

**Appeal No: VA20/4/0025**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Tallaght Oakview Ltd t/a Oakview Tallaght**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 5020225, Miscellaneous at Oakview Tallaght Childcare, Greenhills Road, Dublin 24.

**B E F O R E**

**Majella Twomey - BL**

**Fergus Keogh - MSCSI, MRICS**

**Rowena Mulcahy Solicitor, C.Arb. FCIArb.**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 30<sup>TH</sup> DAY OF MARCH, 2023**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 17<sup>th</sup> day of November, 2020 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 €49,100.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

*“1. Orchard House Ltd had been erroneously deemed by the Commissioner of Valuation to be the occupier of the property. Tallaght Oakview Ltd has taken over the provision of services to the Technological University Dublin – Tallaght, which is the owner and occupier of the property. Therefore, seeking exemption.*

*2. Valuation is excessive have regard to VA 17/5/345 Grian na nÓg and other decision of the Valuation Tribunal relating to the same rating authority.*

*3. Occupied by TU Dublin an educational institution and used exclusively by it for the provision of the educational services and otherwise than for private profit.*

*4. There has been no “material change of circumstances” since a valuation under section 19.*

*5. The property does not constitute newly erected or newly constructed relevant property.”*

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 5<sup>th</sup> day of December 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 Subject Property was sent to the Appellant indicating a valuation of €49,100.

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 21<sup>st</sup> day of October, 2020 stating a valuation of €49,100.

2.4 The date by reference to which the value of the Subject Property, the subject of this appeal, was determined is the 15<sup>th</sup> day of September, 2019.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing (‘the Hearing’) held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2 on the 7<sup>th</sup> day of March 2022 and resumed by remote hearing on the 29<sup>th</sup> day of June 2022. At the Hearing, the Appellant was represented by Mr. Proinsias O’Maolchalain BL, with Mr. Paul Mooney MSCSI MRICS Dip Rating of Avison Young called upon to give valuation evidence. The Respondent was represented by Ms. Rosemary Healy-Rae BL and Mr. Sean Donnellan B.Sc. (Hons) Property Valuation & Management, MSCSI, MRICS of the Valuation Office was called upon to give valuation 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/her précis as his/her 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 the grounds of Technological University Dublin [**hereinafter TUD**] – Tallaght Campus, just off the Greenhills Road, Dublin 24.

4.3 The Subject Property is a single storey, detached, purpose built crèche in good condition which was newly constructed, and opened, in 2008. The crèche has a capacity for 46 no. children.

4.4 The floor area of the Subject Property had been recorded as 327.50 m<sup>2</sup> but at the hearing the Tribunal was advised that it had been agreed between the parties that the floor area of the Subject Property is 322 m<sup>2</sup>

4.5 The Subject Property is owned by TUD.

4.6 The Appellant operates a crèche in the Subject Property under the terms of a Crèche Operation Agreement with TUD dated 11 December 2017 (“the Operation Agreement”) for a period of 3 years with an option on the part of TUD to extend the period for a further period of 2 years.

## 5. ISSUES

5.1 The issue before the Tribunal is whether the Appellant [**hereinafter Oakview**] is in beneficial occupation of the Subject Property.

5.2 If the Tribunal finds that Oakview is in beneficial occupation, the question of quantum arises.

## 6. RELEVANT STATUTORY PROVISIONS:

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.*

## 7. APPELLANT’S CASE

### ***Evidence of Catherine Bruen:***

7.1 Ms Bruen, giving evidence, said that she was the Chief Operating Officer of the Institute of Technology Tallaght [ITT] now TUD which was established in 1997 and which provided education in a disadvantaged area. She said that ITT sought an on-site crèche and made an application for funding to An Pobal. Following the said application, the ITT received funding for an on-site crèche.

7.2 Ms Bruen said that childcare was a barrier for students attending ITT as it was in a DÉIS area. She said that once the funding was secured, the crèche opened in 2008. She gave evidence that the crèche must remain open for 20 years under the conditions of the funding. Furthermore, the evidence was that a hierarchy of students was to be allowed to use the crèche, depending on the requisite criteria.

7.3 In 2008, An Cósán won the public tender to run the crèche for the first two terms. They invoiced ITT as ‘Shanty Education’.

7.4 The evidence was that there was a special childcare fund available to students attending ITT (now TUD). A student who had a child in the crèche would pay the fees and then apply to ITT for funding. This was seen as a big selling point for potential students and was an integral part of ITT (ITT subsequently amalgamated with other third level institutions to form TUD). It was emphasised that ITT/TUD did not pay 100% of the costs. Rather, it was a subsidised system. Students must be in good financial standing to fulfil the criteria.

7.5 Ms Bruen referred to the fact that there was a crèche operation concession agreement in place with Oakview. She said that TUD closely interacts with the crèche operator. She said there were monthly meetings between the two entities.

7.6 The evidence was that the crèche is an integral part of TUD.

7.7 On cross-examination by Ms Rosemary Healy Rae BL, for the Respondent, Ms Bruen was asked how much the An Pobal grant was and Ms Bruen said that it was worth €1,000,000. However, if the crèche is not kept open for the requisite period, some of that money will have to be re-paid. She said that, to date, they have had two operators, the second of which is Oakview. The crèche has never been operated by TUD itself.

7.8 Ms Bruen said there were 46 no. places in the crèche and there were approximately six to six and a half thousand students in TUD. She said that a lot of mature students avail of the crèche facility. Ms Bruen confirmed that it is not TUD that collects the fees from clients. She also confirmed that it was not TUD that is in charge of staff recruitment. However, she said that TUD wished to ensure that the crèche keeps up-to-date with the required operating standards. Ms Bruen also confirmed, in cross-examination, that TUD does not pay Oakview any service fee. Furthermore, she confirmed that TUD is not involved in the day-to-day running of the crèche. However, she said that everything to do with the running of the crèche is set out in the relevant tender document and Oakview informs TUD of any changes.

7.9 In terms of payment for insurance and heating, Ms Bruen confirmed that Oakview pays for the heating of the building but TUD paid the insurance costs of the building. Ms Bruen said that the opening hours for the crèche are set out in the tender document. Oakview has its own keys for the Subject Property and TUD also retains keys for the Subject Property. Ms Bruen said there was not much call for management at TUD to go into the crèche, but they do have monthly meetings with Oakview.

7.10 In terms of access routes to the crèche, Ms Bruen said that there are two entrances. She said the crèche is near the Greenhills Road and there is a barrier at a second entrance, at Belgard Road, and at certain times one must enter via the Greenhills entrance.

7.11 Ms Bruen confirmed that the crèche is also open for use by the wider community, but such individuals would have to make the required application.

***Evidence of Clodagh Moynihan:***

7.12 Ms Moynihan is the Managing Director of Oakview. She gave evidence that Tallaght Oakview Ltd operates the crèche and the tender is with Orchard House Ltd.

7.13 The Appellant company was previously called Orchard House Limited t/a Oakview Tallaght Childcare but changed its name to Tallaght Oakview Ltd. Ms Moynihan said that she began operating the crèche at TUD in January 2018. She said that she had previously been operating a crèche in Tralee and this crèche in Tallaght was a completely different experience for her. She said that the clients in the crèche at TUD were often vulnerable and there were many disadvantaged families availing of the service. Some of her clients could not pay the fees and this was an eye-opener for her.

7.14 The evidence given by Ms Moynihan was that anything which she does in the crèche has to be authorised by TUD. She said that she has to attend monthly meetings with TUD,

submit quarterly reports and provide annual reports. Ms Moynihan said that she also operates other crèches in South County Dublin and they are all liable to pay rates.

7.15 In terms of the monthly meetings, Ms Moynihan said that she has to report everything to TUD, including matters relating to staff, accounts and students. She said that Oakview has to get approval from TUD for a new manager, for example. She referred to having to complete a change control notice in this respect. The Appellant said that when there are TÚSLA and Pobal inspections, they have 24 hours to submit a report to TUD.

7.16 Ms Moynihan said that when she tendered for the crèche, it was for 49 children. However, they could only take 46 in the end. She said that they are allowed to open up places to the community, but students often do not know until September or October if they will be attending TUD. Therefore, in theory, the crèche can take on clients from the community but, in reality, it is not so straightforward. Furthermore, in the past, a situation had arisen where she had to ask a non-student parent to take their child out of the crèche in order to make room for a student's child. Ms Moynihan said that the crèche only opens from 8.30 am to 17.30 pm and that does not really work for many working parents. Ms Moynihan said that, for example, they had to let a cleaner go as she used to come in until 19.00 pm, but this was unworkable due to the 17.30 closing time.

7.17 In terms of funding, Ms Moynihan said there is a national childcare scheme where each child is allocated a certain amount per week. A child might be allocated up to €220-€260 between TUD and childcare funding depending on the circumstances. A child attending the crèche part-time might be allocated €110 per week.

7.18 Ms Moynihan said that schedule 2 of the Operation Agreement with TUD states that the supplier shall operate a crèche under a business name approved by TUD. She said that the logo also had to be approved by TUD. Furthermore, she said that when she took over the crèche she had to go by the TUD calendar. She said that she managed to change that, and they can also take children from May-September now. However, last year, there were only eight children during the summer. She also has had to ask a non-student family to remove a child to make a space for a student's child. When a student is approved for funding, the crèche gets a letter stating that the student is entitled to funding/ a place in the crèche.

7.19 Ms Moynihan said that if there is an accident in the crèche, they must notify TUD immediately. Ms Moynihan said that while the Appellant provides the service, TUD is very involved.

7.20 In cross-examination, Ms Healy Rae BL asked Ms Moynihan to clarify the situation in relation to the name of the Appellant. Ms Moynihan said that they won the tender as Orchard House and having traded for three months under that name, the company was required to change its name to Tallaght Oakview Ltd. She said that she was the Director of the company at the time of the tender. She clarified that she was the Director of six crèches in total and the other crèches paid rates.

7.21 Ms Moynihan was asked about the number of children attending the crèche on the 28<sup>th</sup> of October 2020, and she said there were 18 no. student's children and 14 no. non-student's children. She said that they have never been at full capacity.

- 7.22 Ms Moynihan was asked if Oakview was in the business for profit and she said it was. However, she said that there is a strong emotional connection to Tallaght. She said that they run at a loss from May to September. She said that they are carrying a loss from year one. She said that all expenses including heating and lighting were discharged by the Appellant. If they want to access the premises out of hours, they have to contact the security company at TUD.
- 7.23 In terms of the day- to- day running of the crèche, there is a manager who opens up the crèche and two members of staff have keys. In relation to the staff, Ms Moynihan conducts interviews and then she notifies and gets approval from TUD after which she makes her choice. She said that the staff are employees of Oakview; they are not employed by TUD. Ms Moynihan also confirmed that TUD does not pay Oakview, but they pass on State fees to Oakview. Ms Moynihan confirmed that Oakview operates the crèche.
- 7.24 It was put to Ms Moynihan that the Operation Agreement with TUD refers to the payment of rates. She agreed with this, but she said that Oakview is very special and if it had to pay rates it would have to close. She said that when she had a meeting with TUD and Pobal, there was no mention of rates. She said that she never understood that she would have to pay commercial rates and she genuinely did not think that she would have to pay rates.
- 7.25 Ms Moynihan said that as this is a community crèche all monies are pumped back into it.
- 7.26 Ms Moynihan also confirmed that TUD equips the crèche. However, if something like a playpen breaks, Oakview must replace it.
- 7.27 Ms Moynihan stated that she did not get legal advice at the time of signing the tender.

***Evidence of Paul Mooney- Avison Young:***

- 7.28 The Appellant was represented by Mr Paul Mooney, Valuer with Avison Young. Mr. Mooney contended for an NAV of €17,710 by applying a value of €55 per m<sup>2</sup> to an area of 322 m<sup>2</sup>.
- 7.29 He said that there were 72 crèches in South Dublin County Council. Some are purpose built. Mr Mooney said that at the beginning, all purpose-built crèches were rated at €150 per m<sup>2</sup>. However, he said that since there have been appeals, there is a range between €100 - €150 per m<sup>2</sup>. He provided a table of 20 purpose built crèche comparators ranging from €100 per m<sup>2</sup> to €150 per m<sup>2</sup> which he stated the Respondent had used to support the valuation on the Subject Property.
- 7.30 Mr Mooney provided 5 NAV comparators to the Tribunal on which he stated he placed the most weight:
- (i) Comparator No 1 was Grian na nÓg, Rathcoole (PN 2166549), a single-storey purpose built crèche adjacent to Greenogue Business Park, Rathcoole, approximately 15/20 km from the Subject Property, with a floor area of 367.07 m<sup>2</sup>, similar in size to the Subject Property, albeit slightly larger. The valuation of this comparator property was appealed to the Valuation Tribunal on grounds that the valuation of €150 per m<sup>2</sup> was excessive and that crèches in South Dublin County

Council were overvalued. In that case, the NAV was reduced by the Tribunal from €150 per m<sup>2</sup> to €110 per m<sup>2</sup> with the Tribunal stating in its judgement that “The Tribunal does not accept the Respondent’s view that all-purpose built crèches in the rating area should be valued at the same level, irrespective of location. The Tribunal believes that this would amount to an effective subsidy of better located crèches by those crèches situated in less economically attractive locations”.

- (ii) Comparator No 2 was ‘Starbright’, Greenhills, Dublin 24 (PN 5004942), a single storey, purpose built crèche to the side of St Mary’s National School which provides part-time, full time and free ECCE places and provides an afterschool club from 1.30pm to 5pm but is described as Office (Other) on the Valuation List. With a floor area of 415.80 m<sup>2</sup>, it is larger than the Subject Property but is of a poorer, pre-fabricated construction. This comparator property was valued at €125 per m<sup>2</sup> but has a rateable valuation of zero (€0). The reason for that zero rating was unclear. It was stated that this valuation has not been appealed.
- (iii) Comparator No 3 was an unknown occupier (PN 5002237), a purpose built crèche located on the grounds of Tallaght Hospital, with an area of 147 m<sup>2</sup> and an NAV of €150. It was emphasised that this comparator property is half the size of the Subject Property.
- (iv) Comparator No 4 was Cocoon Childcare, Marifield, Kiltipper, Tallaght (PN 2186558), a purpose built crèche with a floor area of 330.40 m<sup>2</sup>, approximately the same footprint as the Subject Property, which is located in a densely populated area, relatively close to the Subject Property. The valuation was subject to a Valuation Tribunal Appeal in which the NAV was reduced from €150 to €100 per m<sup>2</sup>. with an NAV of €100 per m<sup>2</sup>. This property has a floor area of 330.40 m<sup>2</sup>. and was reduced from €150 to €100 at the Tribunal stage. The property is located in Marifield Mall, Kiltipper, Tallaght. The evidence was that this crèche is quite well accessed as there is a national school across the road and it is in a highly commercialised area.
- (v) Comparator No 5 Cocoon Childcare, Balgaddy (PN 5001804), located in a residential area less than 2 km from Liffey Valley Shopping Centre which is a superior location to the Subject Property. This property has an NAV of €125 per m<sup>2</sup> and with a floor area of 472 m<sup>2</sup>, is larger than the Subject Property. It was stated that this crèche is in a residential area and crèches in such areas are far more flexible in terms of operating hours.

7.31 Mr Mooney stated that Tallaght is a DÉIS area, and the Subject Property has access issues in that, sometimes, barriers prevent access to the crèche. Furthermore, the opening hours are restricted. Additionally, the academic term is a factor as the operator cannot fill all the places during the summer. Normally, crèches have waiting lists and there is no difficulty filling places but the Subject Property is different in this respect.

7.32 In cross-examination, Ms Healy Rae BL asked Mr Mooney if there was a material change in circumstances as this building was newly erected. He said that the building was newly erected at one point in time.

7.33 Mr Mooney was asked why he would say the Subject Property could not be subject to a revision and he replied that it was not on the revision list.

7.34 It was put to him that if it was not on the list that it could not be re-valued, and he accepted this. It was also put to him that there was nothing to prevent a revision when something comes to the rating authority's attention, and he accepted this.

7.35 Ms Healy Rae BL put it to Mr Mooney that the crèche was purpose built in 2008, and he accepted this. It was also put to him that the building was state of the art, lots of light and concrete with aluminium cladding. Mr Mooney said that the crèche website may say these things for marketing purposes. It was put to Mr Mooney that the crèche was close to the M50 and N81 and he accepted this.

7.36 Mr Mooney said that a hypothetical tenant would look at the opening hours and the academic year. The landlord's control of the property had to be considered, according to Mr Mooney. Furthermore, the hypothetical tenant would be looking at potential revenue. Mr Mooney said that market evidence was important. He said that the market evidence presented by Ms Moynihan was that there are 46 places but only 32 are filled.

7.37 Mr Mooney was asked by the Tribunal what the custom and practice in other educational institutions was, in terms of crèches paying rates, and he said that he did not know.

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

### ***Evidence of Sean Donnellan:***

8.1 Mr Donnellan gave the following evidence on behalf of the Respondent. He said that revaluations take place when a property is on the list, but revisions take place between revaluations. He said that a revision can take place when there is a new property.

8.2 Mr Donnellan said that the Subject Property is a single storey, detached, modern, purpose built crèche in a prime area in Tallaght. He said the floor areas were agreed at 322 m<sup>2</sup>. He contended for an NAV of €48,300 based on applying a value of €150 per m<sup>2</sup> to an area of 322 m<sup>2</sup>, if it is found that Oakview was in beneficial occupation.

8.3 The evidence was that the details of the rent being paid are unknown, but TUD is the landlord. Mr Donnellan said that the valuation date was the 28<sup>th</sup> of October 2020. The Appellant company is not a charity. The Pobal website refers to it as a private enterprise.

8.4 It was stated that the Subject Property is similar to a property called Kids Inc, which has a licence agreement with Dublin City Council. It was stated that it is not unusual to get state funding for such enterprises. It was stated that Oakview is a profit-making business. Furthermore, it was stated that the Appellant has keys to the premises and TUD do not have access to the Subject Property on a regular basis.

8.5 Mr Donnellan put forward 3 comparators on behalf of the Respondent as evidence of the tone of the list each of which had a NAV of €150 per m<sup>2</sup>:

- (i) Comparator No 1 was Nurture ELC Limited (PN5002337), a purpose built crèche on the grounds of Tallaght Hospital, Dublin 24 which is primarily, but not exclusively, for children of hospital staff and was described as being similar to the Subject Property in that respect. It is operated under a licence agreement. It is close in proximity to the Subject Property and has similar construction characteristics as



the Subject Property. It has a total floor area of 147 m<sup>2</sup> and capacity to cater for 40 children.

- (ii) Comparator No 2 was Chuckleberries Crèche (PN5002577) which is situated on Ballycullen Road, Tallaght, Dublin 24 has a total floor area of 386 m<sup>2</sup> and capacity to cater for 96 children. It has similar construction characteristics to the Subject Property and is located relatively close to it. This property's NAV of €150 per m<sup>2</sup> is subject to representations.
- (iii) Comparator No 3 was Links Childcare (PN2166565), which is situated at Kingswood, Dublin 24, has a floor area of 618.60 m<sup>2</sup>, almost double the size of the Subject Property, and has capacity to cater for 120 children. It has similar construction characteristics and is located relatively closely to the Subject Property.

8.6 Mr Donnellan said that the comparators submitted by Mr Mooney on behalf of the Appellant were all inferior to the Subject Property or were in an inferior location.

8.7 In cross-examination, Mr O'Maolchalain BL for the Appellant put it to Mr Donnellan that the crèche was subject to Pobal funding and he accepted this was the case with a 20-year clawback. He also accepted that a crèche is an important part of a college's marketing activities as it is a benefit to the students, staff and community.

8.8 It was suggested that TUD was in control of the Subject Property and Mr Donnellan said that the Appellant was in occupation. Furthermore, Mr Donnellan said that the agreement between TUD and Oakview was a licence not a lease. It was put to the Respondent that it was in fact a concession agreement and he replied 'a concession/ licence agreement'.

8.9 Counsel for the Appellant suggested that it was in fact an agreement between a property owner and a supplier of services and Mr Donnellan said '*Orchard House has the keys, they lock up and close the premises. TUD do not have much to do with it, apart from security on the ground*'.

8.10 It was suggested that there was a bare licence for €100, yet he valued the market rent at €49,100. Mr Donnellan said he did not know about a licence fee as he did not see the full accounts. However, he said that TUD could rent this to a tenant and get a substantial amount of money.

8.11 Counsel for the Appellant suggested that TUD controlled Oakview to a certain extent and Mr Donnellan agreed.

8.12 It was put to Mr Donnellan that the service agreement had restrictions and he said that the agreement could be adjusted. It was suggested that the allocation of places was governed by TUD. However, Mr Donnellan said that the figures showed that almost half the places were filled from outside TUD.

8.13 Counsel for the Appellant suggested that TUD had a substantial degree of control over the Appellant. Mr Donnellan said he would not call it control. He said there was an agreement between two parties.

8.14 Mr Donnellan was asked if it was unusual that the Appellant had to submit monthly reports in relation to turnover. He said that things like this have become more and more popular with turnover leases. He said these were not highly unusual.

8.15 It was suggested to Mr Donnellan that the service level agreement caused an enormous intrusion to the Appellant. He said that this was the reason he put forward his first comparator, the crèche in Tallaght Hospital. In that crèche, priority must be given to hospital staff.

8.16 Counsel for the Appellant suggested that the degree of control in this case was far in excess of, for example, a shop in a Department Store. Mr Donnellan said that he disagreed.

8.17 Counsel for the Appellant then questioned Mr Donnellan in relation to Section 28 of the Act. He said that the Subject Property was built in 2008, and the valuation was carried out in South Dublin County Council in 2017. Mr Donnellan agreed. He said that a revision can happen at any time. He was asked if it could have occurred between 2007 and 2017 and he said it could. It was put to him that nothing happened between the revaluation in 2017, and the revision in 2020. He said that it was not uncommon for properties not to be valued for a number of years. Mr Donnellan said that the coming into being of a new property allows for a revision to occur.

8.18 In terms of the comparator in Tallaght Hospital, it was put to Mr Donnellan that the economic circumstances of a consultant in Tallaght hospital were very different to a student in TUD. Mr Donnellan said when they value a property, they view it as being vacant and to let.

## **9. SUBMISSIONS**

### ***Appellant's submissions:***

2.1 The Appellant's Counsel submitted written and oral submissions. The Appellant's submissions were grounded upon the points below:

- (i) TUD is in rateable occupation of the Subject Property;
- (ii) strictly without prejudice to the foregoing, the circumstances did not exist for the exercise of the powers under section 28 in respect of the Property on the Valuation List under section 28(4)(b); and
- (iii) the Subject Property ought to be excluded from the relevant valuation list pursuant to section 37(b)(iv) of the Act.

The Appellant's Counsel, Mr. O'Maolchalain BL, made the following arguments in relation to the points set out above:

### ***Beneficial occupation:***

9.2 The Subject Property is owned and occupied by TU Dublin (Tallaght Campus) and is operated as a crèche. From the outset, the operation of the Crèche has been on the basis of the award of a bare licence to an outside operator to provide crèche operating services

through the Public Tendering System. Neither the process nor the terms of the licence has changed since the Crèche opened its doors in 2009.

- 9.3 The service provider is offered a bare licence on the basis of adhering to a number of conditions set out in the licence and must report to TUD on a range of issues including staff numbers and qualifications, staff turnover, health and safety issues, any TÚSLA or other statutory reports issued on the operation of the facility.
- 9.4 Under the terms of the Service Level Agreement set out in Schedule 2 of the Crèche Operation Agreement dated December 2017 (hereafter the “Operation Agreement”) with the Institute of Technology Tallaght, the Supplier agreed that crèche places would be offered on a set scale of criteria and the primary focus is the provision of places to children of full and part time students attending the Campus. (Para. 3 of the Service Level Agreement).
- 9.5 Para 3.2 of the Operation Agreement provides as follows: *“As long as this Agreement shall remain in operation, IT Tallaght hereby licenses and authorises the Supplier (subject to the terms and conditions contained in Schedule 1 (licence terms)) to enter upon and use the Licensed Area as a Bare Licensee solely for the purpose of providing the Services. The Parties acknowledge that this is a bare licence only and shall not confer upon the Supplier any rights under the Landlord and Tenant Acts or otherwise”*.
- 9.6 “Bare Licensee” is defined in Para 1.1. of the Operation Agreement as *“a person given authority by IT Tallaght to use its premises without becoming entitled to exclusive possession, being deemed a personal privilege with no interest in the land”*.
- 9.7 Under para 14.7 it was agreed that the Supplier should not employ or engage any person without IT Tallaght’s prior written consent (which consent should not be unreasonably withheld).
- 9.8 Detailed specifications of the crèche services are set out in para. 6 of the Service Level Agreement in 12 sub paragraphs. In summary these require compliance by the Supplier with relevant statutes, regulations and guidelines, for example in relation to food hygiene, vetting of staff and educational curriculum. Para 6.8 requires the Supplier to cooperate with IT Tallaght in relation to the conduct of its academic programme in social care which requires a period of placement for its attending students and to facilitate placement of students on the programme for training.
- 9.9 It was submitted that the essential ingredients of rateable occupation were described by ***O’Hanlon J. in Telecom Éireann v. Commissioner of Valuation [1994] 1 IR 66*** as follows: *“The occupation must be exclusive, it must be of benefit to the occupier, and it must not be transient.”*
- 9.10 In determining whether an occupation is exclusive in fact, the test, it was submitted, is whether the person sought to be rated has the enjoyment of the premises *“to the substantial exclusion of all other persons”*- ***House of Lord in Westminster City Council and Kent Valuation Committee v. Southern Railway Co. [1936] AC 511.***

9.11 Counsel referred to *Weir & Sons Dublin Ltd. v. Commissioner of Valuation (Appeal no. VA02/3/002)*, where the Tribunal concluded on the facts of the case that the control exercised by the hotel represented a degree of interference with the use and enjoyment of the subject unit by Weirs to the extent that it could fairly be stated that pre-eminent control rested with the hotel. Whilst Weirs exercised a degree of management and control, the overriding control of the operation of the licensed unit rested with the hotel who perceived the unit to be an integral part of the services afforded to their guests. Accordingly, the Tribunal found that the hotel was in paramount occupation of the licensed unit and that it should, therefore, be valued as part of the hotel premises.

9.12 It was submitted that the terms of the Operation Agreement between the TUD and the Supplier provide for a degree of interference by TUD with the use of the Subject Property such that TUD is in paramount occupation. It was submitted that a significant factor is that the crèche is an integral part of the package of services being provided by TUD to its students.

9.13 Counsel cited *Mater Misericordiae & Children's University Hospitals Limited and Eccles Street Car Park Limited v. Commissioner of Valuation (VA16/3/17)*, where the appellants appealed against the determination of the Commissioner in fixing a NAV of €380,000 on a new multi-storey car park that was occupied by Eccles Street Car Park Limited, a subsidiary of the hospital that had been developed to build and operate the car park. The Tribunal held that the Mater Hospital Car Park was a “*core part of the hospital building and that it is used by the hospital in furtherance of its objects; namely caring for sick persons, and for the treatment of illnesses*” and therefore came within the definition of relevant property not rateable, pursuant to para. 8 of Schedule 4 of the Act.

9.14 It was submitted that TUD, and not Oakview, is in occupation.

***Material change in circumstances:***

9.15 It was submitted that the valuation list for the rating authority area of South Dublin County Council was published on 15 September 2017. The Respondent appointed a Revision Manager under section 28(1) of the Act, who then purported to carry out a revision under section 28(4) of the Act. The Revision Manager issued a Valuation Certificate in respect of the Subject Property on 21 October 2020.

9.16 It was submitted that Section 28(4)(b) of the Act provides as follows: “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—

(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.

(ii) include that property on the list together with its value as determined on foot of that valuation.”

9.17 Counsel submitted that Section 3 of the Act defines “material change of circumstances” as a change of circumstances that consists of—

- (a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or
- (b) a change in the value of a relevant property caused by—
  - (i) the making of structural alterations to that relevant property, or
  - (ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or
- (c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or
- (d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or
- (e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or
- (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or
- (g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority (other than in accordance with the Local Government Act 2019), or
- (h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011.

9.18 Counsel for the Appellant submitted that the Subject Property does not constitute newly erected or newly constructed relevant property or relevant property that has come into being since a valuation under section 19 was last carried out in South Dublin County Council and the valuation list was published in September 2017. Counsel submitted that no revision was carried out in respect of the Subject Property since the valuation list was published in 2017, other than the revision which gave rise to this appeal.

9.19 As there has been no “material change of circumstances” since the valuation list was published in September 2017, the circumstances did not exist for the exercise of the powers under section 28 in respect of the Property on the Valuation List under section 28(4)(b). It was submitted that, therefore, the revision manager did not have the jurisdiction to carry out a revision.

***Respondent’s submissions:***

9.20 The Respondent’s Counsel, Ms Healy Rae BL, submitted oral and written legal submissions. A number of different issues were identified by Counsel for the Respondent. These are as follows:

- 1) Is Oakview the ‘occupier’ of the property for the purposes of the 2001 Act?
- 2) Did a material change of circumstances (MCC) occur within the meaning of s.3 of the Valuation Act, 2001 such as to warrant the exercise of the powers set out in s.28(4) of the 2001 Act?
- 3) Whether the Subject Property operating as a crèche should be exempt from rates?
- 4) The quantum of the valuation.

9.21 Counsel for the Respondent expanded on the above points. A summary of her submissions is set out below.

9.22 The main thrust of the Respondent's submission was that the owner of the property is TUD and the crèche is operated by Oakview (formerly known as Orchard House Ltd t/a Oakview Tallaght Childcare). The crèche is operated under a Crèche Operation Agreement (the "Operation Agreement").

**Occupation:**

9.23 It was submitted that s.3 of the 2001 Act defines "occupier as meaning "every person in the immediate use or enjoyment of the property". Counsel submitted that based on developed case law it has been accepted that there are three essential ingredients to rateable occupation. These principles were recently reiterated by the High Court in **Commissioner of Valuation v Seven Wonders Ltd [2020] IEHC 474** and are :

- (i). The occupation must be exclusive;
- (ii). It must be of value or benefit to the occupier; and
- (iii). It must not be for too transient a period.

9.24 Counsel for the Respondent cited Seven Wonders, where Meenan J stated as follows at para. 11: *"It seems to me that the respondent's occupation of the outdoor seating area where the street furniture is situate comes within the stated requirements for rateable valuation. Under the licence agreement there is actual occupation which is exclusive to the respondent. Only customers of the respondent may use the area. It follows from this that the said outdoor area is "of some value or benefit" to the possessor and there was no suggestion that the possession was only for a transient period."* Counsel submitted that these three essential ingredients are also present in this case.

9.25 It was submitted that the occupation of the Subject Property is clearly of value to Oakview in terms of the crèche fees being paid to it. In terms of the occupation, it was submitted that it was clearly not for a transient period. The licence is for an initial period of 36 months and, thereafter, it continues in effect for an additional period of 24 months at the election of TUD.

9.26 It was submitted that, based on the terms of the Operation Agreement, the Subject Property is in the exclusive possession of Oakview as licensee. Counsel said that looking at the definition of a bare license, it is clear that the Agreement in this case does not constitute a bare licence. Rather it is a licence for a fixed period of three years which entitles TUD to payment of a licence fee.

9.27 Counsel submitted that when looking at whether or not there is exclusive possession the Tribunal must consider the de facto position. It was submitted that when considering the question of exclusivity, it is exclusivity in terms of user that is in issue. It was stated that a landlord or licensor may have authority to enter a property for particular purposes but that does not render the landlord/ licensor the 'occupier' for rating purposes.

9.28 Counsel referred to the case of **Patrick Lavelle (VA/06/2/035)** where the Tribunal held that while Knock Shrine Association derived a benefit from the presence of a doctor in the medical centre, the person in actual occupation of the premises was the doctor being the person who was entitled to immediate use or enjoyment of the premises. The Tribunal held

that even if it was to take the view that there were two notional occupiers, it would have no hesitation in deeming the doctor to be in paramount occupation.

- 9.29 The issue of paramount occupation was dealt with by reference to the House of Lords in *Westminster City Council and Kent Valuation Committee v Southern Rly Co [1936] UKHL J0520-1* whereby it was stated “*There may be a rival occupancy in some persons who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question.*”

### ***Material change of circumstances (MCC):***

- 9.30 In relation to MCC, Counsel for the Respondent stated that the Subject Property was the subject of a revision request and was not previously on the Valuation List. Accordingly, the Appellant’s references to the last date on which a valuation was carried out in the rating authority pursuant to s.19 are of no relevance. It was stated that this is a revision pursuant to Part 6 of the Act. A “material change in circumstances” (MCC) is defined in s.3 of the 2001 Act. It was stated that the MCC that occurred in this case is covered by paragraph (a) of the definition, being: “the coming into being of a newly erected or newly constructed relevant property or of a relevant property.”
- 9.31 It was submitted that the fact that a property may be first rated many years after it comes into existence is of no relevance to the question of its rateability. It was further submitted that the circumstances referred to in s.28(4) of the 2001 Act did exist for the carrying out of a revision exercise by the revision officer in relation to the Subject Property.

### ***Exemption***

- 9.32 In relation to the claim that the Subject Property is not rateable, it was submitted that Paragraph 22 was inserted by the 2015 Act as an amendment to schedule 4 of the principal act, and now specifically sets out the law in relation to buildings used exclusively for the provision of early childhood care and education. Counsel submitted that for buildings in such use - to be exempt - must be occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit.
- 9.33 It was submitted that without prejudice to the foregoing, and for the avoidance of doubt, a crèche is clearly not a “school, college, university or college of technology” or any “other educational institution” within the meaning of Schedule 4, paragraph 10 applying the principle of statutory interpretation known as *noscitur a sociis* (“known by its companions”). The expression “other educational institution” should be given its ordinary and natural meaning as it is an expression that has widespread and unambiguous currency. The crèche is not an educational institute of the same genus or class as a school college,

university or institute of technology and is not exclusively used for the provision of educational services. - see *Bree Community Development Group Ltd VA14/2/08*.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal must determine the value of the Subject Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Subject 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 South Dublin County Council.

10.2 The Tribunal deals with the issues below as raised by the parties.

*Was there a valid exercise of the powers under section 28 in respect of the Subject Property on the Valuation List under section 28(4)(b)?*

10.3 Although not raised as a preliminary issue, for the sake of completeness, the Tribunal will deal with this issue first. The Appellant contended that the Valuation Office did not have jurisdiction under Section 28 of the Act to carry out a revision on the Subject Property.

10.4 The Appellant submitted that the valuation list for the rating authority area of South Dublin County Council was published on 15 September 2017. The Respondent appointed a Revision Manager under section 28(1) of the Act, who then purported to carry out a revision under section 28(4) of the Act and issued a Valuation Certificate in respect of the Subject Property on the 21st October 2020.

10.5 It was submitted that Section 28(4)(b) of the Act provides that if a revision manager, considers a material change of circumstances has occurred since a valuation under section 19 was last carried out in relation to the rating authority area or 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—

(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.

(ii) include that property on the list together with its value as determined on foot of that valuation.”

10.6 It was argued by the Appellant that the Subject Property does not constitute newly erected or newly constructed relevant property or relevant property that has come into being since a valuation under section 19 was last carried out in South Dublin County Council (“SDCC”) and the valuation list was published in September 2017. The Appellant argued that there had been no “material change of circumstances” since the valuation list was published in September 2017 and, therefore, the circumstances did not exist for the exercise of the powers under section 28 in respect of the Subject Property on the Valuation List under section 28(4)(b). Counsel for the Appellant agreed that there had been a newly constructed property. However, he said the timing was incorrect as the MCC had to have



occurred since the valuation was carried out and this Subject Property came into being many years before the valuation date.

- 10.7 In relation to the issue of material change of circumstances, the Respondent stated that the Subject Property was the subject of a revision request and was not previously on the Valuation List. It was argued that this is a revision pursuant to Part 6 of the Act. It was stated that the MCC that occurred is covered by paragraph (a) of the definition, being: “the coming into being of a newly erected or newly constructed relevant property or of a relevant property.” Furthermore, it was argued that the fact that a property may be first rated many years after it comes into existence is of no relevance to the question of its rateability.
- 10.8 In oral submissions, Counsel for the Respondent said that the Appellant’s argument makes a nonsense of the legislation as the Valuation Office shall carry out a valuation of every property in the rating authority and not every property on the list. It was argued that if the Tribunal were to accept the Appellant’s argument, the rating authority would have to go around and value everything before it could carry out a revision and this did not make sense. It was submitted that this was an extreme submission for the Appellant to make. The Respondent relied upon Section 28(4) in conjunction with Section 19(2) of the Act.
- 10.9 In coming to a decision on this matter, the Tribunal has placed significant weight on the evidence of the valuers in the context of the relevant law, as to what the position is.
- 10.10 In cross-examination Mr Mooney, for the Appellant, was asked if there was a material change in circumstances in this case as this building was newly erected. He replied that the building was newly erected at one point in time. He was then asked why he would say the Subject Property could not be subject to a revision and he replied that it was not on the list. Counsel for the Respondent put it to him that if it was not on the list, it could not be re-valued, and he accepted this. It was also put to him that there was nothing, however, to prevent a revision officer carrying out a revision when something comes to its attention, and he accepted this. The Tribunal finds that this piece of evidence supports the contention that the Respondent did not act outside of its Jurisdiction in carrying out a revision. However, this cannot be taken in isolation and must be looked at in the context of the other evidence before the Tribunal.
- 10.11 In relation to Section 28 of the Act, Mr Donnellan agreed that the Subject Property was built in 2008, and the valuation was carried out in SDCC in 2017. However, he said that a revision can happen at any time. He was asked if a revision could have occurred between 2007 and 2017 and he said it could. It was put to him that nothing happened between the revaluation in 2017 and the revision in 2020. He said that it was not uncommon for properties not to be valued for a number of years. Mr Donnellan said that the coming into being of a new property allows for a revision to occur.
- 10.12 Having weighed and evaluated the evidence of both expert witnesses, the Tribunal finds that they appear to be ad idem in relation to the fact that a revision can indeed be carried out if a newly constructed property which is not on the list but is in the rating area comes to the attention of the rating authority.
- 10.13 The Tribunal will now, however, assess the oral evidence given by the Valuers in the context of the legislation before it.

- 10.14 The Tribunal notes that Section 28 (4) allows a revision officer, if they consider that an MCC has occurred since a valuation under Section 19 was last carried out in relation to the rating authority in which the Subject Property is situated, to amend or exclude the property if the property appears on the list **OR** (pursuant to Section 28(4)(b)), if the property does not appear on the list and is a relevant property, may carry out a valuation and include the property on the list.
- 10.15 The Appellant, in this case focused in on the phrase ‘*since a valuation under Section 19 was last carried out*’ and argued that the MCC did not occur after that time, which was September 2017.
- 10.16 If the Tribunal was to accept the Appellant’s argument this would suggest that if a particular property was not on the list that a rating authority would be required to go around and value each and every one of those properties before a revision could be carried out. The Appellant’s own valuer accepted that the Subject Property was not on the list. He also accepted there was nothing to prevent a revision to be carried out when something comes to the rating authority’s attention which is in the rating area. Considering this piece of evidence, coupled with the evidence of Mr Donnellan for the Respondent, who said that the coming into being of a new property allows for a revision to occur and a revision can happen at any time, in the context of Section 28(4) and 19(2), and taking a purposive approach to the legislation, the Tribunal finds that there was a valid exercise of the powers under section 28 in respect of the Subject Property on the Valuation List under section 28(4)(b).

***Beneficial occupation:***

- 10.17 The Appellant argued that TUD is in beneficial occupation of the Subject Property, not Oakview. and therefore Oakview should not be liable for rates. The Respondent argued that Oakview is the beneficial occupier and, therefore, it should be liable to pay rates. Each of the parties relied upon extensive case law, as set out above, to support their assertions.
- 10.18 Counsel for the Appellant said that Oakview has a bare licence. He said that “Bare Licensee” is defined in Para 1.1. of the Operation Agreement as “a person given authority by IT Tallaght to use its premises without becoming entitled to exclusive possession, being deemed a personal privilege with no interest in the land”. Counsel for the Appellant also stated that the test for beneficial occupation is whether the person sought to be rated has the enjoyment of the premises “*to the substantial exclusion of all other persons*”- ***House of Lord in Westminster City Council and Kent Valuation Committee v. Southern Railway Co. [1936] AC 511.***
- 10.19 Furthermore, the Appellant’s Counsel focused on the purported level of control which TUD wields over Oakview and relied upon ***Weir & Sons Dublin Ltd. v. Commissioner of Valuation (Appeal no. VA02/3/002)***, where the Tribunal concluded on the facts of the case that the control exercised by the hotel represented a degree of interference with the use and enjoyment of the subject unit by Weirs to the extent that it could fairly be stated that pre-eminent control rested with the hotel.
- 10.20 Counsel for the Respondent submitted that there must be three ingredients for beneficial occupation
- (i) The occupation must be exclusive;

- (ii) It must be of value or benefit to the occupier; and
- (iii) It must not be for too transient a period.

10.21 It was also argued by Counsel for the Respondent that where there is rival occupancy, the question that arises is Who is in '*paramount occupation*'?

10.22 The Tribunal has weighed and evaluated all the evidence before it to assess who, in fact, is in beneficial occupation in this case and what is the de- facto position on the ground. There is a Crèche Operation Concession Agreement dated the 18<sup>th</sup> December 2017. The said agreement states, inter alia, at paragraph 14.3 that the relationship between the parties is that Oakview 'shall be an independent contractor'. Furthermore, paragraph 14.1 states that the supplier (Oakview) shall indemnify and keep indemnified ITT against all costs, claims, losses, liabilities and expenses'.

10.23 Ms Bruen confirmed that it was not TUD who collected the funds when children enrolled. She also confirmed that it was not TUD who was in charge of staff recruitment. However, she said that TUD wants to ensure that the crèche keeps up to date with the required standards. Ms Bruen confirmed that TUD does not pay Oakview any service fee. Furthermore, she confirmed that TUD was not involved in the day-to-day running of the crèche. According to Ms Bruen, Oakview has its own keys, along with TUD also retaining keys for the Subject Property. She said that there was not much call for management at TUD to go into the crèche but TUD does have monthly meetings with Oakview.

10.24 Ms Moynihan said that Oakview operates the crèche. She said that she had to attend monthly meetings with TUD, submit quarterly reports and provide annual reports. Ms Moynihan said that she also operated other crèches in South County Dublin and they all pay rates. Ms Moynihan said that she had to report everything to TUD, including matters relating to staff, accounts and students. Ms Moynihan said that they are allowed to open up places to the community, but students often cannot do so until September or October. Ms Moynihan said that when Oakview took over the crèche they had to go by the TUD calendar. However, they can also take children from May-September now.

10.25 Ms Moynihan confirmed that she was in business for profit. However, she said that they run at a loss from May to September. She said that expenses including heating and lighting were discharged by Oakview. In terms of the day to day running of the crèche, a manager opens up the crèche and two members of staff have keys. In relation to the staff, Ms Moynihan conducts interviews and then she notifies and gets approval from TUD, after which she makes her choice. The staff are employees of Oakview. They are not employed by TUD. Ms Moynihan confirmed that Oakview operates the crèche. Ms Moynihan accepted that the Agreement with TUD refers to the fact that Oakview is responsible for rates. Ms Moynihan confirmed that she did not get legal advice at the time of signing the tender.

10.26 Considering all the evidence before the Tribunal including the oral evidence of the parties, the documentary evidence in terms of tenders and service level agreements in the context of the relevant case law, the Tribunal makes the following findings:

- (i) The occupation by Oakview is exclusive in nature based on the evidence provided to the Tribunal. It is clear from the evidence of both Ms Bruen and Ms Moynihan that it

is Oakview that collects the funds, Oakview interviews and employs the staff, Oakview has its own manager and employees who possess keys and Oakview pays the expenses including heating and lighting. Furthermore, the Agreement between the parties clearly states that Oakview is responsible for the payment of rates on the Subject Property. Ms Bruen expressly said there was not much call for management at TUD to go into the crèche, but they have monthly meetings with Oakview and they retain a set of keys for the Subject Property. In reaching this conclusion, the Tribunal has had regard to dicta of The House of Lords in ***Westminster City Council and Kent Valuation Committee v Southern Railway Co [1936]AC511***, where it was stated that in determining whether occupation is exclusive in fact, the test is whether the person sought to be rated has enjoyment of the premises ‘*to the substantial exclusion of all other persons*’. The Tribunal has assessed the de facto position of the Subject Property and finds that it is exclusivity in terms of user that is in issue. While TUD may have authority to enter the Subject Property for particular purposes, this does not render TUD the occupier for rating purposes. The Tribunal also refers to the High Court case of ***Commissioner of Valuation v Seven Wonders Ltd*** where Meenan J stated as “*It seems to me that the respondent’s occupation of the outdoor seating area where the street furniture is situate comes within the stated requirements for rateable valuation. Under the licence agreement there is actual occupation which is exclusive to the respondent. Only customers of the respondent may use the area*’. In the same way, the Tribunal finds that under the agreement between Oakview and TUD, Oakview is in actual occupation of the Subject Property and only clients of Oakview may use the area, which is exclusive to it.

- (ii) the occupation of the Subject Property is of value to Oakview in terms of the crèche fees being paid to it. Ms Moynihan gave clear evidence that it was a for profit business and that the fees were paid to Oakview.
- (iii) the occupation in this case is not for a transient period. The licence is for an initial period of 36 months and, thereafter, it continues in effect for an additional period of 24 months at the election of TUD.

10.27 In coming to its conclusion on exclusive possession, the Tribunal has also considered the case of ***Patrick Lavelle (VA/06/2/035)***, which involved a doctor who ran a medical centre at Knock Shrine. In that case, the Tribunal held that while Knock Shrine Association derived a benefit from the presence of a doctor in the medical centre, the person in actual occupation of the premises was the doctor being the person who was entitled to immediate use or enjoyment of the premises. The Tribunal held that even if they were to take the view that there were two notional occupiers, they would have no hesitation in deeming the doctor to be in paramount occupation. The Tribunal in the present case, finds that there are similarities between that case and the case at hand. Just as Knock Shrine Association derived a benefit from having a doctor’s surgery on site, TUD derives a benefit from having a crèche on site. However, it is Oakview, which is entitled to immediate use and enjoyment of the Subject Property, not TUD. Further and without prejudice to the previous findings, even if the Tribunal were to find there were two notional occupiers, it would have no hesitation in finding that Oakview is in paramount occupation, for the reasons given above.

10.28 The Tribunal has also considered the case of *Weir & Sons Dublin Ltd. v. Commissioner of Valuation (Appeal no. VA02/3/002)* and finds that this can be distinguished from the case at hand. The Tribunal finds that the level of control in the Weir case was far more intrusive than is the case here. In the Weir case, the Tribunal found that the hotel had actual day-to-day control over the jewellery shop on site. In Weir, the hotel regularly conducted an analysis of guest comments on all aspects of the hotel's activities and services including the Weir unit. Copies of this analysis which covered such items as the attitudes of staff and quality/quantity of the shop facilities were made available to Weir on a monthly basis. Weir was required to meet performance targets set by the hotel and was subject to continual monitoring in this regard. No evidence of this type of intrusion was given in the present case. In fact, Ms Bruen gave evidence that there was not much call for management at TUD to go into the crèche but they do have monthly meetings with Oakview. It should also be noted that the case at hand can be distinguished from *The Mater Hospital & Eccles Street Car Park v The Commissioner of Valuation, VA16/3/017*, whereby it was found that there was unchallenged evidence that the hospital could not function in the absence of the car park due to the huge number of people visiting the hospital on a daily basis. The same thing could not be said about the crèche operated by the Appellant. The Tribunal notes that there are 46 no. places in the crèche and there are six to six and half thousand students in TUD. There is no suggestion whatsoever in the present case that TUD could not operate without a crèche.

10.29 While the Tribunal is cognisant of the fact that the Agreement refers to the Appellant holding a 'bare license', the Tribunal has assessed what is the de facto situation. The Tribunal finds that what exists, in reality, is a licence for a fixed period of three years which entitles TUD to payment of a licence fee and allows Oakview to be in beneficial occupation. The Tribunal notes that a similar situation arises in relation to a crèche called Kids Inc whereby it has a licence with Dublin City Council and pays a licence fee of €1 per annum. The Tribunal notes that Kids Inc pays rates.

### ***Exemption from rates***

10.30 Although it was not put in issue by the Appellant, Counsel for the Respondent raised the issue of exemption from rates for childcare facilities and submitted that the Subject Property was not exempt from rates on this basis. For the avoidance of doubt, the Tribunal finds that Oakview, which operates as a crèche, is not exempt from rates. Schedule 4, Paragraph 22 which was inserted by the 2015 Act specifically sets out the law in relation to buildings used exclusively for the provision of early childhood care and education. Without prejudice to the foregoing, a crèche is not a "school, college, university or college of technology" or any "other educational institution" within the meaning of paragraph 10, schedule 4 (Relevant property not rateable). Furthermore, a crèche is not an educational institute of the same type as a school college, university or institute of technology and is not exclusively used for the provision of educational services. - see *Bree Community Development Group Ltd VA14/2/08*.

### ***Quantum:***

10.31 Having found that Oakview is in beneficial occupation, the Tribunal will now assess whether the rate struck is equitable and uniform in the context of similarly circumstanced properties.

10.32 Mr Mooney gave evidence that the Subject Property has limited potential for trade as it is required to take a specified number of children from the students of TUD. He also said that the location of the Subject Property was not as good as other crèches in or around Tallaght and that the restricted opening times were not as attractive for parents as other crèches in the area which had later opening hours.

10.33 Both parties put forward a number of comparators to support their respective cases.

10.34 Mr Mooney, for the Appellant, provided a table of 20 purpose-built crèche comparators ranging from NAV €100 per m<sup>2</sup> to €150 per m<sup>2</sup> which he stated the Respondent had used to support the valuation on the Subject Property. He put forward 5 NAV comparators the details of which are described in Clause 8 above, including: Grian na nÓg, in Rathcoole (PN 2166549) with a NAV that was reduced by the Tribunal from €150 per m<sup>2</sup> to €110 per m<sup>2</sup>. He also submitted Cocoon Childcare, Kiltipper, Tallaght (PN 2186558) which has approximately the same footprint as the Subject Property, is closely located to the Subject Property and has a NAV which was reduced from €150 to €100 per m<sup>2</sup> at Tribunal stage. Another comparator, Cocoon Childcare, Balgaddy (PN 5001804) was also put forward as being in a superior location to the Subject Property as it is in a dense residential area and close to Liffey Valley shopping centre and has a NAV of €100 per m<sup>2</sup>.

10.35 Each of the Respondent's 3 comparators, which have similar construction characteristics as the Subject Property and are located relatively closely to the Subject Property, have an NAV of €150 per m<sup>2</sup>. However, all 3 comparators have a capacity to cater for more children than the Subject Property taking into account the size of the property. The Subject Property, with an agreed floor area of 322 m<sup>2</sup> has capacity to cater for only 46 children. The Respondent's first comparator, Nurture ELC Limited, which is situated on the grounds of Tallaght Hospital, Dublin 24 has a total floor area of 147 m<sup>2</sup>, less than half the size of the Subject Property, but it has capacity to cater for 40 children. The Respondent's second comparator, Chuckleberries Crèche, which is situated on Ballycullen Road, Tallaght, Dublin 24, has a total floor area of 386 m<sup>2</sup>, similar in size to the Subject Property, albeit slightly larger, but it has capacity to cater for 96 children, more than double the capacity of the Subject Property. The Respondent's third comparator, Links Childcare, which is situated at Kingswood, Dublin 24, has a floor area of 618.60 m<sup>2</sup>, almost double the size of the Subject Property, and has capacity to cater for 120 children, more than two and a half times the capacity of the Subject Property.

10.36 Having weighed and evaluated all the evidence before it, the Tribunal finds that the Subject Property is inferior to all three of the Respondent's comparators, referred to above, for a number of other reasons. The Tribunal finds that there are physical and operational constraints in place in terms of the Subject Property which make it a less attractive proposition for potential clients. These trading disadvantages include the location, restricted opening hours, greater vacancy during the summer months, inconsistent physical access and limited potential for trade from the general public. Evidence was given to the effect that the crèche had to ask one client to remove their child in circumstances where a student's child wished to attend. Cumulatively, these are factors which make the Subject Property inferior in terms of attracting a hypothetical tenant.

10.37 Having weighed and evaluated all the evidence before it, the Tribunal finds that Cocoon Childcare, Kiltipper, which is situated close to the Subject Property, is the most comparable property to the Subject Property in terms of size and location. This comparator

property is valued at €100 per m2. The Tribunal, however, finds that while this property is comparable to the Subject Property, there are significant differences between it and the Subject Property. The Tribunal finds that the Subject Property is inferior to Cocoon Childcare as it is disadvantaged by restrictions on its opening hours, access, limits on numbers and the reduced number of children in the creche during the summer months, when TUD is closed outside the academic year. For these reasons, the Tribunal considers that a reduction of 20% of the NAV applied to Cocoon Childcare, Kiltipper would be equitable and uniform and finds that an NAV of €80 per m2 should apply to the Subject Property.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Subject Property of €49,100 as stated in the valuation certificate, to a valuation based on an NAV of €80.00 per m2 applied to the agreed, reduced floor area of the Subject Property.

Area m2	NAV (Per m2)	NAV
322.00	€80	€25,760

And so the Tribunal determines.