

[Appeal No. VA90/3/80-82]

**AN BINSE LUACHALA
VALUATION TRIBUNAL**

**AN tACHT LUACHALA, 1988
VALUATION ACT, 1988**

B E T W E E N :

Trustees of the Knights of Columbanus

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Appeal No. 90/3/80 Ho (pt of) (as meeting rooms & Billiard room) No. 7 Ely Place,
CB Dublin.
Appeal No. 90/3/81 Ho (pt of) (as offices and rooms, gd floor, 1st floor and 2nd
floor (pt of) No. 8 Ely Place, CB Dublin.
Appeal No. 90/3/82 Offices and car spaces rear 7.8 Ely Place, CB Dublin.

B E F O R E :

Henry J Abbott Barrister Chairman

Mary Devins Solicitor

Brian O'Farrell Valuer

JUDGMENT OF THE VALUATION TRIBUNAL

DELIVERED ON THE 29TH DAY OF APRIL, 1991.

By notice of appeal dated the 28th day of September, 1990, the appellants appealed against the determination of the respondent fixing the rateable valuation of the above described hereditaments as follows:-

Appeal No. 90/3/80 - £ 80

Appeal No. 90/3/81 - £ 225

Appeal No. 90/3/82 - £1040

Written submissions

Written submissions were received on behalf of both parties as follows:-

On the 11th February, 1991 Mr Patrick J Breslin (M.I.A.V.I.) submitted a precis on behalf of the appellants in which he outlined details of the valuation history, the position regarding tenants on the 2nd floor of No. 7 Ely Place and part of No. 8 Ely Place, the Preservation Order on Nos 7/8 Ely Place, casual lettings, floor areas and his general comments. Mr Breslin supplied a list of the attendance at the hearing and the Documents of Evidence. Also supplied was a publication on Ely House and a copy of the Constitution and Laws of the Order of the Knights of Columbanus.

A written submission was received in respect of each appeal from Mr Noel Lyons B.Comm a valuer in the Valuation Office on behalf of the respondent. Mr Lyons' precis supplied details on the following:- comments on the grounds of appeal, the property, valuation history, comparative information and included copies of documents of evidence.

Copies of the written submissions are attached as Appendix "A" to this judgment.

Oral Hearing

The oral hearing took place at Dublin on the 15th February, 1991. Mr John Gibbons, Barrister instructed by Jim Sheridan, Solicitor appeared for the appellants and Mr Aindrias O'Caomh, instructed by the Chief State Solicitor appeared for the respondent. At the outset the Tribunal was informed that agreement had been reached between the parties on Appeal No. 90/3/82. Mr

Gibbons outlined the premises, the subject matter of this valuation appeal (ref. 90/3/80) consisting of No. 7 Ely Place and he also set out details of the property comprised in the premises the subject of valuation appeal 90/3/81 being No. 8 Ely Place. The parties accepted that No. 7 and 8 were jointly used as the headquarters of the Knights of St. Columbanus. The parties also are in a position to agree the details of the various rooms and areas to which the valuations of Nos 7 and 8 apply notwithstanding the content of the appeals in respect of each premises that there was lack of clarity and no credit had been given in respect of the creation of new rateable units such as the premises let to Venn Publications and other persons. It was agreed that the two appeals ought to be heard together and the Tribunal heard the submissions of Counsel and evidence was given in accordance with the precis submitted by each party.

As the appeal was opened and evidence was heard it emerged that three issues arose on the appeal.

These issues are as follows:-

1. whether the premises are exempt from rating by reason of the fact that the same are used for charitable purposes within the meaning of the valuation code.
2. whether the valuation of the premises ought to be increased by reason of the recent restoration prompted by preservation orders of the planning authority, or whether the valuation ought to be decreased by reason of the actual level of user of the meeting rooms by paying customers.
3. whether the valuation of the premises, not including the oratory and vestry, be reduced on the basis of a credit given in respect of a larger valuation per square metre for the oratory and vestry in the event of the Tribunal holding with the respondent that the valuation ought to be increased.

Charitable Exemption

The appellants are a voluntary religious organisation having a set of organisation rules which set out the objects of the organisation and the qualifications for membership together with the means by which the organisation would administer itself through an executive structure democratically elected by one means or another under the rules. The stated objects are, on any interpretation of the constitution and rules of the appellants, religious. On any formal interpretation of the constitution and rules the objectives are exclusively related to the promotion of the Roman Catholic religion and its practice. However, evidence was given on behalf of the appellants that in fact the appellants organisation adopts a broadly christian approach and in recent years promotes its christian values by and through working for the poor.

The appellants seek to establish their right to exemption firstly on the grounds that the promotion of religion is a charity which entitles them to exemption under the valuation code, and secondly that their assistance of the poor by providing facilities for many organisations which serve the poor of which a list was submitted in evidence and is contained in the appellant's precis and by direct assistance for the poor by way of the provision, (for instance) of a dinner in the Mansion House for destitute or needy people on Christmas day. The premises are finely restored Georgian buildings constructed in the copious manner of that period. Several of the rooms are exquisitely restored and one room is so perfectly preserved that little use is made of it except for formal meetings of the appellant's organisation at the highest level. Apart from the appellants own administrative offices none of the other rooms in the buildings are used for any purpose other than meetings. All the charitable organisations listed in the document containing their names and submitted in evidence are allowed to use the meeting rooms and facilities of the premises free of charge. Other non-charitable organisations use the meeting rooms and the appellants charge a fee for such user. Evidence was given that it is necessary to supplement the

income from membership, investments, rentals and other sources by letting out the rooms for meetings and other suitable purposes such as educational purposes.

Evidence was given on the manner in which the appellants responded to the preservation notices of the planning authority. The appellants are to be highly commended in the way they have restored and preserved the subject premises and in the manner in which they have planned their activities to ensure that the preservation process will not be prejudiced in the future. Counsel for the appellant advanced detailed argument as to why firstly the premises ought to be exempted on the grounds that the advancement of religion notwithstanding certain law on the subject is in fact a charitable purpose which entitles the appellants to exemption and secondly on the grounds that the constitution and laws of the appellant order and their practicable application meant that the primary work of the order was the relief of poverty.

The Tribunal holds that the appellant order is one primarily for the advancement of religion and that the use of the subject premises is primarily for the purposes of the appellant. The Tribunal further holds that while significant help is given by the appellant order to bodies and persons engaged in the relief of poverty, the primary use of the subject premises is for the advancement of religion through the order. In these circumstances the Tribunal finds that it is coercively bound by the decision of Mr Justice Henchey when in the High Court in the case Reverend Mother Mary Brendan appellant v. Commissioner of Valuation respondent [1969] I.R. p.202 and is of the view that the appellants are not entitled to exemption for the subject premises by reason of its purpose being for the advancement of religion. It is note worthy that in the **Brendan v. Commissioner of Valuation** case, the case **Governors of Campbell College Belfast v. Commissioner of Valuation for Northern Ireland** [1964] 1 weekly Law Reports 192 was considered as a case offering the possibility of looking at the exemption process in the context of Section 2 of the Valuation (Ireland) Act, 1854. This context was strongly urged on the Valuation

Tribunal by counsel for the appellant and the Tribunal feels that it is obliged to follow the Irish case law and reject the thinking in the Campbell College case.

In relation to the second ground of exemption relating to the relief of poverty by the appellants through the use of the subject premises, the Tribunal holds that to obtain the benefit of this exemption the charitable purpose of relief of the poor must be the exclusive use of the subject premises. The Tribunal holds as a fact that the premises are not exclusively used for the relief of poverty and accordingly finds that the appellants claim for exemption falls on this ground also.

Quantum

The result of the revised valuation in August 1989 and subsequent first appeal was that the premises roughly described as 8 Ely Place had its rateable valuation increased from £180 to £225 and the premises mainly described as 7 Ely Place had its rateable valuation increased from £75 to £100 with the oratory exempt at £20. The respondent seeks to have comparable letting values as set out in the precis applied to the subject premises when determining the rateable valuation.

The appellants argued that the valuation ought to be determined on the basis of income from actual user for meeting rooms. The Tribunal accepts that the actual user of the subject premises for meeting rooms and the like is not intensive, the fact that the appellants use the premises in a particular way involving fairly non-intensive use does not mean that the objective valuation of the premises by the Tribunal should not take into account a more commercial approach.

However, the Tribunal cannot be swayed by the argument of the respondents that the appellants premises ought to be valued more highly by reason of the fact that extensive repairs and preservation have been carried out rendering the same very attractive visually. The imposition of a preservation order on the premises in this case does not in the opinion of the Tribunal enhance its letting value in the real market. The Tribunal finds it very difficult to see what benefit prospective commercial tenants would find in a premises no matter how well presented having a preservation order imposed on same which could prejudice the ordinary day to day arrangement

of office facilities even on an open plan basis. The respondents argued, in response to claims by the appellants that credits were not given for various parts of the premises which were hived off into separate lettings or rateable hereditaments, that the overall valuation of the subject premises was inadequate to reflect a true rental value of the premises and that notwithstanding the hiving off process the valuation of the remainder of the premises which is not subject to appeal was if anything still on the light side. The Tribunal consider that the pre-revision valuations of the two premises, the subject of the appeal were satisfactory having regard to all the circumstances of the case. While the Tribunal accepts that a response to preservation orders may actually increase the letting value of certain properties in certain cases, it would require compelling evidence to prove this. The effect of preservation orders on the letting value of property in most cases is negative. In this case it is most appropriate that the appellants be praised for their fine response to the preservation order rather than being penalised by a revision prompted by it. The Tribunal is satisfied that the points raised by the appellants in relation to the absence of credits for hived off hereditaments were clarified during the course of the hearing. It was agreed that the oratory should be exempt. The appellants sought that the valuation of the oratory be increased having regard to the standards of rental values applied by the respondent to the other part of the subject premises. The effect of such an increase would be to reduce the valuation of the rateable portion of the building. In view of the foregoing conclusions of the Tribunal, increasing the valuation of the oratory is not appropriate.

Accordingly, the decision of the Tribunal is that the valuation of the subject premises known as No. 8 Ely Place and the subject of Appeal No. 90/3/81 ought to be £180 and the valuation of the hereditament known as No. 7 Ely Place ought to be £75 with oratory exempt at £20 leaving the part of the building which is the subject of Appeal No. 90/3/80 rateable at £55.

