

Appeal No. VA97/6/015

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Elah Voluntary Counselling Services**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Lot No. 48 Hamilton Street, Dublin 8. County Borough of Dublin  
Exemption - Charitable and public purposes

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Barry Smyth - FRICS.FSCS**

**Member**

**Finian Brannigan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 26TH DAY OF APRIL, 1999**

By Notice of Appeal dated the 2nd day of October 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £24.00 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that "Elah provides voluntary counselling to the local community. We are a registered charity and our funding comes from FÁS under the (C.E.P.) Community Employment Projects. We provide training for our participants and we are totally non profit making. All FÁS funding for unemployed workers coming off the dole training is given here at Elah to help them get full time employment.

The relevant valuation history is that in 1996 revision of the hereditament was requested by the Local Authority. The listing was “exemption sought”. On revision the rateable valuation was fixed at £24. The occupier appealed against this decision on 27<sup>th</sup> August 1996. On 19<sup>th</sup> September 1997 the Commissioner issued his decision leaving the rateable valuation unchanged.

A written submission on behalf of the appellant prepared by Helen Aufochs & Company, Solicitors, 2 College View, Main Street, Tallaght, Dublin 24 was received by the Tribunal on 15<sup>th</sup> June 1998. The Tribunal also received from the appellant’s solicitor financial statements for the year ended 19<sup>th</sup> May 1996 with respect to Elah Voluntary Counselling Services. These statements had been prepared by Richard M. Nugent & Co., Certified Public Accountants of 27 Pine Lawn, Tallaght, Dublin 24.

This written submission described the subject hereditament as a two storey structure with reception, office, canteen and toilets at ground level, a small office at stairs return and three offices at first floor.

The written submission stated that the appellant was seeking exemption from payment of rates pursuant to Section 63 of the Poor Relief (Ireland) Act 1838. There was no appeal on the issue of quantum.

A written submission on behalf of the respondent prepared by Mr. Shay Alyward B.Comm and A.C.C.A. was received by the Tribunal on 18<sup>th</sup> May 1998. Mr. Aylward is a District Valuer with over twenty years experience in the Valuation Office. Mr. Aylward’s written submission confirmed that quantum was not an issue in this case.

The oral hearing took place at the Tribunal’s offices in Dublin on 1<sup>st</sup> July 1998.

The appellant was represented by Mr. Eoin Hickey, B.L. instructed by Helen Aufochs and Co., Solicitors. The respondent was represented by Mr. Aindrias O’Caoimh S.C. instructed by the Chief State Solicitor.

Ms. Breda Hanna gave sworn testimony on behalf of the appellant. She said that she was project director of the counselling service. She described the use of the premises. The four rooms upstairs were used primarily for counselling. The four rooms downstairs were used for reception, administration, project directors office and a kitchen.

Ms. Hanna said that the appellant has two functions, (a) training persons in the local community and (b) providing counselling for the general public.

The persons who were trained were participating in community employment projects. These people were long term unemployed (more than twelve months), lone parents, widows, National Rehabilitation Board referrals and ex-prisoners.

Ms. Hanna referred to the ethos of Elah. Counsellors should have the same socio-economic background as their clients.

In her evidence Ms. Hanna stated that training took place one day per week on Wednesday. On that day the centre is closed for counselling. There are four trainers, Mr. Patrick Hanna, Dr. Sam Cromey from Trinity College, Chris Murphy from Cross Care and herself.

On the other four days of the week the premises is open for counselling between 9am and 10pm. Usually there are four counsellors present and one supervisor. One to one counselling is given.

Ms. Hanna said people within the community are counselled where those persons are unable to get that counselling privately. They also get referrals, from the Irish Association of Counsellors and Therapists, the Dublin Inner City partnership and the South West Inner City Partnership. Further referrals come from the social welfare sector, doctors in the community, health board workers and priests.

Ms. Hanna said that the appellant is part of the mental health section of the Dublin Inner City Partnership in terms of the Partnership 2000 programme. The appellant participates in the area action plan to reduce poverty. One way in which the appellant tries to reduce poverty is

to take people from the community and train them as counsellors and then send them back into the community to be counsellors there.

Ms. Hanna described the organisation of Elah. There is a management committee with chairperson, secretary and treasurer. This committee is the employer. The employees are employed by Elah and funded by FÁS. Ms. Hanna said there were three full time employees, herself, Patrick Hanna (Supervisor) and Nora Byrne (Assistant Supervisor).

There is a part time staff of thirty who work in reception, administration, in the kitchen and as counsellors. FÁS paid £12 per worker per week for the part time staff. This money went to the running costs of Elah. Additionally FÁS paid a yearly training grant of £300 per worker. The appellant also had received grants from the Department of Social, Community and Family Affairs.

Ms. Hanna said there is no compulsory charge for the appellant's services. There is however, a voluntary contribution requested of £2 (unemployed) and £5 (waged). This contribution requirement had been put in place to encourage therapeutic responsibility. A payment of this nature encouraged clients to take responsibility for their care.

Ms. Hanna said that the appellant's accounts were dealt with by their accountant who visited its premises every two weeks. Independently audited accounts are submitted to FÁS yearly. Again to comply with its registration as a charity the appellant submits accounts to the Revenue.

In her evidence Ms. Hanna stated that in the event of its dissolution all the appellant's resources with the exception of its premises go back to FÁS. The premises would revert to the Board.

In summary therefore Ms. Hanna stated that Elah provides counsellor training to disadvantaged people and provides counselling to disadvantaged people.

Under cross-examination by Mr. O'Caoimh, Ms. Hanna stated that Elah had been founded five years ago. A group of people, counsellors and carers in the community, which included

herself, established the organisation. Ms. Hanna said that she had been then a trained counsellor with Dublin Corporation.

Under further cross-examination Ms. Hanna stated that the subject property was owned by Daphne and Maurice Beattie who advanced £62,000 for its purchase in 1993. Ms. Hanna stated that Mr. & Mrs. Beattie agreed that Elah could have the premises rent free as long as it exists as a counselling service for the general public. Ms. Hanna in further replies said that Mr. Beattie was a farmer and his wife was a teacher. They were not counsellors and in making the property available they had acted from philanthropic motives.

Under further cross-examination Ms. Hanna described details of the training which took place each Wednesday. FÁS required that this training take place. Ms. Hanna gave an example of a person who had undertaken this training. This person had worked in the kitchen and then in administration for the appellant. Then after three years training as a counsellor by Elah this person had obtained a job as a counsellor for one of the Health Boards.

Ms. Hanna replied to questions about the appellant's accounts for the year ended 19<sup>th</sup> May 1996. There was a FÁS grant of £194,795 and the appellant received counselling fees of £2,323.

Grants of £6,700 came from the Department of Social, Community and Family Affairs and also from the Department of Justice, Equality and Law Reform. With respect to the grant from the latter Department the appellant is a referral agency before people get divorced. The grant was to train counsellors who dealt with these marital problems. Elah did a statistical analysis in recent years of their clients. It was found that 67% of these clients presented with marital conflict.

Under further cross-examination Ms. Hanna gave detailed evidence about the accreditation of the counsellors and the training they undergo.

In further reference to the accounts Ms. Hanna stated £168,079 was paid in wages to the thirty part time workers. Ms. Hanna stated that an expenditure of £8,411 was made for building repairs. This money was used to convert a residential premises to office type use.

An upstairs bathroom was converted to a counselling room. At the back of the premises two toilets and a kitchen were constructed.

Ms. Hanna gave details of how the £300 per worker training grant from FÁS was administered. This money was not given directly to the worker. The person in question submits a training programme for funding. If FÁS approves the programme then Ms. Hanna allocates the funding for the programme.

Under cross-examination Ms. Hanna described the procedure for the initial assessment of clients for counselling. The client is given a form to complete. Then a letter is sent to arrange an appointment at the subject premises. When the client arrives for the appointment that person is assessed contemporaneously by a counsellor and a supervisor. This is a screening process.

Elah does not deal with addicts. Their clients are mostly those marginalised in Irish Society. Elah does not exclude employed people and Ms. Hanna said they had dealt with a person with a high salary who did not want to use the private sector due to fears about identification. The clients receive one to one counselling lasting for one hour.

In further replies Ms. Hanna gave details of the Board of Management called the sponsoring body by FÁS. The Board meets monthly. Mr. Beattie takes the minutes and his wife is the chairperson. These two persons do not receive any payment for this work. Ms. Hanna said that Mr. & Mrs. Beattie could tell Elah to leave the subject hereditament if they wish to sell it. Ms. Hanna said that the premises is located in the Tenters area of Dublin. There are a number of owner occupied properties in the adjacent area. Next door to the appellant's premises there is a house, which has been let in flats.

On re-examination by Mr. Hickey, Ms. Hanna stated that the subject hereditament is held on a year to year basis free from rent. She had resigned from her job with Dublin Corporation to work for Elah. She had no anxiety about the security of her job at Elah.

In further replies to Mr. Hickey, Ms. Hanna stated that on average 200 people were counselled weekly. The clients were mostly from a poor and disadvantaged background.

Finally Mr. Hickey put in evidence a copy letter from the Revenue Commissioners confirming the charitable status of the appellant for tax purposes.

Mr. O’Caoimh said he was not going into evidence. He said he would be relying on the representations made by the appellant. Mr. O’Caoimh said he would deal with the appeal by way of legal submissions.

Mr. Hickey referred to *Barrington’s Hospital –v- Commissioner of Valuation* 1957 I.R. 299 and in particular the general conclusions in that case set out at pages 333 and 334 of the report. He said that the conclusions stated at numbers 2, 3, 4 & 8 on these pages supported his arguments based on the appellant’s evidence that the subject property should be exempt from rates on the basis of its charitable status.

Mr. Hickey referred to *Limerick Youth Services Board –v- Commissioner of Valuation* VA90/3/003. In a detailed exposition of this judgment Mr. Hickey argued that exemption had been granted there on facts analogous to this appeal.

In the Limerick case the appellant provided training for young people from deprived backgrounds. Additionally all income received had to be devoted to the purposes of the charity. Again in the Limerick case even though goods and services were being sold by the appellant exemption from payment of rates had been granted.

By way of analogy in this appeal persons from deprived backgrounds were being counselled. All the income received by the appellant was going to this charitable purpose and no private profit was being made by the appellant.

Mr. Hickey stated his primary argument was that this hereditament was being used for charitable purposes within the meaning of Section 63 Poor Relief (Ireland) Act 1838. An alternative argument was that the premises were being used for public purposes under the same section of the 1838 Act. This was on grounds that the appellant was publicly funded.

In his legal submissions, Mr. O’Caoimh stated that the *Barrington’s Hospital* Case was a good summary of the relevant law. Mr. O’Caoimh stated that charitable purposes in Section 63 of the 1838 Act has a meaning less extensive than that given to charitable purposes in the

Pemsel case. The Pemsel case criteria were sufficient for exemption from taxation by the Revenue Commissioners but not sufficient for exemption from payment of rates.

Mr. O’Caoimh said to find exemption for educational purposes the Tribunal must be satisfied that the provision of this education was exclusively for the poor.

Mr. O’Caoimh said that the essential charity here was that of Mr. & Mr. Beattie in granting Elah rent-free premises for its work. There was however a provision for the payment of rent. Mr. O’Caoimh referred to the written submission of the appellant at page 4 of the brief history of Elah.

Mr. O’Caoimh said that Mr. & Mrs. Beattie had granted the appellant a licence to occupy the subject hereditament. This did not preclude rateable occupation and Mr. O’Caoimh referred to Carroll –v- Mayo County Council 1967, I.R. 364.

### **Determination**

The Tribunal has considered the written submissions of the appellant and the respondent and the evidence of the appellant. The Tribunal has also considered the legal submissions of the appellant and the respondent.

The Tribunal finds that Elah as managed by its board is in rateable occupation of the subject hereditament. This issue was of course not contested by the appellant.

The Tribunal finds that the appellant does not provide education exclusively for the poor and therefore is not entitled charitable exemption from rates under the relevant part of Section 63 Poor Relief (Ireland) Act 1838. This finding is based on the evidence that the appellant provides counselling for employed people who are in receipt of a regular income.

The Tribunal finds that the appellant’s premises is not used for public purposes within the meaning of Section 63 of the Poor Relief (Ireland) Act 1838 and therefore not exempt from the payment of rates on that ground. This finding is based on the evidence that persons who benefit from its activities are targeted as the community within the area action plan as defined by the Dublin Inner City Partnership. Each member of the public does not have an interest in



the property, which is required for exemption from payment of rates under Section 63 of the 1838 Act.

Finally the Tribunal finds that the subject hereditament cannot be exempt from the payment of rates on the basis that it is used for charitable purposes within the meaning of Section 63 of the Poor Relief (Ireland) Act 1838 inasmuch as a private profit is directly derived from it.

This finding is based on the following evidence. The written submission of the appellant states the FÁS funding is fixed for one year only and no commitment is given for future years. Therefore Mr. & Mrs. Beattie who are members of the Board of Elah can resume possession of the subject premises at the end of any one-year if not earlier. It is a reasonable inference that the property has increased substantially in value since 1993. Mr. & Mrs. Beattie would benefit from this increase in value. Again the evidence was that £8,411 was spent on building repairs. There was no evidence that this money was to be repaid to FÁS . On taking possession of the premises Mr. & Mrs. Beattie would have the benefit of this expenditure.

In arriving at this ultimate finding the Tribunal is guided by the reasoning in the case of *Clanwilliam Institute –v- Commissioner of Valuation – VA91/2/067*.

In that case the Tribunal found that the lease for the subject property was not an arms length transaction. The Tribunal found that at the relevant time period for the appeal the lessor was not mindful to increase the rent to the detriment of the lessee, the appellant. Nevertheless the Tribunal considered that a private profit could be made in the future by the operation of the rent review clauses.

The Tribunal considers that by analogy Mr. & Mrs. Beattie in resuming possession of the subject premises would derive a private profit from the accretion in value of the property over the years.

The Tribunal therefore determines that the subject hereditament should not be distinguished as exempt from the payment of rates. The Tribunal also affirms the decision of the Commissioner of Valuation and determines the rateable valuation of the subject hereditament to be £24.

