

Appeal No. VA04/2/013

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

County Monaghan Community Network Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 9, Mullaghmonaghan/High Street, Monaghan, County Monaghan

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Patrick Riney - FSCS FRICS FIAVI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF OCTOBER, 2004**

By Notice of Appeal dated the 2nd day of April, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €18.00 on the above described relevant property.

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

"The Network is a voluntary community organisation with only grant aid from Peace II. This grant aid finishes December of this year 2004. We have no budget for rates."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 26th of July, 2004. At the oral hearing the appellant was represented by Ms. Breege Lenihan and Mr. Francis McCarron and the respondent by Mr. Colm Mac Eochaidh, BL, instructed by the Chief State Solicitor.

The property concerned is an end of terrace two-storey house just off High Street opposite Monaghan General Hospital. The property is used as office accommodation and has a rateable valuation of €18. The quantum of the valuation is not an issue.

The appellant is a company limited by guarantee not having a share capital, incorporated on the 18th of February 2000 in accordance with the relevant provisions of the Companies Acts 1963-1999. A copy of the Memorandum and the Articles of Association of the appellant company was received into evidence by the Tribunal.

The objects for which the appellant company was established are:

“(A)(i) To assist Community groups in County Monaghan and elsewhere to solve common problems and issues and to provide a platform for Community Groups to share information and promote community development.

(ii) To provide a forum for Community groups to meet together and share information, experience and solve common problems.

(iii) To make representations to local, semi-state and statutory bodies on common issues that affect communities in County Monaghan and elsewhere.

(iv) To publicise and assist the promotion of community development in County Monaghan to a wider audience through the media of radio, newspapers, Internet and organised events.

(v) To encourage and develop joint project work by community groups and to promote joint marketing and promotion of community projects in County Monaghan and on a countrywide basis.

(vi) To assist new voluntary groups by offering support, information and guidance to these groups and encouraging community activity in parts of the country where it is absent.

(B) To carry on any other trade or business which can in the opinion of the Board of Directors, be advantageously carried on by the Company in connection with or as ancillary to any of the above businesses or the general business of the Company, or any of its objects.

(C) To apply for all licences which may be required to further any of its objects.

(D) To purchase, take on lease or in exchange, hire or otherwise acquire and hold any estate or interest any lands, buildings, easements, rights, privileges, concessions, patents, patent rights, licences, secret processes, machinery, plant stock-in-trade, and any real or personal property of any kind for such consideration and on such terms as may be considered expedient.

(E) To erect, construct, lay down, enlarge, alter and maintain any roads, railways sidings, bridges, reservoirs, shops, stores, factories, buildings, works, plant and machinery necessary or convenient for the Company's objects, and to contribute to or subsidise the erection, construction and maintenance of any of the above.

(F) To borrow or raise or secure the payment of money for the purposes of or in connection with the Company's objects and for the purposes of or in raising of money by the Company to become a member or any building society.

(G) To mortgage and charge the undertaking and all or any of the real and personal property and assets, present or future and all or any of the uncalled capital for the time being of the Company, and to issue at a premium or discount, and with and subject to such rights, powers, privileges and conditions as may be thought fit, debentures or debenture stock, either permanent or redeemable or repayable, and collaterally or further to secure any securities of the Company by a trust deed or other assurance.

(H) To receive and require money by donation, gift, subscription or otherwise and to apply or expend such funds to or upon all or any objects of the company, directly or indirectly.

(I) To receive and acquire money by donation, gift, subscription or otherwise and to apply or expend such funds to or upon all or any of the objects of the company, directly, or indirectly.

(J) To receive money on loan upon such terms as the Company may approve, and to guarantee the obligations and contracts of any person or corporation.

(K) To make advances to customers and others with or without security, and upon such terms as the Company may approve.

(L) To grant pensions, allowances, gratuities and bonuses to officers, ex-officers, employees of the Company or its predecessors in business or the dependents or connections of such persons, to establish and maintain or to concur in establishing and maintaining trusts, funds or schemes (whether contributory or non-contributory) with a view to providing pensions or other benefits for any such persons as aforesaid, their dependants or connections, and to support or subscribe to any charitable funds or institutions, the support of which may, in the opinion of the Directors, be calculated directly or indirectly to benefit the Company or its employees, and to institute or maintain any club or other establishment or profit sharing scheme calculated to advance the interests of the Company or its officers or employees.

(M) To draw, make, accept, endorse, negotiate, discount and execute promissory notes, bills or exchange and other negotiable instruments.

(N) To invest and deal with the moneys of the Company not immediately required for the purposes of its objects in or upon such investments of securities and in such manner as may from time to time be determined.

(O) To accept payment for any property or rights sold or otherwise disposed of or dealt with by the Company, either in cash, by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred or special rights or restrictions in respect of dividend, repayment of capital, voting or otherwise, or in debentures or mortgage debentures or debentures stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and generally on such terms as the

Company may determine and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.

(P) To sell, improve, manage, develop, turn to account, exchange, let on rent, royalty, share profits or otherwise, grant licences, easements and other rights in or over, and in any other manner deal with or dispose of the undertaking and all or any of the property and assets for the time being of the Company for such consideration as the Company may think fit.

(Q) To amalgamate with any other company whose objects are to include objects similar to those of this Company.

(R) To distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company.

(S) To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, trustees, sub-contractors or otherwise.

(T) To do all such things as are incidental or conducive to the above objects or any of them.”

Evidence was given at the hearing to the effect that the Network was originally established in 1995 by five voluntary community groups. The underlying purpose of the Network was to provide information regarding community development issues and to present a uniform voice to both local and national government and the various funding agencies. The work of the Network was originally carried out by individuals on a voluntary basis but following funding under Peace I a part-time co-ordinator was appointed and by 1999 membership of the Network had grown to 27 which figure has now grown to 49.

The Network is now recognised as the voice of the community development sector in County Monaghan and represents a wide cross-section of community life in the county. Many of the member organisations are based in areas of high deprivation and rely upon the Network for ongoing support and guidance.

The Network is a not-for-profit organisation and relies 100% on Peace funding and does not of itself engage in fundraising activities. If for any reason the Network ceased to operate the activities of many of its member organisations would be severely curtailed and might cease to function.

Ms. Lenihan and Mr. McCarron in their evidence drew attention to the fact that County Monaghan had a relatively low population with a higher than normal percentage of age dependency. The County, they said, suffers from inadequate social, physical and IT infra-structural services. Investment in new employment opportunities in the County is limited and only 140 new jobs were grant-aided by the IDA in the past five years.

Ms. Lenihan said that members of the Network provided a wide range of activities at local and parish level with the primary aim being the creation of good community relations throughout the County. The role of the Network is to offer support to individual member groups as to how best they can fulfil their role in the Community and to offer their facilities for training and personal development purposes. Ms. Lenihan said that many of the activities the Network provided appeared to meet the requirements for exemption under the Valuation Act, 2001 as set down in Schedule 4 paragraphs 10,14,15,16 & 17.

Evidence was given that the Network was originally based in the community hall of one of its founding members but as the range of services provided by the Network expanded it became necessary to provide accommodation for administration purposes and to house the now three full-time members of staff.

Under cross-examination it was accepted that the Network itself was not a direct provider of services in regard to education, care for the elderly, handicapped or disabled persons. Equally it was accepted that the property concerned was not a community hall nor was it occupied solely by a society established for the advancement of science, literature and fine arts.

Mr. Mac Eochaidh, for the respondent, in his submission said that the Network did not meet the requirements for exemptions set down in schedule 4 to the Valuation Act, 2001 at paragraphs 14,15,16 and 17. Any services of an educational, caring or advancement of science, literature or the fine arts nature by any of the member groups were provided directly by them and not by the Network as such. Hence the claim for exemption by the Appellant must be considered solely on the grounds that the Network is a charitable organisation as defined in Section 3(1)(a) of the Valuation Act, 2001 and that the property concerned is used exclusively for charitable purposes. In referring to the Memorandum of Association of the appellant company Mr. Mac Eochaidh said that the Memorandum did not state, “*As its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects.*” In addition the Memorandum does not meet the requirements regarding the disposal of any surplus property when its being wound up nor does it prohibit the payment of remuneration to its trustees or to the members of its governing board or committee.

The Valuation Act, 2001 which came into effect on the 2nd of May 2002 repealed (with one minor exception) all the then existing statutory provisions in relation to the valuation of property for rating purposes. The following sections of the Act are relevant to the appeal under consideration. Section 15 of the Act provides as follows:

“15.—(1) Subject to the following subsections 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.

(3) Subject to [section 16](#), relevant property, being a building or part of a building, land or a waterway or a harbour directly occupied by the State (including any land or building occupied by any Department or office of State, the Defence Forces or the Garda Síochána or used as a prison or place of detention), shall not be rateable.

(4) A fishery on which a rate is struck under [section 55 of the Fisheries \(Consolidation\) Act, 1959](#), shall not be rateable.

(5) In subsection (3) "harbour" does not include a harbour in respect of which a company is established pursuant to [section 7 of the Harbours Act, 1996](#)."

Schedule 4 of the Act (headed "Relevant Property Not Rateable") provides, inter alia, at paragraphs 10,14,15,16 and 17:

"10.—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).

14.—Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, being either—

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer.

15.—Any building or part of a building used exclusively as a community hall.

16.—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, 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.*

17.—Any land, building or part of a building occupied by a society established for the advancement of science, literature or the fine arts and which is used exclusively for that purpose and otherwise than for private profit.”

Section 3(1) of the Act contains the following definition: "*charitable organisation*"
“means a company or other body corporate or an unincorporated body of persons which complies with the following conditions—

- (a) in the case of a body corporate which is not a company, or of an unincorporated body of persons, there exists a constitution or deed of trust in relation to it that—*
 - (i) states the full name of the body,*
 - (ii) provides who are to be its trustees or who are to be the members of its governing board or committee,*
 - (iii) states, as its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects,*
 - (iv) states its powers,*
 - (v) provides for rules governing its membership and procedures to be followed in relation to meetings and the discharge generally of its business,*
 - (vi) provides for the keeping of accounts and the auditing thereof on an annual basis,*
 - (vii) (I) provides for the application of its income, assets or surplus towards its main object or objects,*

(II) prohibits the distribution of any of its income, assets or surplus to its members, and

(III) prohibits the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it),

(viii) makes provision for its winding up, and

(ix) provides for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of this Act), the main object or objects of which is or are similar to its main object or objects or, if the body receives a substantial proportion of its financial resources from a Department of State or an office or agency (whether established under an enactment or otherwise) of the State, to such a Department, office or agency,

and

(b) in the case of a company—

(i) the memorandum of association or articles of association, as appropriate, of the company comply with the conditions specified in subparagraphs (iii) and (vii) of paragraph (a) of this definition (and, for this purpose, the reference in clause (III) of that subparagraph (vii) to trustees or other persons shall be construed as a reference to the directors or any other officer of the company), and

(ii) there is contained in that memorandum or those articles a provision, with respect to a case of its being wound up, that is similar to the condition specified in paragraph (a)(ix) of this definition.”

From the evidence tendered it is clear that the appellant is not a direct provider of services of an educational or caring nature nor is the society established for the advancement of science, literature and the fine arts. It is also clear that the property concerned is not used exclusively for any of the above stated purposes nor is it used as a community hall. Hence it follows that the appellant is not entitled to exemption in accordance with paragraphs 10, 14, 15 or 17 of Schedule 4 of the 2001 Act. In the circumstances the appellant in order to obtain exemption from the payment of rates must

show that it is a charitable organisation within the meaning of the 2001 Act and uses the property concerned exclusively for that charitable purpose.

It would appear, under the provisions of the 2001 Act, that an organisation, no matter how laudable or well-intentioned its purposes and aims may be, must, in order to be entitled to exemption under paragraph 16 of Schedule 4, conduct its affairs in accordance with a constitution which is consistent with the conditions set down in section 3(1)(a) of the Valuation Act, 2001.

An examination of the Memorandum of Association of the appellant company indicates:

- i. that it does not distinguish between its main and/or primary objects and its secondary objects. Nor does it specify the purpose of its secondary objects as being the attainment of the main object or objects.
- ii. that it contains no provisions consistent with the requirements of section 3(1)(a)(vii).
- iii. that it contains no provisions consistent with the requirements of section 3(1)(a)(ix).

Having regard to the above the Tribunal finds that since the Memorandum of Association of the appellant does not comply with the requirements of section 3(1)(a)(iii), (vii), (ix) of the Valuation Act, 2001 the appellant is not a charitable organisation within the meaning of the said Act. In the circumstances therefore the claim for exemption from the payment of rates in relation to the property concerned must fail.

During the course of the hearing the Tribunal's attention was drawn to the Tribunal's findings in the case **VA04/1/008-Clones Community Forum Ltd.** The Tribunal has carefully considered the judgment in that case and finds that the facts determined therein are consistent with facts as found in this instant case.