions filed by the respondent the appellant believed that the decision in **Mellow Spring** should be followed and applied here. The respondent did present written legal submissions and expanded on them concisely at the hearing. The respondent contended that there was no case really being made that the premises were a community hall within the meaning of Section 16 of Schedule 4 of the Valuation Act, 2001, which the appellant accepted.

The Law

In **Nangles Nurseries v The Commissioner of Valuation** (High Court), Unreported, 15th March, 2008, MacMenamin J summarised the principles in interpreting the Valuation Act, 2001 in the light of the various Revenue authorities.

" (1) *while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;*

(2) the Act is to be strictly interpreted;

(3) impositions are to be construed strictly in favour of the rate payer;

(4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;

(5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;

(6) if however there is a new *imposition of liability, looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;*

(7) in the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it."

MacMenamin also quoted Kennedy CJ in **Revenue Commissioners v Doorley** [1933] IR 750. He observed:

"*If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the*

> *letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes, [.....] The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the Taxing Act as interpreted by the established canons of constructions so far as applicable."*

Given that the parties both concede that the premises is not and could not be interpreted through the relevant kinds of interpretation as being a "*community hall"* the only issue remains is whether or not the premises are excluded by virtue of Paragraph 16 of Schedule 4 of the Valuation Act, 2001.

It may be helpful to set this section out. Section 16 provides as follows:

> "*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 [...]"*

A charitable organisation is defined in Section 3 of the 2001 Act. It is defined not in terms of the work it does or the business it carries on, but rather the manner in which it is established. Of significance, under Section 3, in order to be a charitable organisation the entity in question is a company. The Memorandum of Association or Articles of Association of the company must state as its main object or objects a charitable purpose, and specify the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects. The Articles of Association must also provide for the application of its income, assets or surplus with its main object or objects, prohibit the distribution of any of its income, assets or surplus to its members and prohibit the payment of remuneration other than reasonable out-of-pocket expenses to its trustees or the members, its governing board or committee or any other officer of it, other than an officer who is an employee of it. In addition there must also be, contained in the Memorandum or Articles, a provision providing for the disposal of any surplus property to another charitable organisation in the event of the company being wound up.

It seems to us the first question to be asked is whether or not the appellant can be said to be a charitable organisation within the meaning of Section 3 of the 2001 Act.

The objects of the appellant company are set out at paragraph 2 of the Memorandum of Association. It is perhaps worth noting that the company was established at that stage to assist in community development rather than to operate a childcare centre. It is common case that the objects set out at 2(1)(b) to (e) do not state a charitable purpose and do not specify the purpose of any secondary objects for which provision is made to be the attainment of the main objects.

However, that is not the end of the matter. It is appropriate to look at 2(1)(a). It makes it clear that the objects for which the company is established are "*To establish, promote and operate a community development programme, which will act as a focus and catalyst for community development for the community at Togher in the County of Louth and surrounding areas, with a view to promoting their social, economic and cultural welfare and general benefit and particularly to empower specific disadvantaged groups to effectively participate in a programme of personal and social development.*"

There is no express description or reference to an objective for the relief of poverty. The objective of establishing a community development programme as one of its aims with a view to empowering "*specific disadvantaged groups*" cannot be said to be the main sole object.

In this regard we note that the appellant relies heavily on the decision of the Tribunal in **Mellow Spring**. In that case an objects clause expressly provided,

> "*(a) that the centre in question provides not only childcare but also training, family and child support for the Finglas Community*, and
> *(b) that its particular or special aim is to provide these services to those identified as being most in need.*"

It is made clear, however, in that determination that it could <u>not</u> be regarded as establishing that childcare would in general terms be considered a "*charitable purpose.*"

However, it seems to us that the objects clause in this case is significantly different to that in the **Mellow Spring** case. The objects clause here requires the company to establish, promote and operate a community development programme which is aimed at assisting various groups within the community but also promoting social, economic and cultural welfare and general benefit. It does not appear to us that this can be read as being the main or dominant objective for the relief of poverty. There is no mention of "*need*" or "*poverty*" in the objects; indeed there is no mention of a provision of childcare.

In our view, therefore, the appellant cannot be said to be a charitable organisation within the meaning of Section 3.

It may be of assistance if we consider the other points raised. Another issue discussed was whether or not the premises in question could be regarded as being used "*exclusively for charitable purposes*". It is clear that the building here is used not only as a crèche but also for other, what might be described as, community purposes (lessons, meetings and even political clinics). These other uses could not be regarded as being charitable or for the relief of poverty, though undoubtedly they are of considerable assistance and for the benefit generally of the community. It seems to us that even if we did regard childcare as a charitable purpose, the premises in question are not used exclusively for that charitable purpose and therefore would not in any event come within the exemption provided by Paragraph 16 of Schedule 4, even if the appellant had been found to be a "*charitable organisation*" within the meaning of Section 3.

The final issue raised is whether or not the use as a crèche could ever qualify as usage for a charitable purpose. The decision in **Mellow Spring** makes clear that, in certain circumstances, the provision of childcare to a particularly disadvantaged community and in particular the providing of services to persons identified as being in particular financial need can constitute use for a charitable purpose. It is abundantly clear however that the usage as a crèche cannot of itself constitute a charitable purpose.

While both in **Mellow Spring** and the appellant's situation a means test is applied to persons who look for subventions, there is no requirement contained within the Memorandum or Articles of Association here that obliges management to carry out such a means test. Indeed,

given that approximately 30% pay the full rate charged by the centre, it would not appear to us that the centre is used exclusively by persons who cannot afford to pay.

We should also add that the **Mellow Spring** decision was one based expressly on its own facts. So it cannot be said that Togher is suffering from the kind of severe disadvantage or tragic social problems that appear unfortunately to beset the area in which the Mellow Spring Centre was located. It also appears to us that while the provision of childcare can, in combination with various other factors, constitute in effect usage of the premises for the relief of poverty substantially (if not exclusively) this does not arise in the facts of this case.

Determination

The Tribunal determines that the property the subject matter of this appeal is rateable. No issue is taken with the valuation assessment carried out by Ms. Marron in the first appeal and accordingly we affirm the earlier valuation of €50 and dismiss the appeal.

And the Tribunal so determines.