

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL
VR/124/1999
BETWEEN
WAR MEMORIAL HOSTEL COMMITTEE OF THE
PRESBYTERIAN CHURCH IN IRELAND - APPELLANT
AND
THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Re: 49A Derryvolgie Avenue, Belfast

**Lands Tribunal - The Honourable Mr Justice Coghlin and
Mr Michael R Curry FRICS IRRV MCI.Arb Hon.FIAMI**

Belfast - 21st September 2000

Introduction

In 1918, a Committee (“the 1918 Committee”) of the General Assembly of the Presbyterian Church in Ireland determined:

“to provide a Memorial to perpetuate the memory of the deeds and sacrifices of the sons and daughters of the Church in the cause of truth and freedom in the Great European War 1914-1918.”

The 1918 Committee issued a circular inviting subscriptions for that object, proposing that the memorial should take the form of two residential clubs, one for young men and one for young women. In June 1919, the 1918 Committee reported on progress to the General Assembly. The Assembly appointed a new committee (‘the 1919 Committee’) and recommended that members, and directed that Presbyteries co-operate with the 1919 Committee in raising the necessary funds. Premises were acquired and vested in the Trustees under the Irish Presbyterian Church Act 1871.

Later, a Deed of Trust dated 24th June 1930 (“the Trust Deed”) made special provision for the memorial and appointed the trustees of the church as the Trustees. A hostel known as the War Memorial Hostel was subsequently built in Howard Street in Belfast City Centre. In more recent times, for a number of reasons, the Trustees found it impractical to continue their work at that location and so the Trustees sold off the original premises and, beginning about 1994, developed purpose-built new premises known as Derryvolgie Hall, Derryvolgie Avenue, Belfast - (“the Hostel”) - the subject of this appeal.

The Rating Appeal

The Commissioner of Valuation (“COV”) had granted rates exemption to a common room and partial exemption to a residence provided for the Dean.

This appeal arose out of a Decision by him, in 1998, refusing to treat the remainder of the hereditament, which comprised another common room and the three blocks of student accommodation, as exempt. The reason he gave was this:

“To qualify as exempt from rating, premises must be occupied by a Charity, or similar body, and be used for charitable purposes. The subject property is used mainly by students who pay rent - this is not a charitable use.”

On the notice, the Appellant appealed on grounds that, at the relevant time, the hereditament was occupied by a charity and used wholly or mainly for charitable purposes. The reasons given were:

“The hereditament is operated as a hostel for the purpose of advancement of religion. The provision of such accommodation directly facilitates the purpose of the charitable Trust. The Christian ethos pervades the entire hereditament.”

Alva Brangam BL appeared for the Appellant instructed by Cleaver Fulton & Rankin, Solicitors. He called the Dean of Residence, Steve Stockman, an ordained minister, and William Hilton Henry, a Chartered Accountant, Secretary of the Presbyterian Church in Ireland and a member of the General Assembly, to give evidence. Ronnie Weatherup QC appeared for the COV instructed by the Departmental Solicitors.

The Hostel & the Activities there

The Hostel was a complex of linked buildings providing, among other things, self-catering accommodation for some 88 students and young working people, both male and female, and built near Queen’s University, Belfast. It comprised:

- A single storey Dean’s residence with adjoining boiler room and laundry room;
- A three storey building containing three blocks of study bedrooms; and connected to that
- A single storey “Common” room building; and
- A single storey “Activity” room building.

Each of the 3 storey blocks provided three “flats” each containing nine or ten single study bedrooms and a communal kitchen and dining area. Almost all the residents were young people involved in third level education at The Queen’s University of Belfast.

Mr Henry explained that the General Assembly was the “parliament” of the church and outlined the relevant organisational structures. There was a Hostel Management Committee appointed by the General Assembly but there was an informal link between the Committee and the Education Board. The Reverend Stockman was an ordained Minister of the Church and his appointment was made jointly between the University and Education Board and the Board of Social Witness. The former Board dealt with the support and advancement of religion amongst students; the latter Board was engaged in all forms of Christian outreach.

Although the Tribunal was informed that applications were welcome from people of any or no religious persuasion, the clear impression from the evidence was that the Hostel was managed as a community with a strong Presbyterian ethos.

The Dean explained the admission procedure. A significant number of - what the Trust Deed refers to as - “young men and women belonging to the Presbyterian Faith coming to Belfast” now do so for purposes of third level education and many come as undergraduates to the nearby University. In practice it appears that the demand for places in the Hostel far exceeded supply and some selection scheme had to be adopted. He said the policy was to follow the Scheme of Management and Control (see later) and give first preference to Presbyterian students, second preference to students of other Christian denominations and finally admit others of good character. Residents were overseen by the Dean who took a proactive role in relation to their pastoral care. Intended residents were made aware that they must “open themselves to the ministry of the hall” and it appeared that many applied because they wished to be heavily involved in Christian community living. Applicants were questioned about their involvement in religious activities and it was made clear that residents were expected to become involved in the religious activities of the hostel. If, when they became residents, they did not do so, they would not be invited back for a second year.

So, the admission scheme actually adopted by the current administration appeared to be based on an applicant’s willingness to become involved in communal or group religious activities and not, for instance, on an individual applicant’s need for protected accommodation. The application form did not obviously reflect the admission scheme that was set out in the Trust Deed (and to which the Tribunal will return). There may have been practical grounds for that but in the event, it appeared to be that those who were more likely to take a more active role in the communal or group Presbyterian religious life of the Hostel were more likely to be offered a place and certainly only those who actually did so were the only ones likely to be offered a second year.

Although there was a degree of co-operation, over admissions, with the halls of residence of the University, Derryvolgie was distinguished by its religious ethos.

There was worship on Sunday evenings in the Common Room and the Dean encouraged meetings, in the flats, of groups for study, pray and reflection. He described his work as the same as in a parish - to teach, preach, give sacraments and visit. He involved himself greatly in the students' pastoral care, meeting with them in their rooms, the kitchens etc. He and his staff also worked closely with the other Queen's University Chaplaincies and Christian Union at Queen's University and Stranmillis College and the congregations of Fisherwick and Windsor Presbyterian Churches. He organised events which reflected a Christian ethos, and residents were encouraged to be involved.

Two common rooms provided for communal activities - venues for worship, concerts, studies, meetings, pool, table tennis etc. and social events - with open invitations to all staff and students of the University. The larger room dubbed the "Art and Soul room" was treated as exempt, the other, called the Activity room - with a capacity of about 50 persons, was not.

The Tribunal finds that the activities in the Hostel as a whole mainly were:

- the provision of student residential accommodation, for students to pursue their studies in disciplines of their choice;
- in both common rooms, activities one might expect to find in a church hall; and
- activities facilitating religious pastoral care and maintaining an evangelistic atmosphere, which contrasted with the more secular activities and ethos that would normally be expected to be found in student halls of residence.

The Rates Order and Exemption

Prior to the enactment of the Rates (NI) Order 1972 ("the Order"), few issues in the field of charitable exemption, caused more controversy than that of residential or domestic user. Much, though not all, of the difficulty was resolved by the introduction of what is now Article 41(8) of the Rates (NI) Order 1977. This includes a provision for partial exemption for parts of a hereditament an interest in which belongs to a religious body and in which persons holding any full-time office of a religious denomination have a residence from which to perform the duties of the office. However, that does not exclude the prospect of charitable relief for other residential or domestic user.

In its Statement of Case, the Appellant claimed exemption under Article 41 of the Rates (NI) Order 1977. In particular:

Article 41(2)(b)(ii)

“a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity.”

and Article 41(2)(c)

“Any hereditament ... which -

- (i) is occupied by a charity;
- (ii) is used wholly or mainly for charitable purposes (whether of that charity or that and other charities).”

Or Article 41(2)(d)

“Any hereditament which is occupied by a body -

- (i) which is not established or conducted for profit; and
- (ii) whose main objects are charitable”

where a hereditament is used wholly or mainly for the purposes of those main objects”.

The Conclusive issues

The conclusive issues between the parties primarily related to purpose and user.

On the first ground (Article 41(2)(b)(ii)), the conclusive issue for the Tribunal was whether the Hostel as a whole, although architecturally or structurally a student hostel with common rooms, qualified primarily by virtue of its purpose and user as a church hall.

On the other grounds (Article 41(2)(c) or (d)), the conclusive issues were whether the main object or purpose of the occupation was the advancement of religion and whether the use of the hereditament made by the occupier was mainly for the purposes of the advancement of religion.

The Tribunal will return to the first ground but it is convenient to first consider the other grounds.

Mr Henry had explained that the Inland Revenue treated all organisations within the umbrella of the church, including the Hostel as charitable for tax purposes and Mr Weatherup accepted that whether the trustees or the committee were strictly to be regarded as the occupier, the occupier had to be treated as charitable and it was accepted that the Trust Deed bound the occupier.

In coming to a view on the purposes of the occupier, Mr Brangam urged the Tribunal to rely on the evidence of the activities that took place on the hereditament and contrasted the strength of the evidence of religious activities with that in earlier cases. He contended that the purpose of the Trust was not to isolate the residents from the City but to nurture Christian thinking and as a result of that there would be growth and an advancement of

religion. The world had changed and the Tribunal should also look at the user as well as the deed.

In interpreting the activities so as to come to a view on the “object” or “purpose” of the use being made, the starting point is the identification of the occupier: the relevant purposes for which a hereditament is used are those of the occupier (“Portora” [1970] NI 134, HL, [1969] RA 475 per Lord Diplock at pg 147). In addition to the use by the occupier there may be uses by others for example, the student residents.

So, contrary to the basis of the decision of the Commissioner, the use by the students was not the relevant use.

“Purpose” implies the existence of a particular state of mind in a person or some determined commitment to an objective in a body (see, for example, Portora at pg 146 et seq). Where an occupier has no expressly defined objects, the only guide to the purpose of the occupier may be the activities themselves but, where there are expressed objects binding the occupier, it is well established that consideration of those objects is central to an understanding of the activities of the occupier. Although the actual use made of the hereditament by the occupier is an important consideration in exemption cases, where there is a trust deed or written constitution, the objects or purposes are to be determined by reference to the purposes defined in that deed or constitution rather than in isolation. Generally the trust deed or written constitution provides ‘the only reliable compass’ (see, for example Springhill Housing v COV [1983] NI 184, CA per Gibson L.J.) however, where there is ambiguity in the deed - for example, as to which are the main objects and whether others are subsidiary or ancillary - guidance may come from analysis of the activities.

The Tribunal now turns to the Trust Deed.

The Trust Deed

The Trust Deed stated that the original circular issued by the 1918 Committee invited subscriptions to provide:

“a home in the city for young people coming into the city from the country to shelter them from the temptations of the city and to keep them in contact with the Church”.

In 1919 a new Committee was formed and, again according to the Deed, there was a changed tenor and emphasis in the appeal for funds:

“AND WHEREAS the appeals for funds ... laid special emphasis on the fact that the memory of those who had given or risked their lives for the common good

could best be honoured by securing that the most precious heritage of the Church the succeeding generations of youth

- should ... be protected from the temptations incidental to the life of a great city
- should be met with a Christian environment on their arrival and
- brought into and kept in connection with the Church,
- and find in the hostel ...
 - a centre of religious life and activity and
 - a place of pleasant recreation and social intercourse.”

(Restructured by Tribunal)

The Trust Deed later included the following “declaration and scheme”:

“NOW the Trustees [of the Presbyterian Church in Ireland a Body duly incorporated by Royal Charter dated 28 November 1871] do hereby declare that they hold the said hereditaments and premises so granted and conveyed to them as hereinbefore set forth upon the trusts and for the purposes and with and subject to the powers and provisions following that is to say

- (a) To permit all buildings erected or to be erected upon the said premises to be used under the name and title of the War Memorial Hostel of the Presbyterian Church in Ireland (hereinafter referred to as “the Hostel”) as residential clubs by such persons being young men and women belonging to the Presbyterian Faith coming to Belfast and under and subject to the provisions of the Scheme set out in the Second Schedule hereto.
- (b) to (f) *various powers of sale, letting, investment, acquisition and administration.*
- (g) And further that the [General Assembly of the Presbyterian Church in Ireland] shall have power at any of its meetings by resolution to alter or vary as it may think right all or any of the trusts hereby declared provided however that no such alteration or variation shall be made which would in any manner prejudicially affect the objects or purposes for which the said Hostel was established or conflict with the provisions of the scheme set out in the Second Schedule”

The first schedule defined the premises, the second defined “the Scheme” referred to above and, in summary and so far as is relevant, provided:

“SECOND SCHEDULE

Scheme of Management and Control

1. *Committee of management to be appointed by the General Assembly*

2. The residential Clubrooms and Bedrooms and Readingrooms or any other part or parts of the trust premises [shall] be appropriated as Club premises and bedrooms for the use of
 - (a) All young men or women members or adherents of the Presbyterian Church for whom the trust premises afford sufficient accommodation as may not have a settled home in the City of Belfast who are of good character preference being given to such as have served in the Forces of the Crown and to the children of such as may have served in the Crown Forces during the Great War and so far as the availing accommodation under this head is not exhausted.
 - (b) Young men or women of any Christian Church who are of good character as may not have a settled home in the City of Belfast a like preference being given as in head (a) and
 - (c) In case at any time there may be accommodation in the said trust premises not taken up under the heads (a) and (b) the Committee may admit such persons who are of good character of any age as the Committee may in their discretion think right. Provided however that the charges to be imposed on those taking advantage of the accommodation of the trust premises under head (c) shall be such as shall at least recoup the proportionate part of the costs of maintenance and establishment charges of the trust premises attributable to such persons and so that no financial advantage or benefit from the subscribed funds shall be given to such persons.
3. The Trust premises shall not be used for any purpose inimical to the welfare or contrary to the principles of the Presbyterian Church in Ireland.
4. The Committee may receive any additional donations or endowments for the general purposes of this Scheme. They may also receive donations or endowments for any special objects connected with or similar to those set out in the Scheme for sheltering young people coming to the City of Belfast which shall not be inconsistent with or calculated to impede the due working of the provisions of the Scheme.
5. *Power to let surplus rooms etc.*
6. *Costs to be defrayed from income from the premises etc.*
7. *Surplus to be applied to the premises, any debts of the scheme then ...* for any extension or improvements in giving assistance to young people connected with the Presbyterian Churches coming into the City of Belfast in manner similar to that set out in the Scheme and for the purposes of promoting their spiritual moral intellectual or physical improvement or welfare.
8. *Power to vary charges etc.*

- 9 *Minutes, Rules and Regulations*
- 10 *Power to close for repair*
- 11 *Power to carry on the Hostel in harmony co-operation or collaboration with others for the purposes of this Scheme."*

The Main Objects and Purposes

Mr Brangam contended that the Trust Deed disclosed the following purposes:

- Refuge
- Christian environment
- Pleasant recreation and social intercourse

If there was doubt as to the purposes it was appropriate to look at the activities.

He relied on the passage in the Trust Deed that described the 1919 Committee appeal for funds as setting out the purposes of the Trusts and submitted that the later passages, which the Tribunal has identified above as containing the Declaration and Scheme, set out powers not purposes. Mr Weatherup took the opposite view and contended that the Declaration and Scheme set out the purposes and the other matters were part of the recitals.

The Tribunal can only speculate as to the reasons for the changes in the 1919 Committee appeal for funds, with its enhanced emphasis on the religious aspects, but it may be that they were deemed necessary so the acquired premises might appropriately be vested in the Trustees. The Trust Deed notes that the General Assembly had regarded these stated purposes as "Church purposes" within the meaning of the Act (perhaps having regard to the S.14 Power to invest funds in purchase of lands for "other church purposes") and "for the advancement of religion".

Then, in 1930, the Trust Deed records that there was a very significant event: the General assembly of the Church convened a meeting of the subscribers of the fund to approve a declaration of Trust. The Deed recites the reasons why:

- the aim that the scheme should become self-supporting and for the benefit of the greatest possible number of young people coming to Belfast;
- the absence of any formal declaration of the trusts upon which the premises were held; and
- the absence of a scheme for control and management to reflect the appeal for funds

In plain language the Trust Deed declares that the purposes are those set out above in the "declaration and scheme" and the Tribunal cannot not accept Mr Brangam's submission that the passage that described the 1919 Committee appeal for funds set out the purposes of the Trusts. It is the Declaration and Scheme, formally adopted by the meeting of subscribers, that sets out the purposes, the other matters were part of the recitals. Clearly

the binding Trusts from then on became those of the Trust Deed, as approved by the subscribers and, in the view of the Tribunal, the descriptions of the 1918 Committee circular and the special emphasis of 1919 Committee appeals for funds are not to be taken as declarations of the objects and purposes but rather as a recital of the factual matrix leading up to the 1930 Meeting of subscribers.

The Trust Deed also includes a binding scheme for the control and management of the fund. It appears to the Tribunal that the relationship between the Scheme and the Declaration is such that they should be read together.

In the view of the Tribunal, the main object is expressed in clear and unambiguous language: the provision of protected "Hostel" accommodation. While acknowledging the historical background to the appeals for funds, the objects and purposes are clear from the Trust Deed and, they were:

- To provide "the Hostel" as residential clubs by such persons being young men and women belonging to the Presbyterian Faith coming to Belfast subject to a scheme
 - which gave preferential treatment for defined classes of applicant and
 - with an embargo on use for any purpose inimical to the welfare or contrary to the principles of the Presbyterian church in Ireland.
 - any residual surplus funds to be applied to giving assistance to young people connected with the Presbyterian churches coming into the City of Belfast in manner similar to that set out in the Scheme and for the purposes of promoting their spiritual moral intellectual or physical improvement or welfare.

The Tribunal does not accept Mr Brangam's submission, fundamental to his case, that the declaration clearly pointed to a Trust for the advancement of religion: the Tribunal agrees with Mr Weatherup that so far as the principles of the Presbyterian Church in Ireland were concerned the Trusts expressed that relationship:

- In a negative sense so far as the use was concerned - the declaration prevents any use for purposes inimical to the welfare or contrary to the principles of the Presbyterian Church
- In a permissive sense so far as surplus funds were concerned (and there were none) including the purposes of promoting the spiritual ... improvement or welfare of young people connected with the Presbyterian church.

The Dean, with the approval of the Presbyterian church placed great importance on religious activities and no doubt many residents are touched by the ministry of the Dean - the Church might hope that "One passes through the [Hostel] as one passes close to a spring of water". The careful selection of residents enhances that ministry and that ministry is not prohibited by the Trust Deed. But, nor is it compelled by the Trust Deed. There was

no positive purpose within the scheme for the advancement of religion. Although there were benefits for the Church in the arrangement, the hostel was established for the single primary purpose of providing a place in which selected young people could be suitably accommodated.

The Tribunal agrees with Mr Weatherup that the Trust Deed did not establish a Trust with the object or purpose of the advancement of religion.

Was the user of the hereditament wholly or mainly for the advancement of religion?

Although the Tribunal has concluded that the main objects or purposes of the occupier did not include the advancement of religion, for completeness, the Tribunal now turns to the question of whether, as Mr Brangam contended, the user of the hereditament made by the occupier was wholly or mainly for the advancement of religion.

The Tribunal notes that, having regard to the Trust Deed, a different administration of the War Memorial Hostel of the Presbyterian Church in Ireland might properly take a different view of the relative importance of the criteria for admission and retention of a place, the importance of links with the Forces of the Crown, the needs of an applicant for protected accommodation, and the importance of the degree of Presbyterian religious commitment of applicants.

The Commissioner relied on Glasgow Corporation v Johnstone (1965) 1 All ER 730 which was adopted by the Court of Appeal in Northern Ireland in the Commissioner of Valuation v The Trustees of Redemptorist Order and The Trustees of Newry Christian Brothers (1971) NI 114. He said the test was whether the user which the occupier made of the premises was wholly or mainly “directly to facilitate” the main charitable purpose of the advancement of religion. The Commissioner contended that the student accommodation was used mainly for residential purposes as student halls of residence and within that student accommodation such religious activity as occurred was incidental to the main residential user.

The user is a matter of overall impression that is a question of fact and degree but considerable guidance as to where to draw the line may be given by the decided cases and the Tribunal was referred to a number including:

Mageean v COV (1960) NI 141.

Aquinas Hall VR/50/1965

Riddell Hall VR/33/1971

Corrymeela VR/1/1967

Knights of Columbanus VR/3/1996

James McConnell and the Trustees of the Metropolitan Church (VR/5/1988)

Although there were activities that advanced religion, the Tribunal concludes, for the following reasons, that the degree of user for that fell well short of the qualifying standard of wholly or mainly directly facilitating the charitable purpose of the advancement of religion.

- Having considered the documentary and oral evidence and viewed the buildings, on any architectural or temporal apportionment, the primary user was as a hostel for non-charitable residential uses of providing shelter, feeding, study and rest for the students.
- It was not sufficient to establish a religious based community life. Simply living in a religious home was not sufficient. Although the residents may be considered to be a body of worshippers, they were not officers, ordained members of, nor do they hold any special position in the church so as to make them a body required to engage in external charitable works for public benefit - activities relating to the advancement of religion. Although the premises had a religious ethos, there was neither
 - a religious order which served the work of the charity outside the home (such as a convent teachers) nor
 - a charity operation within the accommodation such as Corrymeela.
- The Tribunal accepts that there were unique features of the ministry of the Dean in that the congregation did not go home after Sunday service but stayed with him but does not accept that it followed that the residential accommodation in the hostel was incidental to life in the community of the hostel rather than the other way round.
- The Tribunal accepts that the Presbyterian Church in Ireland was not simply a social worker, and advancing religion was its work but it does not follow that everything it did directly facilitated that work.
- There was the promotion of a Christian life within the hostel but it was incidental to the primary residential user as student accommodation.

Finally, there was nothing about the user that would cause the Tribunal to change its conclusion on the purposes of the occupier and it follows that the residential user cannot be treated as a user directly to facilitate the more efficient performance of a main purpose of the advancement of religion as there is no such purpose here to which the user for residence could be incidental. Even if the Tribunal is wrong in its conclusion - that the main objects or purposes of the occupier did not include the advancement of religion - the user of the hereditament made by the occupier was not wholly or mainly for the advancement of religion.

The Appellant does not succeed under Article 41(2)(c) or (d), because the Tribunal is not persuaded:

- that the main object or purpose of the occupation was the advancement of religion, nor
- that the use of the hereditament made by the occupier was mainly for the purposes of the advancement of religion.

A Church Hall?

Article 41(2)(b)(ii) provides exemption for “a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity.”

Whether the Trustees under the Trust Deed or the Committee were the occupier, the trusts applied to the occupation and it was not suggested that the hereditament was occupied by anything other than “a religious body and used for purposes connected with that body”. Although not all residents were members, at the relevant time, the residents could properly be considered to be a body of members worshipping in the Presbyterian church.

The conclusive issue was whether the entire hereditament (or perhaps something less) was “a church hall, chapel hall or similar building”.

In West London Methodist Mission v Holborn Borough Council C.A. (1958) 3 RRC 86 the Court of Appeal in England considered whether Wesley House was a building which was akin to a church hall or chapel hall under the equivalent English legislation at that time.

It was occupied by the Methodist church and was rated with the adjoining Kingsway Hall which consisted substantially of a large hall used for public religious worship. The following is an extract from the headnote:

“Kingsway Hall was certified as a place of public religious worship. Wesley House consisted of seven floors and was used (*inter alia*) for the purposes of a youth club, small religious meetings, sales of work, church socials, a luncheon club, mission offices, mission committee meetings, living accommodation for resident staff, a Sunday school, crèche and a roof playground. Twenty people lived in Wesley House, of whom seventeen worked there. The respondent rating authority contended that the hereditament was excluded from S.8(1)(a) of the Act of 1955 by virtue of the proviso and, in particular, that Wesley Hall was a ‘similar building’ within the meaning of the phrase ‘church hall, chapel hall or similar building’ in S.7(2)(b) of the Act of 1955.”

Per Lord Goddard CJ:

“Quarter sessions have set out with commendable clarity the different activities which are carried on in Wesley House, and they have approached the matter quite properly, in my opinion, when they say that they were bearing in mind that they were dealing with a Methodist church, and the constitution of the Methodist church, which was proved before them, shows that it was carried on not only for spiritual benefits but for social benefits, and this building, Wesley House, would

be of such social benefit for the provision of cheap meals and the provision of a crèche in which children may be left whose parents are not necessarily Methodists and attend the church. It seems to me quite obvious that it is a building which is akin to a church hall or chapel hall, that is to say, it is a

“Similar building used in connection with any such place of public religious worship, and so used for the purpose of the organisation responsible for the conduct of public religious worship in that place.”

So the relevant legislative provisions, the connection with the adjoining church, and the expressed objects were different from this appeal but the “similar building” test is shared with this appeal.

Lord Goddard CJ continued:

“Architecturally, I dare say, it is not what one thinks of as a church hall, but I am quite certain that this section is not to be tested by some architectural test. It is one of the biggest church halls that one can imagine and it is not all on one floor, as most are. This is a building in which a great number of activities of, and in connection with, the Methodist church are conducted and, therefore, in my opinion, it comes clearly within the words of the section.”

Later, in this jurisdiction, Mageean v Commissioner of Valuation C.A. (1960) NI 141 was decided under earlier legislation, that differed from the English Act and the 1977 Order, but much of the reasoning remains relevant..

The Appellants were trustees occupying a hereditament also close to Queen’s and known as “the Catholic Chaplaincy”. It comprised an assembly room, lecture and committee rooms, a library and a canteen and also a residence for the Dean. The learned Recorder had held, on a survey of the facts, that the main object was to provide a kind of social club with a religious atmosphere and he had refused exemption.

The trustees successfully appealed.

Per Lord MacDermott LCJ at page 152:

“What, then, is the badge of the kind of hall to which section 1(1) refers if it is not its connection with a separate place of public worship? In my opinion a hall to be within the meaning of that subsection must be a hall used to further the work or meet the needs of a group or community of worshippers associated for the purposes of their religion.”

He continued:

“But it does not by any means follow from this that the halls mentioned in the subsection must, to remain within it, be places used mainly or at all for activities of a purely religious character. The activities of an organised body of worshippers are now seldom confined to acts of worship or religious teaching. It is common knowledge that many such bodies recognise a need to provide instructional and recreational facilities for their young people and a place where their members can meet socially. Such activities are not, in themselves, observances of a religious character, but they are organised or arranged for the benefit of those who participate in them and so that they may do so in the atmosphere and under the influence of the religious community to which they have attached themselves. Such activities tend to support and strengthen indirectly the religious purpose of the community which fosters them and they are entered upon on that account and as ancillary to the advancement of religion.

In my opinion a church or chapel hall is within section 1(1) of the Act of 1956 even though its user is confined to these ancillary activities. This, I think, is where the learned Recorder erred. As I read his judgment he took the view that the main user of such halls had to be of a purely religious character - for the advancement of religion. I think the intention behind section 1 of this Act was to recognise that the activities of an organised religious community of worshippers do not end with purely religious observances, and that church halls and like buildings are often used for ancillary activities such as I have described, which, on their merits, ought also to have some form of rating relief.

In the present case the hereditament, and the chapel and sacristy, are used to meet the religious needs of an association of worshippers - the Roman Catholic students of the University - and, for the reasons I have mentioned, I hold it immaterial that the activities catered for by the hereditament are but ancillary to the advancement of religion. There would, in my view, be no answer to the appellants' claim if the chapel and sacristy had been a separate building, with the hereditament standing in its vicinity and fulfilling its present functions. It would then be used by the community for which it is provided in much the same way as the ordinary church hall is used to serve the congregation which provides it.”

And per Black LJ at page 155:

“What then is meant by a church hall, chapel hall or similar building? The Act of 1956 does not give us any definition of these phrases and accordingly, to adopt

a dictum of Lord Denning's [Escoigne Properties Limited v Inland Revenue Commissioners [1958] A.C. 549 at page 566] to which we were referred during the argument, all that the court can do is to take judicial notice of matters generally known to well informed people. By the phrase 'church hall' I think the ordinary well informed citizen of Northern Ireland would visualize a building usually but not necessarily connected with a particular parish or congregation and used for the carrying on in connection with an under the superintendence and control of a religious body a variety of activities of a religious or quasi-religious nature, but also perhaps used for providing in a suitable environment social and recreational facilities for the purpose of keeping together the members of that religious body in the parish, congregation or district. If connected with a particular parish or congregation it might be used for mid-week religious services: if not so connected it would probably be used for holding Sunday services as well."

And later at page 157:

"The phrase 'similar building' is obviously intended to extend the exemption to buildings which would not in ordinary speech be spoken of as church halls or chapel halls. In what respect must a building be similar in order to qualify for the exemption? I do not think the subsection can mean similar from the architectural standpoint or at any rate solely from the architectural standpoint. Such a construction would produce results which it would be difficult to attribute to the Legislature. It may indeed be that a similar building might be contemplated as including (among other accommodation) something in the nature of an assembly hall. Whether this is so or not, the lay out of the hereditament with which we are concerned in the present appeal does in fact include an assembly hall. But I think it is tolerably clear that the main conception in the phrase 'a similar building' is that of a building used by a religious body in a manner in which a church hall or chapel hall would be used and serving purposes similar to the purposes which a church hall or chapel hall would serve. This was taken to be the meaning of the phrase by the English Divisional Court in West London Methodist Mission v Holborn Borough Council in which a very wide and liberal interpretation was given by the court to the words 'similar building' in section 7(2) of the English Act of 1955 as applied to the facts regarding the building 'Wesley House' in that case.

Whether a building is to be regarded in this sense as a similar building to a church hall or chapel hall will depend of course on the facts of the particular case. In some cases the user of the building may be so definitely for religious purposes that there would be no difficulty in saying that its use is similar to that

of a church hall or chapel hall. In other cases though the building may be owned by a religious body and though its use is confined to members of that body it may nevertheless be used so predominately for social and recreative purposes that its use could not be said to be similar to that of a church hall or chapel hall as those phrases are ordinarily understood”

Curran LJ (dissenting) at page 161:

“In the present case there is a chapel or place of worship which is part of the hereditament in question. If it be assumed that the remainder of the hereditament can be said to be similar to a ‘hall’, it is my opinion that it only falls within section 1 of the 1956 Act if it is ancillary to the chapel. I can appreciate that where there is some association between a chapel and the remainder of a hereditament, the chapel may be regarded by the church authorities as an important part of the hereditament. Nevertheless it does not follow that the remainder of the hereditament is ancillary to the chapel. A chapel in a public school is ancillary to the school and not the school to the chapel. In the present case the hereditament is held under a trust deed and the primary objects of the fund with which it was acquired are therein set out as follows: ‘(a) the provision and maintenance of a hostel for Roman Catholic men students and graduates of the Queen’s University of Belfast or affiliated or associated Colleges whereby and in which the religious and educational needs of the said students and graduates shall be provided for: (b) the provision and maintenance of a Roman Catholic University Church for use in conjunction with said University’.

In my view what is being provided falls short of each of these objects, but is on similar lines. If this were not so, I fail to see how it could be justified under the trust deed. If the objects were fully achieved it is difficult to see how the hostel could be regarded as ancillary to the church. It is perhaps significant that the hostel is the first of the primary objects set out in the trust deed. But be that as it may, the hostel is a distinct and separate primary object under the trust deed, and there is nothing in the deed to suggest that it is to be ancillary to the church, if any, provided thereunder. In providing the chaplaincy, either the appellants have done what they could towards providing a hostel and a church under the trust deed, in which event my opinion is that the two elements ‘hostel’ and ‘church’ are separate and distinct and not ancillary the one to the other; or, the appellants have done what they could toward providing a hostel, a part of which consists of a chapel, and the chapel is ancillary to the hostel. In my opinion there is no evidence to support the contention that the chapel is the *raison d’être* of the amenities provided in the rest of the hereditament.”

The Tribunal accepts that “used for purposes connected with that body” is an expression encompassing a potentially very wide range of activities. The Hostel provides instructional and recreational facilities for young people, who worship together as Presbyterians together with places where they can meet together socially, and activities are organised or arranged for the benefit of those who participate in them and so that they may do so in the atmosphere and under the influence of the religious community to which they have attached themselves. The user by the occupier is not merely the provision of a student hostel, it includes purposes connected with a religious body.

However, that is not the only criteria and for the following reasons the Tribunal has concluded that the Hostel, as a whole, is not a similar building to a church hall or chapel hall:

- The main conception in the phrase “a similar building” is that of a building used by a religious body in a manner in which a church hall or chapel hall would be used and serving purposes similar to the purposes which a church hall or chapel hall would serve. Here, although the Hostel may be occupied by a religious body and though its use is confined mainly to members of that body, it is nevertheless used so predominately for domestic and general undergraduate study purposes that its user could not be said to be similar to that of a church hall or chapel hall as those phrases are ordinarily understood.
- To the extent that the facilities were for the purpose of keeping together the members of that religious body in a suitable environment, the student residential facilities go far beyond the social and recreational facilities one would expect to find in a church hall. One would expect halls in the sense of meeting rooms or something like meeting rooms to be the dominant feature of a building that was similar to a church hall or chapel hall. That is what ordinarily would be meant by such halls and there are no examples in the decided cases where that was not the case. Here, the common rooms were not the dominant features, the study/bedroom accommodation (the flats) were predominant. Although the provision of ancillary short-stay residential accommodation for a dispersed religious community might not disqualify a building from treatment as a church hall, the domestic/study activities in the flats here, for students residing for the term of 38 weeks, were not ancillary to their activities as a community of worshippers in the communal areas. The residential accommodation was not provided as ancillary to activities in the common room or activity room (perhaps so that accommodation might be provided for those taking part in such activities) but rather the study/bedroom accommodation was provided so that the young residents could come to Belfast and in particular to facilitate their attendance at Queen’s University Belfast. The communal areas were not the *raison d’être* of the amenities provided in the rest of the hereditament.

- Although the issue has been held not to turn on an architectural or structural test, the issue is whether it is a “similar building” to a church hall or chapel hall and the legislature cannot have intended that word to be surplusage and the architectural or structural nature of the building to be ignored completely. Here, although one or two of the buildings making up the complex were both in terms of user and also architecturally or structurally similar to a church hall, the blocks of study bedrooms were not.
- The impression was that Dean’s work on the premises really was, as he said, fundamentally the same as in a parish - to teach, preach, give sacraments and visit. He involved himself greatly in the students’ pastoral care, meeting with them in their flats. This work, important, though it was, was not a safe indicator of a church hall. The flats were in the parish not in the church hall.

The unit for consideration/assessment

The language of the Order is such that the unit for consideration under this heading is not a “hereditament” but is instead a “hall” or “building”. Both the “Common Room” and the “Activity Room” were linked to the main accommodation building but both were, in ordinary language, separate buildings - they were single storey rather than three storey and both had three external walls, sharing only one face with the main building. The degree of annexation was similar to that between many churches and their church halls.

For the following reasons, the Tribunal concludes that the user made by the occupier of both the “Common Room” and the “Activity Room” clearly qualify both as “a similar building”, that is, a building used by a religious body in a manner in which a church hall or chapel hall would be used and serving purposes similar to the purposes which a church hall or chapel hall would serve:

- They provided
 - instructional and recreational facilities for young people, who worship together as Presbyterians and
 - places where they can meet together socially, and
 - activities organised or arranged for the benefit of those who participate in them and so that they may do so in the atmosphere and under the influence of the religious community to which they have attached themselves.
- The buildings were occupied by a religious body and their user was confined mainly to members of that body.
- From the evidence, the occupier used both common rooms, the two communal areas, for a variety of activities of a religious or quasi-religious nature, under the supervision and control of the Dean and also to provide social and recreational facilities for the purpose of keeping together the body of residents. Although no evidence was adduced to demonstrate the activities that took place in church halls,

- Although the issue has been held not to turn primarily on an architectural or structural test, these two buildings making up the complex were both architecturally or structurally similar to a church hall. In particular, halls in the sense of meeting rooms or something like meeting rooms are likely to be the dominant feature of a building that was similar to a church hall or chapel hall.

Under Article 41(2)(b)(ii), the Hostel as a whole did not qualify as a “a similar building”. But, the Tribunal is persuaded that both the “Common Room” and the “Activity Room” buildings qualify for exemption under Article 41(2)(b)(ii) as “a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body.”

Summary

In 1918, a Committee of the General Assembly of the Presbyterian Church in Ireland determined:

“to provide a Memorial to perpetuate the memory of the deeds and sacrifices of the sons and daughters of the Church in the cause of truth and freedom in the Great European War 1914-1918.”

Funds were raised and a “War Memorial Hostel” subsequently was built in Howard Street in Belfast City Centre. Later, the Trustees found it impractical to continue their work at that location and developed purpose-built new premises known as Derryvolgie Hall, Derryvolgie Avenue, Belfast - “the Hostel” - the subject of this appeal. The Hostel was a complex of linked buildings providing, among other things, self-catering accommodation for some 88 students and young working people, both male and female, and built near Queen’s University, Belfast. It comprised:

- A single storey Dean’s residence etc.;
- Three 3 storey blocks of study bedrooms; with
- A single storey “Common” room building; and
- A single storey “Activity” room building.

The Appellant claimed exemption under Article 41 of the Rates (NI) Order 1977. In particular:

Under Article 41(2)(b)(ii)

“a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity.”

Or Article 41(2)(c)

“Any hereditament ... which -

- (i) is occupied by a charity;
- (ii) is used wholly or mainly for charitable purposes (whether of that charity or that and other charities).”

Or Article 41(2)(d)

“Any hereditament which is occupied by a body -

- (i) which is not established or conducted for profit; and
- (ii) whose main objects are charitable”

whether a hereditament is used wholly or mainly for the purposes of those main objects”.

The Tribunal has found that, at that time, the activities in the Hostel as a whole mainly were:

- the provision of student residential accommodation, in which students pursued their studies in disciplines of their choice,
- in both the common room buildings, activities one might expect to find in a church hall, and
- activities facilitating religious pastoral care and maintaining an evangelistic atmosphere, which contrasted with the more secular activities and ethos that would normally be expected in student halls of residence.

Article 41(2)(c) or (d)

Under Article 41(2)(c) or (d), the conclusive issues were whether the main object or purpose of the occupation was the advancement of religion and whether the use of the hereditament made by the occupier was mainly for the purposes of the advancement of religion.

It was accepted that whether the trustees or the committee were strictly the occupier, the occupier had to be treated as charitable and it was accepted that the occupier was bound by the terms of the Trust Deed.

The Appellant urged the Tribunal to rely on the evidence of the activities that took place on the hereditament and contrasted the strength of the evidence of religious activities with that in earlier cases. It contended that the purpose of the Trust was not to isolate the residents from the City but to nurture Christian thinking and as a result of that there would be growth and an advancement of religion.

In interpreting the activities so as to come to a view on the “object” or “purpose” of the user being made, the starting point is the identification of the occupier: the relevant purposes for which a hereditament is used are those of the occupier (“Portora” [1970] NI 134 HL per Lord Diplock at pg 147). In addition to user by the occupier there may be uses by others for example, the student residents.

So, contrary to the basis of the decision of the Commissioner, the user by the students was not the relevant user.

“Purpose” implies the existence of a particular state of mind in a person or some determined commitment to an objective in a body (see, for example, Portora at 146 et seq). Where an occupier has no expressly defined objects, the only guide to the purpose of the occupier may be the activities themselves but, where there are expressed objects binding the occupier, it is well established that consideration of those objects is central to understanding of the activities by the occupier. Generally the trust deed or written constitution provides “the only reliable compass” (see, for example Springhill Housing v COV [1983] NI 184 CA per Gibson L.J.) however, where there is ambiguity in the deed - for example, as to which are the main objects and whether others are subsidiary or ancillary - guidance may come from analysis of the activities.

In 1930, there was a very significant event: the General assembly of the Church convened a meeting of the subscribers of the fund to approve a declaration of Trust. The Deed in plain language declares that the purposes are those set out above in the “declaration and scheme”. Clearly the binding Trusts from then on became those of the Trust Deed, as approved by the subscribers.

The Trust Deed includes a binding scheme for the control and management of the fund. It appears to the Tribunal that the relationship between the Scheme and the Declaration is such that they should be read together.

The main object is expressed in clear and unambiguous language: the provision of protected “Hostel” accommodation. While acknowledging the historical background to the appeals for funds, the objects and purposes are clear from the Trust Deed and, they were:

- To provide “the Hostel” as residential clubs by such persons being young men and women belonging to the Presbyterian Faith coming to Belfast (subject to a scheme).

The declaration does not clearly point to a Trust for the advancement of religion: so far as the Presbyterian Church in Ireland was concerned the Trusts expressed that relationship:

- In a negative sense so far as the use was concerned - the declaration prevents any use for purposes inimical to the welfare or contrary to the principles of the Presbyterian Church;
- In a permissive sense so far as surplus funds were concerned.

There was no positive purpose within the scheme for the advancement of religion. Although there were benefits for the Church in the arrangement, the hostel was established for the single primary purpose of providing a place in which selected young people could be

suitably accommodated and without any purpose of the advancement of religion. The Trust Deed did not establish a Trust with its object or purpose as the advancement of religion.

Although the Tribunal has concluded that the main objects or purposes of the occupier did not include the advancement of religion, for completeness, the Tribunal considered the question of whether the user of the hereditament made by the occupier was wholly or mainly for the advancement of religion.

The user is a matter of overall impression that is a question of fact and degree but considerable guidance as to where to draw the line may be given by the decided cases. Although there were activities that advanced religion, for the following reasons, the Tribunal concludes that the degree of user for that fell well short of the qualifying standard of wholly or mainly directly facilitating the charitable purpose of the advancement of religion.

- On any architectural or temporal apportionment, the primary use was as a hostel for non-charitable residential uses of providing shelter, feeding, study and rest for the students.
- It was not sufficient to establish a religious based community life. Simply living in a religious home was not sufficient. The residents were not officers, ordained members of, nor do they hold any special position in the church so as to make them a body required to engage in external charitable works for public benefit - activities relating to the advancement of religion. Although the premises had a religious ethos, there was neither
 - a religious order which served the work of the charity outside the home (such as a convent teachers) nor
 - a charity operation within the accommodation such as Corrymeela.
- The Tribunal accepts that there were unique features of the ministry of the Dean but does not accept that it followed that the residential accommodation in the hostel was incidental to life in the community of the hostel rather than the other way round.
- The Tribunal accepts that advancing religion was the work of the Presbyterian Church in Ireland but it does not follow that everything it did directly facilitated that work.
- There was the promotion of a Christian life within the hostel but it was incidental to the primary residential user as student accommodation.

Finally, there was nothing about the use that would cause the Tribunal to change its conclusion on the purposes of the occupier and it follows that the residential user cannot be treated as a use directly to facilitate the more efficient performance of a main purpose of the advancement of religion as there is no such purpose here to which the user for residence could be incidental. Even if the Tribunal is wrong in its conclusion - that the main objects or purposes of the occupier did not include the advancement of religion - the user of the

hereditament made by the occupier was not wholly or mainly for the advancement of religion.

The Appellant does not succeed under Article 41(2)(c) or (d), because the Tribunal is not persuaded that:

- the main object or purpose of the occupation was the advancement of religion, nor
- the use of the hereditament made by the occupier was mainly for the purposes of the advancement of religion.

Article 41(2)(b)(ii)

Under Article 41(2)(b)(ii), the issue put to the Tribunal was whether the Hostel as a whole qualified, primarily by virtue of its purpose and user, as a similar building to a church hall or chapel hall. It was clear from the evidence that the residents could properly be considered to be a body of members worshipping in the Presbyterian Church. But, in summary, for the following reasons, the Tribunal has concluded that the Hostel, as a whole, did not so qualify:

- The main conception in the phrase “a similar building” is that of a building used by a religious body in a manner in which a church hall or chapel hall would be used and serving purposes similar to the purposes which a church hall or chapel hall would serve. Here, the buildings were used so predominately for domestic and general undergraduate study purposes that their user could not be said to be similar to that of a church hall or chapel hall as those phrases are ordinarily understood.
- The student residential facilities went far beyond the social and recreational facilities one would expect to find in a church hall. The common rooms were not the dominant features, the study/bedroom accommodation (the flats) were predominant. Although the provision of ancillary short-stay residential accommodation for a dispersed religious community might not disqualify a building from treatment as a church hall, the domestic/study activities in the flats here, for students residing for the term of 38 weeks, were not ancillary to their activities as a community of worshippers in the common room or activity room. Rather the study/bedroom accommodation was provided so that the residents could come to Belfast and in particular to facilitate their attendance at Queen’s University Belfast. The communal areas were not the *raison d’être* of the amenities provided in the rest of the hereditament.
- The issue is whether it is a “similar building” to a church hall or chapel hall and the legislature cannot have intended that word to be surplusage and the architectural or structural nature of the building to be ignored completely. The blocks of study bedrooms were not architecturally or structurally similar to a church hall.
- The impression was that Dean’s work on the premises really was, as he said, fundamentally the same as in a parish - to teach, preach, give sacraments and visit.

The Hostel as a whole not did qualify as “a similar building”. But, on the issue of whether a building is a similar building to a church hall or chapel hall under Article 41(2)(b)(ii), the unit for consideration or assessment is not a “hereditament” but is instead a “hall” or “building”. Both the “Common Room” and the “Activity Room” were linked to the main accommodation building but both were, in ordinary language, separate buildings - they were single storey rather than three storey and both had three external walls, sharing only one face with the main building. The degree of annexation was similar to that between many churches and their church halls.

The Tribunal has concluded that the user made by the occupier of both the “Common Room” and the “Activity Room” buildings clearly qualify both as “a similar building”, that is, a building used by a religious body in a manner in which a church hall or chapel hall would be used and serving purposes similar to the purposes which a church hall or chapel hall would serve. They both must be regarded as “similar buildings” and so the Tribunal is persuaded that, although the complex as a whole does not qualify, both these buildings qualify for exemption under Article 41(2)(b)(ii) as “a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body.”

The Applicant applied for its costs. The Respondent did not resist the application. The Tribunal therefore directs the Respondent to pay the costs of this Appeal. In default of agreement they shall be taxed by the Registrar of the Lands Tribunal.

ORDERS ACCORDINGLY

15th March 2001

**The Honourable Mr Justice Coghlin and
Mr Michael R Curry FRICS IRRV MCI.Arb Hon.FIAMI
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Alva Brangam BL instructed by Cleaver Fulton & Rankin, Solicitors appeared for the Appellant.

Ronnie Weatherup QC instructed by the Departmental Solicitor’s Office appeared for the Respondent.