

Appeal No. VA16/1/015

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

Sharon Smyth

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In Relation to the Legal Issue in Respect of:

Property No. 5001484, Creche at 108 Esker Manor, Newlands Road, Lucan, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7th DAY OF JULY, 2017**

BEFORE:

Majella Twomey - BL

Deputy Chairperson

Gráinne Duggan - BL

Member

Donal Madigan - MRICS, MSCSI

Member

By Notice of Appeal received on the 13th day of January, 2016 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €20,100 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"Under the terms of the ECCE Scheme I should be exempt for rates as I provide an educational service (sessional service not creche) and operate under the Dept. of Education. I was rate exempt before and because I moved premises they are now looking to rate the same service they deemed exempt before."

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 5th day of July, 2017 adduced before us by Mr. Eamonn Halpin on behalf of the Appellant, who contended that the property be exempted, and Mr. Viorel Gogu on behalf of the Respondent to the appeal, together with Mr. David Dodd BL and Ms. Joan Murphy, Chief State Solicitor's Office. Ms. Sharon Smyth Appellant was also present.

DETERMINES

That the subject property be exempted.

The reasoning being

Evidence on behalf of the Appellant:

1. Mr. Halpin, on the instruction of the Appellant, gave evidence that the service provided by the Appellant is a Montessori, which is an educational facility. He stated that while the building was originally rated as a creche that it is, factually, no longer a creche as the sleeping rooms have been removed. Mr. Halpin gave evidence that the Appellant operates under the ECCE scheme and that when she operated the same business from another premises, that premises was deemed to be exempted from rates. Mr. Halpin gave evidence that there was no difference between the Appellant's previous service and the service which she now operates, apart from the fact that she operates from a different premises.
2. Mr. Halpin stated that the majority of the Appellant's business income comes from the ECCE scheme and this is used to defray expenses. He stated that 67% of the Appellant's business expenses were defrayed by monies received from the ECCE scheme, in 2013. Mr. Halpin asserted that, therefore, the expenses of the business were paid 'wholly or mainly' by the State.
3. Mr. Halpin gave evidence that all of the Appellant's services, including summer camps, are educational in nature. He stated that the business is effectively administered and controlled by the State.
4. Mr. Halpin also stated that there will always be some children who fall outside of the ECCE scheme as they may not be 3 years old at the beginning of the semester but they must attend and be paid for, in order to secure a place when they do turn 3.
5. On cross examination, Mr. Halpin accepted that, in or around €74,000 of the Appellant's income came from sources outside of the ECCE scheme.

Evidence of behalf of the Valuation Office:

6. Mr. Gogu appeared for the Valuation Office and he said that the property had been listed as a creche originally but that it is now listed as a Montessori. Mr. Gogu did not inspect the property originally and he could not explain why it is now listed as a Montessori.

7. The Tribunal asked why the Appellant's facility was exempted from rates when she was in the old property and not in the new one and Mr. Dodd BL indicated that he did not know.

Legal submissions:

8. Mr. Dodd submitted that the onus is on the Appellant to prove that the property is exempted. He said that if there is any ambiguity that the Tribunal must find against the rate payer. He submitted that the Valuation Act was enacted in 2001, before any ECCE scheme. He stated that some Montessori schools are exempt and some are not.
9. Mr. Dodd submitted that there has been an amendment in the 2015 Act in relation to cases such as these but that this case is one from 2013. He said that going forward, no private creches will be exempted. Mr. Dodd said that the Appellant has a business and should pay rates like many other small business entities.
10. Mr. Dodd submitted that the onus is on Mr. Halpin to show that the expenses incurred are defrayed wholly or mainly by the State.
11. It was submitted that 20% of the children attending the facility in 2013, fell outside of the ECCE scheme.
12. It was submitted that, in or around, €74,000 of the income of the facility fell outside of the ECCE scheme.
13. Finally, it was submitted that summer camps are not educational in nature.

Findings:

14. Paragraph 10 of Schedule 4 of The Valuation Act 2001 states that :-

‘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 monies 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).

15. The question for the Tribunal is whether the Appellant meets the test as set out in paragraph 10 of Schedule 4?
16. Based on the evidence before the Tribunal, it is accepted that the building is occupied by an educational institution and that it is used exclusively for the provision of educational services. Mr. Halpin gave uncontradicted evidence to this effect on the instruction of the Appellant. Evidence was given that the service provided by the Appellant is not a child minding facility, rather an educational Montessori school. Furthermore, uncontradicted evidence was given on behalf of the Appellant that the summer camps which are provided are educational in nature. No clear evidence to the contrary was submitted by the Respondent.
17. In terms of the conditions set down in paragraph 10(a) and (b), the Tribunal notes that paragraph 10(a) is broken into two parts and both parts do not have to be satisfied. Mr Halpin gave evidence that the Appellant did not fall within paragraph 10(a)(i) as the facility does make a profit. However, it was submitted that the Appellant fell squarely within paragraph 10(a)(ii) as the expenses incurred are defrayed wholly or mainly out of moneys provided by the Exchequer.
18. The uncontradicted evidence before the Tribunal was that 67% of the expenses of the educational facility are defrayed wholly or mainly by the Exchequer. The Tribunal refers to the High Court case of *Glendale Nursing Home v Commissioner of Valuation [2012] IEHC 254*, which states that *'it seems to me that if there is evidence to establish that more than fifty percent of the expenses of a body are defrayed by a particular individual or from a particular source, it is proper to say that those expenses were mainly so defrayed.'* Taking this dicta into account, the Tribunal finds that the expenses of the educational facility in question are mainly defrayed by the Exchequer.
19. In addition to satisfying the requirements of paragraph 10(a) (i) or (ii), paragraph 10(b) must be satisfied. Paragraph 10(b) requires the Appellant to make the educational services concerned available to the general public (whether with or without a charge being made therefore). The Tribunal finds that the Appellant also fulfils this requirement.
20. Taking all of the evidence before the Tribunal into account, we unanimously find that the Appellant's case falls within the exemption set out in Schedule 4, paragraph 10.

And the Tribunal so determines.