Appeal No: VA19/5/1465

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

ANN REILLY T/A SMALL STEPS **APPELLANT**

and

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 5009218, Creche (Office) at Aeta Place, Gortnakesh, County Cavan.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF JULY, 2024

BEFORE
Mema Byrne – BL **Tribunal Member**

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th day of October, 2019 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 €19,230.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *"I am renting three units in this complex. Units 4 & 5 are used specifically for ECCE childcare which is exempt. Unit 6 is used as a creche and for after school care.*

Unit 6 is completely different. Different entrance and exit, different staff, it has it's own utilities and is completely separate to the other business. It has its own Electricity and water meters. There was access from Unit 4 & 5 but this is no longer the case. I had a girl

out from the Valuation Office and I explained that we would block the access if that was required."

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

2. RE-VALUATION HISTORY

2.1 On the 15th day of March, 2019 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 €19,230.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €19,230.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September, 2017.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts:

a) The Appellant occupies units 4, 5 and 6 Aeta Place Gortnakesh, Cavan, H12 TX63 ("the Premises").
b) The Premises is located within a series of mixed use units from industrial to offices, a religious centre and a service station.
c) The Premises is held by the Appellant on a leasehold basis.
d) The revaluation carried out was in respect of units 4, 5 and 6 however it was described as "unit 6" for rating purposes.
e) Initially the Appellant operated a creche in units 4 and 5. Following approved planning permission in 2016, unit 6 was allowed to change its use to a creche and the sections of the dividing wall between units 5 and 6 were changed to allow for access between the units.
f) The Premises has a net internal area ("NIA") of 240.41sq.m.

g) The Premises' Net Annual Valuation ("NAV") of €19,230 represents a NAV per sq.m of €80.
h) The Appellant did not dispute the valuation itself rather it was submitted that the Premise is not rateable, or is exempt from rates.

5. ISSUES

5.1 The Appellant appealed the Final Valuation Certificate issued on 10 September 2019 confirming the valuation of €19,230 on the basis that units 4 and 5 are used as a creche and for after school care specifically for ECCE Childcare whereas unit 6 is used. The Appellant did not specifically refer to the section(s) of Valuation Act, 2001 ("the 2001 Act") she was relying on, however it was accepted by the Respondent that the relevant provisions are the exemptions provided for under Schedule 4, paragraphs 10 and 22 of the Valuation Act 2001 as amended which provide:

"10. —Any land, building or part of a building occupied by a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services referred to subsequently in this paragraph and otherwise than for private profit, being a school, college, university, institute of technology or other educational institution as respects which the following conditions are complied with—

(*a*) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or

(ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,

and

(*b*) in either case it makes the educational services concerned available to the general public (whether with or without a charge being made therefor)".

And

"22.—Any land, building or part of a building used exclusively for the provision of early childhood care and education, and occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit."

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

> "The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

> "Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

6.3 The relevant statutory provisions being relied upon by the Appellant are provided for under Schedule 4, paragraphs 10 and 22 of the Valuation Act 2001 as amended which provides for "Relevant Property Not Rateable" at paragraphs 10 and 22 respectively :

"10. —Any land, building or part of a building occupied by a school, college, university, institute of technology or any other educational institution and used exclusively by it for the provision of the educational services referred to subsequently in this paragraph and otherwise than for private profit, being a school, college, university, institute of technology or other educational institution as respects which the following conditions are complied with—

(*a*) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or

(ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,

and

(*b*) in either case it makes the educational services concerned available to the general public (whether with or without a charge being made therefor)".

And

"22.—Any land, building or part of a building used exclusively for the provision of early childhood care and education, and occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit."

7. APPELLANT'S CASE

7.1 The Appellant submitted that Unit 6 is used solely for Early Childhood Care and Education (ECCE) purpose and therefore it should be exempt from rates. The Appellant submitted that the unit in question, (Unit 6) is dedicated entirely to providing essential ECCE services.

7.2 The Appellant submitted that unit 6 is completely separate to the other childcare facilities operating in units 4&5 at the site. There are separate entrances and exits and the staff and children do not come into contact with the other children in the other facility. This unit is fully equipped with its own toilets/kitchens and has its own MPRN for electricity supply.

7.3 The Appellant did not submit any comparators or challenge the quantum of the NAV applied bar submitting that unit 6 was wholly exempt from rates. By email dated 15th March 2024 the Appellant rejected the Respondent's precis and submitted the interconnecting door between Unit 6 and the adjacent unit is never used. It was also submitted that the comparison with a Unit in the centre of town, had no bearing on the issue on hand and was not "similarly circumstanced". The Appellant submitted that the opening hours of the business are for the benefit of all our clients, not just the ECCE parents.

8. RESPONDENT'S CASE

8.1 The Respondent submitted that the Appellant does not dispute that the Appellant's business is run for the purpose of making a profit. The Respondent in Appendix II of its precis submitted an extract from the Appellant's accounts which showed that in 2016 €86,812 of the Appellant's turnover of €134,121 (64.7%) came from sales whereas the balance of funding came from state agencies; in the same year the Appellant's expenses amounted to €127,738 whereas its state agency funding amounted to €47,309 (37%). In 2017 €88,805 of €222,349 (39%) of the Appellant's income came from sales with the balance coming from state agencies; in the same year the Appellant's expenses amounted to €200,890 whereas its state agency funding amounted to €133,544 (66%). In 2015 €33,105 of the Appellant's turnover of €43,791 (75.6 %) derived from sales with the balance of income coming from state agencies; in the same year the Appellant's expenses amounted to €83,538 whereas its state agency funding amounted to €10,686 (12.79%).

It was submitted that the principles applicable to the interpretation of the provisions of the Valuation Act 2001 were summarised by McMenamin J. in Nangle Nurseries v. Commissioner of Valuation [2008] IEHC as follows:

"(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."

The Respondent submitted that the Tribunal has been faced with arguments relating to ECCE providers on a number of previous occasions. In each case the determinative factor was that the businesses operated on a "for profit" basis and therefore no exemption was available. The Respondent referred to Faylinn Education Ltd -v- Commissioner of Valuation VA18/2/2015A where the Tribunal concluded, at paragraph 10.9 of that decision, that:

"The Tribunal concludes therefore that the Appellant was both established and operated on a 'for profit' basis and as such does not qualify for exemption under Paragraph 22, Schedule 4 of the Act. As the Tribunal has come to this conclusion, it is not necessary to further consider the evidence put forward by the Appellant in respect of the criteria required to qualify for an exemption under either Paragraph 10 or Paragraph 22 of Schedule 4 of the Act".

The Respondent also referred to Kangacare Arklow Limited v Commissioner of Valuation, VA19/5/0492 where the Tribunal considered whether it was possible for a creche offering the ECCE scheme to claim exemption under both paragraphs 10 and 22. In that case the Tribunal noted:

"If one accepts Mr Halpin's argument – endorsed by the relevant division of the Tribunal at least for the time period the Sharon Smyth case concerned – that paragraph 10 deals with ECCE, then there is undoubtedly some element of incongruity between the provisions of paragraph 10 and paragraph 22 in that the former paragraph would provide an exemption for ECCE in circumstances where the operator seeks to make a profit provided expenses are wholly or mainly defrayed by the Exchequer, whereas the latter paragraph, in all cases where the relevant business is conducted for the purpose of making a private profit, excludes the entitlement to an exemption. Mr Kennedy invites the Tribunal to avoid the incongruity by concluding that paragraph 10 does not apply to ECCE property at all or, alternatively, to resolve the incongruity by concluding that paragraph 22 prevails over the provisions of paragraph 10."

It was submitted that the Tribunal ultimately concluded that paragraph 22 was the only paragraph potentially available to ECCE providers. In that case the Tribunal concluded that:

" The Tribunal notes that paragraph 22 was introduced after paragraph 10 and is thus, obviously, the later provision. Moreover, in contradistinction to the earlier paragraph which refers in a general way to the provision of "educational services", paragraph 22 refers to "the provision of early childhood care and education". Accordingly, paragraph 22 is the more specific or "special" provision and, in the view of the Tribunal, must also, for the same reason, be regarded as the
leading provision on the subject of the exemption for ECCE.

These observations, when considered in the context of the cases referred to above, lead the Tribunal inexorably to the view that where there is an incongruity between paragraph 10 and paragraph 22, the latter provision must prevail. The Tribunal does not need, for the purposes of this decision, to consider [Counsel for the Respondent's] argument that paragraph 10 does not deal at all with ECCE because it takes the view that even if paragraph 10 did so deal with ECCE, the two provisions would, at best, be incongruous and, in those circumstances, paragraph 22, as the leading, later and more specific provision must take precedence over paragraph 10.

In circumstances then where the Tribunal finds that paragraph 22 prevails, the Appellant, because it conducts its business for the purpose of making a private profit, cannot avail of an exemption under Schedule 4".

The Respondent's precis contained 3 comparators. The first comparator (Property Number 220638528) was of an office space of 534,58m2 with a NAV per sq.m of €80 in respect of the office space at ground level; €56 per sq.m at first floor level and €20 per sq.m at mezzanine level. The NAV in respect of the first comparator was €38,400. The first comparator was comparable in terms of property type and location, although its use was not comparable.

The second comparator (property number 2206386) is an office space with a NAV of €6,129.60 in respect of a single unit comparable in type and location measuring 76.62 sq.m. The NAV per sq.m is €80. The third comparator (property number 2292700) is of an office space in Cavan town with an NAV of €12,001.60 in respect of 115.05 sq.m. which represents a NAV of €80 per s.q.m. The Respondent submitted that €80 per sq.m was the appropriate NAV per sq.m for the subject property representing a valuation of €19,230.

The Respondent submitted that the NAV should be confirmed by the Tribunal.

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Cavan County Council.

9.2 Specifically in this appeal the Tribunal has to determine whether the subject property is exempt from valuation on the basis that it qualifies for an exemption under paragraphs 10 and/or 22 of Schedule 4 of the valuation Act, 2001.

9.3 The Tribunal finds that paragraph 22 of Schedule 4 of the 2001 Act was introduced after paragraph 10 and thus, is the later provision. Paragraph 22 specifically refers to "the provision of early childhood care and education". Accordingly, paragraph 22 is the more specific or "special" provision and, in the view of the Tribunal, must be regarded as the appropriate provision on the subject of the exemption for ECCE.

9.4 The Tribunal finds that the onus of proof rests on the Appellant to prove that the rating authority's valuation is incorrect and that it qualifies for an exemption.

9.5 The Tribunal finds that in order to qualify for an exemption under paragraph 22 of Schedule 4 of the 2001 Act the body occupying the subject property must be a body "which is not established and the affairs of which are not conducted for the purpose of making a private profit". The Tribunal finds that the Appellant in this case has provided no evidence, and has not proved that it was established not for the purposes of making a private profit.

9.6 Lest the Tribunal be incorrect in relation to finding that the appropriate provision is para. 22 of Schedule 4 of the 2001 Act the Tribunal notes that to qualify under paragraph 10 of Schedule 4 of the 2001 the Appellant must prove that " (a) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or (ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer….". The Tribunal finds that the Appellant provided no evidence whatsoever that it was established not for the purposes of making a profit or that its expenses are defrayed wholly or mainly out of moneys provided by the Exchequer. In circumstances where the onus of proof rests on the Appellant to prove that it falls within an exemption, the Tribunal finds that the Appellant has failed to prove its case and accordingly the Tribunal finds that the Appellant cannot avail of the emption provided for in para. 10 of Schedule 4 of the 2001 Act.

9.7 The Tribunal finds from the extract of accounts furnished by the Respondent, that the expenses incurred by the Appellant are not "wholly or mainly defrayed by money provided by the exchequer" in circumstances where the funding from the state agencies does not wholly or mainly cover the Appellant's expenses.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the valuation of the Property as stated in the valuation certificate to €19,230.

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.