

Appeal No. VA88/0/047

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

Howth Yacht Club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Clubhouse and Marina at Lot No. 2 Trawler Pier, Howth, Co. Dublin

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF JUNE, 1989

By notice of appeal dated the 11th day of August 1988, the appellants appealed against the respondent's valuation of the above described hereditament on the grounds that:

- 1.The valuation is excessive and inequitable.
- 2.The hereditament comprises land developed for sport including constructions affixed thereto which pertain to development which items are not rateable pursuant to Section 3 of the Valuation Act, 1986, and valuation should therefore be either reduced or declared to be exempt.

Mr Desmond M Killen F.R.I.C.S. A.R.V.A. who is a director of Donal O'Buachalla & Co Ltd presented a written submission dated the 15th February, 1989.

In the course of that submission he set out that the total area of the site as per lease dated 20th February, 1987 between the Commissioners of Public Works as Lessors and the appellants as the Lessee to be 1 acre 1 rood, statute measure or thereabouts. A copy of that lease is attached to this judgment as Appendix A.

Mr Killen said that the sole matter for the consideration of the Tribunal was the correctness, or otherwise, of the respondents making a rateable valuation assessment on the 1st November, 1987, in respect of that part of the hereditament, described in the valuation list as "Marina Yard", having regard to section 3 of the Valuation Act, 1986.

He outlined the valuation history of the hereditament which was also given by Mr O hUallachain on behalf of the respondent.

The parties are agreed that the total site is approximately 1.25 acres of reclaimed land at Trawler Pier, Howth. The "marina yard", the subject of this appeal, is comprised of approximately 1,250 sq metres of surfaced yard - a portion of the total site.

Mr Donal O hUallachain B.A., M.P.A., a district valuer with over 17 years experience in the Valuation Office, presented his written submission on the 16th November, 1988.

In the course of that submission he said that he had inspected the hereditament in January 1988 and found that it consisted of a site of one acre or thereabouts situated on a new pier built in Howth Harbour by the Office of Public Works and known as "Trawler Pier".

Of the site occupied by the club some 1250 square metres were in use as a boat storage area. There was direct access from the storage area to the water of the harbour by way of a boat slip. There was also access through the site by way of a hinged landing bridge or gangway to a floating marina capable of berthing approximately 200 boats. Some of the boats moored to the marina were obviously designed for competitive sailing while others would be regarded as leisure craft. The boat storage area was bounded on two sides by a chain-link fence and wall, on a third side by the water of the harbour and on the fourth side by the clubhouse.

The valuation history of the premises is as follows:-

The yard was first valued in the 1985 revision of valuations at £500. On appeal to the Commissioner no change was made and the club then appealed to the Circuit Court. By the consent of both parties the court reduced the valuation to £100. In 1986 the hereditament was listed for revision of valuation on the grounds that the valuation was excessive. (The agreement to reduce the 1985 valuation to £100 had not been made by that time). No change was made and the club appealed to the Commissioner. Mr O hUallachain was directed by the Commissioner to inspect the hereditament and report to him.

Having considered his report the Commissioner fixed the valuation at £100 as already agreed for the previous year.

The club then appealed to the Circuit Court and on 7th November, 1988 the Court ruled that the hereditament described as "Marina Yard" in the valuation lists published on 1st January 1987 was land developed for the purpose of sport and therefore should not be deemed to be a rateable hereditament. The Commissioner is at present considering whether or not the matter should be referred to the High Court by way of a case stated.

The clubhouse was first valued in the 1987 annual revision at £430 and this was added to the £100 previously agreed valuation on the yard.

The club appealed to the Commissioner on the grounds already stated.

Mr O hUallachain was directed by the Commissioner to inspect the hereditament and report to him. Having considered his report the Commissioner reduced the buildings valuation to £300 and made no change in the absolute valuation of £100.

In response to the grounds of appeal put forward in the notice of appeal it was his considered opinion that:-

- A. No part of this hereditament is land developed for the purpose of sport and that therefore no reduction in the valuation on that ground of appeal would be merited.
- B. The lease states that the plot let to the club is "not to be used otherwise than as site for a Yacht Club House only and ancillary activities". There was no clubhouse valued here when the 1987 valuation list was published. The valuation

now being appealed takes account of the clubhouse which has been erected. The yard is ancillary to the clubhouse.

C. The clubhouse has been valued as a building. According to Section 12 of the Valuation (Ireland) Act, 1852, all buildings are deemed to be rateable hereditaments, and the Valuation Tribunal has deemed the Greystones Golf Club premises to be a building (Appeal No. 88/126) and therefore a rateable hereditament.

D. Howth Yacht Club claims that competitive sailing is a sport. Whether it is or not the activity claimed to be a sport does not take place in this hereditament, but elsewhere - i.e. on the water. Storage or maintenance of boats and trailers is not a sport and there are no markings on the surface of the area used for storage which would indicate that it is used for any sport. In its "actual state" it could be used for other purposes such as carparking.

E. Storage areas attached to the yacht clubhouse have been valued for many years prior to the enactment of the Valuation Act, 1986. The marina yard which is part of this hereditament was valued prior to the enactment of the Act of 1986 and the club agreed to this, accepting that the marina yard was then a rateable hereditament.

The boat storage area as developed land was deemed to be a rateable hereditament prior to the enactment of the Act of 1986 and it remains so because under section 2 of that Act "property falling within any of the categories of fixed property specified in the Schedule to the Act of 1852 (inserted by this Act) shall be deemed to be rateable hereditaments in addition" (emphasis added) "to those specified in section 12 of that Act".

F. The plot leased to the yacht club by the Office of Public Works may not be land, developed or otherwise, but part of the pier known as "Trawler Pier" and liable to be valued under Reference Number 4 of the Schedule to the Act of 1852 inserted by section 3 of the Valuation Act 1986. It is known as "Lot No. 2 Trawler Pier" in the valuation list.

G. If the boat storage area is developed land then the wall and fence are structures affixed to land and should be accounted for in the valuation. The fact

that the storage area is enclosed has been taken into account in arriving at the agreed valuation of £100. As an open unenclosed storage area the valuation would be significantly less.

Oral Hearing

The oral hearing took place on the 15th day of May, 1989. Mr Harold Whelehan S.C. and Ms Yvonne Murphy (instructed by Marcus A Lynch & Son, Solicitors) appeared for the appellants. Mr Aindra O'Caomh (instructed by the Chief State Solicitor) appeared on behalf of the respondent.

In his opening submission Mr Whelehan stated that the appellants were seeking exemption on the basis that the hereditament which was known by the club members as the "dinghy park" was developed for the purpose of sport as set out in paragraph 2 of the schedule introduced into the 1852 Act by section 3 of the 1986 Act.

There was reference to a decision of His Honour Judge Martin given last year wherein he ruled that the hereditament was entitled to exemption.

It appears, however, that the case made on behalf of the respondent at the Circuit Court hearing was that the hereditament came within reference No. 4 to the schedule added on to section 48 of the 1852 Act by virtue of section 3 of the Valuation Act, 1986. This provides for a category of fixed property "all fixed moorings, piers and docks." Mr O'Caomh said that he was not making that case at all before the Tribunal. Equally, the case that he wished to make before the Tribunal had not been made before the Circuit Court, viz. that the actual area used as a dinghy park was not used "for sport".

In that sense, therefore, a completely different case was debated before the Tribunal from what had been debated before Judge Martin.

It should be noted that this case was heard in conjunction with the case of National Yacht Club v. Commissioner of Valuation (VA88/251). It was agreed between the parties that the decision in each case would have to be the same; if one were exempt, the other would be exempt also.

Mr Rupert Jeffares, who is secretary/manager of the appellants gave evidence and set forth that he had sailing experience of about 30 years.

He said that the area in question was used for storing boats in preparation for sailing activities for dinghy races and that the persons taking part in the sport would spend an hour beforehand preparing their boats, getting their sails up, getting their masts up, tuning their boats and then similarly after the race they come back in and derig their boats and put them back into position.

During the summer, in both July and in August, as well as having dinghy races the club runs an Irish Yachting Association sail training course mainly for young people from the age of 9 years up to the age of 16 or 17 and up to 150 people take part in these courses.

During the winter months regattas are held on Sunday morning and up to 70 to 80 boats take part. In summer months the maximum would be about 120.

Prior to the races, the dinghies that go out have their masts put up and their sails as well; the sails are tuned to the amount of wind there is and the sort of race they are going to sail in depending on the weather conditions outside. He said that it was not possible to have boats that normally "live in this park" and are rigged in this park to be launched and then rigged on the moorings while on the water. He said that the rigging of a boat was of the first importance and the winning or losing of a race could very well be in the dinghy park beforehand and that much depended on setting the sails correctly.

Mr Patrick K O'Neill who is president of the Irish Yachting Association gave evidence. It appears that Mr O'Neill is a member of all yacht clubs in his capacity as a president and, in any event, he is familiar with Howth Yacht Club.

He gave a resume of the activities that had been completed. It appears that Howth is set to host a world class event in 1990. There will be 2,000 visitors to Howth for that event. All the boats that are racing in this event will be manicured, prepared and got ready in the park to go on the water and each day the boats will be launched from there and they will go out and they will sail. The preparation before racing in a world class event of this nature would probably take four hours before launching. The race would probably take three to four hours and the derig and debriefing afterwards on this hard area would be another three hours. So that in an event of this nature one third of the time would be spent on the water and two thirds ashore.

In the case of ordinary junior sailing and the like these proportions would be reversed.

Mr O'Neill also stressed the importance of the safety aspects of the matter and the importance that this area had in that.

An outline of the evidence of Mr O hUallachain for the respondent has already been given. Mr Fergus Meghen, who is an engineer with the Office of Public Works, gave evidence that the place in question had been reclaimed from the foreshore.

Mr O'Caomh in his submissions made the point, in the first instance, that this was never agricultural land and came into being, so to speak, as developed land.

His primary submission, however, was that these lands were not developed "for sport". He referred to the decision of the Tribunal in the Turf Club case (Appeal No. 88/138). In the course of its judgment in that case the Tribunal said:-

The Tribunal, however, believes that the constructions which pertain to the development means pertaining to its development for sport rather than anything ancillary to the particular sport. While, undoubtedly, the attraction of spectators is part and parcel of many sporting occasions, nonetheless, the Tribunal believes that if the legislation wished to exempt developments which are ancillary to the actual sporting arena it would have said so in clear words. The Tribunal takes the same view in relation to accommodation both for spectators and participants in the sport.

Findings

The question posed for resolution in this case is basically a simple one. Is this development "for sport" or is it something ancillary to the sport. Of course, the point can be made that the main "sport" is on the water but the Tribunal is of the opinion that what is done at the dinghy park both prior to the dinghies going on the sea and when they are brought ashore is not only something ancillary to the sport but is part of the sport; in a word it is essential to the sport. Whilst the sportsperson could go straight to the football pitch, crease, court or tee these dinghy sailors could not go directly into the water in safety to participate in their sport. Participation in this sport begins of necessity in the marina yard.

In these circumstances, the Tribunal has reached the conclusion that the hereditaments are entitled to exemption under reference number 2 to the schedule inserted after section 48 of the Valuation (Ireland) Act, 1852 which provides -

"All lands developed for any purpose other than agriculture, horticulture, forestry or sport, irrespective of whether or not such land is surfaced, and including any constructions affixed thereto which pertain to the development."

Paragraph 12 of the First Schedule to the Valuation Act, 1988, provides that the costs of the appeal should be ordered to be paid by the unsuccessful respondent or appellant as the case may be in the Appeal "unless there is good reason for not doing so."

The Tribunal has in two cases in the past involving the "sporting" exemption made no order as to costs where the Commissioner was successful on the grounds that they were cases that were "test" cases and might govern many other cases.

That has come to pass. Other cases have abided the results of those cases. These appellants, however, are only concerned with their individual cases and are not concerned that the results may govern other cases.

Accordingly, the appellants are entitled to their costs.