

Appeal No: VA18/1/0015

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MANNA CHARITY SHOP C/O MEATH CHRISTIAN CENTRE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5005663, Property Type: Retail (Shops), Address of Property: Unit 3, Block A, The Hampton, Santry Cross, Ballymun, Dublin 11 (the “**Property**”).

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30th DAY OF MAY 2025**

BEFORE

Barra McCabe BL MSCSI MRICS

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 08th day of February, 2018, the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property was fixed in the sum of €16,060.

1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended (‘the Act’) that a material change of circumstances did not occur since the last previous exercise of powers under section 28(4) of the Act in relation to the rating authority area in which the Property is situate. Accordingly, the value of the Property must be ascertained by reference to values, as appearing on the valuation list for the rating authority area wherein the Property is situated of other properties comparable to the Property.

1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:

“1. Before taking up the lease, in 2008, on Unit 3, The Hampton, we contacted Dublin City Council to ensure we would not receive rate demands. This call was made because experience told us that local Councils did not all behave in the same way in these matters. At that time we were assured, that as an Irish Charity, we would be exempted from paying rates on the premises.

When the premises were assessed, we were assured, ‘this is not a rates assessment.’ Not understanding these procedures and subsequent communication on appealing the valuation, gave us no indication our exemption was lifted by the Council.

Even though exemption was lifted in law, it was at the discretion of each Council whether or not to impose rates. Because we had been exempted for 8 years, we contend that some form of dialogue should have been enacted by Dublin City Council in advance of imposing rates.

2. Although the property is a relatively new build (20 odd years old), it quickly became dilapidated. There were two reasons for this:

(a) Vandalism – because of its exposed location, and lack of security, broken windows and break-ins were frequent. Coupled with this were the threats to volunteer staff. At one point, it got so bad, we considered closing down, but the staff appealed for us to stay because of the service the shop was to the community.

(b) Structural Integrity – it appears that because of design flaws and inferior materials, leaks became common in poor weather conditions. This resulted in damage to the shop and destruction to the contents. Even though the ‘Receivers’ repaired the ceiling and waterproofed joints, the leaks continued to occur. Frankly, this left the shop looking like a premises in a 3rd world location! Shock, would explain our reaction to the size of the rate demand, and we considered it excessive. It appears this location was considered ‘high end,’ and the rate imposed reflected this opinion. Unfortunately, the reality did not reflect the appearance on paper. Because of this we considered the rate imposed to be excessive.

3. We had appealed to the Council to engage with us on compassionate grounds in September 2016, but received no reply, and several attempts to talk to them fell on deaf ears. Eventually we made our appeal to the Valuation Tribunal in February 2018. I verbally informed the Council of this appeal. When we received a rate demand ‘final notice’ in July, 2018, we informed the Council by letter of our appeal. In November 2019 we received a court summons. Because our appeal

appeared static, we began to make a monthly payment to avoid legal proceedings. Unfortunately, Covid19 lockdowns, in March 2020, caused us to suspend payments.

We consider Dublin City Council unwilling to have meaningful dialogue and dismissive to our appeal to the Valuation Tribunal.

4. It is now well over four years since we first made this appeal. The landscape for us has entirely changed. The shop in Ballymun has been closed for over two years because of government imposed lockdown and Landlord unwillingness to forgo rent.

We feel the length of time it has taken to hear this appeal should have mitigating influence and the ability to finance repayments is also compromised due to the closure of the shop.”

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

2. VALUATION HISTORY

2.1 The Property was subject to a revision of valuation in 2015. The Proposed Certificate issued on the 26th January 2015 with a valuation of €16,060 with no representations received at that stage. The Valuation Certificate issued on the 2nd March 2015 unchanged at €16,060.

2.2 On the 11th day of October, 2016 an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property, on the basis that a material change of circumstances had occurred since the previous exercise of the powers under section 28(4), and the Property ought to be excluded from the list as it is no longer relevant property.

2.3 On the 18th day of January, 2018 the Respondent issued a ‘No Material Change of Circumstances Notice’ pursuant to section 29 of the Act. On the same date, a copy of the proposed valuation certificate was sent to the Appellant indicating a valuation of €16,060 pursuant to section 28(6) of the Act, in relation to the Property

2.4 A final valuation certificate issued on the 18th day of January, 2018 stating a valuation of €16,060.

2.5 The date by reference to which the value of the Property, the subject of this appeal, was determined is 18th day of January, 2018.

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

The parties are agreed as to the following facts.

4.1 The Property is an end of terrace retail unit.

4.2 The Property is located on Balbutcher Lane, Santry Cross, Ballymun, Dublin 11.

4.3 The Property extends to 64.25 sqm.

4.4 The Property is held under a lease agreement commencing on 1st January 2008 of an undetermined length on an annual passing rent of €4,800.

5. ISSUE(S)

5.1 The main grounds of appeal of the Appellant are summarised as follows:

Rates to be “set aside” in order to continue Monicas legacy and vision/ mission.

The Property is located in an area of deprivation, vandalism and the owner was unable to attract commercial businesses.

The Property is a charity shop that operates as compassion ministry, not a commercial enterprise.

The Appellant has charitable status.

The Appellant was originally asked to come to the area because of its work providing affordable second hand goods to the less well off.

The shop that operates from the Property is effectively run on a non-profit basis where goods are often sold for little or nothing. When a profit is made, the monies are distributed to maintain foodbank ministries and other social engagement projects to assist the broken and marginalised in society.

In 2017, the shop had a net profit of approximately of only €5,200.

The location of the Property makes it unsustainable if the Appellant were to make the shop a fully commercial enterprise like other better known charity shop brands.

Almost 70% of annual surplus monies would go on rates if the Appellant had to pay the rates demand.

Should the Appellant have to pay the rates arrears the shop would not make a surplus for 15 years.

The Valuation Tribunal should take into account that Dublin City Council sued the Appellant for rates arrears after they were informed that the rateable valuation was being appealed.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

6.2 Section 3(1) of the Act, so far as material to this appeal, defines "material change of circumstances" as meaning a change of circumstances that consists of *inter alia*:

"(c) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4"

6.3 Section 28 (5) of the Act, provides the revision manager with the following powers:

“A revision manager shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—

(a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,

(b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situated in, of other properties comparable to that property.

(2) For purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then-

In case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20.”

7. APPELLANT’S CASE

7.1 Mr Ray Mawhinney, Elim Ministries Church Minister and Charity Shops Administrator of Elim Ministries Ireland made a number of separate written submissions on behalf of the Appellant by way of a précis and makes a number of arguments in respect of the Property as follows:

7.2 Property Location:

The property is located in a new build area that has become an area of deprivation and a mini concrete jungle. In addition, vandalism is a feature of the area and the shop has been broken into many times. Volunteers have been threatened during working hours and the large shop windows have been smashed by rocks thrown from waste land adjacent to property. The lease on the Property was granted at low rent because the owner was unable to attract commercial business to occupy the unit owing to derelict adjacent units and the fact that the Property is the last retail premises going north/west from Ballymun area.

7.3 Charity Shop – Ballymun:

The shop that operates from the Property acts as a compassion ministry and is not a commercial enterprise. The Property is covered by Elim Ministries Ireland charitable status, which is an Irish Church. Elim Ministries Ireland was originally asked to come to the area because of their work in providing affordable second hand goods to the less well off, which includes clothes, furniture and other items. As Elim Ministries Ireland is a non-profit, the goods are often sold for little or nothing. When a profit is made, the monies are distributed to maintain foodbank ministries and other social engagement projects to assist the broken and marginalised in society. While location of the Property is highly inconvenient for Ballymun people, they make the journey there, usually on foot because the value is worth the effort. In 2017 the shop approximated a net profit of €5,200.

7.4 Impact of Council Rates:

The Appellant argues that should they have to pay the outstanding rates demanded the shop that operates from the Property will become unsustainable as a compassion ministry. In addition, if the shop operated as a purely commercial enterprise similar to some well known charity shop brands, the location of the Property would make the operation of the shop unsustainable. The Appellant also submits that the current rates demand means that commercial rates becomes the single largest expense of shop with almost 70% of the annual surplus monies or profit, going to pay rates. On this basis the shop would not make a surplus or profit for another 15 years as the rates demand and the outstanding rates arrears would ensure that any estimated surplus for that period would go towards paying rates.

7.5 Mr Mawhinney in correspondence argues that DCC has discretion not to charge the Appellant rates for the Property. He also asked that the 2015 demand be set aside in light of not being informed by the DCC that the Appellants exemption was removed. In further correspondence, Mr Mawhinney submits that the Valuation Appeal should, in coming to its decision, take account of the fact DCC initiated Court proceedings after the Appellant had notified DCC that they were appealing the Respondents valuation of the Property.

7.6 The Appellant did not submit any relevant NAV informers or comparators with their précis.

8. RESPONDENT’S CASE

8.1 Ms Andria Sloan, revision manager, acted as an expert witness for the Respondent and submitted a written précis on behalf of the Valuation Office (now Tailte Eireann).

8.2 At ‘Section 3-Valuation History’ of the Respondent’s précis Ms Sloan states that the Property was subject to revision of valuation in 2015. In that valuation, the Proposed Certificate issued on 26th January 2015 with a valuation of €16,060, but no representations were received from the Appellant at that point. The Valuation Certificate then issued on 2nd March 2015 with an unchanged valuation.

8.3 Ms Sloan states that the Notice of Appeal (NOA) submitted by Cormac O Ceallaigh & Co Solicitors, validated on 12th October 2016, was accompanied by a letter from Mr Mawhinney outlining that the subject Property was a charity shop and should be exempt from paying rates. Both documents were exhibited in the Respondent’s précis.

8.4 Ms Sloan contends the subject property is rateable Relevant Property in accordance with Schedule 3 paragraph 1 (a) of the Valuation Acts 2001-2015. In addition, she is of the opinion that the subject property does not fall to be considered in Schedule 4, Section 16 of the Valuation Acts 2001-2015:

*“Any land, building or part of building which is occupied by a body, being either –
(a) A charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or
(b) A body which is not established and the affairs of which are not conducted for the purpose of making a private profit and –
(i) The principal activity of which is the conservation of the natural and built endowments in the State, and (ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.*

8.5 Material Change of Circumstances

“Material change of circumstances is defined in Section 3 of the Valuation Act 2001 as amended as follows:

“material change of circumstances” means a change of circumstances which consists of-

- (a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*
- (b) a change in the value of a relevant property caused by (i) the making of structural alterations to that relevant property or (ii) the total or partial destruction of any building or other erection by fire or any other physical cause, or*
- (c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or*
- (d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or*
- (e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*
- (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property or*
- (g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority, or*
- (h) relevant property or part of any relevant property becoming licensed or ceasing to be licenced under the Licensing Acts 1833 to 2011;*

8.6 Ms Sloan considers the application for revision under the eight subheadings (a-h) of the definition of Material Change of Circumstances. In the context of the application for revision of the subject property, she contended that paragraph (d) of the definition of material change of circumstances is particularly relevant, which states the following:

(c) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4.

In her opinion, the property is not a Schedule 4 property, a Relevant Property Not Rateable under the Valuation Act.

8.7 Ms. Sloan also contends that section 28(4) of the Valuation Act provides that revision of valuation may only be conducted in cases where there has been a material change of circumstances since the property was last subject to revision. In relation to the subject Property, she submitted that the property was valued as a shop in 2015 and at inspection in 2017, the property was found to have no change. As no material change

of circumstances had taken place the Respondent was not permitted to carry out revision of valuation under the Valuation Act.

8.8 As the Respondent deemed that there was no material change of circumstances and did not increase the valuation on the Property from the previous revision no new comparators were required.

9. SUBMISSIONS

9.1 In advance of the appeal hearing the Respondent submitted written Outline Legal Submissions drafted by Mr Kieran Binchy BL, dated 10 May 2023. No written submissions were submitted by the Appellant.

9.2 Mr Binchy's primary legal submission argued against the Appellant's claim that the Property is exempt under paragraph 16, Schedule 4 of the Valuation 2001 ("charitable purposes" ground). In doing so, Mr. Binchy cited sections 3 and 15 and paragraph 7, Schedule 4 of the 2001 Act as amended, along with Sections 2 and 3 of the Charities Act 2009. Mr Binchy also relied on *Proudlane LTD (VA00/2/032)*, *Nangles Nurseries v The Commissioner of Valuation (High Court), Unreported, 15th March, 2008*, *Tearfund Ireland Ltd v Commissioner for Valuation [2021] IEHC 534*, *McGahon & Ryan v Commissioner of Valuation [1934] IR 736*, *Elliot and the Trustees of the Methodist Church in Ireland v Commissioner of Valuation [1953] IR 607*, *Barrington's Hospital and City of Limerick Infirmary v The Commissioner of Valuation [1953] IR 299*, *Trustees of the College of Maynooth v The Commissioner of Valuation [1958] IR 189*, *Rev. Mother Mary Brendan v Commissioner of Valuation [1969] IR 202*, *Oxfam v City of Birmingham District Council [1975] 2 ALL ER 289*, 'Ryde on Rating', *University College Cork v Commissioner of Valuation, High Court, 29th of July 2004*, *Rehab Lotteries (VA89/0/229)*, *New Start Addiction Services (VA12/2/019)*, *SVP v Commissioner of Valuation (VA17/5/1239)*.

9.3 In essence and relying on the aforementioned authorities, Mr Binchy submits the case law indicates that 'advancement of religion' is not a "charitable purpose" in rating law. Elim Ministries Ireland, which is also known as Elim Pentecostal Church is a charitable organisation, but its primary purpose as a Ministry and as a Pentecostal Church is by definition the 'advancement of religion'. Mr Binchy also submitted that even if 'advancement of religion' were to be considered a charitable purpose in rating law, the case law in this area indicates that the Appellant must also establish that the Property was in use exclusively for charitable purposes and not for private profit. Mr Binchy contends that this cannot be the case because the primary purpose for which the Property was in use was retail use and charity shops, having a primary purpose of selling items to the public in order to raise funds are rateable.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine whether the value of the Property accords with that which is required to be achieved by section 49 of the Act, namely a value that is relative to the value of other properties on the valuation list of Dublin City Council rating authority area.

10.2 In respect of one of the primary legal issue in dispute between the parties, namely the interpretation of paragraph 16 of Schedule 4 of the Valuation Act 2001 as amended, based on a reading of this section of the Act as well as section 3 of the Act ('charitable organisation') and section 2 and 3 of the Charities Act 2009 ('charitable purpose'), and after considering the High Court judgment in *inter alia Tearfund Ireland* and the Respondent's written submissions, the Tribunal finds that the Appellant is not exempt from paying rates by virtue of the fact that it is categorised as a 'charitable organisation'. The Tribunal finds the Appellant is a church whose primary purpose is for the advancement of religion. The Appellant did not put forward any authority or make any submissions in respect of the Respondent's submissions.

10.3 The Tribunal is persuaded, based on submissions made by both parties and the authorities relied on by the Respondent, that the Property is not in use exclusively for charitable purposes, but instead is in use for the purpose of making a profit, regardless of how small that profit or surplus may be.

10.4 In considering some of the other grounds of appeal there appears to be confusion on the part of the Applicant with regard the Rateable Valuation as estimated by the Respondent and Rates as demanded by the relevant local authority. The long title of the Valuation Act 2001 as amended states the Act is following:

"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."

In respect of Appeals to the Tribunal, section 34 of the 2001 Act states that:

- (1) *In relation to a property, a specified person may appeal in writing to the Tribunal against –*
- (a) a determination under section 19 or 28 of the value,*
 - (b) any other detail stated in the relevant valuation list,*
 - (c) any decision under this Act to include or not to include the property in the relevant valuation list or to exclude the property from the list,*

- (d) any decision by the revision manager under section 28(4)(a) or (b),*
- (e) in the case of a decision by the revision manager concerned to so exclude the property, any detail stated in the notice concerned issued under section 28(7), or*
- (f) any decision of the revision manager concerned that the circumstances referred to in section 28(4) do not exist for the exercise of the powers under that section in relation to the property.*

Therefore, the Tribunal does not have the authority under the Act to make any decision in respect of the actions of the relevant local authority in their efforts to collect rates. It is also the Tribunal's understanding of Irish rating law that rates are levied and payable regardless of an appeal, until the appeals outcome. Therefore, in coming to its determination the Tribunal is prohibited from taking into account the fact the relevant local authority initiated debt proceedings to collect rate arrears when considering the merits of the Appellant's appeal.

10.5 In respect of the rateable value of the Property proposed by the Respondent, the Appellant provided no 'tone of the list' comparables by which the Respondent's valuation of the Property could be challenged. Furthermore, the Respondent did not increase the valuation of the Property from the previous revision in 2015, which was not challenged by the Appellant at the time. Therefore it was not necessary for the Respondent to provide tone of the list comparables on which to base its most recent decision not to revise the valuation.

10.6 The Tribunal concurs with the Respondent's decision that no 'material change of circumstances' took place to the Property since the previous revision. In this regard, the Appellant provided no credible evidence to substantiate a claim that a material change of circumstances had taken place.

10.7 The condition of the Property was clearly in dispute between the parties. The Respondent's expert witness said the property was in good condition, but Mr Mawhinney for the Appellant took a contrary position, claiming there were a number of frequent leaks to the property. In the absence of providing any pictorial evidence of same or expert witness testimony on the condition of the property, the Tribunal gives more weight to the evidence of the Respondent's expert witness in determining that the property is in good condition.

11. DETERMINATION:

On this appeal the Tribunal has to determine whether the revision manager was correct in determining that no material change of circumstance had occurred in relation to the Property.

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

11.2 The NAV of the Property is confirmed at €16,060.00

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.