

Appeal No. VA89/0/112 - 127

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

**Plassey Trust Company Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Fifteen student's houses and one warden residence at Lot Nos. 11N/1 to 11N/16, Townland of Newcastle, Electoral division of Ballysimon, Co. Limerick  
Exemption - Public purposes

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Paul Butler**

**Barrister**

**Mary Devins**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF JANUARY, 1990**

By notice of appeal dated 2nd August, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £25 on each of the students houses and £22 on the warden's residence, described above.

By letter dated 3rd January, 1990 from Lisney and Son the appellants stated that they had reached agreement with the Commissioner of Valuation on a reduction of £5 on the rateable valuation of the students houses and of £4 on the warden's residence reducing the respective valuations to £20 and £18 and that the issue outstanding was the rateability of the properties in question.

The ground of appeal in respect of each case is:-

The property in question is part of and analogous to the N.I.H.E. Complex (now University of Limerick) and is therefore totally exempt from rates.

### **DESCRIPTION OF PROPERTIES**

The properties consist of 15 terraced two-storey houses built in 1988 of concrete block walls and roofed with concrete tiles. Each house has accommodation for eight students with one common kitchen/living room. Each student has his/her own bedroom with facilities for studying and within each there is a facility for linking a computer with the University computer system providing access to many of the University's data-bases. Each house is fully furnished, complete with television, refrigerator, cooker, and so forth. There is a charge of £300 which includes heating, lighting and cleaning per student per term. All main services are connected to the houses.

### **LOCATION**

The hereditaments in question are located on a site opposite the University of Limerick in a residential area within three miles of Limerick city centre.

A statement was submitted on 4th January, 1990 by Mr. Patrick Whelan, B.E. on behalf of the respondent. Mr. Whelan is a staff valuer with 30 years experience in the Valuation Office.

Mr. Whelan outlined the valuation history of the hereditaments as follows:

The houses were first valued in 1988 revision at r.v. £25.00 each. The appellant was aggrieved at this rateable valuation and appealed to the Commissioner of Valuation. Mr. Whelan was deputed to inspect and report. Having considered his report the Commissioner made no change.

After negotiations with Mr. Ray Ward consultant valuer of Lisney and Son on 20/12/89 agreement on quantum was reached and the rateable value in each case was reduced to £20.00 by agreement.

In the case of the warden's residence the rateable valuation was reduced to £18 by agreement on the 20th December, 1989.

By letter dated 4th January, 1990 a submission by Mr. R.N. Cooke S.C. was forwarded to the Tribunal. In this Mr. Cooke stated that Plassey Trust Company Limited was incorporated on the 27th March, 1987 as a company limited by guarantee and not having a share capital.

The purposes for which the company was established are set forth in the memorandum of association of the company and the company has been accorded charitable status for the purposes of sections 333 and 334 of the Income Tax Act, 1967, and it is submitted that in the judgment of the Revenue Commissioners the objects of the company as set out in the memorandum of association are charitable and that the memorandum and articles of association of the company exclude the possibility that any income or profits of the company may be applied to purposes other than those of the charity or so that any benefit may accrue to any person other than genuine objects of the charity.

The company is registered as full owner of the land comprised in Folio 23204F of the register of freeholders of the County of Limerick.

Since the incorporation of the company the institution then known as the National Institute for Higher Education Limerick, has become and is now known as the University of Limerick and references in the memorandum and articles of association of the company to the National

Institute of Higher Education, Limerick, are to be read as references to the University of Limerick.

Clause 2(b)(1) expressly provides that the company may establish, carry on, conduct and maintain (inter alia) residential facilities whether for male or for female students or for both in the houses, buildings and premises or any of them then, or at any time thereafter, acquired by the company.

In pursuance of the objects for which the company was established the company has caused to be built the buildings the subject matter of these appeals, that is to say, fifteen residences for students (Appeal No. VA/112 to VA/126) and a warden's residence (Appeal No. VA/89/127) and has placed the said hereditaments at the disposal of the University of Limerick as residences for students of the University and as a residence for the resident warden to oversee the residences and the occupants for the time being.

The company was formed by and is constituted of persons associated with the University of Limerick.

Control of the residences, the allotment of the accommodation and the accommodation therein, is exercised by the authorities of the university through the company and through Plassey Campus Centre Limited, associate company of Plassey Trust Limited, which was incorporated to carry out and carries out the day-to-day management of the company's estates, which in its present partially developed condition is known as Plassey Village.

A copy of "Plassey Village-Students' Handbook" is annexed hereto as Appendix A to this judgment. That document describes in detail under the headings -

- (1) General Information;
- (2) Application, registration and charges;
- (3) Village Facilities; and

(4) Rules & Regulations

what the Village provides in the way of accommodation and facilities, the charges made and the provisions for control and supervision.

The charges made are so calculated that so far as possible and taking one year with another the development shall not show a surplus or make a profit but shall nevertheless be self- supporting so that a casual surplus or profit shall go in relief of existing or anticipated liabilities.

Mr Cooke anticipated that it would be conceded by the Commissioner of Valuation that the purposes for which the National Institute for Higher Education were heretofore used were public purposes and that the University of Limerick is likewise established for public purposes and is therefore to be distinguished in the Valuation Lists pursuant to Section 2 of the Valuation (Ireland) Amendment Act, 1854 as being of a public nature for use for charitable purposes or as being buildings, lands or hereditaments dedicated to or used for public purposes within the meaning of the second proviso to Section 63 of the Poor Law Relief (Ireland) Act, 1838.

Likewise it was submitted that the land and buildings which are the subject matter of the appeals are land and buildings dedicated to public purposes, and since no profit is derived therefrom, to be distinguished in the Valuation lists pursuant to the said Act of 1854 and the said Act of 1838.

**ORAL HEARING**

The oral hearing took place at Ennis, Co Clare, on the 9th January, 1990. Mr. Richard N. Cooke S.C. and Mr. Brian Lenihan, Barrister, represented the appellants instructed by Mr. Gordon Holmes of Holmes O'Malley & Sexton, Solicitors, 5 Percy Square, Limerick. Mr. Aindrias O Caoimh represented the respondent instructed by the Chief State Solicitor.

Mr. Cooke said that he sought exemption from rating of the properties in question. It is believed that the County Council regard these properties as domestic and that they have been derated under the Local Government (Financial Provisions) Act, 1978. In any event no demand for rates has been received. The University itself is exempt as being a Government institution. The question for the Tribunal is whether the student accommodation buildings are entitled to the same exemption. He said that it was important for the University to know the status of these buildings as this is the first stage of a development which will become a university village.

He said that the land is vested in Plassey Trust Company Limited. Plassey Campus Centre Ltd. manages the premises and a large part of the administration is carried out by the University itself. The University of Limerick Act, 1989 established the university with effect from the 26th June, 1989. It succeeded the National Institute for Higher Education, Limerick. He drew attention to section 3 of the University of Limerick Act, 1989 which amended section 4 of the National Institute for Higher Education, Limerick Act 1980. Paragraph (iv) of subsection (a) of section 4 of that Act now enables the University to:

"enter into arrangements with other relevant institutions inside and outside the State for the purposes of offering joint courses and of conducting research and development work and to enter into arrangements, including participation in limited liability companies, for the purpose of exploiting the results of research and development work undertaken by the University either separately or jointly".

He said that land became available opposite the entrance to the University, or the N.I.H.E. which it was at that time. N.I.H.E. set up a limited company to purchase, own and hold the land. Plassey Campus Centre Ltd. was incorporated in 1985. The memorandum of association of Plassey Campus Centre Ltd and Plassey Trust Company Ltd (incorporated in 1987) are identical. They differ in their articles of association. Plassey Campus Centre Ltd. was formed for the purpose of acquiring the land, building the houses and making lettings. It was registered for VAT which meant it would have to add on 25% to the rent paid by the students. By setting up

the new company, doing the building themselves and by paying VAT on the cost of building, it meant that they did not have to charge VAT on short term lettings. Thus by using Plassey Trust Ltd. the burden of rent on the students was significantly reduced. This is the purpose of the trust. Only persons nominated by Plassey Campus Centre can be members of Plassey Trust. Plassey Campus Centre is a direct emanation from the University of Limerick. The land in question was bought by Plassey Trust with monies raised by loans from the bank. In reality he said that the University provided and ran this accommodation for students.

Mr. John O'Connor said that he was the Financial Director of the University of Limerick, a position he had held with the N.I.H.E. since 1972. He said that the first development plan of the university in 1972 had provision for student residences but, at that stage, they did not have the land. The plan was to put them on the campus. Around 1985 land became available for development of residences. He said the function of Plassey Campus Centre Ltd. is to support the research teaching of the university by the provision of social communal residential infrastructures in the university. The secretary of the company is Mr. Brian Hand who is also buildings manager of the university and he is responsible for the letting of the properties such as shops on the campus. Plassey Campus Centre Ltd. collect the revenue from these and use it to pay off borrowings and to pay some expenses.

He said that land became available in 1986. It was a very prime piece of land so they had to move fast to acquire it. Plassey Trust Company Ltd. was set up to acquire the land. The land was acquired within two weeks.

The land was purchased partly by the University's endowments which were passed to Plassey Campus Centre Ltd. and partly from money borrowed from the bank. The title to the land is registered in the name of Plassey Trust Company Ltd. who built the residences again with

borrowed money and some private sponsorship. The land cost £200,000 and the building cost about £1.2 million. Altogether about £1.5 million was spent on Plassey village.

Mr. O'Connor said that students accommodated pay £900 for a full year, in addition to their tuition fees to the University. This is then handed over to Plassey Trust Company Ltd. and it is used towards reducing the interest on the borrowed money.

He said that for the first year of its operation to September, 1988, the income and expenditure account showed a deficit of £14,000 but that this year it is expected that there will be a surplus of £24,000 which would go towards paying off the capital borrowed.

He said that everything is provided for the students, apart from bed linen. Each student room is connected to the University computer which makes available to the student all the library facilities of the University and other source information to which the university grid is connected. The students may rent a limited number of personal computers from the university at a subsidised rent or may provide their own. At present about 40 of the 120 students occupying the subject properties have personal computers, all of which are provided by the University.

Mr. O'Connor provided a description of the warden's post and said that in addition the warden is also responsible for university discipline within the village. He said the directors of Plassey Campus Centre Ltd. were all university people as well as the President of the Students Union. The very same people were directors of Plassey Trust Ltd. The maintenance team of the university was responsible for maintenance of the student accommodation. The private contractor engaged by the university to look after security also looks after security of the village. Accommodation is allotted by the university on a first come first served basis. He said that of a



capitation fee of £35, paid by each of the universities 3,000 students, £5 goes to Plassey Campus Centre to pay for borrowings.

Mr. Brian Hand, Building Manager of the University and Secretary of Campus Centre Ltd. said that it would have been impossible to provide these residences from a sanitary and drainage viewpoint if it were not for the availability of the campus; in other words that all should be regarded as a unit.

Mr Aindrias O'Caomh submitted that the case being made by the appellants was that the hereditaments in question are part of the university. He said that the student accommodation may be treated as part of the university insofar as both have an open gate policy and in the operation of the word "campus" but that the ownership and occupation is by a different entity, even though there may have been an association between the separate entities at law. He referred to the Pembroke Schools case [1904] 2 I.R. 429 and to the University College Cork case [1911] 2 I.R. 593. He said that the hereditaments in question differ from these cases in that (a) the monies supplied to build these residences were not public monies - they were endowments to the college from private funds, (b) they are maintained from the universities income in general, (c) the staff, namely the warden, is not paid out of public monies - he is paid out of the income of the company, (d) the accounts of the companies are not subject to the control of the Comptroller and Auditor General, (e) the income from the residences do not have to be devoted to the university, (f) the company is not established under statute, (g) the purpose of the residence is not one of great public utility as opposed to that of the university and (h) there is no public representation in the government of the companies. He said that no person has a legal right to become a resident in any of these residences. He said that while it may be prevalent thinking that it is desirable to have students living on a campus it is not an essential ingredient of a university. He referred to the Clonmel Hospital case [1958] I.R. 381 wherein it was held that the residence used by nursing staff was to be treated as part of the hospital. The nursing staff had to

be available, on call, near the hospital. The nursing residence was essential to the hospital. Here it is not an essential ingredient of the provision of education in the university that the students be in residence. He referred also to the Central Applications Office case - appeal No. 88/3 before the Tribunal. That again was a facility whereby a company was established by the universities as a joint venture but where the Tribunal refused exemption. He said that the residences in question are not in the occupation of the State; the Minister for Education has no control over them; it cannot be said that each member of the public has an interest in the property which is only available to a small number of people. He concluded by saying that the application for exemption should be refused.

### **HISTORY**

The Tribunal was furnished with some material from which it can set forth the background history to the university.

In the mid 19th century Limerick failed in its efforts to have a university brought to the city, even though the then Mayor of Limerick, Pierce Shannon, led a delegation to Westminster in 1845 to support the request. Limerick, however, never lost its determination to be a university city.

The NIHE, Limerick, was established in 1972 on a 160 acre campus on the banks of the River Shannon and the campus now lies at the heart of the 500 acre Plassey Technological Park and accommodates some 5,000 students. Over 50 different organisations have located on the park and interact in a variety of ways with the teaching, research and cultural activities of the university.

In 1975 NIHE was established as a recognised College of the National University of Ireland. In 1981 legislation was enacted creating NIHE as a statutory body of the state, functioning under a governing body appointed by the Government. In 1989 an international commission recommended that NIHE be established as an independent university.

On the 22 June, 1989 the University of Limerick, Act, 1989 came into effect. The date marked the establishment of the first Universities (the other being the City of Dublin University) in the history of the State.

The development of the University has been financed by both the World Bank and the European Investment Bank.

The pursuit of excellence in teaching and research to the highest level has been the prime mission of the university from the outset. Implementation of this mission has been constantly conditioned by the criterion of relevance to the world of work, and as new programmes of teaching and research are introduced particular attention is given to those areas judged to be of strategic benefit to the economic and social development of Ireland.

The University of Limerick like other new European universities has sought from the outset to be relevant to the times and to the nation's needs, and to educate its students to the highest levels in the application as well as the acquisition of knowledge. The original Planning Board believed that professional competence is best fostered by a coupling of teaching and research and attention to real-world problems.

Today, education and related research continue to be the university's central purpose, with relevance to the practical world a guiding principle.

In pursuing its mission it is recognised that an appropriate balance between the sciences and the humanities is necessary: students avail of the modular-credit system to undertake a portion of their studies outside their major field.

The University offers a range of undergraduate and postgraduate courses to doctorate level in its three constituent Colleges: the College of Business, the College of Engineering and Science and the College of Humanities.

An increasing number of overseas students participate in study abroad courses and an international student exchanges such as the EC's ERASMUS programme.

The semi-autonomous Plassey Management and Technology Centre was established by the university to meet a wide variety of continuing education and short course needs. It offers programmes both on and off campus including those of the British Open University.

The academic affairs of each College are controlled by a College Faculty Board under the chairmanship of the College Dean. The Faculty Boards are responsible to the Academic Council which controls academic policy and standards. Overall authority is vested by the State in a 25 member Governing Body, appointed by the Government. In common with the other Irish universities the University of Limerick is a designated body under the Higher Education Authority Act, 1971.

Plassey Technological Park consists of some 500 acres of parkland located on the banks of the river Shannon. The university, in partnership with Shannon Development and other Park organisations are collaborating to ensure that the wide range of activities -educational, research, high technology manufacturing industry, service industry, social, residential and recreational are all combined to create an attractive living and working environment.

## **DETERMINATION**

The matter that the Tribunal has to resolve is an academic one in more senses than one because it is agreed that the buildings are derated under the Local Government (Financial Provisions) Act, 1978. Nonetheless, the parties seek a decision as to whether the buildings in question are entitled to the same exemption as is accorded to the buildings on the main campus. It was accepted by the parties that there should be no distinction made between the students' residences and the warden's residence.

It is indisputable that the main buildings are entitled to exemption as being dedicated to or used for public purposes and the situation is, of course, governed by among other cases the University College Cork case [1911] 2 I.R. 593.

It was urged on behalf of the respondent that while residences on or adjacent to a campus were desirable they were not essential for the functioning of a university.

It is true that university residences are not essential to a university in the way that lecture theatres, libraries and laboratories are essential to its proper functioning.

Cardinal Newman said that if he had to choose between a so-called university which dispenses with residences and tutorial superintendence, and gave its degree to any person who passed an examination in a wide range of subjects, and a university which had no professors or examinations at all, but merely brought a number of young men together for three or four years, and then sent them away, as the university of Oxford is said to have done some sixty years before his time, if he were asked which of these two methods was the better discipline of the intellect and he made it clear that he was not saying which was morally the better "for it is plain that compulsory study must be a good and idleness an intolerable mischief:" but if he had to determine which of the two courses was the more successful in training, moulding, enlarging the

mind, which sent out men the more fitted for their secular duties, which produced better public men, men of the world, men whose names would descend to posterity, he would have no hesitation in giving the preference to that university which did nothing, over that which exacted of its members an acquaintance with every science under the sun. Newman: On The Scope and Nature of University Education; Everyman's Library; P.122

The Tribunal does not have to go that far with Cardinal Newman and, in any event, it is clear that his statement would have to be modified to take account of the technological emphasis on which this University places stress and, of course, university education is as relevant to the needs and ambitions of women as to men nowadays, needless to say.

It gleans this much, however, from the history of university education that certainly if one were to trace the tradition of university education back to the old monastic sites at Clonmacnoise and Glendalough the idea of a residence on or near the actual theatre of learning was always regarded as, to say the least, desirable if not essential. That belief was always held as an ideal.

The Tribunal, therefore, has no hesitation in holding that the residences are an integral part of the university. In this regard, the Tribunal places no great importance on the fact that there are computer link-ups and so forth; this is corroborative, of course, of the fact that the residences are an integral part of the campus but even if there were no such link-ups, nonetheless, the Tribunal would come to the same conclusion. The only question remaining, therefore, is the question whether since the university used Plassey Trust Company Ltd., as its vehicle to acquire the lands and construct the buildings and so forth -whether that in any way creates a clog so as to defeat what would otherwise be clearly a case for exemption.

Nowadays, the courts lift the veil increasingly to discover what is the reality behind any corporate identity. The Tribunal has been furnished with an explanation which makes sense to it

and the fact that money is forthcoming, not alone from State funds but by means of endowment is something that, far from defeating its entitlement to exemption, is something that should be encouraged. Every university seeking to expand its facilities accepts sponsorship or endowments from any source which offers them.

This University is not remiss in this regard, either; that, as has been said, is a matter that should be encouraged rather than to be used to defeat what are undoubtedly public purposes.

Incidentally, the Tribunal was informed and accepts that the accounts of both companies are subject to examination by the Comptroller and Auditor General.

The Tribunal has no hesitation in reaching the conclusion that the hereditaments described above are entitled to the same exemption as the buildings on the main campus.

The Tribunal will hear the parties on whether any particular form of order should be made as part of its determination.

### **ADDENDUM**

The Tribunal considered an application for costs made on behalf of the appellants and determined that they are entitled to their costs but on the basis that the several appeals be treated as one case; costs to be confined to one day's hearing and not to include witnesses' expenses or anything touching quantum.

The above will also be included as No.3 on the Order, which will also include;

- "(1) that the said buildings, lands and hereditaments are dedicated to or used for public purposes and that no private profit or use is derived therefrom:

- (2) that the appeal is upheld and that the said buildings, lands and hereditaments be distinguished by the Commissioner of Valuation in making out the lists or tables of Valuation pursuant to Section 2 of the Valuation (Ireland) Amendment Act, 1854."