Appeal No: VA22/4/0015 (Bellevue)

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Daffodil Care Services Unlimited Company and Core Residential Support ULC **APPELLANT**

And

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 5022680, Nursing Home (In Dispute) at Fiddane North, Rahan, Mallow, County Cork.

B E F O R E
Dairine Mac Fadden, Solicitor **Deputy Chairperson**
Sarah Reid, BL **Member**
Fergus Keogh, MSCSI,MRICS **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF NOVEMBER, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 23rd day of November 2022 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €80.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal as follows:

"(b) Details stated in the relevant Valuation List are incorrect.
The description of the property concerned should be 'Care Facility'.

(d) Property concerned ought to have been excluded in relevant Valuation List.

1. Section 15(2) of the Valuation Act, 2001 provides inter alia that relevant property referred to in Schedule 4 shall not be rateable.

2. Paragraph 14(b) of Schedule 4 of the Valuation Act 2001 (as amended by Section 39(c) of the Valuation Amendment Act 2015 refer to: 14 – Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, being either –

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act, 2009"

3. The property is occupied by the Appellants for the purposes of caring for handicapped or disabled persons.

4. The expenses incurred by the Appellants in carrying on the aforesaid activity are defrayed wholly or mainly out of moneys provided by the Exchequer.

5. Such defrayal does not occur by reason of the Nursing Homes Support Scheme Act 2009.

6. By reason of the foregoing, the property is not rateable and ought to be excluded from the Valuation List."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. VALUATION HISTORY

2.1 On the 14th day of September 2022 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €80.

2.2 No representations were made by the Appellant and a Final Valuation Certificate issued on the 27th day of October 2022 stating a valuation of €80.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 21st day of July 2023. At the hearing the Appellant was represented by Proinsias O Maolchalain BL, Finan Finn Solicitor, John Algar MSCSI, MRICS Director with Avison Young & Louis O'Moore Director of Operations of Daffodil Care Services Unlimited Company, and the Respondent was represented by David Dodd BL, Isabella Whelan BL, Padraig Keenan CSSO and Andrew Cremin of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts.

4.1 The Appellant is a registered company providing residential care services to children and young people. They operate and are regulated as children's residential care centre within the meaning of S.I. 397/1996 – Child Care (Standards in Children's Residential Centres) Regulations, 1996 and the Subject Property is one such centre.

4.2 The Appellant provides 24-hour care, 365 days a year at the Subject Property known as 'Bellevue' which is located in Fiddane North, Mallow County Cork. The children cared for in the Property are placed with the Appellant by TUSLA (the Child & Family Agency) subsequent to their being removed from their domestic setting.

4.3 The children cared for in the Property have a complex range of care needs and the Appellant provides varied supports to the children in its care, in addition to arranging and/or facilitating other care from external healthcare, social or other professionals, as may be required. The nature of the supports and services needed by the children cared for by the Appellant will vary depending on the child. The children often have complex needs and may have learning difficulties and psychological disorders.

4.4 The Appellant provides its services to TUSLA pursuant to a service level agreement (SLA) between TUSLA and the Appellant and payment for the services so provided is requested directly from, and discharged by, TUSLA on a monthly invoiced basis. The Appellant does not receive any additional income for their services, bar the payments received from TUSLA. As part of its service, and by agreement with TUSLA, the Appellant is tasked with arranging and/or facilitating additional services including clinical psychology input and delivery of care packages for the children in their care.

4.5 The Property is held by the Appellant on a lease from Rockeden PNA Holdings ULC, as landlords. The floor areas were agreed as:

Use	Sq.m
Ground Floor	243.67
First Floor	166.26

5. ISSUES

5.1 The present Appeal concerns only the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemption contained in Paragraph 14(b) thereof, and the extent to which same applies to the Subject Property.

5.2 In determining whether the Appellant is entitled to the exemption sought, the Tribunal must consider the use of the Property by the Appellant and whether same renders it eligible for exemption under Paragraph14(b) of the Act requiring it to be excluded from the List by the Respondent.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of a property falls to be determined by the Commissioner of Valuation under Section 13 of the Valuation Act, 2001 as amended (hereafter 'the Act'), which provides as follows:

(1) *The Commissioner shall provide for the determination of the value of all relevant properties (other than relevant properties specified in Schedule 4) in accordance with the provisions of this Act.*

6.2 Schedule 4 of the Act, provides that certain properties that are exempt from the payment of commercial rates. A list of circumstances are provided in that context and paragraph 14 of the Schedule exempts:

14. - Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, being either –

> *(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid,*
> *or*
> *(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act, 2009"*

7. APPELLANT'S CASE

7.1 Mr. Louis O'Moore, Director of Operations in the Appellant and Mr. John Algar, valuer with Avison Young gave evidence on behalf of the Appellant. Mr. O'Moore adopted his précis and described the property and location in Mallow County Cork. He outlined in some detail the nature of the services provided by the Appellant and the type of care needs that the present, as well as previous children at the centre, required. Mr. O' Moore confirmed and explained before the Tribunal the process and statutory mechanism through which a child was placed in their care. He gave evidence that before a child is placed with them, the TUSLA National Private Placement Team will contact them to ascertain if they are in a position to provide the appropriate residential care for the child they are seeking to accommodate.

7.2 Mr. O' Moore explained that in selecting a service provider, including the Appellant, TUSLA will take into account the location of the residence to the child's family, the nature of the presenting behaviour of the child, the intellectual and/or physical disability, mental illness, handicap of the child, the level of care required, and types of residential setting provided by a provider. In addition, he noted that TUSLA ask that the provider themselves assess the child to ascertain the type of residential care needs required and thereafter make a proposal to TUSLA if they are in a position to care for the child.

7.3 While acknowledging that each child placed with them will have individual needs, Mr. O'Moore gave evidence that the Appellant provides their services pursuant to Section 58 of the Child and Family Agency Act 2013 and on foot of a contract entered into between the Appellant and TUSLA dated 6 October 2021, (hereafter referred to as the Service Level Agreement) following a procurement process and selection of the Appellant for these services. In respect of the services provided under this contract, the Appellant provided documentary evidence to the Tribunal (specifically the contract terms and schedule of services which detailed the range of care services required by TUSLA) in support of the Appellant's claim. Mr. O'Moore outlined the service requirements the Appellant was operating under and noted that five service types were possible, with additional or enhanced care services offered depending on the severity of the presenting child's needs.

7.4 The Appellant confirmed that TUSLA seek service providers in respect of differing presentation of children as follows:

- ✓ Young people who present a persistent child protection risk.
- ✓ Young people who frequently or persistently fluctuate between calm and crisis.
- ✓ Young people with Attachment Disorders.
- ✓ Young people who frequently or persistently reject care.
- ✓ Young people in persistent crisis within their current placements.
- ✓ Young people who frequently or persistently intimidate peers, professionals, and others.
- ✓ Young people who frequently or persistently create or exploit unsafe situations.
- ✓ Young people who may engage in violent and anti-social behaviour including property damage.
- ✓ Young people who frequently or persistently place themselves and others at high risk.
- ✓ Young people who have experienced early childhood trauma and are exhibiting the lasting mental and physical effects if same.
- ✓ Young people whose risks frequently escalate in group living.
- ✓ Young people whose risks cannot be managed alongside others.

7.5 The Appellant further confirmed that when a child is to be cared for by them in the Property, an additional risk assessment is conducted to ensure the child's needs can be met, and to enable the Appellant assess how best to meet those care needs. Mr. O'Moore gave evidence as to the educational and training qualifications of the Appellant's staff which were, for the most part social care qualifications with various additional child protection, safeguarding and therapeutic crisis intervention training noted.

7.6 As regards the reasons for child referrals to the Appellant, Mr. O'Moore explained that residential care is often required for children when their needs cannot be met elsewhere. He explained that TUSLA's primary preference is to continue to house children in community care, with foster care as another option instead of residential care. Residential care will often arise when the child's needs are complex and can't be met by their family or within the community setting.

7.7 Mr. John Algar, valuer with Avison Young gave evidence before the Tribunal regarding his inspection of the Property in May 2023. He adopted his précis and described the property and its location in Mallow County Cork. Arising from his inspection, Mr. Algar was of the view that the Property was used for the sole purpose of caring for children who suffer from mental illness and/or intellectual disabilities. As regards the two NAV comparisons being relied on by the Respondent, Mr. Algar stated that these were not comparable to the Subject Property as they were both purpose-built commercial nursing home facilities located in residential areas on the outskirts of Churchtown village, County Cork. In contrast the Subject Property was a domestic premises, being repurposed and/or used for residential care of minors.

7.8 Further, and insofar as the Appellant's financial operation arose, Mr. Algar stated that he had reviewed the Appellants Service Level Agreement and details of the financial statements inclusive of the operating expenses for the Subject Property and was satisfied from same that the Appellant was 100% funded by TUSLA. As to the exemption being sought, Mr. Algar had regard to the recent Tribunal decisions in respect of Nua Healthcare Ltd. and Redwood and was of the view that the property is not rateable under Paragraph 14 of Schedule 4 of the Valuation Act, as amended, and should accordingly be removed from the Valuation List.

7.9 In cross examination by Mr. Dodd BL, Mr. O'Moore was asked if 'special care' was a different thing to what was being provided by the Appellant. He acknowledged that it was, and confirmed 'special care' would involve detention of a child, rather than residential care of that child. He explained that the care can 'step up or step down' depending on the child's behaviours but that the Appellant is a children's residential centre registered under Section 61 of the Act which was different from a detention centre for children.

7.10 Mr. O'Moore was asked to confirm if every child under the Appellant's care was subject to a TUSLA care order (being statutory Orders handed down by the Courts) and he confirmed that to be the case. Mr. O'Moore estimated that approximately 60% of the children in the Appellant's care were under interim or full Orders and approximately 40% were housed pursuant to voluntary care Orders. In addition, Mr. O'Moore was asked what happens when a child in their care 'ages out' and reaches 18 years of age, to which he confirmed that the childcare Order ceases at 18 and where needed, wardship can become necessary, with an interim wardship Order being sought on their birthday.

7.11 As to the relationship between the Appellant and TUSLA, Mr. O'Moore was asked if his client was TUSLA and if the Appellant occupied the Subject Property in order to offer services to TUSLA. Mr. O'Moore confirmed both to be correct.

7.12 Mr. O'Moore was asked to comment on the building specifications of the Subject Property and agreed with Mr. Dodd BL that there was no reference in the TUSLA Service Level Agreement documents to "handicapped or disabled" services being required of the Appellant. As regards physically disabled children, it was put to Mr. O'Moore that TUSLA don't provide care for children in the care of the State, (ie disabled children) and he agreed. Further, and in respect of the type of presenting behaviours exhibited by the children referred to their facility, it was put to Mr. O'Moore that this list (recited above at paragraph 7.4) was what a child might present and did not

include medical conditions. Mr. O'Moore noted that it referenced psychological and/or psychiatric conditions and that trauma in children can manifest in reactive ways.

7.13 Insofar as the term "handicapped and disabled" is included in paragraph 14 of Schedule 4, Mr. O'Moore stated this was an outdated phrase and was so when he began working in the area twenty years ago. He noted that the Appellant did not use the phrase, nor did ordinary people or professionals working in the industry. It was used here, as the relevant legislative term, applicable to the Appellant. Mr. O'Moore confirmed in cross examination that there were approximately 50 children in the Appellant's care across their service and amongst them, physical disability was less of a feature than their behavioural needs. Where a child was eligible for disability allowance (potentially from the age of 16) Mr. O'Moore stated that that was a matter to be assessed by the Department of Social Protection with no input from the Appellant, however if monies were paid on foot of disability allowance to a minor in their care, then the Appellant would be obliged to manage those funds.

7.14 Lastly and as regards the accommodation in the Subject Property, it was put to Mr. O'Moore that the photos of the property did not show or suggest modifications to the property to accommodate persons with physical disabilities. There was no wheelchair ramp or other obvious alternations in compliance with building regulations for buildings housing disabled persons. Mr. O'Moore agreed but noted that while there were no 'clinical' rooms in the Property, rooms could be used for that purpose, for example the sitting room used for meeting between a care professional and the child they were treating.

8. RESPONDENT'S CASE

8.1 Mr. Andrew Cremin gave evidence on behalf of the Respondent and adopted his précis and described the Property and his inspection of same. The Property consists of a two-story domestic house comprising offices, living areas, kitchen utility rooms and bedrooms.

8.2 The Respondent maintained that the Property was 'relevant property' for the purposes of the Act and that Paragraph 14(b) of Schedule 4 did not apply, for reasons outlined in the legal submissions hereunder. In the circumstances, the Respondent sought a valuation of €80 reflecting a NAV of €40 per sq.m.

8.3 In seeking a valuation as outlined above, the Respondent noted that there were no comparable 'care facilities' in the local authority area to rely on and offered instead two comparison properties both of which were nursing homes, where a NAV of €40.00 had been applied by the Respondent. It was the Respondent's case that PN 1136745 and PN 2177754 were both located in Mallow, Cork approximately 21 km from the Subject Property and were purpose-built nursing homes with similar uses to the Subject when the NAV values per sq.m were considered.

8.4 Insofar as the issue of classification of the Property arose, specifically the Appellant's objection to the Property being deemed, and valued, as a 'nursing home', Mr. Cremin gave evidence that the Subject Property is considered by the Respondent as being within the 'care sector' along with nursing homes and other healthcare facilities. In those

circumstances the Respondent was not implying that the Property is actually a nursing home, merely that the Respondent's systems do not provide an exact classification for the Property so 'nursing home' is applied to best reflect the position.

8.5 The Respondent advanced a claim in his précis that paragraph 14(a) of Schedule 4 of the Valuation Act 2001 fell to be considered insofar as it pertains to profit making entities and stated that 'The occupier has tendered for a contract of service provision on a fee basis, albeit the contracting body is a government agency… This company has been established for business purposes with the intention of making a profit. The commercial objectives of this company are set out in its memorandum & articles of association attached in Appendix 3.' At the hearing, the Respondent did not seek to pursue this claim and it was accepted by Mr. Cremin that all funding was provided to the Appellant from TUSLA.

8.6 In cross examination by the Appellant, Mr. Cremin was asked to comment on whether the children cared for in the Property had disabilities. He advised the Tribunal that being sensitive to their situation, he merely inspected the Property and did not engage with those present on the day. When pressed to confirm or accept that there could be a range of disabilities that these children could have, he stated he was not qualified to make that assertion and could not therefore agree or disagree with the position being advanced by O Maolchalain BL that the children had disabilities.

8.7 Mr. Cremin was questioned about the relevance of 'profit making' when the Respondent was considering Paragraph 14 of Schedule 4. He confirmed that where profit making is a feature of an enterprise then paragraph 14(a) applies but if that is not the case, 14(b) falls to be considered. Insofar as the Respondent included commentary in their précis in relation to the Appellant's profit-making activities, Mr. Cremin was asked whether paragraph 14(b) was considered when valuing the Subject Property and he replied that he hadn't engaged with the 'expenses defrayed' element as that question was currently under consideration in two other Valuation Tribunal determinations (vis Redwood & Nua Healthcare). It was put to him that regardless of whether aspects of the provision were being considered before the High Court, the Commissioner was obliged to make a decision and he responded that he had made a decision factoring in all the information available to him.

9. SUBMISSIONS

9.1 The Appellant submitted written submissions which were elaborated on by Counsel at the hearing. As part of these submissions, the Appellant stated as follows:

"5. Clients admitted to the Centre have varied clinical presentations, but clients will have mild learning disabilities. This clinical diagnosis of intellectual disability will be confirmed prior to admission and typically as part of the admissions process. In addition to this clinical description clients will typically have further emotional disturbances (mental illness).

6. Clients will suffer from a wide range of emotional disturbance (mental illness) such as:

- *Anxiety disorder*
- *Bipolar disorder*
- *Reactive attachment disorder*
- *Foetal alcohol syndrome*
- *Oppositional defiant disorder*
- *Conduct disorder*
- *Disorder attention deficit hyperactivity (ADHD)"*

9.2 The Appellant sought to rely on three Tribunal determinations in support of their position that the Subject Property was exempt within the terms of paragraph 14 of Schedule 4. Firstly, *Nua Healthcare Services Limited v. Commissioner of Valuation* (VA18/4/0013) insofar as it related to activity in a Property, where the expenses of which were defrayed wholly or mainly out of monies provided by the HSE and TUSLA. Secondly, Nua Healthcare Services Limited v. Commissioner of Valuation (VA19/5/0716) which concerned care facilities the expenses of which were defrayed wholly or mainly out of monies provided by the HSE and thirdly, Redwood Extended Care Facility v. Commissioner VA18/3/0031 which concerned care facilities the expenses of which were defrayed wholly or mainly out of monies provided by the HSE.

9.3 Insofar as VA18/4/0013 and VA19/5/0716 (the 'Nua Healthcare' cases) were concerned, the Appellant noted that the Respondent unsuccessfully argued in those Appeals that because the occupier was a profit-making body it was not entitled to benefit from the exemption in paragraph 14 of Schedule 4. In support of that position, the Appellant relied on the following excerpt from determination VA19/5/0716:

> "*Paragraph 14(b) makes clear that it was not intended by the Oireachtas to deprive profit- making bodies from availing of the exemption accorded by paragraph 14 of Schedule 4. While paragraph 14(a) clearly confirms the general exclusion of properties occupied by profit making bodies for the purposes of caring for elderly, handicapped or disabled persons from Schedule 4, the effect of paragraph 14(b) is to entitle such bodies to claim exemption from rates where they occupy properties for such purposes provided their expenses in carrying out such care activities are defrayed wholly or mainly out of moneys provided by the Exchequer….*
>
> *Paragraph 14(b) of Schedule 4 only requires the expenses incurred in carrying out the care activity at the Property to be defrayed wholly or mainly out of moneys provided by the Exchequer."*

9.4 As regards the Tribunal determination in *Redwood Extended Care Facility Limited v. Commissioner of Valuation* (VA18/3/0031) the Appellant noted that the Tribunal concluded that the claim for exemption under paragraph 14(b) of Schedule 4 should succeed where "[Redwood] is a body the expenses incurred by which in carrying on a activity of caring for disabled persons, the expenses of which are defrayed by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009".

9.5 In Nua Healthcare Services v. Commissioner of Valuation (VA18/4/0013) the Tribunal found at paragraph 10.23 that the Appellant's facility could be distinguished from the facts and property in Glendale holding that "the relevant property fell within the ambit of paragraph 14(b) and, further, that the Appellant (Nua) is a body the expenses incurred by which in carrying on an activity of caring for disabled persons, the expenses of which are defrayed by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009"

9.6 Insofar as the question of funding and 'monies paid' fell to be considered, the Appellant relied on the decision of Mr Justice MacMenamin in *HSE v. Commissioner of Valuation* [2010] 4 I.R. 23, which concluded that the HSE though not an "office of State", was nonetheless "the State" for the purposes of the (then) exempting provision in section 15(3) of the Valuation Act, 2001

> *"44. One turns to a critical issue, that is source of funding. Central government funding is provided for under the Appropriation Act of each year. This Act appropriates to the proper supply, services and purposes sums granted by the central fund. The appellant is one of 40 public state bodies or authorities identified in the Appropriation Act 2006, along with 12 government departments, the Defence Forces, An Garda Síochána, the Prison Service and 23 other bodies which receive appropriations directly.*
>
> *45. While this must be seen as within the critical 'litmus test', it is nonetheless a highly significant indicator as to the status of a State authority and its relationship with central government…*
>
> *51. In addition to the appropriation account, the annual financial statements, by virtue of s. 36 of the Act of 2004, must be submitted to the Comptroller and Auditor General. A further important facet of financial control is that every month the Comptroller and Auditor General approves the issue of monies to government departments from the Exchequer. This regime of approval, otherwise unique* to government."

9.7 Relying on this, the Appellant submitted that the Child and Family Agency (TUSLA) was created by the Child and Family Agency Act 2013 ("the 2013 Act") and is answerable to the Minister for Children, Equality, Disability, Integration and Youth. By virtue of section 82 of the 2013 Act, the functions vested in the Health Service Executive by or under the enactments specified in Schedule 1 to the 2013 Act were, on the establishment day, transferred to the Agency. By reason of the foregoing, it is submitted that moneys provided by TUSLA constitute moneys provided by the Exchequer for the purposes of the Act.

9.8 Insofar as the question of 'profit making' fell to be considered, the Appellant submitted that it was not in dispute that the Appellants is a profit-making entity but that the Respondent had failed or neglected to engage with the recent above-mentioned decisions of the Tribunal which comprehensively dealt with the exemption under

paragraph 14(b) of Schedule 4 where profit making is involved. It was the Appellant's case that the provisions of Paragraph 14(a) and Paragraph 14(b) are alternative bases for exemption. They are not cumulative requirements.

9.9 In concluding their submissions the Appellant maintained there was no question of any financial support being made available to the residents of the Centre by TUSLA and confirmed that the individual children cared for by the Appellant have no expenses in respect of their residence in the Centre. Where that is so, the Appellant maintained it cannot possibly be said in this case that TUSLA is defraying the costs of the children. Further, as the Appellant is delivering services of behalf of TUSLA, and therefore the State, the Appellant argued it was entirely appropriate, and to be expected, that its expenses in so doing should be defrayed by TUSLA, i.e. the Exchequer. In those circumstances the Appellant submitted that the Subject Property fell within the provisions of paragraph 14(b) of Schedule 4 and ought to be excluded from the Valuation List.

9.10 The Respondent submitted written submissions which were elaborated on by Counsel at the hearing. It was the Respondent's case that the primary issue in this case was whether the minors cared for by the Appellant in the Subject Property were "handicapped or disabled persons" within the meaning of paragraph 14(b) of Schedule 4, noting that the said terms were a product of the Statute and ones the parties are coerced into using for present purposes when the children ought not to be so described.

9.11 Included in the Respondent's legal submissions was the following observation:

"*6. There are a number of residential care facilities in the state for children in the care of the state run by private profit-making providers such as the appellant.*

7. These appear on the rating list.

8. No other provider has ever sought to claim that the children under their care are handicapped or disabled person within the meaning of paragraph 14(b)".

9.12 The Respondent outlined the ways children came to be placed in the care of the State, and /or with TUSLA. This can arise pursuant to a 'care Order' under Section 18 of the Childcare Act, 1991, under a 'special care Order' under Section 23H of the Childcare Act, 1991 or via a 'detention Order' pursuant to the inherent jurisdiction of the High Court.

[Care Order] Section 18 provides:

> 18.(1) Where, on the application of the Child and Family Agency with respect to a child, the court is satisfied that—
>
> > (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or

(b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or

(c) the child's health, development or welfare is likely to be avoidably impaired or neglected,

and that the child requires care or protection which he is unlikely to receive unless the court makes an order under this section, the court may make an order (in this Act referred to as a "care order") in respect of the child.

[Special care Order] Section 23H of the 1991 Act means the provision, to a child, of—

(a) care which addresses—

(i) his or her behaviour and the risk of harm it poses to his or her life, health, safety, development or welfare, and

(ii) his or her care requirements,

and includes medical and psychiatric assessment, examination and treatment, and

(b) educational supervision, in a special care unit in which the child is detained and requires for its provision a special care order or an interim special care order directing the Child and Family Agency to detain the child in a special care unit, which the Child and Family Agency considers appropriate for the child, for the purpose of such provision and may, during the period for which the special care order or interim special care order has effect, include the release of the child from the special care unit—

(i) in accordance with section 23NF, and

(ii) where the release is required for the purposes of section 23D or 23E, in accordance with section 23NG."

In addition, the Respondent noted that the subject property is certified under s. 61 of the Childcare Act, 1991 as a children's residential centre same is defined by s. 59 of the 1991 Act as:

"children's residential centre" means any home or other institution for the residential care of children <u>in the care of the Child and Family Agency</u> or other children who are <u>not receiving adequate care and protection</u> excluding—

(a) an institution managed by or on behalf of a Minister of the Government or F350[the Child and Family Agency],

(b) an institution in which a majority of the children being maintained are being treated for acute illnesses,

(c) F351[…

(d) a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,

> *(e) an institution which is a "certified school" within the meaning of Part IV of the Children Act, 1908, functions in relation to which stand vested in the Minister for Education."*

9.13 The Respondent noted that the onus was on the Appellant to establish that they fell within the exemption and the comments of McKechnie J. in *Dublin County Council v Fallowvale Limited* [2005] IEHC 408 were relied on in that regard where the Court confirmed:

"*The following passage from Lennon v. Kingdom Plant Hire Limited, (Unreported High Court, Morris J., 13 December, 1991) was opened to the court as encapsulating the point at hand. Morris J., in the report of the case at para. 2.656 of O'Sullivan and Sheppard said:*

> *"It is accepted by the respondents that they seek to rely upon an exemption and the onus of establishing that they fall within the exemption rests on them."*

9.14 Insofar as the Appeal concerned the interpretation of the Act, specifically paragraph 14(b) of Schedule 4, the Respondent made legal submissions on the principles of Statutory interpretation and the need to identify the 'overriding goal' of the provision and legislative scheme under consideration. In support of this the Respondent noted the principle that words should be given the ordinary and plain meaning in the context in which they appear, the exclusion of matters that could have been included, but were not, and that any ambiguity should be resolved against the party seeking the exemption.

9.15 As regards the requirement to identify the statutory intention and legislative goal, the Respondent argued words should be given the ordinary and plain meaning in the context in which they appear, and Mr. Dodd referenced several authorities in support of this position: *Cork County Council v Whillock* [1993] 1 IR 231, *Harrisrange Ltd. v Duncan* [2003] 4 IR 15, *Inspector of Taxes v Kiernan* [1981] IR 117 and *In re Irish Employers Mutual Insurance Association Ltd*. [1955] IR 176, *Lawlor v Flood* [1999] 3 IR 107, *United States Tobacco International Inc v The Minister for Health* [1990] I IR 394.

9.16 As to the requirement that words should be given a meaning and interpreted in light of the general or 'man in the street' use of the term, the Respondent argued that in fulfilling this task the Tribunal had to consider the following:

Firstly, the "ordinary and plain" meaning of the word, not any unusual, extended or artificial meaning which can be argued that the words could possibly bear. The latter being the opposite of the ordinary and plain meaning.

Secondly, the ordinary everyday use of the word, which involves a consideration of how the word is used in its ordinary meaning and does it capture the matter or object said to fall within its remint, or not, in everyday use.

Thirdly, how the words are used by professionals who operate in the sphere that the enactment is directed to.

Fourthly, the word should be interpreted in the context in which it appears and by reference to the words that surround it. In support of this, the Respondent maintained it is incorrect to extract a word from legislation, assign it a meaning and then place it back into the enactment and indeed the Latin maxim *Noscitor a sociss* means that statutory words are liable to be affected by other words with which they are associated.

9.17 Insofar as regard should be had to the legislation, as drafted, the Respondent noted that it is unusual to attribute to the legislature's intention matters which it could have included at the time of the enactment - but did not. In elaborating on this the Respondent noted the *Longford case* (1889) 14 PD 34 where the Court held it was impermissible to apply an updated construction to a provision so as to reverse the legislature's intention. In that instance 'action' was interpreted as excluding 'admiralty actions' as the legislature, by its choice of words, had expressly excluded these from the provision and the Court was unwilling to revisit or amend the position.

9.18 The Respondent maintained that the law is clear in its requirement that a party seeking to benefit from a statutory exemption, bears the onus of proof in that regard and further that exemptions ought to be applied against the rate payer. In support of this, the decision of McMenamin J., in *Nangles Nurseries -v- Commissioners of Valuation* [2008] IEHC 73 was relied on and the seven interpretive principles set out therein regarding the interpretation of the Valuation Act 2001:

> "(1) While the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;
>
> (2) The Act is to be strictly interpreted;
>
> (3) Impositions are to be construed strictly in favour of the rate payer;
>
> (4) Exemptions or relieving provisions are to be interpreted strictly against the rate payer;
>
> (5) Ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;
>
> (6) If however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;
>
> (7) In the case of ambiguity, the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it."

9.19 In further support of the position the recent decision, in *Tearfund v Commissioner of Valuation* [2021] IEHC 534 was relied on wherein the Court rejected the Appellant's interpretation that advancement of religion was a "charitable purpose" within the meaning of paragraph 10 of Schedule 4 of the Valuation Act but went on to find that

even if the Court was wrong in that regard, the phrase was ambiguous and so should be interpreted against the rate payer seeking exemption:

> *"Even if the court is wrong in the construction of "charitable purposes" in para. 16(a) and if it were held that that phrase was ambiguous, then applying the approach endorsed by the Supreme Court in the Nangles Nurseries case, the wording must be construed against the ratepayer, as it concerns an exemption; in which case the court would also reach the conclusion that the words used do not include the advancement of religion."*

9.20 In concluding the Respondent's submissions, Mr. Dodd argued that the Tribunal is required to identify and give effect to the intention of the Oireachtas in paragraph 14 of Schedule 4. In that regard, it was the Respondent's case that the overriding question to be determined in this Appeal is whether the Oireachtas intended to exempt children's residential centres when it exempted buildings occupied for the purpose of caring for elderly, handicapped or disabled persons. The Respondent argued that the Oireachtas did not intend to do so, and that being clear, the Appeal fails.

9.21 The Respondent argued that the Tribunal ought to ascribe the ordinary meaning of "disabled persons" and that this was not an expression which in ordinary everyday use is used to describe children in the care of the State. The Respondent argued that the person in the street would not believe that the expression "disabled persons" describes children in care. The practitioners in this area do not, as a fact, use the expression 'disabled persons' when describing children in care (that point having been conceded by the Appellant) and so to deploy the expression "disabled persons" and apply it to children in care is an unusual, extended or artificial meaning rather than its ordinary meaning.

9.22 As regards the children cared for in the Subject Property and the way they come to be so cared in that facility, the Respondent noted children may only live in the subject property if they are in the care of TUSLA / the Child and Family Agency as this is the stated purpose of children's residential care homes. The Court care Orders outlined above, ordinarily only arise if the child has been assaulted, ill-treated, neglected, sexually abused, or their health, development or welfare has been or is being avoidably impaired or neglected, such that they require care or protection which they are unlikely to receive unless the Court makes a care Order. Alternatively, where the child's behaviour and the risk of harm this poses to his or her life, health, safety, development or welfare arises, then a Court care Order can be sought placing them in the care of the State. In these circumstances the Respondent argued that the proofs required for a child to be in the care of the State do not concern disability and disability is not required to secure such Orders. In Mr. Dodd's submission this suggests that the purpose of children's residential care homes is not to care for 'handicapped' or 'disabled' persons. Instead, the issue necessitating the placement of a child with the Appellant is the lack of care and protection (or harm) received by them in their domestic setting.

9.23 The Respondent emphasised that a disability is not a necessary precondition of a child being placed in the care of the TUSLA, or even a feature and in fact once the children reach the age of majority at 18, they are ordinarily no longer entitled to reside in the Subject Property. Their challenges may be identical as before (or maybe worse), but

this does not entitle them to continue living at the Subject Property. Mr. Dodd maintained that this was further proof that the essential feature of the property is to provide for the residential care of children in the care of the Child and Family Agency, and not for the purpose of caring for handicapped or disabled persons. Further, the point that caring for handicapped or disabled persons is not the central purpose of the occupation of the Property, is also demonstrated by the fact that a child - or a parent of a child - cannot apply for the child to live in the Property on the grounds of their disability. The Property is for the residential care of children in the care of TUSLA only, not handicapped or disabled persons.

9.24 In concluding his submissions, counsel for the Respondent argued that the exemption ought not to be applied in the present Appeal but that if the Tribunal were to hold that the expression is capable of applying to children's residential centres, then the phrase is ambiguous and the exemption must be interpreted against the ratepayer, *Nangles Nurseries* applying.

10. FINDINGS AND CONCLUSIONS

10.1 The present Appeal concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemption contained in Paragraph 14(b) thereof, and the extent to which same applies to the Appellant's Property. The Tribunal must decide if the decision of the Respondent to include the Property on the List was correct or whether, on the basis of the case put forward by the Appellant, the property should be excluded from the valuation List because it falls within Schedule 4 Paragraph 14 (b) of the Valuation Act, 2001, as amended.

10.2 In determining if an exemption should apply, the Tribunal was asked to consider the intention of the Oireachtas when they included the phrase 'elderly, handicapped or disabled persons' in paragraph 14 of Schedule 4. The Tribunal notes that the terms included in the legislation, specifically 'handicapped' is not a term used by the Appellant or by those presently working in this area. However, for the purpose of this determination, the legislative phasing is used simply for consistency with the statutory scheme. The Tribunal was asked by the Appellant to interpret the definition of 'handicapped or disabled persons' as including the children being cared for by the Appellant's service. The crux of the dispute between the parties is whether the services provided by the Appellant in the Subject Property render it a '*building occupied for the purpose of caring for elderly, handicapped or disabled persons'* as described in paragraph 14 of Schedule 4 of the Act. The Appellant maintains that the Property is exempt under paragraph 14(b), the Respondent argues paragraph 14(b) does not apply as the persons catered for in the Property are not 'handicapped or disabled' to use the language of the provision.

10.3 Insofar as the classification of the Property as a 'nursing home' falls to be considered, the Tribunal accepts that the Respondent's classification system is restricted in how it categorises relevant property within the 'care' sector. It was confirmed in evidence that there is no distinct category available for care services such as those provided by the Appellant and so the designation 'nursing home' was used as a catch all category for

effected properties. The Tribunal accepts that the Respondent is working within a limited and restricted system and finds that while not ideal, the classification applied arose from those systems and was not a determination in its own right by the Respondent as to the use of the Property by the Appellant.

10.4 The Tribunal notes that the Respondent advanced a position in its filed précis that the Appellant was a profit-making entity, but this assertion and aspect of the case was resiled from at the hearing. Insofar as this represents a core consideration within paragraph 14, where a party changes its position at the opening of an Appeal it is both frustrating and potentially prejudicial to the opposing party who has prepared to meet the case outlined in the précis previously exchanged. Parties are required to provide evidence to the Tribunal that represents and supports their case. Changing position on a fundamental aspect of a claim shortly before the Appeal opens, is not conducive to the smooth and efficient administration of the Tribunal. The Tribunal acknowledges that in some cases information may become available to a party at the eleventh hour, through no fault of their own, which might lead them to change their position, but this does not appear to be the case here. The Tribunal notes that no submissions were made by the Appellant in the present case from the change of position adopted by the Respondent and no prejudice arose.

10.5 Insofar as the question of 'disability' and 'handicapped' fell to be considered in this Appeal, the Respondent's witness Mr. Cremin was cross examined and pressed for an answer regarding whether the children present in and cared for at the Property fell within this classification. The Respondent's witness stated that he was not qualified to answer that and the Tribunal notes that if a central tenant of the Appellant's case was that the children cared for came within the Paragraph 14 definition of "handicapped or disabled" then the onus was on them to advance that case with suitably qualified witnesses. An assertion was made by the Appellant in their legal submissions regarding learning disabilities and mental illness of the children cared for in the Property but no evidence was advanced in this Appeal from a suitably qualified medical professional in that regard and the Tribunal cannot make decisions where insufficient information is before it.

10.6 The Tribunal notes that both sets of legal submissions relied on in this Appeal purported to offer evidence that was not otherwise advanced by witnesses before the Tribunal. In respect of the Appellant's legal submissions (recited above), a position was advanced that the children cared for in the subject property suffered from various different learning and or psychological disorders. In respect of the Respondent's legal submissions, (recited above), it was stated that no other similarly circumstanced care provider, whose properties appear on the Valuation list, had ever contested their valuation or sought an exemption in the manner done by the Appellant herein. The Tribunal notes that where an evidential position is relied on by a party in an Appeal, it is incumbent on that party to provide the best evidence in support of their case and this requires that an appropriate person gives sworn evidence on a particular point rather than an assertion being made to that effect by way of Legal submission advanced by Counsel.

10.7 In the present Appeal the Tribunal notes that Mr. O'Moore, Director of Operations in the Appellant, gave evidence as to the diverse range and complex needs of the children

they cared for. His evidence was detailed and sympathetically delivered and arising from it, the Tribunal were able to understand the challenging situation presented and experienced by these children. However, Mr. O'Moore is not, and was not advanced as clinical psychologist or other suitably qualified medical practitioner, who could formally swear to the status of these children's conditions and whether same constituted a 'disability' or 'handicap' as envisaged in the legislation.

10.8 Insofar as the Tribunal determinations of Redwood and Nua Healthcare were relied on before the Tribunal, in circumstances where the Tribunal was advised by both parties that those determinations are being appealed, no findings are made in respect of their application in the present Appeal.

10.9 Insofar as the funding situation of the Appellant falls to be considered within paragraph 14, the Tribunal notes that the evidence was that the Appellant receives its funding from TUSLA and/or the HSE and considers this to constitute 'defrayed by the Exchequer' for the purposes of the provision under consideration.

10.10 The present Appeal requires the Tribunal to consider the remit of paragraph 14 in Schedule 4 of the Valuation Act, 2001 as amended. The Respondent argues that the Tribunal must determine what the Oireachtas intended to be covered by "buildings occupied for the purpose of caring for elderly, handicapped or disabled persons", same being the phrase used in the legislation. The Tribunal's task is to determine whether the property is 'relevant property' within the meaning of the Act or if it is entitled to an exemption pursuant to paragraph 14(a) or (b) of the Schedule. The discussion and arguments advanced in this Appeal focused primarily on the disabilities of the children cared for in the Subject Property and the type of care provided, whether by the Appellant or TUSLA. The question to be determined in this Appeal is whether the building was occupied and used in a manner that would render it eligible or exempt from valuation.

10.11 The evidence before the Tribunal confirmed that the Appellant is engaged by TUSLA to provide services to children who are the subject of care Orders directed by the Courts. The care provided by the Appellant to these children entails shared services involving parties outside the Appellant's organisation and including TUSLA social workers and such other educational, medical and psychiatric professionals as may be needed. Without detracting from the significant work the Appellant does in the provision of care services which these children have for whatever reason been denied, the fact is the Appellant provides the service of shelter, food and accommodation in *loco parentis* and in so doing they protect and safeguard the children from a risk that a Court has found to exist in their domestic situation or by virtue of their behaviour. Where a Court has considered a child to require care, the child is by agreement and following consultation, assigned to the Appellant's facility where they reside and have access to relevant services and therapies as may be needed. That the provision and facilitation of those treatments is done by the Appellant is underpinned by the terms of the Service Level Agreement between the Appellant and TUSLA.

10.12 While the evidence before the Tribunal confirmed the children housed by the Appellant in the Subject property suffer complex difficulties, including disorders that would restrict them in their daily lives, this Tribunal cannot engage in defining disabilities, not least where no medical evidence was proffered or advanced in this Appeal. That is not

the role of the Tribunal and the Respondent's witness correctly declined to offer his opinion on the medical status of the children he witnessed in the Property. The role, function and remit of the Valuation Tribunal is to consider the rateability and appropriate valuation of Properties on the Valuation List, and confirm exemption from rates where the evidence establishes that a Property is 'Relevant Property Not Rateable"' within the meaning of the Act.

10.13 The Tribunal finds that the Subject Property is used by the Appellant for profit making commercial activities, namely providing to TUSLA and/or the HSE care services including accommodation for children deemed to be a risk or at risk and a Court has adjudicated their situation granting a care Order, removing them from their domestic situation. The Tribunal notes that statutory designation and registration is required in order for a party to provide these care services and the Subject Property is one such designated centre.

10.14 The Tribunal notes that while the children cared for in the Property may, and likely do, have conditions that would be considered debilitating if not formal disabilities, that fact is not a prerequisite for their being placed with the Appellant in the Property. In this regard, the Tribunal notes that there is no mention of physical disabilities being envisaged or as the basis of the services sought in the TUSLA tender documentation and SLA agreement which forms the basis of the services provided by the Appellant. The Tribunal also notes that the building specifications and requirements set out by TUSLA do not mention or require disability access in order to fulfil the criteria for service providers.

10.15 The Tribunal finds that while there may be instances where a child placed in the Appellant's service suffers from a disability, the evidence in this Appeal did not establish that this was the primary purpose of the services provided in the Subject Property. The Appellant provides care and assistance to children removed from their domestic situation on foot of a Court Order. The evidence in this Appeal was that these children experience a complex range of issues often requiring multi-disciplinary care both inside and outside the Appellant's service. However, that fact does not change the use of the property into a property occupied for the purpose of caring for 'elderly, handicapped or disabled persons', it is merely the manifestation of the children's care needs while they are accommodated with and by the Appellant.

10.16 In the present Appeal, while the Tribunal is sympathetic to the Appellant and can see that the children, they care for have complex needs; in order to be excluded from valuation and exempted under Schedule 4 of the Act, the building must be occupied for the purposes of caring for 'elderly, handicapped or disabled persons'. The Tribunal finds that the Subject Property is occupied for the purposes of caring for children who have been removed from their domestic setting where a Court has considered them to be a risk or at risk therein.

10.17 In this Appeal the Tribunal was required to consider the phrase 'elderly, handicapped or disabled persons' in paragraph 14 of Schedule 4. The Appellant maintained that the said provision could be interpreted as including children with the range of needs being cared for within their service and on that basis the Property was eligible for exemption under paragraph 14. The Tribunal cannot stray beyond the confines of the Valuation Act, as amended, and where an exemption is sought the onus is on the party seeking it

to satisfy the Tribunal that they come within the statutory provision relied on. The Tribunal is confined by the wording in paragraph 14, schedule 4 and in the absence of a definition of 'disability' or 'handicapped' in the legislation and in the absence of any clear evidence from the parties in respect of these issues, the Tribunal is not satisfied that the Appellant has made their case.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the Appeal and confirms the decision of the Respondent to include the Subject Property on the List.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.