

**Appeal No: VA18/4/0053**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Easkey Community Council CLG**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5011294, Hospitality at Tír na hÓige, Easkey Caravan Park, Curraghnagap,  
Easkey, County Sligo

**B E F O R E**

**Stephen J. Byrne - BL**

**Deputy Chairperson**

**Claire Hogan - BL**

**Member**

**Allen Morgan – FSCSI, FRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 16<sup>TH</sup> DAY OF MAY 2023**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on 13 December 2018 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value (“**the NAV**”) of the above property (“**the Property**”) was fixed in the sum of €8,000.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated, the Appellant is Easkey Community Council CLG (“**the Company**”). The Appellant states that the Property should have been excluded from the relevant valuation list.
- 1.3 The reasons the Appellant contends for exemption from valuation are as follows:
  - The company is a charity as defined under the Charities Act 2009 and holds charitable status. The Company’s charity number is 20102692.

- The company or its directors do not receive any private gain from the profit the company may make.
- The company was established for the advancement of community development, and the promotion of tourism in the area.
- All Directors are volunteers.
- The Company is limited by guarantee with no share capital and charitable status.

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 On 22 October 2018 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001, as amended (“**the 2001 Act**”) in relation to the Property was sent to the Appellant indicating a valuation of €8,000.

2.2 A Final Valuation Certificate issued on 4 December 2018 stating a valuation of €8,000.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely on 29 October 2021. The Appellant was represented by Mr. John Fallon and other members of the Company. The Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor. Mr. Mark Gibbons of the Valuation Office was called to give evidence on the 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. FACTS**

4.1 Counsel for the Respondent confirmed that there were no primary facts in dispute between the parties. From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The Property is a caravan park called Tír na hÓige, which is located on a plot of land adjacent to the Main Street of the village of Easkey, Co. Sligo.

4.3 The Property comprises a private entrance and paved gravel road which provides access to the individual sites. There are 16 Static Sites (mobile home sites) which are fully serviced by electricity, water and wastewater. There are 10 Touring Sites (camper van bays). There are ample green areas for the pitching of tents. There is a sanitary block at the entrance of the site which provides for male/female bathrooms, kitchen and laundry facilities and its gross external area is 88 m<sup>2</sup>.

4.4 The Constitution of the Appellant, date stamped 13 February 2019, provides under the heading “*Main Object*”:

*“The main object for which the Company is established is to promote the social and economic development of Easkey County Sligo and the surrounding areas for the public benefit, through the activities of a Community centre, Meals on Wheels service, museum, visitor centre and other activities designed to benefit the local community.”*

## **5. ISSUES**

5.1 The sole issue to be determined is a legal one; whether the Property is relevant property not rateable pursuant to section 15(2) of the 2001 Act, in that it falls within section 16 of Schedule 4 of that Act.

5.2 The issue of quantum was not appealed, and so cannot be considered.

## **6. RELEVANT STATUTORY PROVISIONS**

6.1 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.”*

6.2 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 specified in paragraph 16(a) of Schedule 4 being:

*“Any land, building or part of a 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, ....”*

6.3 Section 3 of the 2001 Act, as amended by section 2 of the Valuation (Amendment) Act 2015, provides:

*“‘charitable organisation’ means 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;”*

6.4 Under section 2 of the Charities Act 2009 (“**the 2009 Act**”), “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.”*

6.5 Section 2 of the 2009 Act provides that “charitable purpose” shall be construed in accordance with section 3 of that Act, as shall “public benefit”.

6.6 Section 3 of the 2009 Act provides, in material part:

*“(1) For the purposes of this Act each of the following shall, subject to subsection*

*(2), be a charitable purpose:*

*(a) the prevention or relief of poverty or economic hardship;*

*(b) the advancement of education;*

*(c) the advancement of religion;*

*(d) any other purpose that is of benefit to the community.*

*(2) A purpose shall not be a charitable purpose unless it is of public benefit.*

*(11) In this section “purpose that is of benefit to the community” includes—*

*(a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,*

*(b) the advancement of community development, including rural or urban regeneration (c) the promotion of civic responsibility or voluntary work,*

*(d) the promotion of health, including the prevention or relief of sickness, disease or human suffering*

*(e) the advancement of conflict resolution or reconciliation,*

*(f) the promotion of religious or racial harmony and harmonious community relations,*

*(g) the protection of the natural environment,*

*(h) the advancement of environmental sustainability,*

*(i) the advancement of the efficient and effective use of the property of charitable organisations,*

*(j) the prevention or relief of suffering of animals,*

*(k) the advancement of the arts, culture, heritage or sciences, and*

*(l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.”*

## **7. APPELLANT’S CASE**

7.1 Mr. Fallon, the Appellant’s lead witness, having taken the oath, adopted his précis as his evidence-in-chief for the purpose of the appeal. Mr. Fallon stated that the Company was set up by a group of people in the area and that its activities include bingo, and Meals on

Wheels. He said that any income from the Property is used to fund the cooking and delivery of over 120 meals per day, to recipients in the counties of Sligo and Mayo. He stated that it is a purely charitable organisation and that all of its purposes are related to delivering its services to the community. He stated that the Property is not a major asset of the charity but simply an adjunct to its activities. He stated that any monies coming out of the Property were not for profit and were used to fund the charity's other activities for the sole benefit of the local community. Mr. Fallon added that the toilet and washroom block had been there from the outset, i.e., prior to the acquisition of the caravan park land.

7.2 Mr. Fallon stated that the Appellant seeks grant aid from Sligo County Council and from LEAF (Local Enterprise Assistance Fund) and from other sources, but that the income coming in from the Property is of essential assistance, and that without it they would have to shut down the meals on wheels operation. He said that they believe that as a charitable organisation serving the local community they are entitled to the rates exemption on all their activities.

7.3 Mr. Fallon confirmed that the Property was developed as a caravan park 6 years ago and that the land was let to them by the local Protestant Church at an annual rent of €5,000. He stated that no lease has been signed.

7.4 Mr. Fallon also gave evidence about the borrowings of the Appellant and about other issues not germane to the issue which the Tribunal must determine.

7.5 Under cross-examination, the Appellant was first asked to comment on a webpage showing the Tír na hÓige. website. Mr. Fallon confirmed that motor homes, camper vans, caravans and tents are catered for. He discussed the rates chargeable for the use of the caravan park and he confirmed that credit cards were accepted.

7.6 Mr. Dodd BL referred Mr. Fallon to the Constitution of the Appellant. He highlighted that in para. 3 under the heading "Main Object" there was no reference to a caravan park.

7.7 Mr. Dodd BL asked questions about the Appellant's accounts (for the year ending 31 December 2018). Under cross-examination, Mr Fallon agreed that it was stated in the paragraph entitled "Principal Activities" in the Directors' Report that the directors were satisfied with the results for the year and looked forward to another successful year ahead,

that the Appellant's gross profits for 2017 and 2018 were €127,041 and €124,096 respectively and the Fixed Asset totals for the same years were €756,573 and €741,155, respectively.

## **8. RESPONDENT'S CASE**

8.1 Mr. Mark Gibbons adopted his précis as his evidence in chief. He described the caravan park and its location.

8.2 When asked by Mr. Dodd BL to expand on the statement made in para 4.2 of his précis of evidence that "*The Caravan Park provides for tourism, generates an income and is commercial in nature*", Mr. Gibbons stated that this caravan park operates commercially in competition with other caravan parks in the administrative area of Sligo County Council who are obliged to pay rates, and as such he considered the Appellant's use of the Property to be commercial.

8.3 In response to Mr. Fallon's statement that the sanitary block was on the Council's own lands as opposed to Church lands, Mr. Gibbons clarified that the static sites and camper stands were valued (para 4.3 of his précis) but that the sanitary block was excluded from the valuation.

## **9. SUBMISSIONS**

9.1 The Appellant was not legally represented. The Appellant provided a print-out of an article from the website of a solicitor firm which summarised some law on charities and the exemption from rates. It also summarised the decision in *St Vincent's Healthcare Group Ltd v Commissioner of Valuation* [2009] IEHC 113.

9.2 Legal submissions were filed on behalf of the Respondent on 15 October 2021. The Respondent relied on the case of *Nangles Nurseries v Commissioners of Valuation* [2008] IEHC 73 as authority for the proposition that exempting provisions are to be interpreted against rate payers, as if individuals are successful in obtaining exemptions, then the burden of rates not payable by reason of exemption falls upon the remaining ratepayers.

9.3 Mr. Dodd BL made reference to the terms of paragraph 16 of Schedule 4, and highlighted highlighted the two criteria he said the Appellant has to fulfil:

- (i) that it is a “charitable organisation,” and
- (ii) that it uses the land exclusively for charitable purposes

9.4 Counsel confirmed that the Respondent accepted that the Appellant was a charitable organisation but not that the land is used exclusively for a charitable purpose. He relied *inter alia* on *Oxfam v Birmingham City DC* [1976] AC 126, and *Coolock Development Council Ltd. v Commissioner of Valuation* (VA05/3/072).

9.5 It should be noted that Counsel relied on a decision cited in para. 26 of his submissions as “*University College Cork v Commissioner of Valuation* 29<sup>th</sup> Of July 2004, O’Caoimh J.” Mr Dodd BL confirmed, following a question from the Tribunal, that this was the primary authority upon which he placed reliance. However, after the hearing of this matter, the Tribunal could not locate this decision and when asked, by subsequent email correspondence, to produce a copy of the decision, the Respondent could not do so. Instead, the Respondent furnished a previous Valuation Tribunal decision which made reference to the High Court decision: *University College Cork Mardyke Leisure (UCC) Ltd v Commissioner for Valuation*, VA02/3/007, a 2005 decision which had not been relied upon at the hearing.

9.6 In circumstances where neither the Tribunal nor the Respondent can locate a copy of the decision in “*University College Cork v Commissioner of Valuation* 29<sup>th</sup> Of July 2004, O’Caoimh J.” the Tribunal cannot permit the decision to feature in its analysis of relevant case law in determining this appeal. Furthermore, no reliance can be placed by the Respondent on the Tribunal’s decision in *University College Cork Mardyke Leisure (UCC) Ltd v Commissioner for Valuation* as that case did not feature in the Respondent’s submissions, nor was it opened and relied upon by the Respondent when the appeal was heard.

## 10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine whether the Property is relevant property not rateable pursuant to section 15(2) of the 2001 Act, in that it falls within paragraph 16(a) of Schedule 4.

10.2 It is not in dispute that the Appellant is a registered charity under section 2 of the 2009 Act. Accordingly, it satisfies the definition of “*charitable organisation*” under section 3 of the 2001 Act. Therefore, the Tribunal finds that the Appellant is a charitable organisation within the meaning of section 3 of the 2001 Act. Accordingly, the Appellant satisfies the first condition of paragraph 16(a) of the 2001 Act.

10.3 The principal area of dispute between the parties is in respect of whether the second criterion is fulfilled; i.e. does the Appellant use the land “*exclusively for charitable purposes.*”

10.4 Mr Fallon on behalf of the Appellant did not articulate, with any specificity, a charitable purpose upon which it relies. The notice of appeal states, at para 6, that the company was established “*for the advancement of community development, and the promotion of tourism in the area*”. It appears that the Appellant could potentially, although the argument was not made in these terms, seek to rely on the purpose set out in section 3(1)(d) of the 2009 Act, namely “*any other purpose that is of benefit to the community.*” [emphasis added]

10.5 In written submissions, the Respondent maintained, at para 28, “*Almost anything can be said to be of benefit to the community, including the promotion of businesses and tourism, but use of lands to promote tourism and bring people to an area is not a charitable purpose*”. The Respondent argued that use of the lands as a caravan park is not a charitable use of the lands.

10.6 The starting point of this analysis is *Nangles Nurseries v Commissioners of Valuation* [2008] IEHC 73. The principles applicable to the interpretation of the provisions of the 2001 Act were summarised by MacMenamin J as follows, at para 39:

“(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;

(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.”*

10.7 There are two main issues for the Tribunal to decide. First whether the use of the land is for a charitable purpose and second whether the land is used “*exclusively*” for such purpose.

10.8 The Tribunal has had regard to a decision in ***Dublin Business Innovation Centre CLG v Commissioner of Valuation*** (VA18/4/2009) when considering the proper interpretation of the 2009 Act. It is clear from the following introductory words of section 3 of the 2009 Act, “*For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose*”, [emphasis added] that the charitable purposes set out therein are specific to the 2009 Act. The Oireachtas, when amending the definition of “*charitable organisation*” in section 3 of the 2001 Act, did not provide, as it could have done, that the phrase “*charitable purposes*” in paragraph 16(a) should be construed in accordance with 3 of the 2009 Act. It cannot be safely assumed, bearing in mind the presumption against radical changes in the law, that by amending the definition of “*charitable organisation*” the Oireachtas intended that the words “*charitable purposes*” in paragraph 16(a) of Schedule 4 of the 2001 Act would have the same meaning as that provided for in section 3 of the 2009.

10.9 Unlike the 2009 Act, the 2001 Act does not define the meaning of “*charitable purposes*”. In rating law these words are not given the wide meaning they are given by section 3 of the 2009 Act. Under the latter provision, charitable purposes extend to the prevention or relief of poverty or economic hardship, the advancement of education, the advancement of religion and any other purpose that is of benefit to the community. Not all of these

charitable purposes are charitable purposes for the purposes of the valuation legislation. This was confirmed in the recent decision of the High Court in *Tearfund Ireland Limited v Commissioner of Valuation* [2021] IEHC 534 where it was held that the phrase “charitable purpose” in Schedule 4 of the Valuation Act 2001 does not include the advancement of religion. In short, the words “charitable purposes” as used in Schedule 4 of the 2001 Act, which lists all the specific exemptions from rating, have been interpreted by the courts in a restrictive way.

10.10 The Appellant, who bears the onus of proof to establish an entitlement to exemption, has not referred the Tribunal to any authority to support its case that the phrase “charitable purposes” in paragraph 16(a) includes the activities carried out by it in respect of the Property. If it were accepted that “community development and the promotion of tourism” were charitable purposes, then this would impermissibly broaden the definition of “charitable purposes” under the 2001 Act.

10.11 In *Oxfam v Birmingham City DC* [1976] AC 126, the issue was whether the gift shops run by Oxfam could be exempt from rates. It was held by the House of Lords that the true construction of the term “used for charitable purposes” in the relevant legislation, was user for purposes directly related to the achievement of the objects of the charity as opposed to user for the purpose of getting in, raising or earning money for the charity; and that, accordingly, the charity’s shops, being used mainly for the sale of clothing given to the charity in order to raise money for use in the charity's work overseas were not entitled to relief.

10.12 Lord Morris of Borth-y-Gest stated, at p 149:

*“While care must always be taken to adhere to the statutory words and not to supplement them or to supplant them, I consider that user ‘for charitable purposes’ denotes user in the actual carrying out of the charitable purposes: that may include doing something which is a necessary or essential or incidental part of, or which directly facilitates, or which is ancillary to, what is being done in the actual carrying out of the charitable purpose. There may, on the other hand, be things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which must in one sense be connected with the charitable purposes of*

*the charity and which are properly within the powers of the charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. A charity may be entitled to occupy premises and to use them other than for its charitable purposes: only if to occupation by a charity there is added user 'for charitable purposes' will the benefit given by the section accrue.” [emphasis added]*

10.13 The *Oxfam* decision is authority for the proposition that there is a distinction between the use of property for purposes which are the charitable purposes of the charity on the one hand, and their use for purposes which, though linked with the purposes of the charity, are not charitable purposes. The Tribunal is persuaded that the use of the caravan park is commercial in nature, and not charitable. Notwithstanding that the renting of sites in the caravan park supports the meals on wheels activity, the *actual use* of the property does not appear to the Tribunal to be a charitable purpose in the context of rating law. The renting of the caravan park sites is, at its height, merely an indirect way of facilitating the charity’s charitable purposes. The Tribunal has also had regard to the fact that the Constitution of the Appellant does not mention the caravan park at all. Furthermore, any webpages showing the Tír na hÓige caravan park, as appearing in the appendices to the Respondent’s précis, do not mention the use to which any funds generated from bookings is put.

10.14 The Tribunal has considered the reliance placed by the Appellant on *St Vincent’s Healthcare Group Ltd v Commissioner of Valuation* [2009] IEHC 113. In this case, the issue was whether a car park in the grounds of St Vincent’s hospital was entitled to be treated as exempt from rates. Cooke J. considered paragraph 8 of Schedule 4 of the 2001 Act, which provides for an exemption in the case of “*Any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses*”. The car park served no purpose in the care or treatment of the sick but was used as a fee-paying car park by hospital staff, patients and visitors. Cooke J. observed, at para 34, that when considering to what use premises are put, regard must be had not just to the nature of the activity carried on but also to “*the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption.*” However, this is merely general guidance, and the comments were made in the context of a different exemption than the one under consideration in this appeal. As such, the Tribunal’s

conclusions on the issue are unaffected by the *St Vincent's* decision. While it is laudable that the Appellant runs such a successful meals on wheels operation, it is regrettably not possible for the Property to be considered exempt on the grounds that it is being used for “*charitable purposes*” within the meaning of the 2001 Act.

10.15 Even if we are wrong in relation to this issue, it appears to us that there must be very considerable doubt as to whether or not the Property could be regarded as being used “*exclusively*” for charitable purposes. On the facts, the Property is occupied and used by the Appellant for the purposes of renting caravan sites to the general public to enjoy the local area, and accordingly is not exclusively used by the Appellant for charitable purposes.

**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.