

Appeal No: VA14/5/276

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001**

ST. LAURENCE O'TOOLE DIOCESAN TRUST

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of
Property No. 2173932, Office (Georgian/Victorian) at Holy Cross College, Clonliffe Road,
County Borough of Dublin.

B E F O R E

Carol O'Farrell - BL

Chairperson

Donal Madigan – MRICS, MSCSI

Member

Barra McCabe - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JANUARY, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 4th day of September 2014 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV)' of the above relevant Property was fixed in the sum of €445,000.

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

- (i) that the determination of the valuation of the Property is incorrect having regard to the use and the location, size, age and layout of the Property relative to the values of other offices properties on the Valuation List;
- (ii) that the Property is relevant property not rateable in accordance with Schedule 4 of the Valuation Act, 2001 and, in particular, paragraph 16 thereof, as it is occupied and used to

accommodate various secretariats and agencies of the Diocese in pursuance of its religious and charitable objects.

2. REVALUATION HISTORY

2.1 The date by reference to which the value of the Property was determined is the 7th April 2011.

2.2 On the 1st October 2013 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the 2001 Act”) in relation to the Property was sent to The Appellant indicating a valuation of €445,000.

2.3 On the 7th February 2014 the Appellant submitted an appeal to the Respondent pursuant to Section 30 of the Act against the determination of value on the grounds that the valuation was incorrect and that the Property should have been excluded from the Valuation List.

2.4 On the 31st July 2014 the Appeal Manager disallowed that appeal. A Final Valuation Certificate issued on the 16th day of December 2013 stating a valuation of €445,000.

2.5 By Notice of Appeal dated the 4th September 2014 the Appellant appealed to the Valuation Tribunal against the said decision of the Respondent at first appeal.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 24th October 2018. The Appellant was represented by Mr. James Devlin S.C. and Ms. Catherine Donnelly BL instructed by Mason Hayes & Curran Solicitors and on behalf of the Appellant the Tribunal heard evidence from Mr. Declan McSweeney, General Manager of St. Laurence O’Toole Diocesan Trust and Monsignor Paul Callan. The Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor and Mr. Liam Diskin BSc (Property Management and Investment) of the Valuation Office gave evidence on behalf of the Respondent.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal.

4. ISSUES

4.1 The first issue on this appeal is whether the Appellant is a charitable organisation within the meaning of section 3 of the 2001 Act. If the Appellant is such a charitable organisation, then the second issue for determination is whether the Property is entitled to be treated as exempt from rates pursuant to paragraph 16 of the list of properties designated as “relevant properties not rateable” in Schedule 4 of the 2001 Act.

4.2 To determine the first issue, the Tribunal must decide whether the Appellant’s Memorandum and Articles of Association comply with the conditions set out in subparagraphs (iii) and (vii) of paragraph (a) of the definition of charitable organisation in section 3 of the 2001 Act.

4.3 Should it be necessary to determine the second issue, the Tribunal must decide
(a) whether the advancement of religion is a charitable purpose, and
(b) whether the Property is used exclusively for charitable purposes.

4.4 In addressing the issues, the Tribunal must apply the law as it stood prior to the commencement of the Valuation (Amendment) Act 2015.

4.5 The parties agree (without prejudice to the merits of their respective arguments) that in the event the Tribunal does not uphold the Appellant’s claim for exemption, the net annual value of the Property is €352,000.

5. STATUTORY PROVISIONS RELEVANT TO THE ISSUES

5.1 The preamble to the 2001 Act states:

An Act to revise the law relating to the valuation of properties, for the purposes of the making of rates in relation to them; to make new provision in relation to the categories of properties in respect of which rates may not be made and to provide for related matters.

5.2 Section 15 of the 2001 Act provides:

“(1) Subject to the following subsection and sections 16 and 59, relevant Property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.”

5.3 Schedule 4 of the 2001 Act lists 19 types or categories of relevant property which are designated as “not rateable” by section 15(2). This appeal is concerned with the property falling within paragraph 16 (a) of Schedule 4 being:

“Any land, building or part of a building which is occupied by a body, being either a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or”

Section 3 of the 2001 Act provides:

‘charitable organisation’ means a company or other body corporate or an unincorporated body of persons which complies with the following conditions—

in the case of a body corporate which is not a company, or of an unincorporated body of persons, there exists a constitution or deed of trust in relation to it that states the full name of the body, provides who are to be its trustees or who are to be the members of its governing board or committee states, as its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects, states its powers, provides for rules governing its membership and procedures to be followed in relation to meetings and the discharge generally of its business, provides for the keeping of accounts and the auditing thereof on an annual basis,

(I) provides for the application of its income, assets or surplus towards its main object or objects,

(II) prohibits the distribution of any of its income, assets or surplus to its members, and prohibits the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it) makes provision for its winding up, and provides for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of this Act), the main object or objects of which is or are similar to its main object or objects or, if the body receives a substantial proportion of its financial resources from a Department of State or an office or agency (whether established under an enactment or otherwise) of the State, to such a Department, office or agency, and in the case of a company—

the memorandum of association or articles of association, as appropriate, of the company comply with the conditions specified in subparagraphs (iii) and (vii) of paragraph (a) of this definition (and, for this purpose, the reference in clause (II) of that subparagraph (vii) to trustees

or other persons shall be construed as a reference to the directors or any other officer of the company), and

there is contained in that memorandum or those articles a provision, with respect to a case of its being wound up, that is similar to the condition specified in paragraph (a)(ix) of this definition.

6. BACKGROUND FACTS

6.1 The appeal Property is an office complex comprising 3 buildings that are described as the Main Building, the 51 Building and the 66 Building. The Main Building is a 4-storey building that is a protected structure. It was formerly known as Holy Cross College, the foundation stone for which was laid by Archbishop Cullen on the 3rd May 1860. There are interconnecting corridors between the Main Building, the 51 Building and the 66 Building. The 51 Building is a 3-storey building erected in 1951 and is connected on the North West side of the Main Building. The 61 Building is a 4-storey building built in 1966 and it is connected on the north east side of the Main Building. There are 66 car parking spaces in front of Building 66. The floor areas of the offices within the Property is agreed at 4,831.47 sq. m.

6.2 The Appellant was incorporated on the 6th December 1966 as a company limited by guarantee not having a share capital. Article 2 of its Memorandum of Association states that the objects for Which the Appellant is established are

“to act as Trustee for property and investments of every kind owned by or used in connection with the Roman Catholic Church in the Diocese of Dublin or held or to be held in trust for any charitable purpose whatsoever”.

Clause 2 goes on to state that:

“for the purposes aforesaid, but not otherwise, to do each and every of the things following; - to purchase, take on lease or otherwise acquire any lands, buildings, farms, gardens or other property for any estate or interest whatsoever and any rights, privileges or easements over or in respect of ay property;

To sell, improve, manage, develop, exchange, lease, hire, mortgage, dispose of, turn to account or otherwise deal with all or any part of the undertaking, property and rights of the Company;

To borrow raise or secure the payment of money in such manner as the Company shall think fit;

To acquire and hold stocks, shares, securities and other investments and to invest and deal with the moneys of the Company not immediately required and, in such manner, as may from time to time be determined;

To undertake the office of the Manager, Secretary, Trustee, Executor, Administrator, Committee, Attorney, Delegate, Treasurer, or any office of trust or confidence;

To employ such clerical or other staff as may be required by the Company from time to time;

To donate, whether by way of conveyance, transfer, lease, licence or other disposition or means whatsoever any land or property of the Company and whether for a nominal or other or no consideration to any person or body for charitable publicly beneficial purposes and to contribute by donation, subscription or guarantee or otherwise to any charitable or public and beneficial object whatsoever.

Provided that the Company shall not support with its funds any object or endeavour to impose on or to procure to be observed by its members or others any regulation, restriction or condition which, if an object of the Company, would make it a Trade Union”.

6.3 Clause 3 concerning the application of the income and property of the Company and provides:

The income and property of the Company whensoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to Members of the Company PROVIDED THAT nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the Company or to any member of the Company nor prevent the payment of interest at a rate not exceeding 5% per annum on money lent or reasonable and proper rent for premises demised or let by any member of the Company; but so that no Director of the Company shall be appointed to any salaried office of the Company or any office of the Company paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Company to any Director except repayment of out-of-pocket expenses and interest at a rate aforesaid on money lent and proper rent for premises demised or let to the Company; provided that the provision last aforesaid shall not apply to any payment to any company of which a Director of the Company may be a member and in which such Director shall not be bound to account for any share of profits he may receive in respect of any such payment.

6.4 Clause 9

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property, whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other Institution or Institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income or property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause 3 hereof, such Institution or Institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some charitable object.

7. THE APPELLANT'S EVIDENCE

7.1 Mr. Sweeney, the General Manager and Finance Administrator of the Archdiocese since the 1st April 2016, gave evidence that the Archdiocese of Dublin covering the city and county of Dublin, most of County Wicklow, and parts of Counties Kildare, Carlow, Wexford, and Laois consists of 199 parishes. He confirmed the truth and accuracy of the Précis of Evidence submitted to the Tribunal by his predecessor. He explained the meaning of the word “diocese” in Canon Law. He confirmed that the Diocesan Offices are housed in the Property and that the Mater Dei Institute of Education had relocated to the DCU campus in October 2016. He explained that Diocesan funding comes from donations during Sunday Mass collections. He confirmed that the Appellant is recognised by the Revenue Commissioners as a charity being the Trustee Company for a multitude of parishes and schools and in so doing, he referred to certain documents from the Office of the Revenue Commissioners and the Charities Regulatory Authority. He confirmed that the Diocese of Dublin is granted charitable status. A letter of the 14th June 2013 from the Office for the Revenue Commissioners confirms that the Diocese of Dublin was granted charitable tax exemption under CHY 7424 and that the Appellant is also covered by CHY 7424. A printout from the Charities Regulatory Authority confirms that the Charities of the Roman Catholic Archdiocese of Dublin are registered with the Charity Regulator under charity register reference number 20002022 and that the schools and parishes of the Diocese of Dublin (R.C.) are also registered with the Charity Regulator under charity register reference number 20016166. He accepted that there is no reference to the Appellant on the Charities Register. He confirmed that the Appellant is the Trustee of the properties and the investments of the Diocese and that the Appellant has a separate identity from the Catholic Church. He stated that the Appellant does not remunerate the company secretary or any director

and had not ever done so and that it is Diocesan policy not to remunerate directors and officers of the Appellant. He confirmed that the Appellant has no employees. When asked about the nature of the institution or institutions referred to in clause 9 of the Appellant's Memorandum of Association, he said that an institution had to be construed as a charitable institution and that it would also have to be an institute to which it would be in the interests of the Roman Catholic Church to make a distribution of income and property.

7.2 Monsignor Callan, the Moderator of the Curia, co-ordinates the work of the Diocesan offices on behalf of the Archbishop of Dublin. He outlined the work of each of the Diocesan Offices (the full extent of which it is unnecessary to recount) dealing with matters concerning priests, child protection, archives, vocations, evangelisation and ecumenism, chancellery, human resources, liturgy resources, communications, regional marriage tribunal, property, finance, education, and his own office of the Moderator of the Curia. He described broadly the importance and value of the work carried out by each of those offices to the Archdiocese. He did not accept that the work of the child protection office or that of the offices dealing with human resources, communications, finance and property were not properly concerned with the advancement of religion. He confirmed that none of the offices comprised in the Property are let for consideration by the Appellant and that any other charitable organisation using offices within the Property are only asked to contribute to overheads such as heating and lighting.

8. RESPONDENT'S EVIDENCE

8.1 Mr. Diskin adopted his Précis of Evidence. He did not consider that clause 2 of the Appellant's Memorandum of Association states a charitable purpose and he also took issue with whether clause 3 and clause 9 of the Memorandum of Association satisfied the requirements of the definition of charitable organisation. He stated that he did not consider the use of offices within the Property for the provision of child protection services, archives, communications and property services were for charitable purposes. Under cross-examination, he confirmed that on the first appeal the only reason stated by the Respondent for refusing the appeal was that religion is not a charitable purpose and that no issues had been raised by the Respondent on the first appeal in relation to clauses 3 or 9 of the Memorandum of Association. He confirmed that he was not an expert in the field of charity law but accepted that any organisation working with children is obligated to implement child protection policies. He agreed that the use of various Diocesan offices within the Property could fairly be understood through the metaphor of a wheel.

9. APPELLANTS SUBMISSIONS

9.1 The submissions made by Mr. Devlin S.C. for the Appellant may be briefly summarised: The Appellant is a holding company for the property of the Roman Catholic Church in the Diocese of Dublin which Property is used for the advancement of religion. The requirements of section 3(a) (iii), (vii) and (ix) of the Act are respectively satisfied by clauses 2 and 3 and 9 of the Appellant's Memorandum of Association.

The Respondent raises merely technical issues in relation to the Memorandum of Association. Though the proviso in clause 3 enables the "*payment in good faith of reasonable and proper remuneration to any officer or servant of the Company or to any member of the Company*" it is incorrect to read those words in isolation as regard must be had to the words immediately following "*but so that no Director of the Company shall be appointed to any salaried office of the Company or any office of the Company paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Company to any Director except repayment of out of pocket expenses*". The reference in clause 9 of the Memorandum of Association to "*objects similar to the objects of the Company*" must be construed as charitable objects as the Appellant's objects are charitable. The Tribunal should construe the Memorandum of Association in its overall context and on a proper construction and viewed reasonably the provisions meet the requirements for a charitable organisation as defined in Section 3 of the 2001 Act.

The Property is relevant property falling within paragraph 16 of Schedule 4 of the 2001 Act and is not rateable.

Earlier decisions that held the advancement of religion in the context of section 63 of the Poor Relief (Ireland) Act 1838 not to be a charitable purpose were wrongly decided and/or ought not to be followed.

The advancement of religion ought to be regarded as a "*charitable purpose*" by reason that Lord Macnaghten in *Income Tax Commissioners v Pemsel* [1891] 1 AC 531 ('*Pemsel*') divided charity into the following four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads;

The Tribunal has adopted a consistent approach to the interpretation of the term “charitable purposes” by reference to the *Pemsel* categories;

Section 63 of the Poor Relief Ireland Act, 1838 was repealed by section 8 of Act and is no longer law;

Section 63 of the Poor Relief Ireland Act, 1838 differs from the exemption provisions in the 2001 Act;

The *Pemsel* approach was adopted by the Legislature in defining “charitable purpose” in the Charities Act, 2009.

In Veritas Company DAC v Commissioner of Valuation VA17/5/039 the Tribunal determined that the advancement of religion constitutes a ‘charitable purpose’.

The property contains various office uses which pursue religious objectives and the various office uses to which the Property is put should not be considered in isolation as “*it is necessary to ask not only as to the nature of the actual user but why that user is made by the occupier*”.

10. RESPONDENT’S SUBMISSIONS

10.1 The submissions made by Mr. Dodd B.L. for the Respondent may be briefly summarised: The onus is on the Appellant to satisfy the Tribunal that it comes within the statutory definition of charitable organisation and that it qualifies for exemption under paragraph 16 of Schedule 4 of the 2001 Act;

The appeal to the Tribunal is a de novo appeal hearing.

In accordance with Nangle Nurseries v Commissioner of Valuation [2003] IEHC 73 the exemption provisions of the Act are to be interpreted strictly against the Appellant.

The Appellant is not a charitable organisation within the meaning of the Act as it does not satisfy the requirements of section 3(a) (iii), (vii) and (ix). The Appellant Memorandum of Association does not state a charitable purpose. The advancement of religion, which the Respondent does not accept in any event to be a charitable purpose, is not stated as an object in clause 2 thereof.

The Appellant and the Roman Catholic Archdiocese of Dublin are two separate entities. The Appellant is a separate legal entity by virtue of its incorporation pursuant to the Companies Act. It cannot be said that the Company has religious purposes merely because the Archbishop of Dublin is a director of the Appellant. The primary object of the Appellant is to hold, lease

and acquire properties and accordingly the requirement of section 3 (a) (iii) is not met. None of the activities carried on in the Property has any bearing on the objects stated in clause 2 of the Appellant's Memorandum of Association. The Appellant has no employees and therefore the Appellant does not use the Property.

Clause 3 of the Memorandum of Association precludes the remuneration of company directors only and accordingly the requirement of section 3 (a) (vii) of the Act is not met.

The words "institution or institutions" in clause 9 of the Memorandum of Association must be understood to mean any other entity holding property for the Catholic Church and cannot be construed to mean a charitable organisation.

The advancement of religion is not a charitable purpose. All building occupied by religious except places of worship are valued by the Respondent because the specific exemption for churches, chapels or other buildings dedicated to religious worship precludes exemption for other buildings used for the advancement of religion. It was submitted that if such other buildings were removed from the valuation list based on charitable exemption, the burden on other ratepayers would be increased.

The restricted meaning given by section 63 of the 1838 Act must continue to be applied as the exemption provisions in the 2001 Act provides for exemptions in substantially the same terms with modest amendments as were provided for in section 63. Regard must be had to the caselaw concerning the interpretation of the words "*charitable purposes*" in section 63 of the 1838 Act as an aid in construing those words as they appear in paragraph 16 (a) of Schedule 4.

11. FINDINGS AND CONCLUSIONS

11.1 The construction of the provisions of the Act requires the application of strict rules of statutory interpretation. The principles applicable to the interpretation of the Act were set out by MacMenamin J. in *Nangle Nurseries v Commissioner of Valuation* [2003] IEHC 73. These principles require the exemptions or relieving provisions of the 2001 Act to be strictly construed against ratepayers. The starting position is the literal interpretation of the statutory provision and, if, but only if, the literal words produce a result which is absurd, the objective intention of the Oireachtas having regard to the statutory pattern of the Act must be sought by reference to either the provisions of the Act or other Acts expressed to be considered with it.

11.2 The main focus of the Respondent's argument was on the Appellant's Memorandum and Articles of Association in order to demonstrate that the Appellant is not a charitable organisation within the meaning of section 3 of the 2001 Act. The Appellant is clearly a legally entity distinct from the Roman Catholic Church or the Archdiocese of Dublin. The principal object for which the Appellant was established is to act as Trustee for property and investments owned or used in connection with the Roman Catholic Church in the Diocese of Dublin and property and investments held or to be held in trust for any charitable purpose. The mere holding of property owned or used by the Roman Catholic Church in the Diocese of Dublin as trustee does not mean that the Appellant is a charitable organisation. Nor does it mean that anything done by the Appellant that is beneficial to the Diocese of Dublin is necessarily charitable. Not all religious purposes are charitable.

11.3 The Tribunal has to determine the first issue on this appeal by reference to the stated objects in the Appellant's Memorandum and Articles of Association. Section 3(a)(iii) of the Act requires a charitable organisation to state, as its main object or objects, a charitable purpose and to specify the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects.

11.4 The stated object "*to act as the Trustee of property owned or used in connection with the Roman Catholic Church in the Diocese of Dublin and property and investments held or to be held in trust for any charitable purpose*" is the main object for which the Appellant was established. The subsequent objects that are stated in clause 2 must be regarded as secondary or subsidiary given that they are preceded by the words "*for the purposes aforesaid, but not otherwise, to do each and every of the things following*". These subsidiary objects may in fact be no more than powers exercisable in furtherance of the main object. The question is whether the Appellant's principal object, as properly construed, states a charitable purpose.

11.5 Normally one would expect to see used in the wording of an object that has a charitable purpose terminology such as "to provide" "to advance", "to promote", "for the relief of" "for the benefit of". No such words appear in clause 2. The charitable purpose relied upon by the Appellant is the advancement of religion yet there is nothing expressly stated in its objects about the advancement of religion. The Applicant's objects are silent as to the outcomes to be achieved and as to the actual uses or purposes to which the properties are to put by the Appellant. It might be said that the Appellant's principal object promotes religious purposes

but an object that is conducive to religion is not necessarily charitable as the mode of carrying out that object might have nothing of a religious character about it.

11.6 The main object of the Appellant company is not enough to make this object charitable in the legal sense and it is not appropriate for the Tribunal to any draw inference from the stated main object. It is clear from clause 2 b. of the Memorandum that the Appellant has absolute and uncontrolled discretion to deal with all or any part of the undertaking, property and rights of the Company. Though clause 3 provides that the income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in the Memorandum, clause 2 does not expressly state a charitable purpose. It would appear that the advancement of religion is asserted as a charitable purpose merely because the Appellants acts as trustee for the properties of the Roman Catholic Church in the Diocese of Dublin.

11.7 The function of the Appellant is very different in nature from that of the Roman Catholic Church. The Appellant is not a religious body and it does not represent the Church but rather simply exists for the management of church property and investments. In order to avail of the exemption in paragraph 16 of Schedule 4 of the 2001 Act the Appellant must prove that the exemption provided for in paragraph 16 of Schedule 4 clearly applies. Neither the Appellant's memorandum of association or articles of association comply with the condition specified in subparagraphs (iii) of paragraph (a) of section 3(a) of the 2001 Act. The Appellants activities must, for the purposes of the 2001 Act be regarded chiefly as the administration and management of property and investments as no charitable purpose is expressly stated in the Memorandum or Articles of Association of the Appellant.

11.8 In light of the Tribunal's determination that the Appellant is not a charitable organisation within the meaning of section 3 of the 2001 Act there is no need to consider the other arguments put forward by the Respondent as to why the Appellant's claim for exemption should fail.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal. In accordance with the agreement reached between the parties, the net annual value of the Property is €352,000.

And the Tribunal so determines.