

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL

VR/6/1995

BETWEEN

**LARNE ENTERPRISE DEVELOPMENT COMPANY LTD - APPELLANT
AND**

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Premises at 1A Ledcom Industrial Estate, Bank Road, Larne

Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV ACI.Arb

Belfast - 20th April 1998

In the early 1980's many considered that the level of unemployment, in Larne, Co Antrim, was very high and that was, to an extent, as a result of the local economy having been over-dependent on large businesses, some of which had closed down. To address these concerns Larne Enterprise Development Co Ltd (LEDCOM) was founded, following a public meeting, in May 1985. It was a company limited by guarantee, with a Board of Directors who were all members of the local business community and acted in a voluntary capacity. The Company was not registered as a charity nor treated as a charity by the Inland Revenue but it was recognised as a Local Enterprise Agency and that, for example, resulted in tax concessions to companies making donations.

In 1994, the District Valuer had granted Ledcom charitable exemption from rates but, later that year, removed relief. Ledcom appealed to the Commissioner of Valuation who refused to distinguish the hereditament as exempt and this Appeal was against his decision.

Jacqie Simpson BL instructed by O'Rorke McDonald & Tweed appeared for the Appellants. Stephen Shaw BL instructed by the Crown Solicitor appeared for the Respondent.

The premises occupied by Ledcom were part of the Ledcom small industrial estate of 50 small workspace units that they had developed. It was a single storey building containing plain offices and a well fitted out training room. Few of the handful of offices were used for a single purpose but one large room generally was used for training, meetings of staff and board meetings of client boards.

There were more than 30 objects set out in the Memorandum. These included:

- (a) To stimulate and promote the creation within the Borough of Larne of additional job opportunities and new enterprises through small business growth and survival.
- (b) To acquire by any means whatsoever any land, property or premises of any tenure or interest therein for the purposes rehabilitating, sub-dividing or developing the same, in order to make the same available to any small business (hereinafter referred to as "small business" which expression when used herein shall be deemed to include any person, body of persons, partnership, firm or body corporate or unincorporated which shall or may constitute a source of employment) on such terms and conditions as the company shall consider appropriate and to assist any such small business in its establishment, growth, conduct, control or management.
- (c) To advise any small business within Northern Ireland whether existing or in the course of creation as to appropriate management structures the keeping of accounts and the provision of controls whether in respect of finance, stock, production, quality or otherwise within the Borough of Larne.
- (d) To provide technical, managerial, marketing, professional and other executive, supervisory, expert and consultant services for any concern.

And, for example:

- (q) To act as agents or brokers or trustees for any person, firm or company, and to carry on the business of commercial agents, and to purchase, sell and deal in goods, materials, property, commodities, articles and services of every kind whether or not of a kind required for the purpose of any other business which the Company is authorised to carry on.

Also, for example:

- (z) To undertake and transact all kinds of trust and agency business.
- (aa) To enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, or company, that may seem conducive to the Company's objects or any of them, and to obtain from any such government, authority or company any charters, contracts, decrees, rights, grants, loans, privileges, or concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with the same.

"As practitioners well know, those who draw up draft Memoranda of Association these days do not commonly err on the side of brevity" per Lord Evershed, M.R. in North of England Zoological Society v Chester RDC [1959] 3 All ER 116.

Mr Kenneth John Nelson, Chief Executive and Company Secretary gave evidence.

The objects were drafted in similar terms to those of other Enterprise Development Companies and were based on advice given by LEDU. At the time, it was not clear what objects would be desirable to allow appropriate responses to be made to particular needs and future needs of local economies.

Mr Nelson accepted that the Company could be described as acting in three roles

- (a) as a landlord
- (b) as a provider of information, and
- (c) as a provider of services.

The activities of the Company included:

- (a) Investment in the development of the 50 small workspace units let to small businesses and community organisations, on "easy-in, easy-out" monthly tenancies. There were plans for expansion.
- (b) Providing free advice and counselling to individuals and groups, seeking to establish or develop a business or a community economic initiative, and training programmes such as Business Start Training. Generally as a result of funding assistance from LEDU (the small business agency) and the European Union (EU) Social Fund, this training was free of charge or at a discounted charge to participants.
- (c) Providing, under various contracts (with LEDU, Larne Borough Council and other business support agencies) to provide services:
 - (i) advice to individuals on applications for grant aid to assist with self-employment.
 - (ii) loans to individuals, in a disadvantaged/targetting social needs group or area, who were unable to obtain loans from the usual sources.
 - (iii) economic development advice to Larne Borough Council and the management and administration of Larne Development Forum, a local area partnership.
 - (iv) management and administration of Larne District Partnership Board which managed an element of EU funding for Peace and Reconciliation.
 - (v) management of a regional part of the Community Business Start-up Programme for disadvantaged communities developing community businesses.

(d) The provision of secretarial services on a charged out basis.

Mr Nelson set out an impressive list of some of their achievements. In many instances the Company saw themselves as 'signposters' pointing enquirers to where they could obtain assistance. In the financial year 1996/97, Ledcom had:

- (a) provided 250 free counselling sessions for individuals.
- (b) dealt with 800 telephone enquiries about self-employment, economic development and community development both from individuals and community groups.
- (c) provided free training for 90 individuals.
- (d) provided advice, counselling and training to about 50 community groups across Co Antrim.
- (e) assisted about 40 local community and voluntary groups to receive offers of financial assistance totalling nearly £½M towards local projects.

In addition the occupiers of the small workspace units had provided some 385 employment and training places.

In connection with their contract work for business development and funding agencies, projects were monitored and evaluated and their impact measured. They had detected improvements in the local economy, with increased self-employment and less unemployment.

At the premises there were five full-time employees, one part-time and one assistant placed under the Government Action for Community Employment (ACE) Scheme.

Mr Nelson set out estimates of staff time spent on the various activities. About 40% was allocated to economic development. About 10% to each of advice and counselling, training, grants and loans, and company services. About 15% for community development and about 5% for property management.

The people they counselled included, as well as the unemployed, the employed, and some self-employed.

Ledcom was self financing. Its establishment had been aided by grant assistance from LEDU, European funds and Larne Borough Council. It now obtained revenue from letting the workspace premises, consultancy work and business secretarial services, including typing, fax and photocopying that was charged out on the basis of cost plus overheads.

LEDU had fixed contract prices and for Larne Borough Council and others they had a service level agreement and charged on the basis of staff time and overheads. Although sometimes Ledcom did direct enquirers to the private sector they were in competition with private sector consultants, were aware of their charging rates and provided services at more competitive rates. That was one of the factors that encouraged Larne BC to go to them.

Rents of the workspace unit were not based on 'ability to pay' but based on historic cost, revised annually and increased generally in line with inflation. If a prospective tenant requested alterations and Ledcom thought that might create a number of jobs, they would consider making the alterations on the basis of rentalising and aiming to recover the cost over the period of proposed occupation, but each case would be judged on its own merits. In its role of landlord, although funds would be required to deal with accumulated repairs, the rents received were at least covering overheads and outgoings and the units were sufficiently successful to give the company confidence to seek to borrow to expand further. Recently they had had the premises valued for commercial loan purposes, in connection with their expansion plans.

Recent trading had shown a surplus and they had assets of a book value of the order of £800-900,000 which had improved by some £50,000 over the year. But Ledcom still had borrowings and any surplus remaining was ploughed back into the company.

Charitable exemption was sought under 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 the hereditament is used wholly or mainly for the purposes of those main objects."

In a reference to the categories in Pemsel [1891] AC 531 HL, the main objects of Ledcom were claimed to be charitable as being "relief of poverty in the Larne area, and other purposes beneficial to the community (not involving relief of poverty, advancement of education or religion)".

No case was made that objects were charitable on grounds of the advancement of education.

"Poor" is a relative term and an individual need not be destitute to qualify as a poor person and it may also be that a person who suffers hardship from a reduction in circumstances, perhaps "going short" through unemployment and needing a fresh start, may be a proper object of charity.

The Tribunal accepts that the test of whether the "main objects are charitable" gives greater leeway than the "established for charitable purposes only" test under consideration in Inland Revenue Commissioners v Oldham Training and Enterprise Council [1996] STC (Chancery Division). Potentially it permits charitable treatment despite the inclusion of some non-charitable objects, provided they are not main objects of the body and provided that the hereditament in question is used mainly for charitable objects.

The Tribunal has considered the principles and their application in the authorities including Chartered Insurance Institute v Corporation of London (1957) 2 All ER 638 and Berry v St Marylebone Corporation [1957] 3 all ER 682. These were reviewed in Chester RDC and subsequently the latter cases were considered with approval by the Northern Ireland Court of appeal in Royal British Legion Attendants Company Ltd (Belfast) v Commissioner of Valuation (1979) NILR 138 and that was an appeal under these provisions. Other authorities considered included National Deposit Friendly Society Trustees v Skegness UDC [1957] 3 All ER 199 and [1958] 2 All ER 601, Guinness Trust v West Ham Corpn. [1959] 1 All ER 482, Glasgow Corporation v Johnston (1965) 1 All ER 730 and Oxfam v City of Birmingham DC [1975] 2 All ER 289. From time to time the Tribunal has considered these older decisions but there was a new and particularly relevant authority, Oldham TEC.

In determining "what are the main objects of the body?", the question arises as to the extent to which the Tribunal should confine itself to the Memorandum of Association and to what extent it should look at the actual activities of the body.

Where there is a Memorandum, the determination of the main objects of such a body is primarily a question of the interpretation of the stated objects in the context of the document and the Tribunal should be slow to go beyond the Memorandum. But, in some instances there may be such doubts, about what or which are the main objects, perhaps resulting from use of all-embracing language or a scatter-gun approach to drafting, that closer definition is required and then the Tribunal may turn to the evidence of what has in fact been done so far by the body. Some may then be found to be main objects, some subsidiary, others merely ancillary or mere machinery or powers to facilitate the main objects. In identifying the main objects it may be helpful to distinguish between independent purposes. However the determination of the main objects must be a matter for the Tribunal not for the body itself.

Here, there were numerous objects set out and it would be surprising if there were no ambiguities or equivocations within such a wide range but the enquiry may be kept proportionate by the Tribunal confining itself to the fundamental issues that it must address to arrive at a decision. Plainly, some other objects were mere machinery to assist Ledcom to carry out main objects, for example, "(k) to remunerate any person firm or company rendering services to the company".

At the Hearing, the main debate concerned the first four stated objects and it is appropriate to concentrate on these, which be summarised as:

- (a) To create new jobs and enterprises in Larne through the growth and survival of businesses (or perhaps small businesses only).
- (b) (i) To develop premises and make them available to any business on appropriate terms and
(ii) to assist any such business in its establishment, growth, business systems or management.
- (c) To advise any business in Northern Ireland on business systems (possibly confined to their application within the Borough of Larne).
- (d) To provide expert and consultancy services for any concern.

The Tribunal has used the term "business" rather than "small businesses" as the latter was defined expressly from at latest (b) onwards, to include any source of employment, without restriction on size. Object (d) uses the term "concern".

The Tribunal accepts Mr Nelson's evidence and concludes that the hereditament was used mainly for these four objects.

For the Appellant, Counsel submitted that the main object was found in (a) with ancillary objects of (b), (c) and (d) but the Tribunal concludes that, although they are not incompatible with each other, these stated objects express sufficiently independent and important ideas to be regarded as several main objects.

Even if the view were taken that the main object was to be found in (a) alone, the Tribunal considers that stated object to be too vague and requiring refinement by recourse to, at least (b), (c) and (d).

It is not necessary, for purposes of establishing the main objects, to turn to the evidence of what had in fact been done so far by Ledcom. But, if the Tribunal were not correct in that view and there were any doubts about reaching the above conclusion from the document, it is clear that impression is reinforced and not contradicted by the evidence.

The main thrusts of the activities of Ledcom were diverse, included acting as a 'signposter' for those seeking advice on new businesses, an advisor on structures for business start-ups, a property developer and landlord with a substantial property portfolio, and a paid provider of consultancy services, some on behalf of government agencies and some in competition with other consultancies in the private sector. On the evidence, these latter activities, which were operated from the premises, must be regarded as being in the nature of substantial trade or business: although many activities were on very competitive terms, they were carried on under remunerative contracts and on commercial, if not fully, commercial terms.

There were many parallels with Oldham TEC and much of the reasoning applied in that case, applies in this. Like them, Ledcom was an altruistic organisation, in the sense that no profit or benefit could be conferred on its members, its raison d'être was to assist others and there had been substantial public funding at its inception and later. Ledcom's main objects were partly charitable and some activities, in particular much business start-up advice to the unemployed, would seem to be charitable, as being for the relief of poverty.

Although there is a presumption that the purpose of relief of poverty is of benefit to a sufficient range of beneficiaries, that presumption may be displaced and for "other purposes beneficial to the community", a community or sector of the community intended to be benefited, must be sufficiently defined and identified by some quality of a public nature.

Some main objects could not be construed as charitable having regard to the range of benefits and the eligible recipients of such benefits. Further, the objects, of providing expert and consultancy services and advice to and for businesses, had to extend to enabling Ledcom to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them. Some objects clearly allowed Ledcom to provide services on a commercial basis. When the Tribunal turns to the evidence of Ledcom's actual activities on the hereditament, it showed that they included doing just that.

It is essential to consider the actual user of the hereditament: to qualify for relief, the actual use must wholly or mainly directly facilitate a main object which in turn must be charitable. For example, charities may hold substantial property portfolios as investments, without putting their charitable status at risk but it does not follow that their occupation of a

hereditament, if it is used wholly or mainly for the management of those assets, so directly facilitates the charitable aims of a body that the hereditament qualifies for exemption. A body may use premises for fund raising activities without losing its charitable status, but, in the absence of special statutory provisions e.g. charity shops, its use of those premises in that way usually will disqualify its occupation of those premises from charitable relief.

It is clear from Ledcom's activities, that much of their efforts may have been intended to make the recipients of their benefits and advice, more profitable and thereby or otherwise to improve employment prospects. These main objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment must disqualify them from having charitable status. The benefits to the community conferred by such activities were too indirect.

The Tribunal has concluded that Ledcom's main objects must be taken to include (a) to (d). In consequence, and in agreement with the fundamental approach adopted in Oldham TEC, the Tribunal finds that the main objects included objects that were not charitable and to the extent that there may well be a number of charitable intentions, their main use of the premises did not sufficiently directly facilitate those objects. Their objects made provision for both private benefits and non-charitable uses. For these reasons, the Appellant cannot succeed and their occupation of the premises does not qualify for charitable exemption.

That really is the end of the matter but, for completeness, the Tribunal now turns to other issues of whether Ledcom was established or conducted for profit and whether it would qualify if the main object were (a) alone.

The question of whether a body is established or conducted for profit is partly a question of construction of the stated objects but more often the difficult question concerns the actual conduct. That is a question of degree best resolved by applying a common-sense approach to a general view of the body and its activities.

For convenience the income of Ledcom may be considered to derive from 3 sources.

Fees paid by those seeking advice and training through schemes subsidised by grant aid.

Revenue from consultancy and business services.

Revenue from developing and letting premises.

The income from some advice and training, and grant aid to subsidise that, may be regarded as income from a primary purpose activity. No case was made for charitable exemption on grounds of the advancement of education, but the Tribunal would be slow to

regard that work, and some other activities, for example acting as a 'signposter' for those seeking advice on new businesses, as being conducted for profit.

Although there was no precise information given, Ledcom's powers and activities as a provider of business and consultancy services, can only be regarded as in the nature of substantial trade or business of a long term nature, albeit on competitive terms but still clearly remunerative and, on the evidence before the Tribunal, profitable. The opportunity was there, they had taken it and by all accounts taken it well. The whole tenor of the evidence was such that this income must be considered to be income from the primary purposes (c) and (d) and not merely ancillary to the carrying out of the primary object (a) and that these were substantial activities conducted for profit.

It was drawn to the Tribunal's attention that Article 41(4) provides that any use "... by way of letting..." for profit shall not be treated as a use for the purposes [of] those in Article 41(2)(d), but the Tribunal apprehends that provision as relating to letting of the subject hereditament and not other premises.

Ledcom have developed and continue to develop premises that they let. The object clause relating to development and letting of the premises was not confined to making them available to persons or bodies creating additional job opportunities and new enterprises but was drafted in the widest possible terms and there was clearly no bar on profiting from them. This activity was again income from a primary purpose, (b), and could not be regarded as merely ancillary to the carrying out of primary purpose (a). If such accommodation were being provided at nominal or even perhaps substantially below rack rents that might not be regarded as conduct for profit, but the accommodation was let, generally speaking, as a rent based on historic cost, index linked to keep pace with inflation. The instances in which a reduced rent was charged appeared to relate to only a few circumstances where the charge for rentalised improvements was discounted to reflect the benefits of a prospect of enhanced employment. The Tribunal finds that use, of such importance, of the premises for the development and management of these property assets cannot allow that activity of Ledcom to be treated as not conducted for profit.

The Tribunal concludes that Ledcom's various commercial activities were not merely ancillary to a main charitable object, but were carried on in their own right. Although any surplus was ploughed back in and members did not nor could not benefit, the objects and conduct of the company itself, at the relevant time, could only lead to the conclusion that it was established and conducted for profit.

If contrary to the Tribunal's conclusions, Ledcom's main objects were not taken to include (a) to (d) but, instead, be (a) alone, the Tribunal finds that would not change its conclusion

that the premises do not qualify for charitable exemption. In particular, as a main object it was not charitable as it did not exclude private benefit, the sector intended to be benefited was not sufficiently defined and its potential beneficiaries were not sufficiently directly facilitated. There was no bar on the company using these premises for profit, its business activities were significant, not merely ancillary to object (a), and, although some were charitable, others were intended to make profits.

The evidence demonstrated that Ledcom was fulfilling an important role in society and clearly the community, including the local community in particular, had benefited from their activities. However, the Tribunal, not without sympathy for the aims of Ledcom and admiration for its achievements, finds its occupancy of the premises does not qualify for exemption from rates.

Costs

At a further Hearing on costs, Mr Andrew Robinson of O'Rorke McDonald & Tweed, Solicitors, appeared for the Appellant. Mrs Ann Kyle, Crown Solicitor, appeared for the Respondent.

Mrs Kyle applied for costs and set out a chronology of the Appeal. In June 1994 Ledcom had successfully applied for exemption; but, in August 1994 the District Valuer became aware of research at his headquarters and wrote to Ledcom informing them of the possibility of change. By December 1994 the research had been completed and the District Valuer revised the valuation removing the exemption. Ledcom immediately appealed to the Commissioner leading to the Hearing at this Tribunal.

There was a hearing fixed for 13th February 1998. That was adjourned on agreed terms as to costs.

Mrs Kyle submitted that since the legal and expert advice had been available to the Appellant, the normal rule should apply and costs should follow the event.

Mr Robinson accepted there was no doubt about the award but submitted that this was in reality an important test of a change of policy which gave rise to issues which needed to be clarified, tried and settled. He urged the Tribunal to make an exception to the usual rule.

The Tribunal accepts that the case concerned an issue of widespread importance but is not persuaded that there was sufficient doubt about the policy to justify continuing to contest the case to the Tribunal and lead the Tribunal to make an exception.

The Tribunal orders that the Appellant pays the Respondent's costs. Such costs in default of agreement to be taxed by the Registrar of the Lands Tribunal on the High Court Scale.

ORDERS ACCORDINGLY

19th August 1998

**Mr Michael R Curry FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:

Appellant - Miss Jacqui Simpson instructed by O'Rorke, McDonald & Tweed.

Respondent - Mr Stephen Shaw instructed by the Crown Solicitor.