

**Appeal No: VA18/3/0036**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 – 2015  
VALUATION ACTS, 2001 - 2015**

**Onlus Refuge**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5014468, Office(s), Warehouse/Warerooms at Local no/Map Ref Unit 9 Peare Campus, Moyne Lower, Enniscorthy Rural, Enniscorthy, County Wexford (“the Property”).

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 15 TH DAY OF DECEMBER 2022**

**BEFORE**

**Michael Brennan - BL, MSCSI**

**Deputy Chairperson**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 24<sup>th</sup> day of September, 2018, 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 €25.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "the appellant is a registered charity and claims 100% relief from Rates"

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

**2. RE-VALUATION HISTORY**

2.1 On the 23<sup>rd</sup> day of March, 2018, a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €25.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 16<sup>th</sup> day of July, 2018, stating a valuation of €25.

### **3. DOCUMENT BASED APPEAL**

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

### **4. FACTS**

4.1 The parties are agreed as to the following facts relevant to the Property.

4.2 The Property comprises a mid-terrace single storey industrial unit with two storey offices.

4.3 The property is of steel frame construction, concrete block walls, concrete floors and double skin roof cladding.

4.4 The industrial unit element of the Property has an eaves height of 5.25 metres and the Property has a total floor area of 138.23 sq m.

4.5 The Property is located in the Peare Campus development which comprises of a development of 12 terraced industrial units.

4.6 Peare Campus is located on the Old Dublin Road approximately 3km north of Enniscorthy Town.

## **5. ISSUES**

5.1 This appeal concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemption applicable to “a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit” contained in paragraph 16(a), and the extent to which same applies to the Appellant.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

## **7. APPELLANT’S CASE**

7.1 The Appellant submitted a supporting document which comprised of a one page cover letter together with two further pages written entirely in Italian. The cover letter was dated 25<sup>th</sup> May 2022 and was signed by Mr Stephen Flanagan, as President of the Appellant.

7.2 It was stated in the cover letter that the Appellant was a lawfully registered charity in Italy. The two pages written in Italian were submitted to support this position.

7.3 The cover letter included in its header, an address for the Appellant at ‘The Hacienda, Moortown, Killinick’ as well as an Italian address at ‘Strada San Vincenzo 6, 14036, Moncalvo (AT) Italy’. In addition to this, it also detailed an Italian Registered Number, Italian Vat Number and Italian phone number.

7.4 It was set out in the cover letter that the Appellant was awaiting a reference to legislation from the “EU’s legal department” to demonstrate that a charity registered in one EU country is valid in another EU country. He advised that at the date of the Appellant’s cover letter (25<sup>th</sup> May 2022) that he had not received this information and attached the two Italian pages as an alternative. He outlined in an email of 8<sup>th</sup> July 2022 that he had still heard nothing from the “EU” and had nothing further to submit to the Tribunal.

7.5 The cover letter stated that the ground floor could be considered warehouse but that it was not used and the first floor was an office and used for “charitable purposes”. It further stated that “The Valuation Act 2015 provides that a building occupied by a charitable organisation exclusively for charitable purposes and not for private profit is exempt from paying rates”.

## **8. RESPONDENT’S CASE**

8.1 Mr Patrick Nolan, B.Sc. (Hons.) Property Valuations & Management, MSCSI, MRICS, Dip. Rating, submitted a written précis on behalf of the Respondent.

8.2 Mr Nolan’s submission contained a number of factual matters pertaining to the location and physical characteristics of the property which were not in dispute between the parties and are more particularly set out at paragraphs 4.1 – 4.6 above.

8.3 He stated that the onus of proof in appeals before the Tribunal rests with the Appellant and relies on prior Tribunal decisions in support of this, as follows: VA00/2/032 Proudlane Ltd. t/a Plaza Hotel; VA07/3/054 William Savage Construction; and VA09/1/018 O’Sullivan’s Marine Ltd.

8.4 Mr Nolan submitted that the appeal should be disallowed and a valuation of RV €25 be entered in the Valuation List as representing the Rateable Valuation for the Property in accordance with section 49 of the Act.

## 9. SUBMISSIONS

9.1 Mr Brian Murray BL, Counsel for the Respondent, made written legal submissions on their behalf. No legal submissions were submitted by the Appellant.

9.2 It was submitted by Counsel for the Respondent, that whilst it was not expressly stated, the Appellant was seeking exemption for the Property under paragraph 16(a) of Schedule 4 of the Act. Accordingly, it was submitted that the sole question for the Tribunal to decide was whether the Property is entitled to exemption from rates as being occupied by a charitable organisation within the meaning of the Act and used exclusively for charitable purposes.

9.3 It was submitted by Counsel that the ordinary and plain meaning rules are to be applied to the interpretation of the Act. It also relies on the decision in *Lawlor v Flood* [1999] 3 IR 107 for the purpose of emphasising the constitutional importance of applying the ordinary meaning of words that are contained in the legislation. Counsel also relies on *Nangles Nurseries -v- Commissioners of Valuation* [2008] IEHC 73 and the various principles of interpretation that can be summarised as follows:

*“(1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;*

*(2) the Act is to be strictly interpreted;*

*(3) impositions are to be construed strictly in favour of the rate payer;*

*(4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;*

*(5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;*

*(6) if however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;*

*(7) in the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to*

*other provisions of the statute or other statutes expressed to be considered with it.”*

Counsel also submitted the case of *Revenue Commissioners v Associated Properties* [1951] IR 140 in support of the principle that a statute should be interpreted so as to support its legislative purpose and should not facilitate evasion.

9.4 It was Counsel’s submission that the relevant legislative provisions to be considered were as follows:

- (a) The definition of “buildings”, “land” and “charitable organisation” in section 3, Schedule 3, and paragraph 16(a) of Schedule 4 of the Valuation Act, 2001;
- (b) Section 2 of the Charities Act, 2009; and
- (c) Section 20 of the Interpretation Act, 2005.

9.5 It is submitted that in order for the appeal to be successful, the onus of proof rests with the Appellant to establish evidence of the following:

- (a) That the Appellant is in occupation of the Property;
- (b) That the Appellant is a charitable organisation within the definition of the Act and to that end, within the meaning of section 2 of the Charities Act, 2009.
- (c) That the Appellant is entered in the register of charitable organisations pursuant to Part 3 of the Charities Act, 2009.
- (d) That the Appellant is using the subject property exclusively for charitable purposes and otherwise than for private profit.

9.6 It is submitted that the Appellant has not provided any evidence to establish any of the matters set out at paragraph 9.5. Counsel submits that what is of critical importance is that the Appellant does not assert, and nor is there any evidence, that the Appellant has been entered in the register of charitable organisations pursuant to Part 3 of the Charities Act 2009. It is submitted that the fact that the Appellant is not a registered charity pursuant to Part 3 of the Charities Act 2009 means that the Appellant’s appeal must fail *in limine*.

9.7 Without prejudice to requirements of Part 3 of the Charities Act, 2009, Counsel submits that it also has an obligation to prove that it is a “charitable organisation” that promotes a charitable purpose only and that “under its constitution” it is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended. Counsel further argues that the Appellant must also demonstrate that it is using the subject property exclusively for charitable purposes and otherwise than for private profit. Counsel submits that there has been little or no visibility of precisely what purpose the subject property is being used.

9.8 Counsel also states that no evidence whatsoever has been provided such as a Memorandum and Articles of Association or any form of Objects Clause which might document and/or evidence the activities or the primary or main activities and objects of the Appellant and no evidence of a constitution has been provided which is required by Section 2 of the Charities Act, 2009.

9.9 Counsel acknowledges that that section 39 of the Charities Act, 2009 does provide for an application for the registration of a charitable organisation that is established in an EEA state. However, he states that there is no evidence that any such application or registration has taken place with regards to the Appellant.

9.10 Counsel states that by the Appellant’s own admission, it is not using the large warehouse on the ground floor and therefore it cannot be said, from any objective viewpoint, that the building in issue, is being used “exclusively” for “for charitable purposes and otherwise than for private profit”. It is submitted by Counsel that it is manifestly insufficient for the Appellant to merely assert, without evidence, that the first floor of the subject property was used for charitable purposes.

9.11 In summary, for the reasons set out above, it is submitted that the exemption under paragraph 16 (a) of Schedule 4 of the 2001 Act is not established.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation

of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Wexford County Council.

10.2 The Tribunal accepts that the Appellant seeks the exemption provided under paragraph 16(a) of the Act. Paragraph 16(a) of Schedule 4 provides the exemption in relation to “*Any land, building or part of a building which is occupied by a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit*”. This was not explicitly stated but is the clear intention of the appeal.

10.3 The Tribunal acknowledges that the onus of proof rests with Appellant to establish that paragraph 16(a) of the Act applies to the Property.

10.4 The Tribunal accepts that the Appellant uses the first floor offices within the Property and the industrial element of the Property is vacant.

10.5 The Tribunal considers that there is no ambiguity to the fact the Property comprises of a “building” as defined by the Act.

10.6 The Tribunal finds that the Property is considered “Relevant Property” as per Schedule 3 of the Act.

10.7 In order to avail of the charitable exemption provided by paragraph 16(a) of Schedule 4, the Appellant has to establish that it is “*a charitable organisation within the meaning of section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act*”. To establish itself as a “charitable organisation” in accordance with paragraph 16(a) of the Act, section 2 of the Charities Act, 2009 provides for unambiguous requirements that the Appellant had to provide evidence of, as follows:

*“charitable organisation” means—*

*(a) the trustees of a charitable trust, or*

*(b) a body corporate or an unincorporated body of persons—*

*(i) that promotes a charitable purpose only,*



*(ii) that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended—*

*(I) in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and*

*(II) in the case of a religious organisation or community, on accommodation and care of members of the organisation or community,*

*and*

*(iii) none of the property of which is payable to the members of the body other than in accordance with section 89,*

*but shall not include an excluded body;*

*“charitable purpose” shall be construed in accordance with section 3;*

*“charitable trust” means a trust—*

*(a) established for a charitable purpose only,*

*(b) established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust, and*

*(c) none of the property of which is payable to the trustees of the trust other than in accordance with section 89;*

10.8 The Tribunal finds that no evidence was submitted by the Appellant to prove or demonstrate that it is a “charitable organisation” within the meaning provided for in section 2 of the Charities Act, 2009. There was no evidence of a trust, trustees, deed of trust or property payable to trustees which would be required to demonstrate compliance with this part (a) of “charitable organisation”.

10.9 As regards whether the Appellant could be considered to be promoting a “charitable purpose” as a body corporate or unincorporated body under section (b) of “charitable organisation”. Section 3 of the Charities Act, 2009 has a specific range of criteria as to what constitutes “charitable purpose”. The Appellant has submitted no evidence to demonstrate that it is carrying on an activity that could be considered “charitable purpose” as provided for in Section 3.

10.10 The exemption further requires such “charitable organisation” to be registered pursuant to Part 3 of the Charities Act, 2009. The Tribunal further finds that no evidence was submitted by the Appellant to demonstrate that it is registered in accordance with Part 3 of the Charities Act, 2009.

10.11 The Tribunal finds that the Appellant has failed to discharge the burden of proof to demonstrate that the exemption provided under paragraph 16(a) of Schedule 4 applied to them.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

**RIGHT OF APPEAL:**

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal’s determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.