

Appeal No. VA90/3/079

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

County Galway V.E.C. (Petersburg Outdoor Education Centre)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hostel, stores and offices at Lot No: 36Ba, Cappaghmagapple or Petersburg, Clonbur, Oughterard, Co. Galway

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Brian O'Farrell

Valuer

Padraig Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF APRIL, 1991

By notice of appeal dated the 27th day of September, 1990, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £60 on the above described hereditament.

The grounds of appeal as set out in the notice of appeal are that the property is used solely for educational purposes and is non profit making.

The Property

Petersburg House is the ancestral home of a branch of the Lynch Family. It is situated on the southern shore of Lough Mask with Lough Corrib to the south and the Maam Turk and Partry mountains to the west. It is about one and a half miles from Clonbur and 33 miles from Galway city. The property consists of single and two storey rubble masonry buildings with slated roofs. The accommodation consists of a kitchen, dining room cum T.V. room, three dormitories, ladies and gentlemens bathrooms, staff rooms, equipment store and tool shed. It is used as an outdoor education centre with full catering facilities. The activities at the centre include canoeing, yachting, windsurfing, rock climbing. The property was transferred to the V.E.C. by Galway County Council for the nominal sum of £1, on the condition that it be developed as an outdoor education centre.

Valuation History

Prior to the 1989 revision the property was entered in the Valuation Lists as "Ho (vac & dilap) & Offs". R.V. £5. The property was revised in 1989 and was subsequently entered in the Valuation Lists as "Hostel, stores & offs". R.V. £60. This was appealed to the Commissioner of Valuation who made no change at first appeal stage. It is against this determination that the appeal lies with the Tribunal.

Written Submissions

A written submission was received from Mr O Muirgheasa, Chief Executive Officer, County Galway Vocational Education Committee, on the 4th March, 1991. In support of his appeal on Mr O Muirgheasa made the following points:-

1. Petersburg O.E.C. is strictly an educational institution.
2. It is a non-profit making centre.
3. It is subsidised by the State.

4. As far as the running costs and maintenance are concerned, it must be self-supporting financially in accordance with the terms of the relevant Circular Letters from the Department of Education.
5. None of the 12 Vocational Schools under the aegis of Co Galway Vocational Education Committee pay rates.
6. None of the secondary schools (even fee-paying ones) pay rates.
7. University College Galway or the Regional Technical College Galway do not pay rates.
8. None of the other Outdoor Education Centres in the country operating under the aegis of their respective Vocational Education Committees pay rates and have not been valued.

Mr O Muirghesa attached a small article on the Petersburg Outdoor Education Centre which outlines in detail the situation, the history of the premises. The article stated that in 1987 Co Galway V.E.C. purchased Petersburg House, then in ruins, and the adjoining lands for the sum of £1. Contained in the conditions of sale was a caveat that it be developed as an Outdoor Education Centre under the aegis of the Committee. The area of land consists of 18 acres with a further 16 acres of an island situated 300 metres from the shallow southern shores of Lough Mask. He outlined details of the fund raising campaign launched to restore Petersburg House and lands to its former splendour and grandeur. The fund raising took place in the United States and financial subvention was also obtained from the American Ireland Fund. A grant of £50,000 was received from the Department of Education together with finance for staffing and a further £50,000 towards the purchase of equipment. He also outlined the facilities which are available such as lake side activities, orienteering, study of geology and mechanical studies. He said that with the completion of phase 1 the centre was able to provide dormitory accommodation for a total of 60 students together with separate

accommodation for staff, and restaurant and canteen facilities. In addition Mr O Muirgheasa also attached a brochure describing the facilities that are available in the Centre.

A written submission was received from Mr Noel Lyons B.Comm, a valuer in the Valuation Office, on behalf of the respondent, on the 1st March, 1991. In this Mr Lyons outlined the valuation history of the property and gave its description. He said that the contract price for the refurbishment of the buildings was £128,000 and outlined the funding arrangements. He said that he understood from Mr Michael Cunningham of Galway V.E.C. that the day to day running of the Centre was the responsibility of the V.E.C. There is no separate memorandum or Articles of Association. He said that it is hoped that the Centre would be self-financing but shortfalls have to be met by the V.E.C. Mr Lyons said that in 1989 a grant was received from the Department of Education lottery fund to pay the instructors. He said that there are charges for the use of the facilities and that V.E.C. groups are charged less than other groups. Mr Lyons attached three comparisons as follows:-

1. The Cappanalea Outdoor Education Centre.
2. The Little Killarney Adventure Centre.
3. The Delphi Adventure Centre.

Oral Hearing

At the oral hearing which took place in Galway on the 12th March, 1991, the appellants were represented by Mr Michael Molloy, Solicitor of Messrs Blake & Kenny, Solicitors, Galway and by Mr Conor O Muirgheasa, C.E.O. of the Co Galway Vocational Education Committee. Mr Aindrias O'Caoimh, Barrister-at-Law, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Also present was Mr Michael Cunningham of the Co. Galway V.E.C.

Mr O Muirgheasa stressed the educational nature of the Centre. He stated that the majority of the children attending were from disadvantaged areas or disadvantaged homes. He mentioned among the groups using the centre, travellers, first offenders, physically and mentally handicapped children and children from vocational schools. He explained that the Centre is a non-profit making centre which receives some State subsidy but is self-supporting as far as the running costs and maintenance are concerned.

In reply to questions from Mr O'Caoimh, Mr O Muirgheasa said that there were facilities in the Centre for up to 60 children at any one time but that there were rarely 60 in any one day, even during the peak period of June to August. He said that an average of 20-30 attended the Centre daily during that period. He estimated that between 80% and 90% of the children could be described as disadvantaged.

Again, in reply to Mr O'Caoimh, Mr O Muirgheasa agreed that while children from wealthy families did not normally attend Vocational Schools, there was, in fact, nothing to prevent them from so doing.

He stated that funding from central funds was minimal and that the rest of the money was obtained from fund raising and the charges levied on those attending the Centre.

Mr Lyons, referring to comparison No. 1 in his precis, viz/ the Cappanalea Outdoor Education Centre, said that the rateable valuation on this hereditament had been appealed on revision in 1983 but that no change had been made by the Commissioner on 1st appeal. He accepted Mr O Muirgheasa's point that his other two comparisons were commercial ventures but said that the rates charged in these ventures were very little, if any, higher than those of the subject hereditament.

My Lyons stated that to his knowledge, in some County Council areas the local authority did not collect rates from establishments which were similar to the subject in nature.

Mr O'Caoimh stated that the grounds of appeal put forward by the appellant were that the centre was used solely for educational purposes and that he would confine his legal argument to that point.

Mr O'Caoimh referred the Tribunal to Section 2 of the Valuation (Ireland) Act, 1854 which he said should be read in conjunction with Section 63 of the Poor Relief (Ireland) Act, 1838. He referred also to the case of **Barrington's Hospital v. Commissioner of Valuation [1957] I.R. 299** and said that the subject hereditament could not be said to be used exclusively for education of the poor and must therefore fail to secure exemption.

The Law

S. 63 of the Poor Relief (Ireland) Act 1838 -

'Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.'

S. 2. Valuation (Ireland) Act, 1854.

"In making out the Lists or Tables of Valuation mentioned in the said firstly herein-before mentioned Act the Commissioner of Valuation shall distinguish all Hereditaments and Tenements, or Portions of the same, of a public Nature, or used for charitable Purposes, or for the Purposes of Science, Literature, and the Fine Arts, as specified in an Act of the Sixth and Seventh Years of Her Majesty, Chapter Thirty-six; and all such Hereditaments or Tenements, or Portions of the same, so distinguished, shall, so long as they shall continue to be of a public Nature, and occupied for the public Service, or used for the Purposes aforesaid, be deemed exempt from all Assessment for the relief of

the destitute Poor in Ireland and for Grand Jury and County Rates: Provided always, that Half the annual Rent derived by the owner or other Person interested in any tenements or Hereditaments so distinguished shall be included in such List or Tables, so far as the same can or may be ascertained by the said Commissioner of Valuation."

Findings

The Tribunal accepts that the opportunities afforded the young people who attend this centre are educational in the true and derivative meaning of that term. It also accepts that the majority of those young people who might benefit from this enterprise are from the less advantaged sections of our society.

The Tribunal, is however bound to review the statutes which govern this matter and the decision of the Supreme Court in the **Barrington's Hospital** case which has seemed to establish that for "education" to be considered exempt, it must be limited to education of the poor and the poor exclusively. Mr Justice Kingsmill-Moore in **Barrington Hospital v.**

Commissioner of Valuation

"Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory, and buildings belonging to certain societies institutes for purposes of science, literature or fine arts) the grounds for exemption of rates must be found in the proviso to S.63 of the Act of 1838 (McGahan & Ryan's case (2))"

Mr Justice O Dalaigh

"I accept that the charitable purposes referred to in S.63 should in regard to education be read as limited to the education of the poor."

The Tribunal is very conscious of the worthy aims of the subject hereditament and also of the extremely committed work of Mr O Muirgheasa and his fellow trustees.

It is also conscious of the fact that secondary schools benefit from the provisions of the Local Government (Financial Provisions) Act, 1978.

The Tribunal is, however, restricted to the evidence put before it, both by written submission and at oral hearing.

It is satisfied that S.63 of the 1838 Act governs S.2 of the 1854 Act.

In all the circumstances therefore, the Tribunal, albeit somewhat reluctantly, affirms the decision of the respondent.