

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977
RECREATIONAL CHARITIES ACT (NORTHERN IRELAND) 1958

IN THE MATTER OF AN APPEAL

VR/2/2006

BETWEEN

ODYSSEY TRUST COMPANY LIMITED - APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Odyssey Arena, Queens Quay, Belfast

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

- 1) The origin of the Odyssey Trust Company Limited ('the Appellant') lay in the proposal to celebrate the millennium in Northern Ireland by creating a landmark project to be known as "Odyssey".
- 2) The purpose of the Appellant was to promote the development of the Odyssey complex including, either directly or by funding, a science centre, and an arena for public performance and promotion of other charitable purposes.
- 3) On 30th March 2000 the Appellant revised its Memorandum and Articles of Association and since then has been treated as a charity by HMRC for tax purposes.
- 4) This is an appeal against the refusal of the Commissioner of Valuation to distinguish the Arena as a hereditament entitled to charitable exemption. It relates to the Arena only. The relevant Certificate of NAV is dated 16th December 2002.
- 5) The complex included:
 - (i) the Arena – the subject hereditament;
 - (ii) 'W5' - a hands-on science interactive discovery centre;
 - (iii) an IMAX cinema;
 - (iv) the Pavilion which includes a 3,200 seat cinema multiplex, bars restaurants and Night Clubs and family entertainment including ten-pin bowling; and

(v) car parks.

- 6) The Pavilion and the IMAX cinema were funded by the private sector - by Sheridan Millennium Ltd. The Arena and W5 (the Science Centre) were constructed using public money - part funded by the Millennium Commission. Other public body funders included the Department of Culture, Arts & Leisure, Laganside Corporation, and the NI Sports Council Lottery Fund.
- 7) W5 was leased to and occupied by another third party.
- 8) The Arena is a multi-purpose indoor venue designed for concerts, shows, sports events, exhibitions and conferences and is capable of seating 8,500 persons in a banked seating bowl and on a level floor for end-stage concerts. There are also hospitality suites. Outside the auditorium the accommodation includes fixed units for food and beverage and merchandise concessionaires and a bar.

Procedural matters

- 9) Mark Orr QC instructed by Johns Elliot appeared for the Appellant. Stephen Shaw QC instructed by the Departmental Solicitor's Office appeared for the Commissioner of Valuation.
- 10) The Tribunal received
 - a written statement from Mr Steven Cockcroft, solicitor of Johns Elliot;
 - written and oral evidence from Mr Martin Fleetwood - a Chartered accountant employed by Price Waterhouse Coopers;
 - written and oral evidence from Mr Antony Payne Financial Director and Company Secretary of both Odyssey Trust Co Ltd and Odyssey Management Ltd ('OML');
 - oral evidence at a Hearing on 27th September 2007; and
 - post hearing submissions.

After the Hearing, the Tribunal drew attention to additional matters and asked whether either party wished to address them. Both declined.

The Tribunal has viewed the hereditament.

Position of Parties

- 11) The Tribunal raised the question of the identity of the rateable occupier or occupiers. The Valuation List showed the occupier to be the Appellant. Mr Shaw QC contended that there were three possible rateable occupiers.

- 12) Mr Orr QC contended that the Appellant was making its premises available for use wholly or mainly for purposes declared to be charitable by the Recreational Charities Act (Northern Ireland) 1958 ('the 1958 Act'). Mr Shaw QC contended that the occupier (whoever that was) fell outside the scope of the 1958 Act and the use of the premises was not 'wholly or mainly' for purposes within the 1958 Act.

Discussion

Inter-company arrangements

- 13) It is common practice for charities to set up a trading subsidiary - a non-charitable trading company owned by the charity to carry on a trade on behalf of the charity. In this case, inter-company arrangements were complex.
- 14) Odyssey Management Limited ('OML') is a Trading Subsidiary of the Appellant. OML operates under a 'management agreement' with the Appellant. This also permits OML to appoint third parties to operate the Arena on terms reasonably acceptable to the Appellant.
- 15) SMG - Sheridan Limited ('SMG') is a third party appointed by OML to operate and manage the Arena for a term of 10 years from 2000. SMG has sole responsibility for the management of all aspects of the Arena, dealing with the day-to-day management, staffing and running of the Arena, including marketing the Arena to promoters, and negotiating contracts with them; maintenance other than capital improvements and structural repairs; employment of staff; engagement of concessionaires or service providers; and financial management.
- 16) There is one bank account ('the Arena Account') in connection with all the business of the arena. By way of a book keeping paper exercise, surpluses/profits are apportioned.
- 17) In regard to hiring out the facilities of the Arena to promoters to stage events, OML acts as an undisclosed agent of the Appellant. In 2006 hire income amounted to £2,066,674 and a net deficit of £362,438. The Appellant indemnifies OML to the extent that Arena hire income may be insufficient to meet the costs of charity activities.
- 18) Other income includes food and beverage commission; merchandise commission and commercial rights. In 2006 this amounted to an income of £1,254,224 and a net surplus of £543,489. In regard to this other income, OML acts as principal, bearing risks and donating profits (as gift aid) to the Appellant.
- 19) SMG is rewarded primarily on a management fee basis. There is a remote possibility that it could share in some Appellant/OML profits.

- 20) Tenure arrangements are similarly complex, involving a sublease by the Appellant of various parts of the Odyssey building, including the Arena, to another subsidiary, Odyssey Property Company, and a licence to the Appellant of the Arena and various other premises.
- 21) The Appellant uses surpluses to maintain the Odyssey buildings, maintain the viability of the Arena by covering any operating deficiencies and subventing W5.

Charitable Relief

- 22) The memorandum of association of the Appellant contains powers that included at 3. (A) -
 - (i) To advance public education and in particular, but without limitation, to the generality of the foregoing to establish and maintain a science centre or museum... ; and
 - (ii) For the benefits of the inhabitants of NI to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare and with the object of improving their conditions of life.

Essentially, the Appellant performs the former by leasing premises to W5 and making donations to it in the event that annual grant aid from the Department of Culture, Arts & Leisure is insufficient to cover its operational costs. It performs the latter by providing and maintaining the Arena as a facility for hire.

- 23) Article 41 of the Rates (NI) Order 1977 ('the 1977 Order') makes provision for a hereditament to be distinguished as exempt from rates.
- 24) By the time of the hearing, the Appellant had elected to rely on Article 41(2)(e) and Article 41(4) of the 1977 Order. Article 41(2)(e) provides for exemption for any hereditament which is used wholly or mainly for purposes which are declared to be charitable by the Recreational Charities Act (Northern Ireland) 1958 ('the 1958 act'). (There is corresponding legislation in England and Wales.)
- 25) Article 41(4) of the 1977 Order includes a provision that any use, by way of letting or otherwise, for profit shall not be treated as a use for the purposes mentioned in Article 41(2), unless it directly facilitates the carrying out of those purposes.
- 26) The 1958 Act provides at Section 1:
 - " (1) Subject to the provisions of this Act, it shall be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

(2) The requirement of sub-section (1) that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—

(a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(b) either—

(i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or

(ii) the facilities are to be available to the members or female members of the public at large.

(3) Subject to the said requirement, sub-section (1) applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.”

27) As it is the use that the occupier makes of the hereditament that matters and as its aims and objects provide the compass for interpretation of the activities on the hereditament, it usually is important to identify the occupier (see Springhill Housing v Commissioner of Valuation [1983] NI 184 CA). Where, as here, there were a number of companies who seemingly have rights of occupation, the task of identifying the company in paramount occupation can be difficult. However, in this case for present purposes, in light of the issues that the Tribunal was asked to determine and the conclusions that it has reached, it need not reach a determination as to the rateable occupier.

28) The Arena is the largest indoor venue in Ireland. The Appellant produced a list of events which were accepted to be typical of the sort of events held at the arena at the valuation date. They ranged from entertainment shows through spectator sports, an exhibition and perhaps an example of the advancement of religion: Disney on Ice, Lionel Richie, Sarah Brightman, Ronan Keating, Les Miserables, James Last, Stereophonics, Jamiroqua, and the Irish Tenors; spectator sports such as Ice Hockey, World Wrestling All Stars, Supercross; World Amateur Boxing Championships; Job Scene exhibition; a NYE Party Young World Concert and Christ for All Nations.

- 29) It is clear that the vast majority of events were events for public entertainment, staged by promoters who hired the facility on commercial terms. Although there might be occasional use of the arena by charities, that did not amount to a significant part of the use of the arena.
- 30) The Tribunal accepts that the provision of a public building for leisure use may be charitable (see Springhill Housing Association v Commissioner of Valuation [1983]).
- 31) The Tribunal concludes that the use made by the occupier was, apart from a few possible exceptions, to provide the facilities of the arena by way of letting or hire to promoters for profit.
- 32) In accordance with Article 41(4)(e) and (2) of the 1977 Order, such use shall not be treated as a use wholly or mainly for purposes which are declared to be charitable by the 1958 Act unless it directly facilitates the carrying out of those purposes.
- 33) The Memorandum would suggest that the persons for whom the facilities were primarily intended were the inhabitants of Northern Ireland. However as a matter of common knowledge, the promoters charge substantially for admission. So, considering not only the wording of the Memorandum but also the actual circumstances and effects (in accordance with the approach in Commissioner of Valuation v Lurgan Borough Council [1968] NI 104 CA) the persons for whom the facilities were primarily intended were those inhabitants of Northern Ireland who would pay a substantial admission charge for each event. (Section 1(2)(a) of the 1958 Act.)
- 34) The Appellant did not seek to rely on an argument that the persons for whom the facilities were primarily intended were persons having need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances. (Section 1(2)(b)(i) of the 1958 Act.)
- 35) That being so, for exemption, the occupier must meet the requirement of Section 1(2)(b)(ii) of the 1958 Act. But it did not do so because the facilities were not available to the public at large: access was limited to those members of the general public who paid an admission charge for each event. Those charges went far beyond some small fee in the interests of regulation and were so substantial that those to whom the facilities were available could not be said to be the public at large. (See St MacNissi's College v Commissioner of Valuation [1957] NI 25 CA; Commissioner of Valuation v Lurgan Borough Council [1968]; and Belfast Y.M.C.A. v Commissioner of Valuation [1969] NI 3 CA.)

36) The “social welfare” requirement of Section 1(1) of the 1958 Act causes difficulties for a number of reasons. As Lord McDermott LCJ said in Commissioner of Valuation v Lurgan Borough Council [1968], “social welfare” is a somewhat vague and uncertain expression. It is not defined in the 1958 Act. When that is coupled with the need for that which is to be regarded as charitable to develop and change as new social needs arise, the issues that arise can be difficult. In General Nursing Council for England and Wales v St Marylebone Borough Council [1958] Ch 421 Lord Evershed MR said:

“In such a case, as Lord Radcliffe observed in a wholly different context, the law cannot be set at rest by any neat combination of words. But, if we can add anything to illustrate the limitation which we think should in this context be put upon social welfare, it would be that the phrase involves at any rate the conception of what used to be called “good works”: the notion of things that, as a matter of social obligation, ought to be done for those in the community whose living conditions in those respects are inadequate. We do not suggest this by way of definition, but only as an indication why ...”

37) In the view of the Tribunal, the provision of facilities for entertainment of spectators, except perhaps in special circumstances, is not something that ought to be done, as a matter of social obligation or ethics. In this case the events put on by the promoters clearly were primarily calculated to entertain or amuse spectators – merely for entertainment’s sake and merely making life more enjoyable. Further, there was no evidence that those patrons, for whom the facilities were intended, were inadequately served for entertainment. The Tribunal concludes that the occupier did not meet the requirement of Section 1(2)(a) of the 1958 Act (see also National Deposit Friendly Society Trustees v Skegness Urban District Council [1958] 2 All ER 601; [1959] AC 293 and *Tudor on Charities* 9th Ed para 2-100 footnote 65).

38) In regard to the use by the promoters, who hired or took a letting of the facilities, they used them for private profit not for the public benefit and not in the interests of social welfare within the meaning of the 1958 Act. Some of the income, from letting to the promoters, in the hands of the Appellant may have facilitated some charitable purpose, e.g. subventing W5, but did not do so sufficiently directly. (See e.g. Oxfam v City of Birmingham District Council [1976] AC 126.) The Tribunal concludes that the Occupier did not meet the requirements of Article 41 (4) of the 1977 Order.

Income and Corporation Taxes Act 1988

39) The Tribunal was informed that charitable status was obtained for the Appellant from HMRC on the basis of HMRC’s examination of the revised objects clause of the company. Mr Orr QC submitted that it is not open to the Tribunal to construe this statute (a revenue statute) in a

manner different to HMRC. The Tribunal agrees with Mr Shaw QC that it is at liberty to form its own assessment on the evidence presented to it.

Conclusions

- 40) There are many activities that are of social value but not recognised as charitable.
- 41) In regard to the 1958 Act, it was not suggested that the occupier met the requirements of Section 1(2)(b)(i). The occupier did not meet the requirements of Section 1(2)(b)(ii) because the facilities were not available to the public at large. The occupier did not meet the requirement of Section 1(2)(a) because its provision of these facilities for entertainment of spectators is not something that ought to be done, as a matter of social obligation or ethics and there was no evidence that those patrons, for whom the facilities were intended, were inadequately served for entertainment. The Tribunal concludes that the use of the hereditament may have been within a wide meaning of the term “social welfare” but the occupier was not providing facilities for purposes declared to be charitable by the 1958 Act.
- 42) In regard to the 1977 Order, the occupier did not meet the requirement of Article 41(4) because the promoters, who hired or took a letting of the facilities, did not use them in the interests of social welfare within the meaning of the 1958 Act and although some of the income, from letting to the promoters, in the hands of the Appellant may have facilitated some charitable purpose, e.g. perhaps subventing W5 would qualify, it did not do so sufficiently directly. The Tribunal concludes that the occupier was not providing facilities for purposes declared to be charitable by the 1958 Act and was not entitled to charitable exemption under the 1977 Act.
- 43) The Appeal is dismissed.
- 44) If necessary, the Tribunal will make directions for the hearing of any application for a determination of the rateable occupier/s.

ORDERS ACCORDINGLY

21st April 2010

Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Mark Orr QC instructed by Johns Elliot appeared for the Appellant.

Stephen Shaw QC instructed by the Departmental Solicitor's Office appeared for the Commissioner of Valuation.