

Appeal No. VA04/1/075

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

UCD Student Centre Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 5/4 Unit 6, Roebuck, Clonskeagh Belfield, Clonskeagh, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Joseph Murray - B.L.

Member

Leonie Reynolds - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF NOVEMBER, 2006

By Notice of Appeal dated the 31st day of March, 2004 the appellant appealed against the determination of the Commissioner in setting a rateable valuation of €104.00 on the above described relevant property.

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

"The valuation is inequitable, excessive and bad in law. We are of the opinion that under Schedule 4 Part 10 of the Valuation Act 2001 the property is relevant property not rateable"

The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 on the 7th December 2005 and 7th and 21st February 2006. At the hearing the Appellant was represented by Mr. Owen Hickey, B.L. instructed by Member State. Edel Curley, Solicitor, UCD with Mr. Martin O'Donnell, B.A. Econ, FIAVI, Grad. Dip. Planning & Development Economics, Principal of O'Donnell Property Consultants, Mr. Dominic O'Keeffe, Manager, UCD Students Centre and Mr. David Carmody, Student Services Officer, UCD. The Respondent was represented by Mr. Colm MacEochaidh, B.L. instructed by Mr. Tom Sweeney, Chief State Solicitor's Office with Mr. Tomás Cassidy, B.Sc. Property Management & Valuation, MIAVI, a Valuer in the Valuation Office.

The Property

The property concerned in this appeal forms part of the new building used as offices of the Students' Union in UCD Campus known as the Student Centre. The Centre is a two storey structure providing a multi-purpose hall and bar area known as the Forum Club, restaurant, offices, shops and medical centre.

The Student Centre is owned by a special-purpose company known as UCD Student Centre Ltd., a company limited by shares established under the Companies Acts 1963-1990 and registered on 3rd August, 2000.

On 30th September, 2003 a licence arrangement was entered into between UCD Student Centre Ltd. and University College Dublin, National University of Ireland, Dublin for an initial 5 year period from 1st September, 2002 subject to the conditions and stipulations set forth in the licence agreement. *Inter alia*, the Licence Agreement provides as follows:

1. That the 5 year period of the licence may be extended by mutual agreement of the parties.
2. That the Licensee makes a monetary contribution known as a licence fee to help defray the expenses incurred by the Licensor in servicing and maintaining the building. The licence fee for the first year to be €1,068,676.00 plus VAT at 21% payable annually in arrears. The Licensor is entitled to review the licence fee on an annual basis.

3. That the licence is personal to the Licensee, who shall not purport to sublet or part with or otherwise dispose of the user or occupation of the Centre.
4. That the parties agree and understand that the licence created shall not give rise to any proprietary or interest in rem and nothing shall be deemed to confer on the Licensee exclusive possession of the Premises or to create the relationship of Landlord and Tenant.

The Appellant's Evidence

Mr. Dominic O'Keeffe is the acting manager of the Centre and is a full time employee of the University. At the oral hearing Mr. O'Keeffe outlined the background to the procurement of the Centre and the special reasons for the establishment of the special purpose company. Mr. O'Keeffe outlined in some detail the facilities provided within the Centre and indicated the offices at ground floor level which were dedicated to the use of the Students' Union. Mr. O'Keeffe said that no rent was paid for the use of the offices by the Students' Union nor was there any formal contract between the Union and the University authorities. The use of the offices, he said, was subject to the rules and regulations set down by the University authorities which also reserved the right to change the location of the offices used by the Students' Union elsewhere within the Centre or indeed to other premises under the control of the University.

Mr David Carmody is a Student Services Officer employed by University College Dublin. In his evidence Mr. Carmody described his functions as the provision of management and administrative service to the Students' Union and elected officers. Mr. Carmody said that the offices in question were used by the elected officers in the carrying out of their daily duties in providing a wide range of services to the members of the Union which effectively meant the entire student body. Mr. Carmody said the offices were also used by a number of full time staff in the employ of the University who provided a range of advisory services to students such as the Welfare Officer, Accommodation Officer, Establishment Officer and Examination Officer.

Mr. Carmody said the offices were fitted out and furnished by the University which also paid all the utility bills and other usual property outgoings. The offices, Mr. Carmody said, operated during the opening hours of the centre which were regulated and controlled by the University authorities.

Under cross-examination Mr. Carmody agreed that the affairs of the Students' Union were governed by its own constitution and that the Union was funded by fees collected on its behalf by the University on an annual basis. However, Mr. Carmody said that it should be clearly understood that none of the funds so raised were used by the Union for the payment of rent or other outgoings associated with the use of the offices at the Centre.

Rating History

The offices in question which are at ground floor level in the Centre have an agreed net internal area of 151.12 sq. metres. At the relevant valuation date of 23rd July, 2004 the rateable valuation of the offices was assessed by the Revision Officer at €104.00. The quantum of the valuation is not in dispute and the only issue before the Tribunal is whether or not the property concerned is a relevant property not rateable under the provisions of Schedule 4 of the Valuation Act, 2001.

Legal Submissions

Preliminary Issue

At the hearing on 7th December, 2005 a preliminary issue was raised by Counsel for the respondent as to whether or not the appeal was properly before the Tribunal, due to insufficient compliance with the relevant sections, i.e. sections 30 and 34, of the Act dealing with appeals to the Commissioner and the Tribunal respectively. Having considered the arguments and submissions put forward by Counsel for the respondent and the appellant the Tribunal found in favour of the appellant to the effect that UCD Student Centre Ltd. was entitled to pursue an appeal to the Tribunal under Section 34 of the Act as "*a person referred to in subsection (1) of section 30.*" From the facts submitted it was clear that UCD Student Centre Ltd. is the legal owner of the building known as the Student Centre and that UCD National University of Ireland, Dublin are the occupiers in the first instance as Licensee under the Licence Agreement dated 30th September, 2003.

Substantive Issue

Both the appellant and the respondent made written legal submissions to the Tribunal on the substantive issues and copies of those submissions are attached at Appendices 1 and 2 respectively to this judgment.

The Law

Paragraph 10 of Schedule 4 of the Valuation Act, 2001 states as follows:

“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 therefor).”*

Rateable occupation is not defined in the 2001 Act but it is well established in jurisprudence that there are three essentials that must be met as per Keane on Local Government:

- The occupation must be exclusive.
- The occupation must be of benefit to the occupier.
- The occupation must not be for too transient a period.

Degree of Control

If it is found that more than one person is “in the immediate use and enjoyment of the property” the question to be answered is whose occupation is paramount and whose is subordinate, having regard to the facts established or found. The answer to this question is found in the degree of control one occupier exercises over the other. In this case we must examine the degree of control UCD has over the Students’ Union. By control we mean control as to “user”.

1. There is no formal letting agreement between the University and the Students’ Union. No rent is charged for occupation of the subject premises, yet the University could charge rent if it so wished.

2. The Students' Union is not charged any occupational costs by the University such as heating, lighting, cleaning or insurance. However, a capitation fee is charged to students on registration at the University to fund the Students' Union.
3. Use of offices in the subject premises is subject to regulation by the University and this involves the opening and closing hours of the Centre.
4. The University reserves the right to change the location of the Students' Union offices. In other words they have no security of tenure and this is a very important element of control.
5. The University can hire or fire Student Union staff and has disciplinary control over the students themselves.
6. The "*raison d'être*" of the Students Union is the University itself.

It is evident from the above facts that the degree of control by the University over the Students' Union is of such degree that we conclude that it is the University who is in paramount occupation of the subject premises and accordingly in exclusive occupation for rating purposes. Moreover, UCD meets the other criteria for rateable occupation in that it is in beneficial occupation of the Centre and, also, not for a short or transient period. Accordingly, the University is in "*de facto*" and "*de jure*" occupation of the Centre. However, it is the "*de facto*" occupation which is important for rating purposes.

Having established that the University are in rateable occupation of the property concerned, the next question to be addressed is whether or not the premises is used "*exclusively by it for the provision of [the] educational services*" and hence entitled to exemption from rates by virtue of Paragraph 10 of Schedule 4 of the Act – already cited at Page 5 herein.

Whilst it is clear that the University would be entitled, *de facto*, to exemption, the test to be met in this appeal is whether or not the nature of the use of the property concerned is such as to fall outside the normal activities of the University and its public purposes.

1. Universities are publicly funded through the auspices of the HEA, which determine the amount of money to be allocated to them on an annual basis. Universities have the freedom to determine the manner in which they spend their budget subject to compliance with guidelines issued by the HEA in relation to

staffing levels and the proportion of the budget applied to the different activities of the University.

2. The Students' Union has an important role to play in the life of the University and has seats on the governing authority of the University. It contributes to "education" in the broad meaning of the word – an enlargement of the mind – as the founding father of the University, John Henry Newman, envisaged. All students are automatically members of the Union, whose affairs are governed by its constitution. The HEA recognises the importance of educating the whole person, which should include all aspects of student life including physical, emotional, social welfare and spiritual. The provision of student support services such as those provided in the property concerned is intrinsic to student development and act as a complement to academic activities. The provision of these support services, which are viewed as part of the education process, includes the provision of specialist staff and the accommodation necessary for the better performance of their functions.
3. In addition, the HEA recognises the role the Students' Union, clubs and societies play within the University in complementing the formal education process. To this end, staff members are encouraged to contribute and to become involved by assisting in the administration and organisation of clubs and societies. The importance of the role of the Students' Union, clubs and societies is borne out by the recommendation of the HEA that a significant portion of the annual students' services charge should be allocated to these clubs and societies.

Having considered all the arguments advanced, the Tribunal finds that the property concerned in this appeal is used for activities which are exclusively for the provision of educational services having regard to the overarching concept of education which includes not merely the academic, but all activities within the University which play a role in the education of the whole person.

And the Tribunal so determines.