

Appeal No. VA97/4/030

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

**Forbairt**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Laboratories at Map Reference 1Aa BC Claremont Avenue, Ward: Botanic A  
(Glasnevin), County Borough of Dublin  
Exemption - Public purposes

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Barry Smyth - FRICS.FSCS**

**Member**

**Michael Coghlan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 17TH DAY OF NOVEMBER, 1998**

By Notice of Appeal dated the 29th day of July 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £8,500 on the above described hereditament.

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

- "1. The said assessment is grossly excessive and inequitable relative to assessments on other industrial facilities in the administrative areas of Dublin Corporation and Fingal County Council.
2. The assessment is bad in law in that it does not comply with the provision of the Valuation Acts 1852 - 1988 and in particular with the provisions of Section 5 of the Valuation Act 1986.

3. In determining the rateable valuation of this hereditament, the Commissioner of Valuation had no regard or alternatively insufficient and inadequate regard to;
  - (a) The location of the hereditament
  - (b) The extent, nature, age and layout of the accommodation provided.
4. The hereditament being of a public nature and/or used for the purposes of science or as otherwise used is not rateable and should be Distinguished in the Valuation Lists as was previously the case in accordance with the provisions of Section 2 of the Valuation (Ireland) Act, 1854 and other relevant legislation.
5. No ground exists for the removal of distinguishment in respect of this hereditament as the character and nature of the occupancy has not altered in any respect as is evidenced from the inspection of the hereditament and other evidence of the nature of the occupation.
6. The hereditament should be described as "Distinguished" in the Valuation List pursuant to Section 2 of the Valuation (Ireland) Act, 1854.
7. The hereditament is dedicated to or used for public purposes and accordingly is not rateable pursuant to Section 63 of the Poor Relief (Ireland) Act, 1838.
8. The hereditament is dedicated to or used for public purposes and accordingly is not rateable pursuant to Section 63 of the Poor Relief (Ireland) Act, 1838 and accordingly should not be included in the Valuation Lists".

The relevant valuation history is that the subject property was first valued for rates in 1950, the occupier being the Institute for Industrial Research and Standards. The valuation was £275. Over time the subject premises was extended on a number of occasions with a consequent increase in the valuation. In 1986 the rateable valuation stood at £11,750. Throughout all this period the rateable valuation was distinguished as exempt in the valuation lists.

In all of the valuation increases the occupier remained the same but the description was amended to include 6 Finglas Road and 3B Claremount.

The 1995/4 revision resulted in a decrease in the rateable valuation to £9,700 and in the subject premises being no longer distinguished as being exempt. The only change on appeal to the Commissioner of Valuation is that the quantum of rateable valuation was reduced to £8,500.

Finally before the hearing of this appeal the appellant and respondent agreed a quantum figure of £7,000 for the rateable valuation.

A written submission on behalf of the respondent was received by the Tribunal on 9<sup>th</sup> January 1998. The written submission was prepared by Mr. Colman Forkin B.S.c (Surveying) ARICS ASCS, a Valuer with seventeen years experience in the Valuation Office.

The written submission contained *inter alia* a description of the property, details of its valuation history and the inclusion of one comparison.

The Tribunal received a letter dated 8<sup>th</sup> January 1998 from Jones Lang Wootton on behalf of the appellant on 9<sup>th</sup> January 1998. In this letter Mr. William Tuite stated that the appellant and respondent had agreed the quantum of rateable valuation at £7,000. He further stated that “only the distinguishment issue” remained to be dealt with at the Tribunal hearing.

The oral hearing took place at the Tribunal Offices, Ormond House on 19<sup>th</sup> January 1998.

The appellant was represented by Mr. Owen Hickey B.L. instructed by McCann Fitzgerald Solicitors. There were with Mr. Hickey, Mr. William Tuite of Jones Lang Wootton and Mr. Patrick Hopkins, Chief Administrator and Accountant of Forbairt.

Mr. Mark Sanfey B.L. appeared for the respondent instructed by the Chief State Solicitor and with him was Colman Forkin from the Valuation Office.

At the outset of the hearing it was confirmed to the Tribunal by both sides that the quantum of rateable valuation for the subject premises was agreed at £7,000 and the only issue to be

decided by the Tribunal was whether that rateable valuation should be distinguished as exempt.

In his sworn testimony on behalf of the appellant Mr. Patrick Hopkins outlined the legislative history which governed the activities of the Institute for Industrial Research and Standards which was the predecessor of the appellant at the site in Glasnevin. In 1987 the Science and Technology Act changed the name of the Institute for Industrial Research and Standards to Eolas. In 1993 the Industrial Development Act abolished the activities of Eolas and transferred 75% of its activities to Forbairt and 25% of its activities to Fás. In 1995 the 1993 Industrial Development Act was amended to allow Forbairt to own property.

In his testimony Mr. Hopkins described the activities carried on at the subject premises. He said they were a continuation of the work of the Institute of Industrial Research and Standards. These were research, testing and consultancy and work dealing with patents and inventions. The appellant provided general advice to indigenous Irish Industry in the area of science and technology. The appellant also collaborates in scientific research with third level institutes.

Mr. Hopkins referred to Section 6 of the Industrial Research and Standards Act 1961 and Section 8 of the Science and Technology Act 1987 to illustrate the range of activities carried on by the appellant at the subject premises.

Mr. Hopkins stated that all these activities had been carried on at the subject premises since 1961. There had been a change in emphasis in recent years.

In his sworn testimony Mr. Hopkins described the funding of the agency. This was derived from Government grants in aid and fees earned by technical services to industry. There was a budget of £30,000,000. The fees payable in 1996 amounted to £6,400,000. This latter figure for fees amounted to 20% of the administration budget of £30,000,000.

Mr. Hopkins stated that the accounts of the appellant are audited by the Comptroller and Auditor General and then tabled in the houses of the Oireachtas, after approval by the Cabinet.

Mr. Hopkins stated that the Minister for Enterprise and Employment appoints the Board of the appellant. Currently there are representatives of the Minister and the Minister for Agriculture on the Board.

Finally in his direct evidence Mr. Hopkins described the recent ownership of the subject premises. On 1<sup>st</sup> January 1994 Eolas transferred the property to Forfas. On 1<sup>st</sup> January 1996 Forfas transferred the property to Forbairt.

Under cross-examination by Mr. Sanfey Mr. Hopkins agreed that there was a fundamental change to the organisation occupying the appellant premises due to the 1993 Industrial Development Act. Again Mr. Hopkins agreed that the objective under Section 7 of the Industrial Development Act 1993 was to develop industry in the state.

Mr. Sanfey further put it to Mr. Hopkins that the appellant invests in Irish industry and its accounts for 1995 at note 17 showed a list of such companies. Again this was an activity which the appellants predecessor, Eolas, did not engage in. Mr. Hopkins did not deny any of these propositions.

Mr. Sanfey quoting from promotional literature published by the appellant entitled “Supporting sustained growth in Irish Industry” described its activities as;

- (a) **technology services; meeting the needs of Irish Industry,**
- (b) **science and technology; managing a range of programmes to support the role of science and innovation in Irish Industry,**
- (c) **business development; meeting the needs of Irish Industry and the international food and natural resources sectors through the provision of a comprehensive package of financial and development services,**
- (d) **investment policy; supporting industry to stimulate growth through the development of new forms of financing and equity**
- (e) **strategy and administration; supporting the organisation to deliver improved customer service.**

Mr. Hopkins agreed with all this. Mr. Hopkins further agreed under cross-examination that the appellant's promotional literature refers to "customer's charter" and "clients".

Again quoting from the same promotional literature of the appellant Mr. Sanfey referred to the appellant's investment policy directorate. This entity had a role in four main areas;

- (a) **equity funds**
- (b) **developing companies market**
- (c) **B.E.S. funding**
- (d) **Developing guidelines for Forbairt Investment**

The entity's role in all of these was to consider and commercially evaluate proposals of a financial nature received by the appellant. Mr. Hopkins agreed with this.

Mr. Sanfey again referred to the 1995 accounts at note 21 which states that the Industrial Development Act 1995 provided that the appellant could acquire, hold and dispose of land and any other property. Again Mr. Sanfey referred to the 1993 Industrial Development Act which provided that the appellant was a corporate body. Mr. Hopkins agreed with these propositions.

Under further cross examination Mr. Hopkins stated that the appellant receives dividends from preference shares in companies and rent from industrial properties leased by indigenous Irish Industry. These payments in total amounted to £3,200,000.

Mr. Colman Forkin in his sworn testimony adopted his written submission as his evidence to the Tribunal. He referred to Section 5 of his written submission, which dealt with the valuation history of the subject premises. He stated that the change brought about in 1995/4 revision as to exemption was due to the change in status of the occupier brought about by the 1993 Industrial Development Act. He further stated that the subject premises is not occupied by the State but by a body corporate. Finally he stated that I.D.A. properties were rateable.

Under cross-examination by Mr. Hickey, Mr. Forkin stated that he was not aware of any change in the use of the subject property since it lost its exempt status. Mr. Forkin agreed that the previous occupier since 1961 had been a body corporate. Mr. Forkin further agreed

that the subject premises had been inspected twelve times since 1961 without losing its exemption.

In his legal submission to the Tribunal, Mr. Hickey cited four authorities;

- (1) *University College Cork –v- Commissioner of Valuation* [1912] I.R. 328
- (2) *Trinity College –v- Commissioner of Valuation* [1919] I.R. 49
- (3) *Maynooth College –v- Commissioner of Valuation* [1958] I.R. 189
- (4) **The decision of the Valuation Tribunal in VA92/1/008 - *Royal Hospital Kilmainham –v- Commissioner of Valuation.***

Mr. Hickey submitted that the statutory basis for the exemption rested on Section 63 of the Poor Relief (Ireland) Act 1838, Section 16 of the Valuation (Ireland) Act 1852, and Section 2 of the Valuation (Ireland) Act 1854. These statutory provisions provided for exemption where the hereditaments in question are dedicated to or used for public purposes.

Mr. Hickey proposed six tests to satisfy the requirements of the relevant statutory provisions as to exemption. They were;

- (a) **the premises were *prima facie* used for public purposes**
- (b) **the accounts are audited by the Comptroller and Auditor General and presented to the Government and the houses of the Oireachtas**
- (c) **the premises are used for great public utility**
- (d) **the premises are built by monies provided by parliament**
- (e) **the premises are maintained by monies provided by parliament, and**
- (f) **that the purpose of occupation is governmental in the sense accepted by the Valuation Tribunal in the Royal Hospital Kilmainham case.**

Mr. Hickey stated that these tests were contained in the authorities he had opened to the Tribunal.

Referring to the University College Cork case at page 338, Mr. Hickey stated that this provided the source for test (a). Again Mr. Hickey stated that the Trinity College case at page 503 provided the source for tests (b) and (d) and (e). In referring to the Maynooth College case Mr. Hickey stated this case at page 201 provided the source for tests (d), (e) and (c). Finally in referring to the Royal Hospital Kilmainham case before the Valuation Tribunal Mr. Hickey stated that this was the source for test (f) at page 17 (the second paragraph) and page 18 (the second paragraph).

In summary Mr. Hickey submitted that the evidence adduced by the appellant showed that the subject premises were built and maintained by public funds. The accounts were audited by the Comptroller and Auditor General and presented to the Government and Houses of the Oireachtas. The subject premises were used for a purpose of great public utility, namely in the provision of research, scientific knowledge and help to Irish indigenous industry. Again the buildings the subject matter of this appeal were prima facie and in their natural meaning dedicated to and used for public purposes. Mr. Hickey's interpretation of the Royal Hospital case seemed to be that the findings of the Valuation Tribunal as to the nature of a governmental purpose were determined by the evidence that the appellant company was entirely appointed by the Taoiseach and its accounts were submitted to the Comptroller and Auditor General. In the instant appeal all the members of the appellant's Board were appointed by the Minister for Enterprise and Employment and there is one Board member from that Department and another Board member from the Department of Agriculture.

In conclusion Mr. Hickey submitted that the six tests grounded on his authorities were fully satisfied by the appellant in this case.

In his legal submissions Mr. Sanfey agreed with Mr. Hickey as to the statutory basis for exemption from rates in this case.

Mr. Sanfey cited the following authorities in connection with his legal submissions;

- (1) *Cork Corporation -v- Commissioner of Valuation* [1916] IR 77
- (2) *Maynooth College -v- Commissioner of Valuation* [1958] IR 189



- (3) *St. McCartens Dioceses Trust –v- Commissioner of Valuation* [1990] I.R. 508 and,
- (4) **the decision of the Valuation Tribunal in the case of *Aer Rianta –v- Commissioner of Valuation* VA88/0/141.**

Mr. Sanfey said the test that property is used for public purposes is set out in Judge Keane's Book, the Law of Local Government in the Republic of Ireland at page 297. The test is that the property;

- (1) **belongs to the government or**
- (2) **each member of the public has an interest in the property.**

Mr. Sanfey said these tests had been discussed in *Cork Corporation –v- Commissioner of Valuation* [1916] IR 77.

In further legal submissions Mr. Sanfey referred to the provisions of the Industrial Development Act 1993 and he suggested that the purposes for which the subject premises were used could be ascertained by looking at the purposes of the appellant. The functions of Forbairt were in Mr. Sanfey's submission to develop and encourage indigenous Irish Industry.

Mr. Sanfey submitted that Section 11 of the Industrial Development Act 1993 provided a mechanism for the payment of grants to the appellant by the government.

The first schedule to the Industrial Development Act 1993 sets out, in Mr. Sanfey's submission a memorandum and articles of association for Forbairt. Paragraph One of this schedule specifies that Forbairt is a body corporate with power to sue and be sued in its own name. Again Forbairt is given the power to acquire, hold and dispose of land and other property in the said schedule.

Mr. Sanfey then referred to the second test proposed by Judge Keane. Does each member of the public have an interest in the property? Mr. Sanfey submitted that this was not so as only those involved in the development of Irish Industry whether as an entrepreneur or otherwise

would have an interest in the subject premises. Conversely any person who was not involved in setting up a business had no interest in the premises.

Mr. Sanfey submitted that the test is not one of great public purpose or general benefit to society as a whole. *Maynooth College –v- Commissioner of Valuation* [1958] IR 189 dealt with this issue. The training and education of priests to minister to the spiritual needs of over nine tenths of the population was advanced in argument by the appellant as a great public purpose which every member of the community had an interest in. The High Court in that case refused to accept that argument as tending to widen the extent of exemption, which was not warranted by the authorities.

As to the test of ownership of the subject hereditament by the government Mr. Sanfey referred to *VA88/0/141 - Aer Rianta –v- Commissioner of Valuation*. This judgment in dealing with the issue of ownership of property found that all property at the relevant airports was vested in the Minister for Tourism and Transport and Aer Rianta was an agent of the said Minister.

Mr. Sanfey contrasted the situation of Aer Rianta with that of the appellant. Forbairt owns property and can sue and be sued in its own name. Mr. Sanfey submitted that Forbairt was a corporate body established by statute and subject to some monitoring by the Minister for Enterprise and Employment.

In further submissions Mr. Sanfey stated that the fact that the appellant depends on State funding does not of itself render the hereditament as dedicated to or used for public purposes. His authority for this was *St. McCartens Dioceses Trust –v- Commissioner of Valuation* 1990 IR 508. In that case an educational establishment founded for the benefit of a limited section of the public was later extended for wider public service. The establishment had never been taken over by the state though eventually it had become dependent on state financing for its continued existence. Nevertheless the court found that the involvement of the state in the use by the occupiers of the hereditaments did not qualify them as “dedicated to or used for public purposes”.

In reply Mr. Hickey referred to the test proposed by Judge Keane as submitted by Mr. Sanfey. Mr. Hickey stated that this test was derived from a very old case in 1865 and from

an analysis of local authority exemption claims which were of little use in dealing with a major public body like Forbairt.

### **Determination**

The Tribunal finds that;

- (1) the subject hereditament is owned by the appellant, a body corporate established by statute and**
- (2) that only that section of the public involved in indigenous Irish Industry and the international food and natural resources sectors have an interest in the said hereditament.**

In arriving at a determination in this matter the Tribunal notes the finding in the *VA92/1/008 - Royal Hospital Kilmainham –v- Commissioner of Valuation* that the title of the subject hereditament there was vested in the Minister for Finance which makes that case factually distinguishable from the instant appeal.

The Tribunal in the *Royal Hospital Kilmainham* case remarked at page 16 of the judgment “title however, is immaterial if the occupation of the premises is rateable”. The judgement goes on at the same page to quote Mr. Justice Blackburn in *Cameron –v- The Mersey Docks Trustees* where he says “the exemption depends entirely on the occupier and not on the title to the property. The tenants of Crown property, paying rent for it, are rateable like all other properties.

The Tribunal considers that the decisive test in this case in establishing the exemption is whether the occupation of the subject premises is dedicated to or used for public purposes. The Tribunal further considers that the terms of this test were most ably articulated by Kenny J. in his judgment in *Trinity College –v- Commissioner of Valuation* [1919] IR at page 519.

Before reproducing that test in this judgment the Tribunal considers that there is a major factual issue which distinguishes the *Trinity College* case from the *University College Cork* case advanced by Mr. Hickey and is relevant to the issue to be decided in this appeal.

In the case of University College Cork the facility was open to “all classes of people without distinction of rank, creed, or sex, and without limitation of locality from which students may come”, page 335 of the judgment.

In the Trinity College case the Court found that the college was an independent institution not subject to government or any other control. Furthermore no person had a legal right to become a student. In the case of University College, Cork the court held it to be exempt where as in the case of Trinity College, Dublin, the court found it to be rateable.

In this context Kenny J. stated “that in all the Irish authorities where the question of the meaning and application of the words “used for public purposes” or “altogether of a public nature” or “used exclusively for public purposes” has arisen, it has been uniformly determined that the “user”, essential in order to establish exemption, must be available for all the subjects of the realm; the “purposes” must be purposes in which every member of the community has an interest; and the premises must be used for the public benefit of the whole community, and not for the private or exclusive use of any members, or any particular class or section, of it.”

In view of the factual findings of this Tribunal, the subject hereditament in this appeal does not satisfy the foregoing test in as much as the occupation of the premises is for the benefit of only a section of the community.

Accordingly the Tribunal affirms the decision of the Commissioner of Valuation in not distinguishing the subject premises as being exempt. The Tribunal therefore determines that the subject premises should not be distinguished as being exempt by virtue of the proviso contained in Section 63 of the Poor Relief (Ireland) Act 1838 and the Tribunal further determines the rateable valuation of the said premises to be £7,000.