

Appeal No. VA04/2/040

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

Castle Park Primary School Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Primary School at Lot No.2A.3, Bullock/Castlepark Road, Dublin, Dalkey
Bullock, County Dublin

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Brian Larkin - Barrister

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF OCTOBER, 2004

By Notice of Appeal dated the 30th day of April, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €58.68 on the above described relevant property.

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

“The relevant property is not rateable because it comes within the provisions of Schedule 4, Paragraph 10 (a) (i) and (b) under Section 15 of the Valuation Act, 2001.”

At Issue**Rateability**

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 31st day of August, 2004. The appellant was represented by Mr. A. O’Brolcháin, Senior Counsel instructed by Mr. Andrew Walker, Solicitor, Hayes Solicitors. Mr. Pat Coyle, General Manager and Secretary of Castle Park Primary School Ltd. also attended. Mr. James Devlin, BL, instructed by the Chief State Solicitor represented the respondent. Mr. Aidan McDaid, a District Valuer in the Valuation Office and Mr. John Colfer, a Valuer in the Valuation Office were also present.

Both parties adopted their respective précis, which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the Appeal.

The Property

The property is located on the east side of Castlepark Road, Dalkey at the junction with Breffni Road. It is on a site of approximately 6.8 Ha and consists of a castellated period building fronting a complex of ancillary single and two storey structures to the rear and centred on a quadrangle. The accommodation, with the exception of residential areas, is devoted to educational use and in total amounts to 3,878 Sq. metres.

Tenure

The tenure is understood to be freehold.

Nature of Relevant Property

The property is a fee-paying primary school.

Valuation History

In 1981 the property was listed for revision by the occupiers for the purpose of consideration for an exemption. The Commissioner decided that the property was rateable.

In 1992 the property was listed for revision to take account of new housing. The valuation was assessed at £440 (€558.68).

In 1996 the property was, again, listed for revision by the occupiers for the purposes of consideration for exemption. The Commissioner decided that the property was rateable.

In 2003 the property was, again, listed by the occupiers to consider the issue of exemption under Schedule 4, paragraph 10 (a) (i) and (b) of the new Valuation Act, 2001. The Commissioner decided that the property had undergone no material change of circumstances.

Appellant's Case

Mr. O'Brolcháin, S.C. opened the case for the appellant. He indicated to the Tribunal that there was no dispute between the parties with regard to the formalities. It was accepted that the School was a registered charity and referred to the Articles and Memorandum of Association included with submissions before the Tribunal and also the Revenue letter re: Charitable Status. Mr. O'Brolcháin immediately directed the Tribunal to Section 15 of the Valuation Act, 2001. The relevant properties which were not rateable were those listed in Schedule 4, paragraph 10 and were as follows:

"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).”

Mr. O’Brolcháin added that if the Tribunal was satisfied that the appellant met the above criteria then the property was not rateable. In particular he emphasised that the conditions cited in paragraph 10 (a) (i) and 10 (a) (ii) were in the alternative i.e. either or. He submitted that paragraph 10 (a) (i) of Schedule 4 was accepted as a fact by the Commissioner for the following reasons:

1. The School is a registered charity
2. The audited accounts.
3. The Memorandum and Articles of Association prohibit the making of a private profit.
4. The Directors may not receive any fees or remuneration.
5. No dividend may be paid.
6. In the event of the dissolution or winding up of the company any surplus must be transferred to a similar educational institution or similar charity as the subject.

There remained therefore the question as to whether the educational services concerned were available to the general public, whether with or without a charge being made therefor, as stipulated in paragraph 10 (b) of Schedule 4.

Mr O’Brolcháin submitted that the educational services of the subject School were available to the general public and indeed that a charge was made therefor.

In support of this contention, Mr. Patrick Coyle was called to give evidence on behalf of the appellant. In the course of his examination in chief by Mr.

O’Brolcháin, Mr. Coyle, in addition to furnishing a description of the premises,

provided a profile of the educational services offered by the School and confirmed its non-profit making status. The Montessori School catered for children in the 3 to 6 year age bracket at fees in the region of €4,000 p.a.. There were 96 children in this School. The Junior School catered for children in the 6 to 12 year age bracket at fees of the order of €6,000 p.a.. There were 160 children attending this School. Mr. Coyle was at pains to point out that the appellant was an inclusive school. It was interdenominational, co-educational, catering for children of non-nationals and those from the full range of social strata. The School welcomed children from all walks of life essentially and advertised on the Internet and Irish Times. Mr. Coyle further stated that scholarships were available for those financially stretched and in general that a sympathetic approach was adopted for those with particular problems.

On the matter of fees, responding to questions put by Mr. O’Brocháin as to whether they were restrictive to members of the general public, Mr. Coyle rejected such suggestions. The subject School’s fees, unlike most other schools, included not just tuition but lunch, books and sports facilities. The sports facilities covered such activities as hockey, cricket, summer camp and swimming. The swimming pool, when not required by pupils of the subject, was made available to outside groups for a specified charge.

Mr. Coyle continued by saying that where difficulties were experienced by certain students in paying the fees, phased payment arrangements were put in train. He drew comparisons with St. Andrew’s School, Booterstown which, unlike the subject, was partly funded by the State. In response to further examination by Mr O’Brocháin as to what visible evidence there was to refute the suggestion that the appellant School was of an elitist and exclusive nature, Mr. Coyle re-inforced what he had already said, that the School was being actively marketed on an “all were welcome” basis and to that effect held open days and had its own website on the Internet. In practise Mr. Coyle re-iterated that the subject School took in some of the overflow from schools in its catchment area such as Dalkey National School as well.

Under cross-examination from Mr. James Devlin, BL for the respondent, that the subject School catered for children whose parents had sufficiently large income, Mr. Coyle replied that this was not so. He added that the School was not just available to people to whom money was no object and it simply charged an economic level of fees in a non-subvention context.

Mr. Devlin remained concerned at the availability or otherwise of educational services in the subject School to members of the general public and suggested that the latter concept should be given a very wide meaning and should embrace the community as a whole. Mr. Devlin dwelt further on the two concepts: “service to the public” and “the general public”. He referred to Section 3 of the Valuation Act, 2001 i.e. the Interpretation Section to define “service to the public”. This was incorporated under the definition of “public utility undertaking”. Service was defined within that caption Mr. Devlin said, to *“include any service which consists of the provision or supply of any substance or form of energy or any means of communication or the transmission or distribution of radio or television programmes”*.

Mr. Devlin, with regard to the concept of “the general public”, went on to rely on the Official Languages Act, 2003 (a submission not included with original précis, but issue was not taken in relation to this by Counsel for the appellant). In the Interpretation Section of that Act at Section 2, Part I a distinction was drawn between “the general public” or “a class of ‘the general public’”.

There, “service” means a service offered or provided (whether directly or indirectly) to the general public or a class of the general public by a public body. Mr. Devlin submitted that the educational services in the subject School were restrictive of the general public and were applicable to a “narrower” group i.e. to “a class of the general public” and thus did not qualify for the exemption provided in Schedule 4, paragraph 10 of the Valuation Act, 2001. Mr. Devlin, furthermore put it to the Tribunal that there was a significant difference between making

services available to the general public and offering services to the general public on the basis that the level of fees was not within the scope of the general public.

Mr. O’Brolcháin, in his closing submissions, reacted to the points raised by Mr. Devlin. He stated that the provisions in Section 15 of the Valuation Act, 2001 were enshrined to rectify an anomaly which existed, whereby certain schools were liable for rates and the rest were not, due to their Secondary School status. Mr. O’Brolcháin indicated that there was incontrovertible evidence before the Tribunal that the educational services of the appellant were available to the general public. He referred to the Statutes of Interpretation “*that words have to be given their ordinary general meaning*” in support of that view in relation to a definition of the general public rather than the qualified definition in the Official Languages Act, 2003.

The bottom line, Mr. O’Brolcháin submitted, now that the legislation was in place to remove the anomalous situation which had prevailed for years in relation to rateability of certain schools, was whether the subject School fell within the ambit of Schedule 4, paragraph 10 of the Valuation Act, 2001 outlined above. The answer to that question was yes, he stated.

Findings

1. This appeal centred on a net legal issue. Did the appellant School qualify for exempt status from rates by virtue of the provisions of the Valuation Act, 2001?
2. Had Dun Laoghaire-Rathdown County Council in its communication to the General Manager of Castle Park Primary School Ltd. dated 22nd September, 2003 in the following terms:

“It is the Council’s opinion that under Schedule 4, Section 10 of the Valuation Act, 2001,

(a) (ic) *the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of money provided by the Exchequer, you would not qualify for “exempt status”.*

- misinterpreted, misunderstood or been mistaken with regard to the relief provided by the Act?

3. Did the appellant in the course of legal argument set the record straight in this regard?
4. Were the necessary supporting facts adduced from the School Management with regard to access of the general public to the said School albeit on a fee-paying basis?

Determination

1. The Tribunal, having reviewed the written submissions, listened to legal argument and heard oral evidence accepted that the subject School was not established and its affairs were not conducted for the purpose of making a private profit.
2. The School was self-funding, from fees income, and therefore the expenses incurred were not defrayed wholly or mainly out of monies provided by the State. The Tribunal in accepting that was also satisfied that this requirement in the Valuation Act, 2001 was not a *sine qua non* for exempt status.
3. The Tribunal was satisfied that the educational services concerned were available to the general public on a charge/fee basis.
4. The Tribunal found that Dun Laoghaire-Rathdown County Council erred in law in rejecting the subject School’s application for exempt status for the reasons set out in its communication of the 22nd September, 2003 to the appellant for the following reasons:
 - (1) The conditions for exempt status arise under Section 15, Schedule 4, paragraph 10(a), (i) and (ii) and 10 (b) and not under Section 10 of the Valuation Act, 2001.

- (2) the requirements under 10(a)(i) and 10(a)(ii) of Schedule 4 are in the alternative. Thus once it is established that the School's affairs were not conducted for making a profit, it was irrelevant then whether the expenses incurred by it in providing the educational services concerned were defrayed wholly or mainly out of money provided by the Exchequer so long as the educational services were available to the general public (whether with or without a charge being made therefor).
5. The Tribunal is satisfied that the subject School is entitled to exempt status from rates under Section 15, Schedule 4, paragraph 10 (a) (i) and 10 (b) of the Valuation Act, 2001.

And the Tribunal so determines.