

**Appeal No: VA18/4/0009**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**DUBLIN BUSINESS INNOVATION CENTRE CLG**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 839748, Office(s) at Ground Floor Part, First & Second Floor, 60-63 Dawson Street,  
Dublin 2

**B E F O R E**

**Carol O'Farrell - BL**

**Chairperson**

**Sarah Reid - BL**

**Member**

**Gerard O'Callaghan - MRICS, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 16<sup>th</sup> DAY OF NOVEMBER 2021**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 18<sup>th</sup> day of October 2018 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 €242,000.

1.2 The sole ground of appeal is that the Property is exempt from rating as the Appellant is a registered charitable organisation and uses the Property for charitable purposes.

**2. VALUATION HISTORY**

- 2.1 The Appellant made an application to the Respondent on 3<sup>rd</sup> March 2017 for the appointment of a revision manager on the basis that a material change of circumstances had occurred in respect of the Property and that the Property ought to be excluded from the list on the basis that it was exempt from the payment of rates pursuant to paragraph 16 of Schedule 4 of the Valuation Act 2001 as amended by reason that the Appellant is a registered charity.
- 2.2 Following that request the Respondent appointed Mr O'Brien who inspected the Property on the 2<sup>nd</sup> February 2018 and upon being satisfied that a material change of circumstances had occurred as a property, previously valued as one property on the valuation list, had become liable to be valued as two or more properties. Pursuant to his powers under section 28 of the Act, Mr O'Brien determined that the Property occupied by the Appellant is 'relevant property' and proceeded to determine its value as he did not accept that the Appellant occupied the Property exclusively for charitable purposes.
- 2.3 Being dissatisfied with the valuation proposed, representations were made to the revision manager on the grounds that the Appellant is a 'not for profit' charitable organisation that pursues charitable objects for public benefit and further by reason that Property No 839742, occupied and used by another registered charity, iCompany Startup Initiative Ltd, for similar purposes, was exempt from rates. Following consideration of those representations, the revision manager did not consider there to be any grounds to revisit the determination that the Property is not occupied for charitable purposes, and a final valuation certificate issued on the 21<sup>st</sup> September 2018 stating a valuation of €242,000. At that time the revision manager accepted that the Appellant is a charitable organisation within the meaning of section 3 of the Valuation Act 2001 as amended.

### **3. THE HEARING**

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on the 15<sup>th</sup> day of October 2021. At the hearing, the Appellant was represented, with the consent and authority of the Appellant, by the Mr. Michael Culligan, the Appellant's Chief Executive Officer, and the Respondent was represented by Mr. Niall Nolan BL instructed by the Chief State Solicitor who called Mr. David O'Brien MSCSI, MRICS of the Valuation Office to give evidence.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted them to the

Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

#### **4. FACTS**

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

- 4.1 The Appellant is a company limited by guarantee and not having a share capital.
- 4.2 The Appellant is a charitable organisation within the meaning of Section 2 of the Charities Act 2009 (“the 2009 Act”). It is registered under number 20019877 on the register of charitable organisations established and maintained by the Charities Regulatory Authority under section 39 of the 2009 Act for the purposes of that Act and is regarded by the Revenue Commissioners as established for charitable purposes under charity reference number 8220.
- 4.3 The Appellant’s Memorandum and Articles of Association list 39 objects for which the company was established. The two objects most relevant to this appeal are:
  - (a) To establish and manage a business innovation centre in order to stimulate entrepreneurship and the creation of new innovative activities in new or existing businesses and to detect, select and develop entrepreneurs or technologies, whether directly or in conjunction with existing training, educational, developmental, or other agencies and to train persons in basic entrepreneurial management and business skills.
  - (b) To provide business premises for the generating or support of businesses together with such administrative and consultancy services as may be deemed necessary.
- 4.4 At the effective date (i.e., the 21<sup>st</sup> September 2018), the Appellant occupied the Property which comprised the first and second floors and part of the ground floor of a five-storey office building over a basement car park.
- 4.5 The Appellant went into occupation of the Property, since demolished for redevelopment and taken out of the valuation list, under a 13-month Licence Agreement and thereafter, by mutual agreement with the owner, on a rolling basis as the building was earmarked for demolition and redevelopment.

- 4.6 The Appellant rented office space within the Property to start up, early stage and developing entrepreneurs and businesses at competitive and affordable rents for varying periods of time and provided programmes and services including financial services through a general partnership with a connected entity, to assist them in accessing seed capital to advance and grow their respective businesses.
- 4.7 The Appellant is based in its registered office at The Tower, Trinity Technology & Enterprise Building in Grand Canal Dock, Dublin 1. As regards the Property the Appellant provided support staff onsite to assist those who had rented office space in the Property described by Mr. Culligan as akin to a serviced office type situation.
- 4.8 The Appellant is supported in its endeavours by Enterprise Ireland and the Department of Jobs, Enterprise and Innovation.
- 4.9 The Appellant's financial statements for year ending December 2017 confirm that the Appellant has four sources of income: Enterprise Ireland and Intertrade Ireland funding, Halo Business Angel Network (HBAN) funding, subsidiary fees, and consultancy fees, and Mr. Culligan gave evidence that while income is earned, the Appellant is not for profit and so any surplus income as may arise is reinvested in the company.

## **5. ISSUE**

- 5.1 As the valuation determined in respect of the Property is not challenged on this appeal, the sole issue is whether the Property ought to be excluded from the valuation list on the basis that it is exempt from rates pursuant to paragraph 16(a) of Schedule 4 of the 2001 Act as amended.
- 5.2 The Tribunal must, therefore, determine in the first instance whether the Appellant is a charitable organisation (as defined in section 3 of the 2001 Act as amended) and secondly, if the purpose for which the Property was used, is capable of being considered a 'charitable purpose' within the meaning of paragraph 16(a) of Schedule 4 of the Valuation Act 2001, as amended and, if so, whether the Property was exclusively used for such charitable purpose.

**6. RELEVANT STATUTORY PROVISIONS:**

6.1 Section 15 of the 2001 Act provides:

(1) Subject to the following subsection and sections 16 and 59, relevant Property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.

6.2 Schedule 4 of the 2001 Act lists nineteen types or categories of relevant property which are designated as “not rateable” by s. 15(2). This appeal is concerned with the property specified in paragraph 16 (a) of Schedule 4 being:

“Any land, building or part of a building which is occupied by a body, being either

(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit....”

6.3 Section 3 of the 2001 Act as amended by section 2 of the Valuation (Amendment) Act 2015 provides:

‘charitable organisation’ means a charitable organisation within the meaning of section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act

6.4 Under section 2 of the 2009 Act

(i) “charitable organisation” means:

(a) the trustees of a charitable trust, or

(b) a body corporate or an unincorporated body of persons—

(i) that promotes a charitable purpose only,

(ii) that, under its constitution, is required to apply all of its property both real and personal) in furtherance of that purpose, except for moneys expended—

(I) in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and

- (II) in the case of a religious organisation or community, on accommodation and care of members of the organisation or community, and
  - (iii) none of the property of which is payable to the members of the body other than in accordance with section 89,

but shall not include an excluded body.
- (ii) “charitable purpose” shall be construed in accordance with section 3
- (iii) public benefit” shall be construed in accordance with section 3 .

Section 3 of the 2009 Act, in material part, provides:

- (1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:
  - (a) the prevention or relief of poverty or economic hardship.
  - (b) the advancement of education.
  - (c) the advancement of religion.
  - (d) any other purpose that is of benefit to the community.

- (2) A purpose shall not be a charitable purpose unless it is of public benefit.

- (11) In this section “purpose that is of benefit to the community” includes—
  - (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,
  - (b) the advancement of community development, including rural or urban regeneration
  - (c) the promotion of civic responsibility or voluntary work,
  - (d) the promotion of health, including the prevention or relief of sickness, disease or human suffering
  - (e) the advancement of conflict resolution or reconciliation,
  - (f) the promotion of religious or racial harmony and harmonious community relations,
  - (g) the protection of the natural environment,
  - h) the advancement of environmental sustainability,
  - (i) the advancement of the efficient and effective use of the property of charitable organisations,
  - ( j) the prevention or relief of suffering of animals,

- (k) the advancement of the arts, culture, heritage or sciences, and
- (l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

## **7. APPELLANT'S CASE**

- 7.1 Mr Culligan submitted that the Valuation (Amendment) Act 2015, sets out two pre-conditions for the exemption to apply to charities, namely, that the organisation is charitable organisation and the property in respect of which exemption is being claimed is occupied for charitable purposes and not for private profit. As regards the first condition, he considered that the effect of section 2 of the 2015 Act (by substituting a new definition of “charitable organisation”) is to import concepts from the 2009 Act into the 2001 Act so that if an organisation is registered with the Charities Regulatory Authority (‘CRA’) it will be regarded as a charitable organisation for the purposes of the Valuation Acts. He confirmed that the Appellant is registered as a charity with the CRA since the 12<sup>th</sup> November 2015 under Registered Charity Number 20019877 and has charitable tax exemption status from the Revenue Commissioners under CHY Number 8220.
- 7.2 Mr Culligan considered it “*highly significant*” that a charitable organisation as so defined must promote a charitable purpose otherwise it would not have been registered by the CRA. He further submitted that since registration as a charitable organisation under the 2009 Act is only possible if a body has a charitable purpose, it would be illogical for the Valuation Acts to refer to charitable organisations within the meaning of section 2 of the 2009 Act but exclude the activities of that organisation from being charitable purposes for the purposes of paragraph 16 of Schedule 4.
- 7.3 As regards the second condition, Mr Culligan referred to the Appellant’s Constitution document (i.e., the memorandum and articles of association of the company) which had been submitted to the CRA with the application for registration and which was accepted by the CRA as fulfilling the requirement that a charitable organisation have a charitable purpose. He considered that all the Appellant’s objects were directed at supporting start-up businesses. He pointed specifically to object (b) in clause 2 and highlighted proviso (ii) below the list of objects which states that the objects shall not be construed in any way so as to render any of the objectives otherwise than exclusively charitable. In reliance upon these provisions, Mr Culligan stated that the charitable purpose at clause 2 (b) is being fulfilled through the activity of providing business premises to entrepreneurs and early-stage startups and that this was the sole activity engaged in by the Appellant at the

Property. Consequently, the Appellant was of the view that Property was occupied solely for charitable purposes on a 'not for profit' basis as confirmed by clause 3 of the Constitution which provided that the income and property of the Appellant must be applied solely towards the promotion of the objects of the company and further by clause 7 thereof which precludes the distribution of the company assets to its members in the event of a winding up or dissolution of the company.

- 7.4 Mr Culligan provided details of the type of persons and/or companies to whom the Appellant let office space. He described them as seldom having ready access to finance and not being in a position to take on a long-term lease of office space. He said that by providing cheap office space on short term licence agreements the appellant helped them navigate the difficult initial stages in starting and promoting a business. He pointed out that a 'for-profit' entity would charge up to three times the rent that the Appellant charged for lettings and potentially impose far more stringent deposit requirements, notice rules regarding terminations and perhaps even require a share of equity in the start-up.
- 7.5 Mr Culligan accepted that these start-up businesses are not charitable organisations, and indeed the evidence was that for the most part the Appellant fostered fledging businesses with international outreach. Mr Culligan said that any funds that were raised by the Appellant were needed and used for the purposes of maintaining the services provided in the Property and said that the Appellant's business costings had been based on the presumption that the Property would be entitled to an exemption under paragraph 16(a) of Schedule 4 and, he said that if that transpired not to be the case, the financial model and viability of the Appellant's pursuits would be severely impacted.
- 7.6 Mr Culligan said that the Appellant was aware that a precedent had already been set regarding charitable rates exemption in respect of a charitable organisation called ICompany Startup Initiative CLG who occupied the adjoining premises at 59 Dawson Street. He understood that their application for exemption has been acceded to by the Respondent. The mission of that company was "*....to support business start-ups and employment in Ireland*" which he said aligned with the Appellant's objects. He said that the Appellant had entered the Licence Agreement to use the Property on the basis that it believed that it would be similarly exempt from rating.
- 7.7 When asked in cross examination to identify the 'community' that benefitted from the use of the Property and the Appellant's services, Mr Culligan replied that it was the start up



community and new businesses. When asked to further elaborate on this by the Chair, Mr. Culligan confirmed that although these parties are commercial entities, they contribute to the economy and grow into bigger enterprises thereby creating economic wealth and jobs within the community and/or within the Irish economy.

- 7.8 In summing up, Mr Culligan stated that in order to avail of the Schedule 4 exemption, a party had to be a charitable organisation, which they were, be in occupation of the property, which they were, and use it for a charitable purpose, which he said they did. While acknowledging that the Appellant is paid for the services that they render, he argued that it nonetheless remains a non-profit entity as confirmed by their Constitution.

## **8. RESPONDENT'S CASE**

- 8.1 Despite accepting that the Appellant is a charitable organisation within the meaning of the Valuation Acts prior to the issue of the valuation certificate, at the hearing Mr O'Brien contended that the Appellant is not a charitable organisation as defined in section 3 Valuation Act 2001 as amended. It was also his view that the Appellant did not use the Property for a charitable purpose. In support of this contention, he said that the Property was not used to promote community enterprises and that the main objects clause in the Appellant's Constitution document showed that the Appellant was established to stimulate entrepreneurship and to create innovative activities in new or existing businesses which in his view is not an activity for the benefit of the community and not, therefore, a charitable purpose.
- 8.2 In addition, Mr O'Brien stated that each start-up company availing of incubation space in the Property would have different objectives to that of the Appellant which would not necessarily be charitable objectives, a point which was not disputed by Mr. Culligan. On this basis, he said the Property could not be said to be used exclusively for a charitable purpose.
- 8.3 Mr. O'Brien referred the Tribunal to the Appellant's service charter which states '*Dublin BIC works primarily (but not exclusively) with clients who are on a pathway to becoming Enterprise Ireland clients*'. He also referred to the information provided on the Appellant's website regarding the programmes and support services provided by the Appellant and how the Appellant assists entrepreneurs, promoters, and early-stage businesses in the greater Dublin area through its four core areas of expertise: (i) investor-ready

preparation (ii) access to finance (iii) incubations space and (iv) community and collaboration.

- 8.4 When questioned by the Tribunal how two seemingly divergent views could be taken by the Respondent in respect of the subject Property and the adjoining property at No. 59 Dawson Street which to all intents and purposes appeared to be occupied by a company having similar charitable objects to that of the Appellant, Mr. O'Brien acknowledged that the adjoining property PN 839742 had been permitted to avail of the charitable exemption under paragraph 16 of Schedule 4 and surmised that had he been tasked with valuing that property he would not have made the same decision.

## 9. SUBMISSIONS

- 9.1 Mr Culligan contended that the establishment of the CRA under the 2009 Act and the introduction of a rigorous vetting process under that Act for a charitable organisation to secure registration were relevant matters to which the Tribunal should have regard. Specifically, he submitted that the amendment to the Valuation Act 2001, so as to incorporate provisions of the 2009 Act as regards the meaning of charitable organisation had not been tested since the Valuation (Amendment) Act 2015 has come into force and therefore, the issue fell to be considered on this appeal. He also argued that registration with the CRA is, and ought to be taken as, proof that the Appellant is a charitable organisation, and that its activities are for charitable purposes.
- 9.2 Counsel for the Respondent provided written submissions to the Tribunal outlining the grounds upon which the Respondent claimed the Appellant had failed to satisfy the eligibility criteria for charitable exemption.
- 9.3 Counsel submitted that the onus is on the Appellant to prove that the exemption applies to the Property and that the 2001 Act is to be strictly interpreted in an analogous manner as taxation and penal statutes and its exemption provisions are to be interpreted strictly against the rate payer. In support of this submission, he referred to *Nangle Nurseries v Commissioner of Valuation* [2008] IEHC 73.
- 9.4 Counsel submitted that the Appellant is not a charitable organisation, same being a condition precedent of availing of the exemption permitted by paragraph 16(a) of Schedule 4. This argument was grounded on the definition of 'charitable organisation' in

section 3 of the Valuation Act, 2001 as amended, which applies the definition of ‘charitable organisation’ in section 2 of 2009 Act. It was submitted that section 3(b)(i) of the 2009 Act makes clear that a body can only qualify as a charitable organisation if it “*promotes a charitable purpose only*” and that the Appellant fails this exclusivity requirement. It was further submitted that the Appellant did not meet the requirement of exclusivity as the Property is not used exclusively for charitable purposes.

- 9.5 In support of his argument, Counsel relied on the following passage in the Tribunal’s decision in ***Coolock Development Council Ltd. V Commissioner of Valuation*** (VA05/3/072):

*“While it may well be economically sensible and even desirable to promote small businesses within particular areas, in our view, this does not render the promotion of small business a charitable purpose. While there may well be some sort of “trickle down” effect in the general community from the running of successful small businesses within that community, it does not appear to us that the promotion of small business can be said to be a charitable purpose.*

*Therefore, even if the main objects clause referred only to the promotion of community enterprises in the particular area and therefore could be said to state as its main object a charitable purpose, the fact that the same main objects clause also states as its object the promotion of small business in our view means that its main objects include non-charitable purposes, and it is therefore outside of the ambit of Section 3.”*

Counsel considered that this decision was still good authority even though it predates the 2009 Act and the amendment of the Valuation Acts 2001 in 2015.

- 9.6 Counsel further argued that there must be considerable doubt that the use of the Property by the Appellant was for charitable purposes and even if it could be said that there was some use for charitable purposes, the Property was not used exclusively for charitable purposes as required by paragraph 16(a) of Schedule 4. Further, Counsel contended that if there is any ambiguity in respect of this issue, based on the High Court’s decision in ***Nangles Nurseries***, any ambiguity in the wording must be construed against the Appellant.

## 10. FINDINGS AND CONCLUSIONS

- 10.1 The Tribunal must decide whether the Appellant has established that the Property at the effective date was exempt from rating under Schedule 4, paragraph 16 (a) of the 2001 Act as amended.
- 10.2 It is apparent from paragraph 16(a) that a property will be exempt under Schedule 4 if the following conditions are satisfied, namely
- (a) it is occupied by a charitable organisation.
  - (b) it is used by the charitable organisation for charitable purposes and such use is exclusively for charitable purposes.
- 10.3 The Appellant is entered on the register of charitable organisations pursuant to Part 3 of the 2009 Act and, accordingly, the Tribunal finds that the Appellant is a charitable organisation within the meaning of section 3 of the Valuation Act 2001, as amended and as such is a non-profit making organisation. Accordingly, the Appellant satisfies the first condition of paragraph 16(a).
- 10.4 As regards the expression “charitable purpose” in paragraph 16(a) of Schedule 4 Mr. Culligan put forward the view that because the Appellant is a charitable organisation their use of the Property in furtherance of their charitable objectives to support start-up enterprises rendered such use a ‘charitable purpose’. The Respondent contends that such use is not charitable and/or that the use of the Property is not exclusively charitable and, therefore, the Property is relevant rateable property falling within Schedule 3 of the 2001 Act and does not qualify for exemption.
- 10.5 The words “charitable purpose” in the 2009 Act fall to be construed in accordance with section 3 of that Act. It is clear from the following introductory words of section 3 “For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose”, [emphasis added] that the charitable purposes set out in section 3 of the 2009 Act are specific to the 2009 Act and go no further than the aim, scope, and objects of that Act. Furthermore, it is to be noted that when amending the definition of “charitable organisation” in section 3 of the Valuation Act 2001 the Oireachtas did not, as it could have done, provide for the phrase “charitable purposes” in paragraph 16(a) to be construed in accordance with 3 of the 2009 Act. It cannot be lightly assumed that by amending the definition of “charitable organisation” the Oireachtas intended that the

words “charitable purposes” in the paragraph 16(a) of Schedule 4 would have the same meaning as that provided for in section 3 of the 2009.

- 10.6 Unlike the 2009 Act, the Valuation Act 2001 as amended does not define the meaning of “charitable purposes”. In rating law these words are not given the wide meaning they are given by section 3 of the 2009 Act. Under the latter provision, charitable purposes extend to the prevention or relief of poverty or economic hardship, the advancement of education, the advancement of religion and any other purpose that is of benefit to the community. Not all of these charitable purposes are charitable purposes for the purposes of the Valuation Acts and one need look no further in relation to this point than the recent decision of the High Court in *Tearfund Ireland Limited v Commissioner of Valuation* [2021] IEHC 534 where it was held that the phrase “charitable purpose” in Schedule 4 of the Valuation Act 2001 does not include the advancement of religion.
- 10.7 Therefore, notwithstanding the attractive argument presented by Mr Culligan, the Tribunal must find that notwithstanding the fact that the Appellant is a charitable organisation whose activities are fully recognised by the CRA as being “charitable purposes” under section 3 of the 2009 Act, these facts do not of themselves give rise to an entitlement to an exemption from rating under paragraph 16 (a) of Schedule 4 of the Valuation Act 2001.
- 10.8 The next issue the Tribunal has to decide is whether the phrase “*charitable purposes*” in paragraph 16 (a) of Schedule 4 of the 2001 Act includes the provision of “*business premises for the generating or support of businesses together with such administrative and consultancy services as may be deemed necessary*”. Having regard to paragraph 16(a) of Schedule 4 it is clear that the Oireachtas intended to provide an exemption for bodies that are charitable organisations as defined in section 3 of the 2001 Act as amended, when they use the property exclusively for “charitable purposes”. This phrase is intended by the Oireachtas to be interpreted in the same way that it has always been for rating purposes prior to the passing of the 2001 Act. There is no intention expressed in the 2001 Act, whether as originally enacted or as subsequently amended by the Valuation (Amendment) Act 2015, to confer a wider meaning to that phrase for the purpose of rating law.
- 10.9 The Appellant, understandably, places reliance on section 3 of the 2009 Act and urges the Tribunal to apply the same meaning to the words “charitable purposes” in paragraph

16(a) of Schedule 4 as has been given to charitable purposes in the 2009 Act. However, each Act has to be looked at separately for the purpose of ascertaining the meaning of these phrases. The words “charitable purpose” in the 2009 Act have been defined in the 2009 Act solely for the purposes of that Act. The words “charitable purposes” as used in Schedule 4 of the 2001 Act, which lists all the specific exemptions from rating, have been interpreted by the courts in a restrictive way. If the words “charitable purposes” in paragraph 16(a) were intended to be used in their widest sense, then paragraph 16(a) would have been sufficient to cover most of the exemptions provided for in the preceding paragraphs of Schedule 4. This suggests that the meaning of these words, which are capable of many shades of meaning, must be coloured by the context in which they are used.

- 10.10 There is no doubt but that relief of poverty is a recognised charitable purpose. The word “poverty” by reference to financial or economic hardship can cover many problems or difficulties arising from adverse social or economic conditions. It can affect individuals or communities and can be experienced on a long or short-term basis. In this instance, the Appellant is seeking to provide financial assistance and resources to persons who are looking to establish new businesses. Not everyone who avails of the Appellant’s services is necessarily poor. What the recipients of the Appellant’s services need is seed money or angel funding to help them develop ideas for a new business or project, the provision of cheap accommodation such as incubator office space and mentoring services depending on their particular needs and possibilities.
- 10.11 The Appellant, on whom the onus of proof lies to establish an entitlement to exemption, has not referred the Tribunal to any authority to support its case that the phrase “charitable purposes” in paragraph 16(a) includes the provision of accommodation and services of his nature. The advancement or promotion new business in the community does not appear to the Tribunal to be a charitable purpose in the context of rating law. In saying the foregoing, the Tribunal is not in any way doubting that the Appellant is a charitable organisation or that it is pursuing charitable purposes that may benefit the community.
- 10.12 Even if the Tribunal is wrong in relation to this aspect of the second condition that has to be satisfied, it appears to us that there must be very considerable doubt as to whether or not the Property could be regarded as being used “exclusively for charitable purposes”.

- 10.13 Even though a body may be charitable and its objects exclusively charitable, it does not automatically follow that when it occupies a property for purposes for which it is entitled to use them, it must be using them for charitable purposes. On occasion a line has to be drawn between the use of property for purposes which are the charitable purposes of the charity on the one hand and their use for purposes which, though connected to the purposes of the charity, are not charitable purposes on the other.
- 10.14 In the context of the Valuation Acts, the focus is on the occupation and use of the property by the charitable organisation. The Oireachtas intended that the exemption from rates for a charitable organisation in occupation of a property should depend upon the charitable organisation making exclusive use of the property for charitable purposes. The question comes down to what use is the property put to, not what the charitable organisation's purpose is in occupying the property.
- 10.15 It is apparent from the evidence that the Property is primarily used by persons who enter into letting or licence agreements with the Appellant on terms that are affordable and flexible for office space (otherwise known as 'incubation space') from which they can grow their new businesses. On the facts, the Property was occupied and used on a relatively limited basis by the Appellant in having a number of staff present at the Property to make introductions and to provide mentoring or consultancy advice and to those who were let into occupation of the incubation spaces. The Tribunal finds as a fact that the Property was used by start-up businesses for commercial business purposes and accordingly was not exclusively used by the Appellant for charitable purposes.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal.