

Appeal No. VA12/2/017

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

Bere Island Old School Heritage Complex Ltd
APPELLANT

and

Commissioner of Valuation
RESPONDENT

RE: Property No. 912621, Heritage Centre at Lot No. in 7, Ballynakilla, Bear,
Castletown, County Cork.

B E F O R E

Sasha Gayer - Senior Counsel

Chairperson

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF DECEMBER, 2012

By Notice of Appeal received on the 6th day of June, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €31 on the above described relevant property.

The Grounds of Appeal are set out in a letter attached to the Notice of Appeal, copies of both of which are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, located on the third floor of Holbrook House, Holles Street, Dublin 2, on the 8th day of October, 2012. The Appellant was represented by Mr. Eugene Glendon of Coakley Moloney, Solicitors, 49 South Mall, Cork, and Mr. Barry Hanly, Chairman of the appellant organisation, gave evidence to the Tribunal. The Respondent was represented by Mr. Robert O’Neill B.L., instructed by the Chief State Solicitor’s Office, and Mr. Liam Hazel, MSC Real Estate, BSC (Hons.) Real Estate Valuation and Property Management, ASCSI, MIPAV, a valuer in the Valuation Office, gave evidence on behalf of the Respondent.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence and legal submissions prior to the commencement of the hearing and had submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence in chief. This evidence was supplemented by additional evidence given either directly or via cross examination. From the evidence so tendered, the following emerge as being the facts relevant and material to this appeal.

The Property

The subject property comprises of a converted old school building on a site of 0.35 acres. The property was refurbished and extended in 2010 and consists of a heritage exhibition of Bere Island, a café, shop and conference facilities which has a total capacity for up to 130 people.

The accommodation comprises:

| | |
|-------------------------|------------------|
| Reception and shop | 67.93 sq. metres |
| Café and kitchen | 13.44 sq. metres |
| Conference/meeting room | 77.09 sq. metres |
| Exhibition area | 43.77 sq. metres |
| Toilets | 8.84 sq. metres |
| Lobby areas | 19.15 sq. metres |

It seems that when the property was originally inspected by a valuer on behalf of the Commissioner of Valuation the “exhibition area” referred to above was wrongly stated to be 76.38 sq. metres. This led to the rateable valuation of €31 being included in a Valuation Certificate dated the 10th of May, 2012. However, because the exhibition area was in fact only 43.77 sq. metres it was accepted by the Respondent that the correct rateable valuation should be €27. This was clarified at the outset of the oral hearing.

The property is held by the Appellant under a Lease from St. Brendan’s Trust dated the 10th of July, 2001 for a term of thirty-five years from the 1st of January, 2008 subject to an annual rent of €330. The Lease in question contains covenants that, *inter alia*, the use of the premises is restricted and the lessee is obliged “*to use the old school as a heritage and genealogical centre for Bere Island and for the objects detailed at clause 2(1) of the Lessee’s Memorandum of Association at incorporation*”. There is a further covenant on the Lessee “*to permit the trust to use the Old School for its parochial purposes, without charge on giving ten days’ notice in writing to the Lessee or its Secretary and such notice of use may be given by the Parish Priest of Bere Island or such Priest or person acting under his authority*”.

Location

The property is situated on Bere Island in Bantry Bay adjacent to Castletownbere in West Cork.

Valuation History

The property had not previously been entered on the Valuation List.

The Appellant’s Case

In its written submissions, the Appellant expanded upon the grounds of appeal which were set out in the Notice of Appeal. It was indicated that the Appellant is relying on the following grounds, of exemption, as set out at Schedule 4 of the Valuation Act, 2001:

“11.–Any art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit.”

“16.–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 or otherwise than for private profit, [...].”

The Appellant’s written submissions contained a copy of a letter dated the 17th of September, 2012 from the Revenue Commissioners confirming that the Appellant is regarded as established for charitable purposes only and the submissions confirmed that the Appellant enjoyed charitable status under registration number CHY19268.

The Memorandum of Association of the Appellant at paragraph number 2 states:-

“The main object for which the company is established is:

To benefit the community of Bere Island and West Cork by promotion of understanding and preservation of the cultural heritage of Bere Island by collecting, documenting and preserving relevant resources.”

“To encourage and support community participation in said promotion through events, workshops and exhibitions.”

The Memorandum of Association states at paragraph number 3 –

“The following objects set out hereafter are exclusively subsidiary and ancillary to the main objects set out above and these objects are to be used only for the attainment of that main object and any income generated therefrom is to be applied for the main object only.”

“That our Heritage Centre would serve as an Information Centre for both locals and visitors to the island.”

“To facilitate the investigation of Genealogy.”

“To promote the preservation of Traditional Skills.”

Paragraphs 7 and 8 of the Memorandum of Association state that the Appellant cannot generate a private profit.

The Heritage Centre Income and Expenditure Report 2011 records that the centre had a total income of €11,968.24 (generated by an entrance fee to the exhibition, sales in the shop, sales in the café, room hire, fundraising and an insurance and bank loan refund). The total expenditure including overheads, servicing a bank loan and promotion was in the sum of €10,285.48.

In his opening submission to the Tribunal, Mr. Glendon, on behalf of the Appellant, indicated that evidence would be adduced on the Appellant’s behalf from Mr. Barry Hanley, the chairman of the Bere Island Heritage Centre. It was stated that Mr. Hanley’s evidence would show that the Appellant has charitable status and that the premises was normally used as an art gallery/museum and/or as a library. Mr. Glendon appeared to accept in his opening submission that the Appellant was not in a position to make out the case that the property in question was used exclusively by it for charitable purposes and to that end would in the main be relying upon the exemption afforded by Paragraph 11 of Schedule 4. Mr. Glendon outlined how the property was in a very remote location and that while the island was only accessible by boat, the heritage centre itself was approximately 1.5 kilometres from the nearest ferry port. Mr. Glendon stated that while there was a craft shop within the premises it did not generate any profits to speak of.

The Evidence of the Appellant

Mr. Barry Hanley, chairman of the heritage centre, gave evidence that the property in question was located in the centre of Bere Island and that it was approximately a two hour drive from Cork to the heritage centre. Mr. Hanley outlined how the property had previously been a national school which was extended and converted into the heritage centre with the building work taking place in 2009 and the official opening taking place in 2010. The centre had been renovated and extended with, *inter alia*, European funding sourced by a group called “The Friends of Bere Island”. Mr. Hanley indicated that this group had come together with the aim of assisting the survival of the community on Bere Island. In addition, Mr. Hanley outlined how the island had a rather unique cultural heritage as there had been a British military presence there until 1938. A huge number of persons on the island had been employed by the British military who had constructed a Martello tower to protect against a French naval invasion. Mr. Hanley stated that the exhibition located in the property related in part to the military history of the island and the fortifications which had been built.

Mr. Hanley stated that the premises were in part an art gallery, a museum and a library. The premises were an art gallery in that it was used to exhibit the work of local artists and local craftsmen. They were also used as a museum which displayed, *inter alia*, artefacts which had traditionally been used by the islanders. At this point, reference was made to the Appellant’s précis of evidence and the photographs contained therein of the items currently on display in the heritage centre. Mr. Hanley also gave evidence that the premises were used as a library by the island community in that the premises contained a number of reference and reading books available to them. In addition, significant work had been done by the people who worked in the Heritage Centre in record-keeping, in which they had been trained by Pobal. This had included mapping a local graveyard and compiling a database of graves which was available in the heritage centre. Mr. Hanley stated that a lot of work had been done for the centre by volunteers. It was open throughout the year, Monday to Friday, from 9.00 a.m. to 5.30 p.m. and during the months of May to September it was also open for four or five hours on a Saturday and Sunday. During the winter, most of the work done in the centre involved preparing for

exhibitions to be staged during the summer months. It seems that the premises have what can be described as a “permanent” exhibition. But, in addition to this the premises also hosts from time to time themed exhibitions. Previous exhibitions held in the centre had been on the island’s military history, sport and emigration.

Mr. Hanley emphasised that the premises were not maintained for the purposes of making a profit. No payment was made to the directors, officers or employees of the Appellant. Most professionals donated their services free of charge. The sales from the art gallery/craft shop just about covered the expenditure associated with the premises. Mr. Hanley noted that there were three people who were in a position to continue living on the island because of what the heritage centre was doing.

Cross-Examination

Under cross-examination by Robert O’Neill B.L., for the Respondent, Mr. Hanley confirmed that when a themed exhibition is running in the centre visitors are charged into same. There was always a permanent exhibition in the premises but it was moveable and could be moved around the premises from time to time. Mr. Hanley was then asked about the brochure which had been compiled by the Appellant when they opened the centre. This referred to craft courses, dance classes and meditation, a nature and heritage walk, heritage and archaeological package holidays exploring the island, and traditional skills courses. Mr. Hanley indicated that the Appellant did not organise package holidays but stated that some persons on the island did provide this service. Mr. Hanley said that when the brochure was being compiled they had included a range of services in same which they had hoped the Centre would be in a position to provide. In relation to the library, he confirmed that there were some 500 to 600 books in the centre contained in a floor to ceiling bookcase and that people borrowed books from the centre on a weekly basis. There was no other library on the island. He was not in a position to say whether there was a charge involved in this.

When questioned about the shop he confirmed that the products in the shop had all been sourced locally and that the centre charged a 20% commission in respect of each item

sold. Therefore the €1,332.72 recorded in the Appellant's accounts in respect of shop sales represented one fifth of the total sales of the shop. The café provided coffee and pastries which had been supplied by locals.

The art gallery consisted of pictures displayed along the back wall and around. There were no photographs of the pictures so displayed in the Appellant's précis of evidence. Mr. Hanley indicated that most of the art work contained in the centre was not for sale. He indicated that there was a permanent collection of paintings and that perhaps about 50% of all of the paintings in the centre comprised this permanent exhibition.

The Respondent's Case

The Respondent disputed the Appellant's assertion that it was entitled to avail of either the exemption contained in Paragraph 11 or Paragraph 16 of Schedule 4. With regard to the exemption claimed under Paragraph 11, it was submitted that the premises did not come within the definition of "art gallery" or "museum" or "library". Instead, it is a property which contains a craft shop, café, a heritage exhibition and a meeting room/conference centre. Even if the operating company did not make a profit, it was argued by the Respondent that local businesses/artists/crafts persons used the premises to sell their wares, including artwork, or run courses, apparently for private profit. Reference was made to the information leaflet published by the Appellant which offered an extensive range of Bere Island products for sale including craft holidays and traditional skills courses and which advertised for corporate events. In this information leaflet there was reference to a selection of local information, but no reference to a library or art gallery. It was submitted by the Respondent that the property is multi-use and that while there is a heritage exhibition on the premises, its function is otherwise commercial in nature and for the private profit of the local business/craft community. The Respondent argued that the ratepayer has a strict onus of proof to achieve and the property is not any of the things contended for in this regard.

With regard to the exemption claimed pursuant to Paragraph 16 of Schedule 4, the Respondent asserted that the Appellant was not a charitable organisation, nor, is the

property, the subject of the appeal, used exclusively for charitable purposes or otherwise than for private profit. Whilst the Appellant is a registered charity for Revenue purposes, the Respondent points out that this does not mean *per se* that it will be deemed to be a charitable organisation for the purposes of the 2001 Act. The Articles and Memorandum of Association of the Appellant do not disclose a charitable purpose. The stated primary purpose in the Memorandum of Association is not a charitable purpose *per se*, but, is rather to benefit the island community by the promotion of the understanding and preservation of the cultural heritage of the island. It was further submitted that to benefit from the exemption conferred by Paragraph 16, the constitution of the company must strictly comply with the requirements of Paragraph 16 and that in this case the constitution of the company does not comply with the further requirements of the definition of “charitable organisation” in the 2001 Act.

The Respondent further argued that even if the Tribunal considered that the Appellant constituted a charitable organisation within the meaning of the Act, that was not the end of the matter, but, the Appellant also had to prove that the property is used exclusively for charitable purposes and not for private profit. In the instant case, the Respondent submitted that the property is not used exclusively for charitable purposes. It is not accepted by the Respondent that any of the purposes it is actually used for are charitable purposes and even if there is any charitable use, it is not exclusive and the Respondent submitted that in fact the primary use of the premises is commercial.

In its précis of evidence, the Respondent listed three comparator properties – Youghal Heritage Centre, Skibbereen Heritage Centre and Cobh Heritage Centre – all of which were listed rateable.

The Respondent’s Evidence

Evidence was given by Mr. Liam Hazel, valuation officer, who referred to his précis of evidence and adopted same. Mr. Hazel confirmed that he had visited the centre on the 19th of April, 2011 and had been met by a Ms. Teresa Hobbs. The leaflet which had been

put to Mr. Hanley in cross-examination and relied upon by the Respondent in its legal submissions had been presented to Mr. Hazel by Ms. Hobbs.

Mr. Hazel confirmed that he did not see any books which may comprise a library, nor did he see any items of art. The museum in which the permanent exhibition was housed was, on the day of his visit, set out with chairs as if for a meeting. Mr. Hazel noted that the main object of the company was not charitable under the 2001 Act, although he conceded that the Revenue Commissioners might treat the company as being charitable.

Cross-Examination

Under cross-examination, Mr. Hazel accepted that the property, the centre, was some five and a half hours' journey from Dublin and accepted that the premises were open when he arrived, although he had prior to this sent a letter saying he would be in the area on the day he was due to call.

On questioning by the Tribunal, Mr. Hazel confirmed that there were some fifty-one heritage centres listed in the Valuation List. He had not actually visited the comparator properties referred to in his précis of evidence so was not in a position to comment on the size of the exhibition in each of those properties in comparison with the café, etc. Mr. Hazel noted that there was one heritage centre which was deemed not to be rateable and this was Bray Heritage Centre. These premises were not rateable because they had been deemed to be "100% museum".

The Appellant's Submissions

Mr. Glendon on behalf of the Appellant submitted that the premises in question were a dedicated community hall and that the Appellant was a registered charity. In his submission if the rateable valuation imposed by the Respondent was allowed stand this would be a penal amount to the Appellant.

The Respondent's Submissions

Mr. O'Neill submitted on behalf of the Respondent that the premises operated for the cultural and economic benefit of the islanders. As far as the exemption under Paragraph 11 was concerned, Mr. O'Neill submitted that the premises in question was not an art gallery, nor, was it a museum or a dedicated library. Instead, the premises was a heritage centre. Mr. O'Neill submitted that an art gallery is not created simply by hanging a few paintings on the walls. Further, Mr. O'Neill submitted that the use of the word "or" in the phrase "*any art gallery, museum, library, park or national monument ...*" which defined the premises which might avail of an exemption pursuant to Paragraph 11, meant that the section had to be interpreted disjunctively so that if a premises had multiple uses such as art gallery and museum, it could not come within the ambit of Paragraph 11. Mr. O'Neill submitted that Paragraph 11 required premises to be one thing or the other to avail of the exemption.

In addition, Paragraph 11 provides that in order to avail of the exemption the premises must not be operated for private profit. In this case, while the Appellant company had not been set up for profit, the heritage centre itself operated for the benefit of the island community and one of its primary functions involved marketing the community's wares. This could only be deemed to be for the benefit or profit of the community and in that sense the property could not come within the ambit of Paragraph 11.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at the hearing.

The Tribunal finds that:-

- (1) The subject relevant property does not comply with the requirements of Schedule 4, Paragraph 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 principle 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.”*

The property could not be said to be used “exclusively for charitable purposes” by the Appellant and consequently the Applicant’s ground of appeal pursuant to Paragraph 16 of Schedule 4 of the Valuation Act, 2001 must fail. In so finding the Tribunal has had regard to the evidence before it that the property is used for a variety of purposes including to exhibit art (some of which is for sale), for the sale of locally made items, to keep a library of books on, to house historical exhibitions, to host conferences and events and to provide a space for other activities including lessons in music, photography and arts and crafts. The Tribunal finds that while these uses are of considerable assistance and for the benefit of the island community, they could not be regarded as charitable and in so finding, the Tribunal applies a previous decision in **VA03/3/007 – Dance Theatre of Ireland Limited; VA05/3/072 – Coolock Development Council Ltd.; VA09/2/002 – Kids Allowed Ltd.; and VA10/2/024 – Togher Community Project Group Ltd.**

- (2) The Tribunal must now consider whether the Appellant is entitled to avail of the exemption contained at Paragraph 11, Schedule 4 of the 2001 Act which applies to:

“Any art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit.”

The Tribunal does not accept that to avail of the exemption allowed by Paragraph 11 of Schedule 4 of the Valuation Act, 2001 a premises must be either an art gallery, or, a museum, or, a library as submitted by the Respondent and that if a premises has multiple uses it immediately falls foul of the said exemption. The Tribunal is satisfied that the word “or” is used in the Section to link the alternative types of premises which qualify for an exemption. The Tribunal is satisfied that the words used in their ordinary and grammatical sense do not exclude from the parameters of the exemption any premises which has a multiple use, provided those multiple uses are confined to the uses contained in the Section. The Section does not provide that the exemption applies to “*any premises which is either an art gallery, museum, library, park or national monument...*” Therefore, if a premises is both an art gallery and a museum, the Tribunal is of the view that same will qualify for an exemption pursuant to Paragraph 11 of Schedule 4.

- (3) Having heard the evidence from both parties regarding the use to which the premises, the subject matter of this appeal, is put, the Tribunal is satisfied that the said premises does not come within the definition contained in Paragraph 11 of Schedule 4 of the 2001 Act in that the premises cannot be said to be either an art gallery, or a museum or a library or a combination of any of these. The Tribunal accepts that an art gallery can be small in scale and that a premises can qualify for exemption as an art gallery when it is used to exhibit just a few paintings. Further, the Tribunal accepts that a premises does not cease to come within the exemption afforded by Section 11 simply because it is an art gallery or museum or national monument with a café attached. However, the premises in this case is not an “art gallery” while it does exhibit paintings, nor, is it a “museum” while it does have a small permanent exhibition, nor, can it be said to be a library, although it does have some reading books available for loan to members of the community. The premises

is primarily a “community centre” or “heritage centre” which exhibits artefacts and some art and in that sense can be distinguished from the heritage centre in Bray mentioned in evidence by Mr. Hazel.

The 2001 Act is a statute of taxation and as such the onus of proof remains upon the ratepayer to prove exemption and any exemptions contained therein are interpreted strictly against the ratepayer. In this regard, the Tribunal is obliged to follow the decision of the High Court in *Nangles Nurseries v. The Commissioner of Valuation* [2008] IEHC 73. In applying this decision, the Tribunal is of the view that if the legislature had intended community centres, or, heritage centres *per se* to be exempt from rateability then provision for this would have been made in the legislation.

- (4) Having made the finding at paragraph 3 above, it is not necessary for the Tribunal to consider whether the premises had been established or is maintained for the purpose of making a private profit.
- (5) Having regard to the evidence of Mr. Liam Hazel, the Tribunal finds that the rateable valuation of the subject property is €27.

Determination

In view of the foregoing, the Tribunal determines that the property is rateable. There being no appeal against quantum, the Tribunal determines that the rateable valuation on the subject property is €27.

The Appeal stands dismissed.

And the Tribunal so determines.