

Appeal No. VA97/2/021

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

**Philip Mullally, The Enterprise Trust**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Map Reference 1 Floor 3, Fitzwilliam Place, Ward: South Dock, County  
Borough of Dublin

Exemption - Educational and public purposes

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Rita Tynan - Solicitor**

**Member**

**Anita Geraghty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF NOVEMBER, 1999**

By Notice of Appeal dated the 23rd day of April 1997 the appellant company appealed against the determination of the Commissioner of Valuation in placing a valuation of £24 on the above described hereditament.

The Grounds of Appeal, as set out in the aforesaid Notice are that; "exemption is sought under Section 63 of the Poor Relief (Ireland) Act 1838 - occupation by a charity (Ref No: CHY10414) and Section 2 of 1854 Act".

1. This appeal, which was heard at the Tribunal Offices in Dublin, proceeded by way of an oral hearing at which the Enterprise Trust was represented by Mr. Frank Hamill, who was assisted by Ms. Sandra Moran, and at which Mr. Eamonn Marray, B.L., instructed by the Chief State Solicitors Office appeared on behalf of the Commissioner. The appeal valuer in this case was Mr. Thomas Costello, a District Valuer with over 35 years experience in the Valuation Office. Prior to the commencement of the hearing both parties had, in documentary form, set forth their respective cases and had submitted the same to this Tribunal. Having taken the oath, evidence was given by both Mr. Hamill and Mr. Costello. At the conclusion thereof it was evident that in essence no dispute or disagreement existed about the essential facts of this case. These can be stated as follows.
2. The hereditament in question is situated on Floor No. 3 of No. 1 Fitzwilliam Place, Dublin 2. On that floor there are three offices, a storeroom, canteen and toilet. In all there is about 800 sq.ft. of a letting area. Prior to 1991 the entirety of No.1 Fitzwilliam Place was valued as a single hereditament. In that year the basement and floors, from ground to third, were separately valued. The latter had a ratable valuation of £24 placed thereon. In 1996 this floor, which the trust occupies under a lease for a period of 2 years and nine months from the 1<sup>st</sup> August 1994 at an annual rent of £5,250, was listed at the request of the trust seeking on its behalf an exemption from rates in respect thereof. The revising valuer, on 10<sup>th</sup> May 1996, refused exemption to the appellant. An appeal followed. On 25<sup>th</sup> March 1997, the Commissioner, at first appeal stage, also refused the claim for exemption. On 23<sup>rd</sup> April of that year the company brought this present appeal to the Valuation Tribunal.
3. The Enterprise Trust, is a company limited by guarantee having been incorporated on 30<sup>th</sup> October 1991. It has an impressive list of Directors with McCann Fitzgerald as its solicitors and Craig Gardener as its Auditors. Mr. Philip Mullally is the Chief Executive. It is a non-profit and grant making organization. Its history, purpose and activity can best be described by quoting in the first instance from its report and financial statements, for

the year ending 31<sup>st</sup> December 1995 and secondly from a similar report for the year ending 31<sup>st</sup> December 1996.

- (a) Year ending 31<sup>st</sup> December 1995 “the Trust is an independent organization, set up by the employer bodies – IBEC, ICOS and CIF – to promote business in communities in Ireland. The Trust helps business people get the best results from their participation with local communities – an outcome of which is a network of people committed to local enterprise. The Enterprise Trust also provides a resource of experience throughout the country and links business opportunities between networks. Its tax status maximises the benefits of contributions to the local community” (p.3) and,
- (b) For the year ending 31<sup>st</sup> December 1996. “The Enterprise Trust established in 1992 by IBEC, ICOS and CIF delivered a commitment of employers in the PESP agreement. The Trust’s role in promoting the establishment of Local Enterprise Networks within the framework of the Operational Program for Local Urban and Rural Development has been confirmed by the Partnership 2000 Agreement in the Chapter “Action for Greater Social Inclusion”. The Chambers of Commerce of Ireland have recently joined this initiative.” (p.3).

**4.** The main objects of the company, as set out in its memorandum of association, are;-

- (a) to encourage by any lawful means industry and commerce in Ireland with a view to improving social and economic conditions and to that end the support of enterprise.
- (b) To establish and/or support initiatives in Ireland or any community thereof directed towards generation of enterprise for the benefit and welfare of unemployed people.

5. In pursuit of its last mentioned objects, being those of encouraging industry and commerce and of benefiting the unemployed people, we were informed in evidence by Mr. Hamill and accept, that initially the enterprise identified twelve areas throughout the country in which its aims and intentions could be promoted. These activities were facilitated through local enterprise partnerships. Such partnerships consisted of employers, social groups and trade unions. Advice, establishment or set-up assistance and some funding were made available essentially to small businesses. It networked, where appropriate, one area with another. As it became established it broadened its scope and incorporated areas of deprivation and also areas where there was long term unemployment. Overall it hopes by its methods to deliver on its commitment as given in response to and within the framework of the programs above mentioned. Finally, in the context of the factual background of this appeal it should be noted that the company employs six employees, with one seconded from the E.S.B., at the aforesaid hereditament. And also, as previously noted, it has Mr. Mullally as its chief executive.
6. In the circumstances outlined above, the case made on behalf of the Trust is relatively simple and straightforward and has within it a net point. It is claimed that by virtue of the proviso to Section 63 of the 1838 Act the trust is entitled to exemption from rating. That element of the proviso relied upon is that the premises in question are used “exclusively for charitable purposes”. In support thereof they refer to the fact that from the Revenue Commissioners they have obtained charitable status as well as special tax status under Section 56 of the 1992 Finance Act and Section 64 Finance Act 1997.
7. On behalf of the Commissioner the claim is denied. It is argued that by reason of a long line of authorities, dealing with the expression “charitable purposes” as it is contained in Section 63 of the 1838 Act, the hereditament in this case, being the subject matter of this appeal, cannot fall within such definition and accordingly cannot obtain the exemption as sought.
8. In many cases coming before this Tribunal, where exemption is claimed by reason of the user being for “charitable purposes”, it is frequently urged upon us that because the

Revenue Commissioners have conferred “charitable status” on the occupiers of such hereditaments, then it should follow that a similar status and thus exemption, should be granted under the valuation code. This submission in our view fails to fully appreciate the distinctive codes under which, on the one hand the Revenue Commissioners operate and on the other hand, the valuation system works. Under part 21 of the Income Tax Act 1967, as amended and applied, there are, as therein set forth, numerous grounds upon which charitable and other exemptions can be obtained. These grounds are significantly more expansive and more elaborate than the proviso contained in Section 63 of the 1838 Act, which section is the only statutory provision upon which, in general, exemption can be obtained for valuation purposes. Accordingly, since the respective statutory grounds of exemption can be wholly distinguished, one from the other, it is of little evidential value, before this Tribunal, for an occupier to argue that the existence of a certain tax status should in itself lead to the granting of an exemption. This is simply not so. These remarks apply equally to the provisions in the Finance Acts 1992 and 1997.

9. In *Barrington’s Hospital –v- Commissioner of Valuation*, 1957 IR 299, the Supreme Court, traced in some detail, the history and applicability of the definition of “charitable purposes” as given in *Pemsel’s Case* 1891 AC 531, to the definition of the same purposes as contained in the 1838 Act. It is unnecessary to burden this judgment with any more than two observations on this decision though the judgment ran to over thirty pages. At pages 326 and 327 Kingsmill Moore J. said “an examination of Section 63 of the 1838 Act and of the other earlier rating statutes lead coercively to the conclusion that, so far as educational charities are concerned, exemption could only be claimed where the property was used exclusively for the education of the poor”. Having in the preceding pages dealt with *Pemsel’s case*, at page 327 he said “*charitable purposes in Section 63 cannot have their widest meaning in as much as particular charitable purposes are specifically mentioned with certain limitations on their nature and “charitable purposes” cannot be construed as covering the same particular purposes without such limitations. But to say that “charitable purposes” as used in this section must be read with a meaning less than the widest which has been applied to that term is not to lend any support to the contention of the Commissioner that such purposes must be of an entirely gratuitous*

*nature or must be confined to poor persons....*” Accordingly two points emerge from these extracts. Firstly, in so far as exemption might be claimed on the grounds of education, that can only be advanced if the hereditament in question is used exclusively for the education of the poor and secondly, there is no doubt but that in Section 63 the phrase “charitable purposes”, must be given a narrower or more restricted meaning than the court applied to the similar phrase in Pemsel’s case.

- 10.** In our opinion there is, in the activities carried out by or on behalf of the Trust, a proportion, perhaps significant, of educational value within. In the broad sense “educational purposes” must in our view include the giving of advice, the furnishing of assistance and the supervisory and backup role played by the partnership in the establishment and/or consolidation of new businesses. In particular given the context in which the Trust was established and given the circumstances, of at least some of those who benefit by its activities, it seems to us that to transmit and impart knowledge and assistance can only mean the giving or making available of education to the recipients in question. Accordingly there is in our belief this element to and within the operation of the trust. However, given the extract above quoted, from the judgment of Kingsmill Moore J., it is clear that the focus of the Trust is not confined to the “poor” as understood in the context of Section 63 and accordingly, that being the case, one could not argue successfully for exemption on the basis that the education so given is of the poor.
- 11.** Regrettable as it may be, it seems to us that, despite the commendable, important and laudable role which this trust plays, and notwithstanding both its existence within the programs above identified and the undoubted value which the beneficiaries thereof receive, nonetheless it would be very difficult indeed to hold that the user of the subject property falls within the definition of “charitable purposes” as above mentioned. Certainly we believe the facts of the case fall well short of establishing that floor No. 3 of the subject property is used “exclusively”, for charitable purposes. Support for this view is obtained from a recent decision of this Tribunal entitled *VA94/3/071 - Powerhouse Bolton Trust Enterprise –v- Commissioner of Valuation*, Judgment delivered on 4<sup>th</sup> December 1995. Whilst the facts of that case are not on all fours with the present appeal

the Tribunal, at page 8 of its judgment, summarized the aims and purposes of the trust in that case as being to promote enterprise and to encourage and develop the provision of jobs in the Inner City of Dublin. As in this case Bolton Trust was an entirely non-profit making body and relied on a full time fundraiser and on contributions from companies/institutions. And yet the Tribunal in its determination concluded as follows: *“however, the Tribunal is of the opinion that this is not sufficient to satisfy the strict requirement of Section 63 of the Poor Relief (Ireland) Act 1838, to which it is clear from well established precedent, a narrow interpretation must be given. Section 63 requires exclusive use .....for charitable purposes”*. Exemption was refused.

- 12.** In our opinion equal considerations apply here. Accordingly and notwithstanding our acknowledgment of the beneficial work carried out by and on behalf of this trust we are unable, under the law as it presently stands, to grant exemption to the herediament the subject matter of this appeal.