Appeal No: VA18/4/0021

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

VERE LENOX CONYNGHAM **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 5013676, Event Space at 13C Anaverna, Ravensdale, Dundalk, County Louth ("the Property")

B E F O R E
Carol O'Farrell – BL **Chairperson**
Kenneth Enright - Solicitor **Member**
Michael Brennan – BL, MRICS **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JULY 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 13th day of November 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 €24.00.

1.2 The grounds of appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "*The valuation is incorrect and property should have been excluded from the relevant valuation list.*"

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

2. VALUATION HISTORY

2.1 This appeal arises from a decision of the revision manager in the exercise of his powers pursuant to section 28 of the Valuation Act 2001 ("the Act") to value the property and to include it on the valuation list as a separate relevant property.

2.2 On the 29th day of August 2018 a copy of a valuation certificate proposed to be issued under section 24(1) of the Act in relation to the property was sent to the Appellant indicating a valuation of €24.00.

2.3 A valuation certificate issued on the 16th day of October 2018 stating a valuation of €24.00.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing remotely, on the 11th of April2022. At the hearing, the Appellant appeared in person and the Respondent was represented by Mr Vallely BL instructed by the Chief State Solicitor and Mr. Mark Gibbons, Valuer, of the Valuation Office was called to give evidence.

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 oath, 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 located 11 kilometres from Dundalk, near the village of Ravensdale, in a rural area on the Cooley peninsula.

4.3 It is an L-shaped loft area measuring 177.19m^2 comprising part of the first floor of a stone-built, former stable complex, dating from around 1790. It is located on the Anaverna Estate, a property owned and occupied by the Appellant.

4.4 The subject property stands adjacent to a dwellinghouse.

5. ISSUES

5.1 The issue raised by the amended Notice of Appeal is whether the Property is "Relevant Property Not Rateable" under Schedule 4 Paragraph 15 of the Act by virtue of its being a "*building or part of a building used exclusively as a community hall*."

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.

6.2 Section 13 of the Act states:

13.—The Commissioner shall provide for the determination of the value of all relevant properties (other than relevant properties specified in Schedule 4) in accordance with the provisions of this Act.

6.3 Section 15 of the Act states:

15.— (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.

6.4 Schedule 4 of the 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 property specified in paragraph 15 Schedule 4 being:

15.—Any building or part of a building used exclusively as a community hall.

6.5 Section 3 of the Act states:

(1) In this Act, unless the context otherwise requires—
"community hall" means 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;

6.6 Section 28(4) of the Act provides as follows:

(4) A revision manager, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection, or of comparable powers under the repealed enactments, in relation to the property warrants the doing of such, may, in respect of that property—

(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—

(i) amend the valuation of that property as it appears on the list,
(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,
(iii) amend any other material particular in relation to that property as it appears on the list,

(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—

(i) carry out a valuation of that property, and
(ii) include that property on the list together with its value as determined on foot of that valuation.

7. PRELIMINARY ISSUES

7.1 Two preliminary issues were heard and dealt with by the Tribunal.

7.2 The first issue concerned the Respondent's objection to the admission of the document called "Comments, Refutations and Evidence by the Appellant" which contained the Appellant's written replies to the Respondent's legal submissions. Mr Vallely, for the Respondent, stated that on 14th of March the Appellant was given leave to amend his notice of appeal, following which the Respondent made its legal submissions. The Appellant's subsequent submissions were, said Mr Vallely, made without leave or direction from the Tribunal and contrary to the Rules. Mr Lenox-Conyngham said that what he submitted were comments on Mr Vallely's legal submissions, written down for the convenience of the Tribunal. He stated he was willing to withdraw the written submissions and that he could, in any case, deal with the issues in his oral evidence.

7.3 The Tribunal ruled that it would not admit the replying submissions of the Appellant because they were made out of time and without leave. The Tribunal in making its decision noted that there was no prejudice to the Appellant because he had indicated he was willing to withdraw his submissions as he would be able to make his points in his oral submissions in any event.

7.4 The second issue was whether the Appellant was pursuing the ground of appeal set out in his Notice of Appeal and Précis of Evidence that the subject property was "Relevant Property Not Rateable" by virtue of the provisions of Schedule 4 paragraph 17 of the 2001 Act. The Appellant confirmed he was not pursuing this ground of appeal and he was relying only on the provisions of Schedule 4 paragraph 15.

8. APPELLANT'S CASE

8.1 The Appellant, having noted the exemption from rates for a "community hall" in Schedule 4 paragraph 15 of the Act, referred to the definition of "community hall" in Section 3 of the Act. He stated that in the light of this definition the subject property was a community hall. He then went through the various parts of that definition and described, by reference to his précis of evidence, how the events, both recreational and social involve local participants and audiences, which take place on subject property, as he saw it, fitted the definition.

8.2 The Appellant, referring to the photographs in his précis, said the subject property was, from a structural point of view, "*a hall or similar building*." He stated that it was owned by him and was not the premises of a club.

8.3 Quoting paragraph (a) of the definition of "community hall" section 3(1)(a) of the Act, the Appellant said the subject property was not used for profit or gain. He referred the Tribunal to the accounts from 2016 to 2020 contained in his précis of evidence. The accounts listed various concerts and plays for the stated years, eleven of which took in money at the box office. The précis provided details of the box office receipts for these eleven events. The gross receipts were in all cases modest, ranging from €500 taken in for an event called "Ciara Casey and Daniel" on 2 September 2018 to €1,040 for a "Film and Talk about Pushkin" on 22 June 2019. In addition to these two events the subject property hosted and charged admission for concerts by the Camarilla Ensemble, Michael McHale, Jennifer Murphy and Ivan Illic as well as Epiphany plays and plays about the Brontes.

8.4 In each case the Appellant provided details of the amounts paid to the artist (where that applied), expenses and sundries, as well as the annual cost of insurance, piano tuning and heating. The Appellant said that he usually promises 75% of the box-office to the artist or performer but often gives them more, especially when the audience numbers are lower than expected. The Appellant showed the net receipts for each event, the most successful in monetary terms being the Epiphany Play on 6 January 2019 which came out at showing an excess of receipt over expenses of €245. The Appellant said that he used to get a grant of €300 from Louth County Council for general expenses but has not received this in the last 5 years.

8.5 The Appellant's accounts kept track of what he called the "notional float," the amount of money that would remain in the box if he left it untouched between concerts. The float is carried forward from one concert to the next. Between the years 2016 to 2020 the float reduced from €0 to minus €400 which, the Appellant said, showed a loss or deficit of €400 in 5 years.

8.6 In addition to these paid-for events, the Appellant referred to his précis of evidence and the details set out therein of other activities and events which have taken place in the subject property without charge or where a charge was made with the proceeds going to charities or community causes. These included:

- Music lessons and master classes for piano players, a bassoon player and a group of aspiring bodhrán players
- Meetings of Ravensdale Cub scouts
- Set dancing for a local group
- A play based on James Joyce's short story "The Dead," produced by the Appellant and Sharon McArdle
- A concert by a guitarist, Pat Coldrick, in memory of the Appellant's recently deceased son, arranged by his son's local friends and with the proceeds going to the local school
- Twelve performances in 2019 of a play for children organised by An Táin Arts Centre

8.7 The Appellant referred to the second part of the definition of "community hall" contained in paragraph (b) of section 3(1) of the Act which provides that if the property is to qualify as a community hall it must be occupied by a person who uses it or allows 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

The Appellant argued that the various events held in the property, as set out in his précis and in his oral evidence to the Tribunal, meet the requirements of both (i) and (ii).

8.8 In his replies to Mr Vallely's cross-examination, the Appellant stated that the subject property was available for use all year round. He said a Christmas concert was held every year with other concerts taking place occasionally. He said the local Boy Scouts used to avail of its facilities every Saturday morning and that when the set-dancing group used the subject property they had conducted their activities on Tuesday evenings.

8.9 In response to questions from Mr Vallely as to whether most of the events held in the subject property could be described as "artistic endeavours," the Appellant – making reference to the Boy Scouts' use of the property by way of example – described the events as "recreational and social." The Appellant referred to and read out extracts from an email written by a local person outlining how events at the property enhanced the lives of "local senior residents" and "young children" and provided opportunities for "young artists." The Appellant assured Mr Vallely that use of the property was not confined to "*a high brow artistic lot*" but that all sorts of musical events, plays and other things take place there.

8.10 Replying to Mr Vallely's question as to whether any other local community groups use the property, the Appellant said he had offered the property to the Men's Shed in Cooley after that group lost its own premises. He said the Men's Shed subsequently secured new funding and consequently did not need to take up the offer.

8.11 The Appellant in his evidence under cross-examination mentioned on a number of occasions the Tribunal's decision in *National Basketball Arena v Commissioner for Valuation VA08/5/073* referenced by Mr Vallely in his legal submissions as the "classic example" of a community hall within the meaning of the Act. The Appellant contrasted

what he saw as mostly basketball-focussed activities that took place at that property for the benefit of basketball players with the breadth of activities with the ~~and~~ events that take place at his own property for the benefit of the local community.

8.12 The Appellant acknowledged to Mr Vallely that the estate is privately owned and was part of the Anaverna Demesne, expressing his view, at the same time, that this fact had no bearing on whether the property was a community hall under the terms of the legislation.

8.13 Mr Vallely put it to the Appellant that the subject property was not run on a non-profit basis, that it advertises on its website as holding "events" and that it seeks to generate business. The Appellant replied that concerts were held at the property and that details are put up on the website. Referring to the legislation, the Appellant said that the subject property was not used "*primarily for profit or gain*." He repeated his evidence that when concerts are held at the property 75% of the door receipts go to the artist and 25% are retained towards meeting some of the expenses. He said there were a number of activities that were not charged for at all, mentioning the poetry readings and the Boy Scouts' use of the property.

8.14 The Appellant acknowledged to Mr Vallely that he did not on his website or promotional literature describe the property as a community hall. He went on to say, referring to what Mr Vallely had presented as "the classic case," that he thought it unlikely the National Basketball Arena did so either.

8.15 Mr Vallely put it to the Appellant that if a person on the street were asked to describe the property, they would not say it was a "community hall." The Appellant agreed but replied that the person on the street would not be likely to call the National Basketball Arena a community hall either. He also said he had read out the relevant legislation to a number of local people familiar with his property and its use and everyone agreed that, under the terms of the legislation, the property was a community hall. The Appellant expressed the view that the definition in the legislation "*exactly describes what happens in Anaverna without any doubt whatever*."

8.16 In response to questions from the Tribunal, the Appellant said that most of the high profile events that take place in the property are organised by him but that other events, including the Christmas concert, the set-dancing and the Boy Scouts meetings are organised by others. Referring to and quoting from emails he had received, he outlined a number of other events organised by people other than himself, including poetry readings, a 2021 show based on The Hound of the Baskervilles, a reading event in 2017 and a Russian Family Day in 2018. In addition, he said that quite often the property is used by people rehearsing plays, sometimes for weeks at a time, in which his only involvement is saying "*the place is available*."

8.17 He said that the property as a whole has been used by the Boy Scouts or Cub Scouts in one way or another since 1990s. He himself, he said, was a scout leader at one time but that, more lately, as a result of the difficulty in finding leaders, the Cub Scouts have been in abeyance for at least 5 years. The Boy Scouts still use the woodlands adjacent to the

subject property (and did so throughout the Covid period) but it was, said the Appellant, at least two years prior to Covid since they last used the subject property itself.

8.18 The Appellant said that set-dancing took place every Tuesday for years and years but stopped before 2018 only because of the advanced age of the participants.

8.19 When asked if there were other local groups that used the property, the Appellant referred to the poetry readings at which both local and non-local poets would read their work.

9. RESPONDENT'S CASE

9.1 Mr Gibbons' précis of evidence presented a plan and photographs of the subject property. He described it as part of the first floor of a stone-built, former stable complex, dating from around 1790. Mr Gibbons identified the "function room" and ancillary space as blocks (a) to (d) on the plan, an L-shaped area of 177.19m^2.

9.2 Mr Gibbins said he did not believe that the subject property was a community hall for the purposes of Schedule 4, paragraph 15 and that accordingly, it was relevant property under Schedule 3 of the Act.

9.3 This opinion, he said, was based on his view that the property was used for profit and gain. He said that the fact that money was taken at the box-office with 75% of proceeds going to an artist meant the property was used for the profit and gain of these individuals.

9.4 Referring to paragraph (b) (i) of the definition of "community hall" in section 3(1) of the Act – the requirement that the use of the property should involve, on the terms set out in the paragraph, participation of the inhabitants of the locality generally – Mr Gibbons stated that he would see the property as private property and that the Appellant had exclusive occupation of it. Accordingly, in Mr Gibbons' view, the property did not come under the terms of that part of the definition.

9.5 Responding to questions from the Appellant, Mr Gibbons reiterated on a number of occasions the reasons he concluded that the property was not a community hall. Firstly, that the property was a private property, the Appellant had exclusive ownership and occupation of it and, secondly, that the property had a commercial element in that it was advertised, money was taken at the door and artists were paid. Mr Gibbons also added that the property was attached to a dwelling and that generally a community hall would be a stand-alone property.

9.6 Over the course of his cross-examination of Mr Gibbons, the Appellant read out a number of extracts from the relevant legislation and asked Mr Gibbons if, in the light of those extracts and taking into account the Appellant's use of the property as given in evidence, Mr Gibbons still held to his view that the property was not a community hall.

9.7 The Appellant referred Mr Gibbons in particular to paragraph (b) of the definition of community hall in section 3(1) emphasising that the provision referred to a property

"*occupied by a person who ordinarily uses it, or ordinarily permits it to be used*" for the stated purposes in sub-paragraphs (i) and (ii), as well as to paragraph (a) thereof which provides that if a property is to qualify as a community hall it must not be used "*primarily"* for profit or gain.

9.8 Mr Gibbons remained firm in his opinion that the property was not a community hall for the reasons he had given.

9.9 Mr Gibbons stated in his evidence that he carried out his inspection on the 19 July 2018 as a Revision Officer following the receipt of a communication from Louth County Council that there had been a change of circumstances to the effect that the property was being used as a performance space, a wedding venue and theatre space. It was put to Mr Gibbons by the Appellant that the property was never used as a wedding venue with the single exception of the occasion on which he hosted the wedding of his cousin Kate, who – as the Appellant had stated (in a document submitted by the Respondent in his précis) – used to live in the stable yard adjacent to the subject property.

10. RESPONDENT'S SUBMISSIONS

10.1 Mr Vallely referred the Tribunal to his written legal submissions dated the 31 March 2022.

10.2 His submissions referred to *Dublin Public Radio Association Ltd. v Commissioner for Valuation VA05/3/001* from which appeal he quoted some extracts, including the following:

"In this case the term "community hall" is directed to the public at large, rather than a particular class such as a professional body of people. Accordingly, the term "community hall" must be understood in its ordinary and colloquial sense. In other words what the man in the street would understand by the term "community hall."

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. 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, kitchen, tearoom, or changing rooms. 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.

This does not take from the fact that a "community hall" could well be an integral part of a large building which is used for other purposes. The "community hall" itself has to be used exclusively as such"

10.3 In his oral submission, referring to the caselaw, Mr Vallely said that the person in the street would not regard the subject property as a "community hall."

10.4 Mr Vallely also referred to the National Basketball Arena case which he described as "*the classic example of where the Tribunal did find a community hall within the meaning of the Act."*

10.5 In that case, Mr Vallely said in his written submissions, there was "extensive evidence of usage by large numbers of local organisations and community organisations comprising a significant number of inhabitants of Tallaght and the surrounding locality. Mr Vallely invited the Tribunal to contrast this with what occurs at the subject property.

10.6 Referring to pages 3 and 4 of the Tribunal's decision in that case, under the heading "The Appellant's Case", Mr Vallely said that the evidence presented was that the basketball arena was open some 340 to 350 days out of every year and that it was used every day by local schools and offices. The arena, according to the appellant's witness in that appeal, was used by various basketball clubs and teams from Tallaght and elsewhere, day and night throughout the year. In addition, the arena hosted high profile national and international basketball events as well as various basketball events for non-Irish communities living in the locality.

10.7 Mr Vallely also referred the Tribunal to *Shannon Swimming & Leisure Centre v Commissioner for Valuation VA12/1/004* in which case, he said, the Tribunal found that the property in that appeal was primarily a leisure centre and did not meet the physical attributes of a community hall.

10.8 In the case of the *Irish Parachute Club v Commissioner for Valuation VA12/2/008*, Mr Vallely said the users of the relevant property were found to be a specific grouping and accordingly the property was held not to be open to the wider community.

10.9 Referring to paragraph (b) of the definition of "community hall" in section 3(1) of the Act, Mr Vallely submitted that "*the key difference between what Anavarna (sic) is and a community hall is that the events are actually run and organised by the Appellant and there is a distinct absence of local community groups being involved or participating in any way*".

10.10 Mr Vallely further submitted, "*no matter what or how wide an interpretation is put on community hall, this building cannot be said to be a community hall or similar building, within the meaning of Section 3 of the Act. The fact that it is used only occasionally or ad-hoc also militates against it being considered a community hall*."

10.11 Mr Vallely referred to what he called in his written submission "*the wide variety of events such as film, talks about Pushkin, Bronte plays and various concerts, charitable and non-charitable*" but said that the property is run by the Appellant in a commercial way and that it is not used by local community groups or sporting associations. Mr Vallely acknowledged there was "*passing mention*" of local groups rehearsing at Anaverna and artists giving painting lessons. He said the subject property was part of a privately-run

estate which distinguished it from the National Basketball Arena, which premises he understood to be operated by a not-for-profit body.

10.12 Mr Vallely said that in further contrast with National Basketball Arena, the subject property was no longer used by "*wider community groups*" such as the scouts and set-dancers, although he noted that the scouts remain active in the woods. Mr Vallely also acknowledged in his oral submissions the Appellant's evidence about his offer to the Men's Shed, which was not taken up. Mr Vallely observed that this narrows the use to a number of artistic groups including the poets' groups which, he said, involve some local people. On that basis, Mr Valley expressed doubt whether there was a wider community involved at all as distinct from a particular artistic group from within the area and further afield. He asked if there could be a community hall without a community.

10.13 Mr Vallely said the subject property advertises online and is commercial in nature. It was, he said, a venue or an event-centre. He referred to the extracts from the website presented in Appendix 5 (n/a to public) of the Respondent's précis. He said there was no mention of the word "community" in any of the literature. He noted the admission charges for some events and argued that in the light of these charges there was a question about whether the property is run for profit or gain.

10.14 In his oral submissions, Mr Vallely noted that the property was not a stand-alone property as it was attached to a dwelling.

10.15 In the light of these arguments, Mr Vallely urged the Tribunal to reject the appeal.

11. APPELLANT'S SUBMISSIONS

11.1 The Appellant said that Mr Vallely and Mr Gibbons had relied on opinions but that they had not produced a single reason, by reference to the actual legislation, as to why the property should not qualify as a community hall.

11.2 He said that the idea put forward by the Respondent that a member of the general public would not call the property a community hall was not relevant as it was not a requirement of the legislation.

11.3 The Appellant went on to say that the Respondent's position was "*completely blown-out*" by the *National Basketball Arena* case. He maintained that, in contrast to the activities at the National Basketball arena, the concerts and events held at the subject property involve the participation of a wide section of the community. He said that virtually every child in the area has attended at least one of the concerts held on the property.

11.4 The Appellant emphasised that the Tribunal should not be concerned with anyone's opinion as to what constitutes a community hall but should focus instead on the definition set out in the section 3 of the Act. He said that if the opinion of the person on the street was of significance, the National Basketball Arena would be unlikely to be regarded as a community hall.

11.5 The Appellant noted the reference in the Act – paragraph 15 of Schedule 4 – to "*part of a building*" and said, in the light of this, that there is no reason the property should be denied the status of a community hall merely because it is attached to, or part of, another building.

11.6 The Appellant stated that the loft at Anaverna "*meets exactly*" the definition of a community hall in section 3(1). He further argued that it "*meets completely*" the definition of community hall in the *Dublin Public Radio* case as well as what he described as the "*very much wider criteria*" used in the *National Basketball Arena* case.

11.7 He urged the Tribunal to rule that the subject property was a community hall within the meaning of the Act and to allow his appeal.

12. FINDINGS AND CONCLUSIONS

12.1 In order to decide if the subject property meets the definition of a "community hall" within the meaning of section 3(1) of the Act, the Tribunal must answer the following questions:

I. Is the property a hall or similar building other than the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act, 1904? The second part of this definition can be disposed of immediately as it is common case that the property is not the premises of a club.
II. Is it used primarily for profit or gain?
III. Is it 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?

If the property does meet the definition of "community hall," then a 4th question must be answered to meet the requirements of Paragraph 15 of Schedule 4:

IV. If the property is used as a community hall, is it exclusively so used?

12.2 If Questions I and III are answered in the affirmative and Question II in the negative then the property is a community hall. If the property is a community hall and Question IV is also answered in the affirmative then, under Section 15 of the Act, and paragraph 15 Schedule 4, the property is Relevant Property Not Rateable.

12.3 It will be noted that Question I relates to the physical properties of the building and Questions II, III and IV relate to the nature of its use and occupation.

12.4 Before answering these questions, the Tribunal notes Mr Vallely's references to the decision of the Tribunal in the *Dublin Public Radio* appeal and his questions to the Appellant as to whether it was his view that "*the person on the street*" would regard the subject property as a community hall.

12.5 In the *Dublin Public Radio* case, the Tribunal had regard to certain principles of statutory interpretation and referred, by way of paraphrase, to two of the three authoritative

principles of interpretation enunciated by Henchy J. in *Inspector of Taxes v Kiernan* [*1981] IR 117 ('Kiernan')* in order, apparently, to consider the meaning of the term "community hall". It is worth quoting in full the paragraph from the *Kiernan* judgment in which Henchy J. sets out the first of those principles:

> *"Leaving aside any judicial decision on the point, I would approach the matter by the application of three basic rules of statutory interpretation. First, if the statutory provision is one directed at the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given in its ordinary or colloquial meaning."*

12.6 Henchy J. went on to outline the second rule – relating to strictness of construction of penal and taxation statutes, not referred to in the *Dublin Public Radio* judgment – and the third, summarized by the Tribunal in *Dublin Public Radio* to the effect that a judge should rely on his own experience before resorting to dictionaries.

12.7 In the light of Henchy J.'s statement that the expression under consideration "*should be given its ordinary or colloquial meaning*," the Tribunal in *Dublin Public Radio* said, in one of the passages quoted by Mr Vallely in his submissions, that "community hall*" should be interpreted as "the man in the street*" would interpret it.

12.8 However, the Act contains its own guide to interpretation in section 3 and, within that section, is a definition of the term "community hall".

12.9 Murnaghan J. in *Mason v Levy [1952] IR 40, at p. 47* makes it clear that where a piece of legislation contains a guide to interpretation, that guide should be adhered to:

> *"Where a statute…defines its own terms and makes what has been called its own dictionary, a court should not depart from the definitions given by the statute and the meanings assigned to the words used in the statute."*

12.10 Henchy J. says as much in the passage quoted above at paragraph 12.5 above, when he makes it explicit that it is only "*in the absence of internal evidence suggesting the contrary*" that the word or expression should be given its ordinary or colloquial meaning. Moreover, section 20(1) of the Interpretation Act 2005, which enactment codifies much of the case law on the subject, puts the position beyond doubt:

> *20 (1) Where an enactment contains a definition or other interpretation provision, the provision shall be read as being applicable except in so far as the contrary intention appears in—*
> *(a) the enactment itself, or*
> *(b) the Act under which the enactment is made.*

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12.11 No contrary intention appearing in the Act, the Tribunal is obliged to interpret the term "community hall" according to the words used in the definition contained in section 3(1).

As the Tribunal now proceeds to answer Question I, it must be noted that the first part of the definition of "community hall" contains within it, in a rather circular way, the word "hall" and that there is no explicit definition of the word "hall" in the Act.

> *"'community hall' means a hall or similar building…."*

The word "hall" must be given its plain and ordinary meaning interpreted in the particular context in which it is used. A word "hall" in its natural and ordinary meaning is a large room in a building. As mentioned at paragraph 12.3 above, it is the Tribunal's view that the determination of the question whether the property is a "*hall or similar building*" depends on the physical attributes of the property.

12.12 The Tribunal was provided by Mr Gibbons with an unscaled floor plan, measurements of the area identified as blocks a, b, c and d, and internal and external photographs of the subject property. The photographs of the internal space "Pic 3" on page 1 of the Appellant's précis and the first floor photograph (Block A) on page 9 of the Respondent's précis show a rectangular space with a wooden floor and a hip roof supported by wooden beams. At one end of the space is a raised platform or stage which, by the looks of it, is easily removable and certainly not of a structural nature. In the Appellant's photograph the room is empty, in the Respondent's photograph it is clearly set up for a performance of some kind: it has six visible rows of chairs set out, four chairs on each side of a wide middle aisle, well-spaced, and facing the platform on which stands a piano. In addition to the area shown in the two photographs, roughly identical to the area which Mr Gibbons identifies as Blocks "a" and "b" on his sketched plan at page 31 of his précis, there are two other smaller areas, labelled "c" and "d" on Mr Gibbins's sketch and shown, or partly shown, in "Pic 3" in the Appellant's précis. It was the Appellant's evidence that all of these areas are used for the events and activities he describes. From the photographs put before the Tribunal, one can readily see how the property has capacity to accommodate a variety of different activities, from dancing to theatrical performance to the games played by Cub Scouts. The Tribunal finds as a fact that the property constitutes "*a hall or similar building*."

12.13 To deal with one additional point made by the Respondent, there is no requirement that a "hall or similar building" be a stand-alone property. As the Appellant pointed out in his oral submissions, paragraph 15 of Schedule 4 makes reference to *"[a]ny building or part of a building*…". The fact that the subject property is connected to a dwellinghouse on a private estate does not of itself preclude the property from being designated as a community hall within the meaning of the legislation.

12.14 For the above reasons, Question I is answered in the affirmative.

12.15 Question II concerns whether the property is primarily used for profit or gain.

12.16 There is little, if any, dispute between the parties as to the facts concerning the use of the property. Certain events and activities, such as the plays and some musical performances, incur a box-office charge; certain other activities, such as the poetry readings, the painting lessons, the music lessons, the play readings and rehearsals, the set-dancing and the scout

meetings, do not. Where income is received the usual practice is for 75% of the proceeds to be paid to the artist or performer with 25% going back into the running costs of the property. In some cases, all of the door proceeds go to charity.

12.17 Mr Gibbons expressed the view that because money is taken at the door from time to time and artists and performers receive payment, this means that the property is used for profit or gain. The Tribunal is of the view that if this were the criterion on which the question were to be determined, there would be few, if any, halls in the country that would meet the definition of a "community hall" in the Act. Most community halls run events, from time to time, where artists are paid to perform. Consequently, it is necessary for these halls to take money at the door.

12.18 The fact that the Appellant advertises these events online, does not of itself mean that the property is used primarily, or at all, for profit or gain. Moreover, while it is clear from an examination of the screenshots from the Appellant's website, presented on pages 27 to 29 of the Respondent's précis, that the Appellant does advertise specific events, this is not the same as advertising the property as a "venue" or as an "event-centre" *per se*. The Appellant is giving notice to the community of events that are to take place at the property, not advertising the property as a space to host future events, so that he might acquire, as it were, future business. The Appellant in his précis and in his oral evidence was also very clear that the property was never advertised as a wedding venue, notwithstanding Mr Gibbons' evidence that this was one of the alleged changes in circumstance that prompted the local authority to request the revision in the first place.

12.19 The Appellant does not himself take a share of the very modest door proceeds, re-investing, as he does, the 25% or so left over after the performers have been paid. The Tribunal is satisfied and finds as a fact that he does not make a personal profit or monetary gain from what the use of the property and his evidence, which is accepted, was that over the years 2016 to 2020 the running of the property incurred a deficit of €400.

12.20 Even if the fact that money is received from time to time and performers are paid does mean that that the property is used for profit and gain, it is certainly not the case, based on the evidence presented, that it is used *primarily* for profit and gain.

12.21 Thus, Question II is answered in the negative.

12.22 Question III concerns whether the property is ordinarily used, or permitted to be used, firstly, for purposes which involve participation by inhabitants of the locality generally and, secondly, for purposes which are recreational or otherwise of a social nature.

12.23 Before answering the two parts of this Question, the Tribunal refers to the points put forward in the evidence of Mr Gibbons and the submissions of Mr Vallely to the effect that because the property is owned and occupied by the Appellant, a private individual, the property cannot be a community hall. It is the Tribunal's view that the identity or legal status of the owner and occupier of the property has no bearing on the question of whether the property meets the definition of a "community hall." There is no condition in the legislation that the property be owned by, for example, any trust, company, committee

or public body, merely that the occupier, whoever she, he, or it might be, ordinarily uses it, or ordinarily permits it to be used, for both of the purposes designated (i) and (ii) in paragraph (b) of the definition in section 3(1).

12.24 The Appellant gave evidence of an array of events and activities involving the inhabitants of the area as both active and passive participants. The former as participants in plays, play rehearsals, monthly play readings, poetry readings, art classes, music classes and charity concerts, not to mention the activities of the scouts and the set-dancers; the latter as audience members for the plays and concerts. The Tribunal accepts the Appellant's evidence in regard to the participation of local inhabitants in these activities and would observe that, given the very rural location of the property – 11 kilometres from Dundalk and on the Cooley Peninsula – as well as the nature of most of the activities that take place at the property, that local participation would necessarily, generally, predominate.

12.25 The Appellant was keen to resist any implication that because a large number of the activities that take place at Anaverna – the plays, the poetry, the music – could be placed under the umbrella term "the Arts," meant that they involved or appealed only to a limited coterie within the community. The Tribunal would likewise be sceptical of any suggestion that because many of the activities are of an artistic or cultural nature or, to put it another way, using Mr Vallely's example, the fact that the property is not currently availed of by any sporting associations, it necessarily follows that the said activities would appeal only to some kind of artistic elite, and be of little interest to the inhabitants of a rural locality generally. Such a suggestion would itself be elitist.

12.26 It is clear from the evidence, lest there remain any intimation to the contrary, that the property is not run as some kind of artistic salon for the private amusement of the Appellant and a certain artistic set. Mr Vallely asked the Appellant if the property was used by an unemployed men's group. The Appellant confirmed that he had offered it to the Men's Shed in Cooley after they lost their own premises but, as it turned out, they did not take up the offer, having secured funding for another property.

12.27 Similarly, the property was for many years used by the Cub Scouts for their meetings. The property is no longer so used, not because the Appellant denied the Cub Scouts access but because the Cub Scouts are no longer active in the area. The property remains available to their elder counterparts, the Boy Scouts, but they currently use only the neighbouring woods.

12.28 Like the scouts, the set-dancers – who ceased their use of the property in 2018 – did so, not because the property was no longer available to them, but for reasons of their own.

12.29 In the light of the above, and the evidence presented about all the various activities and events, the Tribunal can say, by way of reply to the first part of Question III, that the property is used for purposes which involve participation by inhabitants of the locality generally.

12.30 The second part of Question III concerns the type of the activities that take place at the property: are they of a recreational or otherwise social nature?

12.31 This question has probably been dealt with *en passant* in the foregoing paragraphs but it as well to make the answer explicit. Yes, virtually all of the activities that take place at the property – there is no need to list them again – are of a recreational and social nature. They are, in addition, and as the Appellant pointed out in his evidence, much more various than those that occur at the National Basketball Arena. Undoubtedly, these activities amuse and divert the people who participate in them during their leisure hours; and who do so, necessarily, in a state of friendly companionship. Thus, they are, as aforesaid, of a recreational and social nature.

12.32 In light of the above and the fact that Questions 1 and III have been answered in the affirmative and Question II in the negative, the Tribunal decides that the subject property is a community hall.

12.33 Question IV then remains to be answered. Is the property used exclusively as a community hall? With the possible exception of the occasion upon which the Appellant hosted a wedding for his cousin, who formerly lived on the estate, there was no evidence adduced as to the property being used otherwise than as a community hall, accommodating the various events and activities, details of which have been recited at length in this decision. It would be unreasonable to declare that this once-off wedding event, the date of which was not given in evidence, should negate many years of otherwise continuous, exclusive use as a community hall. Accordingly, Question IV is answered in the affirmative.

13. DETERMINATION:

The Tribunal holds that the subject property is a community hall occupied by the Appellant who ordinarily uses or permits it to be ordinarily used for the purposes specified in (b)(i) and (ii) of the definition of community hall in section 3(1) of the Act. Accordingly, under the provisions of section 15(2) and Schedule 4 of the Act, the subject property is Relevant Property not Rateable.

For the above reason, the Tribunal allows the appeal and determines that the property ought to be excluded from the valuation list.