

**Appeal No: VA20/4/0097**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**National Irish Safety Organisation**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2163894, Office(s), Warehouse/Warerooms at A11, Calmount Business Park,  
Calmount Avenue, Ballymount, Dublin 12

**B E F O R E**

**John Stewart - FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Caroline Murphy - BL**

**Member**

**Eamonn Maguire - FRICS, FSCSI, VRS, ARB**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 11<sup>TH</sup> DAY OF MAY, 2023**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 6<sup>th</sup> day of November 2020, the Appellant appealed against the decision of the revision manager made pursuant to section 28(6) of the Valuation Act 2001, as amended, not to exercise his statutory powers by reason that no material change of circumstances had occurred in relation to the property.
- 1.2 The sole ground of appeal against the determination is that it fails to recognise the charitable and educational status of the owner occupier in accordance with paragraphs (10) and (16) of Schedule 4 of the Valuations Act 2001 ('the Act').

**2. VALUATION HISTORY**

- 2.1 An application for a revision of valuation was made by the Appellant on the 4<sup>th</sup> day of September 2019 on the basis that a material change of circumstances had occurred that warranted the property being excluded from the valuation list on the ground that it is no longer relevant property as it falls within Schedule 4 of the Act.
- 2.2 Following inspection of the property in September 2019 the revision manager determined that no material change of circumstance had occurred in relation to the

property and that a revision of valuation was not warranted. A 'No Material Change of Circumstance Notice' was issued by the revision manager on the 9<sup>th</sup> day of October 2019.

### **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 5<sup>th</sup> day of April 2022. At the hearing the Appellant was represented by Mr. Proinsias Ó Maolchalain instructed by David Donegan, solicitor, and Mr. Pauric Corrigan was called to give evidence. The Respondent was represented by Mr. Michael Vallely BL instructed by the Chief State Solicitor and he called Martin Fitzsimons of the Valuation Office to give evidence. On application of the parties, Mr. John O'Keefe, General Manager of the Appellant was permitted to give evidence on behalf of the Appellant on an issue regarding the income stream of the Appellant and was sworn in accordingly to do so.
- 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, Pauric Corrigan and Martin Fitzsimons, having taken the oath, adopted their précis as their 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 Appellant is a company limited by guarantee established under the Companies Act 2014.
- 4.3 The Appellant is a charitable organisation within the meaning of Section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act.
- 4.4 The property is owned by the Appellant and is located in Block A, Unit 11 Calmount Business Park, Ballymount, Dublin 12.
- 4.5 The property is a mid-terrace unit that has office to front and double height warehouse to the rear. The Unit has a red brick/glass façade and is in a block with units to each side and to the rear.
- 4.6 The Appellant uses the property to hold educational courses, for the administration of educational courses held in the property, third level institutions, their member companies and throughout the country, for the organisation and administration of the All-Ireland Safety Awards and All-Ireland Safety Quiz and compiling of journals.
- 4.7 The Appellant has so used the property since August 2001.
- 4.8 In 2004 the Appellant on an appeal to the Respondent sought to have the property excluded from the valuation list on the grounds of the Appellant's charitable status. That appeal was unsuccessful.

4.9 In 2013 the Applicant submitted a revision application on the grounds that a material change of circumstances had occurred that warranted the property being excluded from the valuation list. That application was refused as the revision officer determined that no material change of circumstances had occurred.

## 5. ISSUES

5.1 The issue in this appeal is whether a material change of circumstances has occurred and, if so, whether the property is entitled to be treated as exempt from rates pursuant to paragraph 10 and/or paragraph 16 of Schedule 4 of the Act.

## 6. RELEVANT STATUTORY PROVISIONS:

6.1 Section 3 of the 2001 Act as amended defines a '*material change of circumstances*' as a change of circumstances which 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, or*

*(h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;”,*

6.2 Section 28 of the Act as amended as far as material provides:

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

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

*(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4*

6.3 Paragraph 10 of Schedule 4 provides:

*“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).*

6.4 Paragraph 16 of Schedule 4 provides:

*“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.”*

## **7. APPELLANT’S CASE**

7.1 Mr. Pauric Corrigan, a Director and the Secretary of the Appellant explained the background to the establishment of the Appellant. The National Industrial Safety Organisation was established for the promotion of industrial safety, health and welfare at work in 1963 following recommendations to the then Minister for Industry and Commerce by the Factories Advisory Council, a statutory body established under the Factories Act, 1955, to set up a voluntary organisation to carry out the promotion of health, safety and welfare of persons at work through education and training. The then unincorporated association was at that time concerned with formation of policy, building

membership and organisation of voluntary local committees building a framework of the organisation which developed into regional groups. The ethos for prevention of accidents carried through from when the Appellant was called “The National Industrial Safety Organisation” having changed its name to The National Irish Safety Organisation.

- 7.2 The Safety, Health and Welfare at Work Act, 1989 resulted in the establishment of the Health and Safety Authority (“HSA”). At one stage the Appellant shared offices with the HSA having been placed there by the Department of Industry and Commerce (“the Department”) and did not pay rent for that premises. The Appellant was later given a subvention by the Department to buy the property as it could see the Appellant was getting the message of health and safety into the workplace and could be seen as independent of the body enforcing the legislation. The Appellant’s executive committee has four representatives from ICTU, IBEC, HSA and Insurance Ireland.
- 7.3 The Appellant applied and was granted charitable status in 1996 by the Revenue Commissioners. Mr. Corrigan referred to a letter of 23<sup>rd</sup> April 1996 from the Revenue Commissioners which granted the Appellant an exemption on the basis that the organisation was established for charitable purposes only. He said the exemption was subject to compliance with conditions including that no amendments could be made to the Appellant’s Constitution unless the amendments were previously approved in writing by the Revenue Commissioners.
- 7.4 Mr. Corrigan stated that the Charities Regulator was established in 2009 and produced an extract from the register wherein it states the charitable purpose of the Appellant is the “Advancement of Education” and the charitable objects are “*To promote measures designed to safeguard persons at work against occupational risks to life, limb and health and thereby promote their safety, health and welfare in places of work.*” This entry mirrors a statement from the Appellant’s Constitution. He said the Charities Regulator requires charities to sign up to certain conditions.
- 7.5 Mr. Corrigan said in 2016 the Charities Section of the Revenue Commissioners reviewed the Appellant’s Constitution and formed the view that their Constitution did not meet the requirements of the Companies Act 2014 as to governance and the procedure for the appointment of directors. In those circumstances and having regard to the fact that the Charities Regulator had started to publish guidelines on how charities should be formatted to be compliant with the ethos of the Charities Regulator, the Appellant felt it appropriate to amend the Constitution and Memorandum and Articles of Association. The ethos of the organisation had not changed since their foundation under the Department of Labour.
- 7.6 The Appellant adopted a new constitution at the Extraordinary General Meeting on the 24<sup>th</sup> January 2019. The main object of the Constitution is essentially the same as that in its previous version of the Constitution, namely, “*To promote measures designed to safeguard persons at work against occupational risks to life limb and health and thereby to promote their safety, health and welfare in places of work*”. The new Constitution was sent to the Revenue Commissioners for them to for review and approval of the amendments before it was adopted.

- 7.7 When asked how the Appellant achieves their purposes Mr. Corrigan said that the Appellant promotes Health and Safety. Educational courses form a big part of the Appellant's work, getting the message of health and safety across, in accordance with the Health, Safety and Welfare at Work Act by communication, training and instruction.
- 7.8 The Appellant runs the NISO Occupational Cert Course which began in the 1960's. Many courses run by the Appellant are registered by the educational organisation, Quality and Qualifications Ireland ("QQI"). The Appellant was also approved by FETAC, the predecessor to QQI. The Appellant had to be approved for quality assurance to meet their standards to be approved as a body to provide the courses and for certificates to be awarded. The Appellant provides what were known as FETAC Level 3 to 6 courses on the National Framework of Qualifications. The Appellant is registered with An tSeirbhís Oideachais Leanúnaigh Agus Scileanna ("SOLAS") by whom the Appellant needed to be approved as a training body to provide the SAFE PASS course undertaken by employees to work on construction sites.
- 7.9 Mr. Corrigan confirmed the vast majority of their courses are provided in partnership with third level institutes such as Athlone Institute of Technology ("AIT") and Limerick Institute of Technology ("LIT"). These Institutes recognise the Appellant's certificate course to allow applicants to go on and do a master's in occupational health and safety. Courses are aimed at members and the public. Some Institutes require the Appellant to reserve a number of places for people who are unemployed or on a low wage. All course lecturers are voluntary.
- 7.10 At the property, the Appellant runs the SAFE Pass course and the Display Screen Equipment Assessors course, manual handling courses, and manual handling instructors' courses. There are two offices upstairs and there is much involved in setting up the courses including registration, organising notes, exam papers, marking the exam papers and certificate and administration support. Mr. Corrigan confirmed that even if the course was in Galway-Mayo Institute of Technology ("GMIT") the Appellant would carry out the administration for that course in the office in the property.
- 7.11 The Appellant organises the All-Ireland Safety Awards as a means of promoting a safety culture in Ireland for employers and employees. Members submit a submission on their previous years' safety records and documentary evidence on 13 modules. The awards are open to members and the general public. The Appellant organises speakers and the Health and Safety Commissioner and HSA attend their conferences to share and promote knowledge and information. They work with the Department of Health and Healthy Ireland to promote health in the workplace.
- 7.12 Mr. Corrigan confirmed that courses are open to members and the general public with a membership rate and public rate. The activities of the Appellant were of benefit to the community, promoting and preventing ill health in the workplace.
- 7.13 Under cross examination, when Counsel for the Respondent put to him that nothing had really changed between the drafting of the Appellant's Constitution in 1995 and the

drafting of the new Constitution in 2019, Mr. Corrigan said the Constitution had been brought into compliance with the requirements of the Companies Act.

- 7.14 When it was put to Mr. Corrigan that most of the Appellant's courses are carried out externally, he disagreed. He was asked whether GMIT, LIT, AIT and DTU courses are provided on campus, he said they cannot run the amount of courses in head office.
- 7.15 When asked what percentage of the general public participate in the courses in the property itself as opposed to the employees of the member companies, he didn't know the figures, but his general manager could assist. He agreed that what the Appellant does is training. In response as to whether there was a difference between training and education, he answered they were the sharing of knowledge and that both involved learning as students take what they've learnt on the course and apply it to their work.
- 7.16 When asked whether the charitable purpose is education, he agreed it was one of their "big things" and is in their ethos and constitution which is to promote education and knowledge sharing to prevent accidents and ill health in the place of work. He agreed that the predominate purpose was to educate the members, workers and the public in the workplace which he said included a large number of non-member organisations he described as members of the public.
- 7.17 Mr. Corrigan was unable to respond to questions about the Appellant's revenue stream from the public and from the members.
- 7.18 When asked what had changed that gives the Appellant the opportunity to seek an exemption from rates, he said that the trustees have a legal responsibility to look after the interests of the charity. The Appellant had sought exemptions previously but had always been told that there had been no material change.
- 7.19 When asked whether he was saying the material change was effectively to do with the new constitution in 2019, he said there were a number of material changes that had brought them to this point, the Companies Act, 2014, Charities Act 2009, Revenue Commissioners pointing out their previous Articles of Association were not fully in compliance with the Companies Act in the way the directors were elected which were all Material Change of Circumstances, not by the organisation, but by the Statutory Instruments. When asked was the largest change to the 2019 constitution a governance matter, he agreed and that it was pointed out that the Appellant wasn't meeting a statutory instrument, if they had not acted, they could have been in breach of those Acts.
- 7.20 In response to a question from the Tribunal, Mr. Corrigan said there were five employees employed at the property, a general manager, finance manager, two administration staff and a part time employee, who looks after cleaning and refreshments for training courses. When asked how many courses are held in the property per week, he said he could not answer but Mr. O'Keefe could. When asked how much of the work carried out at the property is concentrated towards courses and awards, he thought the administration staff probably spend about two months on a yearly basis working on the awards.

- 7.21 In reply to a question from the Tribunal, he confirmed the opening hours of the property are normally 9 to 5 but may be open for an evening course.
- 7.22 When asked he agreed that the vast majority of the Appellant's services are providing educational courses. He said that the other services were the awards and the All Ireland Safety quiz, run within eight regions which go through to the All Ireland Quiz Final which includes their sister organisation, Northern Ireland Safety Group (NISG). The organisation of the quiz is carried out by the administration staff in the property who also manage everything within the regions because those in the regions are volunteers. He confirmed the quiz and the awards do not take place on the property.
- 7.23 He was asked where the manual training aspect of the courses take place, he said in the regions, the property or member companies. He confirmed no teachers or lecturers were based on site as they are volunteers. Occasionally an expert would be remunerated.
- 7.24 With the consent of Counsel, Mr. O'Keefe, the Tribunal permitted the Appellant's General Manager to be tendered as a witness to give evidence solely in relation to the Appellant's sources of income.
- 7.25 When asked what percentage of the income flow comes from members, Mr. O'Keefe said without looking at the accounts he couldn't say but he thought in the region of 50/50 which varied depending on the type of course.
- 7.26 When asked if the Appellant or the third level institute charge the student for the course run in the Third level institute, he said with LIT and AIT there are different arrangements. There are different rates and the Appellant knows and oversees the member companies and public and the colleges know their own students. Asked whether most of the fees would be collected by the third level institute for a course run by the Appellant, he said it would vary. He clarified membership fees include 4 corporate rates, 2 student or unwaged rates with the majority coming from the corporate end.

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

- 8.1 Mr. Martin Fitzsimons confirmed he inspected the property in September 2019 and referred to photographs showing the external view, internal office, and warehouse. He confirmed there were also training rooms and a canteen. It was his opinion that no Material Change of Circumstances had taken place.
- 8.2 Under cross examination, Mr. Fitzsimmons confirmed he issued the No Material Change of Circumstance Notice in October 2019. When referred to his Report, where it stated there was no material change of circumstances under (d), that the Appellant did not meet the criteria under paragraph 16 and paragraph 10, he confirmed that was his reasoning and that the Revision Manager issued the Notice on foot of his recommendation.
- 8.3 When asked why the Appellant did not meet the criteria under paragraph 10, Mr. Fitzsimmons said it would need to be a school, college, institute of technology or any other educational institution. He said it was rateable before and didn't qualify previously. In relation to paragraph 10, it wasn't an educational institute like an Institute of Technology,



Maynooth or DCU. It is not your typical educational body, it was an industrial warehouse in an industrial park. It was put to him that a body like Open University did not have classrooms for it to be an education institution and that TUI Dublin had offices where no courses were provided and they are not rated, but he was not familiar with those properties.

- 8.4 He confirmed he saw the training rooms on the day of his inspection, but they weren't in use. When asked whether he was aware that the property was being used to organise courses within the country, he said he was aware from when he checked online that some courses were provided in hotels with some on site. Asked whether he accepted that the Appellant is an educational provider authorised to provide a certain level of courses, he said that's what they were here to decide. He did not disagree with the course levels the Appellant can provide.
- 8.5 When asked why the Appellant didn't meet the criteria under Paragraph 16, Mr. Fitzsimmons said no income was provided by the government it was from courses and from membership and yearly annual conferences. He was asked whether he considered the Appellant was not a charitable organisation as to do with funding structure of the Appellant, he said it was part of it but that comes from the criteria that the Appellant didn't meet, which was to do with the criteria for charitable organisations for the relief of poverty and relief of suffering. When asked where this reference is found, he said the Charities Act, 2009.
- 8.6 When asked whether the reason why the Appellant did not meet the criteria of charitable purpose was the relief of poverty, Mr. Fitzsimmons said that was part of the criteria, when asked what criteria he was referring to, he said charitable purpose was broad but if you are giving charity it should be free of charge to anyone who wants it.

## **9. SUBMISSIONS**

### **Appellants Legal Submissions**

- 9.1 Counsel for the Appellant, Mr. Ó Maolchalain provided written legal submissions to the Tribunal. The two limbs to the Appellant's case were the exemption for an educational institution and exemption for charitable purposes.
- 9.2 QQI was established by the Qualifications and Quality Assurance (Education and Training) Act, 2012. The Appellant is recognised as a "provider" as defined by section 3 of that Act, as it "*provides, organises or procures a programme of education and training*". The recognition of the Appellant by QQI, the state agency is tasked, *inter alia*, with providing trusted information on the qualifications included on the National Framework of Qualifications. The Appellant is recognised by SOLAS as an approved training organisation and counsel contended that training is a subset of education and the imparting of knowledge.
- 9.3 Counsel submitted that the Appellant meets the criteria of Paragraph 10. The Appellant is a registered charity, no course was reserved for members and the courses are available to the public and that element of the test was satisfied within the meaning of the Act. It is a building, the premises were used for the provision of educational services, which does

not mean that the course must take place in the head office but that the activity that takes place is geared towards the provision of education.

- 9.4 The Appellant's motivation in providing educational services is to prevent accidents which is the overriding aim or ethos of the Appellant and the educational aim being subsidiary doesn't deprive them of qualifying under paragraph 10.
- 9.5 In relation to the exemption under paragraph 16 (a) of Schedule 4, Counsel submitted that "charitable organisation" is defined *inter alia* by section 3 of the Act which was amended by section 2 of the Valuation (Amendment) Act, 2015 as a "*charitable organisation within the meaning of section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act*".
- 9.6 Counsel argued that to be a charitable organisation under that Act you can only promote a charitable purpose. Section 3(1) of the Charities Act, 2009 provides, *inter alia*:  
"For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:  
(a) the prevention or relief of poverty or economic hardship;  
(b) the advancement of education;  
(c) the advancement of religion  
(d) any other purpose that is of benefit to the community."
- 9.7 He said "*charitable purpose*" is not defined in the Valuation Act, 2001 but section 2(1)(d) of the Charities Act, 2009 provides that "*charitable purpose*" is to be defined in accordance with section 3 of that Act.
- 9.8 He said that the Appellant comes primarily under Section 3 "(d) *any other purpose that is of benefit to the community*" but could arguably come under "(b) *the advancement of education*", as well. In terms of (d), section 3(2) provides that: "*a purpose shall not be a charitable purpose unless it is of public benefit*" and that section 3(11) lists the various purposes that are "*of benefit to the community*".
- 9.9 He said that subparagraph (d) of section 3(11) "*the promotion of health, including the prevention or relief of sickness, disease or human suffering*" was precisely the work the Appellant was engaged in. The charity was of public benefit and the assessment of that is the origins of the Appellant. This work is carried out through education and with representatives from the various organisations involved amounting to less accidents in the workplace which is for the public benefit. It is an overwhelming case for charitable purposes which was the Revenue Commissioners' position for many years and after 2009, the Charities Regulator formed a view that it was deserving of an entry on the register.
- 9.10 He argued that ***Tearfund Ireland Limited v Commissioner of Valuation*** [2021] IEHC 534 has no bearing on the interpretation that must now be given to the definition of charitable purposes as this decision concerns the pre 2015 position and historical position regarding the advancement of religion and even without the enactment of the Valuation (Amendment) Act, 2015, the property would come within the exemption under Paragraph 16.

9.11 In *Jesuits Missions Trust v. Commissioner of Valuation* (VA16/1/032) the Tribunal found that the changes brought about by the 2015 Act reflected a clear expression of the intention of the Oireachtas that, for the purposes of the Valuation Act 2001, the term “charitable organisation” in that Act is to have the same meaning as in the 2009 Act. It held:

*“Whilst this is manifestly not a reproduction of the wording of the definition of the term charitable organisation contained in the 2009 Act, it is, in the view of this Tribunal, a clear expression of the intention of the Oireachtas that, for the purposes of the Principal Act, the term charitable organisation in that Act is to have the same meaning as in the 2009 Act. Further, it is apparent that the definition of charitable purpose contained in the 2009 Act is an intrinsic part of the definition of charitable organisation contained in that Act.*

*Accordingly, the Tribunal finds in favour of the Appellant.”*

He submitted regard should be had to the definition of “charitable purpose” set out in the Charities Act, 2009 as much as to the definition of “charitable organisation” in that Act when construing the provisions of Paragraph 16. As far as he was aware *Jesuits Missions Trust* was not case stated.

9.12 He said the evidence that a fee is paid for the services and that the Appellant does not receive funding from the State does not take the Appellant out of an exemption as they are a charitable organisation with a charitable purpose. The “charitable purposes” being carried out are defined based on the definition in the Charities Act, 2009.

9.13 In support of this, he referred to O’Halloran in *Charities Law*, second ed. (Dublin: Round Hall, 2009) at p 467 wherein the author writes, “while the Valuation Act, 2001 does not provide a definition of ‘charitable purposes’, as a statutory definition of charitable purposes has now been provided by the 2009 Act in future the second test will only satisfied when meeting the requirements of Section 3 of the [Charities] Act”.

9.14 In relation to the changes in the constitution, he said Mr. Corrigan correctly called it a governance issue which was an essential part to the definition of “charitable organisation” in the Valuation Act, 2001 and a part of the definitions of the 2009 Act. It was required to maintain their registration on the register which was why the Appellant moved from 2016 to 2019 to meet these concerns. Mr. Ó Maolchalain argued that it was not appropriate to say that the Appellant has always been a charity, when at Revaluation the Respondent said they were relevant property. On foot of the Material Change of Circumstances which comprised changes to the Constitution, it was contrary to the Act to say that the Appellant was always exempt and therefore no change arose.

### **Respondents Legal Submissions**

9.15 Counsel for the Respondent, Mr. Vallely, provided written legal submissions to the Tribunal. He said there were two issues before the Tribunal. The first, whether there was a Material Change of Circumstances in the property, and, if there was, the second, whether the property was an educational institution. The Notice of Appeal had no mention of any wider grounds such as the charitable ground.

9.16 Counsel referred to the term, *ejusdem generis*, whereby if you specify a category in a Statute and it follows with “any other”, it flows that the general terms should follow the

specific terms. In Paragraph 10, the cardinal canon of statutory interpretation of "*ejusdem generis*" is that an educational institution must have the hallmarks of the previous specific wording being a school, college, university, institute of technology.

9.17 Counsel accepted the Appellant is not for profit but there were no trainers on site, the Respondent's valuer said he saw on inspection a warehouse in an industrial estate. The Appellant referred to other educational providers that they partner with and many but not all the courses take place externally, but it depends on what happens at the property which was not an educational institution, and it was a strained interpretation of the Act.

9.18 ***Nangles Nurseries v. Commissioner of Valuation*** [2008] IEHC 73 states that exemptions should be interpreted against the taxpayer. His understanding was ***Jesuit Missions*** is not finalised, not a correct decision and should not be followed.

9.19 He said he understood what was being argued by the Appellant was that they are now a charitable organisation, have sorted out their paperwork under the Charities Act, 2009 have followed what the Revenue Commissioners required and the provisions of the Charities Act, 2009 and are now some sort of body that is not rateable under the Act, with what he understood the big change to be in the constitution which cannot be a material change of circumstance. The happening of any event is where a relevant property begins or ceases to be treated as relevant property or not relevant property.

9.20 He said the argument the Respondent was to meet was that the Appellant was recognised as a Charitable Organisation under the 2009 Act which subsequently gives the Appellant new ground to come in before the Tribunal. He referred to paragraph 55 of ***Tearfund***:

*"Furthermore, the court accepts the submission that in general the Oireachtas is presumed not to make a radical change in the pre-existing law, unless that is done in clear and explicit terms. The court is of the view that had the Oireachtas intended to sweep away the long established definition of "charitable purposes" for rating purposes that existed at common law, they would have done so in clear and explicit terms."*

The fact of the registration under the Charities Act, 2009, does not give or change the law on what an organisation does because the Charities Act, 2009 did not change the law. He said there was no Material Change of Circumstances, the Appellant was a charity in 1995, they remain a charity albeit they have a different constitution now in compliance with the Charities Act, 2009 but that's as far as it goes.

9.21 The Appellant is not an educational institution within the meaning of the Act as they tend to be in a classical sense or some sort of scholastic sense as in ***Leargas - The Exchange Bureau and Commissioner of Valuation, VA14.1.010***. In this Appeal, there are students but they are not in the property and the Appellant doesn't fall within Paragraph 10 or 16.

### **Appellant's Reply**

9.22 Mr. Ó Maolochain referred to (d) "*the happening of an event whereby any relevant property begins or ceases to be treated as relevant property falling within Schedule 4.*" which was a very different type of definition than, for example, structural alterations or a new property. The Respondent has always treated the property as falling outside Schedule 4 and is estopped from saying the Appellant was a charity then and a charity now.

- 9.23 Referring to the Grounds of Appeal, he said there was a clear reference to Paragraph 10 and 16, "*The property is owned and occupied by National Irish Safety Organisation, a Charity whose object is to promote health and safety in the workplace through education, by means of safety seminars and courses and the promotion of safety messages to the public and members.*" which was also clear in the documentation.
- 9.24 The Appellant is on the Register as a charitable organisation, the Act has a definition of charitable purpose and the Appellant falls within that definition. As the Appellant is a recognised statutory education provider there is a strong basis in line with *ejusdem generis* as an education institution.

## **10. FINDINGS AND CONCLUSION**

- 10.1 The Revision Manager made a determination that there was no material change of circumstances in respect of the property to warrant the exercise of his powers under section 28(4). The Appellant lodged a Notice of Appeal to the Tribunal against that determination as stated in the 'No Material Change of Circumstance Notice' that was issued on the 9<sup>th</sup> day of October 2019.
- 10.2 The first issue for the Tribunal to determine is whether a material change of circumstances occurred in respect of the property to warrant the exercise of powers under section 28(4) by the revision manager.
- 10.3 It is clear from the definition of 'material change of circumstances' that a material change of circumstance may occur in eight different circumstances. For the purpose of this appeal the Tribunal is only concerned with paragraph (d) thereof which concerns:  
*"the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4"*
- 10.4. It was common case that since 1995 the Appellant is a charity and is now registered as a charitable organisation within the meaning of section 2 of the Charities Act, 2009 in accordance with the requirements of that Act. The Appellant has occupied the property since 2001.
- 10.5 The Appellant contends that the adoption of the Appellant's Constitution in 2019 to satisfy the formalities required by law amounted to a material change of circumstances within the meaning of section 3 of the Act as amended.
- 10.6 The objects for which the Appellant was established are stated in its Memorandum of Association in the Constitution of the 23<sup>rd</sup> of February 1995 as follows:  
*"1.) To take over and assume with effect from its incorporation, all or any assets, rights or liabilities of the unincorporated "National Irish Safety Organisation".*  
*2.) To promote measures designed to safeguard persons at work against occupational dangers to life limb and health and thereby to promote their safety, health and welfare in places of work."*

These main objects are followed by 27 secondary objects.

In the new Constitution approved at the Appellant's EGM on the 24<sup>th</sup> January 2019 the main object for which the company is established is stated to be:

*"3.1 To promote measures designed to safeguard persons at work against occupational risks to life limb and health and thereby to promote their safety, health and welfare in places of work."*

Aside from that amendment, other changes to the Constitution related to governance issues.

- 10.7 The Tribunal is of the view that the happening of an event that gives rise to a relevant property beginning or ceasing to be treated as relevant property not rateable requires proof of (i) the use to which the property was put before the purported material change of circumstances occurred, (ii) the change of use that has occurred since a valuation or revision was last carried out in relation to the rating authority area in which the property is situate and (iii) that such change of use warrants the property being treated as relevant property not rateable.
- 10.8 The Appellant was established as a charity in 1995, thereafter maintained its charitable status with the Revenue Commissioners and following the coming into force of the Charities Act, 2009 registered as a "charitable organisation" under Charities Act, 2009. In order to do so, it was required to amend its Constitution to satisfy the requirements of the Companies Act in respect of certain governance issues. The Tribunal finds that the adoption by a company of a new Constitution is not a material change of circumstances as defined s.3 by the 2001 Act as amended.
- 10.9 On the evidence adduced, the Tribunal finds that the Appellant is occupying the property since 2001 for the very same purposes as it was used when the revision application was made. No evidence was adduced to show that the use of the property has changed since a valuation or revision was last carried out or as a result of the Appellant's Constitution being amended in January 2019. On the evidence of Mr. Corrigan the material change of circumstances was a governance matter rather than a change as to the use to which the property the Tribunal does not accept that any material change of circumstances has occurred which would justify the exclusion of the property from the valuation list. The Tribunal is of the view the Appellant adopted a new constitution following correspondence from the Revenue Commissioners and the Charities Regulator in 2019 but this does not amount to a material change of circumstances to render the property relevant property not rateable.

## **DETERMINATION**

For the forgoing reasons, the decision of the revision manager is upheld as no material change of circumstances had occurred in relation to the property. The appeal is dismissed.

## **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.**