

Appeal No. VA94/3/071

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

**Powerhouse Bolton Trust Enterprise**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices and Car Park at Map Ref: 86b, Pigeon House Road, Ward: Pembroke East, County Borough of Dublin

Exemption - Educational and public purposes

**B E F O R E**

**Veronica Gates**

**Barrister (Acting Chairman)**

**Fred Devlin**

**FRICS.ACI Arb.**

**Paddy Farry**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 4TH DAY OF DECEMBER, 1995**

By Notice of Appeal dated the 28th day of October, 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £210 on the above described hereditament.

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

- "(1) The rateable valuation of £210 is excessive in amount and inequitable.
- (2) The entity is entitled to be distinguished in the Valuation Lists as exempt from rates because it is exclusively occupied and used for public and/or educational and/or charitable purposes, to wit; the reduction of unemployment via job creation development programmes focused on the subject premises as its Enterprise Centre."

**The Property:**

The property comprises the former Pigeon House Hotel converted for use as offices by previous occupier, E.S.B. and now used as offices by the appellant. It is a substantial 3 storey over basement, stone building of considerable architectural and historical merit.

The property is located on Pigeon House Road in the general surrounds of the E.S.B. generating stations of Ringsend and Poolbeg.

The accommodation consists of:

- Basement:** Board room, computer room, 4 offices (incubator units) and a kitchen. Total floor area is 2,240 sq.ft.
- Ground Floor:** Computer room, waiting room, 3 management offices and 3 offices (incubator units). Total floor area is 1,942 sq.ft.
- First Floor:** 9 offices (incubator units). Total floor area is 2,025 sq.ft.
- Second Floor:** 7 offices (incubator units). Total floor area is 2,025 sq.ft.

The building is in excellent repair and all main services are connected.

**Valuation History:**

Prior to occupation by appellant the building formed part of the E.S.B., Pigeon House Power Station which was bought by the E.S.B. from Dublin Corporation in 1929. It was reconstructed and modernised between 1933 and 1940 but as a generating station was closed in 1975. The entire valuation of which the subject is part, was dealt with in the Circuit Court in 1987 at which time the total valuation was reduced from £1,250 to £555. The amount attributed to the subject is £345.

The building was granted to the appellant by the E.S.B. rent free by way of a licence agreement for a 10 year period.

Following a request from Dublin Corporation, the valuation was revised in 1993 and two new lots were created, with a valuation of £210 placed on the subject. An appeal was lodged with the Commissioner of Valuation at First Appeal. No change was made by the Commissioner of Valuation and it is against this valuation that an appeal now lies with the Tribunal.

**Written Submissions:**

A written submission was received in letter form on the 1st day of June, 1995 from Mr. Jerry G. O'Brien of John C. Walsh & Company, Solicitors on behalf of the appellant. In the letter, Mr. O'Brien stated that the appellant would be seeking exemption from rates on the basis of their charitable, public and educational state.

He also outlined that the appellant could produce documentation to substantiate their being distinguished on the Valuation List in the form of the Memorandum and Articles of Association, the Membership Rules, Copy of Oiris Oifigiuil and the confirmation from the Revenue Commissioners of their charitable status with a copy of their accounts if necessary. He stated that the appellants were prepared to call two witnesses from the Trust to establish its charitable position.

A written submission was received on the 11th day of May, 1995 from Mr. Peter Conroy, District Valuer with 20 years experience in the Valuation Office on behalf of the respondent. In his written submission, Mr. Conroy described the property, its location and valuation history.

Commenting on the appellants grounds of appeal, Mr. Conroy stated the valuation was not excessive as regard was had to the provisions of the Valuation Acts. He also stated that in his opinion the Powerhouse Bolton Trust was not entitled to be distinguished in the Valuation Lists and that it does not comply with the provisions of the Valuation Acts viz. Section 15 of Valuation (Ireland) Act 1852 in that the hereditament is not used exclusively for public or charitable purposes or for the purposes of Science, Literature and Fine Arts. Nor does it comply, in his opinion, with Section 63 Poor Relief (Ireland) Act 1838 and/or Section 2 Valuation (Ireland) Amendment Act 1854.

Mr. Conroy set out in his written submission his calculation of the rateable valuation on the subject hereditament as follows:-

"Basement:	Net Lettable Area	2,510 sq.ft.
Ground Floor:	Net Lettable Area	1,942 sq.ft.
First Floor:	Net Lettable Area	2,025 sq.ft.
Second Floor:	Net Lettable Area	<u>2,025 sq.ft.</u>
		8,500 sq.ft.

8,500 sq.ft.	@	£4.00 =	£34,000
NAV £34,000	@	0.63% =	£214.20
		RV =	£210"

Mr. Conroy stated that his assessment of £4 psf for rateable valuation purposes was modest in light of the fact that Powerhouse Bolton Trust charge £43 per month for desk space or £8 per week. Office space was at £8 psf. Light and heat was extra as was phone, fax, copying and computer time.

Mr. Conroy stated that the quantum had been agreed with Mr. Des Killen of Donal O'Buachalla & Company Limited who acted as agent for the appellant at the outset of this appeal and was not an issue.

### **Oral Hearing:**

The oral hearing took place in Dublin on the 9th day of June 1995. The appellant was represented by Harry Connolly, Barrister-at-Law instructed by John C. Walsh & Company, Solicitors and the following witnesses attended to give evidence:-

Mr. Eddie Laverty - Chairman  
 Mr. Paul Douglas - Administrative Manager  
 Mr. Les Kiernan  
 Mr. Paul Byrne  
 Ms. Pauline Gallagher

The respondent was represented by Aindrias O'Caomh, S.C. instructed by the Chief State Solicitor together with Mr. Peter Conroy, District Valuer in the Valuation Office.

It was agreed between the parties that the correct rateable valuation for the subject hereditament is £210 and that the only issue before the Tribunal is whether the subject premises comes within the category of premises exempt from rateable valuation under Section 63 of the Poor Relief (Ireland) Act 1838 and/or Section 2 of the Valuation (Ireland) Amendment Act 1854.

Mr. Connolly contended that the subject is used for charitable purposes and/or public purposes and/or in the alternative that the purpose is educational. He said that as the appellant has been granted charitable status under the Income Tax Code it followed from this that it should also enjoy the same status under the Valuation Code. He submitted a letter

dated 2nd April 1987 from the Revenue Commissioners granting charitable status to the appellant.

Mr. Eddie Laverty gave evidence that he has been Chairman of the Bolton Trust since its establishment. He stated that the premises had formerly comprised the Pigeon House Hotel and had been given to the Trust by the E.S.B.. Building and refurbishment had been jointly funded by the E.S.B. and the I.D.A. and the premises opened in and around 1989.

Mr. Laverty said that the aim of the Trust is to provide a structure and environment in which selected small businesses can develop and become established. Businesses can only remain in the Powerhouse premises for up to 3 years and the facilities available include the provision of desk space and management consultancy advice, from the Administrative Manager, Mr. Paul Douglas and also from the members of the Bolton Trust, who are drawn mainly from the staff of the Dublin Institute of Technology and who have agreed to donate forty hours of their time per annum. The Trust charges £43 per month for desk space or £8 per week. Office space is charged at £8 psf. The Trust can boast a 75% success rate from the businesses involved. This is compared with a 20% success rate for new businesses developing outside the Powerhouse environment. Mr. Laverty contended that the charitable nature of the Trust is exemplified by the fact that it is essential to the continuance of the Trust that a full time fund raiser is employed. In addition, licensees are given time to pay the fee charged if their businesses have failed to generate an adequate income.

In response to a question from Mr. O'Caomh in cross examination, Mr. Laverty agreed that the Trust has educational purposes. In support of this contention he said that licensees are drawn from an annual "New Ideas" competition which is advertised through RTE and entrants are whittled down from 210 entries to approximately 27-29 licensees in occupation. In addition, there is an accelerated growth programme, the educational nature of which consists of training sessions over two weekends in the year with the object of assisting in business planning and marketing for the businesses.

The building consists of 8,500 sq.ft. and there are 27 rooms available for use. Of the 29 businesses currently in occupation, the majority are in knowledge based service areas. The standard charge is £8 psf, which sum includes management consultancy services to assist with project development, financial planning and marketing. Telephone charges have to be paid by the individual licensees.

Mr. Walsh, in giving evidence said that to make the Powerhouse economically viable it would be necessary to charge licensees between £13/£15 psf.

Mr. Les Kiernan, a former licensee with the Bolton Trust gave evidence that he would not be in business today without the assistance of the Trust. He explained that he was able to establish a comprehensive business plan with the assistance of the Trust and said that licensees were able to run up bills and were given time to pay if in difficulties. He said that the building itself is open 24 hours a day, 7 days a week and provides an excellent environment if trying to impress business contacts.

Ms. Pauline Gallagher, a former winner of the small businesses competition gave evidence along similar lines. She said that as winner of the competition she was entitled to desk space worth £6,000pa and with the assistance of the Trust had been able to complete a feasibility study for her proposed business. As a licensee she said that she was able to make considerable savings in having access to a computer and having free management consultancy advice.

Mr. Conroy contended that both sides were in agreement that the open market rent for similar space was in the region of £4 psf which reflect the poor environment in which the premises is located. The Trust however, was charging £8 psf. He said that rents in the Fitzwilliam and Mountjoy Square areas would be in the region of £10 psf and that the Ossory Business Park, situate at East Wall charges £8 psf.

There followed legal submissions by both parties. Mr. Connolly said that he was relying on the exemption in Section 63 of the Poor Relief (Ireland) Act 1838. He said that the licence fee of £8 is not to be considered as a rent based on square footage but is a contribution to the funds of the Trust. He said that without the facilities and backup services provided by the Trust, the cost to the small businesses would be much greater and therefore same would not prosper. In effect the Trust was subsidising the licensees.

He emphasised that the Trust is non-profit making and that the members provide their services free of charge. In addition to its educational purposes, the Trust relieves poverty insofar as unemployment is relieved. He stressed that the building was provided through the generosity of the E.S.B.. He said that although the Trust derives an income from the charges levied on the licensees using the building itself, the fund raising efforts are essential in order to ensure that the fund can continue to meet its operating costs.

Mr. O'Caomh in his submissions said that the evidence put forward by the appellant has been accepted by the respondent. He said that not all of the building actually generates an income as there is free space available. He agreed that the licensees can avail of valuable services and that the underlying purpose of the Trust and the use of the premises is educational in its widest connotation. Mr. O'Caomh referred to Section 333 of the Income Tax Act and said that the exemption under this section for charitable or public purposes is very different from the Rating Acts. The categories of charity are much wider under the Income Tax Code than the Rating Acts. He said that applying the *sui generis* rule to Section 63 means that a narrow interpretation of the Act must be given to the Section. To achieve exemption the property must be exclusively used for charitable purposes. As there is no fixed definition of charitable purposes in the Act the case law must provide guidelines. He submitted that the essential service of the Trust, together with the provision of space is educational but questioned whether this is a sufficiently charitable purpose to bring it within the meaning of Section 63. He submitted that on the authorities the work of the Trust and the services it provides is educational but is not exclusively for the education of the poor and therefore does not qualify for the Section 63 exemption, nor is the building used exclusively for charitable or public purposes.

**Determination:**

It having been agreed between the parties prior to the oral hearing that the correct rateable valuation of the subject hereditament is £210, the only issue before the Tribunal is whether the hereditament is entitled to exemption from the payment of rates because it is exclusively used for public and/or charitable and/or educational purposes as provided by Section 63 Poor Relief (Ireland) Act 1838, Section 12 and Section 16 Valuation (Ireland) Act 1852 and Section 2 Valuation (Ireland) Amendment Act 1854.

Counsel for the appellant has contended that the subject is entitled to exemption on the grounds that it is exclusively occupied and used for public and/or educational and/or charitable purposes and that it therefore complies with the requirements of the relevant sections of the Valuation Acts. Those purposes were more specifically described in the course of both written and oral submissions as the reduction of unemployment by means of job creation development programmes. The Tribunal accepts both from the oral evidence adduced and the Memorandum of Association that the aims and purposes of the Bolton Trust are to promote enterprise and to encourage and develop the provision of jobs in the inner city of Dublin. The Tribunal further accepts that the Bolton Trust is an entirely non-profit making

body which relies primarily on the efforts of a full-time fund-raiser and on contributions from the larger companies and financial institutions. The time and effort of volunteer members of the teaching staff of the Dublin Institute of Technology is donated freely and is essential to the Trust's existence.

There is no precise definition of the term 'charitable purposes' in the Valuation Acts but it has been examined at length in a long line of authorities to which the Tribunal has been referred by Counsel on behalf of both parties, in particular Pemsel's Case [1891] AC 531, Barrington Hospital case and Maynooth College case. It is settled law since *McGahan & Ryan v. Commissioner of Valuation [1934] IR 736* that exemption from rateability is to be ascertained primarily from Section 63 Poor Relief (Ireland) Act 1838 which states:

"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 any infirmary, hospital, charity school, or other building used exclusively 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 annual value of such profit or use".

It is accepted by the Tribunal from the evidence adduced by the appellant that the Trust does provide an educational service to the licensees insofar as management consultancy advice is provided free of charge by the administrative manager and by the volunteer members of the teaching staff of the Dublin Institute of Technology.

However, the Tribunal is of the opinion that this is not sufficient to satisfy the strict requirements of Section 63 of the Poor Relief (Ireland) Act 1838, to which, as is clear from well established precedent, a narrow interpretation must be given. Section 63 requires exclusive use of the hereditament for the education of the poor and/or for charitable purposes, and/or for public purposes. The Tribunal finds as a fact that the educational services of the Trust are available only to a limited section of the community, that is, the licensees. These licensees may have financial limitations but cannot be considered "the poor" in that they are obliged to pay a licence fee and are in a position to generate a business income. The premises and the facilities provided are not exclusively used for public purposes in that they are not available to the public at large but are restricted to persons who have been selected by means of a competition, albeit an open competition, nor can the purposes of the Trust be



considered to be exclusively charitable in that the primary purpose of the licensees operating within the premises is the establishment of a successful business.

The Tribunal therefore finds that the hereditament is not entitled to an exemption from the payment of rates and the appeal fails.