

Appeal No. VA04/1/001

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

City of Dublin VEC

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office No. 1. Pembroke Place, Pembroke West B, Ballsbridge, Dublin 4. Lot No. 842842
County Borough of Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Joseph Murray - Barrister

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF JUNE, 2004

By Notice of Appeal dated 19th day of January, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €6.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"The property should be excluded from the Valuation list as it constitutes a 'relevant property not rateable' as set out in Schedule 4 of the Valuation Act, 2001."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin, on the 22nd March 2004. At the hearing, the appellant was represented by Mr. Owen Hickey BL, instructed by Mr. Tony O'Rourke Solicitor, P.F. O'Reilly & Co. Solicitors and evidence was given by Mr. John McGrath, Head of Administration, City of Dublin VEC. Mr. Brendan Conway, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent and Mr. Daniel Griffin a District Valuer in the Valuation Office was also present.

Introduction

1. Pembroke Place is a terrace of two-storey houses off Pembroke Road/Merrion Road. No. 1 Pembroke Place is across from a side entrance to the Herbert Park Hotel. Adjacent premises are in office use. No. 1 Pembroke Place is a two-storey house which is occupied by the City of Dublin VEC. The City of Dublin VEC however submit that it should be excluded from the valuation list being non-rateable having regard to the provisions of Schedule 4 of the Valuation Act, 2001. The hereditament is occupied exclusively by the City of Dublin VEC. The rateable valuation is €6. No issue arises in relation to this figure.
2. It may be helpful to refer to the relevant sections of the legislation:

Section 15(2) of the Valuation Act, 2001 ("the Act") provides that:

"Subject to sections 16 and 59, the relevant property referred to in Schedule 4 shall not be rateable."

Section 16 and 59 have no bearing on the present case.

3. Schedule 4 is headed "Relevant Property Not Rateable". At paragraph 10 thereof such property is deemed to include:

“Any land, building or part of a building occupied by a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services referred to subsequently in this paragraph and otherwise than for private profit, being a school, college, university, institute of technology or other educational institution as respects which the following conditions are complied with -

(a) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or

(ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,

and

(b) in either case it makes the educational services concerned available to the general public (whether with or without a charge being made therefore).”

4. Both parties made written submissions and adopted those submissions as summaries of their evidence.

THE APPELLANT’S CASE:

5. Mr. John McGrath who is Head of Administration in the City of Dublin VEC (“CDVEC”) gave evidence. He adopted the précis of evidence as his evidence. He confirmed that the VEC is run on a not-for-profit basis, that the expenses are defrayed wholly or mainly by the Exchequer and that the services it provides are available to the general public. It appears that the headquarters in the Town Hall, Merrion Road, Ballsbridge became too small to carry out all of the administrative work of the CDVEC and so in 2002 it became necessary to rent the subject premises at 1 Pembroke Place.

The main activity in 1 Pembroke Place is the student services office. Mr. McGrath indicated that the office processes over 4,000 applications from students and trainees for grant aid allowances. This involves processing applications from students inside and outside Dublin. It also deals with enquiries made by students. There is a large volume of paperwork associated with these applications. It also issues payments. It processes attendance reports and other data in respect of successful applicants and pays them their monthly or weekly grants. It also pays out travel and meal allowances to VTOS students and Youth Reach trainees.

6. In addition it houses two community education facilitators. Their role is to work with local community groups in the City of Dublin. Out-reach programmes are put in place to try to bring education to communities which otherwise might not wish to avail of such education. In addition they seek to implement adult community educational programmes in Dublin.
7. In addition the building houses two technicians. These provide technical back-up to computer facilities in the offices in question.
8. The Tribunal was informed that the financial procedures of CDVEC were being reviewed, at the behest of the Comptroller and Auditor General, on the premises. However this was likely to be for only a short period.
9. Mr. McGrath indicated that the activities carried out were essential to allow the VEC to perform its statutory duties and to fulfil its role of providing continuing education and technical education.
10. In cross-examination Mr. McGrath indicated that whilst CDVEC was funded by the Department of Education there was some funding from Dublin County Council and also some private tuition fees paid. The Department of Education gives an indication to the CDVEC as to the kind of programmes it would like to see being implemented. The Committee itself is appointed by Dublin County Council. There are local political

representatives as well as parent and teacher representatives. (It was noted that the make-up of the Committee may change with the end of the dual mandate.) Of the 14 members 12 are politicians with one parent and one teacher representative. There is no requirement that they have an educational qualification. The schools who implement the various programmes report to the Chief Executive Officer of the VEC, who is responsible for the “hiring and firing” of staff, finance and development of programmes. The Committee is essentially part-time and meets monthly. The educational function of the CDVEC is the development, planning and implementation of programmes. Plans drawn up by the CDVEC are submitted to the Department of Education. The Department of Education then sets out what it would like to see.

11. Mr. McGrath confirmed that if the Town Hall had had sufficient accommodation they would still be carrying out all of this administrative work there. No rates were payable on the Town Hall premises. CDVEC had processed student grants and payments there prior to their moving to the Pembroke Place building.

THE RESPONDENT’S CASE:

12. The Respondent cross-examined Mr. McGrath but did not adduce any evidence on its own behalf.

Both parties then made legal submissions.

THE APPELLANT’S SUBMISSIONS:

13. On behalf of the Appellant Mr. Hickey contended that the offices were clearly used “*for the provision of the educational services*” referred to in Schedule 4, paragraph 10 of the 2001 Act. Both parties accepted that there was no definition of the meaning of “*educational services*”. Mr. Hickey asked however that if this office accommodation was not used to provide such educational services, what services were they providing? He referred to the **Irish Legal System (Byrne & McCutcheon)** and in particular their

chapter on interpretation of legislation. The authors (at 14.34 et seq) suggest that where a law indicates that there is nothing to modify, alter or qualify the language which the statute contains, it must be construed according to the ordinary and natural meaning of the words. Furthermore, if a word or expression is used in a statute creating a penal or a taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language. He also referred to the Oxford English Dictionary definition of “provision” and in particular the definition of provision as being “*arrangements for possible future events or requirements*”. He also referred to **Byrne & McCutcheon’s** assertion that revenue statutes should be construed strictly. He referred also to the evidence of Mr. McGrath and submitted that the premises the subject matter of this dispute were in essence an extension of the premises at the Town Hall which had not been rateable.

14. We were also referred to the decision of **Aldous & Others –v- Southwark London Borough Council [1968] 1 WLR 1671**. In that case the Court of Appeal held that the management and administration of estates settled on trusts for charitable purposes, in order to collect and distribute the yield for the main charitable purpose, viz. education and the relief of poverty in the instant case, was itself a charitable purpose and therefore the hereditaments occupied by trustees for that purpose were wholly used for charitable purposes and qualified for rating relief. At 1676-1677, Lord Denning MR observed:

“The management and administration of these estates is part of the charitable work itself. No doubt the estates have changed much in character from their original estate 350 years ago. They have been developed for residential properties and produce a considerable income. Funds have been invested in stocks and shares. But, whatever the present form of the estates, the management and administration of them is in itself a charitable purpose, being bound up with the principal purpose of providing education, or funds for education. These four hereditaments are all occupied by the estate’s governors for the management and administration of the estate. They are therefore wholly used for charitable purposes. They qualify for rating relief.”

15. In the same case Lord Justice Davies referred with approval to the observations of Donovan J in **United Grand Lodge of Ancient Free and Accepted Masons of England –v- Holborn Borough Council [1957] 1 W.L.R. 1080**. At page 1088 of the said case Judgment Donovan J observed:

“But these are simply the ways in which the purpose of promoting masonry is pursued; and accordingly when the problem to be solved is the nature of the appellant’s purpose, or object, one must find out what is the purpose or object of masonry itself. Every organisation setting out to advance some cause must, if it is of any size, have an office where the necessary clerical and administrative work is done. But one cannot isolate this, and say that the purpose of the office is different from that of the organisation itself. To do so is to confuse ends with means. There is only one purpose, which is that of the organisation as a whole; though the different units within it may be working out that purpose in different ways.”

16. Lord Justice Davies in that case also quoted with approval a passage from the Judge presiding at the Court of first instance in **Aldous** (Roskill J) where he said:

“This charity has been administered as a charity for over three centuries and the nerve centre of its administration is in the estates office where, amongst other things, meetings are held both of the estates governors and of the various committees of the estates governors.”

17. In addition Mr. Hickey submitted that there was a presumption against ambiguous or unclear changes in legislation. Mr. Hickey also referred us to the determination of the Tribunal in **University College Cork –v- Commissioner of Valuation (VA 96/4/039, VA97/5/016 and VA97/5/017)**. This case related to the rateability of a creche, licensed shop, and shop, office and radio station in UCC. Mr. Hickey drew our attention to paragraph 18 of that determination where the submissions of behalf of the Commissioner

are noted. On behalf of the Commissioner in that case it was submitted that “*whilst acknowledging that the facilities provided for in these buildings may be desirable, helpful and progressive, these were not, in her view, essential for the functioning of a University and could not be deemed to come within education in the context of obtaining an exemption.*”

18. Mr. Hickey submits that if the test is whether the facilities provided are “*essential for the functioning of a University*” then on the evidence of Mr. McGrath the office premises of CDVEC undoubtedly fall within that definition.

THE RESPONDENT’S SUBMISSIONS:

19. On behalf of the Respondent Mr. Conway suggested that the basis of the exemption previously granted in earlier legislation had changed. In his view the statute was aimed at exempting premises providing actual educational services and nothing else. In his submission, the carrying out of administrative or financial services might be regarded as an aid to or an adjunct to the CDVEC’s statutory role. However this did not constitute the provision of educational services. The services so carried out in the premises in question could be carried out by any third party. In his view the definition in paragraph 10 of Schedule 4 required the services in question to be actual educational services rather than services supporting the provision of educational services. So for example if a premises were a place where teaching or learning was actually carried out, such a premises would be exempt.
20. Applying the analogy to a college campus, Mr. Conway suggested that although a college might in a general sense be said to be providing educational services the administration offices within that campus could not be regarded as being involved in the provision of educational services.
21. Mr. Conway referred to Chapter 14 of **Byrne & McCutcheon** (previously referred to) as to how the words set out in paragraph 10 of Schedule 14 might be interpreted. In his

view the primary emphasis of the language in this paragraph related to “*educational services*” rather than to provision. In his view the **Aldous** case did not apply to the facts here.

22. Mr. Conway also sought to suggest that the legislature had intended to bring administrative offices of the VEC into the rateability “net”. Mr. Conway offered to open the section of the Dáil and Seanad debate in this regard. However on the basis of **Crilly –v- T. & J. Farrington Ltd. [2001] 3 I.R. 251** we indicated that we would not admit the parliamentary debate on a legislation question as an aid to the interpretation of that legislation. The Judgments of the Supreme Court in that case make it clear that to do so would be to cause difficulty in relation to the legislative process (and indeed might risk compromising it). While there is no difficulty in looking at the legislative history of the legislation if the legislation is ambiguous, it is of fundamental importance to recognise that in examining legislation one examines the objective rather than subjective intent of the legislation. The citizens of the State are bound by the law adopted and promulgated by the legislature, rather than statements of intention or design made by individual members of the legislature.

23. In addition Mr. Conway suggested that CDVEC was not directly an educational institution. In his view it was a management type of body which facilitated the provision of education but was not engaged in the provision of education itself. Undoubtedly it was involved in the area of education. Undoubtedly too it assisted in the supplying of technical education. However the fact that it was involved in the administration of a programme did not of itself mean that it was engaged in the provision of educational services in his view.

DETERMINATION:

24. In our view the CDVEC is an educational institution within the meaning of paragraph 10, Schedule 4 of the Act of 2001. Created by statute, the CDVEC provides a variety of programmes for full-time and trainee students as well as night class students. The

evidence suggests that it employs large numbers of staff in a variety of colleges and other centres. The fact that the committee is part-time and that most of the work is done by a Chief Executive Officer does not deprive it of the status of an educational institution, nor does the fact that the programmes it provides are drawn up on consultation in part with the Department of Education.

25. The remaining issue for determination therefore is “*Are the premises in question used exclusively by the CDVEC for the provision of educational services?*” In this regard it is noted that while paragraph 10 of Schedule 4 refers to “*the educational services referred to subsequently in this paragraph*”, no such “*educational services*” are in fact referred to in the paragraph in question. The fact however that the draft of the relevant paragraph is somewhat inchoate is unfortunate but not fatal. In the absence of a definition it was agreed that the parties were at large as to what the phrase “*educational services*” might be deemed to mean. It seems to us that the facilitation and provision of educational programmes to students does fall within even a relatively narrow definition of “*educational services*”.

26. Likewise there is no definition of “*provision*” within the meaning of the Act. We believe that the word should be given its natural and ordinary meaning. The word “*provision*” can be defined as including:

(a) *the action of providing.*

(b) *arrangements for possible future events or requirements.”*

27. In our view the processing of student application forms and the processing and paying of grant applications for those students is inextricably linked to the various educational programmes and facilities provided by CDVEC. We do not believe that the purpose of the activities which take place in the office premises in question are any different or distinguishable in any relevant way from the educational services provided by the CDVEC. The remarks of Donovan J referred to above do seem apposite. It is hard to imagine how any organisation of any size can avoid having an office where the necessary

clerical and administrative work is carried out. It is however artificial to suggest that the purpose of the various activities carried on in the office is wholly different from the purpose of the organisation as a whole. The purpose of the activities carried out in this office is to permit students to enrol in classes provided by the CDVEC organisation and (where appropriate) to grant aid to students participating in these classes. It seems to us that in providing for the participation of students in these classes the office administration is undoubtedly engaged in the provision of educational services within the meaning of paragraph 10 of Schedule 4 of the Act.

28. There was an oblique suggestion that because the finance officer was carrying out a review of the CDVEC's financial administration at the behest of the Comptroller and Auditor General, the premises were not being used exclusively by the CDVEC for the provision of the educational services in question. The evidence established that the review in question would take them more than twelve months. We do not believe that this taints or in any way dilutes the purpose of the activities carried on in the office administration space in question. Suppose the Revenue Commissioners decided to carry out an in-depth on-site audit of the CDVEC's finances: in our view the fact that such an audit was being carried out on the premises would not deprive the premises of their status as the administrative nerve centre in which a significant part of the educational services are coordinated.

29. We should also add that in some respects the issue of the rateability of the premises in question appears to arise only because the CDVEC's original headquarters became too small for the CDVEC. We were told in the course of evidence that no rates are paid by the CDVEC on its principal offices in the Town Hall. Had those premises been bigger they would have been able to accommodate the office administration currently being carried out at 1 Pembroke Place. There is no suggestion that the administration taking place in 1 Pembroke Place is so radically different as to be distinguishable from the administration being carried out of the CDVEC in the Town Hall at Merrion Road. It may be that no rates are payable on the Town Hall premises for reasons unconnected with the activities of the CDVEC. However there is no warrant for suggesting that the office

administration carried on in 1 Pembroke Place renders those premises rateable whereas the administration carried on in the Town Hall should be excluded from rateability simply because the work in question is carried on in the Town Hall. To discriminate between the two offices solely on grounds of geography would, in our view, be unfair.

CONCLUSION:

30. For the reasons set out above we conclude that the premises the subject matter of this Appeal are not rateable having regard to the provisions of Section 15 and Schedule 4, paragraph 10 of the Valuation Act, 2001.