

Appeal No: VA20/4/0094

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Museum of Literature Ireland

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5021595, Retail (Shops) at Basement Part, Newman House, 85-86 St. Stephen's Green, Dublin 2 ("the Premises").

B E F O R E

Dolores Power - MSCSI, MRICS

Deputy Chairperson

Barra McCabe - BL, MRICS, MSCSI

Member

Mema Byrne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 2ND DAY OF JUNE, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 19th November 2020 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value 'the NAV' of the above relevant Premises was fixed in the sum of €9,120.

1.2 The grounds of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Premises is not a determination that accords with that required to be achieved by section 28(4) of the Act because : *"Property Concerned ought to have been excluded in relevant Valuation List. The property should be categorised as*

"Relevant Property Not Rateable" as defined in Schedule 4 of the Valuation Act, 2001"; and

- 1.3 If deemed rateable, the Appellant considers that the valuation of the Premises ought to have been determined in the sum of €3,000.

2. VALUATION HISTORY

- 2.1 On the 12th day of March, 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 Premises was sent to the Appellant indicating a valuation of €9,120.
- 2.2 A Final Valuation Certificate issued on the 23rd day of October, 2020 stating a valuation of €9,120.

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 20th day of February, 2023. At the hearing the Appellant was represented by Mr. Owen Hickey SC instructed by Ms. O'Flynn from UCD Legal Department. Mr. Martin O'Donnell FRICS, FSCSI of CBRE appeared as an expert witness for the Appellant. The Respondent was represented by Mr. Keith Rooney BL instructed by Mr. Pdraig Keenan of the CSSO. Mr. Neil Corkery of the Valuation Office appeared as an expert witness for the Respondent.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

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

- (a) That the Premises does not have street frontage and there is no indication from the street that there is a bookshop operating in the Premises.
- (b) That the Premises is run by the staff of the Museum, and is accounted for within the accounts of the Museum.
- (c) That the Museum is the paramount occupier of the Premises.
- (d) That the Museum is a charitable organisation and it benefits from an exemption under the Valuation Act. This fact was not in issue between the parties.
- (d) That the bookshop in occupation of the Premises is subject to a licence agreement from the Museum.

5. ISSUES

- 5.1 Whether the Premises was rateable or not rateable pursuant to s.11 of Schedule 4 to the Valuation Act 2001.
- 5.2 If the Premises was rateable whether the NAV of €7,620 (reduced from €9,120) or €5,400 (increased from €3,000) was applicable.

6. RELEVANT STATUTORY PROVISIONS:

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

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

- 6.2 Section 11 of Schedule 4 to the Valuation Act, 2001 sets out the following premises as relevant property not rateable:

“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”.

7. APPELLANT’S CASE

- 7.1 The Appellant firstly stated that the parties had prior to the hearing agreed the floor area of the Premises at 45.4 square metres, which had been at issue prior to the hearing. The Appellant also submitted that it would not rely on written submission in relation to paragraphs 10,12 and 17 of Schedule 4 of the Valuation Act, 2001. The Appellant gave evidence that the Premises is attached to the Newman House Literary Centre CLG trading under the name Museum of Literature Ireland (“the Museum”), which is held under an occupational licence. It was submitted that the Premises is not directly accessible from the front of the building, and as a result could not be rented out as a commercial unit. It was also submitted that the Premises is part of the Museum experience, in that it allows for the continuation of the Museum experience at home by enabling visitors to purchase items related to the exhibitions in the Museum. The shop in the Premises is operated and staffed by the Museum. The Museum is open to the general public. The Appellant stated that the sales in Premises may be broken down as follows:

- 44 % Book Sales
- 44% Literary Products
- 8% Non literary Items

- 7.2 The Appellant stated that it was for the Tribunal to weight the fact that not all of the items sold in the Premises related to the Museum experience. The Appellant referred to three comparators in respect of rateability contained at Appendix 1 (n/a to public).

The Appellant submitted evidence that each of the comparators, which were shops in museums/ galleries were not rated.

- 7.3 The Appellant submitted that the Premises was exempted from rating under Paragraph 11 of Schedule 4 of the Valuation Act 2001 which provides an exemption to rating for:

“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”.

- 7.4 It was contended that in the event that the Valuation Tribunal determined that the Premises is rateable, the NAV per square metre proposed by the Commissioner of Valuation is too high. In support of this submission three comparators were relied upon which the appellant submitted were “similarly circumstanced”. It was submitted that the comparators for the purposes of determining the NAV were similar in use, size, location and/or construction.

- 7.5 The Appellant addressed the comparators used by the Respondent and noted that the first comparison is the café adjoining the Premises in the basement of 86 St. Stephen’s Green. While unchallenged, this comparison is on the valuation list at €154 per square metre for the café dining area and €100 per square metre for the kitchen area. While this unit is also in the basement of the same building it benefits from independent access to the street via an external staircase. The Premises is a single room to the rear of a Georgian basement with a permanent thoroughfare through the centre of it for museum guests. The Premises does not benefit from street access and has no profile on the public street. Taking the above into account and the valuation level applied to Comparisons 2 and 3, which the Appellant opined are superior properties, the it was submitted that a value of €110 per square metre is fair and reasonable for the Premises, which would produce a NAV of €5,400.

- 7.6 Under cross examination the Appellant did not accept that it was improper for the café adjoining the Premises to have a different valuation, as the café had street frontage. Mr O’Donnell admitted that he did not inquire as to the footfall coming from

the Museum to the Premises, or from the Premises to the Museum. He also admitted that he did not inquire as to the turnover of the Premises, but he did not accept that if the footfall was the same as the Café they should be both similarly rated as rateable valuation was not calculated based on footfall. Mr O'Donnell stated while the building had been renovated to accommodate the Museum, he accepted that the Premises generated some income for the Museum.

8. RESPONDENT'S CASE

8.1 The Respondent's first comparator in relation to rateability or the tone of the List was the adjacent café. The Respondent's expert witness, Mr Corkery, gave evidence that he attended at the Premises and admitted that he was rating the café premises adjoining the Premises at the same time. The first time he attended at the Premises he came through the Museum. The second time he attended at the Premises he came through the café. He gave evidence that he was also able to access the Premises through the garden door at the rear of the Premises. The Respondent submitted that the subject Premises is valued at the prevailing levels as evidenced from the comparators. He also submitted the comparators for the purposes of rateability are properties which are 'similarly circumstanced' and are considered comparable. This means they share characteristics such as use, size, location and/or construction. In addition to the relevant market evidence which underpins the valuation scheme, the Respondent submitted that the comparative evidence demonstrates the correctness and equity & uniformity of value have been achieved in this case.

8.2 The Respondent's second 'tone of the list' comparator operates as a visitor's centre which contains a café, a flower shop and a gift shop. This premises has a total floor area of 274.71 square metres and a NAV of €41,200. Based on this comparison the Respondent submitted that the licence between the licensor and the licensee, provided a similar form of control to that of the Premises as the licensor was in paramount control. However, the licensees in the Respondent's second comparator are deemed rateable and are not deemed to fall under property not rateable under Schedule 4. There is no lease or licence agreement between the licensor and the Florist's Shop. The Florist's Shop is operated within the Trust and supports the work of the Trust hence they have decided not to enter into a written agreement. The Florist's Shop is

deemed to be a relevant property and is rated for similar reasons to the cafe in the main building as it is not exempt under Schedule 4 because it does not fall under “charitable purpose” nor is it a main objective of the charity. The Valuation Acts, 2001-2019 do not provide for areas or uses outside an exempt premises to be exempted even if the funds are re-invested into the property for the benefit of the main objective. For example, Schedule 4, Para 11 does not provide for a shop or café established in a museum. It was submitted by the Respondent that it was not the intention of the legislators to exempt commercial enterprises run by charitable bodies, which are not transient or periodic in nature. The gift shop in the visitor’s centre is run by the Trust and is deemed to be a relevant property, it is not exempt under Schedule 4.

8.3 The third comparator was a Museum in Limerick which has a total floor area of 176.31square metres and a NAV of €22,900. This comparator is a restaurant contained within the Museum. The accommodation comprises of a seating area inside and a terraced seating area outside along with a preparation area/kitchen. In decision VA 99/4/004, the Tribunal determined that due to the nature of the Licence Agreement that existed between the Appellant and the Museum, the Appellant was not in paramount occupation. They concluded that the Museum was in occupation. The property was subsequently listed for revision. On cross examination the Respondent admitted that he had not visited this property and acknowledged that it was not in the rateable area of the Premises.

8.4 The Respondent submitted that it had investigated all of the particulars of the appeal, considered both the grounds and the evidence of the appellant, and having agreed any matters of fact which were in dispute, was of the opinion that the correct NAV for the Premises is €7,620

9. SUBMISSIONS

(a) The Appellant’s Submissions

9.1 The Appellant submitted that Schedule 4 of the Valuation Act, 2001 (as amended) (“the Act”) which is a schedule of ‘Relevant Property Not Rateable’, provides, at paragraph 11, that:

*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.*

9.2 The Premises operates as a bookshop which is part of the Museum of Literature Ireland, which is operated by the Appellant. The Museum of Literature Ireland is, as a matter of fact, a literary museum. The Museum is open to the general public, and it is not established or maintained for the purpose of making a private profit. The Premises, being an integral part of the Museum, accordingly constitutes relevant property not ratable pursuant to paragraph 11 of Schedule 4 to the Act.

9.3 It was submitted that it is not lawful for the Respondent to selectively identify an integral part of an exempt museum and to arbitrarily ascribe to it the use of '*Retail (Shops)*' as if it constituted an ordinary retail unit in the high street.

9.4 The Appellant relied on the case of *St. Vincent's Healthcare Group Limited-v-Commissioner of Valuation [2009] IEHC 113*, which dealt with the ratability of the multi-story car park serving St. Vincent's Hospital at Merrion Road, Co. Dublin. In its decision the High Court held that the Valuation Tribunal had erred in law in the test that it applied, namely that the use of the car park must be inextricably linked as a matter of necessity to the proper operative elements of the functioning of the hospital. At paragraph 34 of his judgment, Cooke J. stated as follows:

"It is therefore not just the nature of the activity carried on in the building (the use) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption.

9.5 At paragraph 36 of his judgment, Cooke J. went on to state:

“When the correct test is applied namely, that of ascertaining the purpose of the appellant in using the structure as a car park, the Court considers that its use clearly comes within the scope of heading No. 8. The car park is so provided and located because the hospital is situated in a built-up urban area and attracts large volumes of traffic by those using or visiting the hospital. It may not be “necessary” in the literal sense, to provide car park spaces in order to care for the sick or treat illnesses, but it may well be a highly necessary part of the efficient management of the hospital as a whole to ensure that traffic in and out of the hospital, including ambulances, is efficiently accommodated and organized. The car park exists and is so located because of the hospital and not otherwise. It is there because the hospital is there. In that sense therefore, the use of the car park is not “remote” from the main activity of the appellant. It is used predominantly by those having business at the hospital and staff alone account for 50% of its user.”

- 9.6 The Appellant submitted that the Premises was being used as part of the Museum, and for no other purpose. It was also their position that the words of Cooke J. in the St. Vincent’s Healthcare case can be precisely applied to the Premises.
- 9.7 The principle in the St. Vincent’s Healthcare judgment was applied by the Valuation Tribunal in its determination in the case of Mater Misericordiae & Children’s University Hospital & Eccles Street Car Park Limited-v-Commissioner of Valuation (VA16/3/017), holding the hospital car park to be exempt from rating, notwithstanding that the Mater car park was occupied by a separate entity to the hospital.
- 9.8 The Appellant submitted that the Premises is part of the charitable purposes of the Museum as it is used for purposes directly related to the achievement of the objects of the Appellant company. It is not a retail facility operating in the marketplace in the manner of, for example, Oxfam shops with the purpose of raising money for the museum.

9.9 The Appellant relied on the case of University College Cork-v-Commissioner of Valuation (VA9/4/039) in which the Valuation Tribunal held a wide range of facilities on campus to be exempt from ratability by virtue of being used for “public purposes” within the meaning of the proviso of section 63 of the Poor Relief (Ireland) Act 1838. At paragraph 24 of its judgment, the Tribunal stated as follows:

“At Level 1 it could not be argued with any conviction that the provision of a coffee shop, the convenience shops, a photography shop, offices and ancillary other uses are other than what one would normally expect to find in a University campus and without which a University could not function.”

9.10 The appellant also relied upon case of Limerick Youth Services Board-v-Commissioner of Valuation (VA 90/3/003) where the property in question was a purpose-built centre containing a number of training modules suitable for instruction of young people in the skills of hairdressing, shoe repairs, baking, food preparation and catering. The Tribunal noted:

“The Tribunal finds it impossible to come to any conclusion other than that the purposes for which the young persons are employed in the shops the subject of the appeal in this case are those of the charitable purposes of the Appellant. The Tribunal finds that the Appellant is a charity in relation to its constitution and general objectives.

9.11 The case of St. Joseph’s Foundation-v-Commissioner of Valuation (VA 05/3/057) was a case concerning a property known as ‘The Forge Centre’ in which a Training Employment Social Skills Program, as part of its Vocational Education Program, included training programs in the subject property, namely a coffee shop. The Valuation Tribunal held the property to be occupied for the purpose of caring for handicapped or disabled persons.

9.12 The Appellant submitted that in the case of University of Limerick-v-Commissioner of Valuation (VA 95/5/010, VA 95/5/011, VA 95/5/012, VA 95/5/013, & VA 9VA 95/5/014) the Hunt Museum situated on the campus of the University of Limerick,

was determined to be exempt by the Valuation Tribunal pursuant to the pre-2001 Act law; and in the case of Ms. Helen O'Donnell (The Hunt Museum Ltd)-v-the Commissioner of Valuation (VA 99/4/004), a case concerning the basement restaurant and kitchen, part of the Hunt Museum, it was held that the Hunt Museum was the paramount occupier of the property. It was submitted that reading the two aforementioned cases together that the restaurant premises in question, as part of the Hunt Museum, was exempt from rateability pursuant to the earlier decision of the Valuation Tribunal.

- 9.13 With reference to the citation of precedent case law before and after the enactment of the 2001 Act, it should be noted that Cooke J. in the St. Vincent's Healthcare case, at paragraph 25 of his judgment stated as follows:

"It is accepted that although the pre-2001 legislation comprising the Valuation Acts from 1838 onwards are now repealed, many of the analogous cases considered in judgements on those provisions still remain useful and authoritative in considering these questions."

- 9.14 The Appellant submitted that the appropriate test to be applied in any particular case is whether the use of a part of the relevant property in question, when not used precisely and directly for the core exempted activity, e.g., caring for sick persons directly, relieving poverty directly, caring directly for people with special needs, is a use, which exists because of the core use and not otherwise, which is there because the core use is there, and is used predominantly by those having business connected with the core use. It is the purpose of the occupying body in engaging in that use which gives rise to the exemption.

- 9.15 Applying that test to the present case, it was submitted by the Appellant that the Premises constitutes relevant property not ratable pursuant to paragraph 11, Schedule 4 to the Valuation Act, 2001.

(b) The Respondent's Submissions

9.16 The Respondent submitted in relation to section 11 of Schedule 4 of the 2001 Act that the Premises is not occupied *qua* museum but rather for the purposes of operating a shop selling books and assorted other items after the Museum patrons have left the environs of the Museum. The Premises is occupied for the purposes of making a private profit. The Premises is neither necessary for, nor operated in aid of, the efficient running of the Museum and therefore falls outside the scope of “museum”.

9.17 The Respondent submitted that the correct approach to interpreting the Valuation Act, 2001 (“the 2001 Act”) is set out in *Nangles Nursery v Commissioner of Valuation* [2008] IEHC 73 law as follows:

“(1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;

(2) the Act is to be strictly interpreted;

(3) impositions are to be construed strictly in favour of the rate payer;

(4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;

(5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;

(6) if however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;

(7) in the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.”

9.18 The Respondent noted that “Occupier” is defined in s.3 of the 2001 Act as “every person in the immediate use or enjoyment of the property”. Who constitutes an occupier is a matter inferred from the facts of each case, but the test of occupation is

immediate use and enjoyment (*Westminster Council v Southern Railway and Others* [1936] A.C. 511). It was submitted that the Appellant is the party that has exclusive use and enjoyment of the Premises.

- 9.19 Where more than one person claims rights over property then the issue becomes one of fact to determine the “paramount” occupier. This remains the case whether the right to occupy is “*attributable to a lease, a licence or an easement*” as per *Carroll v Mayo County Council* [1967] IR 364. It was submitted that the Tribunal must assess occupation by reference to the *de facto* rather than the *de jure* position. Even if the Appellant established it had contracted with UCD in such a way as to establish UCD as the paramount occupier, this Tribunal would have to consider the actual facts on the ground as opposed to any legal fiction created between the Appellant and UCD.
- 9.20 In *UCD v Commissioner for Valuation* [VA07/3/063], UCD argued that it was the occupier of a premises within the Belfield campus, albeit the property subject to a licence agreement with a limited company. However, the actual occupier of the property was an unincorporated off-shoot of UCD itself. In those circumstances UCD was held to be the “paramount occupier”. The Respondent noted that the key distinguishing feature in this case is the separate legal personality of the Appellant.
- 9.21 While the Respondent made written submissions in relation to other sections of Schedule 4 of the 2001 Act also relating to non rateable premises (paragraphs 10,12 and 17 of the Schedule 4), these were not put in issue at the hearing, as the Appellant had informed the Tribunal it would not be relying on them, and therefore the Respondent did not make any submission in relation to these paragraphs.
- 9.22 The Respondent conceded that the Appellant operates a museum in the building. However, it submitted that the Premises is not necessary for the orderly and efficient management of the Museum. The Respondent considered the *St. Vincents’ Hospital* case and submitted that the true test for ascertaining whether part of an unrateable property could be rated was to identify the purpose of the appellant in using that portion of their property. Cooke J. held in that case:

“The Tribunal applied the wrong test in holding that it was not "directly related to" or "inextricably linked" or "essential" to the provision of medical services. The correct test is not whether its use is essential to the provision of medical services but whether the occupation of the car park is for the purpose of the hospital.”

The Court, in considering the proposition that rateable elements of an otherwise unrateable property could exist, held:

“[...] A building housing a restaurant or a computer servicing business will not attract exemption, but if one is the hospital canteen and the other is its information technology department, they may well do so.

In other words, it is necessary to ask not only what the nature of the actual user is but why that use is made by the occupier.”

- 9.23 The Respondent submitted that the true issue in this case is whether the Premises is being utilised for the purposes of *a* museum, not whether the Premises is being utilised for the purposes of *this* museum. It was submitted that the Appellant describes the Premises in the following terms:

“The subject property which in use as a shop is an integral part of the Museum of Literature Ireland. The shop contributes to both the museum experience in general with the selling of books which only have a relevance to Irish Literature and to the revenues of the company which is a Non-for-Profit company. ” (sic)

- 9.24 The Respondent submitted that the Premises is accessible without payment of an entry fee to the Museum and thus is not part of the Museum experience itself, but rather a separate entity accessible to the public. While its selection of books may cater towards Irish authors and Irish literature, that forms only a small part of the Premises’ overall offering. The book shop operating in the Premises also offers such diverse items as wrapping paper, lip balm, mugs, notebooks, candles, greeting cards and even colourful socks.

- 9.25 The Respondent submitted that the Premises' purpose is not to contribute to the Museum experience or to promote Irish literature, but rather to defray the costs of operating the Museum through the generation of profit. The Premises is not used by the Appellant within the scope of its operation as a museum, nor does it fall within the scope of a facility that is integral to the running of the Museum.
- 9.26 The Respondent argued that in the *Vincent's* case, the car park was unratable as it existed only because of the hospital. In the absence of the hospital there was no need for the car park. While the car park did contribute to the income of the hospital, that was not a factor in determining whether it was ratable. However, the Premises is used as a commercial enterprise to bolster the income of the Museum. This does not bring the Premises within the ambit of "*museum*" for the purposes of the 2001 Act and therefore it is liable to be rated.
- 9.27 The Respondent submitted that the restaurant and flower shop operating within the grounds of the visitor's center (used as a comparison) could fall within the scope of *Vincent's*. What takes them outside that scope is the fact neither enterprise furthers the operation of the cemetery. Instead, they generate helpful revenues that benefit the charity running the visitor's center.
- 9.28 The Respondent submitted that the Premises operates solely as a commercial entity complimenting the activities of the museum. It is not necessary to the museum, nor is its use part of the fabric of the museum itself. Unlike Vincent's car park, the absence of the book shop in the Premises would not materially affect the day-to-day operation of the Museum. Its patrons would not find the Museum harder to access, its exhibits less informative or its collections less evocative. Its severability indicates its ratability.
- 9.29 The Respondent relied on the comparators submitted in respect of the tone in addressing the appropriate NAV of the Premises, set out in Appendix 2 (n/a to public). The Respondent submitted that the direct comparator is the adjacent café which shares

the basement level of the building with the Premises. This has a value of €154.00 per square meter. By applying the same rate to the book shop, the Respondent ensures compliance with the requirements of section 49 of the 2001 Act. The Respondent submitted that a lower value should be attributed to the Premises than the café, on the basis the Premises does not have direct street access, is insufficient to justify a lower rate. The Premises also has street access *via* the café and through the Iveagh Gardens entrance. Also, the Premises is directly accessible from the Museum whereas the patrons must pass through it to access the café. These factors off-set any potential benefit which might justify a higher rate for the café.

9.30 It would be contrary to the intention of section 49 for two equally situated properties to have different rates without a strong objective basis for doing so. In the absence of such a basis the Tribunal should be slow to interfere with the expert assessment of the Commissioner.

9.31 The Respondent sought its costs should the Tribunal find for the Respondent.

10. INSPECTION

10.1 On the 22nd March 2023 the Division visited the Premises. The division was met by the Director of the Museum and shown:

- a) The access from the street to the café;
- b) The access from the café to the Premises;
- c) The access from the Museum entrance through to doors that pan open to the garden;
- d) The access point from the Iveagh Gardens to the Museum's gardens;
- e) The Premises and the bookshop operating therein.

11. FINDINGS AND CONCLUSIONS

11.1 On this appeal the Tribunal must first determine whether the Premises is a rateable property or whether it falls within one of the exceptions contained in Schedule 4 of the Valuations Act, 2001.

11.2 Should the Tribunal find that the Premises is rateable, the Tribunal has to determine the value of the Premises so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Premises as determined by the Tribunal is relative to the value of other properties on the valuation list of Dublin City Council rating authority area there being no comparable properties in existence on that valuation list.

11.3 Schedule 4 of the Valuation Act, 2001 which is a schedule of 'Relevant Property Not Rateable', provides, at paragraph 11, that the following properties are not rateable:

*"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".*

11.4 The Tribunal determines that the Premises is not rateable for the following reasons:

a) That the Premises forms part of the Museum and is therefore not rateable pursuant to section 11, Schedule 4 of the Valuation Acts.

b) That the Premises is used as a bookshop which is part of the Museum of Literature Ireland and is an integral part of the Museum, being part of the experience of the Museum, having no street frontage and accordingly constitutes relevant property not rateable pursuant to paragraph 11 of Schedule 4 to the Act.

c) That upon inspection the Division found that there was no way of knowing that there was a bookshop in the Premises either from the street, the Iveagh Gardens or from the adjoining café or from the main entrance of the Museum. There was no signage whatsoever promoting or directing people to the bookshop in the Premises.

d) The Division found that the Premises was inaccessible through the garden doors in the Premises itself. The Division also found that the side door appears unmanned and unused. The Division further found that unless you travel to the very back of the café you would not even know the bookshop in the Premises was there and from the Iveagh gardens there was no sightline to the Premises.

e) The Division found there was no direct access from the front of the basement entrance (without going through the café) straight through to the Premises.

f) The Division also found that the Premises had no profile independent to the Museum.

g) The Premises is not part of the flow of the Museum experience and visitors are expressly directed to the bookshop in the Premises both at the beginning and the end of any tour of the Museum.

h) The Division considered the case of Ms Helen O'Donnell (The Hunt Museum Ltd) v Commissioner of Valuation (VA99/4/004) and found it instructive in determining that the Museum was in paramount occupation of the Premises considering the licence agreement, the staffing of the Premises and the *de facto* occupation of the Premises.

i) That the case of *St. Vincent's Healthcare Group Limited-v-Commissioner of Valuation* [2009] IEHC 113 found the test is that the property is a necessary part of the efficient management of the unrated property and is so located because of the unrated property and not otherwise. That the Premises meets the test set out in the *Vincent's* case as it is a necessary part of the efficient management of the Museum, in that it is part of the Museum experience, and part of the charitable purposes in that it contributes to the financial viability of the Museum object of its existence is not to make a profit, and is located where it is only because the Museum is there.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal finds that the valuation of the Premises as stated in the valuation certificate be Not Rateable.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court.

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.