

Appeal No: VA18/1/0033

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**LISMULLEN EDUCATIONAL
FOUNDATION CLG**

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 836665, Office(s) at Basement, 6 Clare Street, County Borough of Dublin.

B E F O R E

Carol O'Farrell - BL

Chairperson

Caroline Murphy – BL

Member

Fergus Keogh – MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 1ST DAY OF OCTOBER, 2020.

THE APPEAL

1. By Notice of Appeal received on the 29th day of March 2018 the Appellant appealed against the decision of the Revision Manager made pursuant to section 29 of the Valuation Act 2001 as amended not to exercise his statutory powers by reason that no material change of circumstances had occurred in relation to the Property.

2. The sole ground of appeal stated in the Notice of Appeal is as follows:

“The property should be excluded as relevant property not rateable under schedule 4 paragraphs 10 and 16 as an educational institution not established or conducted for the

purpose of making a private profit and whose services are available to the general public; also being a charitable organisation that uses the property exclusively for charitable purposes and otherwise for private profit”.

RELEVANT VALUATION HISTORY

3. An application for a revision of valuation was made by the Appellant on the 6th June 2017 on the basis that a material change of circumstances had occurred in that the Property was relevant property, not rateable.

4. Following inspection of the Property on the 5th February 2018 the revision officer determined that no material change of circumstance had occurred in relation to the Property and that a revision of valuation was not warranted. A ‘No Material Change of Circumstance Notice’ was issued by the Revision Manager on the 5th March 2018.

THE HEARING

5. The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 17th December 2019. The Appellant was represented by Mr. Eoin Carolan BL instructed by Mr. John Byrne Solicitor and Mr. Bill Kiely was called to give evidence on behalf of the Appellant. The Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor and he called Mr. David O’Brien MSCSI, MRICS of the Valuation Office to give evidence.

6. In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and 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.

THE ISSUE

7. The primary issue is whether the Property is entitled to be treated as exempt from rates pursuant to paragraph 10 and/or paragraph 16(a) of Schedule 4 of the Valuation Act, 2001.

RELEVANT STATUTORY PROVISIONS

8. Under section 3 of the 2001 Act as amended a ‘material change of circumstances’ is a change of circumstances which consists of

“(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4,”

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.”

Paragraph 10 of Schedule 4 provides:

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

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

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

and

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

Paragraph 16 of Schedule 4 provides

16- 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.

PRELIMINARY PROCEDURAL ISSUE

9. At the commencement of the hearing, the Appellant sought to introduce documents including the Précis of Mr. Bill Kiely to which objection was taken but after reviewing the Précis of Mr. Kiely, Mr. Dodd made no objection to that document being introduced into evidence.

APPELLANT'S CASE

10. Mr. Kiely, the Administration and Facilities Manager of the Appellant, adopted his Précis as his evidence in chief. Mr. Kiely stated he was previously a Company Secretary and Director of the Appellant and that he has been working as a volunteer in his current role for almost 4 years. Mr Kiely said that the Appellant is a charity registered with the Charities Regulator Authority under registration number 200344757. The Property is used for general administrative work involved in the organisation of events and activities that take place in Lismullen Conference Centre in County Meath ('hereinafter 'Lismullin'). This administrative work entails gathering volunteers, contacting speakers, scheduling, preparing brochures and promotional material.

11. Mr. Kiely said that the main object of the Appellant as set out at Article 2 of the Constitution "*is the advancement of education and the development of character in accordance with Christian principles and ideals.*" The Appellant holds seminars on Heritage, Philosophy, Business Leadership and Ethics as well as Farming in Lismullin. Apart from the Appellant, the Lismullin Institute also runs approximately 100 courses a year in Lismullin. These courses are attended by a general cross section of society from different parts of the country who become aware of them through mail outs, word of mouth, recommendations from friends, past attendees or participants, brochures, advertisements, event listing in local newspapers and History Ireland. Brochures are distributed through mail shot to friends, libraries, schools and wherever suits best depending on the particular course. Farming activities are advertised on local radio. Day or weekend retreats, of which there are approximately ten every year, focusing on self-knowledge, human values and virtues, and the promotion of Christian values are held on a daily or at weekends.

12. Mr. Kiely stated that admission to some events is on payment of a nominal charge and the revenue is used towards defraying basic running expenses. He estimated the cost of an overnight seminar with one full day, accommodation with three meals at €70 to €75 with

concessions for students, pensioners, and unemployed persons. He said the Appellant receives donations which account for approximately a third or one quarter of the Appellant's income which is similarly expended on running costs and the significant upkeep, maintenance, and renewal of the physical facilities in Lismullin.

13. Mr. Kiely stated that the Appellant has a working relationship with Fiuntas Centres CLG ('Fiuntas') which is also a charitable organisation in respect of the provision of accommodation and services at Lismullin. Lismullin was built in or around 2000 and since then Fiuntas has also been running various activities there. He stated that the Lismullin Scientific Trust goes back to the mid 1960's when Lismullin was acquired by the Tara Trust but the Lismullin Scientific Trust has not been active since the early 2000's.

14. Mr. Kiely stated that the School of Culinary and Home Arts at Lismullin provides classes and programmes related to looking after the home, cooking, and catering. For young people classes focus on healthy eating and the ability to cook well and programmes are also run to teach immigrants how to cook Irish food. Local residents also use the facilities to prepare Meals on Wheels. In relation to the Heritage series Mr. Kiely stated lectures on various topics are given by experts from museums, universities or by people who have carried out personal investigations or have published works. The Appellant engages with the local Meath Historical Society. The Leadership Forums provides courses that focus on ethics and leadership for people in industry. These courses differ from other business courses in that they focus on ethical decision making. The Leadership seminars are accredited for CPD with the Chartered Institute of Accountants and the Law Society. Farming Seminars focus on agricultural development, the environment, and the opportunities and challenges that faced by farmers and their families. He said End of Life Care courses for nurses were provided in the past and that other courses are provided covering matters such as emotional wellbeing, marriage, parental harmony, family stability and home management. Summer courses, with not many being recently provided, are run mainly for Irish people but occasionally people from abroad attend. He said Lismullin also host weekends for people volunteering in youth clubs/facilities.

15. In relation to spiritual activities and retreats, he said the retreats were given by a Chaplain arranged by Opus Dei. When asked by the Tribunal whether the retreats were limited to people of a particular faith in furtherance of the main object of the company, he answered that they were not. When asked who attends the various activities and retreats at Lismullin, he

said it depended on the particular course, for example, in the context of farming, farmers from within a 10 to 15 mile radius have attended as did people from Donegal and the Appellant would have no idea of their particular faith.

16. Under cross-examination Mr. Kiely stated the accounts were prepared at the Property. He confirmed that the Appellant has two employees employed on a part time basis and that they work in the Property. Mr. Kiely said he works in a voluntary capacity and is not a director of Fiuntas. He confirmed that the Appellant's activities are inspired by members of Opus Dei, their friends, and their colleagues. He further accepted that the Lismullin Institute is inspired by a certain number of individuals who are in turn inspired by the philosophy of Opus Dei, but he said that not everybody in Opus Dei is involved in Lismullin. Mr. Kiely confirmed that

“Opus Dei is entrusted with the spiritual and doctrinal activities conducted at Lismullin Conference Centre. Opus Dei is a Catholic institution that offers faith education and personal guidance to men and women of all walks of life”

is a reasonably accurate description of a message on the website <https://lismullin.ie>. He acknowledged that the website also states that the Lismullin Institute is the registered business name of Fiuntas Centres CLG, an approved charity by the Charities Regulatory Authority [RCN-20035884]. When asked who is controlling the activities at Lismullin, Mr. Kiely said that the Appellant and Fiuntas work together in organizing activities and that there is no rigid distinction between them. He confirmed that the Appellant and Fiuntas are the only two Institutes operating in Lismullin, and that no other institute has a presence there. Mr. Kiely confirmed that the Opus Dei priests provide the spiritual retreats and that retreats are run by Opus Dei. In terms of the sample timetable for a retreat, he identified Mass, Rosary, Eucharistic Adoration with Meditation, Benediction and Gospel Commentary as religious activities. He said 'meditation' depends on whether the topic is religious or relates to family life or work or society. He said some retreats are more about how people behave in society but agreed that all topics were discussed within a religious framework. Mr. Kiely confirmed that the Appellant owns Lismullin and that no classes, lectures, or courses are held in the appeal Property.

17. When questioned about the Appellant's 2017 accounts, Mr. Kiely accepted that there was no reference to grants or donations in the accounts. He confirmed that the investment properties valued at €2,000,000 are Lismullin and a small farm of approximately 40 acres on

the land adjacent to the conference centre. The farm is let to a local dry stock farmer who pays rent to the Appellant. He said that for reasons of convenience the administrative work relating to the farm is carried out at Lismullin. He confirmed that the Appellant does not own any other properties and that the investments comprise shares which generate a dividend the proceeds of which are paid to the Appellant and ploughed back into Lismullin

18. When questioned about the Fiuntas Accounts of 2018, Mr. Kiely confirmed that Fiuntas has 23 employees but not all were full time employees. He said that course administration and management is carried out in the main by volunteers and not by employees who are probably employed in administration, catering, and cleaning. He said the general administrative office in Lismullin is used to administer the 'real time' activity taking place in Lismullin

19. Upon re-examination, Mr. Kiely said that only some courses feature on the Appellant's website and that the Lismullin Institute decides whether to hold retreats. The planning and organisation of events at Lismullen take place at the Property and the only planning that takes place in Lismullin is on the day that the event or activity takes place. He said the company directors cannot be paid by law, so he did not know why they were referred to as employees in the accounts. He said the accounts for the Appellant and Fiuntas were prepared by different accountancy firms who had different approaches. He confirmed that the Property is used only for administrative work. He said the Appellant leases the Property from Aosog the owner of the building, which is also a charity. He said that Aosog and the Appellant are not related parties.

20. When asked whether the activities run by the Appellant at Lismullin were run separately from the activities run by Fiuntas, he said some activities are run by Lismullin and others are run by Fiuntas and some are run jointly. He acknowledged that most of the courses in Lismullin are run by Fiuntas and that there is a lot of cooperation between the two companies. When asked who would organize a joint event or course, he said most of the preparatory work would be done in the Property by the Appellant's employees. He said the Fiuntas administrative work is carried out in Lismullin and in an office elsewhere.

21. Mr. Kiely was questioned by the Tribunal in relation to Note 16 page 17 of the Appellant's accounts titled "*Related Parties Transactions: Conference Centres Limited Ronan O Farrell is a director of Lismullin Educational Foundation Limited and is also a director of Conference Centres Limited. Conference Centres Limited is a trustee of Aonsanach educational*

trust at the start of the year the company owed Aonsanach Educational Trust €805,000. This balance is still outstanding at the end of the year.” He explained that the Appellant had acquired a loan from Aonsanach Educational Trust to build the conference centre at Lismullen. He clarified that Aosog was not a related party but is the Lessor of the Property. Aonsanach Educational Trust is a different charity unrelated to Aosog. When asked by the Tribunal whether the Appellant had leased Lismullin to any entity, such as Fiuntas, Mr. Kiely was unable to say whether there was a lease in place.

RESPONDENT’S CASE

22. Mr. O’Brien provided the Tribunal with a Précis of evidence containing his reasons for opposing the appeal. Fifteen appendices were attached to the Précis comprising copy Notice of Appeal, copy ‘No Material Change of Circumstances’ Notice, information printed from the www.lismullin.ie website, copy Appellant’s Constitution, copy Charities Regulator Record of the Appellant, copy Constitution of Fiuntas Centres CLG, copy Charities Regulator Record of Fiuntas Centres CLG, copy Charities Regulator Record of Lismullin Scientific Trust, five decisions of the Valuation Tribunal and copy Valuation Certificate. Without objections from the Appellant, Mr. O’Brien also handed into the Tribunal an Extract from Folio 2705F, the Appellant’s Directors’ Report and Financial Statements for the years ending the 31st December 2017 and the 31st December 2018, the Annual Financial Report and Financial Statements of Fiuntas Centres CLG for the year ended the 30th September 2018, a Form B10 of Companies Registration Office filed on behalf of the Appellant relating to ‘Change of director or secretary details’ and a Valuation Office print-out of the representations made to the Revision Officer relating to the Lismullin Conference Centre in December 2003 and a letter of the 4th April 2004 from the then managing Director of the Appellant, Mr. Ronan O’Farrell.

23. Mr. David O’Brien adopted his Précis as his evidence in chief. Based on his inspection of the Property, Mr. O’Brien was of the view that the Property comprises offices and that only administrative work is carried out there. He said there was no evidence of teachers or tutors being employed by the Appellant and that he was of the opinion that the Property was used for administrative work and not exclusively used for educational services or for charitable purposes and so neither the requirements of paragraph 10 or 16 of Schedule 4 were satisfied.

24. He said the Lismullin Institute operates in Lismullin and it was his understanding that the Lismullin Institute adopts a Christian or Catholic based approach to the activities organized

in Lismullin. In his opinion, retreats do not amount to educational services and as they are religious in context. He said that the Respondent is of the opinion that the advancement of religion is not a charitable purpose and so the requirements of paragraph 16 of Schedule 4 are not satisfied. On that basis, he did not accept that a material change of circumstance had occurred in respect of the Property.

25. Under cross-examination, Mr. O'Brien explained that he had highlighted in his Précis certain words comprised in the main object of the Appellant as he thought them to be important. He said the wording of the object indicated that the Appellant's activities would take place elsewhere. He agreed that educational services could be directed to the promotion of the Catholic faith and Opus Dei doctrines. Mr. O'Brien accepted that some educational classes took place at Lismullin, but he considered other seminars or courses not to be exclusively educational. He was of the view that courses and retreats were strongly influenced by Opus Dei and were directed primarily at members of the Catholic faith. He pointed out that Opus Dei and its interactions with the Appellant feature widely on the website. When asked, he confirmed that it was not his position that where an organisation has a religious dimension, spirituality or ethos, its activities must be construed as being for the advancement of religion.

26. Under re-examination Mr. O'Brien said that from his review of website material, the farming seminars are organized by the Lismullin Institute. He also said it was his opinion that Opus Dei strongly influences the aims and objectives of the activities in Lismullin but that not necessarily everyone who attends the activities is a strong Catholic. He was of the view that Fiuntas is the occupier of Lismullin. He said that Valuation Office records indicate that the property number of Lismullin is PN1631458 and that Fiuntas Centre t/a Lismullin Education Foundation Ltd is the occupier.

27. In response to a question from the Tribunal Mr. O'Brien said that he considered education to be separate and distinct from the advancement of religion pointing out that they are covered by two separate paragraphs in Schedule 4 of the Act.

APPELLANT'S LEGAL SUBMISSIONS

28. Mr. Carolan submitted:

(i) The Appellant is a charitable organisation under the provisions of the 2001 Act as amended. An application was made for a revision of the valuation of the Property as the

Appellant went into occupation in mid-May 2017. The Property is the Appellant's administrative office and the work carried out in the Property is undertaken in support of and for the purpose of promoting the company's main object. The Property is accordingly exempt from rates by virtue of paragraph 10 and/or paragraph 16 of Schedule 4 the Valuation Act 2001.

(ii) The courses and seminars in Lismullin are run by the Appellant in pursuit of the company's main object which is the advancement of education and the development of character in accordance with Christian ideals. These are charitable purposes of public benefit within the meaning of section 3 (1) and (2) of the Charities Act 2009. Reliance is placed on the Tribunal's decision in *Jesuit Missions Trust v Commissioner of Valuation* VA16/1/032. The meaning of "charitable purpose" under section 2 of the Valuation Act cannot be understood without regard to section 3 and section 89 of the 2009 Act. The Appellant's affairs are not conducted for private profit as disclosed by its financial accounts. Article 5 of its Constitution requires that the Appellant's income and property be applied solely towards the promotion of its main object.

(iii) As to paragraph 10 of Schedule 4, the Property is used for organising educational services, retreats, courses, seminars, and programmes. An "educational institution" is separate and distinct from school, college, university school; the word "other" in paragraph 10 must mean other than something scholastic. What is key is not the structure but the kind of courses that are provided. The courses cover a wide range of topics, some of which are CPD accredited and offer diplomas, many of which are entirely unrelated to any religious teaching. The advancement of education has always been broadly construed. In *Re the Worth Library* [1995] 2 IR 301: *"education" has been given a broad meaning so as to encompass gifts for the establishment of theatres, art galleries and museums and the promotion of literature and music. In every case, however, the element of public benefit must be present and, if the benefit extends to a section of the community only, that section must not be numerically negligible.* Education is to more than scholastic organisations and has always been so interpreted.

(iv) The Respondent is distracted by references on websites to Christian Ethics, Christian Values and Opus Dei and did not adequately consider the content of the courses provided. There was no evidential basis for an assumption that those who attend the courses are members of the Catholic faith. Furthermore, there was no basis to assume that simply because the ethos of an institution has a Christian dimension that courses are run for the promotion or

advancement of religion. If that were the case, no school having a religious ethos, could come within paragraph 10 of Schedule 4. The focus should be on the course not the religious dimension or motivations of those who help to organise the courses.

(v) As to Paragraph 16, if it is the Tribunals view that some of the Appellant's activities are not exclusively education in that they advance or promote religion, it is open for the Tribunal to find that the Property is exempt under paragraph 16 of Schedule 4. Reliance is placed on the Tribunal's decision in *Tearfund v The Commissioner of Valuation* VA15/4/074 where the Tribunal accepted that if a charitable organisation is using a property for two purposes, paragraph 16 of Schedule can apply so long as both purposes are charitable. Reliance is also placed on *St. Vincent's Healthcare Group Ltd v Commissioner of Valuation* [2009] IEHC 113, where Cooke J. stated: at paras. 31-34:

"Secondly, the use of a building or part of a building does not cease to be a use for the charitable purposes of a hospital by reason only of the fact that its particular use, if treated in isolation, would not itself be regarded as involving a service of care for the sick or the treatment of illnesses. A building housing a restaurant or a computer servicing business will not attract exemption, but if one is the hospital canteen and the other is its information technology department, they may well do so.

In other words, it is necessary to ask not only what the nature of the actual user is but why that use is made by the occupier."

RESPONDENT'S LEGAL SUBMISSIONS

29. Mr. Dodd submitted:

(i) Exemptions are to be interpreted strictly against the ratepayer as per MacMenamin J. in *Nangle Nurseries v Commissioners of Valuation Nurseries v Commissioner of Valuation* [2008] IEHC 73.

(ii) The onus is on the Appellant to satisfy the Tribunal that the Property satisfies that the requirements of paragraph 10 and/or paragraph 16 of Schedule 4 of the 2001 are met.

(iii) The Appellant is not an educational institution. The Tribunal must give term "educational institution" in paragraph 10 its ordinary everyday meaning. Secondly, the term "educational institution" is within the *ejusdem generis* (of the same kind) rule of statutory interpretation and so must receive its meaning from the words "school, college, university,

institute of technology". Not all places that run courses are educational centres, for example, local health centres running HSE courses for families. Most cooking schools would not be described as educational institutions, though a catering school offering a qualification following a three-year course would be. The Appellant is not an educational institution and nor is the property run exclusively for the provision of educational services. Reliance was placed on the Tribunal's decision in ***Clanwilliam Institute v Valuation Office*** VA092/001.

(iv) The Appellant's accounts indicate it is a property holding company. The company holds shares. Mr. Kiely said the Appellant's income is used to support Lismullin. No donations are shown in the accounts. The Lismullin Institute is the registered business name of Fiuntas. Fiuntas has 23 staff members and they run the courses at Lismullin. The Lismullin Institute is running Lismullin. The Opus Dei Institute clearly offers courses, retreats and seminars directed at the advancement of religion.

(v) The *Jesuit Missions Case* was incorrectly decided. Reliance is placed on that part of the Tribunal's decision in ***Veritas v Commissioner of Valuation*** VA17/5/039 which disagreed with the reasoning in Jesuit Missions case.

(vi) The Tribunal's decisions in ***Veritas and Tearfund*** have been appealed by way of case stated on a point of law to the High Court as to whether the advancement of religion is a charitable purpose. Without prejudice to the argument that the advancement of religion is not a charitable purpose, in the event the Respondent is not successful on the proposed appeal by way of case stated, the Property does not qualify for exemption pursuant to paragraph 16(a) of Schedule 4 of the 2001 Act as the appeal Property is not exclusively used for charitable purposes. Charitable purposes" should not be given the wide meaning with which those words are generally used in income tax legislation or the law regulating charities because of the different considerations that arise in the context of rating exemption under the Valuation Acts. Reliance was placed on ***Barringtons Hospital v Commission of Valuation*** [1953] IR 299.

(vii) If a property is used for mixed purposes, some charitable, some non-charitable, then it is not exempt under paragraph 16. When considering what use is made of premises regard must be had not just to the nature of the activity carried on but also to "*the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption.*"

(viii) The evidence establishes that the Appellant and Fiuntas work and run courses together. There is lack of clarity as the Appellant has two administrative employees and is holding assets and the other company with a wage bill of €350,000 is based in Lismullin.

(ix) The advancement of religion is not a charitable purpose and the claim for exemption must fail. Reliance was placed on *Oxfam v. Birmingham City District Council* [1976] AC 126 and *Cork New Life Media v Commissioner of Valuation VA17/0043*.

(x) In *St. Vincent's Healthcare Group*, the carpark qualified for exemption because it was located beside the hospital. On the facts of this appeal, the Property is in Dublin and any charitable activities are being conducted in Lismullen in County Meath.

APPELLANT' REPLY

30. In relation to the words “*educational institution*” in paragraph 10, apart from the principle that words should be interpreted by reference to its surroundings, there is another statutory principle that when the Oireachtas chooses to use a different word they do so to capture something that the previous words did not capture. The Respondent’s examples of a solicitor’s firm and HSE are of organisations that occasionally provide a programme or class which is to some extent completely unrelated to their main activity, or even ancillary to their main activity, are not educational institutions.

31. The Tribunal must consider the issues in the context of the evidence given by Mr. Kiely. Mr. O’Brien did not refer to any of the factors referenced by Counsel or rely on the legal arguments advanced on behalf of the Respondent for contending that the Property does not come within paragraph 10, Schedule 4. The evidence is that the Appellant occupies the Property and the activities carried out there are directed towards organising a portion of the 100 classes held in Lismullin and in assisting Fiuntas or in jointly organising classes with Fiuntas. The fact that the Appellant is a company is not relevant. What is relevant is whether the Appellant provides educational services. The evidence indicates that 10% of the activities carried out are retreats. Many educational institutions have a religious dimension or ethos and many schools, colleges or universities hold retreats. The Respondent has made no attempt to find out what the courses entail or of the proportion of courses to retreats.

32. Any income generated from shares is income which is used to finance the Appellant's activities. Charges for course and retreats cover the Appellant's overheads and there is no need to underwrite them. *Veritas* and *Tearfund* have been appealed to the High Court by way of case stated. Paragraph 16 of *Jesuit Missions* is clear. *Veritas* did not reject that argument. *Cork New Life Media* concerns paragraph 16, Schedule 4 only; it is not relevant to paragraph 10, Schedule 4. In *Oxfam*, Lord Morris of Borth-y-Gest said at page 302 that user for "charitable purposes" denotes user in the actual carrying out of the charitable purposes; that may include doing something which is a necessary or essential or incidental part of, or which directly facilitates or which is ancillary to what is being done in the actual carrying out of the charitable purpose". The activities in the Property, even if not considered necessary and essential are at the very least incidental and ancillary to the Appellant's activities. The use of the Property is necessary and relevant; it is used exclusively for and connected to the activities and courses that are delivered in Lismullin. The only question for the Tribunal is whether these activities, relating to the provision of educational services or the advancement of religion, which is the Appellant's alterative argument, are charitable purposes of a general Pemsel character.

FINDINGS

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

34. The Property comprises the basement of a four storey over basement mid terrace Georgian building which is situated at 6, Clare Street, Dublin 2. The agreed floor area of the Property is 35.50m² measured on a net internal basis.

35. The Appellant is a charitable organisation within the meaning of section 3 of the Valuation 2001 Act as amended by the Valuation (Amendment Act) 2015. The Appellant is registered with the Charities Regulatory Authority under number 20034757.

36. The Appellant was incorporated under the Companies Act on the 6th March 1997.

37. The main object for which the Appellant is established is stated in paragraph 2 of its Constitution as:

"...the advancement of education and the development of character in accordance with Christian principles and ideals. This will be achieved chiefly by owning and operating centres where courses in Christian philosophy and theology, personal development, ethics, home management, domestic science inter alia will be provided"

38. The Appellant is not established or conducted for profit.

39. The Appellant is the owner of the Lismullen Conference Centre in Tara, Navan, County Meath.

40. Lismullin Institute is the business name of Fiuntas Centres Company Limited by Guarantee (Fiuntas), an approved charity by the Charities Regulatory Authority. Many of the courses and activities organised by the Lismullin Institute take place in Lismullin. In particular, the Lismullen Institute organises the retreats at Lismullin and the retreats are run by Opus Dei.

41. Section 15(1) of the Act which provides (subject to certain other provisions), that relevant properties shall be rateable, is 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 in the first instance pursuant to paragraph 10 of Schedule 4. In order to avail of this exemption, the Appellant is bound to establish that the exemption applies clearly and without doubt and in express terms. The principles applicable to the interpretation of the provisions of the Valuation Act 2001 were summarised by MacMenamin J. in *Nangle Nurseries v. Commissioners 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.

42. Paragraph 10 of Schedule 4 is a provision that falls to be interpreted strictly against the ratepayer and ambiguities, if found, are to be interpreted against the ratepayer. The Tribunal has to determine first of all whether the Property is occupied by a school, college, university, institute of technology or any other educational institution and, if so occupied, whether it is used exclusively for the provision of the educational services and otherwise than for private profit.

43. Counsel for the Appellant contends that the Appellant is an educational institution as it provides classes, seminars, and courses in Lismullin. Counsel for the Respondent argued that the Property is not occupied by an ‘*educational institution*’ within the meaning of paragraph 10 of Schedule 4 and invoked the doctrine of *ejusdem generis*. The language used in paragraph 10 is “*any other educational institution*”. Those words follow “*school, college, university, institute of technology*” and it appears to the Tribunal that “any other educational institution” must be construed as applying only to institutions *ejusdem generis* with those previously described or in other words must be capable of being put into one and the same genus. In the Tribunal’s view the words “*school, college, university, institute of technology*” in paragraph 10 denote traditional and formal educational settings.

44. Mr. Kiely gave evidence that both the Appellant and Fiuntas separately run courses in Lismullin but that some are jointly organised by the Appellant and Fiuntas. He said that the Lismullin Institute runs approximately 100 courses a year in Lismullin. He acknowledged that most of the courses are run by Fiuntas. Having considered the documentary and oral evidence, that evidence strongly indicates that the Lismullin Institute is the primary user of Lismullin and that the majority of the courses and seminars are organised and run by the Lismullin Institute.

45. Mr. Kiely gave evidence that the Appellant and Fiuntas are not related parties. The 2003 rating records in respect of Lismullin Conference Centre indicate that Fiuntas are the lessees of the Property and the Appellant is the landlord. Mr. Kiely, however, was unable to confirm if a lease is in place between the two entities. The two charitable organisations certainly employ their own staff, have separate offices, and keep separate accounting records. In his letter of the 30th April 2004 to the District Valuer, Mr. Ronan O’Farrell a director of the Appellant confirmed that Fiuntas is paying rent to the Appellant. On the basis of Mr. Kiely’s evidence, it must be presumed that these charitable organisations are sufficiently at arms-length from one another and have normal commercial relationships each with the other. Fiuntas has 23

employees, is based in Lismullin, and is responsible for running most of the courses and seminars in Lismullin and decides when retreats are held.

46. The Tribunal is not satisfied that the Appellant has discharged the onus of proof that the Property is an educational institution. No evidence was adduced before the Tribunal that the Appellant advances education in an environment akin to that of a school, college or university with classrooms offering a professional, vocational or technical curriculum, with trained and certified teachers in the Property or Lismullen or any other place. Educational institutions consisting of schools, colleges, universities, and institutes of technology all deliver traditional and recognised formal primary, secondary and tertiary education to enrolled students. As a norm, students who attend educational institutions at tertiary level receive certificates, diplomas, or academic degrees. The Tribunal considers that the main conception in the phrase '*any other educational institution*' is that of a building used and occupied by an educational body in a manner in which a school, college or university would be used and serving purposes similar to the purposes which a school, college or university would serve.

47. Moreover, the evidence establishes that the Property is not a place where persons go to be educated or where educational services are exclusively provided. The Appellant has two employees who carry out administrative duties in the Property. The purpose and user of the Property is that of an office where general administrative work is carried out. The Tribunal is not at all convinced that the use of the Property for administratively arranging courses which are to take place in Lismullin could constitute the provision of education services. The Tribunal finds that the Property is not occupied by an educational institution and that the Property is not used exclusively for the provision of educational services. Accordingly, the Property does not fall within the ambit of paragraph 10 of Schedule 4 of the 2001 Act.

48. The next issue concerns the Appellant's alternative claim for exemption under paragraph 16 of Schedule 4 on the basis that the Property is exclusively used for charitable purposes. The charitable purpose identified by the Appellant is the advancement of religion. In respect of this exempting provision three requirements must be satisfied:

- (i) The Property must be occupied by a body that is a charitable organisation
- (ii) The Property must be used by the Appellant exclusively for charitable purposes
- (iii) The Property must be used otherwise than for private profit.

49. First of all, it is quite clear that the Appellant is a charitable organisation and the Appellant's Constitution eliminates the idea of private profit as it provides that "No portion of the Company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Company" and that "*No director shall be appointed to any office of the Company paid by salary or fees, or receive any remuneration or other benefit in money or money's worth* " from the Appellant and nor, in the event of the winding-up or dissolution of the Appellant are the surplus assets paid or distributable among its members as any such surplus must be given or transferred to some other charitable institution. Those two requirements, therefore, are satisfied.

50. Secondly, the object or purpose for which a charitable organisation is established is to be determined by reference to the object defined in its Constitution. The advancement of education and the development of character in accordance with Christian principles and ideals is the primary object under the Appellant's Constitution. This main object is expressed in clear and unambiguous language and the manner in which the Appellant proposes to achieve that object is stated in the Constitution as follows:

"This will be achieved chiefly by owning and operating centres where courses in Christian philosophy and theology, personal development, ethics, home management, domestic science inter alia will be provided".

The Constitution provides that the powers conferred in clause 3 are exclusively subsidiary and ancillary to the main object. The sub-clauses (of which there are no less than nineteen) confer very wide powers on the Appellant and it is for the Appellant to determine whether any such power is subsidiary and ancillary.

51. It seems to the Tribunal that the promotion or advancement of religion means the promotion of the spiritual teaching of a religious body and the maintenance of the doctrines and observances that serve to promote and manifest it. The development of character goes beyond the advancement of religion. There is not anything in the Constitution which indicates that the Appellant is a religious organisation or that it has close connection with any religious body. Mr. Kiely's evidence was that the Appellant is inspired by Opus Dei philosophy and by members of Opus Dei. Clause 2 clarifies that the main object for which the Appellant is established will

be “*achieved chiefly by owning and operating centres*” where, amongst others, courses in Christian philosophy and theology, will be provided.

52. Mr. Kiely gave evidence that the Appellant owns Lismullin and that retreats are held at Lismullin. However, he said that the decisions to hold retreats in Lismullin were made by the Lismullin Institute and that the spiritual retreats were given by Chaplains nominated by Opus Dei. No evidence was adduced of the Appellant engaging in any religious activities at the Property or in Lismullin. Retreats and courses in Christian theology are activities that advance religion and whilst Lismullin has a Christian ethos it was confirmed that neither Opus Dei, nor any religious order is operating from there. The evidence indicates that there is promotion of Christian life at Lismullin, but it is incidental to the primary user of that Property for the provision of non-religious courses and community-based activities.

53. Having considered the documentary and oral evidence adduced by the Appellant, the Tribunal is not satisfied that the Appellant has discharged the onus of proof that the Property is exclusively used for the advancement of religion. It may well be that the minds of those concerned with the Appellant are affected by religious motives and religious sentiments in taking the part they do in the work which the Appellant undertakes, but, none the less, the object of the Appellant is not to do something which is in itself religious and, more importantly, no evidence was given of the Appellant undertaking or engaging in any religious activities for the public benefit.

54. The Tribunal concludes, for the following reasons, that the claim for exemption under paragraph 16 of Schedule 4 must also fail.

DETERMINATION

55. The Tribunal refuses the appeal and confirms the decision of the revision manager.

And the Tribunal so determines.