

Appeal No. VA89/0/103

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

Lough Corrib Angling Federation

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Trout Hatchery and Land Co. Galway

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF NOVEMBER, 1989

By notice of appeal received on the 14th August, 1989, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £8.50 (Buildings £8, Land 50p) on the above described hereditament. The grounds of appeal are as follows:

"The building is only in use for five months each year as an incubation centre for trout.

The trout fry are then placed in nursery streams around the Corrib Lake to supplement the existing stocks of trout in the lake. All the monitoring, care and distribution of the fry is

carried out by club members on a voluntary basis. There is no financial reward for any of the participants.

We believe that because of the tremendous input made by club members for the good of fishing and the benefits to be derived by local and tourist anglers without restrictions, it seems unfair that we should be penalised by the imposition of rates. We have to pay for electric current and maintain the building and provide water supply.

All this work is carried out for the common good and helps to improve local amenities.

The property is held on trust by the Angling Clubs."

DESCRIPTION

The subject property is comprised of a hatchery building with an external concrete holding tank standing on just under two acres of land. The hatchery is of rubble masonry construction under a pitched corrugated iron roof with a gross external floor area of approximately 96 m² (1,033 sq ft). The building houses concrete holding tanks through which water continuously flows and is used as an incubation centre while the ova are being hatched. The building is in moderate structural condition though the roof will need replacing in the near future. The property is held freehold.

The property is situated on the outskirts of Oughterard on the main Clifden Road. The Owenriff River forms the northern boundary and access from the main road is gained via a footbridge over the river.

In a written submission to the Tribunal received on the 31st October, 1989 Mr. Frank Moran, Hon. Secretary Lough Corrib Angling Federation outlined in more detail the grounds of appeal as follows:

- (a) The unique nature of the property and its use should exempt it from rates.
- (b) The operation is non commercial and could never be profit making because the trout fry are unsaleable by law and must be returned to the water from whence the brood stock come.
- (c) The building was designed for this sole purpose and is not useful for anything else and is only accessible by a foot- bridge.
- (d) Funding of the operation depends on the voluntary contribution of club anglers in the area.
- (e) The benefits derived from operating this hatchery are enormous because it guarantees a stock of fish in Lough Corrib which is a major attraction for tourism and local community interest without any financial costs.

In a written submission received on the 27th October, 1989, Mr. John Colfer, A.R.I.C.S. B.Sc. (Surveying) Dip. Environment Economics, a Valuer with ten years experience, eight of which are in the Valuation Office said that the points of appeal are not disputed by the Commissioner. He said that while it is the Commissioner's contention, however, that the Federation's activities are totally voluntary and non-profit making, these are insufficient grounds to warrant exemption under current legislation.

Mr. Colfer outlined the valuation history of the subject property as follows:

The property was first described as a hatchery under the 1964 Revision and the buildings were valued at £8.00. In 1988 the property was listed for revision by the local authority

at the request of the Federation who claimed exemption. The Commissioner deemed the property rateable and made no changes at either the Revision or First Appeal stages.

Mr. Colfer said that in his opinion the net annual value of the property is not less than £1,500 per annum which devalues as follows:

	£
Hatchery building	1,033 sq ft @ £1.25 p.s.f. = 1,291
External holding tank enhancement value	<u>250</u>
	£1,541
	say £1,500

R.V. = N.A.V. x 0.5%
 = £1,500 x 0.5%
 = £7.50 Say £8

Devaluation of R.V.

	£
Hatchery building	96 m2 @ £0.07 = 6.72
Holding Tank	<u>1.50</u>
	£8.22 Say £8.00

Mr. Colfer offered the following two comparisons.

- 1) R.D. Clifden Townland: 1c Cushatrough
 Occupier: Boetmor Seafood Ltd.
 Description: Fish Hatchery and land
 Valuation: £50 1988 1st Appeals

Basis of Valuation:

Buildings 8,058 sq ft @ £1 p.s.f. = 8,058

Tanks 1,000

£9,058

Say £10,000

R.V. = £10,000 x 0.5%

= £50

Devaluation of R.V.:

Buildings: 475 m2 @ .5p = 23.75

274 m2 @ .7p = 19.18

Tanks 5.90

£48.83 Say £50

- 2) R.D. Thomastown Townland: On 15A Jerpointchurch
 Occupier: Patk Kirwan
 Description: Hatchery and fish farm
 Valuation: Buildings £10 Absolute: £15 1988 1st Appeals

Basis of Valuation:

Buildings: 1,819 sq ft @ £1 p.s.f. = £1,819

Say £1,800

R.V. = N.A.V. x 0.5%

= 1,800 x 0.5%

= £9 Say £10

Absolute: Tanks and channels: R.V. £15

ORAL HEARING

The oral hearing took place in Galway on the 2nd November, 1989. Mr Cyril Dooley, LLB BL, Mr. Frank Moran and Rev. Fr. Murphy appeared on behalf of the appellant and Mr. John Colfer appeared on behalf of the respondent.

The appellant witnesses gave evidence in terms of the written submission made and emphasised the entirely voluntary and non- profit making nature of the undertaking. They indicated that the appellant is obliged to return all the fry from the hatchery to its natural habitat, Lough Corrib. The entire operation is in the nature of a protection incubator to reduce what would otherwise be the very high (in excess of 90%) mortality rate if left to the mercy of the natural hazards in the lake.

Mr. Dooley relied upon Section 63 of the Poor Relief (Ireland) Act 1838 which we will deal with hereunder. Mr. Dooley also made reference to a note which he had taken from the headnote of the case of Kerry County Council V O'Sullivan and Hickie [1927] IR P.26.

Mr. Colfer's evidence was entirely on the lines of his written submission. He referred to his comparisons and while accepting that the two comparisons given were commercial enterprises, he emphasised that the subject premises must be looked upon as having a potential commercial use, and, therefore value.

Section 63 above referred to provides that:

"Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use."

The appellants submitted that two matters in this section were of relevance to the appeal, viz: that the premises were used for educational purposes and that they were used for public purposes.

In relation to the former, while there was evidence that local schools did send students to study the hatchery, the section clearly states that the premises must be used "exclusively for the education of the poor". The Tribunal is in no doubt that these premises could not be so described.

The Tribunal has dealt with the question of "public purposes" and has considered the authorities thereon in a number of previous appeals. In particular, in the appeal of St. Macartan's Diocesan Trust (Appeal 88/100), it was held that property is "used for public purposes" where and only where:-

- (i) It belongs to the government; or
- (ii) Each member (emphasis added) of the public has an interest in the property.

The Tribunal, having considered all of the foregoing is satisfied that the hereditament is not legally entitled to exemption from rates.

On the question of quantum, the subject premises is to be distinguished from the comparisons in that, as agreed by both parties, the subject premises is a non-profit making undertaking, with doubtful profit-making potential, and the comparisons are both commercial undertakings.

Taking these factors into consideration and bearing in mind the essentially voluntary nature of the undertaking, the Tribunal is satisfied that the rateable valuation of the subject hereditament should be reduced to £4 which includes £3.50 for buildings and £0.50p for land.