Appeal No: VA19/5/1504

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

Faylinn Education Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of

Property No. 5008228, Miscellaneous at Heathermist Farm, Ballinakill, Gorey, County Wexford

B E F O R E

Dairine Mac Fadden – Solicitor **Deputy Chairperson**
Killian O'Higgins - FSCSI, FRICS **Member**
Mema Byrne - BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF APRIL 2024

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 €**22,800**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "As Advised by the Valuation Tribunal due to the limitations of the On Line Portal, we set out the Grounds of Appeal below, we are further precluded in attaching additional sheet/s and or information as the portal does not allow or permit same.

Grounds of Appeal:

1. The valuation of the subject property is excessive and inequitable. The property's value as applied by the Commissioner is not in line with its potential rental value.

2. The Appellant is entitled to exemption from the payment of rates in accordance with the provisions paragraph 10, Schedule 4 of the Valuation Act, 2001

3. By virtue of the Valuation (Amendment) Act 2015 Schedule 4, 22 the Act provides for anti-competitive and or discriminatory and or is inequitable in respect of entities providing the same or similar services whereby the relevant services are wholly or mainly funded directly or indirectly by the Exchequer in the procurement and or delivery of such services to the public.

4. That the interpretation of the Valuation Act, Paragraph 10, Schedule 4 by the Valuation Commissioner is erred as its interpretation is inequitable, anti-competitive and discriminatory by virtue of providing exemption to services participating in the delivery of ONLY the Early Childhood Care and Education (ECCE) Scheme and not applied equally and fairly to all services who provide such services which are wholly and or mainly Exchequer funded."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.00 when Schedule 4 paragraph 10 is applied or €12,000 if paragraph 10, Schedule 4 is not applied.

2. REVALUATION 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 **("2001 the Act")** in relation to the Property was sent to the Appellant indicating a valuation of €22,800.

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 it 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 €22,800.

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

3. THE HEARING

3.1 The appeal proceeded by way of two days of oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 23rd day of March 2023 and 7th day of February 2024 respectively. At the hearing the Appellant Mr Conor Ryan appeared in person and the Respondent was represented by David Dodd BL instructed by Michael Conlon of the Chief State Solicitors Office. Mr David O'Brien MSCSI MRICS Dip. Rating of Tailte Éireann (formerly the Valuation Office), gave evidence on behalf of the Respondent. Prior to the second day of the hearing the parties had agreed that Deputy Chairperson Ms Mac Fadden could replace Ms Carol O'Farrell (who had sat on the first day of the hearing, as she was no longer a tribunal member) subject to Ms Mac Fadden listening to a recording of the first day hearing in full prior to a resumption of the hearing. At the opening of the hearing on the second day, Ms Mac Fadden confirmed to the parties that she had listening to the recording and was fully familiar with

the case. Both witnesses having taken the oath, adopted their first précis and their supplementary précis as their evidence-in-chief in addition to giving oral evidence.

4. ISSUES

4.1 The present appeal concerns the interpretation, and application, of Schedule 4 of the 2001 Act as amended (**"the Act"**), specifically the exemptions contained in paragraphs 10 and 22 thereof, and the extent to which either provision applies to the Appellant.

4.2 The quantum of the valuation is also at issue.

4.3 This appeal also concerns the methodology used by the Respondent to value the property.

4.4 Also at issue is whether the Respondent had due regard to comparable or "reference" properties when valuing the property.

4.5 Also at issue in the appeal was whether the valuation sufficiently considered the equity of the valuation and whether equity was being sacrificed so as to conform with the tone of the List.

4.6 The Appellant disputed that Gross Internal Area (GIA) is the appropriate method of measurement of the floor area. The Appellant contended that the Respondent was incorrect in including the corridors when undertaking the valuation of the Property, and submitted that the Property should be measured on a Net Internal Area (NIA) which would exclude corridors.

5. RELEVANT STATUTORY PROVISIONS

5.1 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."

5.2 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."

5.3 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 -:*

(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).”

5.4 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”*

6. APPELLANT’S CASE

6.1 On the first day of hearing, the first witness called was Mr Conor Ryan, owner and Co-Director of Faylinn Education Limited t/a Faylinn Montessori School & Creche (**“**Faylinn**”**). Mr Ryan, was the sole representative of Faylinn before the Tribunal and identified the basis of the appeal as follows:

(i) The quantum of the valuation was excessive; and the incorrect method of measurement was used to assess the Property
(ii) The application of the exemption under paragraph 10, Schedule 4 of the 2001 Act;
(iii) That the methodology of the Respondent / application of the Act was anti-competitive and erroneous.

The Appellant submitted that there is an inconsistency in how early learning centers are dealt with by the Commissioner for Valuation and inconsistencies in relation to the rating methodologies applied to early learning centres and that equity is being sacrificed for the tone of the list.

6.2 The Appellant indicated that he would deal with the applicability of the exemption first. The Appellant submitted that there are various determinations by the Tribunal that confirm exemptions exist for early learning education centers under paragraph 10 Schedule 4 of the

2001 Act. The Appellant referred to the decision in ***Bernie Moran v Commissioner for Valuation*** **VA 083/024.** The Appellant referred to "Appendix K" of his précis which contained a POBAL Circular on "Note to early Learning Centers On Commercial Rates" which states:

"2. Group 2 type facilities are exempt under paragraph 10 schedule 4 of the Valuation Acts 2001 - 2015 on the basis of the facility is used exclusively for the provision of educational services (ECCE only) and otherwise than for private profit this means that facilities who provide the Early Childhood Care and Education Scheme (ECCE) only are exempt from commercial rates.

3. Group 3 type facilities are essentially businesses established for the purpose of making a private profit and are therefore ratable".

The document recommends that any person with queries in relation to commercial rates should contact the Valuation Office.

6.3 The Appellant referred to "Appendix E" of his précis which contained a decision of the Valuation Tribunal ***Sharon Smyth v Commissioner of Valuation*** **VA16/1/015**. Mr. Ryan submitted that this decision determined that an educational institution whose expenses are wholly or mainly defrayed by the Exchequer benefits from the exemption to pay rates under paragraph 10, Schedule 4, of the Valuation Act, 2001. He highlighted para. 18 of the determination where it refers to the High Court case ***Glendale Nursing Home v Commissioner of Valuation*** **[2012] IEHC 254** where the court found "*that if more than fifty percent of expenses of a body are defrayed by a particular individual or from a particular source, it is proper to say that they were mainly so defrayed".* Mr Ryan submitted that at paragraph 16 of the Symth case it was found that if the building is used exclusively for the provision of educational services, and is not a child-minding facility, then it is an educational institution.

6.4 The Tribunal asked the Appellant to deal with the facts first and then make submissions. The Appellant agreed.

6.5 The Appellant submitted that Faylinn was established as an early education facility in 2007 to provide education to the children under six years of age, wholly or mainly funded by the Exchequer. He submitted that Faylinn is only viable due to the provision of an initial National Development Plan (NDP) grant of €100,000. It has since benefited from various grants including funding under the Partnership for Public Good and the Core Funding element by the Exchequer and receives funding for delivery of its services both directly and indirectly from the Exchequer. Additionally, parents availing the service are also in receipt of state funding, under the National Childcare Scheme.

6.6 Mr. Ryan submitted that at the date of valuation the Appellant benefited from Exchequer funding under various schemes, including the ECCE scheme (Early Childhood Care and Education), the CCPS scheme (Community Childcare Subvention Plus) and the AIMS scheme (Access Inclusion Model Scheme). The Appellant explained that the maximum number of children in a room is 22 children, further funding is provided for extra staff where there is an AIMS qualified child in the room, so as to reduce the children / teacher ratio. It was submitted that at the date of valuation Faylinn was receiving AIMS funding for a teacher. There are other AIMS funding sources available providing extra money for extra equipment. At the date of the valuation the Appellant was receiving AIMS 7 and AIMS 4 funding. The Appellant submitted that he was receiving funding from the Link Programme, under the Link Programme where a member of staff receives a higher educational qualification, there is additional capitation grant given. This is in addition to the various capital programmes which off-set initial construction, repairs and upkeep.

6.7 Mr. Ryan explained that there had been three to four capital funding programmes between 2007 – 2017. The Appellant submitted that there is a capital call most years to allow for adaptations or upgrades or maintenance and therefore the Exchequer maintains its investment in the centres. If the centre does not remain open after the capital funding is provided, a claw back applies. Where a childcare service provider receives Exchequer funding, children can be referred to that provider with the Exchequer meeting the cost of the attendance.

6.8 Mr. Ryan did not present the certified accounts for the Appellant and the Tribunal inquired as to why there were no accounts before the Tribunal. The Appellant stated that he could provide accounts.

6.9 The Tribunal inquired as to whether there was a license between the Exchequer and the Appellant. The Appellant stated that the funding is between the Department of Education and Skills, the Exchequer and the service provider and that the funds are disbursed by POBAL. Mr. Ryan stated that there was a license, he stated that the license was between the Appellant and POBAL and was the ECCE contract. He stated that the document at "Appendix T" of his précis is the type of agreement between the parties. He said that the ECCE agreement hasn't changed since it came into place, noting that the document in the précis was dated 2021.

6.10 The Appellant stated that the facility was subject to various inspections to ensure the Aistear and Siolta frameworks (Appellant Appendix "N") are being delivered. The Department of Education and Skills, TUSLA (looks at the size per square foot/ metre of each and the facilities of any provider, based in the Childcare Act 2016) and POBAL (which inspects the financial aspects of the provider) also carry out inspections. Mr. Ryan said there is a base level of funding and an up-lift if the teacher has a higher educational qualification, he said this is in addition to the uplift paid under LINK. He stated that €62.50 per child per week is paid by the Exchequer and that this sum rises to north of €80 if the staff have a higher qualification. He stated that Faylinn is delivering the ECCE scheme and receives €80 per child and also the LINK funding which was €2 extra per child per week.

6.11 The Appellant stated that Appendix "O" of his précis shows that the Appellant is on the Register of Childcare Providers, and that the Childcare Act, 2016 mandates that they must be registered. The Register states that Faylinn can accommodate a maximum of 40 children at any one time. He says there is a requirement to re-register every 3 years. The Register of Childcare Facilities states that Faylinn is registered as "sessional". The Appellant was invited to explain the meaning of being registered "Sessional". He stated that the 2016 Act provides how many hours amount to part-time, full-time and sessional care, or you may be a combination of those. The Appellant explained that the Property is open from 7am-6pm Monday through Friday and that at the date of valuation Faylinn operated the ECCE

Scheme from 9-12 (midday) and 9.15am-12.15pm daily in two rooms. Additionally, he said there was a session for younger children (1 to 2 years old), a session for 2 to 3-year-olds and another session for the afternoon children. He explained that depending on the age of the children different ratios of children to teachers were needed for each session, thus the Property was deemed to be "sessional". While the maximum number of children Faylinn can have in the service at any given time is 40, over a day more than 40 children may attend in different sessions.

6.12 The Appellant said where the children did not qualify for the ECCE scheme, they may qualify for the CCPS. The Appellant stated that the CCPS Scheme is means tested, and 80% of the children in the School were covered by some sort of funding on the date of valuation. The Appellant stated the position at the date of the hearing was that upward of 95% of the children at the school have state funding of one form or another.

6.13 Mr. Dodd, for the Respondent, submitted that the evidence given by the Appellant was not in the Appellant's précis and that this placed him at a disadvantage as he cannot cross examine the Appellant on his evidence. The Respondent submitted that a decision had already been made by the Tribunal in respect of this property at revaluation (***Faylinn Education Ltd v Commissioner for Valuation*** **VA18/2/0015)** and submitted that the Tribunal has already held that creches are governed by paragraph 22 of Schedule 4 of the Valuation Act, 2001, which the Applicant does not fall within as it is a profit-making entity. Mr. Dodd said that the information given should be vouched. The Chairperson noted that there was a large volume of documents before the Tribunal, but they had not been related to the Property and there is no statement explaining how the Appellant is funded. The Appellant accepted that Faylinn was a private limited company established for the purposes of making a profit. The Chairperson explained that the Appellant needed to prove that all of the expenses of the property are wholly or mainly defrayed by the Exchequer, and asked the Appellant where in his Précis this was set out. The Appellant said he was relying on previous decisions of the Tribunal. The Chairperson explained the onus of proof was on the Appellant and Mr. Ryan had to adduce factual evidence to show that the Appellant was an educational institution and that its expenses are mainly defrayed by the Exchequer. The Chairperson explained that the documents contained in the précis show an entitlement to

funding, but do not show what services the Appellant provides and the funding that is specifically received for those services.

6.14 The Tribunal adjourned the matter and directed that the following documents be submitted by the Appellant by the 5th day of May 2023, 5pm:

(a) A précis of evidence to support the Appellant's clam for exemption under para. 10 of schedule 4 of the 2001 Act;
(b) (i) Details of all funding received directly or indirectly from the Exchequer;
(ii) Details of all income received by the Appellant from any other sources;
(c) Details of annual expenditure which are defrayed from the Exchequer funding;
(d) Details of annual expenditure figures

for the financial years commencing 2015 and ending 2018; together with all the supporting documents.

The Respondent was offered the right to respond by filing a replying précis by the 15th day of June 2023.

The Appellant's application to secure copies of the Respondent's policy documents was refused.

On the 9th day of June 2023 the Appellant submitted a supplementary précis, and following which, on the 28th day of July 2023, the Respondent filed a supplementary précis in response.

6.15 On the second day of hearing, the 7th day of February 2024, Mr Ryan was reminded that he was still under oath and continued to give evidence. Mr Ryan had submitted additional documents to the Tribunal on the 1st day of February 2024 – which was neither requested by the Tribunal not was permission sought from the Tribunal to file this documentation.

6.16 The Appellant's précis of the 30th day of January 2023 included extensive Appendices in five volumes, amounting to 960 pages. The content of the Appendices were:

- Reference to previous Tribunal decisions VA08/3/024, VA08/4/005, VA/17/5/345, VA17/5/674, VA16/1/015
- Political party comments on rates exemptions
- A Service Funding Agreement
- Pobal Sector Profile 2016/2017 and Surveys 2019-2021
- Tusla Early Years Services register
- Comparison Properties
- Various Pobal announcements on related services and commercial rates
- Child Care Act 1991
- National Quality Framework for Early Childhood Education
- Parliamentary questions and responses on Competition Act
- Government's Workforce Plan for Early Learning….2022 to 2028
- New Funding models for Early Learning and Child Care (2021)
- Funding Agreements 2020/2021
- Competition and Consumer Protection Commission Website extract
- Parliamentary questions and responses in 2017 and 2019 in relation to rates exemptions.

6.17 The Applicant submitted that he had provided the financial figures requested by the Chair in the appendices to his supplemental précis. He submitted that in Appendix A1 of his supplemental précis all the funding received by the Appellant was set out; at Appendix A2 there was confirmation (from Pobal) that this funding was Exchequer funding; at Appendix A3 there was a breakdown year by year from 2015 to 2018 of total income received by the Appellant, and the percentage of total income funded by the Exchequer, indicating defrayed costs covered by Exchequer funding, and indicating such defrayed costs as a percentage of total income. It was submitted that Appendix B evidenced the qualifications required to work in the early learning sector and Appendix C1 contained an inspection report of the Property from the Department of Education and Skills. The Appellant went through the figures in Appendix A3 contained a letter to the Appellant by O'Byrne Fay, Chartered Certified Accountants and Registered Auditors, dated the 9th day of June 2023,

and asserted Exchequer (Pobal) funding as a proportion of Total Income as shown in Appendix 1 of this judgment (N/A to public).

6.18 The Appellant submitted that the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of funds provided by the Exchequer, and accordingly paragraph 10 of Schedule 4 of the 2001 Act applied.

6.19 In relation to quantum, the Appellant submitted that the property was in a rural location, with no population center, accessed by an unmaintained road. It was submitted that the comparators used by the Commissioner for Valuation were all close to population centres or housing estates and or within walking distance from those areas. The Appellant submitted that the property is 6 km from Gorey, and that most people want to have child care within walking distance. The Appellant submitted that the value was too high in relation to the achievable rental income. The Appellant addressed the 9 comparators used in Appendix J of his précis.

6.20 Mr. Ryan said he had identified that there were 87 'for-profit' operators in the County Childcare Committee Database with 22 identifying themselves as within the Gorey environs. He said that this called into question the data used by the (then) Valuation Office in assessing NAV's for childcare services in Gorey.

6.21 Mr. Ryan offered the following comparable properties in support of his submissions.

Appellant's NAV for Comparable Properties (from Valuation List)					
Comparable Properties	**Sq. M**	**Rate/Sq. M**	**Net Effective Rent or NAV**	**Location**	**Change of Use/Purpose Built**
(AA) 5008228	*286.23*	*€80 (Grd)*	*€22,800*	*Subject Property*	*Purpose Built*
(C1) 5008874	**84.33**	**€50 (Grd)**	**€4,210**	**Hollyfort**	**Change of Use & Purpose Built Extension**
(C2) 2197941	**107.57**	**€50 (Grd)**	**€5,370**	**Annagh Long**	**Change of Use & Purpose Built**
(C3) 2198741	**100.19**	**€60 (Grd)**	**€6,010**	**Gorey**	**Not Stated**
(C4) 2198742	102.25	€60 (Grd)	€6,130	Kilmuckridge	Change of Use

(C5) 2205066	180.00	€80 (Grd)	€14,400	Ballycanew	Purpose Built
(C6) 2198743	185.00	€90 (Grd)	€16,650	Gorey	Purpose Built
(C7) 2195354	212.50 152.00	€90 (Grd) €63 (FF)	€28,700	Gorey	Purpose Built
(C8) 5009852	131.96 102.36 6.67	€90 (Grd) €63(FF) €1 (Store)	€18,330	Gorey	Purpose Built
(C9) 2210278	39.20 33.31	€100 (Grd) €70 (FF)	€6,250	Gorey	Purpose Built
NAV Other Comparisons (from Valuation List)					
(01) 2192884	506.13 240.95 152.90 1,892	€32.40 (Showroom) €27(Store) €4.90(Mezz) €6.00 (Yard)	€35,000	Garden Centre Gorey	
(02)2008375	70.15 53.13 42.09 82.77 7.68 1.00	€100 Zone A €50 Zone B €25 Zone C €12.5 (Rem) €65 Offices €249.60 Other	€14,500	Ballycanew Pumps and Shops	

(Comparable properties C5, C6, C7, C8 were also supplied in evidence by Mr O'Brien for the Respondent)

6.22 The Appellant submitted that the closest comparators for the purpose of valuation were those in rural locations that were outside town centers and that were achieving between €50 to €60 psm. The Appellant drew attention to the fact that the premises that were achieving €80 and €90 psm were in town centers or close to population centres. The Appellant referred to property numbers 500-8874 and 219-7941 which achieved €50 and €60 psm. The Appellant said that the nearer to a population center the nearer to travel amenities and that this is not the same in a rural setting. The Appellant said that the comparators used by the Commissioner for Valuation were primarily in non-rural locations. He submitted that the appropriate NAV is €12,000 based on €39.42 psm.

6.23 Turning to the methodology employed by the Respondent on the subject property, Mr Ryan firstly cited the Valuation Tribunal decision in in **VA08/4/005** ***Seamus and Majella Reilly v The Commissioner for Valuation*** as precedent for the proposition that the corridors and circulation areas should not be included in the measurements, that is to say on a net internal area basis (NIA) rather than on a gross internal area basis (GIA). He submitted the

corridors and circulation areas should be excluded and if they were excluded the property would measure 243.50 psm. The Applicant submitted that the NAV would be lower if the corridors and circulation areas were removed from the calculation.

6.24 Mr. Ryan also cited ***Seamus and Majella Reilly v The Commissioner for Valuation*** and ***Bernie Moran v Commissioner of Valuation*** **VA08/3/024** in support of his contention that any valuation of the property should have taken into account the fact there was a maximum capacity of children allowed in the Property. The Appellant submitted, relying on the case of ***Helen O'Regan v The Commissioner for Valuation*** **VA 17/5/674,** that where a regulator can specify the staff/ children ratio, the need for dedicated sleep rooms, it is akin to the manner in which a licensed premises is tightly regulated and therefore a different valuation methodology should be used. He stated that there was an over provision of space at the Property, that it could never have been developed without the grant it received and it was larger than the demand for its services in the area. 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 Respondent.

6.25 On cross examination, Mr. Ryan accepted that there was a care component in the Property in addition to an educational component. It was put to Mr. Ryan that one of the comparators used by him property no. 2205066 in Ballycanew which was valued at €80 psm was in fact further away from Gorey than the Property. The Appellant stated that Ballynew was a population centre unlike the rural location of the Property. It was put to Mr. Ryan that property no. 2198742 which is valued at €60 psm was in fact in Gorey town. It was also put to Mr. Ryan that all of the comparators of the Respondent's précis show that the childcare facilities are measured using GIA measurement, including all of the corridors and circulation spaces. Mr. Ryan did not accept this as he stated that his comparators shows many of the properties were measured upon a NIA basis. Mr. Dodd put it to Mr. Ryan that purpose built creches are measured on a GIA basis and home creches and non-purpose built

creches are measured on a NIA basis. It was put to the Appellant that the difference between the property valuations was not that rural areas achieved lower NAVs but that purpose built early learning facilities attracted higher NAVs.

7. RESPONDENT'S CASE

7.1 Mr. O'Brien for the Respondent relied on Précis dated the 21st day of February 2023 and Supplementary Précis dated the 28th day of July 2023. He noted that the Appellant was the only owner or occupier of a purpose built creche in Co. Wexford to lodge an appeal against the (then) Commissioner of Valuation's determination.

7.2 Mr. O'Brien gave evidence that the Property was located in Balinakill 6.5km south of Gorey (population 9,822 persons - Census 2016), 4km west of Courtown/Riverchapel and 2.5km off the R471 – the Gorey/Wexford Regional road. The Property is located in a rural area but a short distance from Gorey town, approximately a 7-to-10-minute drive away to/from the Property.

7.3 Mr. O'Brien stated that the Property was a purpose-built premises with a car park and an agreed floor area of 304.38 sq. m based on GIA. The floor area was increased from 286.23 sq. m to 304.38 sq. m. by way of extension which was completed before the Final Certificate issued on the 10th day of September 2019 and consequently he was contending for a higher NAV of €24,300 compared to the NAV on the List of €22,800. He noted that all the comparators valued at €50 or €60 psm were in former houses and non-purpose built facilities. The Respondent relied on the following comparators in respect of NAV:

Respondent's NAV for Comparable Properties								
Comparable Properties	**Sq. M**	**NAV/Sq. M**	**NAV**	**No. of children service can accommodate**	**NAV per child**	**Sq. M/ child**	**Code of Measuring Practice**	**Rural / Non-Rural**

Subject property	304.38	€80	€24,300	81	€300.00	3.757	GIA	Rural
Comp N1 - 2205066	180.00	€80	€14,400	48	€300.00	3.75	GIA	Rural
Comp N2 - 5009625	255.67	€90	€20,300	59	€344.06	4.33	GIA	Non-Rural
Comp N3 - 5009852	240.99	€90	€18,330	75	€244.40	3.21	GIA	Non-Rural
Comp N4 - 2195354	364.50	€90	€28,700	70	€410.00	5.21	GIA	Non-Rural
Comp N5 - 2198743	185.00	€90	€16,650	29	€574.14	6.38	GIA	Non-Rural
Comp N6 - 2189066	279.52	€90	€21,800	46	€473.91	6.08	GIA	Non-Rural

(Comparable Properties N1, N3, N4 and N5 were also provided in evidence by Mr. Ryan for the Appellant.)

7.4 Mr David O'Brien for the Respondent admitted that the data for the number of children that the service could accommodate is from 2022 whereas the valuation date is the 15th day of September 2017. Mr. O'Brien went through each of the comparators noting that the purpose-built comparators attracted a higher NAV and that they were all measured on a GIA basis. Mr. O'Brien said that non-purpose built creches are measured on a NIA basis. Mr. O'Brien said that even if a NIA basis was used, the same NAV would be applicable in circumstances where the value psm would increase to €90.00 to €100.00 psm on a NIA basis compared to €80 psm on a GIA basis. On cross examination Mr. O'Brien said that all-purpose built creches are based on the Society of Chartered Surveyors Ireland ("SCSI") valuation methods which is best practice, but non-purpose built creches are measured on a NIA basis. Mr. O'Brien admitted that early learning centres are constrained by the regulator as to the number of children that can be accommodated by the regulator. Mr. O'Brien was asked whether other licensed premises are valued using a different methodology. Mr. O'Brien stated that the licence of a public house attaches to the building, and that the appropriate methodology for valuing early learning centers is by comparison and not by the receipts and expenditure methodology applied to public houses. Mr. O'Brien stated that the valuation was in line with the tone of the List.

7.5 Under cross-examination Mr. Ryan asked Mr. O'Brien about Property no. 2195354 used as a comparator by the Respondent. The Appellant put it to Mr. O'Brien that the comparator

was in town in a housing estate, but that a car was needed to access the subject Property. Mr. O'Brien submitted that he was satisfied that €80 psm reflects the Property's value in its location and that it was valued in line with other purpose-built premises. On re-examination Mr. O'Brien stated that the initial valuation date was the 15th day of September 2017, and the final certificate date was the 10th day of September 2019 and that on that day the Property had increased in size to 304.38 sq. m.

8. SUBMISSIONS

8.1 Mr. Ryan submitted that para. 22 of Schedule 4 of the Act applies to early childhood care and education facilities, that are not established for the purpose of making a private profit. He said the introduction of para.22 does not prevent the Appellant from relying on para. 10 of Schedule 4 pf the Act which applies to all "*....any other educational institution and used exclusively by it for the provision of the educational services ....".* He submitted that the Appellant fulfils the foregoing criteria as it is an educational institution used exclusively for the provision of educational services. Mr. Ryan accepted that to fall within para.10 he must also establish that the expenses incurred by the Appellant in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer.

8.2 Mr. Ryan submitted that in his view, and as evidenced from the various grants and schemes of which the Applicant was in receipt, that the expenses of Faylinn were defrayed wholly or mainly from Exchequer funding.

8.3 Mr. Ryan cited the Tribunal Valuation decision in ***Seamus & Majella O'Reilly v Commissioner of Valuation*** **VA 08/4/005** as authority for the proposition that all corridors and circulation areas should be omitted from the floor area calculated.

8.4 Mr. Ryan relied on ***Sharon Smyth v Commissioner of Valuation*** **VA16/1/015**, as authority for his submission that the Property was an educational facility and noted that the Smyth case had not been appealed by the Respondent.

8.5 The Appellant submitted that the valuation must be assessed equitably taking into account the restricted/ regulated nature of the business rather than solely on the size and location of the Property.

RESPONDENT'S LEGAL SUBMISSIONS

8.6 Mr. Dodd relying on ***Nangle Nurseries v. Commissioner of Valuation*** [2008] IEHC 73 submitted that the statute must be construed strictly against the ratepayer seeking to rely on an exemption. Mr. Dodd also submitted that the burden of proof rested on the Appellant. Mr. Dodd stated that the Property had already been the subject of a decision of the Tribunal in Faylinn v Commissioner for Valuation, and that the Tribunal had already correctly found that para. 10 of Schedule 4 of the Act did not apply to the Property. He accepted that it was under appeal by the Appellant but submitted that it had not been overturned at the date of the within hearing and therefore should be followed by the Tribunal. Mr. Dodd also relied on the case of **Kangakare v Commissioner of Valuation VA 19/5/0492**. He said both cases were authority for the proposition that no exemption was available to childcare facilities that had as their object the making of profit, as in this regard they were no different from any other business. He submitted that the purpose of Para. 22 of Schedule 4 of the Act was to provide a specific exemption for community based childcare services located in disadvantaged areas which operated on a not-for-profit basis.

8.7 Mr. Dodd submitted that Para. 10 of Schedule 4 of the Act defined institutions such as primary schools, secondary schools and universities and that the Appellant was seeking to fall within a general definition of "any other educational institution". He argued that a specific provision was contained in the legislation for crèches at Para. 22 of Schedule 4 of the Act which only applies to non-profit making creches. He argued Para. 22 of Schedule 4 of the Act uses specific words while Para. 10 of Schedule 4 of the Act uses general terms. Mr. Dodd argued that where there is specific provision within an Act or instrument, it is presumed that it was intended to deal with the matters specifically identified, and that the specific provision will prevail over the general provision. In this regard he relied upon the

maxim *Generalia specialibus non derogant* which provides that a general provision does not derogate from a special one. He submitted, where a provision deals with a particular situation in special or specific terms, and the language of a more general provision could be taken to apply to the same particular situation, the general provision will not be held to undermine, amend or abrogate the effect of the special words used to deal with the particular situation.

8.8 Mr. Dodd also submitted that in interpretating statutes, where a provision clashed with a previous provision the more recent provision takes precedence. He submitted "*while commonly expressed in terms of a later general statute, the logic behind the maxim is not confined to that situation*". There can also be specific and general provisions which potentially apply to the same set of circumstances, appearing in the same enactment, in which case the same logic applies: the specific provision overrides more general words that might be erroneously claimed to also apply. Mr Dodd relied upon a passage on this issue in ***National Authority for Occupational Safety and Health, v Fingal County Council*** [1997] 2 IR 547, where the court quoted Halsbury Laws of England, 4th Ed., Vol. 44 (1) para 1486, in ***Barker v Edger*** ((1898) AC 748, at p754) in which the maxim was applied as follows:

"Construction of general and particular enactments . . . Whenever there is a general enactment in an Act which, if taken in its most comprehensive sense, would override a particular enactment in the same Act, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Act to which it may properly apply."

Mr Dodd submitted " *if an enactment is both more specific and later than an earlier general enactment, there is no difficulty: both rules compel that the later specific intent is to be given effect to".*

8.9 Returning to the words "educational institution" contained in Para. 10 of Schedule 4 of the Act, Mr. Dodd submitted that the Appellant was providing childcare and education. He said Faylinn was not an 'educational institution'.

8.10 Furthermore, he submitted that the Appellant had showed that it was receiving funding from POBAL but he had not shown that that funding was actually being used to defray expenses. He submitted that Appendix A2 only provided details on the monies received from POBAL as a percentage of income and not of expenses. He said that the Appellant has asked the Tribunal to assume that all the money received from Pobal in funding is being used to defray expenses.

8.11 Mr. Dodd submitted that Para.10 of Schedule 4 of the Act does not apply to the Appellant but that if it did, the Appellant still does not meet the criteria set down thereunder as the percentage of expenses as calculated by the Appellant used to defray costs fell well below 50% in the years leading up to and the year of valuation.

8.12 The Respondent submitted that the Sharon Smyth case was not relevant as it was decided prior to the introduction of para. 22 of Schedule 4 of the Act which makes specific provision for early childhood care.

9. FINDINGS OF FACT:

9.1 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, well maintained building, in good condition throughout. Access from the public road to the Property is achieved by way of a lane approximately 200 metres long. The Property has car parking facilities and a sizeable outdoor play area. There is a care component in the Property in addition to an educational component.

9.2 The Appellant is a private limited company and was both established and operated on a 'for profit' basis and as such does not qualify for exemption under Para. 22 of Schedule 4 of the Act.

9.3 There was no evidence adduced by Mr Ryan to substantiate the claim that the methodology of valuing the Property was incorrect.

9.4 The Exchequer (Pobal) funding as a proportion of Total Income was less than 50% of all income in the years leading up to the valuation date and at the valuation date. The Tribunal accepted that the Appellant received Exchequer funding as a proportion of total income as outlined in Appendix 1 of this judgement (N/A to public).

9.5 The Premises was being used as an educational facility and as a childminding facility.

9.6 The Property had been extended prior to the issuing of the final certificate on the 10th day of September 2019 as accepted by the Appellant.

9.7 The Appellant and Respondent agreed that the GIA of the Property on the 10th day of September 2019 was 304.38 sq. m.

10. REASONS:

10.1 Each case in front of the Tribunal is independent, and decided on its own merits - there is no onus on the Tribunal to follow previous determinations.

10.2 The burden of proof in this appeal before the Tribunal lies with the Appellant.

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

10.4 Apart from 'Comparison Properties' (Appellant's Appendix J pages 549 to 576) most of the remaining content of the Appendices is of very limited evidential value to the Valuation Tribunal's consideration of the matters under appeal.

10.5 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 Para. 10 Schedule 4 of the Act. Further, if the Tribunal decides that the Property should not be excluded from the valuation list, the Tribunal must then 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 Wexford County Council.

10.6 Paragraph 10 of Schedule 4 of the Act requires that the Appellant be an educational institution used exclusively for the provision of educational services referred to in Para.10 of Schedule 4 of the Act, 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. The Tribunal has to determine first of all whether the Property is an educational institution in respect of Para. 10 of Schedule 4 of the Act, or a building or part of a building used exclusively for the provision of early childhood care and education services in respect of Para. 22 of Schedule 4 of the Act, or alternatively whether it can meet the requirements of both Para.10 and Para. 22 of Schedule 4 of the Act in this regard. When this has been established the Tribunal must decide whether the Appellant meets the other specific requirements of Para. 10 and / or Para. 22 of Schedule 4 of the Act.

10.7 In relation to Paragraphs 10 and 22 of Schedule 4 of the Act both cannot simultaneously apply to the Property. The Tribunal is persuaded that the relevant provision to apply to the Appellant is the subsequent and more specific legislative provision of Para. 22 of Schedule

4 of the Act, relying on the dicta in ***National Authority for Occupational Safety and Health, v Fingal County Council*** [1997] 2 IR 547.

10.8 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 of Schedule 4 of the Act. 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 taxation statutes 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.

10.9 Much of the information supplied post-dates the date of valuation, the 15th day of September 2017. Comments and observations by political parties and organisations relating to rates liability are simply such – comments – they have no evidential value in relation to the matter under appeal. Responses to parliamentary questions consistently refer to the

independent role of the (former) Valuation Office/Commissioner of Valuation and the rights of ratepayers to appeal to the Valuation Tribunal, emphasising the legislative basis for rates – it is of no evidential value to the Tribunal.

10.10 Mr Ryan confirmed that the Appellant was established for profit. Paragraph 22 of Schedule 4 of the Act 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"*.

10.11 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 Para. 22 of Schedule 4 of the Act.

10.12 As the Tribunal has come to these conclusions in relation to Paragraphs 10 and 22 of Schedule 4 of the Act , 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 these paragraphs.

10.13 Mr. O'Brien gave evidence that the Respondent had applied the SCSI Code of Measuring Practice to the Property when undertaking the valuation. In his evidence, Mr. O'Brien 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 his NAV comparators all support this. Mr. O'Brien stated that NIA would apply to a non-purpose built creche. The case of ***Seamus & Majella O'Reilly v Commissioner of Valuation*** **VA 08/4/005** cited by the Appellant as authority for the proposition that all corridors and circulation areas should be omitted from the floor area calculated, is an old case going back to 2009 and in which for the purpose of maintaining equity and consistency at that time it was necessary to exclude the corridors, as all the comparators used in that case were measured on NIA.

10.14 The Appellant did not identify a basis of measurement on any of the comparable evidence offered to support the Appellant's contention. All the evidence offered by Mr. O'Brien was

for purpose-built creches and as the Property was also purpose-built, the analysis of the comparable NAV's psm based on GIA was applied to the Property. NIA, in all instances, will produce a lower floor area than GIA and if the comparable properties were analysed on an NIA basis, NIA would produce a lower floor area. When the existing NAV is divided by the lower floor area it would produce a higher NAV psm based on NIA, which in turn would be applied to the Property at that higher level. The SCSI Code of Measuring Practice 2016 recommends measuring creches on a GIA basis and such basis was adopted by the Respondent. Comparing like with like, no prejudice arises for the Appellant. The Respondent acknowledged that non-purpose built, or change of use, creches were measured on an NIA basis.

10.15 Mr. Ryan offered no evidence as to the child occupancy capacity and actual occupancy which could have been accommodated by the service providers in comparable properties at the valuation date of the 15th day of September 2017, despite arguing that such occupancy should be taken into account as of the valuation date. Mr. O'Brien offered evidence of the number of children which could be accommodated in his comparable property evidence but accepted that the data dated from 2022. Accordingly, there was no evidence offered to the Tribunal as to comparable number of children which could have been accommodated at comparable properties as at the 15th day of September 2017.

10.16 In considering the comparable ground floor evidence offered by the Appellant, C1 (NAV €50psm), C2 (NAV €50 psm) and C3 (NAV €60 psm) were identified by Mr Ryan as Mr. Ryan's his best comparable evidence. However, C1 and C2 were not exclusively purpose built creches but originally change of use with subsequent extensions and therefore less directly comparable to the Property. No evidence was offered as the whether C3 was a change of use, change of use with extension or purpose built. In addition, by reference to Mr. Ryan's map (Appendix, Part 3, page 453) both C1 and C2 are at a greater distance north-west of Gorey compared to the Property's distance to the south-east of Gorey. The location of C4 is in Kilmuckridge far removed, south of Gorey. Comparable C4 (NAV €60psm) is identified as a change of use, again less comparable to a purpose-built property. C5 (NAV €80psm) is purpose built and in a small village, Ballycanew, south of the property

with a population of approximately 6% of that of Gorey but provides evidence for a purpose-built creche outside the immediate Gorey urban area. Comparators C6, C7, C8 (each NAV €90psm) and C9 (NAV €100 psm) demonstrates NAV values in Urban Gorey – C9 was a very small creche total 72.51 sq. m over two floors. Comparable properties 01 and 02 are of no evidential value, being a garden centre and pumps and shop respectively, not directly comparable to the Property. Accordingly, the Tribunal finds the Appellant's comparable properties C5 to C9 to be of most assistance. Comparable properties C5 to C8 are common to four of the six comparable properties introduced in the Respondent's evidence. The Appellant contended for a valuation of €39.42 psm but no supporting evidence was offered to support this level. The lowest comparable creche evidence in the comparable data Mr. Ryan advanced was €50 psm for a non-purpose built creche and €80 psm for a purpose built creche.

10.17 Turning to the Mr. O'Brien's comparable (ground floor) evidence :

Comp N1 – Purpose-built creche in Ballycanew, in a housing development. Rural location in Co. Wexford, with a village population of 516 persons, 4km south-west of the subject property and 8km south of Gorey. Compared to the subject property, this property has a larger outdoor play area. This is the same property as identified in the Appellant's C5 comparable evidence. Also included in the Appellant's evidence (C5).

Comp N2 – Purpose-built, single storey, in Gorey at entrance to housing estate. Urban location. 7km from subject property (NAV €90 psm).

Comp N3 – Purpose-built, two storeys, in Gorey at entrance to housing estate. Urban location. 8km from subject property (NAV €90 psm). Also included in the Appellant's evidence (C8).

Comp N4 – Purpose-built, two storeys, in Gorey in housing estate. Urban location. 7km from subject property (NAV €90). Also included in the Appellant's evidence (C7).

Comp N5 – Purpose built on outskirts of Gorey - not in housing estate. 6.5 km from subject property (NAV €90). Also included in the Appellant's evidence (C6).

Comp N6 – Purpose built in retail park in Gorey. 6.5 km from subject property (NAV €90).

10.18 Comparable N1 is of assistance to the Tribunal indicating the NAV (€80 psm) of a rural creche in a small village, 4km from the Property and also include in the Appellant's evidence. Comparables N2 to N6 are of assistance to the Tribunal in indicating a consistent level of €90 psm for purpose built creches in urban Gorey. Comparables N3, N4 and N5 were also introduced in evidence by Mr. Ryan.

10.19 In addition, Mr. O'Brien gave evidence of the 2019 Scheme of Valuations for purpose Built Creches measured on a GIA basis (Appendix 2, N/A to public). The valuation date of the 15th day of September 2017 is common to each county and the evidence offered reflects the rate psm applied to the ground floor accommodation. Where a relevant property included a first floor, the first floor accommodation was valued at 70% of the ground floor rate. This is helpful evidence in indicating a consistent approach to Urban and Rural NAV's for creches in Wicklow, Meath, Louth and Wexford amongst other counties and indicates a level of consistency with the approach adopted in Co. Wexford.

10.20 Mr. O'Brien also offered evidence of the Market Transactions for the Valuation Scheme adopted in 2017 and Key Rental Transactions (Appendix 3, N/A to public). The Key Rental Transactions indicate a common urban NAV rate for ground floor creches of €90 psm.

10.21 In relation to the methodology used by the Respondent to value the Property, including whether the Respondent had due regard to relevant comparable properties when valuing the Property as well as the additional burdens placed upon the Property to deliver its services; and the submission that the corridors / passageways should have been excluded when valuing the Property; the Tribunal finds relying on evidence adduced by both parties, that the NAVs of urban based properties that are purpose-built are €90 psm for urban creches, whereas change of use creches or non-fully purpose-built facilities attract a lower NAV of €50 to €60 psm. The parties shared three comparable Gorey properties each with a NAV of €90 psm and a fourth common comparable Ballycanew property at a NAV €80. The evidence from both parties is that creches in urban Gorey are generally assessed at a NAV of €90 psm which also accords with the Respondent's evidence of urban creche NAV rates in a number of other counties. Accepting that the Property is not in urban Gorey, the

NAV should be discounted from urban Gorey's most common rate of NAV €90 psm. Excluding evidence other than purpose built creches and seeking an example, the only other relevant evidence remaining, and common to both parties, is the Ballycanew (2205066) evidence of NAV €80psm (C5 for the Appellant, N1 for the Respondent) The burden of proof is on the Appellant to show that the NAV was overvalued. In relation to the properties advanced by the Appellant by way of NAV comparisons, five of the comparators were purpose built creches, one related to an industrial showroom which is not an appropriate comparator, one related to a retail unit with pumps which was also not an appropriate comparator. In relation to the 5 comparisons which were purpose built creches, these demonstrated a NAV range from €80 to €90 psm with the €90 psm rate accepted, by both parties, as appropriate to urban Gorey. The Tribunal considers that the Ballycanew (2205066) evidence of NAV €80psm (C5 for the Appellant, N1 for the Respondent) offers the most relevant evidence of the NAV psm which should be adopted for the Property.

10.22 The Tribunal finds that the Appellant has not shown that the valuation of the Property psm is incorrect, and accordingly the Appellant has not discharged the onus of proof.

10.23 It was agreed by both parties that the area of the Property on the date the final valuation certificate issued being the 10th day of September 2019 was in fact 304.38 psm. Section. 37 (1) of the Act provides that a tribunal in considering the appeal, unless the issues in the appeal do not relate to the value of property, "shall achieve a determination of the value of the property concerned that accords-

(a) with that required to be achieved by section 19(5)…".

S. 19(5) provides as follows:

"(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)—

(*a*) correctness of value, and

(*b*) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in *paragraph (b)*) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area…."

10.24 The appeal lodged by the Appellant related to both exemption and the value of the Property and consequently the Tribunal is obliged in its determination to achieve a determination that accords correctness of value and equity and uniformity. Having regard to the error in the floor area of the Property due to the omission of an extension to the Property which was completed before the Final Valuation Certificate issued on the 10th September 2019, the valuation as stated in the said Certificate is not correct. Consequently in order to achieve correctness of value and equity and uniformity as required under s. 19(5) of the Act, the Tribunal finds that the correct valuation of the Property is €24,350.40 calculated as follows: 304.38 Sq. M x €80 = €24,350.40.

10.25 The Tribunal finds that no evidence was adduced by Mr Ryan to substantiate the claim that the methodology of valuing the Property was anti-competitive. Without prejudice to the foregoing the Tribunal does not have jurisdiction to determine whether legislation has an anti-competitive effect under the Competition Act 2002 and subsequent amendments.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal dismisses the appeal and as a consequence of the agreed increase in the floor areas, amends the net annual value of the Property as stated in the Valuation Certificate to €24,300.

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.