Appeal No: VA18/2/0015

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020

Faylinn Education Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 5008228, Creche at Ballinagraun Upper, Ardamine, Gorey, County Wexford.

B E F O R E

Rory Hanniffy - BL	**Deputy Chairperson**
Claire Hogan - BL	**Member**
Barra McCabe – BL, MRICS, MSCSI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15th DAY OF JUNE, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on 09 May, 2018 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ("the NAV") of the above relevant property ("the Property") was fixed in the sum of €59.00

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- The Property should be excluded as relevant property taking into consideration the use, activity, purpose and delivery of services and the exemptions that exist in the Act covering such uses and or activities, and/or precedent Valuation Tribunal findings

covering such uses and/or activities, together with the funding of delivery of services being mainly derived from exchequer funding.

- It should be relevant property not rateable as per Paragraph 10 of Schedule 4 of the Valuation Act 2001 ("the Act"):

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

<u>And</u>

- It should be relevant property not rateable as per Paragraph 22 of Schedule 4 of the Valuation Act 2001 ("the Act"):

> *"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."*

1.3 The Appellant contended that the valuation of the Property ought to have been determined in the sum of €0 based on the exemptions at Paragraph 10 and Paragraph 22 of Schedule 4 of the Act. .

1.4 Thereafter the issue that arises is that of quantum pertaining to the methodology used by the Respondent in valuing the Property, with which the Appellant disagreed. The Appellant did not contend for any specific alternative figure in respect of the valuation of the Property.

1.5 A further ground of appeal was that the Respondent did not correctly issue a notification as required under the Act, due to incorrect contact details being used in the notice. In addition, it was alleged the same incorrect contact details were provided to the Local Authority.

1.6 A further ground of appeal raised was that the Respondent failed in its duty by consorting with the Local Authority in the delivery of its powers and or statutory duties.

2. VALUATION HISTORY

2.1 The revision officer determined that a material change of circumstances had occurred under Section 3 of the Act, and the subject property was deemed Relevant Property and was entered in the Valuation List for the relevant Rating Authority on 08 November 2016.

2.2 On 10 August, 2016 a copy of a valuation certificate proposed to be issued under section 28(6) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €59.00.

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

2.3 A Final Valuation Certificate was firstly issued on 01 November 2016 stating a valuation of €59.00, and was then re-issued on 13 April 2018 with the same valuation.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in Dublin Dispute Resolution Centre (DDRC), The Distillery Building, 151 Church Street, Smithfield, Dublin 7 on 12 January, 2022. At the hearing the Appellant was represented by Mr Conor Ryan and the Respondent was represented Mr David Dodd BL and Ms Andria Sloan of the Valuation Office.

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

4. FACTS

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

4.1 The Property was purpose built in 2007 and is located in a rural location approximately 6.5 kilometres from the town of Gorey in County Wexford. The Property comprises a single storey detached property in good condition throughout and is well maintained. Access from the public road to the Property is achieved by way of a narrow poorly-surfaced lane approximately 200 metres long. The accommodation comprises two ECCE rooms, two toddler rooms, two wobbler rooms, food preparation room, nappy room, sleep room, staff room and staff WC, office and children's WC.

4.2 The Property is held on a freehold basis.

4.3 In its précis, the Appellant described the property as an 'Early Years Education Centre'. In contrast Respondent used the term 'creche' in its précis and on the Valuation Certificate. The trading name of the Appellant organisation and the name used on headed correspondence issued by the Appellant is 'Faylinn Montessori School & Creche', while the registered name of the business is Faylinn Education Limited. For ease of reference the property will be referred to as either "the Property", "the subject Property" or "Faylinn".

5. ISSUES

5.1 Two preliminary issues were raised at the outset of the hearing, the first of which related to records of parliamentary debates from the Houses of the Oireachtas, which the Appellant sought to put into evidence. The Respondent invited the Tribunal to remove the records from the Appellant's précis. The documents were a record of Parliamentary Questions raised in respect of Commercial Rates and Childcare Services. A further issue concerned correspondence between the parties in respect of access to the subject property following directions from the Chair of the Tribunal.

5.2 The present appeal concerns the interpretation, and application, of Schedule 4 of the Act, specifically the exemption contained in Paragraphs 10 and 22 thereof, and the extent to which either provision applies to the Appellant.

5.3 This appeal also concerns the methodology used by the Respondent to value the property. The matters that fall to be considered are whether the Respondent had due regard to comparable or "reference" properties when valuing the property as well as the additional burdens placed upon the property to deliver its services. A further issue to be considered in this regard is whether the Respondent was incorrect in including the corridors when undertaking the valuation of the subject property.

5.4 A further issue for consideration is whether the Respondent was in breach of the statutory regime when the Valuation Certificate was issued with the first names and surnames of the two owners of the Appellant's business incorrectly inverted.

5.5 The Appellant also makes accusations that Respondent consorted with Local Authority.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of the Property falls to be determined by the Commissioner for the purpose of section 28(4) of the Act (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

> *"(1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property."*

6.2 Schedule 4 of the Act provides for certain properties that are exempt from the payment of commercial rates under the Act. Paragraph 10 provides for the following exemption:

"*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 -:*

(b)(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,

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

6.3 Paragraph 22 of Schedule 4 provides for an exemption in respect of:

"*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 first witness called was Mr Conor Ryan, owner and one of the Directors of Faylinn Education Limited t/a Faylinn Montessori School & Creche. Mr. Ryan adopted his précis as his evidence. The Appellant had intended calling two other witnesses, Ms Sinead Healy Co-Director of the Appellant company, and Mr Diarmuid O'Byrne, Certified Accountant. While Ms Healy was unable to attend for medical reasons, Mr O'Byrne was going to attend remotely to give evidence on Appendix F of the Appellant's précis, which was a document entitled 'Chartered Certified Accountants and Registered Auditors Correspondence'. In the circumstances, Mr Dodd for the Respondent informed the Tribunal that there was no objection to this document and therefore Mr O'Byrne was not required to give evidence, a basis upon which Mr Ryan was happy to proceed. Mr Ryan began by referencing three matters: an exemption under s 10, Schedule 4 of the Act; the removal of corridors and ancillary space in the Respondent's valuation methodology, and the argument that

properties that were further away from more densely populated areas should have a lesser value.

7.2 As stated previously, a preliminary issue then arose in relation to two documents which the Appellant sought to put into evidence. The documents were a record of Parliamentary Questions raised in respect of Commercial Rates and Childcare Services. In his submissions on this point, Mr. Dodd cited the decision in ***Crilly v Farrington*** **[2001] IESC 60** stating that no Ministerial Statements made in the Houses of the Oireachtas were permitted to be used as evidence. In reply, Mr Ryan submitted that the information contained in the documents was already in the public domain and it gave essential background to the State's involvement in childcare. Submissions were also made by both parties on recent correspondence between the parties relating to access by the Respondent to inspect the Property, following the directions previously made by the Chair of the Tribunal. In response to correspondence between the parties that had been sent to the Tribunal prior to the hearing, Mr Ryan emphatically rejected that he had not co-operated in facilitating an inspection of the property by the Respondent. He explained that holiday periods and Covid restrictions meant that unfortunately access was difficult to accommodate in the short window of time that had been provided. Mr Dodd confirmed that the Respondent was not seeking an adjournment. The Division rose for a short period to consider the submissions of both parties.

7.3 Mr Ryan continued giving his evidence by providing a detailed background on the Property and the operation of a childcare business. Mr Ryan referenced funding schemes including the Early Childhood Care and Education Programme (ECCE), Community Childcare Subvention Programme (CCS), Training and Employment Childcare Scheme (TECS), Community Childcare Subvention Plus Programme (CCSP) and the Affordable Childcare Scheme (ACS), which was originally means tested. Under the National Childcare Scheme (NCS), access to funding other than ECCE funding is contingent on the parental financial situation. Evidence of this is provided directly to the NCS via "HIVE". In addition, capital grants were provided to childcare operators in the Childcare Act 2016.

7.4 Mr Ryan said the subject property was laid out prior to the existence of Tusla, under the former HSE Guidelines. He stated that ECCE childcare services are provided to any and all services based on a commercial contract, which is the essence behind the funding and

parents were informed of this in March 2020 at the start of the Covid-19 pandemic. Faylinn adopted and currently uses the Department of Education and National Council for Curriculum and Assessment's 'Early Childhood Curriculum Framework' entitled 'Aistear'. Mr Ryan said that Faylinn was regularly inspected by the Department of Education and Tusla and that it had to follow the Aistear curriculum, which continues all the way up to Junior and Senior infants.

7.5 Relying on his Précis, Mr Ryan referenced the 'Partnership for the Public Good. A New Funding Model for Early Learning and Care and School-Age Childcare'. He spoke about the relationship of the future funding model and explained that it would lead to €200 million of State contribution to the wages of childcare workers, which would be ring-fenced for that purpose. Mr Ryan said that from September 2022, when the new funding model commences, childcare service providers would not be able to increase the fees they charge. Mr Ryan provided a further document which was published by Government of Ireland entitled, 'Nurturing Skills: The Workforce Plan for Early Learning and Care and School-Age Childcare 2022-2028', as evidence that there is significant involvement by the State in the area of childcare services and that the State directs what each crèche can do, which influences the sustainability and viability of any childcare operator. Tusla, the regulator for early years childcare services specifies key issues such as the size of the rooms, the number of minders per child, and the minimum square footage for children of different ages.

7.6 Mr Ryan stated that childcare services that provide ECCE services only were exempted under Paragraph 22, Schedule 4 of the Act, and that some other local childcare centres only provide ECCE services. He said the Valuation Office had informed him that if Faylinn only provided ECCE services that there would be no rates liability, but that this did not apply to 'wrap-around services', which the Tribunal understands to mean services provided in excess of those provided under the ECCE scheme, and which Faylinn provides. Mr Ryan said that those who are in receipt of ECCE funding are 'for profit' businesses and only community providers of childcare services were truly 'not for profit' organisations. On this basis Mr Ryan argued that there is a great disparity between private creche operators and community providers of childcare services.

7.7 In response to a question from the Chair of the Division, Mr Ryan confirmed that the exemption that he was seeking for Faylinn arose out of Paragraph 10, Schedule 4 and not Paragraph 22, Schedule 4 of the Act.

7.8 Mr Ryan cited the Valuation Tribunal decision in ***Sharon Smyth v Commissioner of Valuation*** **VA16/1/015** and submitted that Faylinn is similarly position to the Appellant in that decision. Later in his evidence he highlighted the fact that Sharon Smyth offered 'wrap around services' similar to Faylinn.

7.9 Turning to the methodology employed by the Respondent on the subject property, Mr Ryan firstly cited the Valuation Tribunal decision in ***Bernie Moran v Commissioner of Valuation*** **VA08/3/024** and submitted that this was a similar type property and situation to Faylinn. He said that unlike the decision in ***Bernie Moran*****,** the Respondent had not factored in the maximum number of children specified by Tusla when they undertook a valuation of the subject property. In those circumstances, Mr Ryan contended that equity had been sacrificed for uniformity, because under the Regulator's Certificate issued by Tusla, the maximum number of children permitted at Faylinn was 40, something which had not been considered by the Appellant.

7.10 Mr Ryan said that the highest 'reckonable rate' for the funding of childcare was the Dun Laoghaire Rathdown rate, which equated to €1,480 per child, but this reduced to €660 per child in County Carlow. The funding model was capped at the county rate and therefore the square footage of the property made no difference to the rate per child because this was the same across each county.

7.11 With respect to the Valuation Tribunal decision in ***Seamus & Majella O'Reilly v Commissioner of Valuation*** **VA08/4/005**, Mr Ryan submitted that this is authority for the proposition that hallways, corridors and passages should not be included in the calculation of the total net annual value of the subject property.

7.12 The Valuation Tribunal decision ***Grian na Nog Creche v Commissioner of Valuation*** **VA17/5/345** was cited by the Appellant as authority for the submission that the Respondent's comparable properties were not similar to the subject property because Faylinn is located in a field. Mr Ryan provided details of two comparable creches located

in County Wexford, both of which are purpose built in built up areas and are located closer to Gorey than the subject property. The comparable properties have a NAV valuation of €15 and €75 respectively.

7.13 Mr Ryan submitted that the Respondent's interpretation is erroneous when Paragraph 22 of Schedule 4 of the Act is taken into account. He added that the Respondent had not considered capital funding received / ongoing capital funding and wholesale funding other than that provided via the ECCE scheme.

7.14 Mr Ryan referenced the definition of the word "education" in the Education Act 1998 and contended that it is not restricted to only primary school, but also includes "early years" education. He said a broad interpretation of the word "education" is contained within section 2, the interpretation section of the 1998 Act.

7.15 The Tribunal was directed by Mr Ryan to Appendix M of the Appellant's précis and the representations made by the Appellant to the Valuation Office in September 2016. He said that none of the factors submitted by the Appellant were taken into account by the Respondent in relation to the location, surroundings, passageways, halls etc.

7.16 In respect of minimum education qualifications, Mr Ryan stated that equality needed to be considered when two people are delivering the same service, but under different conditions. He said there were child protection issues and early years qualification and regulatory matters, as well as the requirements of the Department of Education that needed to be taken into account by the Respondent when valuing the subject property.

7.17 Mr Ryan referenced the Tusla Early Years' Service schedule for County Wexford, for Registration date 01 January 2020. He informed the Tribunal that a private playschool for 3-6 years old, which provided ECCE services only and operated from a community centre / parish hall in Gorey, County Wexford was unrated. He also highlighted an education and childcare service less than 3 kilometres from the subject property, located in a high density village setting also remained unrated. Mr Ryan posited that there were no footpaths leading to the subject property, but that he and his wife as owners and Directors of the business had decided to advertise a free transport service for children to try and attract new customers.

7.18 In cross examination by Mr Dodd, the Appellant updated for the benefit of the Tribunal, the identification of the rooms in the crèche, which have been detailed at paragraph 4.1 above. Mr Ryan confirmed that Faylinn did not care for babies of less than 1 year of age. Mr Ryan agreed with Mr Dodd that Pobal was a company limited by Guarantee and was an agency of the State. Mr Dodd said that some funding for childcare services come from the European Commission and other sources such as the Department of Rural Affairs. The contracts for funding are agreed between the Department of Children and the crèche owner. Mr Dodd drew the Tribunal's attention to details of the Affordable Childcare Scheme as detailed at page 12 of a document in the Appellant's précis entitled "Early Years Sector Profile 2016/2017", published by Pobal. Mr Ryan said that parents do not pay for ECCE services, but they do pay for some other services. Mr Dodd put to Mr Ryan that funding was only accessed when there was a contract between the crèche and the Department and therefore the funding only goes to certain crèches. Under the CSSC, parents have a choice where to send their children. In response to a question that it was possible to run a crèche without funding, Mr Ryan said it was possible but unlikely to happen. Mr Ryan confirmed that the creche was operating since 2007 and that rates had not been paid since that date, but acknowledged the revision of the list occurred in 2016. Mr Ryan confirmed that all of the properties in the Valuation Tribunal decisions provided by him as authorities did pay rates and that all except one post-dated the Valuation Act 2015 and Paragraph 22 of Schedule 4 of the 2001 Act as amended. The singular decision that predated the 2015 amendment of the Act was that of ***Sharon Smyth v Commissioner of Valuation* VA16/1/015**.

7.19 Mr Dodd asked the Appellant to withdraw his comments accusing the Valuation Office of colluding with the Local Authority and any accusations of impropriety or dishonesty. Mr Ryan said that he stood over what he included in his Notice of Appeal pertaining to the Respondent consorting with Wexford County Council and he also stood over the allegation of honesty / dishonesty. Mr Ryan added that while the Respondent's valuer was not dishonest, others were and there was a certain level of irregularity. Mr Ryan provided no further details in this regard.

8. RESPONDENT'S CASE

8.1 The Respondent called Ms. Andria Sloan who was the valuer for the property in question and she adopted her précis as her evidence. Ms Sloan confirmed the present valuation was

a revision of the list and that she applied section 49 of the Act when valuing the property using tone of the list comparisons.

8.2 Ms Sloan said that the subject property was purpose-built and was measured based on the Gross Internal Area (GIA), which included the corridors. She stated that a valuation based on a GIA basis would be lower on a per square metre basis than that measured on a Net Internal Area (NIA) but that this would not affect the overall valuation. She said that the decision in ***Seamus & Majella O'Reilly v Commissioner of Valuation*** **VA08/4/005** such that hallways, corridors and passages should not be included in the calculation of the total net annual value of the subject property, was not followed by the Respondent. In addition, the location of the property had been corrected so that the distance from Gorey of the Property accorded with that detailed in the Appellant's précis, but that it would make no difference to the valuation of the Property. Ms Sloan gave evidence that the tone of the list rate of €41 psm applied to the Property was the lowest in Wexford, and the rate applied in New Ross and Enniscorthy was higher.

8.3 Under cross-examination, Ms Sloan informed the Tribunal that she had been working with the Valuation Office for 16 years and that she had valued in the region of 15 to 20 crèches. She was assigned the case at the end of October 2021 and was familiar with the background of the case. Orla Lambe, also from the Valuation Office had inspected the premises in 2016. In 2018, Caitriona Portland from the Valuation Office inspected the property and on 05 December 2017, Liam Cahill from the Valuation Office met with Mr Ryan and it was accepted by them that there had been a mix up of names wherein the Valuation Certificate has been addressed to Conor Healy and Sinead Ryan when in fact it should have been addressed to Conor Ryan and Sinead Healy. Mr Ryan said that it had been proposed by Liam Cahill to start the revision process over from the start. The location of the property was accepted by Ms Sloan along with the fact that it was located 4 /5 meters below the road level on a poorly maintained road. She said that she was restricted by s.49 of the Act so that she could only apply tone of the list comparisons for revisions as opposed to a revaluation, but that location is taken into account as a factor when considering the valuation of the property.

8.4 Mr Ryan then directed Ms Sloan to the Representations he had made in 2016 to the Valuation Office and put to her that one of the comparisons in Clonattin Village was in fact

a purpose-built creche and not a converted house. The property was valued at €47.88, and Ms Sloan said that the property had been valued on an NIA basis and that the location of the property was taken into account. Furthermore, the crèche formed part of a larger development of houses, and the higher value was based on it being a purpose-built crèche. Ms Sloan did not agree with the Appellant's proposition that convenience of location under ECCE is a major element in choice of crèche. Ms Sloan did not agree and some parents will invest in travelling longer distances to get their children into the crèche they want. Ms Sloan acknowledged that location would make a difference. In addition, while she acknowledged that childcare is regulated and restricted to the number of children that could attend, she maintained that the number of children was not a factor which the Valuation Office took into account when valuing a crèche.

8.5 In relation to the Valuation Certificate, Ms Sloan said that the Local Authority would normally be informed a week after the final Valuation Certificate was issued. She did not know whether the Local Authority was put on notice about the mistake with Mr Ryan and Ms Healy's names. Proceedings were issued against Faylinn in the District Court based on the 2016 Valuation Certificate with the incorrect names. Ms Sloan said that there was no need to issue a new Valuation Certificate because there was no material change of circumstances, but the Valuation Office issued a new Valuation Certificate in April 2018 as a gesture of goodwill.

8.6 Ms Sloan said that the Code of Measurement Practice was not specified by the Valuation Tribunal, but instead was specified by the Society of Chartered Surveyors Ireland (SCSi) / Royal Institution of Chartered Surveyors (RICS). Revisions under s.49 of the Act were based on the tone of the list.

9. SUBMISSIONS

APPELLANT'S LEGAL SUBMISSIONS

9.1 Mr Ryan submitted that both sections 10 and section 22 of Schedule 4 of the Act co-exist as opposed to being distinct from each other. He argued they both applied to the subject property. He went onto explain that in his view that the portion of Faylinn's income that comes from the ECCE scheme is covered by section 22 of Schedule 4 of the Act and the 'wrap around services' are covered by section 10 of Schedule 4 of the Act.

9.2 Mr Ryan submitted that s.2 Interpretation of the Education Act may be interpreted to construe "education" as including early learning years childcare. In addition, he suggested that the distinction between gross versus net in the measurement of commercial property and the distinction between profit and non-profit organisations, where both are providing the same service, both are certified by Tusla, and inspected by the same body, suggests that a different method of valuation is used for sole traders and corporate structures, which in his submission, was not sustainable.

9.3 Following Mr Ryan's comment that he could not understand how the amendment brought about by the Valuation Act 2015 meant that Tribunal decisions that were relevant before Paragraph 22 of Schedule 4 of the Act was enacted, were subsequently affected, the Tribunal put it to Mr Ryan that Paragraph 22, Schedule 4 of the Act did not apply to the Property. In response, Mr Ryan said that the Tribunal decisions submitted by him were in support of the contention that one property can come under Paragraph 22 and Paragraph 10 of Schedule 4 of the Act. In response to a further question from the Tribunal whether all crèches should be exempt, Mr Ryan said more and more crèches were being rated. Mr Ryan confirmed for the Tribunal that Faylinn was a 'for profit' organisation. It was put to Mr Ryan by the Tribunal that Paragraph 22, Schedule 4 could not apply because this covers 'not for profit' organisations only. In response to the question of what proof of other crèches being exempt for the purpose of the ECCE scheme could he provide, Mr Ryan directed the Tribunal to a section on Commercial Rates in the Pobal document entitled 'Early Years Sector Profile 2016/2017'.

9.4 The Tribunal was directed to the letter from the Appellant's accountants O'Byrne Fay, dated 22 December 2021. Mr Ryan submitted the contents of the letter pertaining to the monies received by Faylinn from Pobal for the years ending July 2017 to 2020, as evidence that exchequer funding was defraying the expenses of the business and the percentage income for which this accounted. He again cited the Tribunal Valuation decision in ***Sharon Smyth v Commissioner of Valuation*** **VA16/1/015**, drawing similarities between the facts in that appeal and the present one. ***Sharon Smyth*** was also relied on as authority for the Appellant's submission that the relevant consideration in assessing the amount of exchequer funding is the percentage of expenses and not income. The Appellant requested that the Tribunal deduce from the O'Byrne Fay letter the percentage of expenses that

exchequer funding from Pobal accounted for, but submitted no specific documents to the Tribunal to demonstrate this point.

RESPONDENT'S LEGAL SUBMISSIONS

9.5 The Respondent submitted its legal submissions on 29 December 2021.

9.6 Mr Dodd stated that the statute must be construed strictly against the ratepayer otherwise every other ratepayer has to pay more. He submitted that the onus is on the Appellant to prove that the Valuation Office erred, and the Valuation Tribunal has to decide on this issue and provide reasons for its decision.

9.7 In analysing Paragraph 22 of Schedule 4 of the Act, Mr Dodd submitted that there was specific intervention for early childhood care and the Tribunal had to give effect to the words of the statute. Paragraph 22 makes specific reference to 'not for profit' childcare services, but Faylinn was established to make a profit. He maintained that the purpose of Paragraph 22 was to provide a specific exemption for community based childcare services located in disadvantaged areas which operated on a not for profit basis. It was never the intention that profit making childcare services such as Faylinn would be exempt from paying rates.

9.8 Mr Dodd submitted that the words "early childhood care and education" appear in the 'Aistear – The Early Childhood Curriculum Framework' document provided by the Appellant, and the term should be interpreted distributively. He said the words are about looking after and education, not one or the other of these and that crèches are built and designed for this purpose. Mr Dodd submitted that Paragraph 10 of Schedule 4 defined institutions such as primary schools, secondary schools and universities and that Faylinn could not meet this definition. He argued that crèches are governed specifically by Paragraph 22, Schedule 4 and the term "other educational institution" contained in Paragraph 10 is a non-specific general term. Paragraph 22 uses specific words while Paragraph 10 uses general terms, and Mr Dodd argued that this interplay is resolved by the maxim "*generalibus specialia derogrant",* which means that where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment with the Act or instrument, it is presumed that the situation was intended to be

dealt with by the specific provision. Mr Dodd said that Paragraph 22 was very specific to not-for-profit crèches.

9.9 Returning to the words "educational institution" contained in Paragraph 10, Mr Dodd submitted that examples of this included ITs, Trinity College and perhaps some Church-based institutions, but not crèches. He said Faylinn was not in the same genus or class as an 'educational institution'. Furthermore, he submitted that Pobal is not the exchequer but instead is a company limited by guarantee. Mr Dodd referred to ***Glendale Nursing Home v The Commissioner of Valuation*** [2012] IEHC 254 where it was held funding was not meant as a subvention or to defray expense but was to ensure the elderly were cared for. He maintained that crèches are concerned with trying to help parents, but monies were not paid by the exchequer to defray the crèche expenses. To illustrate the situation, Mr Dodd said that he was paid by the CSSO to provide a service and represent them in the current Appeal, but this did not mean his expenses were being defrayed by the CSSO. He said an example of defraying expenses is when capital payments are made to defray the expenses. Mr Dodd referenced the evidence of the Appellant's accountant contained in the O'Byrne Fay letter, and referred to paragraphs 29 and 30 of ***Glendale.*** He said the letter only provided details on the monies received from Pobal as a percentage of income and not of expenses, as specified in the Act, and as referred to in paragraph 30 of ***Glendale.*** He submitted that Paragraph 10 of Schedule 4 does not apply to Faylinn but that if it did, Faylinn still does not meet the criteria set down thereunder. Mr Dodd said that it must be assumed the subject property is vacant and it does not matter if Faylinn divides up the property because it is the property that is being taxed and not the business. The property is a purpose-built, single standalone building, which is not part of another building or a mixed use development.

9.10 Mr Dodd submitted that when interpreting the Education Act 1998, the first rule of statutory interpretation prohibited transplanting an interpretation of words from one Act of the Oireachtas to another Act of the Oireachtas.

9.11 In making further submissions, Mr Dodd said that Faylinn failed to inform the Tribunal that they paid no rates from 2007 to 2021. Mr Ryan said he did not want to pay rates for 2016 and 2017. Mr Dodd also pointed out that the Respondent had a Professional Valuer giving evidence while the Appellant had no expert witness in this regard.

10. FINDINGS AND CONCLUSIONS

Basis of Appeal

10.1 The Tribunal must decide if the decision of the Respondent was incorrect and whether, on the basis of the case put forward by the Appellant, that the property should be excluded from the valuation list because it falls within Paragraph 10 Schedule 4 and / or Paragraph 22 Schedule 4 of the Act. Paragraph 10 requires that the Appellant be an educational institution used exclusively for the provision of educational services referred to in Paragraph 10, which either does not make a profit or where expenses incurred providing education services are defrayed wholly or mainly out of monies provided by the Exchequer. In both of the aforementioned circumstances, the education services must be available to the general public with or without a charge being made. Paragraph 22 requires that the Appellant must use any land, building or part of a building, exclusively for the provision of early childhood care and education services, which are provided on a not-for-profit basis.

10.2 Section 15(1) of the Act provides (subject to certain other provisions), that relevant properties shall be rateable, subject to Section 15 (2) which identifies exemptions where "relevant property referred to in Schedule 4 shall not be rateable". The Appellant's claim for exemption is advanced pursuant to Paragraph 10 and Paragraph 22 of Schedule 4. In order to avail of this exemption, the Appellant is bound to establish that the exemption applies clearly and without doubt and in express terms. The principles applicable to the interpretation of the provisions of the Valuation Act 2001 were summarised by MacMenamin J. in ***Nangle Nurseries v. Commissioner of Valuation*** [2008] IEHC 73. 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.

10.3 The burden of proof in all appeals before the Tribunal lies with the Appellant.

10.4 Paragraphs 10 and 22 of Schedule 4 are provisions that fall to be interpreted strictly against the ratepayer and ambiguities, if found, are to be interpreted against the ratepayer.

10.5 The Tribunal has to determine first of all whether the property is an educational institution in respect of Paragraph 10, or a building or part of a building used exclusively for the provision of early childhood care and education services in respect of Paragraph 22, or alternatively whether it can meet the requirements of both Paragraph 10 and Paragraph 22 in this regard. When this has been established the Tribunal must decide whether the Appellant meets the other specific requirements of Paragraph 10 and / or Paragraph 22.

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

10.6 As set out above, Mr Dodd and Mr Ryan both made submissions in relation to the two preliminary issues raised, relating firstly to the admissibility of parliamentary debates and secondly correspondence issued between the parties relating to access by the Respondent to inspect the subject property following directions made by the Chair of the Tribunal at the monthly call over. In relation to the admissibility of the content of parliamentary debates, the Tribunal followed the decision in ***Crilly v Farrington* [2001] IESC 60**. It concluded that transcripts of parliamentary debates from the Houses of the Oireachtas were inadmissible and would not be taken into account. In

respect of the second preliminary issue, the Tribunal accepted that all sides were labouring under newly implemented Covid 19 restrictions at the relevant period of time, and accepted the data protection requirements specific to childcare facilities. Therefore, it was held that the lack of accessibility for inspection purposes would not influence the Tribunal's decision.

10.7 Mr Ryan submitted that the subject property qualifies for exemption under both Paragraphs 10 and 22 of Schedule 4 of the 2001 Act. He gave evidence that Faylinn was both an educational institution under Paragraph 10 and a building used exclusively for the provision of early childhood care and education services under Paragraph 22 of the 2001 Act as amended. Mr Dodd disputed this contention, as set out above. He maintained that when Paragraph 22 was inserted into the 2001 Act on 8th June 2015 by the Valuation (Amendment) Act 2015, subject to transitional provisions, it was the intention of the Oireachtas that specific organisations such as Faylinn which provided 'childhood care and education services' would only fall under Paragraph 22 of Schedule 4 and not Paragraph 10 of Schedule 4. Furthermore, Mr Dodd contended that the ordinary meaning of the words "other educational institution" in Paragraph 10 clearly does not include a crèche or childhood care and education services. Mr Dodd also contended that legal interpretation dictates that where there is a conflict between provisions, the intention of the subsequent and more specific piece of legislation must over the intention of an earlier one. The Tribunal finds the arguments of the Respondent compelling in this regard, and is satisfied that Paragraphs 10 and 22 of Schedule cannot both apply to the subject property. The Tribunal is persuaded that the relevant provision to apply to Faylinn is the subsequent and more specific legislative provision of Paragraph 22 of Schedule 4.

10.8 Mr Ryan confirmed under cross examination that Faylinn was established for profit. Paragraph 22 of Schedule 4 states that in addition to the provision of early childhood care and education, the building or part of a building must be "*occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit*".

10.9 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.

10.10 Mr Ryan gave evidence that the methodology used by the Respondent to value the property was incorrect, including whether the Respondent had due regard to comparable properties when valuing the property as well as the additional burdens placed upon the property to deliver its services. The Appellant also contended that the corridors / passageways should have been excluded when valuing the subject property.

10.11 The Tribunal finds that details provided by Mr Ryan on two comparable properties provided inconclusive details to support the Appellant's contention. The information provided by Mr Ryan on the two comparable properties, "H" and "D", did not include any details on the number of children or the size, specification or condition of the two crèches. In addition, the Appellant provided no evidence from an expert witness in respect of the rental values of crèches in the relevant Local Authority in order to support his argument. The Tribunal also notes that where a Revision of a property is undertaken the Commissioner is restricted to the 'Tone of the List' under section 28(4) of the Act, in accordance with the provisions of section 49 (1) of the Act which provides that:

> *"(1) If the value of a relevant property (in subsection (2) referred to as the "first-mentioned property") falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*

10.12 Ms Sloan gave evidence that the Respondent had applied the SCSi / RICS Code of Measuring Practice to the subject property when undertaking the valuation. She also said that the decision of ***Seamus & Majella O'Reilly v Commissioner of Valuation*** **VA08/4/005** was wrong and not followed by the Respondent, something which the Tribunal noted was not challenged by Mr Ryan. In her evidence, Ms Sloan also said

that the appropriate way of measuring a purpose built crèche was based on the Gross Internal Area (GIA) and not the Net Internal Area (NIA) and no evidence was given by Mr Ryan to dispute this.

10.13 The Tribunal is not convinced by the evidence provided by Mr Ryan and concludes that the Respondent did not employ the incorrect methodology when valuing the subject property.

10.14 The Tribunal finds that based on the evidence provided, the Respondent made an unintentional error in mixing up the names of the two Directors of Faylinn when issuing the Final Valuation Certificate dated 01 November 2016. Following meetings between the Appellant and the Respondent, the Respondent acknowledged the error and re-issued the Final Valuation Certificate on 13 April 2018, with the names of the Directors correctly detailed. The Tribunal notes that Representations were received by the Respondent on 14 September 2016, which the Revision Officer considered and no changes to the valuation were proposed. Furthermore, on foot of the re-issued Final Valuation Certificate in 2018 the Appellant issued a Notice of Appeal to the Valuation Tribunal dated 08 May 2018. The Tribunal concludes that while the Respondent made an unintentional error in the names of the Directors of Faylinn on the original Final Certificate of Valuation dated 01 November 2016, this error was acknowledged and remedied by the Respondent without causing any prejudice to the Appellant.

10.15 The Tribunal finds that no evidence was adduced by Mr Ryan to substantiate the allegation that there was any collusion between the Respondent and the Local Authority at any time. As such the Tribunal concludes that there was no basis for the allegation that there was any impropriety or dishonesty on the part of the Respondent.

DETERMINATION:

The Tribunal determines that the Appellants claim for exemption under Paragraphs 10 and 22 of Schedule 4 of the Valuation Act 2001 does not succeed. The Tribunal also determines that the Respondent employed the correct methodology when undertaking the valuation of the subject property.

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent

And the Tribunal so determines.