

**Appeal No: VA18/2/0024**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Stephen McCahill For Awake  
Tourism**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2004886, Heritage Centre at Local No/Map Ref: 4, Ardara. Drumbaran,  
Ardara, Glenties, County Donegal.

**B E F O R E**

**Majella Twomey - BL**

**Deputy Chairperson**

**Liam Daly - MSCSI, MRICS**

**Member**

**Caroline Murphy - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 18th DAY OF MAY, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 13<sup>th</sup> day of June, 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 €39.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The valuation for the Subject Property is not in accordance with the Valuation Act, 2001, as community halls are exempt, Schedule 4, Section 15, "any building or part of used exclusively as Community Hall."*

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of €0.

## **2. VALUATION HISTORY**

2.1 On the 18<sup>th</sup> day of April, 2018 a copy of a Valuation Certificate proposed to be issued under section 28(4) of the Valuation Act 2001 (“the Act”) in relation to the Subject Property was sent to the Appellant indicating a valuation of €39.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 5<sup>th</sup> day of June, 2018 stating a valuation of €39.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 27<sup>th</sup> day of October, 2021. At the hearing, Mr. Stephen McCahill, Chairperson of Awake Tourism, which occupies the subject property, appeared and the Respondent was represented by Orla Lambe MSCSI, MRICS of the Valuation Office, together with Rosemary Healy-Rae B.L. and Michael Collins of the Chief State Solicitor’s office.

3.2 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 affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

## **4. FACTS**

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

4.2 The Subject Property is situated on Front Street, Ardara Co. Donegal.

4.3 The Subject Property was the subject of a revision request from Donegal County Council (“the rating authority”) in 2016 based on the fact that the Subject Property was subject to Temporary Apportionment being now divided into 2 properties. The Subject Property was subdivided with property number 5015100.

4.4 The measurements of the Subject Property are not in dispute.

## **5. ISSUES**

5.1 The issue in this Appeal is whether the Subject Property is entitled to be treated as exempt from rates pursuant to paragraph 15 of Schedule 4 of the Valuation Act, 2001.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The value of the Subject Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment) Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

*“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”*

6.2 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.”*

6.3 Schedule 4 of the 2001 Act lists 19 types or categories of relevant property which are designated as “not rateable” by Section 15(2). This appeal is concerned with the Subject Property specified in paragraph 15 of Schedule 4 being that, “*any building or part of a building used exclusively as a community hall*” shall not be rateable.

6.4 “Community hall” is defined in section 3 of the 2001 Act as being “*a hall or a similar building, other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904 which:-*

- (a) is not used primarily for profit or gain, and*
- (b) is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which-*
  - (i) involve participation by inhabitants of the locality generally, and*
  - (ii) are recreational or otherwise of a social nature”.*

## **7. APPELLANT’S CASE**

7.1 Mr. Stephen McCahill, Chairperson of Awake Tourism adopted his Précis as his evidence in chief. Mr. McCahill said that the 3 comparisons provided by the Respondent were heritage centres that were very commercial centres and very different to that of the Subject Property. He also said that the Subject Property was very different to the 39 heritage centres in Co. Donegal and that the Subject Property, which he referred to as “the centre”, was not for profit, and never had been, and, fits into the category for “community hall” according to the definition in the Act. He said Ardara is a small community and everyone in the community uses the centre. The Subject Property was divided, and the other part is a restaurant which is rateable. He said the people who provide the tourist

information at the tourist desk in the centre do so to provide people with assistance, to keep business alive in the area and advise where they could rent a house, for example. He said they use the centre to keep the area alive with many young people having left and they do this by providing various classes for the community.

7.2 Mr. McCahill outlined the history of the Subject Property. He said the centre was set up with the County Council and Bord Failte when Ardara was deemed a heritage town. It was probably correct to consider it a heritage centre back then as it was laid out with various displays of traditional tweed and craft skills of past generations and of past times. There were weavers working their looms in those days and various displays and lectures were regularly given in the heritage centre. These crafts could then be purchased in the town. He said it was defined as a "Heritage Centre" previously and not considered for rates at that time.

7.3 The heritage theme survived in some areas and not others. As the years passed the centre fell into demise and was about to close approximately twelve years ago as it could not survive. Mr. McCahill said a new committee was formed to keep the centre open. The committee removed the heritage theme from the Subject Property. The adjustment included leasing the restaurant to a private operator. It included removing the weavers and their looms and recommending private operators carried out their displays in commercial centres in the town instead. The centrepieces and displays were removed from the main hall. The photos of the history of wool in the Parish were fitted on the walls and the main hall became a centre for the community. He said they should have removed the sign entitled "Heritage Centre" as the Subject Property is used as a community centre. They put a floor in the centre so it could be used by the community. The centre was made more community related, whereas previously it had been a visitors centre. He said he found that people coming to Ardara had nowhere to tell them where to go in the town, for example, for toilets and he arranged for people on a FAS scheme to work at the desk to direct people where to go when they were visiting the town.

7.4 Mr. McCahill said the centre can show a film upstairs but the main people who looked at that were local people, and the film has not been shown in approximately three years. The room upstairs is also used by people wanting to use it for meetings, for example, GAA and grinds for the leaving certificate.

7.5 Mr. McCahill said the people who teach the Zumba classes and other classes do it for the centre. They charge a nominal fee for the use of the hall. He said both he and the Zumba teacher do not take any money for teaching the classes and it goes back into the centre to pay bills.

7.6 The Subject Property's registered owner is Ardara Town Trustees, run by Awake Tourism. He said Awake Tourism was the Parish Council in Ardara which was a community company limited by guarantee, which they registered as they needed to be

registered for a tax number. He said they rent the restaurant out and that is really where they get their income from, which he said was about €6,000 a year. The income from the restaurant keeps the centre alive. He said the Appellant Company would have received funding from the State previously, from time to time, mainly, from the County Council.

7.7 He said the dancing classes hadn't taken place for two years due to the Pandemic but the classes that normally take place in the hall are Ceilli and Sets on a Monday night, Jiving on a Tuesday, Line Dancing and Zumba on a Wednesday, Jiving on Thursday and Zumba Gold on Friday mornings. The hall is only really used at weekends for schools who put on plays.

7.8 The film was donated to the area and is shown if people want to see it. He said that the room upstairs is mainly used for meetings for small groups, such as, local town traders and local ICA. He said they do not have to pay for the use of the room and the hotel closes for three months of the year. According to his evidence, it is really simply a meeting room.

7.9 When asked by the Tribunal, he clarified the desk for tourist information is located on the way to the hall and the people who staff it work a few hours a week on a social employment scheme. He confirmed that he is a volunteer and he tries to entice people to the area with activities in the centre.

7.10 He confirmed that public liability insurance is the centre's biggest expense per year and costs approximately at €1500/€1,600. The restaurant pays the electricity for the centre as part of their lease as the amount used by the centre is small.

7.11 When asked, by the Tribunal, why if it is a community hall does the Appellant have the name "AWAKE Tourism", he said that name was used when the town was set up as a heritage town. He said "AWAKE Tourism" stands for Ardara Weaving and Knitting Association with the Articles and Memorandum of Association setting out how they would manage that work which they have not done since 2010, when it changed. He said they did not change the name "AWAKE Tourism" because they do other things such as fixing the roads and it's the name of the parish council. He said he hasn't changed anything in the Constitution since its inception and that he should have done that.

### **Cross examination**

7.12 Ms. Healy-Rae referred Mr. McCahill to a document entitled "Ardara Heritage Centre, Ardara, Co. Donegal" which was submitted by the Appellant at Representations stage as to what occurred at the Subject Property in 2018. She referred to this letter as the "main letter" sent into the Valuation Office and that at the start of the letter it states that the centre was a community centre. She referred to Paragraph 2, which said, "*The centre is used as a Tourism Information centre and is staffed voluntary and with assistance from*

*Social Welfare Schemes.*” She put it to Mr. McCahill that the tourism aspect must be a big part of the centre being set out at Paragraph 2 of the letter, to which he said it was not and that he did not set the document out in any particular order. He said that for the purpose of valuing the Subject Property you would be far better being there for a week or ten days to know what goes on in the centre as he said that the first thing you see when you come into the centre is a basic tourist desk. She noted that he said in the document the centre is “used” as a Tourism centre which he accepted as it was factual. However, he went onto say that it could be closed tomorrow, if necessary.

7.13 She referred to Paragraph 3 which stated, “*The main hall is used primarily for visitors to view and read the story of weaving and woollen story of Ardara*” and asked Mr. McCahill whether he accepted that the hall is used primarily for visitors, which he said the word “primarily” was probably wrong in the context in which it is there. He said he removed the stands but he put the photographs up on the wall. He said people who read the story could be local or visitors, and that they often come in from the restaurant and that people read it from time to time.

7.14 Ms Healy-Rae, referred to Paragraph 4, “*The main hall is used for cultural and heritage themes like ceili and set dancing and various other dances*” and Paragraph 5, “*The upstairs room is used to show visitors films of Ardara and surrounding areas.*”, and she put it to Mr. McCahill that there was no mention of meetings or grinds taking place in the room upstairs. He said that he probably should have clarified that comment but that his understanding was that rates related to profit and the Appellant is not-for-profit and that he should have said exactly what happened there. He said that there are meetings taking place next week with the County Council, local traders and a woman starting French classes.

7.15 Counsel for the Respondent referred to paragraph 6 which states, “*All contributions are voluntary and a donation box is positioned on the tourist desk and has been there for over twenty years*” and Mr. McCahill accepted the photographs he submitted marked pictures ‘A’ and ‘B’ which show the tourist part with donation box and brochures; pictures C, D and E which show the main hall with the story of weaving and woollen on the walls and picture F which shows the upstairs room with a drop down screen used to show films.

7.16 It was put to Mr. McCahill that Ardara was a tourist town being located on the Wild Atlantic Way and it must get a lot of tourists to which he said it is at tourist town but Bord Failte never set up an office in the town. He said they get visitors to the centre on account of the work they do which includes running 11 festivals a year to keep the community alive and relied on people coming to the area, but that had failed and the heritage centre had to close.

7.17 When asked about the opening hours, he said the hours were irregular for the FAS

employees and that the desk was not always manned and that is why the brochures were available. He said it is open 5 or 6 days a week and in the summertime, it was open 9a.m. to 5p.m. He confirmed that people can go in even if there is no one on the desk and that the Subject Property is unlocked, and it is open to the public all the time.

7.18 Ms. Healy-Rae put it to him that on the website, Ardara.ie, which lists the opening hours of the “Tourist Information Centre at the Heritage Centre” as Monday to Friday 10am – 6pm and Saturday 10am- 4pm, which he did not dispute.

7.19 Ms. Healy-Rae questioned Mr. McCahill on the costs of classes. He said one of the members of the committee ran the Zumba class, and she charges approximately €5 an hour, the same as the jiving class. The Art classes that take place in the hall or on the street are for free and grinds take place for part of the year. He confirmed that they don’t sell any goods at the Subject Property. When asked about government grants for the centre, he said they previously got a grant for floors and for fittings/stands for photographs of the area and characters from the area.

7.20 Ms. Healy-Rae noted the centre was open access where if there wasn’t anyone at the tourist desk people can take leaflets and can view the story of the weaving and put to it Mr. McCahill that those people wouldn’t be local people coming into the centre, he disagreed. When Ms. Healy-Rae put it to him that you wouldn’t expect locals to be wandering around the hall more than once looking at the story on the wall, he accepted that, but said everybody looked at it. He gave an example of a wedding in the town, on that day, of local people who had moved from the area who had returned for the celebration and that they might come in and look at it.

7.21 When asked if the other centre had meetings, he said they may have but it was mainly a sports hall and it was a bit out of the town. He confirmed that the subject property was a community centre. He said people had their meetings in the Subject Property.

## **8. RESPONDENT’S CASE**

8.1 Ms. Lambe adopted her precis as her evidence in chief. She gave details as to the location of the Subject Property. She said Ardara had a small population and that it was one of the five heritage designated centres in Co. Donegal. The Subject Property was listed for revision and was subdivided under section 28(4)(e) of the Act and a new subdivision for the coffee shop (the restaurant) was created and is valued separately at property number 5015100. Ms. Lambe referred to the block plan and explained that on the inspection of the Subject Property, she saw the area at the entrance had a tourist information area, the hall had photographs of weaving on the walls and on the first floor there are offices and a place to watch films on the area. She referred to three Heritage Centres included in the Valuation List for Donegal County Council. Based on the

representations received which included the letter submitted by Mr. McCahill the valuation remained unchanged.

### **Cross Examination**

8.2 Mr. McCahill said the comparison heritage centres Ms. Lambe referred to were very different to the Subject Property and he asked Ms. Lambe if she could define the activities in the comparisons. She said she was not aware of the activities, but they are listed as relevant property on the Valuation List for Co. Donegal. She said that she named them as comparisons as Mr. McCahill disputes that the Subject Property should be rated in his Representations and Notice of Appeal and heritage centres are valued and included in the list. Mr. McCahill put it to her that the centre complies with section 3 of the Act as a community hall and asked her to confirm that she arrived late in the afternoon on the date of her inspection, which she did.

8.3 When asked by the Tribunal if she had been to the comparisons, she confirmed she had not. She said these comparisons were to show that heritage centres were valued and included on the Valuation List for Co Donegal. When asked by the Tribunal to confirm what she saw on the date of inspection, Ms. Lambe confirmed that the entrance was an area where they were giving out brochures, the hall was displaying photographs of weaving in the Ardara area of Co. Donegal and in the upper floor there was an office for a projector for displaying videos. She said there was nobody conducting activities when she was there.

8.4 When asked why she took the view that the Subject Property was a heritage centre and not a community centre, she said Mr. McCahill referred to it as the Ardara Heritage Centre and a tourist information centre in the document he submitted at representations stage and it was previously valued as a heritage centre, she said she valued the Subject Property and the onus is on Mr. McCahill to prove the Subject Property is a community hall.

## **9. SUBMISSIONS**

### **Appellant's Summing up and Submissions**

9.1 In making oral submissions, Mr. McCahill said the word, "heritage" is the problem, as the focus has been on the word "heritage" and the fact that the centre is a community hall has not been looked at. He said Ms. Lambe had not visited the other heritage centres in the town even though she has compared them to the Subject Property which was not valuing like with like. He suggested that had he taken the word "heritage" down on the wall he wouldn't have had a problem with rates.

### **Respondent's Summing up and Submissions**



9.2 Ms. Healy-Rae referred to her written submissions dated 21<sup>st</sup> October 2021, by stating that in all appeals before the Tribunal the onus of proof rests with the Appellant. She referred to *Nangles Nurseries v Commissioner of Valuation* [2008] IEHC 73 where MacMenamin J. stated at paragraph 26 that:

*“The statute under consideration [the 2001 Act] is, obviously, for the purpose of rating. It is to be strictly interpreted. It is subject to the same general principles of interpretation as a taxation or penal statute.”*

He continued as follows by setting out the principles of interpretation of the 2001 Act at paragraph 39:

*“I would therefore summarise the principles which are applicable in an interpretation of this statute in the light of the authorities 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.” [emphasis added]*

9.3 Ms. Healy-Rae said the onus is on the ratepayer to satisfy the Tribunal that the Subject Property is exempt from rates under the 2001 Act.

9.4 The Appellant seeks an exemption under paragraph 15 of Schedule 4 that the building or part of the building is used exclusively as a “*Community hall*” as defined in section 3 of the Act. The following requirements must be met before the Subject Property can be excluded from the Valuation List:

- (i) The building or part of a building must be used **exclusively** as a **community hall**;
- (ii) It must be a hall or a similar building;

- (iii) The premises must not be a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904;
- (iv) It must not be used primarily for profit or gain;
- (v) It must be occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which involve participation by inhabitants of the locality generally, and which are recreational or otherwise of a social nature.

9.5 Ms. Healy-Rae considered each of the requirements to be met in turn. In relation to whether the Subject Property is used exclusively as a community hall, Mr. McCahill gave evidence as to the uses of the Subject Property. She said even if there are other activities being carried out at the Subject Property, the hall is not being used exclusively as a community hall.

9.6 Ms. Healy-Rae considered the question, is the subject property "*a hall or a similar building*"? It is noted that "*community*" is not separately defined in section 3. However, in the context of the definition of "Community hall" contained in section 3, it appears to mean the inhabitants of the locality i.e. the local community.

*"Community hall"* is defined in section 3 of the 2001 Act as being "*a hall or a similar building, other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904 which:-*

- (a) is not used primarily for profit or gain, and*
- (b) is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which-*
  - (i) involve participation by inhabitants of the locality generally, and*
  - (ii) are recreational or otherwise of a social nature".*

9.7 She said the Subject Property is not a club, not used for profit or gain according to Mr. McCahill's evidence. She said the Subject Property must be occupied for purposes which (i) involve participation by inhabitants of the locality generally, and (ii) are recreational or otherwise of a social nature.

9.8 She said that the Subject Property is clearly being used as a tourism and heritage centre. There is a tourist office centre at the entrance to the Subject Property and the main hall has all of the history of the area on the walls. She referred to the contemporaneous document at the time which was submitted at Representations stage by Mr. McCahill, which indicated it was being used as a Tourism information Centre with the main hall being used for cultural heritage themes and the upstairs room being used to show visitors the film of Ardara and the surrounding areas, which she said Mr. McCahill set out himself. In terms of the definition of part (b) the building is being used by visitors and tourists as they are the people who would be availing of the tourist information and they would not come within the definition of the inhabitants of the locality generally.

9.9 Ms. Healy-Rae referred to **Dublin Public Radio Ass. Ltd. VA05/3/001** (the **Anna Livia** case) and **Shannon Swimming & Leisure Club (VA 12/1/004)** which found that the properties in question were not used exclusively, and they were held not to be community halls. In the **Anna Livia** case, the Tribunal took the view that the fact that the property was used by the community did not of itself make it a community hall. In addition, the physical attributes of the premises in question in the Anna Livia case meant that it could not be regarded as a hall.

9.10 She said that the dance classes of which there are nominal charges are ancillary to the main use of the centre to that of the heritage and tourist information centre. She suggested that the name AWAKE Tourism also lends credence to that.

9.11 In conclusion, the Subject Property doesn't come within the definition of community hall in section 3 of the Act and the Appellant has not met the onus of proof.

## **10. FINDINGS AND CONCLUSIONS**

10.1 The issue in this Appeal is whether the Subject Property is entitled to be treated as exempt from rates pursuant to paragraph 15 of Schedule 4 of the Valuation Act, 2001.

10.2 In all appeals before the Tribunal, the onus is on the ratepayer to satisfy the Tribunal that the Subject Property is exempt from rates under the 2001 Act. This is on the basis that all property is rateable unless shown to come within an exemption. In this regard, section 63(1) of the 2001 Act provides that "*the statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act*".

10.3 In *Nangles Nurseries v Commissioner of Valuation* [2008] IEHC 73 MacMenamin J. stated at paragraph 26 that:

*"The statute under consideration [the 2001 Act] is, obviously, for the purpose of rating. It is to be strictly interpreted. It is subject to the same general principles of interpretation as a taxation or penal statute."*

He continued as follows by setting out the principles of interpretation of the 2001 Act at paragraph 39:

*"I would therefore summarise the principles which are applicable in an interpretation of this statute in the light of the authorities 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.” [emphasis added]*

### **Is the Subject Property being used as a community hall?**

10.4 Schedule 4, part 15 states that there is an exemption for ‘*Any building or part of a building used exclusively as a community hall*’.

10.5 The interpretation section of the Act defines “community hall” as ‘a hall or a similar building, other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904, which— (a) is not used primarily for profit or gain, and (b) is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which— (i) involve participation by inhabitants of the locality generally, and (ii) are recreational or otherwise of a social nature.

10.6 In order to evaluate whether the Subject Property falls within this exemption, the Tribunal must assess the criteria laid down in the legislation and the case law.

### **Is the subject property “a hall or a similar building”?**

10.7 The Tribunal in ***VA05/3/001 – Dublin Public Radio Ass. Ltd. (the Anna Livia case)*** took the view that the fact the Subject Property was used by the community did not of itself make it a community hall. In that case, the suggestion was that because a community radio operated from certain offices that made the building in question a community hall.

10.8 Furthermore, the Tribunal in the ***Anna Livia*** case, cited above, went onto state that ‘*It could mean a large hall or chamber which can accommodate a considerable number of people and is available for use by the local community for a variety of purposes which could include concerts, meetings or recreational uses. The configuration of the building or shape of the hall is not material..... emphasis is on hall or large room and this of course may also*

*have ancillary rooms such as toilets, kitchen, tea room, or changing rooms..... The "community hall" itself has to be used exclusively as such.'*

10.9 The Tribunal notes in the ***Anna Livia*** case, the Tribunal determined as follows: *"The configuration of the building or shape of the hall is not material. However, proportionality in the physical sense as to what we understand by "community hall" is important. The main emphasis is on hall or large room and this of course may also have ancillary rooms such as toilets, a kitchen, tearoom or changing room. The focus is on a "hall" or large chamber for the community as understood in its ordinary sense or meaning with spatial area greater than other ancillary units in the building. The hall is the dominant feature.'*

10.10 The Tribunal has had the benefit of seeing photographs of the Subject Property, provided by the Appellant and which Mr. McCahill accepted were accurate. The photographs clearly show a 'hall or large room' and the Tribunal finds that 'the hall' in this case is the dominant feature of the Subject Property.

**Are the premises, the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act of 1904?**

10.11 No evidence was adduced that the Subject Property is registered under the Registration of Clubs (Ireland) Act of 1904 and, accordingly, the Tribunal finds that the Subject Property was not registered under that Act.

**Are the premises used primarily for profit or gain?**

10.12 Mr. McCahill gave evidence there is a donation box at the tourist information desk and that there are nominal charges for some of the classes that take place in the centre but that all of that income goes back into the centre. Mr. McCahill confirmed that no goods were sold at the Subject Property. Taking all the factual evidence, before the Tribunal into account, the Tribunal finds that the purpose of the Subject Property is not to make or turn over money for profit or gain.

**Is the premises occupied by a person who "...ordinarily permits it to be used for purposes which involve participation by inhabitants of the locality generally"?**

10.13 The term 'Ordinarily' was dealt with in the case of ***VA05/3/001 - Dublin Public Service Radio Association*** where it was held that *'the occupier must ordinarily use it as a "community hall" or ordinarily permit it to be used as a "community hall". Use must have a custom or habit and not just for "ad hoc" use'*.

10.14 Under cross examination, Mr. McCahill was referred to paragraph 3 of his main letter, *"The main hall is used primarily for visitors to view and read the story of weaving*

*and woollen story of Ardara*” and asked whether he accepted that it is primarily used for visitors, he said the word “primarily” was probably wrong there. He said people who read it from time to time could be local or visitors, and that they often come in from the restaurant. When Ms. Healy-Rae put it to him that you wouldn’t expect locals to be wandering around the hall more than once looking at the story on the wall, he accepted that but said everybody looked at it.

10.15 The Tribunal considers that the usage of the Subject Property as a tourism centre clearly does not involve participation by inhabitants of the locality generally. Tourists visiting the centre are by their very nature not inhabitants of the locality generally. The concept of “locality” cannot be taken to include tourists who are visiting the area. The evidence of Mr. McCahill was that classes and dance classes take place in the hall at the centre on weekdays and the Tribunal concludes that the premises are ordinarily used by inhabitants of the locality generally.

10.16 Considering the evidence given by the Appellant, and the Respondent, the Tribunal cannot conclude that the premises are ordinarily used by inhabitants of the locality generally as the evidence clearly states that tourists visit the property also.

**(v) Are the purposes for which the premises are ordinarily permitted to be used “recreational or otherwise of a social nature”?**

10.17 The Subject Property is used as a tourism information desk with the history of Ardara displayed on the walls in the hall and the upstairs room being used on request to show visitors films of Ardara. While tourism activities may be considered to be of a ‘recreational’ nature (insofar as they are usually done for enjoyment when one is not working), the Tribunal finds that tourism activities are not ‘social’ in nature in the sense in which that word is used in the definition of a community hall because the word ‘social’ means people gathering together and meeting and mixing together.

10.18 Mr. McCahill’s evidence was that the hall was used for dance classes on different days of the week and was used by schools for performing their plays at the weekends. He said that the upstairs room was used for meetings by many different groups. The Tribunal finds that the community hall is open to being used by various different people for various different activities including classes, meetings and other recreational activities in which inhabitants of the locality participate on a regular basis but that this is ancillary to its use as a heritage centre and for the promotion of tourism in the area and tourism and heritage activities.

**Are the premises in question used exclusively as a community hall?**

10.19 The Tribunal has already found that the Subject Property is not being used as a community hall, based on its evidence regarding the main activities happening there that being that the Subject Property is a tourism centre. The Tribunal finds as there are other activities related to tourism being carried out there the hall is not used exclusively as a community hall.

10.20 The Tribunal finds that, based on the foregoing, the Subject Property is not a 'community hall' within the meaning ascribed in section 3 of the Act.

10.21 The Subject Property is used as a heritage centre and for the promotion of tourism in the area and tourism and heritage activities do not come within the definition in section 3 of the Act.

10.22 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 Subject Property is exclusively used for the as a community hall.

10.23 The Tribunal concludes, for the following reasons, that the claim for exemption under paragraph 15 of Schedule 4 must fail.

#### **DETERMINATION**

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