

Appeal No: VA20/4/0081

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Scanlan Oils

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5021731, Workshop at 5A/1 Ballynaraha, Glanworth West Fermoy, County Cork.

B E F O R E

Donal Madigan - MRICS, MSCSI

Sarah Reid - BL

Anna Maria Gallivan - FRICS, FSCSI, MPhil SEE

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29th DAY OF MARCH, 2023**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th day of December 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 €19.

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

“(d) Property Concerned ought to have been excluded in relevant Valuation List”

and

“The property was never rated before and it is not being used as a workshop. I have been told by two different agents from the valuation office that because the property has no concrete floor (floorspace) that it cannot be rated. I do not trade from the property.”

- 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 On the 1st day of October 2020 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €19.
- 2.2 A Final Valuation Certificate issued on the 16th day of November 2020 stating a valuation of €19.
- 2.3 The Property had not previously been entered on the List but came to be reviewed by the Respondent in 2020 arising from a listing by Cork County Council.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 22nd day of February 2023. At the hearing the Appellant Mr. Richard Scanlan represented himself and the Respondent was represented by Mr. Terry Devlin of the Valuation Office.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

- 4.1 The Property is located in a rural setting 11km northwest of Fermoy, Cork. It is situated adjacent to a residential property, owned and occupied by the Appellant, and is presently accessed via shared lands with the Appellant’s domestic property.
- 4.2 The Property was granted planning permission in 2004 including permission for direct access from the main road up to the Property thereby avoiding the need to traverse the Appellant’s private property. For reasons outlined below, this entryway has not been developed to date and the Property is instead accessed by the Appellant via lands belonging to his domestic property.
- 4.3 The Property was constructed by the Appellant in and around 2009 and his intention at the time was to use same as part of a plant hire venture. Due to the financial downturn circumstances changed and the Appellant’s business intentions were not advanced resulting in the Property being left unfinished. In particular, the Appellant did not put in a concrete floor, as envisaged in the planning permission, and instead the Property has been left with a hardcore gravel floor.

- 4.4 The Property has no services but on occasion and as required, the Appellant uses the electrical supply from his domestic property in the Property, by way of an extension lead. There are no waste services connected to the Property.
- 4.5 The Property is used for storage of miscellaneous items, including but not limited to items associated with the Appellant's oil business (for example oil containers) and various domestic items and plant can be seen in the photographic evidence before the Tribunal.

5. ISSUES

- 5.1 This Appeal concerns the extent to which the Property was appropriately included on the Valuation List by the Respondent. The Appellant contends the property ought to be excluded from the Valuation List, however, he did not elaborate or otherwise confirm whether the Property is not relevant property (under paragraph 2 of Schedule 3 of the Valuation Act as amended) or is relevant property but nonetheless exempt from valuation (under Schedule 4).
- 5.2 Separately and arising from the Respondent's inspection of the Property, the floor areas were discovered to be incorrect, and Mr. Devlin sought to amend same at the hearing of the Appeal. As a consequence of the revised floor areas, the recalculated Valuation of the Property would increase from €19 to €24 and the Respondent sought to amend the Valuation Certificate to reflect the floor area of the Property so found.

6. RELEVANT STATUTORY PROVISIONS

- 6.1 [Relevant Property] Schedule 3 of the Valuation Act, 2001, as amended:

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

(a) buildings,

(b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development,

(c) railways and tramways, including running line property and non-running line property,

(d) harbours, piers, docks and fixed moorings,

(e) mines, quarries, pits and wells,

(f) rights of fishery,

- (g) profits á prendre, other than rights of fishery,*
- (h) tolls,*
- (i) easements and other rights over land,*
- (j) rights to drill for and take away petroleum,*
- (k) canals, navigations and rights of navigation,*
- (l) advertising stations and land and any buildings used as advertising stations,*
- (m) electricity generating stations, including where appropriate—*
 - (i) all buildings and structures,*
 - (ii) all tanks, including fuel oil tanks, water tanks and chemical tanks,*
 - (iii) boilers, furnaces and ancillary fuel handling equipment,*
 - (iv) cooling water inlet and outlet facilities, including pump-houses, culverts, pipe-works, weirs and outfall works,*
 - (v) natural gas installations,*
 - (vi) effluent disposal works, including chimneys and treatment plant,*
 - (vii) wind generators, turbines and generators, together with ancillary plant and electrical equipment, including transformers,*
 - (viii) docks, cooling towers, embankments, canals (head race, tail race), locks, penstocks and surge tanks,*
 - (ix) dams, weirs, bridges, jetties, railways, roads and reservoirs,*
 - (x) all ancillary on site developments,*
 - (xi) all electric lines.*
- (n) the entire networks subsumed in an undertaking including, as the case may be—*
 - (i) signal transmission and reception equipment, all associated masts, lines, cables, posts, pylons, supports, brackets, ducting, tubing and all equipment necessary for normal effective functioning of the networks up to the supply point for each individual consumer,*
 - (ii) all pipeline networks and systems, including pressurising and pressure reducing equipment, together with associated site developments,*

(iii) storage and containment facilities, including tanks, silos or other plant or developments used for the storage and for containment of any substance whether solid or fluid (liquid or gaseous),

(iv) gas works, gas pipelines and natural gas terminals,

(v) telecommunications, radio and television relay and rediffusion networks, including lines, cables and ancillary appendages necessary for the working of such networks,

(vi) electricity transformer stations, including—

(I) all buildings and structures,

(II) all site developments,

(III) transformers,

(IV) electrical equipment, including switchgear, circuit breakers and associated developments,

(V) all electric lines,

(vii) electric lines (within the meaning of the Electricity (Supply) Act, 1927, as amended by section 46 of the Electricity (Supply) (Amendment) Act, 1945), including transmission and distribution networks and consumer service mains and networks on, over, or underground, together with lines and cables with their respective supports (including poles, pylons and brackets), culverts, cuttings, ductings and pole transformers, used in association with those electricity conductors.

2.—The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property,

or

(b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.

6.2 [Relevant Property Not Rateable] Schedule 4 of the Valuation Act, 2001, as amended:

1. Agricultural land.

2. Land developed for horticulture.

3. Land developed for forestry.

4. Land developed for sport.

4A.

(1) Any building or part of a building used exclusively for community sport, and otherwise than for profit and not being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904.

(2) In this paragraph "community sport" means sport, the principal participants in which are—

(a) inhabitants of the locality in which the building concerned (or part of the building concerned) is situate,

(b) inhabitants of localities neighbouring the first-mentioned locality, or

(c) in the case of sporting activities involving teams and with the consent of those responsible in the first-mentioned locality for organising sporting activities in that locality, persons from any geographical area.

4B.

(1) Any building or part of a building used exclusively for community sport and otherwise than for profit, and being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904, but not including any building or part of a building—

(a) used on a regular or occasional basis for the sale or consumption of alcohol

or in conjunction with the sale or consumption of alcohol, or

(b) used directly or indirectly in the generation of income, not being—

(i) club membership fees,

(ii) income received from community organisations for the use of the building or part for community purposes, or

(iii) income received from participants in community sport for the use of the building or part for the purposes of community sport.

(2) In this paragraph "community sport" has the same meaning as it has in paragraph 4A of this Schedule but with the modification that, in the case of subparagraph (1)(b)(iii) of this paragraph, the definition of that expression in that paragraph 4A shall be read as if for "the principal participants in which are—" there were substituted "the principal participants in which are, ordinarily—"

5. *Farm buildings.*

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

7. *Any land, building or part of a building used exclusively for the purposes of public religious worship.*

8. *Any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital, being either—*

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer and the care or treatment provided by which is made available to the general public (whether with or without a charge being made therefor).

9. Any burial ground or crematorium which is not established or operated for the purposes of making a private profit and the income derived from the operation of which is used wholly to defray the expenses (including expenses of a capital nature) incurred in its operation.

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

*(a) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit, or (ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,
and*

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

11. Any art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit.

12. Property (whether falling within paragraph 11 or not) occupied by—

- (a) the National Museum of Ireland,*
- (b) the National Library of Ireland,*
- (c) the National Gallery of Ireland,*
- (d) the Irish Museum of Modern Art Company,*
- (e) the Arts Council,*
- (f) the Heritage Council,*
- (g) the National Concert Hall F97[...],*
- (h) the Chester Beatty Library, or*
- (i) the National Theatre Society Limited.*

12A. Property, being a building or part of a building, land or a waterway or a harbour directly occupied by—

- (a) any Department or Office of State,*
- (b) the Defence Forces, or*

(c) the Garda Síochána, or used as a prison or place of detention, wherever situate, but in this paragraph "harbour" does not include a harbour in respect of which a company has been established pursuant to Section 7 of the Harbours Act, 1996.

13. Any buoy, beacon or lighthouse.

14. Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, being either—

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer F100[, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 200.

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

16. Any land, building or part of a building which is occupied by a body, being either—

(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or

(b) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and—

(i) the principal activity of which is the conservation of the natural and built endowments in the State, and

(ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.

17. Any land, building or part of a building occupied by a society established for the advancement of science, literature or the fine arts and which is used exclusively for that purpose and otherwise than for private profit.

18. Any turf bog or turf bank used exclusively for the purpose of cutting turf or for making turf mould therefrom for fuel or manure.

19.

(1) Any building or part of a building occupied by a member of either House of the Oireachtas or a representative in the European Parliament which is used exclusively for the purposes of accommodating his or her constituency office and the whole or part of the expenses incurred in maintaining that accommodation are defrayed by that member or representative.

(2) In this paragraph "constituency office" means an office which is used solely for the provision of representative services by the member of the House of the Oireachtas or representative in the European Parliament concerned in his or her capacity as such a

member or representative but does not include the head office of a political party or any other office occupied by a political party.

20. Any land, building or part of a building occupied by the Health Service Executive other than any land, building or part of a building referred to in paragraph 8 or 14.

21. The entire network (within the meaning of section 2 (1) of the Water Services Act 2007) used for the provision of water services (within the meaning of that subsection) by Irish Water or a person who holds a water services licence under section 79 of the Water Services Act 2007 or land and buildings occupied by Irish Water or such a licence holder. ”

22. Any land, building or part of a building used exclusively for the provision of early childhood care and education, and occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit.

6.3. [Appeals to Tribunal] Section 34:

34(1) In relation to a property, a specified person may appeal in writing to the Tribunal against—

(a) a determination under section 19 or 28 of the value,

(b) any other detail stated in the relevant valuation list,

(c) any decision under this Act to include or not to include the property in the relevant valuation list or to exclude the property from that list,

(d) any decision by the revision manager under section 28(4)(a) or (b),

(e) in the case of a decision by the revision manager concerned to so exclude the property, any detail stated in the notice concerned issued under section 28(7), or

(f) any decision of the revision manager concerned that the circumstances referred to in section 28(4) do not exist for the exercise of the powers under that section in relation to the property

6.4 [Consideration of appeals by Tribunal] Section 37

37. (1) The Tribunal shall consider an appeal made to it under section 34; in considering the appeal, unless the issues in the appeal do not relate to the value of property, the Tribunal shall achieve a determination of the value of the property concerned that accords—

(a) with that required to be achieved by section 19(5), or

(b) in the case of an appeal from a valuation made under section 28, with that required to be achieved by section 49.

(2) Having considered the appeal, the Tribunal may, as it thinks appropriate—

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, valuation manager or revision manager, as appropriate, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate—

(i) decide that the circumstances referred to in section 28(4) existed for the exercise of the powers under that section,

(ii) in accordance with the matters set out in section 19(5) or 49, as appropriate, increase or decrease the valuation as stated in the valuation certificate,

(iii) decide that the property ought to be included in the relevant valuation list, and determine the valuation in accordance with the matters set out in section 49,

(iv) decide that the property, ought to be excluded from the relevant valuation list,

(v) decide to amalgamate relevant properties, the subject of 2 or more appeals, and determine the valuation of the amalgamated property, in accordance with the matters set out in section 49,

(vi) decide that the property ought to be subdivided into 2 or more relevant properties, and determine the valuation of each such subdivided property in accordance with the matters set out in section 49,

(vii) amend any detail, other than the valuation, as stated in the valuation certificate,

(viii) amend any detail stated in the notification made under section 28(7).

(3) The Tribunal shall endeavour to make a decision on an appeal made to it under section 34 within 6 months from the date of its having received the appeal.

(4) For the avoidance of doubt, neither subsection (1) (a) or (2) (b) (ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.

7. APPELLANT'S CASE

- 7.1 The Appellant represented himself and adopted his précis. He outlined the development history of the site and sought to furnish additional documentation to the Tribunal pertaining to the planning permission extant on the subject. While ordinarily the Tribunal does not allow new evidence be presented at the Hearing, Mr. Devlin for the Respondent took no objection, and the said documents were allowed to be introduced as they served to clarify factual matters rather than prejudice the Respondent.
- 7.2 The Appellant went through his précis which contained photographs of the Property and provided a narrative account as to its use. He noted the lack of services, including waste and electrical services to the Property and took issue with the Respondent's categorisation of the Property as a 'workshop'. The Appellant confirmed that he operates an oil supply business which has a registered address at the property (though the same address covers both the subject Property and the Appellant's private domestic dwelling on the adjacent plot). The Appellant's business is mostly conducted on the road and online and his use of the Property is limited to storage of miscellaneous items in the Property, but he maintained that this did not constitute trading from the Property and therefore the Respondent's classification of the Property was incorrect.
- 7.3 The Appellant did not provide any comparison evidence and his evidence was limited to the question of whether the Property was capable of use, having no services and a hardcore gravel floor. He maintained that two agents from the Respondent had visited the site previously and inspected it, advised him that the Property was not liable for valuation because of the state of the building.
- 7.4 The Appellant confirmed that the Property had not been entered on the Valuation List prior to the within listing, despite the building having been in situ since 2009. Mr. Scanlan gave evidence that his intention at the time of construction was to use the Property as part of a plant hire venture. However, due to the financial downturn circumstances changed and the Appellant's business intentions were not advanced resulting in the Property being left unfinished. In particular, the Appellant did not complete the concrete floor, as envisaged in the planning permission, and instead the Property has been left with a hardcore gravel floor.
- 7.5 In cross examination of the Respondent, the Appellant took issue with the comparison properties relied on by the Respondent. He argued same were not similarly circumstanced to the Property and the Subject could not be viewed in line with them. The Respondent objected to the Appellant's commentary and line of questioning claiming the valuation evidence was not open to challenge in circumstances where the Appellant's appeal was focused on incorrect inclusion on the list only. Further, the Respondent noted he was unable to confirm or clarify whether agents had previously attended the Property, as described by the Appellant, as those interactions were many years prior and were not recorded on the Respondent's system.
- 7.6 In summing up his case, Mr. Scanlan reemphasised that he did not trade from the Property, had not completed it in line with the building specifications contained in the planning permission granted, and that the Property should be excluded from the List.

8. RESPONDENT'S CASE

- 8.1 Mr Devlin, for the Respondent, provided a summary of his case, his response to the Appellant's case, the valuation history for the Property, a location map and pictures of the subject Property. He maintained the view that the property was capable of beneficial occupation and met the requirements for relevant property under the Act. Further, he disputed Mr. Scanlan's claim that the property was unusable based on the hard-core floor contending it was clearly in use, when inspected, and that various items associated with Mr. Scanlan's business were to be seen there as well as other items which the photographic evidence confirmed.
- 8.2 Notwithstanding that the Appeal was for exclusion from the List, rather than determination as to valuation, Mr. Devlin included examples of comparison properties in his précis for reference purposes in circumstances where the Respondent was asking the Tribunal to amend the valuation (as a consequence of the amended floor areas). On that basis, he felt it was appropriate to set out the basis and justification for the Respondent's value and the comparison evidence attached in an Appendix to this decision (n/a to public). The range identified in these comparison properties was a NAV/m² of between €17.09 / RV €19 and €20.50 / RV €23 and was set out as follows:

Type	Property No	Address	NAV € per sq.m	RV (€)
Subject Property	5021731	Ballyhooly, Co. Cork	17.09	19.00
Comp 1	2162119	Parkacunna, Glanworth Co. Cork	20.50	19.00
Comp 2	2203699	Acres, Fermoy, Co. Cork	17.08	35.00
Comp 3	2201348	Acres, Fermoy, Co. Cork	20.50	23.00
Comp 4	2184386	Ballylegan, Glanworth Co. Cork	20.50	68.00
Comp 5	2167441	Glanworth West, Fermoy, Co. Cork	17.09	14.00

- 8.3 In summing up his case, Mr. Devlin contended that the Property was in use by Mr. Scanlan notwithstanding the hard-core flooring and this use refuted the contention that Schedule 3 paragraph 2 exemption applied. He pointed out that no argument had been put forward by the Appellant that the Property fell within the list of exempted structures set out in Schedule 4 of the Act and arising from the incorrect floor areas, he asked the Tribunal to amend the valuation from €19 to €24, retaining the NAV unit value rate as €17.09/m²

9. SUBMISSIONS

- 9.1 There were no legal submissions from the Appellant.

- 9.2 Though not a formal legal submission, the Respondent objected to the Appellant's cross examination of the comparison evidence contained in his précis. Mr. Devlin argued that the Appellant had raised no valuation evidence himself and was obliged to stay within his grounds of Appeal, namely that the property should be excluded from the List. Mr. Devlin further argued that as Mr. Scanlan had not contended the valuation was incorrect, any evidence sought to be introduced regarding valuation was impermissible.

10. FINDINGS AND CONCLUSIONS

- 10.1 In this Appeal and based on the Grounds of Appeal submitted by the Appellant, the Tribunal has to determine if the Appellant's contention that the Property ought not to have been entered on the List is correct. The Tribunal's powers are limited to that question and the power to determine the Appeal lies under, and is dictated by, Section 37 of the Valuation Act, 2001 as amended.
- 10.2 The Appellant's case was based on his view that the Property ought to have been excluded from the Valuation List and as such he effectively requested the Tribunal find in his favour pursuant to Section 37(2)(b)(iv) of the Act. The Respondent argued that the property was validly listed, relevant property and capable of beneficial occupation, meaning the Appeal should be dismissed pursuant to Section 37(2)(a) of the Act with the Valuation being amended to reflect the revised floor areas.

Exclusion from the List

- 10.3 The default position under the Valuation Act, 2001 is that all property listed in Schedule 3 falls to be valued as relevant property, unless covered by paragraph 2 of that Schedule, for example where the Property is incapable of beneficial occupation. Separately, a property may be excluded from the List notwithstanding it is relevant property, if it falls into a class of properties listed as exempt under Schedule 4 of the Act. Both Schedules are set out in full in Section 6 above.
- 10.4 The Tribunal's powers are dictated by the claim an Appellant makes. If an Appellant claims a property is not relevant property and incapable of use (pursuant to Schedule 3 paragraph 2) then the Tribunal must decide this as a yes or no determination based on the evidence as to the state of the property and its potential use to an occupier. Alternatively, if an Appellant claims that a property is or ought to be exempt from valuation, the Tribunal is required to consider if the property falls within the category of exempted properties listed in Schedule 4 of the Act.
- 10.5 In the present case, the Appellant simply stated in his grounds of Appeal that the Property ought to have been excluded as it was never previously rated and in any event was structurally incomplete and not used as a workshop (same being the description given to it by the Respondent). Absent further argument and/or evidence as to whether the contended exclusion was justified under Schedule 3, paragraph 2 or Schedule 4 of the Act, the Tribunal had before it, insufficient evidence substantiating the Appellant's claim.

Appellant's failure to prove their case

- 10.6 The Tribunal can only decide an Appeal based on the evidence placed before it. It is a well-established principle that the onus in these appeals rests with the Appellant to prove his/her case. Furthermore, in order to successfully avail of an exemption under the Act, an Appellant is bound to establish that the exemption applies clearly, without doubt and in express terms.
- 10.7 Insofar as beneficial occupational arises for consideration in this Appeal, the decision of Mrs. Justice Hyland in *Fibonacci Property Ica v Commissioner of Valuation* [2020] IEHC 31 refers wherein she found that:

“27. It is common case that in a deciding whether an owner is in beneficial occupation one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether it is in “immediate use and enjoyment of the land” (as characterized in Sinnott v Neale [1984] (IR JUR. REP. 10, even though in that case the defendant was not in occupation of the property) or whether the occupation was of value (O’Malley v The Congested Districts Board 2 [1919] IR 28)”

- 10.8 The legal position is well established and was considered by the English Court of Appeal in *Williams v Scottish & Newcastle Retail Ltd & Ors* [2001] ALL ER (d) 173 wherein the Court considered the threshold for beneficial occupation which was described as a low one:

“57. The first and most important of these principles is the distinction between the determination of a person's liability to be rated (on the one hand) and the quantification of that liability by determination of the rateable value (on the other hand). Mr. Holgate submitted that the Lands Tribunal fell into serious error by failing to make this distinction. He also relied on what he called the principles of reality and uniformity. These submissions call for serious consideration.

58. A person cannot be liable to pay non-domestic rates unless he is in occupation of a non-domestic hereditament within the meaning of the 1988 Act, and there is a long line of cases (starting, so far as the modern law is concerned with the Mersey Docks case in 1865) on the concept of rateable occupation. It is a concept which imports the notion of beneficial occupation, but not necessarily in the same sense of being profitable to the occupier personally. Moreover, the need for benefit is (as Mr. Holgate urged, referring to the advice of the judges given by Blackburn J in the Mersey docks case (1865) II HLC 443, 461) a low threshold. Once a hereditament has passed this threshold and is shown to be ratable, the valuation process requires a determination of annual value to a hypothetical tenant holding under a hypothetical annual tendency and the actual occupier ceases to be relevant.”

- 10.9 The Appellant gave evidence that he did not conduct business from the Property nor did he use it as a workshop. The Respondent maintained that the subject Property was not only capable of being used by the Appellant but was in fact used for storage of

various items, including items associated with his business, and photographs of the building's interior were relied on in that regard.

- 10.10 Having assessed the evidence provided by the parties, the Tribunal finds that insofar as Schedule 3 permits exclusion of a Property if it is incapable of use and beneficial occupation, this has not been proven by the Appellant. From the evidence before it, the Tribunal finds that the Property is used by the Appellant, including for storage purposes ancillary to his business enterprise. In addition, the Property does not fall within the category of properties listed in Schedule 4 of the Act and no argument was put forward in that respect by the Appellant.

Respondent's request to amend the valuation certificate

- 10.11 At the hearing of the Appeal the Respondent sought to amend the floor area of the Property and accordingly asked the Tribunal to amend the Valuation Certificate from €19 to €24 to reflect the corrected size and floor area of the Property. The Tribunal is bound by the Appellant's grounds of Appeal and may not extend their deliberations beyond same, specifically where valuation has not been put in issue in the present Appeal.
- 10.12 For reasons of jurisdiction outlined below, the Tribunal finds that the Appellant has expressly limited their grounds of Appeal to the eligibility of the Property for inclusion on the List and where that is so, matters of valuation do not arise. There can be no 'Appeal within an Appeal' and having regard to Section 37 of the Act and confirmed by the High Court in *Honeybridge Ltd* (VQA 14/4/021), the Tribunal cannot entertain the Respondent's request to revise and increase the valuation of the Property in the circumstances.

Statutory jurisdiction of the Tribunal

- 10.13 In this, as in all Appeals, the Tribunal is confined to its statutory remit. Specifically, and as recently confirmed by the Mrs. Justice Hyland in *Honeybridge Ltd and Rory Burgess and the Commissioner of Valuation* (VQA 14/4/021), the Tribunal can only proceed based on the powers afforded to it under Section 37 of the Valuation Act, as amended:

"26. Section 37 provides that the Tribunal shall consider an appeal made to it under s.34 and may under s.37(1)(a) "disallow the appeal and accordingly, confirm the decision of the Commissioner" or may allow the appeal and then take one of a number of decisions under s.37(1)(b), depending on the nature of the decision appealed against, being (i) to amend the value or any other detail in relation to the property; (ii) decide the property ought to be included in the relevant valuation list or (iii) amend any detail in relation to the property. What is clear from the nature of the various decisions specified is that the jurisdiction of the Tribunal is circumscribed by the nature of the appeal. It may amend the value – precisely that which it had been asked to do in the instant case. It may decide the property ought to be included or excluded in the relevant valuation list. It may amend any detail in relation to the property.

27. In other words, the Tribunal is not at large to make a decision that is not encompassed by the provisions of s.37. Its jurisdiction is derived exclusively from the Act. This has two separate consequences in the instant appeal.

28. First, there is no provision in s.37 for the Tribunal to decide a matter not encompassed in the appeal. It is clear from the wording of s.37 that the Tribunal is only entitled to consider the appeal before it. Section 37 expressly obliges it to consider “an appeal made to it”. Section 37(1) provides that, having considered the appeal, the Tribunal may either disallow the appeal or allow the appeal.”

10.14 The Tribunal finds that the Appeal advanced by the Appellant is that the Property should not have been included on the list (whether under Schedule 3 paragraph 2 or under Schedule 4 of the Act) and as such the within Appeal constitutes an Appeal under Section 34(1)(c) of the Act. Where that is so, the Tribunal must either agree or disagree with the Appellant’s contention and accordingly disallow the Appeal or allow it, removing the property from the List.

10.15 Arising from the above, the present Appeal was not an Appeal contesting the determination of value under Section 19 of the Act wherein the obligation to ensure correctness of value would arise. This is a revision appeal having regard to section 28 and section 49. The Tribunal therefore finds that the Respondent does not have a right of appeal against its own decision and the power to amend the Valuation Certificate is precluded in this Appeal.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent to enter the Property on the List with a valuation of €19.