

Appeal No: VA19/5/0488

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2022**

Paul A. Moore

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1277925, Office(s) at -1, 0, 1 OF 32 Laurence Street, Drogheda, County Louth.

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Annamaria Gallivan – FRICS, FSCSI, MPhil SEE

Member

Elaine Torpey – B.Sc. (Hons), FSCSI, FRICS, ACI Arb

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 28th DAY OF APRIL, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €15,380.

1.2 The grounds of appeal as set out in the Notice of Appeal are that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

“1. The first floor level and both basement levels are and always have been domestic premises. None of these levels has eve[sic] ever been occupied as offices. The last resident was the Bradley family who sold to the current owner, more than a decade ago and these floors have remained unoccupied ever since.

2. The hall floor (“floor 0” on the valuation certificate) has always been rated as it was the dental surgery of the late Mr. Bradley, although it too has remained unoccupied since circa 2003, save for approximately three years between 2007 and 2010 when it was occupied by an Engineering office.

3. The property is a protected structure and as such carries an extra burden in terms of maintenance, repair and insurance and is also much less suitable for office compared with modern buildings.

4. The property is accessed by high Georgian steps from street level. It is not accessible from ground level and is unsuitable for access by elderly or disabled persons.

5. The property is not a self-contained premises with the accommodation being divided by a shared access hallway to the other floors and the toilet facility is shared.

6. Despite significant efforts, the appellant has been unable to let the property for rent.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €3,148.80.

2. REVALUATION HISTORY

2.1 On the 15th day of March 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €20,600.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €15,380.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €15,380.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 18th day of January 2022. At the hearing, Mr. David Halpin M.Sc (Real Estate), BA. (Mod) of Eamonn Halpin & Co. Ltd, represented the Appellant and also gave evidence on his behalf. The Tribunal also heard evidence from the Appellant, Mr. Paul Moore. The Respondent was represented by Ms. Rosemary Healy-Rae BL instructed by the Chief State Solicitor's Office; Ms Edel Dunne of the Valuation Office gave evidence on behalf of the Respondent.

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

4. ISSUES

The Appellant accepted that the ground floor of the Property was in commercial use and also accepted the quantum in respect of that floor. The Appellant did not accept that the basements and first floor of the Property (the "disputed floors") were in commercial use.

The first question for determination is whether the entire appeal property (i.e. first floor, ground floor and basements) is relevant property, and the second question is, assuming that the property is relevant property, is whether it falls within paragraph 6 of Schedule 4.

The Appellant's representative confirmed that if the Tribunal were to find that the entire appeal property was rateable, then that the quantum as assessed in the valuation list was appropriate.

5. RELEVANT STATUTORY PROVISIONS:

5.1 Section 3 of the Act specifies that:

"relevant property" shall be construed in accordance with Schedule 3.

"domestic premises" means any property which consists wholly or partly of

premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

"mixed premises" means a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.

5.2 Section 15 of the Act provides, inter alia, as follows:

(1) Subject to the following subsections 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.

5.3 Section 19 of the Act provides as follows:

(1) The Commissioner, after consultation with the Minister for the Environment, Community and Local Government and the rating authority concerned, may make an order (in this Act referred to as a 'valuation order') specifying a rating authority area as being an area in relation to which the Commissioner proposes to appoint a person under subsection (2) to organise and secure the carrying out of a valuation of relevant property situate in that area (other than any property specified in paragraph (a) or (b) of that subsection).

(2) As soon as may be after the making of a valuation order, the Commissioner shall appoint a person to organise and secure the carrying out of a valuation of every relevant property on the valuation list or existing valuation list situate in the rating authority area specified in the order and any relevant property entered on that list between the making of the valuation order and the publication of the list, other than-

(a) any relevant property the subject of an order under section 53,

or

(b) any relevant property specified in Schedule 4.

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

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

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

5.4 Section 43 of the Act provides as follows:

(1)"Notwithstanding the repeal by section 8 of the enactments specified in Schedule 1, an existing valuation list for a rating authority's area and the value of each property appearing thereon shall, subject to any amendment thereof made in accordance with the provisions of this Act, as applied by section 44, and any apportionment of the value under subsection (3), continue in force in relation to that area for all purposes until the date on which a valuation list is caused to be published under section 23 in relation to that area. "

5.5 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

5.6 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

5.7 Schedule 4 of the Act sets out certain categories of relevant property not rateable and paragraph (6) refers to:

"Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain circumstances))".

5.8 Schedule 3 of the Act sets out the categories of relevant property which are rateable as follows:

1.-Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act:

(a) buildings ...

6. APPELLANT'S CASE

6.1 Evidence of Mr. Paul Moore

Mr. Moore stated that he purchased 32 Laurence Street, Drogheda, County Louth at an auction in 2003 from a local dentist who had lived there with his family for many years and who had operated his dental practice on the ground floor; prior to that, the dentist's father, who had been a medical doctor, operated his medical practice and also lived there. Mr. Moore stated that it had been sold to him as a dwelling house and when he acquired it, it was a home with furniture including beds. It had been his intention to operate his legal practice in it and also to live there but that never happened. His brother-in-law who was an engineer, moved into the ground floor for a period of approximately three years. The Property has since then, remained vacant, and he had instructed Auctioneers to let the Property, but without success. He was not suggesting that he had given instructions for it to be let as a dwelling house only. There were several interested parties but due to difficulties with works which would have been required to be completed, prior to occupation, and the Property being in a building which was a protected structure, it had not been possible to secure a letting. He also referred to works which had to be completed by him, in particular the replacement of the roof and costs incurred. The windows were in poor condition. The top two floors of 32 Laurence Street were in commercial use and were separately rated. He was only paying 50% of the rates levied on the ground floor, as it was vacant. He accepted that the ground floor was not residential but the remainder (the first floor and the two basements) is, and always was, a residential property; in order to change that,

it would have to be put into commercial use and that would require planning permission. He confirmed in summary that as regards the disputed floors, those floors had no commercial or residential use, since he purchased the Property and that on said purchase, he paid a residential rate of stamp duty on the residential part of the Property.

6.2 Cross examination of Mr. Moore

Under cross examination by Ms. Healy-Rae B.L, for the Respondent, Mr. Moore said that he had viewed the building at 32 Laurence Street, prior to purchasing it at auction. It was put to him, that he could have no actual knowledge of the use, prior to purchase. He stated that when he had viewed the building, the furniture was in place including beds; there was a TV room and there were children's graduation photographs on display. He said that it was very clearly a home. It was put to him that this was the position, on one particular day only. He accepted that the Letting Agents were asked to let the Property, not just as a house. He accepted that in respect of the second and third floors which were in commercial use, no planning application had been submitted; however, he said that the agreements in relation to same were short term, that no planning warranties had been given by him, a break clause was included, in the event of any enforcement notices being served by the Local Authority. Ms. Healy-Rae referred him to the 2018 rate demand note and asked if he accepted that it showed a valuation for the whole property, with a deduction for the domestic portion. He responded that it had always been rated right back to 1800's when he thought it might have been a bank and that he understood her point with regard to domestic remission.

6.3 Evidence of Mr. David Halpin

Mr. Halpin stated that only the ground floor of the Property was in commercial use since the Appellant acquired it; prior to that there was documentation from the Respondent to show the occupation, being the Commissioner's notebook entry ("the Notebook"). He referred the Tribunal to the photographs on pages 8-18 of his précis and stated that when he inspected the Property, he saw three vacant floors. He observed no evidence of any commercial use. His opinion of value, was that the NAV as of the valuation date, was as follows: Ground floor office $56.98\text{m}^2 @ \text{€}120/\text{m}^2 = \text{€}6,837.60$ say €6,830.

6.4 Cross examination of Mr. Halpin

Under cross examination by Ms Healy Rae, Mr. Halpin stated that he had been engaged towards the end of November 2021 and confirmed that his evidence was only of what he had seen on the 1st of December 2021, when he had inspected the Property and that any other information regarding the use had been supplied to him by the Appellant. He stated that there was no evidence of any commercial use on the first floor, or in the basements, but confirmed when asked, that there was also no evidence of any commercial use on the ground floor; however, he said that the information as regards prior commercial use of the ground floor, is what informed the opinion to value it, as such.

In response to a question from the Tribunal, he stated that on the date of his inspection, there were no remnants of commercial use on the ground floor, to distinguish it from any of the other floors.

7. RESPONDENT'S CASE

7.1 Evidence of Ms. Dunne

Ms. Dunne stated that revaluation was a process, whereby, the valuation of every relevant property, in a particular rating authority, was updated by reference to a single valuation date. The process brought greater equity, uniformity, fairness, and transparency into the local authority rating system, resulting in a more equitable distribution of the overall commercial rates burden among ratepayers.

Ms. Dunne stated that she had inspected the Property on the 1st of October 2021. She referred the Tribunal to the photographs in her précis of evidence at pages 16 – 20 and said that there was no evidence of any domestic use in the Property.

She outlined the valuation history of the Property, as outlined in detail, at section 5 of her précis. In particular, after the issue of the proposed valuation certificate in March 2019 and following representations made by the Appellant, the top two floors of the building in which the Property is located (floors 2 and 3) were separately rated. An adjustment was made to the valuation of the Property, which was reflected in the final valuation certificate, issued in September 2019.

The ground and first floors were not in domestic use. Both floors were vacant with no indication of any domestic use. The -1 basement contained remnants of an old kitchen, while the front room in that basement was empty except for a fireplace and wheelie bin. The -2 basement was vacant, with the exception of some timber and planks of wood on the ground; parts of that basement, the coal bunker area, had been deemed incapable of occupation and had been excluded for valuation purposes. There was no evidence of domestic use on the day of inspection.

The Property was no different to the neighbouring comparable properties in Laurence Street, which were all valued in line with the tone of the list (basement -2 €58, basement -1 €84, ground floor €120 and first floor €84). The disputed floors were no different to the second and third floors of the building within which the Property was located, and which were currently in commercial use and now separately rated. The Property was a typical Georgian/Victorian office building with shared entrance, hallways, and WC's.

Regarding the Notebook, her view was that a small domestic adjustment had been made. She did not know what parts of the Property were in domestic use in 1979. In her précis, she had included the Local Authority Rate Demand Notice 2018. She was of the opinion that the correct NAV for the Property was €15,380. The valuation was arrived at on the following basis:

Floor	Use	Area (m2)	NAV € (m2)	Total NAV € (m2)
-1	STORE	51.12	€ 84	€ 4,294.08
0	OFFICE(S)	56.98	€ 120	€ 6,837.60
-2	STORE	21.83	€ 59	€ 1,287.97
1	OFFICE(S)	68.53	€ 84	€ 5,756.52
Total		197.46		15,386.46
Say			€15,380	

(The Tribunal has noted that the total sum when calculated in accordance with this table is €18,176.17 and the total floor area is 198.46m² ; the allowance in the sum of €2,790 made by the Respondent in respect of the parts of the basement -2 level that were deemed incapable of occupation has not been factored into this table and when it is, the

NAV is the sum of €15,380 as proposed by the Respondent and the floor area is 197.46m²).

In her summing up, she said that the Property had been valued in accordance with section 48 and section 19(5) of the Act. All factors had been taken into account. Her précis had outlined 6 NAV comparisons, showing the prevailing tone of the list which was applied to the Property and all other similarly sized office buildings in Drogheda and Dundalk in Co. Louth.

7.2 Cross examination of Ms Moore

Under cross examination by Mr. Halpin, she accepted at the outset, that the Appellant's case was whether the Property was commercial, domestic or mixed. She confirmed that she had experience in valuing mixed properties and stated that in one such inspection, she was in a position to rule on the domestic part, having seen utilities, beds, pictures, clothesline and clothes in the wardrobe. From a rating point of view, she confirmed that what happened in that situation with mixed premises, was that the ground floor would be valued under Schedule 3 and the residential part under Schedule 4. She was appointed in 2021. She did not have any direct involvement at the stage of the issue of the proposed valuation certificate. She did not know the date on which the Property had been inspected, prior to her involvement; however, Mr. Moore informed the Tribunal at this point that it had been inspected by Ms. Jones on behalf of the Respondent on the 28th May 2019. It was put to her, that the domestic apportionment which had been applied, was not a small one, given that the non-domestic portion was valued at £8 and the domestic at £24, being three times as much as the non-domestic. She was referred to her direct evidence and it was put to her that contrary to what she had said of not being able to discern the extent of the commercial element in 1979, that it could be established by reference to the Notebook, which she accepted. She accepted that it was stated in the Notebook that the Property had not changed since 1938. She was asked whether in the current revaluation, the residential element of the Property was relevant property under Schedule 3 or relevant property not rateable under Schedule 4 and said that she could not be 100% sure.

Under questioning from the Tribunal, as regards her evidence of a kitchen in the basement area, she stated, that what she found, was the remnants of an old kitchen which was not then in use. She did not know if anyone was there in 1979 but accepted that the Notebook entry from that time, indicated that a large portion was in domestic use. She was asked when she inspected the Property as to whether her view was that there had been a change to commercial use or that it

had never been used for anything other than residential and she responded that she had seen all commercial save for the remnants of a kitchen in the basement.

8. SUBMISSIONS

8.1 Appellant's submissions

In his written submissions, Mr. Halpin firstly submitted that the Property was mixed premises within the meaning of the Act. He accepted that the ground floor fell to be valued as a commercial property. However, in respect of the remainder of the property (first floor, and the two basements) which he accepted were not currently in domestic use and were vacant, it was his submission that these were to be treated as domestic premises within the meaning of the Act. That was their prior use, and it was such prior use that defined rateability. By valuing at this stage, the Commissioner was jumping the gun, and imagining the Property, as he would like it to be, not *rebus sic stantibus*. If the Respondent's argument is allowed to stand, it implies that every vacant residential property in the country is liable for rates. The first floor, basement and double basement were exempt under Schedule 4, section 6 of the Valuation Act 2001. Secondly, if he was incorrect in his first submission, he further submitted that section 19 of the Act refers specifically to the revaluation of relevant property which was defined in that section, as excluding any relevant property specified in Schedule 4 and that included any domestic premises. The Appellant was not aware of any decision by the Commissioner of Valuation, prior to revaluation (i.e. a revision), which could have rendered the first floor, basement and double basement as relevant property. In short, if these floors were not relevant property prior to revaluation, and a revaluation only applies to relevant property, it was his submission that it was impossible for them to suddenly become relevant property under a revaluation.

In his oral submissions at the hearing, Mr. Halpin confirmed at the outset that the Appellant was not now relying on the Authorities referred to by the Appellant in his précis as they related to quantum, which was not in dispute. He submitted that the question before the Tribunal from a legal perspective was whether the use of the Property was commercial, residential or mixed. It was his submission that it was mixed. Ms Dunne's had given evidence as to how the Commissioner approached the valuation of mixed property, firstly by designating the commercial part as rateable relevant property under Schedule 3 and the residential part not rateable under Schedule 4; that is how it was approached in 1979 even though at that point in time, the terminology of the 2001 Act was not used, as it was not in force at that time. The Respondent had not revised the Property prior to the revaluation, and it was his submission that

the Respondent was not entitled to revalue the parts of the Property already considered to have been under Schedule 4, i.e., the residential floors of the Property. Revision is not a revaluation. On a revaluation, the Respondent must take what is already there, which in the case of the property, was what existed in 1979. Until the Appellant used it in a commercial way, there was no happening of an event where the Property was transferred from Schedule 4 to Schedule 3. The Respondent had "magicked" it from one category to another without doing a revision and that was fundamentally incorrect. The valuation certificate was flawed.

He referred the Tribunal to the handwritten note in red in the Notebook which read "*apportionment non-domestic £8 balance £24 Total: £32*" and which was signed and dated the 16th March 1979, which he said post-dated the legislation which had been brought in to exempt domestic property from rates. The Notebook entry had also given the extent of the surgery at that time as $5.1 \times 5.0 = 25.5$, which he said was a reference to the front room on the ground floor, the waiting room as $4.6 \times 6.0 = 27.6$, which he said was the rear room on the ground floor and the hall which had been referred to also in the Notebook but did not form part of the rateable property. He then referred to the entry in the Notebook in blue handwriting which stated that "*This property was last revised in 1938 when RV of £34 was reduced to £32 at that time the present occupier's father (a doctor) had a surgery & waiting room and it was appropriately considered at that time. There has been no change here since then except that surgery is now used by present occupier as dental surgery. Propose no change to RV. Doctor's surgery in partial use Dentist's surgery in full use*". It was unclear as to the date of these latter notes. However, the Property had been last rated in 1938 and there were at least two entries and references in the period between 1938 and 1979 to the entire property being residential other than the ground floor. At that time, in 1979, the Act of 1852 was in force.

On the enactment of the 2001 Act, the terminology of "mixed premises" and "domestic premises" was introduced. Domestic premises were dealt with under Schedule 4 and non-domestic premises under Schedule 3.

As regards the rates demand notice, he said that the Appellant's representative had wished to make something out of that the bill showed the whole of the property and the deductions. However, he said that the deductions had been done by the Commissioner; in nine out of ten cases, it is the Local Authority who makes the domestic allowance later rather than the Commissioner. In this rates demand, the non-domestic of £8 relates to the bill being levied i.e

£10.16, the portion that is struck off is £24; that is the Commissioner's entry in 1979 as noted in the Notebook. In the strictest sense what the Local Authority should have done in 2001, was simply to bill the commercial value of £10.16.

In essence his submission was, that the prior use of the Property held and that was the common practice across all properties; no event had occurred to change that prior use. The Commissioner wanted to say that vacant residential had magically become commercial which could not be the case, as otherwise a dwelling could become rateable.

In response to a question from the Tribunal he said that on the valuation date, the Property was in the valuation list as a mixed premises and that was the property which was being revalued.

8.2 Respondent's submissions

Ms. Healy-Rae referred to her written submissions. The onus of proof was on the Appellant. There were no exemptions based on historical use and as held by Mac Menamin J in *Nangles Nurseries v Commissioner of Valuation* [2008] IEHC 73, exemptions or relieving provisions are to be interpreted strictly against the ratepayer.

She referred to the definition of "domestic premises" in the Act as "premises used as a dwelling" and said that was important; the premises had to be in use as a dwelling. She also made reference to that part of the definition of "mixed premises" which stated "is used partly as a dwelling". It was the submission of the Respondent that at the point of revaluation, no part of the Property was in use as a dwelling. Further, the Property could not be a 'mixed premises' as no part of it was in use as a dwelling.

Schedule 3 listed "relevant property" within the meaning of the Act. Section 15 of the Act stated that all relevant property shall be rateable and relevant property in Schedule 4 is not rateable property. Section 19 referred to the valuation of "relevant property" and to the requirements of correctness and uniformity which had also been referred to by Ms. Dunne, witness for the Respondent. The entire of the Property was relevant property for the purpose of the revaluation under section 19.

She referenced the High Court judgment of Ms. Justice Murphy, in *John Clarke v Patrick Halpin and Ann Keane T/A The Aberdeen Lodge* [2020] IEHC 317, who in the course of her judgment stated, inter alia, as follows at paragraphs 33 and 34:

33. *The Act introduces the concept of 'relevant property' in place of 'hereditament' 'Relevant property' is defined in Schedule 3. Paragraph 1(a), of the Schedule, provides that 'buildings ' are relevant property for the purposes of the Act. It follows that all domestic dwellings are 'relevant property'. S.15(2) provides that relevant property referred to in Schedule 4 shall not be rateable. Item 6 in Schedule 4 specifies 'Any domestic premises'. S. 3(1) of the Act defines 'domestic premises' as: "domestic premises" means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel.*

34. *The effect of these provisions is that domestic premises are 'relevant property' but are no longer rateable.*

35.

She refuted the submission of the Appellant's representative that only the ground floor of the Property was relevant property for the purposes of the revaluation. When Section 19 refers to relevant property, it includes the whole of the property and that is the subject of the revaluation. The appellant in the Clarke case had gone down the wrong road and the Judge had commented that if he wanted to claim domestic use, he should have made a revision application.

She said that Mr. Halpin may have misunderstood her reference to the rate demand note which she said went to the heart of the matter, which was that in 1938 and in 1979, that which was valued was the whole of the property, including all the floors. The fact that there was an exemption for domestic use at that point was irrelevant. It was a question of fact that the entire property was valued; the fact that part of it was excluded from rateability was a different concept and was not relevant to the question that the whole of the relevant property was rateable per se. The level of rates was a separate issue.

Section 43 of the Act states that an existing valuation list continues in full force until the date on which a valuation list is published under section 23 following the revaluation of the relevant area. It follows, consistent with that provision that Mr. Halpin is correct in stating

that the whole property was valued in 1979 which is also confirmed by the 2018 rates demand notice. However, on a revaluation under section 19, relevant property on an existing list had to be valued. The relevant date was the 15th September 2017 and on that date the property fell to be revalued in accordance with section 19 of the Act. That is what was done, and the property was valued as it stood, on that date and in accordance with section 48 of the Act. Following the revaluation, a new list was published under section 23. All the floors were valued other than the second and third floors which had been separately rated and the coal bunker area of the -2 basement. The purpose of the revaluation is to achieve equity and uniformity. There is nothing in section 19 which stipulates that the Respondent is in any way confined or restricted to carrying out a valuation based on an historic 1938 or 1979 position. It was a fresh revaluation and that was its whole purpose.

She submitted that the Appellant's representative was confusing the revaluation process and a material change of circumstances situation when he had referred to there being no happening of an event. Section 19 clearly makes no reference to any issue regarding change of circumstances or happening of an event. There is absolutely nothing in the 2001 Act which states that the Respondent has to carry out a revision before a revaluation. The Property was assumed to be vacant and available to let.

The valuer for the Respondent gave testimony that there was no evidence of any use and it had been accepted by the Appellant that except for the second and third floors (now separately rated), it is vacant and that no part is in domestic use. It was not a mixed premises. It is relevant property which is rateable. Just because something may have been in domestic use at one point did not make it domestic forever – that is the whole point of a revaluation to bring everything into line. It would be totally unfair just because part of the Property had been used historically as a residence, it was excluded from being revalued. It would not achieve equity and uniformity if a similar property next door was valued differently. The submission of the Appellant's representative would defeat the whole purpose of the revaluation process.

The concept of Schedule 3 and Schedule 4 had not been there prior to 2001 and this was the first revaluation since the 2001 Act.

In response to a question from the Tribunal, as to the point, at which it was contended, that the Property defaulted to commercial, she said that this happened when the decision was made to make a revaluation order. There was no reference to change of use in section 19 and if the Oireachtas had wanted to restrict it, the Oireachtas could have included in Part 5, similar to that in Part 4, under revision. As regards the terms "use" and "occupation" she stated that vacant property was capable of beneficial occupation and that the term "use" only came into the definition of "domestic premises". She was not saying that it defaulted to commercial but that it fell to be valued under section 48. In a nutshell, her case was that the Property was relevant property, that the domestic dwelling exemption did not apply, and that the Property fell to be valued under section 48 of the Act.

8.3 Mr. Halpin's responding submissions

Mr. Halpin reiterated his view that the Respondent could not revalue any relevant properties in Schedule 4 of the Act. He was not asserting that a domestic property stayed as such forever, but that if the Respondent designated a property as domestic, and if he wished to change that, he must first do a revision before he can do a revaluation. It was specifically stated in the Act that there could not be a revaluation of relevant property in schedule 4. That is why the Respondent does not on a revaluation, value housing estates, which would have an historic value buried somewhere in the list. He submitted that the person who had prepared the valuation certificate did not understand the apportionment and that was clear as they had valued all the floors.

8.4 Ms Healy- Rae's responding submissions

Schedule 4 only came in with the 2001 Act; the Property was not dealt with under Schedule 4; that exemption does not apply. In response to Mr. Halpin's reference to housing estates, she distinguished them on the grounds that they were never on the list. The Property was already on the list and the purpose of the revaluation was to look at properties on the list already. She accepted that if a property had never appeared on the list, it would have to be a revision. This was the first revaluation since the 2001 Act and the existing list was based on the Notebook entry from 1979. The entire property was valued on that date and the fact that there was a partial domestic exemption, was a separate issue. It did not necessarily mean that

it was relevant property within the meaning of Schedule 4 now, and which is why she said she had highlighted section 43.

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of County Louth.

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

9.2.1. The Property is located at 32 Laurence Street, Drogheda, County Louth. It is a terraced Georgian property constructed circa. 1820. The Property is within a building comprising four floors over double basement. The top two floors (second and third floor) are now separately assessed and do not form part of the Property.

9.2.2 Part of the lower basement is no longer relevant property on the grounds that it is not now capable of beneficial occupation. This was determined by the Respondent.

9.2.3. The floor areas were agreed as follows:

Floor	Use	Area (m²)
-1	STORE	51.12
0	OFFICE(S)	56.98
-2	STORE	21.83
1	OFFICE(S)	68.53
Total		197.46m ² (after making allowance for the part of the lower basement as referred to in paragraph 9.2.2 above)

9.2.4. The disputed floors are vacant, and no parts thereof are currently used as a domestic premises or in commercial use; that is accepted by both parties.

9.2.5 At the time of the 1979 valuation, the entire property at 32 Laurence Street was in residential use except for the surgery (5.1 x 5.0 = 25.5) and waiting room (4.6 x 6.0 = 27.6) on the ground floor. This was also the position when the Appellant acquired that property in 2003. The only part of the Property in commercial use since he acquired the Property was the ground floor.

9.2.6 The Property was a mixed premises within the meaning of the Act on the valuation date.

9.3 On the first issue of whether the Property is relevant property, the Tribunal finds that the Property is relevant property within the meaning of the Act. Prior to valuation under section 19 of the 2001 Act, the entire property at 32 Laurence Street was on the existing list as a rateable hereditament. It was open to the Commissioner under section 43(3), when the 2001 Act came into force, to determine that part of 32 Laurence Street fell into Schedule 3 (e.g., the ground floor) and part fell into Schedule 3 and 4 so as to apportion the value between each part. No evidence was adduced that he did so. Therefore, when the property came to be revalued under section 19 as amended, it was a relevant property.

9.4 The existing list continued in force until the date on which a valuation list for the rating authority area of Louth County Council was published under section 23 of the 2001 Act.

9.5 Pursuant to section 19 of the Act as amended and the Valuation Order made by the Commissioner, a person appointed by the Commissioner, must carry out a valuation of every relevant property on the valuation list or the existing valuation list. Therefore, *prima facie*, the entire property at 32 Laurence Street fell to be revalued as relevant property under section 19.

9.6 After the issue of the proposed valuation certificate, it was ascertained that both the second and third floors of 32 Laurence Street were in separate rateable occupation and had, accordingly, become separate relevant property. Therefore, under section 17(2) of the Act as amended, 32 Laurence Street was considered to be a relevant property comprising two parts

capable of being occupied separately and those two separate parts were valued as separate relevant properties.

9.7 On the issue as to whether the Property falls within paragraph 6 of Schedule 4 ("domestic premises") the Tribunal's view is that it does not.

"domestic premises" is defined in s.3 of the Act as meaning

any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

"mixed premises" is defined in the same section as meaning:

property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent

The Appellant's evidence was that when he purchased 32 Laurence Street in 2003, a substantial part of it was in residential use and that it had been sold to him as a dwelling house. He also gave evidence that the disputed floors were not in commercial use during his period of ownership. This evidence was not disputed. Ms. Dunne, witness for the Respondent had not inspected the Property until the 1st of October 2021 which was 4 years after the valuation date. She gave evidence that on that occasion she had seen all commercial save for the remnants of a kitchen in the basement. However, given that there was no actual commercial use, a fact which is not in dispute, and no evidence was given by Ms Dunne of there being any equipment, fixtures or fittings which would point to commercial use, it is the Tribunal's view that she was making an assumption of commercial use. The Tribunal does not accept Ms Healy-Rae's submission that the Property could not be a 'mixed premises' as no part of it was in use as a dwelling on the valuation date. Empty dwellings even when within a mixed premises, cannot default to commercial simply because they are vacant and not being used as such and when no alternative use has commenced. The Tribunal finds that the Property is a "mixed premises". It follows therefore that the Property is not a "domestic premises" since the definition of "domestic premises" excludes "mixed premises". Accordingly, the Property does not fall within paragraph 6 of Schedule 4 of the Act. The Property fell to be revalued on the valuation date as "mixed premises".

The level of rates is a different issue and in this regard the Tribunal notes that under s.7(2) of the Local Government (Financial Provisions) Act 1978, a rated occupier of a mixed premises may through the rating authority concerned, or the rating authority may apply to the Commissioner to have the valuation of the mixed premises apportioned for the purposes of section 2 of that Act.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms the Respondent's NAV of €15,380.