

Appeal No. VA09/2/008

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

**Higher Education Authority**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 1545941, Offices at Lot No. 158C (flr 1), Shelbourne Road, Pembroke West B, Pembroke West, County Borough of Dublin

**B E F O R E**

**Michael P.M. Connellan - Solicitor**

**Deputy Chairperson**

**Brian Larkin - Barrister**

**Member**

**Aidan McNulty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 1ST DAY OF OCTOBER, 2009**

By Notice of Appeal dated the 8th day of May, 2009 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €1,015.79 on the above-described relevant property.

The grounds of Appeal are on a separate sheet attached to Notice of Appeal, a copy which is attached at the Appendix to this Judgment.

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 13<sup>th</sup> day of July, 2009. At the hearing the appellant was represented by Mr. Tom Boland, Chief Executive Officer of the Higher Education Authority and Mr. Maurice Collins, SC, instructed by Mr. Brian Whitaker, Solicitor. The respondent was represented by Mr. Edward Hickey, Valuer in the Valuation Office and Mr. James Devlin, BL, instructed by the Chief State Solicitor.

### **The Property Concerned**

The property concerned is Brooklawn House, First Floor, Shelbourne Road, Dublin 4.

### **The Issue**

Rateability.

### **Valuation History**

The subject property was first valued in 1998 at £805.00. On appeal the RV was reduced to £800.00 (€1,015.79) which is the current RV.

Following a request from the appellant that the subject property be deemed “relevant property not rateable” pursuant to Section 15 (3) of the Valuation Act, 2001, the property was inspected in July, 2008 arising out of which its list status was changed from Non List Exempt to List Rateable.

As no change was made at Representation or Revision stages, an Appeal was then lodged with this Tribunal on the aforementioned grounds seeking exemption from rates, a status which was enjoyed prior to the Valuation Act, 2001 coming into effect.

### **Tenure**

The property is held under a 25 year lease at an annual rent of IR£410,000 (€20,593) per annum.

### **The Evidence**

Evidence was given on behalf of the appellant by Thomas Boland, Chief Executive of the Higher Education Authority (HEA) in line with his written précis which covered the following:

1. Establishment of the HEA
2. Functions of the HEA
3. Relationship with the Department of Education and Science
4. Governance
5. Funding
6. Management of projects on behalf of the Government
7. History of the HEA's accommodation

Mr. Boland in his evidence emphasised that the HEA was established on a statutory basis under the Higher Education Authority Act, 1971 and its principal functions include:

- to further the development of higher education;
- to maintain a continuous review of the demand and need for higher education;
- to assist in the coordination of state investment in higher education and to prepare proposals for such investment;
- to allocate among universities, institutes of technology and the designated institutions the grants voted by the Oireachtas.;
- to promote the attainment of equality of opportunity in higher education and democratisation of higher education.

Additional functions were assigned to the HEA, Mr. Boland added, under the Universities Act, 1997 and the Institutes of Technology Act, 2006. Furthermore the Department of Education and Science has assigned additional functions to the HEA including:

- the establishment of a National Office for Equity of Access to Higher Education within the HEA;
- responsibility for administration of the Programme for Research in Third Level Institutions;
- administration of the Irish Research Council for the Humanities and Social Science and the Irish Research Council for Science, Engineering and Technology;
- administration of the Strategic Innovation Fund.

On the matter of the relationship of the HEA and the Department of Education and Science, Mr. Boland stated that the formal relationship between the HEA and the Department is outlined in the Higher Education Authority Act, 1971 under the following heads *inter alia*. Section 12 provides that funding for the HEA is subject to the Minister's consent. Section 14 provides for staff appointments, pay and conditions. Sections 3 and 4 of the Schedule to the Act provides that appointments to the Authority are made by the Government on the recommendation of the Minister and Section 11 of the Schedule provides for the payment of fees to Members.

Mr. Boland impressed upon the Tribunal that the HEA engages with the Department widely in the discharge of its functions and cited examples of the Department's influence of the work of the HEA viz:

- Development of the HEA Statement of Strategy, adding that the HEA consulted the Department before finalising its Strategic Plan 2008 – 2010 (copies of which were handed in to the Tribunal) and pointing out in particular that the Minister in his foreword to the Plan indicated “*the HEA's strategic priorities are fully consistent with Government objectives, as articulated in the NDP.....and I and my Department will work closely with the HEA in the development of a National Strategy for Higher Education*”.
- All major capital projects require approval by the Department.

On the subject of funding Mr. Boland stressed that virtually all of the HEA's administration grant is provided by the Department (DES) and that the HEA is also covered by recent government decisions on expenditure and staffing including the public sector pensions levy, cuts in travel and subsistence rates and the public service moratorium on recruitment. Significantly too, he added, the HEA is exempt from stamp duty payments under Section 18 of the Higher Education Act, 1971.

When put to him by Mr. Devlin for the respondent that he had not identified the HEA as part of Central Government in the 2008 – 2010 HEA Strategic Plan, but on the contrary as an intermediary body positioned between the Government and the Institute of Higher Education, Mr. Boland stoutly defended the HEA's role as one which ran the full gamut of higher

education. Pushed further by Mr. Devlin that the fact that seven of the nineteen members of the HEA came from the world of academia was evidence that the HEA was a separate and distinct body entirely from the Department of Education and Science and one in which academics had a real voice, Mr. Boland rejected such a suggestion adding that, on the contrary, their presence had a practical dimension and is a reassurance to the wider public.

Mr. Boland also rebutted any allegations by Mr. Devlin, that given the fact that key decisions on policy and funding were taken in Marlborough Street (Headquarters of the DES), the HEA's input into higher education decision making was minimal and peripheral.

## **The Submissions**

### **Submissions on behalf of the HEA**

On behalf of the HEA Mr. Maurice Collins contended that the subject premises occupied by the HEA comes squarely within the exemption provided by Section 15(3) of the Valuation Act, 2001 and as such is not rateable. These oral submissions, in support of such a position, he added, must be read in conjunction with the written précis already forwarded to the Tribunal and exchanged with the respondent in advance of the Hearing.

Mr. Collins submitted as follows:

1. Section 15 (3) of the Valuation Act, 2001, in dealing with the rateability of relevant property, provided for an exemption from rates in the following circumstances; "*Subject to section 16, relevant property, being a building or part of a building, land or 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.*"  
In summary "the State" or "office of State" should not be liable for payment of rates. The status of the HEA was analogous to the HSE, he argued, which, in a binding High Court 2008 decision, was granted exempt status from rates on the grounds of being "the State".
2. The logic underpinning the exemption is rooted in common sense. Here, all the HEA funding came from the Exchequer, as did the funding for the Department of Education and Science. It meant no sense at all, therefore, through the imposition of rates, transferring monies from one arm of the State to another.
3. The HEA was "on all fours" with the HSE, albeit with differences of nuance and structure, and, like the HSE, should qualify under Section 15(3) of the Act for exemption from rates.

The HEA was a creature of Government policy and control. Its educational imperatives as enshrined in the 1971 Act were on a par with the health care directives in the Health Act, 2004. Both the HEA and the HSE were subject to a high degree of Government control.

4. The fact that a body such as the HSE was a distinct legal entity as referred to by McCarthy J in **PIAB v Commissioner of Valuation** did not deprive that body of the exemption provided by Section 15(3).
5. Funding of higher education was key to social and economic development in the State.
6. The simple fact that the HEA could be described as an “intermediary” between the Department of Education and Science and the Universities does not disentitle the HEA from exemption from rates, no more than the HSE.
7. There were no demarcation lines between the State and the HEA, fundamentally. The HEA was integrally linked with the Department of Education and Science.
8. The operational provisions of the HEA Act, 1971 are at the heart of Government Policy, referring in particular to Section 3 – General Functions.
9. The appointment of Officers and Servants of the HEA is subject to Ministerial approval.
10. Section 18 of the 1971 Act provides for an exemption from stamp duty for the HEA. There is no such exemption, for example, for PIAB.
11. The HEA’s close relationship with the Government is analogous with the spirit and intent of Section 7 of the Health Act, 2004 which refers to interaction and continuous dialogue with the Minister.
12. By contrast, PIAB, whose appeal to be classified as an “office of State” for the purposes of rate exemption failed, its functions were adjudicatory in essence and did not call for the same interaction with Government as was the case with the HSE. (ref to Section 54 of the PIAB Act). PIAB, furthermore, is self-funding, which was in sharp contrast to the HEA. The logic of Section 15(3) demanded that if a body is totally funded by the State it made no sense to render it rateable.
13. While the appellant’s primary case for exemption from rates was based on Section 15 (3) of the 2001 Act as being property directly occupied by “the State”, in the alternative, exemption was being sought on the grounds that the premises in Ballsbridge were “an office of State” as identified by McCarthy J in **PIAB**, although PIAB itself failed to satisfy the criteria.

### **Submissions on behalf of the Commissioner of Valuation**

Mr. James Devlin, on behalf of the Commissioner of Valuation urged the Tribunal to reject the Appeal of the HEA on the following grounds:

1. Section 15(3) of the 2001 Act must be construed strictly.
2. The Act referred to specific exemptions in “*relevant property directly occupied by the State*”.
3. The words “directly” and “the State” are critically significant; some weight must be attached to those words. The word “state” is not defined, but in **Comyn v Attorney General** [1950] it was held that the State was a juristic person with a capacity to hold property.
4. The concept of a public body was touched on in Section 42 of the Valuation Act, 2001: “Public Body” was defined as: “(a) a *Department of State or any other office or agency of the State*”. A distinction is manifestly drawn between “office of State” and “agency of State”.
5. The fact that a body is established under statute does not make it an “office of State”.
6. The HEA is not central Government. It is removed from it by virtue of being an intermediary.
7. The development of higher education viz à vis its function does not make the HEA “the State”.
8. The 2001 Act seeks to reduce, and not expand, the scope of the Section 15(3) exemption.

### **Reply of Maurice Collins**

1. The HEA is a structure of the State; its staff are the Government’s, and they advance the Government’s policies.
2. The HEA gets no funding or policy direction from the Institutions of Education.
3. The HEA’s use of the term “Intermediary Body” does not alter the fact that it is a creature of Government under the 1971 Act.
4. Section 42 of the Valuation Act, 2001 in defining “public body” includes “*any other office or agency of the State*” in addition to a Department of State. Thus, the legislation captures a body which fell outside of “the State” in the strict sense, such as the HEA.

5. The Respondent's contention that the HEA was not "the State" could equally have applied to the HSE.

## **The Law**

The following were the relevant legislative sources upon which legal argument was advanced:

### **Statute Law**

- Valuation Act, 2001
- Higher Education Authority Act, 1971
- Personal Injuries Assessment Board Act, 2003

### **Judicial Decisions**

- **Personal Injuries Assessment Board v Commissioner of Valuation** [2006] No. 891 JR (May 2008) (Unapproved)
- **Health Service Executive v Commissioner for Valuation** [2008] IEHC 178

### **Decisions of the Valuation Tribunal**

- **VA04/2/038 – Legal Aid Board**
- **VA05/3/003 - FETAC**
- **VA05/3/061 - Personal Injuries Assessment Board**
- **VA06/4/001 - Health Service Executive**
- **VA07/4/001 – Foras Áiseanna Saothair**
- **VA02/5/013 - HEANET Ltd.**

## **Findings**

1. At the hearing the parties were represented by Counsel and the Tribunal is indebted to them for the depth and quality of their submissions, both oral and written, which referred the Tribunal to a wide range of authorities and legal precedents.
2. The subject premises were not liable for rates prior to the enactment of the Valuation Act, 2001.
3. Section 15(3) of the 2001 Act provides as follows:

*“ Subject to section 16, relevant property, being a building or part of a building, land or 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. The fact that the HEA is in occupation is uncontested and its occupation is “direct”.
5. The HEA was established by the Higher Education Act, 1971 and consequently is a creature of statute.
6. The general functions of the HEA are set out in Section 3 of the 1971 Act, and are stated as follows:
  - a) *Furthering the development of higher education;*
  - b) *Assisting in the co-ordination of State investment in higher education and preparing proposals for such investments;*
  - c) *Promoting an appreciation of the value of higher education and research;*
  - d) *Promoting the attainment of equality of opportunity in higher education;*
  - e) *Promoting the democratisation of the structure of higher education.*

Thus, the functions of the HEA are intimately associated with the functions of Central Government and responsibility to deliver on these functions is imposed on the HEA as a matter of Law.

7. The national or State character of the HEA is also reflected in Section 4 of the 1971 Act, which requires that the HEA in performing its functions “*shall bear constantly in mind the national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of those aims*”
8. There is wide evidence of Government/Ministerial control. e.g. The composition of the HEA, the appointment and removal of staff, terms and conditions of employment are subject to Ministerial approval.
9. Funding and governance of the HEA are Government-controlled.
10. The context of the HEA and its integration with Central Government is strikingly similar to the HSE’s role in the National “tapestry”.
11. The policy context and objectives of the HEA, and its interface with Central Government, articulated so impressively and so robustly in its Strategic Plan 2008 – 2010, is a stern reminder that the HEA is determined to enhance, if anything, rather than diminish its role in higher education going forward to 2010 and beyond.
12. The Tribunal is satisfied that the benchmark guidance and binding authority in this Appeal rests with the High Court judgment delivered by Mr. Justice John McMenamin on the 13<sup>th</sup> June, 2008 in the matter of the **HSE v Commissioner of Valuation**, following a Case

Stated by the Valuation Tribunal on behalf of the respondent. The learned Judge held that premises directly occupied by the HSE in parallel circumstances to the subject HEA case were occupied by “the State” and were not merely an “office of State” and were thus exempt from rates under Section 15(3) of the 2001 Act.

**Determination**

The Higher Education Authority (HEA) is “the State” within the meaning of Section 15 (3) of the Valuation Act, 2001. That being so, the property directly occupied by the HEA at Brooklawn House, Shelbourne Road, Dublin 4 is not rateable.

And the Tribunal so determines.