

Appeal No. VA97/5/011

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

Cork City Partnership Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Map Reference 12,13 ABCDE/18 Kilnap, Sunbeam Industrial Estate, Mallow Road, County Borough of Cork
Exemption - Charitable purposes

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Finian Brannigan - Solicitor

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF MARCH, 1999

By Notice of Appeal dated the 15th day of August 1997, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £70 on the above described hereditament.

The Grounds of Appeal as set out in the Notice of Appeal are that "Cork City Partnership Limited, as the occupiers of the hereditaments referred to in Clause 1 hereof, should be exempt from rates on the grounds that the buildings are exclusively used for charitable purposes or for the education of the poor."

The relevant valuation history is that a rateable valuation of £70 was placed on the property in the Valuation List issued on 8th November 1996. At first appeal stage, the issue contested was the appellant's claim for exemption. This claim was rejected by the Commissioner of Valuation in his decision issued on 18th July 1997.

The Tribunal received a written submission from O'Flynn Exhams & Partners, Solicitors on behalf of the appellant on 15th April 1998.

A written submission on behalf of the respondent, prepared by Francis Twomey, District Valuer in the Valuation Office was received by the Tribunal on 15th day of April 1998. This written submission contained a copy of the Memorandum and Articles of Association of the appellant company. Also contained in the written submission were a copy of the audited accounts for the appellant company with respect to the year ending 31st December 1996.

The building occupied by the appellant is part of a large industrial complex, which has been divided into a number of smaller units.

The oral hearing took place in the Conference Centre, Silver Springs Hotel, Tivoli, Cork on the 6th May 1998.

The appellant was represented by Mr. David Holland BL instructed by O'Flynn Exhams & Partners, Solicitors. The respondent was represented by Ms. Siobhan Lankford B.L. instructed by the Chief State Solicitor.

Mr. Holland put in evidence a copy of the lease to the premises and a brochure describing the activities of the appellant company. This brochure was entitled Local Development Plan 1996-1990 for the Cork City Partnership Ltd.

Mr. Jim O'Flynn, Chief Executive of the appellant company gave sworn testimony to the Tribunal. He confirmed that the objectives of the organisation was to counter disadvantage through support for communities which make a collective effort to maximise the development potential of their areas, which are capable of a sustained effort to implement a plan and which have committed an appropriate level of resources in that process.

Mr. O'Flynn described the origins of the organisation. It came into being as a result of the PESP negotiations in 1991. Part of this agreement was designed to deal with disadvantage caused by long term unemployment. The focus was on communities severely effected by long term unemployment.

Twelve pilot projects were established by the Government and one of these was on the north side of Cork City. The location of the pilot project there was due to the severe level of disadvantage there.

The purpose of the appellant company is to ameliorate poverty. This is done by (a) education and training to reduce early school leaving, (b) attempting to help people who have not benefited from their formal schooling by the provision of complementary education (c) by the operation of a local employment service, which assists the long term unemployed access the labour market and (d) by improving the quality of life in communities suffering from severe disadvantage.

The initial area in which the organisation operated contained a large number of local authority housing scheme and suffered from severe disadvantage. This area included Knocknaheeny, Mayfield and Farranee.

In 1995 after Government evaluation the number of projects nationally was increased from 12 to 38 and the geographic remit of some was increased. The project now covers the entire city of Cork and takes in disadvantaged areas in the south side of the city.

Mr. O'Flynn in his evidence described the governance of the appellant. Approximately 130 community organisations are affiliated to the company. Each of these organisations act as a conduit between the community and the Board.

The Board meets approximately six times a year. At the annual general meeting seven community representatives are elected to the Board. Each of the State agencies, VEC, FAS, Department of Social Community & Family Affairs and Cork Corporation elect one member to the Board. Six members are elected by the social partners, three from the union side and three from the employer's side. The Board members are not paid.

Mr. O’Flynn then dealt in his evidence with the activities of the appellant.

In the area of community development the appellant seeks to provide the members of the community with the skills to manage the community, to lobby on behalf of it, to identify the needs of the community, and to develop a strategy to help the community to address those needs.

Mr. O’Flynn then referred to specific areas of community development, including women’s development, traveller initiatives and childcare.

The benefits provided by the childcare project were (a) it released the parents of the children to access training, education, or employment and (b) the provision of early education for children has been found to be beneficial.

The youth services provided by the appellant were a continuation for older children of the type of services provided by the childcare project.

Mr. O’Flynn said the appellant sees itself as piloting initiatives and then persuading the public agencies to develop these initiatives as main stream activities.

Mr. O’Flynn said his organisation employs persons with expertise to train locals to provide services in the community. The aim is to give locals the skills to help themselves and their community.

Mr. O’Flynn referred to the men’s development initiative. These groups set their own agenda and endeavour to create a consensus in the area of education, training, community development and employment. The appellant facilitates these groups or advocates for them with various agencies.

Mr. O’Flynn then referred to the enterprise creation and development activities of the appellant. The objective here is to help the long-term unemployed, that is, persons who have been on the live register for more than twelve months. These people can develop their business idea while receiving their full social welfare entitlement. The appellant helps these people by giving them financial advice. The organisation planned to take 400 people off the

live register over a four-year period. Last year in fact 212 people were taken off the live register.

Mr. O'Flynn then referred to the appellant's support of existing business in the community. He said his organisation was careful in choosing which ones to help. They were chosen (a) where there was no displacement effect (b) the business had potential to create jobs and (c) the business was in difficulty.

These businesses come to the appellant as a last resort. They are located in the community, usually provide a service, and give employment to their neighbours. An example of this would be a childcare facility. Mr. O'Flynn said the appellant did not help businesses like setting up a shop.

The appellant helps these businesses by giving advice on management. They also grant aid to the businesses by financial grants, which range from £200 to £1,000.

Mr. O'Flynn referred to the infrastructure and environment project of the appellant. This is directed at improving the physical environment in the public housing areas. Here there are 220 people employed in a community employment-landscaping project. This provides training in horticulture for the employees. The appellant has an arrangement with Cork Corporation that when any vacancy arises in its parks department then these employees on the appellants landscaping project will have a chance of getting this job. Recruitment to this community employment programme is dependent on being on the live register as unemployed for twelve months.

Mr. O'Flynn referred to the training and education provided by the appellant. The people who benefit from this could not afford to pay for similar services available in the private sector. The appellant provides inducements for those taking their education and training courses such as crèche facilities and transport expenses. The education and training facilities are vocationally focused and available free to the participants.

Mr. O'Flynn referred to the various services for the unemployed listed at page 37 of the brochure put in evidence by Mr. Holland.

Mr. O’Flynn said the appellant employed approximately 42 whole time staff and 50 part time staff. The part time staff was teachers. The staff, whole time and part time were paid normal commercial rates. There was also a significant voluntary contribution from the community in work terms.

The people involved in education and training at any one time numbered in excess of 2,000. These people were paid by FAS but some receiving education were getting no payment.

Finally, in his direct evidence, Mr. O’Flynn referred to the main objects in the memorandum of the appellant company, which are to help the long-term unemployed.

In cross-examination, Ms. Lankford asked Mr. O’Flynn about object three of the memorandum, which provided *inter alia* for the payment of monies to members of the company. Mr. O’Flynn stated that this allowed the appellant to rent offices in pursuit of its objectives to help the unemployed from the four state agencies represented on the Board of the appellant. He stated that it has never arisen that a member of the company has benefited from the operation of the company.

Under further cross-examination, Mr. O’Flynn referred to the appellant’s accounts for the year ending 31 December 1996. He said the appellant had two main sources of funding. One was European Union Funding through an intermediary agency known as Area Development Management. The other source was the Department of Enterprise and Employment, which contributed £40,000. The appellant also received £25,000 from the Department of Justice, Equality and Law Reform. This was to aid a disability project.

The funds provided by the Cork Council of Trade Unions were to pay the salary of an employee of the Council who was assigned to the appellant by the Council.

Ms. Lankford asked Mr. O’Flynn as to whether the appellant can generate profits from its activities. Mr. O’Flynn replied that none of the appellant’s activities can generate profits for the organisation.

Ms. Lankford asked Mr. O'Flynn as to how the appellant promotes attitudinal change towards the long-term unemployed. Mr. O'Flynn replied that the employer's involvement in the partnership had helped to change their attitude towards the long-term unemployed.

Mr. Twomey in his sworn testimony adopted his written submission as his evidence to the Tribunal.

Counsel for both sides agreed that the grounds for exemption in this case were the same as those in the immediately preceding case Northside Community Enterprises Ltd., (VA97/5/027). They were that the appellant's property (a) was used exclusively for the education of the poor and (b) was used exclusively for charitable purposes. The provision for both of these exemptions being contained in Section 63 of the Poor Relief (Ireland) Act 1838.

Again, Counsel for both sides stated that their legal submissions were the same as in the immediately preceding case and they did not repeat these submissions in this case.

Mr. Holland made the following additional submissions. He said that the appellant provided education, which included training.

He submitted that charities providing relief for the poor and those providing benefit to the community as specified in the Pemsel case were not subject to a narrow construction for the purposes of exemption under the Valuation Code. These activities were entitled to exemption from rating.

Mr. Holland again referred to the "succourless" and "impotent" as quoted in the Barrington's Hospital case. He said by analogy, the unemployed and the marginalised were the equivalent in present day terms.

Ms. Lankford said the training and education provided by the appellant were very broadly based. She said education only for the poor secures exemption.

Ms. Lankford referred to the Clanwilliam Institute case (VA91/2/067). In that case the Tribunal had refused exemption to the appellant because it considered that the Directors of

the Institute were able to make a private profit in connection with the lease of the appellant's property.

In this case she said that a member of the company can lend money to it and charge 5% as provided in the memorandum. Therefore, there was a possibility that a member of the company could make a private profit.

Ms. Lankford referred to the Comhlamh case (VA95/3/015). She said that the memorandum and articles provided that the organisation could support volunteers who had gone overseas but who have on their return indicated a desire to reintegrate into Irish society. She said the Tribunal had found that this supportive function was insufficient to grant exemption to the appellant. In this case the activities of the appellant were supportive of the unemployed.

In reply Mr. Holland stated that the lease for the appellant's property was an arms length transaction and the landlord was not a member of the company. This case therefore, was different from the Clanwilliam Institute case. In the Clanwilliam case the directors were the beneficial owners of the appellant's property.

Mr. Holland referred to the Comhlamh case. That case dealt with returning doctors and engineers. There was no comparison with the marginalised helped by the appellant. Support in this case means relief of poverty as contemplated by the Pemsel case.

The Tribunal has considered the written submissions and the evidence offered by both the appellant and the respondent. The Tribunal has also considered the legal submissions made by the appellant and the respondent in Northside Community Enterprises Ltd., (VA97/5/027) and both sides additional legal submissions in this case.

The Tribunal finds that the appellant does not provide education exclusively for the poor within the meaning of Section 63 of the Poor Relief (Ireland) Act 1838.

This finding is based on the evidence, which the Tribunal accepts established the fact that the appellant supports businesses in the community by *inter alia* grant aiding them. The most

contemporaneous and elastic definition of education could not include these activities within its ambit.

The appellant therefore cannot succeed on this ground in its claim for exemption from the payment of rates.

The Tribunal finds that the hereditament occupied by the appellant is used exclusively for charitable purposes, namely the relief of poverty.

This finding is based on the evidence, which the Tribunal accepts established the following facts;

- (a) the primary purpose of the appellant as specified in its memorandum and articles of association is to help the unemployed
- (b) the activities of the appellant has a direct effect in reducing poverty in the area of its operation in as much as unemployment and community deprivation is decreased and
- (c) the appellant cannot in any sense be described as a commercial entity dependent as it is on funding from the European Union and the Irish State.

The Tribunal also accepts the uncontested evidence that the provision for payment of monies to members of the company was designed to remunerate the State agencies represented on the Board so as that these State agencies could facilitate the objectives of the appellant. The Tribunal further accepts the uncontested evidence given on behalf of the appellant that no member of the company had benefited from its activities.

As to the legal position which specifies that the charitable exemption from payment of rates is narrowly construed in Irish law the Tribunal notes the following matters discussed in the Barrington's Hospital case.

One of the general conclusions in that case is that the extent of the narrowness of that construction has never been decided (proposition number 2 at page 333 of the judgment).

The Tribunal also notes at page 324 of the Barrington's Hospital case that the following obiter of Palles C.B. from Clancy –v- Commissioner of Valuation, 1911 2 I.R. 173, is reproduced. “The uniform current of authority in this country has been based (and, as I think rightly) on the word ‘charitable’ as used in this section, being construed in the large sense in which the word is generally used in our law – in the sense in which it had been held to be used in the Legacy Duty Act and in the Income Tax Acts – upon it not being restricted merely to the relief of poverty”.

This obiter of Palles C.B. was made after the Pemsel case but before O’Neill –v- Commissioner of Valuation, 1914 2 I.R. 447. This latter case was the case in which Palles C.B. lead the Court to decide that charitable exemption from payment of rates should be narrowly construed.

In adverting to this obiter of Palles C.B. the Tribunal is not adopting the view that charitable purposes for the relief of poverty should be narrowly construed.

In the Barrington's hospital case the only authority as to the exclusions from charitable purposes refer to any specific charitable purpose named in Section 63 of the Poor Relief (Ireland) Act 1838. Charities for the relief of poverty are not specifically mentioned in the Section. Furthermore Counsel for the respondent did not produce any authority to the Tribunal which showed that charitable purposes for the relief of poverty should be narrowly construed for the purposes of exemption from the payment of rates.

The Tribunal therefore determines that the hereditament occupied by the appellant should be distinguished as being exempt from the payment of rates in as much as its charitable purposes are exclusively directed to the relief of poverty.

