

Appeal No. VA96/3/068

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

Beaumont Hospital Board

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Ref: 1B4, Townland: Beaumont, Ward: Beaumont B, County Borough of Dublin

Exemption - Public purposes

B E F O R E

Mary Devins - Solicitor

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF MAY, 1997

By Notice of Appeal dated the 31st July, 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £30 on the above described hereditament.

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

- "1. The valuation should be included in the distinguished lists as exempt in accordance with current rating legislation.
2. The valuation is excessive and inequitable in accordance with the provisions of the Valuation Acts".

The Property:

The subject hereditament consists of a shop known as "The Bakers Corner" located to the left of the main entrance door to Beaumont Hospital. It is staffed by hospital board personnel and used for the retail sale of pastries. It is fitted with a glass and timber display unit with a small amount of racking for display of bread. It has a total floor area of 102 sq.ft..

Valuation History:

It was first valued in August, 1995 as a result of a request from Dublin Corporation "to value commercial units in entrance hall". Arising from this request three new hereditaments were created as follows:-

- (1) Lot No. 1B4 - RV£30. The subject
- (2) Lot No. 1B2 - RV £6 (abs.). Right to operate photographic machine. This is rated to "Photo Me Ireland Limited".
- (3) Lot No. 1B3 - RV £45 the "Flower Bed" shop. This is occupied by Margaret Joyce and Owen O'Moore. It is held on a 2 year 9 month lease from the 15th July, 1991 at a rent of £14,000 per annum. This was subsequently reviewed under a 2 year 9 month agreement to £15,000 from the 4th January, 1994. The valuation on this unit was upheld at First Appeal stage.

Written Submissions:

A written submission was received on the 14th March, 1997 from Mr. Tom Davenport, ARICS ASCS, Chartered Surveyor, of Lisney on behalf of the appellant. In his written submission he set out the valuation history of the subject premises and his grounds of appeal. He said that the quantum had been agreed with the Commissioner of Valuation at £30 and the only issue to be resolved was the question of exemption.

He said that the kiosk was staffed by hospital employees and that there are a total of four staff employed on a shift basis. He submitted that the kiosk was only an extension of the overall catering facilities provided within the hospital for the needs and benefits of patients, staff and visitors.

A written submission was received on the 14th March, 1997 from Mr. Stephen Dervan, a Valuer in the Valuation Office on behalf of the respondent. In his written submission he set out a description of the subject premises, the grounds of appeal and his comments on the grounds of appeal.

He submitted that the hereditament did not satisfy the requirements of *Section 63 of the Poor Relief (Ireland) Act 1838* or *Section 2 of the Valuation (Ireland) Act 1854* and accordingly he was unable to recommend distinguishment to the Commissioner of Valuation.

He set out his valuation which was agreed between the parties at £30.

Oral Hearing:

At the oral which took place on the 24th day of March, 1997 the appellant was represented by Mr. Richard Cooke S.C. instructed by Messrs. BCM Hanby Wallace, Solicitors.

Mr. Aindrias O'Caomh S.C. instructed by the Chief State Solicitor appeared on behalf of the respondent.

Also present were Mr. Gerard Lynch, Financial Controller of Beaumont Hospital, Mr. Tom Davenport of Lisney and Mr. Stephen Dervan of the Valuation Office.

Mr. Lynch gave evidence that the subject hereditament had been built in 1994 primarily for the convenience of hospital patients and their visitors, as the nearest shops were in Coolock or Artane.

He explained that the accounts furnished were management accounts only and that the wage bill for the entire catering staff in the hospital was in the region of £2.7m. Mr. Lynch confirmed that the staff of the subject unit were members of the hospital catering staff and he further explained that the figures shown for overheads in the accounts were proportionate and based on salaries.

Mr. Lynch said that the hospital received approximately £68m directly from the Minister for Health and approximately £11m from other sources including £3.1m from VHI, payments from successful road traffic accident litigants and some income from non-nationals.

He said that of the total beds in the hospital, 626 were public and 106 either private or semi-private, and that since all VHI payments were capped there was some Government subsidy towards the private and semi-private as well as the public.

The evidence contained in the written précis of Mr. Thomas Davenport of Messrs. Lisney was adopted as his sworn evidence. The written précis of Mr. Stephen Dervan was also adopted as his sworn evidence.

In the course of cross examination by Mr. Cooke, Mr. Dervan stated that since the subject was a separately partitioned unit, used for what he described as a profit making venture, he considered it rateable.

He said that he had considered that the use was not of a public nature and that it would be inequitable to other commercial ventures to treat this unit as exempt.

In reply to further cross examination Mr. Dervan said that he had considered the unit to be comparable to Oxfam shops and to the ticket sales portion of Rehab Lotteries Limited, (the subject of an appeal to the Tribunal *VA89/229 - Rehab Lotteries Limited v. Commissioner of Valuation*) both of which were considered rateable in spite of the fact that the proceeds ultimately go to charities.

In the course of re-examination by Mr. O'Caomh, Mr. Dervan said that when Beaumont Hospital was originally granted exemption he presumed it was on the basis of "public use as a hospital" but that he really did not know.

Submissions:

Mr. Cooke submitted firstly that *Barrington's Hospital v. Commissioner of Valuation [1957] IR 299* was the authority for exemption in this case. He also said that this case was 'pari passu' with the decision of the Tribunal in the *Eastern Health Board v. Commissioner of Valuation (VA88/381)* since all indications of public service were present. The hospital was established by Statutory Instrument No. 225/1977, its genesis was for public service as part of an overall national service and its funding comes from the Minister for Health, covering public patients and even private patients to some extent.

Mr. Cooke submitted that the use of the subject hereditament was ancillary to the hospital activities undertaken by the Hospital Board as a State undertaking.

Mr. O'Caomh for the respondent referred to Statutory Instrument No. 225/1977 and pointed out that although the Order would suggest that the Board was set up by the Minister, it did include however, nominees of other bodies and institutions.

He cited *Rehab Lotteries Limited v. Commissioner of Valuation (VA89/229)* and said that as in this case, if the activity carried on were not in itself charitable, regardless of the ultimate destination of the funds, it should not benefit from exemption under *Section 2 of the 1854 Act*.

Mr. O'Caoimh said that the fact that this unit was operated by the hospital did not distinguish it from other shops in the foyer of the hospital.

Determination:

The Beaumont Hospital Board which is the occupier of the subject hereditament was established by virtue of SI No. 255/1977 known as the Beaumont Hospital Board (Establishment) Order, 1977. The functions of the Board are *inter alia* "to plan, build, equip and furnish a General Hospital in accordance with the Directions of the Minister for Health". All of the Board members are appointed by the Minister, some of them on the nomination of the Eastern Health Board, College of Surgeons, St. Laurence's Hospital Board of Governors and Jervis Street Hospital Committee of Management.

The hospital services to be provided must be approved by the Minister for Health.

The statement of accounts for each financial year is subject to audit and report by an Auditor appointed by the Minister.

It is clear that the hospital is used for public purposes and it belongs to the Government, is managed by the Board on behalf of the Minister for Health and is, in the main, funded directly by the Department of Health.

What remains to be decided therefore is whether any private profit or use is derived from the occupation of the subject hereditament such as would remove from it the exemption referred to in the proviso to *Section 63 of the 1838 Poor Relief (Ireland) Act* which provides:-
"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 seems to the Tribunal that the undeniably commercial nature of the transactions carried on in the subject hereditament does not of itself indicate any such private profit or use any more than would be the case if the bread or cakes were sold from a hatch opening directly into the kitchens of the hospital. The trading accounts relating to the subject are management accounts only and form part of the overall statement of accounts of Beaumont Hospital, as do, presumably, the details of rental income derived from the lettings of individual units in the hospital foyer.

There is no separate letting agreement in relation to the subject unit. It is owned and occupied by the Board of Beaumont Hospital.

If the status or identity of the occupier were to change, the question of rateability might well arise. Until such change, however, the Tribunal is satisfied that the current occupier viz. Beaumont Hospital Board, is providing a facility in accordance with its statutory entitlements and duties.

In light of the above the Tribunal does not therefore need to consider the question of the charitable nature of the occupation.

Accordingly, and in view of the circumstances and all of the evidence adduced the Tribunal finds and determines that the subject hereditament is entitled to exemption under the proviso to *Section 63 of the Poor Relief (Ireland) Act 1838*.