Appeal No. VA12/2/004

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Fota Wildlife Park Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 956367, Office(s), Shop, Restaurant/Cafe, Land at Lot No. 2C, Foaty, Cobh Rural, Cobh Upper, County Cork.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb **Deputy Chairperson**

Aidan McNulty - Solicitor **Member**

Fiona Gallagher - BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF OCTOBER, 2012

By Notice of Appeal received on the 12th day of April, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €360 on the above described property.

The grounds of appeal as set out in the notice of appeal are:
"The subject property comprises relevant property not rateable under Schedule 4 of Valuation Act, 2001."

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 18th June, 2012. At the appeal the appellant was represented by Mr. Owen Hickey SC, instructed by Kilroy Solicitors. Ms. Siobhan Murphy BSc (Surv) MSCSI MRICS of GVA Donal O Buachalla and Mr. John Kingston, Company Secretary, gave evidence. The respondent was represented by Ms. Elizabeth O'Connell BL, instructed by the Chief State Solicitor. Ms. Yvonne Kiernan MRICS, MSCSI, ACI Arb, a valuer at the Valuation Office, also gave evidence.

Location

The subject property is situated on Fota Island, Carrigtwohill, County Cork, an island located in Cork Harbour, approximately 15km east of Cork City.

The Property Concerned

The subject property comprises 70 acres of parkland, which have been landscaped and designed to create a number of animal habitats, with various holding pens and an incubation unit for the animals. In addition, there are a number of buildings on site, including entry/exit kiosks, a gift shop, a café, a restaurant, offices and staff facilities, stores and an education centre, comprising classrooms, a lecture room and offices. A car park is also located on the property with approximately 250 spaces.

Accommodation

Entry Kiosks (x2)	19.14 sq. metres
Café / Gift Shop Building	437.47 sq. metres
Café / Gift Shop (Ancillary – Corridor/WC/Break Room 1)	61.50 sq. metres
Administration Building	399.67 sq. metres
Education / Lecture Theatre / Classroom	218.36 sq. metres
Boiler House **(not rated)**	4.40 sq. metres
Former Shop / Offices, assume Offices	112.15 sq. metres
Entry Kiosks (x2)	2.88 sq. metres
Education / Lecture Theatre / Classroom	178.50 sq. metres
Medical / Staff	118.11 sq. metres
Restaurant	160.65 sq. metres
Restaurant	116.24 sq. metres

Incubation House **(not rated)**	148.83 sq. metres
TOTAL	**1,977.90 sq. metres**

Rating History

The subject property was first valued in 1986, with a rateable valuation of IR£45 (€57.10) applied to the restaurant within the park. The property was revised again in 1996 following an extension to the restaurant and the construction of an incubation house. As a result, the valuation was increased to IR£80 (€101.52). The property was further revised in 1998 after the building of a shop, lecture hall, offices, staff room, surgery and hay barn, leading to an increase in the rateable valuation of the buildings to IR£140 (€177.76).

On 21st December, 2010, the subject property was listed for revision to value new buildings constructed, namely a gift shop, café, entry plaza and ticketing booths, administration building, animal enclosure, holding facility and public toilets. In addition, the existing gift shop was changed to educational use and the education centre was refurbished.

A draft Valuation Certificate was issued on 11th July, 2011, proposing a valuation of €370. Representations were submitted on behalf of the appellant seeking an exemption from rateability in respect of the subject property. Such exemption was rejected and a final Certificate issued on 11th August, 2011, affirming the valuation of €370. The appellant appealed against that decision to the Commissioner of Valuation on 19th September, 2011 and following consideration of the appeal, the Appeal Officer deemed the property to be rateable but reduced the valuation to €360. By Notice of Appeal of 12th April, 2012, the appellant appealed that decision to the Tribunal.

The Issue

The issue before the Tribunal was the rateability of the subject property. In the event of the Tribunal determining that the subject property was rateable, an RV of €360 was agreed between the parties.

The Appellant's Evidence

Mr. John Kingston, Company Secretary of the appellant, gave evidence on behalf of the appellant. Mr. Kingston stated that Fota Wildlife Park opened in 1983 as a joint project

between University College Cork (UCC) and the Zoological Society of Ireland, both of which institutions continue to have an input into the Park's Board of Governors. Mr. Kingston stated that the Park was set up to teach people about the conservation of animals and also to give visitors the opportunity to view a variety of indigenous and foreign animal species. He further stated that the Park runs breeding programmes for highly endangered native species such as the white-tailed sea eagle, the red squirrel and the corncrake, in addition to non-native species like the European bison, the scimitar-horned oryx and the Madagascar Pochard duck.

Throughout the year, Mr. Kingston stated, the Education Centre runs programmes for primary and secondary school students. Furthermore, the Park, in conjunction with the Zoological Department of UCC, also facilitates undergraduate and post-graduate students in carrying out research. According to Mr. Kingston, the Education Centre, which comprises classrooms and a lecture room, is only used for education purposes, save for general staff meetings, which are conducted there due to its size. Mr. Kingston stated that during school terms this building would generally be in daily use. He further stated that the Park employs two full-time educational staff, with additional part-time and seasonal staff.

Mr. Kingston provided details of the Park's opening hours and charges. The Park is open 363 days a year, closing on 25th and 26th December each year. The cost of entry is €14 per adult and €11.50 per child, with discounts for groups, over-65s and students. It is also possible to purchase season tickets or to take out annual membership. Mr. Kingston stated that the appellant operates on a not-for-profit basis, with any surplus funds used for improvements, new exhibits and animals. He affirmed that the Park is funded through gated receipts in the main with some income generated from donations, but receives no funding from the State.

Under cross-examination, Mr. Kingston admitted that the appellant's second largest source of income is receipts from the coffee shop, with further income generated from the gift shop. He further admitted that the products sold in the gift shop are not produced by the appellant. Under questioning from the Tribunal, Mr. Kingston stated that the coffee shop is contracted out to a private operator, but that the gift shop is operated by the appellant's own staff. He also confirmed that the Park is not used for entertainment purposes.

Mr. Kingston also accepted under cross-examination that the conservation projects in which the appellant is involved and which it supports are wide-ranging and not confined to Irish species alone. Under questioning from the Tribunal, he admitted that the Park does not always carry out its own research on projects it supports abroad. He agreed however that the benefit to the Park was the knowledge that it generated. Mr. Kingston stated that such knowledge was accessible to the public either via the appellant's website or directly in response to queries. In addition, Mr. Kingston stated that the appellant's Director attends European Zoo Breeding Programme meetings and shares information obtained by the Park and reports annually.

Ms. Siobhan Murphy, a surveyor engaged by the appellant, also gave evidence on its behalf. She adopted her written précis and valuation as her evidence-in-chief. Ms. Murphy provided details of the various buildings on the lands and their respective areas. In her view the subject property should be exempt from rates, consistent with Dublin Zoo, which is exempt. It was put to Ms. Murphy under cross-examination that Dublin Zoo had never been valued since 1963. She replied that she was informed as such by the respondent. She accepted that the subject property was slightly different from Dublin Zoo in that some of the animals roamed free, unlike in the Zoo.

The Respondent's Evidence

Ms. Yvonne Kiernan, a valuer at the Valuation Office, also adopted her written précis and valuation, which had previously been received by the Tribunal and the appellant, as her evidence-in-chief.

Detailed written and oral legal submissions were made by counsel for both parties.

Appellant's Submissions

Mr. Owen Hickey SC on behalf the appellant, firstly and primarily submitted that the subject property is a "park" within the meaning of Paragraph 11 of Schedule 4 of the Valuation Act, 2001, which provides as relevant property not rateable, *"[a]ny art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit."* Mr. Hickey stated that as the subject property is open to the general public and is not established or maintained for

the purpose of making a private profit, the only issue is therefore whether it is a "park" within the meaning of Paragraph 11.

Mr. Hickey referred to the definition of the word "park" in the *Concise Oxford Dictionary of Current English* (9th Edition), which includes *"a large enclosed area of land used to accommodate wild animals in captivity (wildlife park)"*. He submitted that the subject property clearly fulfils this part of the definition and accordingly is a "park" and thus exempt from rateability in accordance with Paragraph 11 of Schedule 4 of the 2001 Act.

Mr. Hickey next addressed the issue of whether the various ancillary support facilities within the Park should also be exempted. He referred to the decision of the Tribunal in **VA04/1/001 - City of Dublin VEC,** which quoted with approval from the judgment of Donovan J. in the English case of **United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council** [1957] 1 WLR 1080. Donovan J. observed at page 1088 of that case that:-

"Every organisation setting out to advance some cause must, if it is of any size, have an office where the necessary clerical and administrative work is done. But one cannot isolate this, and say that the purpose of the office is different from that of the organisation itself. To do so is to confuse ends with means. There is only one purpose, which is that of the organisation as a whole; though the different units within it may be working out that purpose in different ways."

In **VA04/1/001 - City of Dublin VEC**, the Tribunal found that the offices attached to the VEC which processed student application and grant forms were exempt from rates on the basis that such activities were "*inextricably linked"* to the various educational programmes and facilities provided by the VEC. The Tribunal stated at paragraph 27 of the judgment that, *"It is hard to imagine how any organisation of any size can avoid having an office where the necessary clerical and administrative work is carried out. It is however artificial to suggest that the purpose of the various activities carried on in the office is wholly different from the purpose of the organisation as a whole."*

With regard to the instant case, Mr. Hickey submitted that the ancillary support facilities within the subject property are *"inextricably linked"* with its operation, in accordance with the test applied by the Tribunal in **VA04/1/001 - City of Dublin VEC v. Commissioner of Valuation** and thus should be exempt on the basis that the Park itself is exempt in accordance with Paragraph 11 of Schedule 4 of the Valuation Act, 2001.

Mr. Hickey also referred to the decision of Cooke J. in the High Court in the case of **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** (Unreported, High Court, Cooke J., 26th February 2009), which concerned the rateability of a car park at St. Vincent's Hospital. In that case Cooke J. set out the relevant test at page 13 of his judgment:-

"When the correct test is applied namely, that of ascertaining the purpose of the appellant in using the structure as a car park, the Court considers that its use clearly comes within the scope of heading No. 8 [of Schedule 4 of the Valuation Act, 2001, i.e. any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital]. *The car park is so provided and located because the hospital is situated in a built-up urban area and attracts large volumes of traffic by those using or visiting the hospital. It may not be "necessary" in the literal sense, to provide car park spaces in order to care for the sick or treat illnesses, but it may well be a highly necessary part of the efficient management of the hospital as a whole to ensure that traffic in and out of the hospital, including ambulances, is efficiently accommodated and organised. The car park exists and is so located because of the hospital and not otherwise. It is there because the hospital is there. In that sense therefore, the use of the car park is not "remote" from the main activity of the appellant."*

Mr. Hickey submitted that these remarks applied *mutatis mutandis* to the present case. He contended that all of the ancillary facilities and buildings exist and are so located because of the wildlife park and not otherwise.

Mr. Hickey also referred to Cooke J.'s judgment at page 12, where he stated that:-

"There may well be many convenient activities or facilities within a hospital which could be said to be unnecessary to the operative element of its functioning or to 'the carrying out of its

stated aims namely, the caring for sick persons'. A coffee shop or a kiosk selling newspapers may be desirable but they are not necessary. Nowadays it is probably feasible to contract out many services including those of computer and equipment maintenance or even laboratory work so that a hospital could function without such departments of its own. But it is not the role of the Tribunal or of this Court to decide how a hospital should be organised and what is necessary in that sense."

Mr. Hickey submitted that the case of **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** sets out a new charter in relation to these matters, which effectively takes into account the purpose of the ancillary facilities and that if that purpose goes to the exempt building, then those facilities are also exempt. Mr. Hickey also asserted that the old authority, in particular the English case of **Oxfam v. City of Birmingham District Council** [1976] AC 126, is no longer applicable in the wake of this decision. Mr. Hickey pointed out that the Tribunal decision in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** referred to the case of **Oxfam v. City of Birmingham District Council** and this decision of the Tribunal was overturned by Cooke J. in the High Court. In any event, Mr. Hickey submitted that the **Oxfam** case was not relevant to the instant case, dealing as it did with whether retail shops operated by the charity Oxfam were used for charitable purposes.

Applying the *ejusdem generis* principle of statutory interpretation to Paragraph 11 of Schedule 4 of the Valuation Act, 2001, Mr. Hickey stated that there is no specific genus to the list of facilities set out therein. However, he submitted that they all relate to cultural and recreational activities. He argued that parks and wildlife facilities are manifestly of cultural importance and accordingly that the subject is clearly exempted by Paragraph 11. In Mr. Hickey's view, there is no ambiguity present given that a wildlife park is within a set of definitions in the *Concise Oxford Dictionary of Current English* of the word "park" and, therefore, on the plain and ordinary meaning of the language of Paragraph 11, the subject property is a "park". Furthermore, he submitted that the ancillary facilities and buildings are exempted in accordance with the test enunciated by Cooke J. in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation.**

Alternatively, Mr. Hickey submitted that the education centre within the subject property housing the classrooms and lecture room, are buildings occupied by a *"school, college, university, institute of technology or any other educational institution",* and used exclusively by it for the provision of educational services in accordance with Paragraph 10 of Schedule 4 of the 2001 Act. Accordingly, he submitted that the education centre is therefore not rateable. Mr. Hickey stated that it is common case that these buildings are used for educational purposes and the provenance of the land is that it was owned by UCC and leased to the appellant.

Referring to the *ejusdem generis* principle of statutory interpretation, Mr. Hickey submitted that Paragraph 10 of Schedule 4 applies to an entity like a school, university, institute of technology or educational institution, which he argued the education centre is. It was submitted by Mr. Hickey that the word *"any"* before "educational institution" in Paragraph 10 was deliberately inserted by the draftsman to broaden the provision to include any institution providing educational services. Therefore, he argued, this extends the definition beyond something akin to a school or university. Mr. Hickey contended that the appellant can be deemed to be an educational institution as the subject matter taught by the appellant would ordinarily be taught in a school or university.

Further, or in the alternative, Mr. Hickey submitted that the subject property fulfils the criteria under Paragraph 16(b) of Schedule 4 of the Valuation Act, 2001, which provides that any land, building or part of a building which is occupied by a body, *"being. . . . a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and—(i) the principal activity of which is the conservation of the natural and built endowments in the State, and (ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit."*

Mr. Hickey stated that Mr. Kingston's evidence was that the subject was used for the conservation of certain native species of animal, which he argued could amount to a natural endowment in the State. With regard to the conservation of non-native species, Mr. Hickey submitted that if one acquires e.g. a herd of bison from another country for the purposes of conservation, this becomes part of the endowments in the State.

Mr. Hickey stated that there was a contradiction on the face of the wording of Paragraph 16(b) of Schedule 4, in that it referred to the principal activity of a body, while at the same time requiring the land, buildings or part thereof to be used exclusively by that body for that activity. Therefore, he submitted that by implication Paragraph 16(b) allowed some residual use of the land or buildings, other than for the conservation of the natural endowments in the State.

Finally, Mr. Hickey submitted that the subject property comprises land and buildings or parts thereof occupied by a society established for the advancement of science, which is used exclusively for that purpose and otherwise than for private profit in accordance with Paragraph 17 of Schedule 4 of the Valuation Act, 2001 and is accordingly exempt on that basis. In support of this contention, Mr. Hickey referred to the appellant's Memorandum and Articles of Association and in particular to the objects clause therein. One of the appellant's objects is, "[*to*] *support global diversity, and the conservation of wildlife nationally and internationally, through education, the breeding of endangered species, the support of scientific research and the provision of financial and technical assistance to worthwhile conservation projects worldwide."*

Respondent's Submissions

Ms. Elizabeth O'Connell BL, in response to the appellant's primary submission that the subject property is a "park" within the meaning of Paragraph 11 of Schedule 4 of the Valuation Act, 2001 and thus exempt from rateability, submitted that when examining the definition of "park" in the *Concise Oxford Dictionary of Current English* the use of the word "wildlife" after the word "park" therein is an additional descriptor. She stated that the definition of "park" also includes a reference to a car park, but contended that under the ordinary and natural meaning of "park" it would not include a car park. Ms. O'Connell argued that the further descriptor was the vital difference between the two different entities. She submitted that "park" should be given its ordinary and natural meaning, which is a large public garden in a town for recreation.

Alternatively, Ms. O'Connell submitted that at best it was ambiguous that Paragraph 11 of Schedule 4 of the Valuation Act, 2001 included a wildlife park. If that is so, she submitted that given that Schedule 4 is an exempting provision of the 2001 Act, any ambiguity must be interpreted strictly against the rate payer in accordance with the case of **Nangles Nurseries v.**

Commissioner of Valuation [2008] IEHC 73, which derives from the judgment of Kennedy CJ in the Supreme Court in **The Revenue Commissioners v. Doorly** [1933] IR 750. Therefore, Ms. O'Connell maintained that if the Tribunal is of the view that there is any ambiguity in the language of Paragraph 11, it must be interpreted against the appellant.

Ms. O'Connell referred to the case of **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** (Unreported, High Court, Cooke J., 26th February 2009), which Mr. Hickey relied on. That case dealt with a car park, which she submitted was a totally different occupation to the subject property. She argued that a person does not park a car as a standalone purpose, but rather it leads on to something else. In contrast, however, she stated that it is possible that visiting the coffee shop in the subject property or buying a present in the gift shop could be standalone purposes, not leading to anything else. Ms. O'Connell submitted that the test is whether the facilities are necessary for the efficient management of the business of the occupier and an integral part of or necessary to that business.

Ms. O'Connell also referred to the English case of **Oxfam v. City of Birmingham District Council** [1976] AC 126, where the House of Lords found that shops operated by the charity Oxfam were not exempt from rates. The House of Lords held that the shops were mainly used to raise money for the charity by the sale of donated clothing, as opposed to being used for purposes related to the achievement of the objects of the charity and accordingly were not exempt on the basis that they were used for charitable purposes. Ms. O'Connell submitted that this case is authority for the proposition that just because the profits from a business feed into an exempt activity, it does not mean that the business premises is also exempt. She stated that this case was not specifically referred to by Cooke J. in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** and contended that it is still of weight in Ireland in the aftermath of that decision.

It was submitted by Ms. O'Connell that the case of **Oxfam v. City of Birmingham District Council** was completely analogous to the subject property. She claimed that the gift shop, restaurant and café assist in the running of the occupier's business by generating money. Therefore, Ms. O'Connell argued that, even if the Tribunal accepts that the subject property is a park within the meaning of Paragraph 11 of Schedule 4 of the Valuation Act, 2001, the shop, kiosk and restaurant are not part of the Park and should only be treated as exempt if they tie in with the business of the Park, which she submitted they did not. In her view those

facilities have nothing to do with the business of running a wildlife park and the legislature never intended, when referring to a "park" in Paragraph 11 of Schedule 4, that it would include shops, restaurants, etc.

The Tribunal questioned Ms. O'Connell as to whether the inclusion of "park" in Paragraph 11 of Schedule 4 of the Valuation Act, 2001 along with art galleries, museums, libraries and national monuments, implied something more than a mere public garden. In response Ms. O'Connell stated that if the legislature had wanted to exempt a facility such as the subject, it could have expressly done so in the list of facilities exempted under Paragraph 12 of Schedule 4. She pointed out that Dublin Zoo and the subject are the only zoological facilities within the State. Ms. O'Connell was further asked if she considered a national park such as Killarney National Park to come within the definition in Paragraph 11. She replied that it is stretching it too far to equate a wildlife park with a national park, as people do not go to a wildlife park for walks or to enjoy the scenery.

Addressing the appellant's submission that the education centre within the subject is exempt in accordance with Paragraph 10 of Schedule 4 of the Valuation Act, 2001, Ms. O'Connell acknowledged that there is an educational element to the appellant's activities. However, she argued that the exempting provision in Paragraph 10 places the bar a good deal higher, by requiring the occupier to be a school, college, university, institute of technology or other educational institution. Ms. O'Connell referred to the definition of "institution" in the *Oxford English Dictionary*, namely, *"[a]n establishment, organisation or association, instituted for the promotion of some object, especially one of public or general utility, religious, charitable, educational, etc ..."* She argued that the appellant is not an educational institution. It did not offer degrees, awards or diplomas. Although it offered some educational component like many other bodies, Ms. O'Connell argued that the legislature could not have intended for an entity such as the appellant to come within the exempting provisions of Paragraph 10. She contended that the primary object of the appellant is not educational, but rather to run a wildlife park.

Paragraph 10 of Schedule 4 also requires the educational services concerned to be available to the general public. Ms. O'Connell stated that Mr. Kingston's evidence established that the educational facilities are available to schoolchildren and students but not to adults *en masse* and accordingly the appellant failed to satisfy this condition. Furthermore, she took issue with

whether the education centre is used exclusively for the provision of educational services as also required by Paragraph 10, on the basis of Mr. Kingston's evidence that it is also used for staff meetings.

Ms. O'Connell stated that there is no precedent in relation to the issue of whether the entirety of a facility has to be treated as an educational institution or whether it was possible to divorce the buildings where the education takes place from the rest of the facility. She acknowledged that Paragraph 10 referred to, *"[a]ny land, building or part of a building"* and that there is an educational component to the appellant's objects. However, she contended that that does not make it into an educational institution, as its main purposes are the provision of a wildlife park and conservation.

With regard to Paragraph 16(b) of Schedule 4 of the Valuation Act, 2001, Ms. O'Connell submitted that it was stretching the wording of the provision too far to include a species of animal as part of the natural endowments in the State. However, she submitted that even if this was accepted, the ordinary and natural meaning of the section would be that natural endowments in the State must be confined to the heritage of the State and accordingly could only mean native species of animal. Ms. O'Connell stated that Mr. Kingston had conceded that the conservation projects engaged in by the appellant were not confined to native species, but included foreign species as well. She contended that such species could not be part of the natural endowments in the State in accordance with Paragraph 16(b). In any event Ms. O'Connell submitted that the principal activity of the appellant is not conservation, but rather the operation of a wildlife park.

Finally, addressing Paragraph 17 of Schedule 4 of the 2001 Act, Ms. O'Connell submitted that the advancement of science is not the principal object of the appellant and therefore it is not a society established for the advancement of science in accordance with Paragraph 17. Furthermore, Ms. O'Connell submitted that the subject property is not used exclusively for the advancement of science. She argued that the exhibition of living animals is for recreational and not scientific purposes.

Findings

The Tribunal wishes to thank the parties for their detailed and comprehensive legal submissions, which have been most helpful to the Tribunal in arriving at its determination. The Tribunal hereby finds as follows:

1. The appellant's primary argument was that the subject property was a "park" within the meaning of Paragraph 11 of Schedule 4 of the Valuation Act, 2001. This paragraph provides as relevant property not rateable, *"[a]ny art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit."* Mr. Kingston, Company Secretary of the appellant, gave evidence that the property is open to the public at large 363 days a year and further that the appellant operates on a not-for-profit basis, with any surplus funds used for improvements, new exhibits and animals. This evidence was not disputed by the respondent. Therefore, it is accepted by the Tribunal that the subject property fulfils the criteria set out in Paragraph 11 of Schedule 4, subject of course to its being deemed a "park."

2. In determining whether the subject property is a "park", the Tribunal is guided by the definition of the word "park" referred to by Mr. Hickey in the *Concise Oxford Dictionary of Current English* (9th Edition). This definition includes *"a large enclosed area of land used to accommodate wild animals in captivity (wildlife park)"*. Ms. O'Connell did not dispute that the subject was a wildlife park, but argued that the use of the word "wildlife" was an additional descriptor to "park", differentiating it from a "park" in the ordinary and natural sense of the word.

   The Tribunal does not accept the argument advanced by Ms. O'Connell and finds that the subject property clearly comes within the meaning of the word "park" as defined in the *Concise Oxford Dictionary.* Thus, it is a park within the ordinary and natural meaning of the term in Paragraph 11 of Schedule 4 of the Valuation Act, 2001 and accordingly is relevant property not rateable. As there is no ambiguity with regard to the language of Paragraph 11, the line of authority flowing from the cases of **The Revenue Commissioners v. Doorly** [1933] IR 750 and **Nangles Nurseries v. Commissioner of Valuation** [2008] IEHC 73 is not applicable.

3. It is common case that there are a number of facilities within the subject property which may be described as ancillary to the actual business of running the wildlife park, such as the restaurant, café, gift shop, administration building and education centre. It is necessary to determine whether such buildings are also exempt in accordance with Paragraph 11 of Schedule 4 of the Valuation Act, 2001 or whether they should be rated. The relevant authority is the High Court decision of Cooke J. in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** (Unreported, High Court, Cooke J., 26th February 2009). Cooke J. identified the relevant test at page 13 of the judgment as of "*ascertaining the purpose of the appellant in using the structure*". Cooke J. went on to state:-

"It may not be "necessary" in the literal sense, to provide car park spaces in order to care for the sick or treat illnesses, but it may well be a highly necessary part of the efficient management of the hospital as a whole to ensure that traffic in and out of the hospital, including ambulances, is efficiently accommodated and organised. The car park exists and is so located because of the hospital and not otherwise. It is there because the hospital is there. In that sense therefore, the use of the car park is not "remote" from the main activity of the appellant."

4. Applying the test enunciated by Cooke J. in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation** to the instant case, the Tribunal finds on the evidence before it that the purpose of the various ancillary facilities is in ease of and to accommodate visitors to the Park and accordingly such facilities are part of the efficient management of a wildlife park. They exist because of the wildlife park and not otherwise and thus their purpose is the purpose of the appellant as a whole, namely the running of a wildlife park. Further, they are not too remote from the activity of the running of a wildlife park. Accordingly, such facilities fall within the exemption under Paragraph 11 of Schedule 4 of the Valuation Act, 2001 and thus are not rateable.

5. The Tribunal is further reinforced in its views in this regard by the remarks of Cooke J. at paragraph 35 of his judgment in **St. Vincent's Healthcare Group Ltd v. Commissioner of Valuation**.

6. As the Tribunal finds the subject property to be relevant property not rateable in accordance with Paragraph 11 of Schedule 4 of the Valuation Act, 2001, it is not necessary to consider the other arguments advanced in the alternative by the appellant with regard to the rateability of the subject property and the facilities thereon.

Determination

The Tribunal determines that the subject property is relevant property not rateable in accordance with Paragraph 11 of Schedule 4 of the Valuation Act, 2001.

And the Tribunal so determines.