

Appeal No: VA17/5/186

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Hasta Healthcare Limited

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2187053, Nursing Home at Local NO/Map Ref: 1B,2B,3.4/1, Clashacollare (Pt of), Callan, County Kilkenny.

B E F O R E

Eoin McDermott - FSCSI, FRICS

Deputy Chairperson

Martin Connelly - MAgrSC, M.Sc., MSCSI, FCInstArb

Member

Rowena Mulcahy - Solicitor

Member

Michael Brennan BL MSCSI

**Substitute Member for
Rowena Mulcahy**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF DECEMBER, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th day of October, 2017 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 €195,000.

1.2 The Grounds of Appeal are set out in significant detail by the Appellant in 24 pages of appendices to their Notice of Appeal and is contained in **Appendix 1** hereto. Briefly stated the Appellant, relies on paragraphs 6, 8 and 14 of Schedule 4 of the Valuation Act 2001, as amended (“the Act”) claiming that the subject property is relevant property not rateable and is

exempt from rates. As per paragraph 2 of page 2 of the Appellant's legal submissions the grounds of appeal are more concisely summarised as follows:

“ 2. The points contended for in the Notice of Appeal are as follows:

- (i) The property is not properly described;*
- (ii) The Respondent is not entitled to presume that the property is a relevant property and that there should be no burden on proving the property is not relevant property on the Appellant;*
- (iii) The property is not relevant property;*
- (iv) All occupiers (by which the Appellant is referring to as patients/older people who reside at the nursing home) were not served;*
- (v) The Appellant alleges that the Chief Executive Officer of the NTPF, the Director General of HSE, the Chief Executive Officer of HIQA and the Minister for Health also need to be served;*
- (vi) Inadequate reasons and justifications;*
- (vii) The Respondent/Valuation Manager failed to follow statutory procedures, administrative fairness, and issued an unlawful and an unconstitutional decision to include the property on the valuation list.”*

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

2. REVALUATION HISTORY

2.1 On the 25th day of May, 2017 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 €210,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €195,000

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €195,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 30th day of October, 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 15th day of February, 2022. At the hearing, the Appellant was represented by Mr. Gerard Murphy BL, Ms Laura McCarthy Financial Controller, Ms Geraldine Comerford Director of Nursing and Ms Ann Bryan Administrator as witnesses. The Respondent was represented by Mr. David Dodd BL and Mr. Adrian Power Kelly FRICS, FSCSI, ACI Arb, RICS Reg Val on behalf of the Commissioner of Valuation.

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 their précis as their evidence-in-chief in addition to giving oral evidence.

3.3 Subsequent to the hearing on 15th February 2022 and prior to the finalisation of this judgment, a legal member of the Division was no longer available to assist in the determination of the appeal. As the appeal raised legal issues only, to obviate the need for a second hearing and to save time and costs, the parties agreed to the substitution of a new legal member to review the appeal papers and listen to the audio of the hearing before the Division made its determination. The Chairperson of the Valuation Tribunal at the time, nominated Michael Brennan BL MSCSI as the substitute legal member.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts pertaining to the subject property:

4.1 The subject property comprises a 60-bedroom nursing home that was purpose built in 2005 and is known as Strathmore Lodge Nursing Home;

4.2 The subject property is laid out to provide 25 bedrooms at ground floor level and 35 bedrooms as first floor level. In addition to the bedrooms, the subject property also comprises of a large sitting room, two dining areas, oratory, small sitting room, activities / hairdressing

room, nurse treatment room, communal bathroom, kitchen, office and laundry at ground level. In addition to the bedroom at first floor level, ancillary accommodation also comprises an office, staff room, large sitting / dining room, relaxation / sensory room, store, nurse treatment room and a small sitting / snug room.

4.3 The subject property currently trades as Aperee Living. Callan Ltd was trading as Hasta Healthcare Ltd prior to this.

4.4 The subject property is located at 41 Friary Walk, Clashcollare, Co. Kilkenny.

4.5 At the date of hearing, the subject property was registered with the Health Information and Quality Authority (“HIQA”) and is licensed to provide care for a maximum of 60 residents.

5. ISSUES

5.1 The appeal is entirely legal in nature and concerns the procedural application of the Act and whether power was lawfully exercised by the Respondent and the construction of substantive elements of the Act and the statutory interpretation of same. The primary underlying issues are as follows:

- (i) Whether the Property described by the Respondent as “nursing home” has been properly described.
- (ii) Whether the Respondent can rely on the presumption that the property is a relevant property.
- (iii) Whether the Property is a relevant property within the meaning of the section 15 and Schedule 3 of the Act.
- (iv) Whether there is a statutory duty on the Tribunal to serve upon each resident of the Property a copy of the notice of appeal pursuant to section 36(1) of the Act.

- (v) Whether there is a statutory duty to serve all written documents and information submitted in connection with this appeal on the residents of the Property, the Director General of the Health Service Executive (“HSE”), the Chief Executive Officer of the National Treatment Purchase Fund (“NTPF”), the Chief Executive Officer of HIQA and the Minister for Health and to give them notice of their right to be heard and to adduce evidence at the hearing of the appeal.
- (vi) Whether the Property described by the Respondent as “nursing home” is a domestic premise as defined in section 3 of the Act and referred to in paragraph 6 of Schedule 4.
- (vii) Whether the Property is used for the purposes of caring for sick persons or for the treatment of illnesses by a body that is established and whose affairs are conducted otherwise than for the purpose of making a private profit from the provision of such care or treatment as referred to in paragraph 8 of Schedule 4 or alternatively a body the expenses of which are incurred in the provision of care or treatment which is made available to the general public (whether with or without a charge being made therefor) are defrayed wholly or mainly out of moneys provided by the Exchequer.
- (viii) Whether the Property is occupied for the purpose of caring for elderly, handicapped or disabled persons by a body that is not established and the affairs of which are not conducted for the purpose of making a private profit from such care provision or a body the expenses incurred by which in carrying on such care provision are defrayed wholly or mainly out of moneys provided by the Exchequer as referred to in paragraph 14 of Schedule 4.
- (ix) Whether the Respondent/Valuation Manager failed to follow statutory procedures, administrative fairness, and issued an unlawful and an unconstitutional decision to include the property on the valuation list

5.2 The primary issues identified in paragraph 5.1(iv) and (v) were raised in eight other appeals (VA17/5/172, VA17/5/179, VA17/5/182, VA17/5/184, VA17/5/185, VA17/5/188, VA17/5/189, VA17/5/194 VA17/5/195) concerning designated centres and it seemed to the Tribunal proper and expedient to come to a decision on those issues before dealing with the primary grounds of appeal in those appeals. The procedural issues in each of those appeals

were heard over the course of four days in November 2018. The Tribunal's Decisions were delivered on the 23rd January 2019.

5.3 The Tribunal decided the procedural issues against the Appellants and determined that in each of the Appellant's appeals there was no obligation on the Tribunal under section 36 of the Act to serve a copy of the relevant documents on the residents in each of the nursing homes involved, or on any other persons identified by the Appellants. In March 2019 the Appellants obtained leave by way of judicial review [High Court Record No. 2019 No. 137 JR] to apply for a declaration that the Tribunal had erred and misdirected itself in law and an order of certiorari quashing the Decisions. At the time this appeal was heard the judicial review application stood listed for hearing on the 13th October 2022. The application was withdrawn and struck out by the High Court on the 15th November 2022.

5.4 In addition to this, the general grounds of appeal before the Tribunal in this subject case have arisen prior similar cases before the Tribunal and have been substantively dealt with in VA17/5/192 Garry Gavigan v Commissioner of Valuation and VA19/5/1064 Castleross Nursing Home Limited v Commissioner of Valuation.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The NAV of the Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

Section 48(3) of the Act provides for the factors to be considered in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any)

that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

6.2 A ‘domestic premises’ is defined in section 3(1) of the Act as meaning

“any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel”

A ‘mixed premises’ is defined in the same section as meaning

“a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and other purposes to such an extent”

6.3 Schedule 4 under the heading “Relevant Property Not Rateable”, so far as material to the issues on this appeal, provides

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

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).

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, other than a body in relation to which such defrayal occurs
by reason of the Nursing Homes Support Scheme Act 2009.”

Section 13(1) of the Act provides

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

Section 15(2) of the Act provides

Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be
rateable.

7. APPELLANT’S CASE

7.1 Ms.Comerford confirmed that she is the Director of Nursing and has worked at the subject
property since December 2021. Ms.Comerford gave evidence regarding the physical
characteristics of the property and agreed with description that was provided by her colleague
Ms. Ann Bryan in her précis of evidence. Ms. Comerford confirmed that the subject property
can accommodate up to 60 residents which is the maximum number they are allowed in the
subject property pursuant to their registration. She stated that the occupancy varies between
55 to 58 persons. She stated that there were 25 bedrooms on the ground floor together with a
large sitting room, two dining areas, oratory, small sitting room, activities room which also
doubles up as a hairdressing room, a nurse treatment room, communal bathroom, working
kitchen, office and laundry. She stated that the first floor comprises 35 bedrooms, office, staff
room, large dining room, sensory room, store, nurse treatment room and small sitting room.
She confirmed that there is a support office in Cork, where the senior management team is
based along with the clinical and finance team.

7.2 Ms. Comerford confirmed that there are 60 single occupancy rooms which vary in size and can be decorated and specified to a resident's specific requirements. For example, a resident may request a larger tv or no tv. She also described how a particular resident installed an alter in the bedroom to mirror a similar scene to his home. She stated that all bedrooms have an en-suite bathroom. She confirmed that residents remain in occupation at the subject property generally until end-of life and cater for residents with medical conditions, intellectual disabilities and psychiatric conditions.

7.3 Ms. Comerford confirmed that 24-hour care is provided for at the subject property but there is no staff accommodation. She stated that there is a flexible visiting policy throughout the day and visiting hours are not subject to a timetable. She confirmed that there is a secure locker in the bedrooms for personal valuables. At the date of the hearing Ms. Comerford confirmed that there were 54 persons residing at the subject property and that the longest resident was there for nine years with most resident being there for two months. She confirmed that the average residency is approximately 2-3 years.

7.4 Ms. Comerford stated that all current residents were long term residents, but that respite care can also be provided for at the subject property. She also confirmed that residents can leave the subject property to spend some time with family particularly around Christmas and for birthdays.

7.5 Under cross examination, by Mr. Dodd BL, Ms. Comerford was asked if Hasta Healthcare Ltd owned the subject property and if they were the sole recipient of the income stream from the business and she confirmed that those two propositions were correct. She also confirmed that Hasta Healthcare Ltd were required to have employees on site when she was questioned by Mr. Dodd. She also confirmed that it was a private commercial company whose objective was to make a profit. Mr. Dodd questioned whether residents were empowered to make changes to the bathrooms and Ms. Comerford confirmed that such a request did not arise in her experience. When questioned as to the flooring, she was unsure of its structural qualities but that it was a vinyl product. When asked if a resident could change the floor covering, she stated that such a request never arose. When asked if a resident could change the windows, she stated

that she would escalate the matter if such a request was made but such a request never arose. In relation to access, Ms. Comerford confirmed that subject property is accessed from a front door that leads to a foyer which has keypad access control which leads to the main reception area. Residents are risk assessed with regard to access control. She confirmed that visitors to the subject property have access to the code and they complete a sign-in sheet in the main reception area for fire safety purposes.

7.6 Ms. Comerford was asked by the Tribunal in relation to the secure locker and whether residents had a key to their bedroom. Ms. Comerford confirmed that residents who were appropriately risk assessed are allowed keys to their bedrooms if requested. She explained that residents with higher needs of clinical oversight or a higher risk of falls are factors that are considered in the risk assessment. She confirmed that notwithstanding the results of a risk assessment, if a resident was adamant on having a key to their bedroom that they would allow for this as they have a master key. In relation to the percentage of residents attending for respite or short-term care, she confirmed that it was infrequent and was unsure of the percentage. She also confirmed that there are no designated beds for short term care but that if there was a bed available for short-term use that they would allocate it. She confirmed that residents all suffer from a cognitive impairment or physical ailment or a combination of both. In his right of reply, Mr Murphy BL asked Ms. Comerford if they ever refused an application for care, and she confirmed that circumstances can arise where a resident may not be suitable for care in the subject property having undertaken appropriate assessment.

7.7 Ms. Ann Bryan also submitted a précis of evidence on behalf of the Appellant. She did not provide any oral testimony and was not cross examined by legal counsel for the Respondent. Ms. Bryan confirmed that she is the administrator in the subject property and joined in 2018 and is employed directly by the Respondent. She stated that her day-to-day role involved managing residents and requests arising from family members of residents. She also provides payroll and billing information to head office. In Ms. Bryan's written evidence, she gave overview of the physical characteristics of the property which was referred to and agreed with by Ms. Comerford's evidence in chief. A significant proportion of Ms. Bryan's written evidence was referred to orally by Ms. Comerford in her oral evidence referred to above regarding the operation of the subject property. Ms. Bryan confirmed that in compliance with

regulatory requirements each resident has a written contract containing standard terms and conditions regarding the nature of the residential and care services to be provided by the Appellant as well as specific provisions pertaining to a resident's personal care needs. She stated that this is a standard contract and would typically only vary in the event of a resident who was not availing of the fair deal scheme and was making payments privately.

7.8 Ms. Bryan was questioned by the Tribunal in relation to the layout of the nursing home and the proportion of common areas that are in use for the residents communally as distinct from the bedrooms. Ms. Bryan stated that she was unsure of the proportion, but that subject property was purpose built in 2005. She was also asked as to the use of the communal facilities by a resident was available at all times and whether they could get a cup of milk during the night if they couldn't sleep. Ms. Bryan stated that the subject property is managed by staff on a 24-hour basis which comprises of nurses and healthcare assistants at night. She stated that chefs work day hours and a day trolley is available in the mornings, after lunch and in the evenings and if they wanted a cup of tea at night a trolley would be available in the corridors with fresh drinks. Ms. Bryan was asked if residents were allowed to access the kitchen for the purposes of cooking and she said that there would be health and safety risks to that but that there was a buffet available at all times. She did state that they were free to access the kitchen, but some residents need assistance which is conducted through their activity coordinator. Ms. Bryan confirmed that the sitting room and activity room are never locked, and day rooms are open 24 hours per day. Ms. Bryan confirmed that there is a service lift and main lift as well as three stairwells. In response to questions from the Tribunal, Mr. Murphy BL asked Ms. Bryan if activities took place in the kitchen, and she confirmed that cookery classes take place there. Mr. Murphy BL also asked about food and dietary requirements, and she confirmed that dietary requirements are catered for.

7.9 Ms. Laura McCarthy, the Financial Controller for the Respondent also provided a written précis of evidence as well as giving oral evidence. Ms. McCarthy confirmed that she oversees the finance function for the subject property which includes payroll, day to day payments to staff and suppliers. She confirmed that she is based in the head office in Cork City. She confirmed that she does not work in the subject property. She stated that whilst employees of the Respondent are based in head office, they may have to visit nursing homes in the group

such as facilities management relating to a specific nursing home. She explained that the facilities manager may have to meet the maintenance manager, or the catering manager may need to meet the head chef.

7.10 Ms. McCarthy in her written statement confirmed that Residents in the subject property are primarily funded by the Nursing Home Support Scheme (“the fair deal scheme”) which is typically referred to as the fair deal scheme. She stated that the aforementioned scheme, is administered by the National Treatment Purchase Fund (“the NTPF”) who negotiate rates received by the Respondent on behalf of the HSE. She states that the rate is a flat rate and does not vary dependent on the level of care required by a resident. She stated that the rate set by the NTPF is the amount charged by the Respondent to each resident. She also stated that each resident has to pay their assessed contribution and if such contribution is less than the rate set by the NTPF, that the HSE will pay the balance of the fee to the Respondent. She stated that each resident is assessed on an individual means test for their contribution. She stated that as at 31st December 2020, the Respondent received €1.42m under the fair deal scheme which accounted for 52% of their total receipts for 2020 which was in the order of €2.5m. She also stated that in 2020 approximately 89% of residents in the subject property were funded under the fair deal scheme and the residual 11% of residents were self-paying, private residents.

7.11 Miss McCarthy set out the criteria for negotiations with the NTPF and that in advance of negotiations, an information pack is submitted to them which includes financial statements as well as details of the cost base and income streams of the business. She stated that this is reviewed by the NTPF to assess whether value for money is being achieved at the subject property. She stated that rate increases with the NTPF are benchmarked against the national average and that in reality, the rate does not increase relative to specific costs at the subject property. She stated that the NTPF agreement for the subject property is in place until due 2022 and includes price increases of 2% per annum. Ms. McCarthy confirmed that income received outside of the fair deal scheme (approximately 48% of total income in 2020) is paid by residents privately without any contribution under the fair deal scheme and by residents who are required to pay a contribution under the fair deal scheme. Ms. McCarthy was not cross examined by Mr Dodd BL.

8. RESPONDENT'S CASE

8.1 Mr Adrian Power Kelly submitted a written précis of evidence on behalf of the Respondent. At hearing he did not provide an additional oral evidence and he was not cross examined by Mr Murphy BL. The Tribunal did not have any questions for Mr Power Kelly. There were no further witness on behalf of the Respondent.

9. LEGAL SUBMISSIONS

9.1 Mr Murphy for the Appellant submitted written legal submissions as well as making oral legal submissions. At the outset he stated that the Appellant was not making any claim that the Act applies to all nursing homes in the same way. He stated that the level of care within the subject property was heavily personalised towards each resident's specific needs. He stated that they had considerable freedom in how they were able to leave and the manner in which visitors could attend. He stated that under cross-examination, Ms Comerford indicated that all requests from residents would be considered and they could paint and personalise their rooms. Mr Murphy submitted that the common areas such as the residents lounge, which was a sitting room are for the use of the residents exclusively and this was largely the case for all common areas including the kitchen. He said it was significant that there were only two small offices within the subject property which was there to service the resident's activities. He stated that all the management and administration was serviced by head office in Cork City. He stated that this may not apply to all nursing homes.

9.2 Mr Murphy emphasised the requirement for the Act to be interpreted on a strict literal basis. He stated that it was not appropriate for the Tribunal to enquire into the meaning of a particular word or phrase if it was clear from the legislation as to what it meant. He referred to section 3 of the Act and the definition of "occupier" and stated that there was no absurdity or ambiguity regarding the meaning of this. He referred to paragraph 14 and 15 of his written legal submission regarding the definition of "occupier". He stated that the inclusion of "every person" means that there could be more than one person in occupation. He referred to the Interpretation Act 2005, and the fact that the singular always means the plural. He said that it was clear from section 3 that there can be more than one occupier, and insofar as the Act requires the occupier to be served, it means that all of the occupiers need to be served. He

stated that there was no inconvenience or absurdity to the fact that 60 residents needs to be served. He stated that it was appropriate that all 60 residents should be served and that it was a manageable number given the evidence before the Tribunal and that many residents are long term residents and consider the subject property to be their home.

9.3 Mr. Murphy submitted that the Appellant has firmly made the case that the subject property, a nursing home is a domestic premises within the meaning of paragraph 6 of Schedule 4 of the Act. He stated that domestic premises is defined as dwelling that is not a mixed premises and based on the evidence, that the subject property is very much a dwelling and means a shelter, house or somewhere that somebody lives. He states that residents move into the nursing home and that it is like changing house where they will have a standard of living appropriate to their needs and to a certain extent was like “Downton Abbey with a lot of servants to take care of your needs”. He stated that many residents at this stage of their lives will have the means to enjoy this standard of living and there was nothing unusual about a having a house with servants, as many people do. He stated that it is a domestic premises in accordance with paragraph 6 of Schedule 4 and a strict literal interpretation of the Act, leads to that conclusion. He states that the subject property is not a mixed premises as they are just there to service the residents and the offices are small and are there to service the residents also. He also stated that the administration takes place externally which may not be the case for every nursing home, but that it is the case for the subject property.

9.4 Unlike a nursing home, Mr Murphy stated that residents of a hostel would not have the same level of freedom that the residents of this nursing home enjoy. He referred to the other exemptions in Schedule 4 and emphasised that the phrasing of paragraph 6 and “any domestic premises” was not a standalone category and that there could be many different types. He referred to the legal standing of the subject property as regards the Residential Tenancies Act and that the applicability of this Residential Tenancies Act depended on the quality of the occupation and depended on exclusive possession and whether the legal arrangement is a lease or a licence. He said that under the Act the exemption applied as a matter of fact as to whether it was a domestic premises as set out in paragraph 6 of Schedule 4 and the Appellant met that criteria.

9.5 Mr Murphy stated that the Appellant was also relying on paragraph 8 of Schedule 4 and the exemption for any land, building or part of a building for the purpose of caring for sick persons. He stated that the evidence was that all residents had medical needs and “the term sick persons was not a term of art but an ordinary word”. He also referred to part (b) and “the expenses incurred in carrying on an activity” was significant and the Tribunal should be looking at the expenses incurred in carrying on an activity, the activity in question being caring for sick persons and that it was not all the expenses of the nursing home but the activity involved in caring for sick persons. He stated that they met the test laid out in paragraph 8(b) of Schedule 4 and that there was evidence of the fair deal funding and the expenses incurred in caring for sick persons on this home were mainly funded by the exchequer in circumstances where 89% of residents were in receipt of the fair deal scheme. Mr Murphy stated that notwithstanding paragraph 8 of Schedule 4, that the Appellant also relied upon paragraph 14(b) of Schedule 4 of the Act. He stated that the ethos of the subject property was novel and is a domestic premises for the purposes of paragraph 6 of Schedule 4.

9.6 The Tribunal asked Mr Murphy if the subject property was a domestic premises, was it registered for local property tax and he confirmed that he had no instructions regarding this but would seek same. Mr Murphy strongly urged the Tribunal not to have regard to the submission of the local property tax having regard to the strict literal rule of interpretation of the Act and not to consider any other legislation in relation this.

9.7 Mr Dodd BL made some preliminary remarks relating to the Appellant’s legal submissions prior to dealing with the substantive legal issues. He stated that the Tribunal was being asked to exempt this nursing home from rates. He stated that all nursing homes pay rates at the moment and whilst the Appellant’s counsel contends that the decision will only affect the subject property, he stated that the Tribunal needed to test the underlying basis on which it is being sought. Mr Dodd stated that there was nothing out of the ordinary in the way the subject property operated in comparison to other nursing homes in the State. Mr Dodd stated that the subject property was a “bog standard” nursing home with no distinguishing features regarding the care it provides or how it provides it or the building itself. Mr Dodd stated that if it is decided that this nursing home is exempt, that it is going to apply to all other nursing homes. Mr Dodd stated that the subject property concerned a very significant commercial undertaking with in excess of €2.5m annual revenue. He submitted that the Appellant is seeking an exemption despite other similar operators being obliged to pay. He stated that in such a

circumstance, those who do not benefit from the exemption will be unfairly penalised and the legislation is drafted in way to avoid this type of scenario.

9.8 Mr Dodd stated that all of the issues before the Tribunal today have been examined in three decisions, including two prior Tribunal decisions and a High Court decision. He stated that there are no new evidential or legal issues arising in the subject appeal that were not dealt with in these prior decisions. Mr Dodd referred to the High Court decision in *Glendale* where the exemption was sought under paragraph 14 of Schedule 4 on the basis that funds received under the fair deal scheme constituted the State defraying the expenses of the nursing home. In terms of the case being decided as a domestic premises, Mr Dodd stated that this was also decided in *First Citizen Residential Limited v Commissioner of Valuation* in 2004. In relation to the third relevant decision, Mr Dodd stated that this related to 10 decisions, referred to as *Gavigan* setting out why it was clear that the residents are not in occupation of the premises or where the rooms that they sleep do not constitute relevant property Mr Dodd stated that those three decisions provide precise answers to the questions that remain before the Tribunal.

9.9 Mr Dodd submitted that the appeal concerns the nursing home in its totality which is run as a commercial enterprise by the Appellant and is generating €2.5m per annum. He stated that the appeal does not concern the bedrooms, which are rooms off corridors and individually, are not relevant property as confirmed in the prior Tribunal decisions in *Brindley and Gavigan*. He stated that it is the Appellant that is in occupation and not the residents.

9.10 Mr Dodd submitted that the law on exemptions is very clear and are to be strictly construed against ratepayers which was set out by the Supreme Court in *Revenue Commissioners v Doorly* and by the High Court in *Nangles Nurseries*. He stated that this was an important underlying principle irrespective of looking at the detail and applicability of the exemption.

9.11 Mr Dodd stated that the subject property is a nursing home and is relevant property, the Respondent is in occupation and make very significant revenues from the subject property. He stated that the fact there was a corridor which provides access to rooms does not make each of the rooms relevant properties. He submitted that the rooms are not separate properties, they don't have separate addresses, post boxes, own door access, clear division between separate properties, separate services for each room, separate entities for each room, separate metering

and separate insurances. He stated that the subject property is not 60 relevant properties and that it concerns one separate property, that being a nursing home.

9.12 Mr Dodd referred to *Brindley* which he stated dealt with this issue in significant detail. He referred to the very detailed submissions made by him in this case from paragraph 16 – 22 which he also adopted in this case. He noted that the Tribunal found at paragraph 24 and 25 in its findings and determination:

“ 24) In the Tribunal’s view the definition of occupier is to be understood in the context of the Valuation Act as referring to the person who has immediate possession of the property and physically occupies and uses the property for business purposes, in other words, the person whose occupation is or may be rateable. The Appellant is the leaseholder and as the registered provider, is the entity carrying on the business of the designated centre known as Mill Lane Manor Nursing Home. The Appellant has contracted to provide bedrooms which are reserved for the use of dependent persons with whom the Appellant has contracted to provide residential care services. These bedrooms do not cease to be in possession and occupation of the Appellant whilst they are made available for the use and enjoyment of the residents.

25) The residents use and enjoy the Property as contractual licensees, but they are not occupiers within the meaning of Section 3 of the 2001 [Act]. None of the residents have independent or exclusive possession of any part of the property. They have a contractual right to reside in and, to receive care services at, the Property but those rights are entirely subordinate to the Appellant's occupation of the property which at is at all times governed, managed and controlled by the Appellant. The residents right to use and enjoy the property is akin to that of a lodger. As Henchy J. said in Carroll v Mayo County Council:

“in the case of a lodger or hotel guest, the occupier of the room may have exclusive use of it as far as third parties are concerned, but the landlord or hotelier concurrently occupies and uses the property for the purposes of his business and is therefore the rateable occupier.”

26) *For so long as the Appellant is providing care services to the resident occupiers, the Appellant retains such a sufficient degree of control over the Property to be regarded as the person “in the immediate use or enjoyment of the property” regardless of the contracts held by the residents. The Appellant exclusively occupies the property for the purpose of the permitted nursing home user which user is beneficial to the Appellant. The residents could not reasonably expect from their contracts of care to be able to use and enjoy their bedrooms, the other facilities that are made available to them and to maintain an independent existence without any interruption, intervention or engagement by the Appellant.”*

9.13 Mr Dodd emphasized that governance, management and control of the property are key elements relevant to the Appellant and noted that in Ms Comerford’s evidence, the fact that requests are made to the Appellant highlights the absence of control over the property by the residents. Mr Dodd also noted that a lodger can reside in a property for their entire life, but this does not give them occupation or control of a property. Mr Dodd also quoted the last line of paragraph 28 of *Brindley*, “*The residents are merely occupiers living at the Property for the purpose of receiving care services. Accordingly, there is no obligation upon the tribunal to serve a copy of the notice of appeal on residents.*” Mr. Dodd stated that this argument was being advanced by the Appellant which would have significant consequences resulting in the issuing of over 10,000 notices of appeal to residents. Mr Dodd stated that the appeal grounds in the subject case are identical to *Brindley*.

9.14 Mr Dodd referred to High Court decision in *Glendale Nursing Home v Commissioner of Valuation [2012] IEHC 254*. He noted that the Court stated that the fair deal was not about subventing nursing homes but subventing the cost of care of the elderly person and defraying the cost of care of the individual. He stated that payments made under the fair deal scheme does not equate to defraying the expenses of the nursing home, so the exemption does not get off the ground. Mr. Dodd submitted that the identical wording was used with regard to paragraphs 8 and paragraphs 14 of Schedule 4 and on that basis the High Court has already ruled on the meaning of the legislation in this regard with regard to “caring for the sick”. He stated that to describe the subject property as being used to primarily care for sick people would be contrived and contrary to the operation of the legislation as set out in paragraph 25 of the judgment. In summarising the applicability of *Glendale*, Mr Dodd stated that they cannot get

over the issue of the defrayed expenses and the fact the primary function of the subject property is as a nursing home and not for caring for the sick.

9.15 In relation to the applicability of the domestic premises exemption, Mr Dodd submitted that this was addressed in *First Citizen Residential Limited v Commissioner of Valuation* (“*First Citizen*”). He stated the identical grounds of argument claiming to be a domestic premises failed. He stated that this case concerned the use of chalets which had many self-contained features of a home and it still failed as it was a mixed dwelling. Mr Dodd submitted that the factual matters pertaining to subject property were much further removed regarding any elements of self-containment. He stated that First Citizen failed because it was considered a mixed property when considered as a whole as it had an administration office, reception, activity room, staff room, manager’s office, nurses station, common room, laundry room, staff wc, and plant room which were all common to the relevant property in that case.

9.16 Mr Murphy BL referred the Tribunal to section 5(2) of the Finance (Local Property Tax) Act 2012 (“the LPT Act”), in response to the earlier question from the Tribunal regarding whether the subject property was registered for local property tax. He referred to section 5(2)(b) of the LPT Act and stated that where the residential property is used exclusively for the care of individuals who have been certified by a registered medical practitioner as suffering from long term mental or physical infirmity and is registered under section 4 of the Health Nursing Homes Act 1990. Mr Murphy stated that there is a recognition in the LPT Act that a nursing home could be a residential property and therefore it is exempt for local property tax. He stated that is quite significant that there is a statutory recognition in the LPT Act that a nursing home could be classified as a type of residential property. Mr Murphy stated that “residential property” is not defined under the Valuation Act but that “any domestic premises” is. Mr Murphy stated that emphasis should be given on the use of the word “any” and also requested the Tribunal to look at the definition of residential property in section 2 of the LPT Act. He stated that under section 2 of the LPT Act, that residential property means any building or structure which is in use or is suitable for use as a dwelling and includes any shed, outhouse, garage or other building or structure and any yard, garden or other land appurtenant or usually enjoyed with that building save that so much in any such yard garden or other lands that exceeds one acre shall not be taken into account for the purpose of the definition. Mr Murphy stated that definition is actually quite useful and is probably more useful as an aide to interpretation than in the VA10/4/001 *Tatton Ward* case where the tribunal looked at the Multi Unit

Development Act. Mr Murphy also urged the Tribunal to remain within the boundaries of the Valuation Act and stated that in regard to the definition of “any domestic premises” there is no ambiguity at all in the use of any domestic premises and insofar as there is any ambiguity then it might be useful to refer to the LPT Act where he stated that clearly a nursing home falls within the definition of a dwelling or a residential property. He stated that terms dwelling and residential property are used almost interchangeably having regard to section 2 of the LPT Act and that it may be useful for the Tribunal to look at this definition. He stated that his primary submission is that there is no ambiguity regarding the definition of any domestic premises under the Valuation Act. Mr Murphy went on to say that the issue is not whether the individual bedrooms are self-contained as the expression self-contained is not referred to in the LPT Act nor in the Valuation Act. He stated that the expression “self-contained unit” that is used in the Residential Tenancies Act is for the particular purpose of deciding whether a property is occupied as a lease or a licence. He further went on to say the legal nature of the occupations does not answer the question of whether the property is a domestic premises or residential property. He stated that the Appellant is making the case that the Act requires all the residents to be served with a notice of appeal. He stated that the definition of occupier is clear and straightforward in the Act and made the point that all the residents should have been served and that there is no great inconvenience for the Respondent in serving 60 residents. Mr Murphy stated that he is not making the case that the legislation applies in the blanket way to all nursing homes. Mr Murphy stated that Mr. Dodd did not ask any questions about post when he was cross examining the witnesses and requested the Tribunal not to consider issues relating to post. He stated that the evidence in the précis was clearly that the nursing home provides accommodation and other services to people who are sick. He stated that the current residents are aged 60 upwards and many people would not regard 60 as elderly. He stated that the evidence in the précis was that the nursing home is in the position to provide respite and convalescent care and there is no age limit to this care. He also referred to Ms Comerford’s précis of evidence which confirmed that there is no age limits other than the person has to be over 21 with a medical or social need.

9.17 In relation to the application of the LPT Act, Mr Dodd identified to the Tribunal that the first rule of statutory interpretation is that you are not permitted to look at definitions in other legislative acts to interpret Valuation Act. He stated that the only situation where you do that is when the Acts are said to be in *pari materia*. Mr Dodd referred to judgment of Henchy J in *The State (Sheehan) v Government of Ireland* [1987] I.R. 550: “the rule the statutory

interpretation and in construing a particular statutory provision is that no provision of another statute may be used as an aide or guide unless that other statutory provision is in pari materia that is formed part of the same statutory context.” Mr Dodd stated that the kind of issues that fall into that category include the licensing acts which comprise of approximately 35 acts spread over 150 years and are considered to be in *pari materia* as they deal with the same subject matter and same purpose and they can be read together. Mr Dodd stated that the taxes consolidation acts and social welfare acts all part of a coherent code and are intended to inform each other. Mr Dodd stated that the LPT Act is not in *pari materia* with the Valuation Act, that the LPT Act has nothing to do with valuation, net annual value or rateable occupation. Mr Dodd stated it would be gross legal error to so consider LPT Act as an aide to interpretation of the Valuation Act.

9.18 In response to Mr Dodd’s submission, Mr Murphy stated that the Residential Tenancies Act and Multi Unit Development Act are not in *pari materia*. He stated that insofar as the LPT Act is a taxation statute then it does fall in broadly into the same category as the Valuation Act. He stated that his primary submission is the Tribunal should look at the Valuation Act and insofar as it may be relevant to look at other legislation including the LPT Act.

9.19 The Tribunal referred Mr Murphy to the amended notice of appeal and the statements relating to questions of EU law and the suggestion that all EU law matters raised by this appeal should be referred to the superior courts of the European Union for a preliminary ruling. The Tribunal asked Mr Murphy to clarify if he was withdrawing issues in the amended notice of appeal and to clarify exactly what grounds of appeal are being pursued. Mr Murphy stated that he is withdrawing the reference to EU law as he did not believe that it arose. He stated that there are arguments set out in the grounds of appeal and referred to VA08/5/017 & 018 *Coolmine Leisure Ltd* (“Coolmine”) which was a decision of a prior Tribunal and stated that he was still pursuing these grounds of appeal notwithstanding that a prior Tribunal decided against this in Coolmine. He stated that they are grounds of appeal that he is putting forward and may rely upon them in another forum. He stated that insofar as it may be necessary for him to exhaust all internal remedies, he has put them forward in the notice of appeal. He stated that he is conscious that the Tribunal has ruled in Coolmine but there are certain issues that it cannot deal with so is emphasising the issues that he felt the Tribunal can deal with. The Tribunal put it to Mr Murphy that if he wished to rely on the grounds of appeal that were decided in Coolmine that he should make submissions in relation to them or withdraw them. He referred

to paragraph 2 of his legal submissions as relevant to the grounds of appeal being relied upon. The Tribunal also asked Mr Murphy to clarify his reliance on the *Gavigan* case and he stated that he was relying on the submissions of Mr Craven SC in relation to the issues that were outstanding in the High Court appeal and paragraphs 10 – 15 of the *Brindley / Gavigan* decision. As a point of clarification, Mr Dodd stated to the Tribunal that in relation to paragraph 2(v) of Mr Murphy’s legal submissions, that this ground of appeal appeared in the 10 similar Tribunal decisions but has been dropped in the High Court judicial review.

10. FINDINGS AND CONCLUSIONS

10.1 In reaching a decision in this appeal, the Tribunal has had regard to the précis of evidence, the Appendices thereto, the legal submissions and the authorities of both parties. The fact that the Tribunal does not make specific reference to any particular document, argument or submission does not indicate that it has not been taken into account.

10.2 Having assessed this evidence, the Tribunal makes the following findings of fact in relation to the building under appeal:

- i. The subject property is more commonly known as Strathmore Lodge Nursing Home;
- ii. It is a two storey purpose built nursing home that was constructed in 2005;
- iii. The nursing home comprises of 60 bedrooms and the maximum capacity is 60 persons
- iv. 24-hour nursing care is provided to male and female residents of the nursing home;
- v. The subject property is registered with HIQA as a designated centre for older people pursuant to the Health Act 2007;
- vi. The Appellant receives revenue from the HSE in respect of residents who are funded under the Nursing Home Support Scheme, more commonly known as the “fair deal” scheme which is administered by the National Treatment Purchase Fund;
- vii. In 2020, the Appellant received approximately €1.42m under the fair deal scheme and which equated to approximately 52% of total revenue for that financial year;
- viii. In 2020, approximately 89% of residents benefited from the fair deal scheme with 11% being self-paying private residents;
- ix. Approximately 10% of residents are temporary or respite admissions with an approximate average resident duration being two years.

10.3 The issues generally before the Tribunal in the subject appeal have been well trodden by the Tribunal in prior hearings and subsequent judgments. The prior Tribunal decisions in VA17/5/192 Garry Gavigan v Commissioner of Valuation and VA19/5/1064 Castleross Nursing Home Limited v Commissioner of Valuation are relevant.

10.4 Many of the grounds of appeal assert that in determining the valuation of the Property the Respondent acted in a manner that was ultra vires its statutory powers or otherwise unlawfully. In the circumstances, it is worth clarifying that the Tribunal does not have jurisdiction on an appeal made to it under section 34 of the Act to determine the type of jurisdictional or procedural arguments commonly advanced on a judicial review application. An appeal to the Tribunal is a de novo appeal and on such appeal the Tribunal is required to hear the appeal and come to its own conclusions on the evidence and the documents presented on the appeal. If a person considers that a determination of value was reached without jurisdiction or in breach of fair procedures, the determination may be challenged on an application to the High Court by way of judicial review or a statutory appeal on the merits may be pursued or, depending on the circumstances, both a judicial review application and an appeal may be pursued. If a person opts solely for the statutory appeal, as the Appellant did in this case, then any issues that could have given rise to an application for judicial review will fall away and the powers exercisable by the Tribunal are limited to such orders as are permitted by section 37 of the Act.

Procedural Grounds

10.5 The text of the Act is and must be the primary indication of the intention of the Oireachtas in enacting legislation. The Tribunal is satisfied that section 3(1) intends that the word "occupier" to be understood uniformly throughout the Act. Section 20(2) of the Interpretation Act 2005 provides that "where an enactment defines or otherwise interprets a word or expression, other parts of speech and grammatical forms of the word or expression have a corresponding meaning".

10.6 In the Tribunal's view the definition of "occupier" is to be understood in the context of the Act as referring to the person who has immediate possession of the property and physically occupies and uses the property for business purposes, in other words, the rateable occupier.

The Appellant is an owner in possession and as the registered provider, is the person carrying on the business of the designated centre. The Appellant has contracted to provide bedrooms which are reserved for the use of dependent persons with whom the Appellant has contracted to provide residential care services. These bedrooms do not cease to be in the possession and occupation of the Appellant whilst they are made available for the use and enjoyment of the residents.

10.7 The residents use and enjoy the Property as contractual licensees, but they are not occupiers within the meaning of section 3 of the Act. None of the residents have independent or exclusive possession of any part of the Property. They have a contractual right to reside in and to receive care services at the Property but those rights are entirely subordinate to the Appellant's occupation of the Property which is at all times governed, managed and controlled by the Appellant. The residents right to use and enjoy the Property is akin to that of a lodger. As Henchy J. said in *Carroll v Mayo County Council*;

“...in the case of a lodger or hotel guest, the occupier of the room may have the exclusive use of it as far as third parties are concerned, but the landlord or hotelier concurrently occupies and uses the premises for the purposes of his business and is therefore the rateable occupier.”

10.8 For so long as the Appellant is providing care services to the resident occupiers, the Appellant retains such a sufficient degree of control over the Property to be regarded as being the person “in the immediate use or enjoyment of the property” regardless of the contracts held by the residents. The Appellant exclusively occupies the Property for the purpose of the permitted nursing home user which user is beneficial to the Appellant. The residents could not reasonably expect from their contracts of care to be able to use and enjoy their bedrooms, the other facilities that are made available to them and to maintain an independent existence without any interruption, intervention or engagement by the Appellant.

10.9 The words “every person” in the definition of ‘occupier’ appear to contemplate a situation in which more than one person may simultaneously be entitled to be in the immediate use or

enjoyment of property. There can be situations where a number of persons seemingly have rights of occupation in the same property. It is well established that where more than one person or set of persons have rights to be in or upon a property the person or set of persons having the control and regulation of the property is treated for the purpose of rating law as the rateable occupier. The leading case on exclusivity is the House of Lords decision in *Westminster Council v Southern Railway & Ors* [1936] AC 511 where it was held that a person will be in exclusive occupation for the purpose of rating if the person's position in relation to the occupation of land is paramount for the purpose for which the land is used. Lord Russell of Killowen said:

“Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases, there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every case must be one of fact, namely, whose position in relation to occupation is paramount, and whose position in relation to is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises.”

10.10 The right or entitlement to be served with a copy of the notice of appeal as provided for in section 36 (1) is given context by the whole Act and its overall provisions. Upon receipt of an appeal, the Tribunal is obliged to serve a copy of the appeal on the relevant rating authority, the Commissioner and the occupier of the property, the subject of the appeal. If the occupier of the property, the subject of the appeal is the Appellant, then under section 36 (1) the Tribunal need only serve a copy of the notice of appeal on the relevant rating authority and the Commissioner. The Appellant's occupation and use of the Property is paramount for the purpose for which the designated centre/nursing home is occupied so it is the Appellant who is “the person in the immediate use and occupation” of the Property. The residents are merely occupiers living on the Property. Accordingly, there is no obligation upon the Tribunal to serve a copy of the notice of appeal on the residents.

10.11 Subsection (2) of section 36 of the 2001 Act requires the Tribunal to serve all other documents and information in writing submitted by any party in connection with the appeal on the occupier of the property, the subject of the appeal, and any other person who appears to the Tribunal will be directly affected by its decision on the appeal. As the Tribunal has determined that for rating purposes the Appellant is the occupier of the Property, the question that remains to be decided is whether the residents, the Director General of the HSE, the Chief Executive of NTPF, the Chief Executive Officer of HIQA and the Minister for Health are persons who will be “directly affected” by the Tribunal’s decision on the appeal.

10.12 It is impossible to read this provision without seeing that the purpose of the legislative scheme is to anxiously safeguard all interests that might be affected by any decision made by the Tribunal on an appeal pursuant to section 37 of the 2001 Act as amended. However, the key word in subsection (2) of section 36 is "directly". This word eliminates not just the mere busybody but also the person who might have an interest in the outcome of this particular appeal but who is only indirectly affected by that outcome. So, a person who might have an interest in the outcome of this particular appeal but who is only indirectly affected by that outcome does not come within subsection (2) of section 36.

10.13 It is difficult to see how it can be said that the residents and the four named individuals will be “directly affected” by the Tribunal’s decision. The decision under appeal is that made by the Respondent determining the net annual value of the Property. The appeal is brought by the owner and occupier of the Property against the decision made by the Respondent. Although the residents may be ‘affected’ in the ordinary sense of that word in the outcome of the appeal as they may eventually have to pay a percentage or portion of any rates that may be levied as part of the amount that they pay towards their nursing home care fees whilst they live on the Property, nevertheless they will not be “directly affected” by any decision the Tribunal might make on this appeal as that phrase is to be properly understood. If the appeal is unsuccessful, they clearly are not directly affected in any adverse sense as they have no estate or interest in the Property and they are not in rateable occupation. Their obligation to pay any contribution towards rates arises not by virtue of any decision the Tribunal may make on this appeal but by virtue of their contractual obligation to contribute toward the cost of their nursing home care. If the appeal were to be successful, again there would be no direct effect upon them in the sense

of taking any direct benefit from a determination that the Property is not relevant property or is relevant property not rateable. The persons who will be “directly affected” by any decision the Tribunal might make on this appeal are the Appellant, the Respondent and the rating authority.

10.14 The Tribunal accepts that a person whose interests are capable of being directly affected by any decision the Tribunal may make should be afforded an opportunity to be heard and to make submissions prior to the determination of the appeal. However, if the cost of care implicitly or indirectly includes the cost of rates, the fact that the HSE and the residents make contributions to the payment of rates does not suffice to establish a right to be heard. The Tribunal does not see that any injustice or unfairness, let alone a breach of natural or constitutional justice, will arise from the fact that the residents and the statutory individuals will not be consulted or heard prior to the determination of the appeal.

10.15 It is difficult to conceive of any circumstances in which the Tribunal would consider the Director General of the HSE, the Chief Executive of NTPF, the Chief Executive Officer of HIQA and the Minister for Health as persons who will be “directly affected” by the Tribunal’s decision on the appeal. They have no estate or interest in the Property, and they are not the rateable occupiers. The fact that the NFT negotiates the Fair Deal rate with the registered provider by reference to the costs reasonably and prudently incurred in the running of the nursing home, the fact that the HSE defrays in whole or in part the amount payable to the nursing home in respect of any Fair Deal resident and the fact the Minister has an interest in the welfare of the residents in the nursing home is just not sufficient. The operation of the Fair Deal scheme is concerned solely with providing financial support to help persons pay for the cost of nursing home care. Even if those persons had an interest or concern about the rates payable by the nursing home, the Tribunal has heard no evidence of any such interest or concern, any decision the Tribunal may make on the appeal will not directly affect them.

10.16 Therefore, neither the residents of the Property nor the Director General of the HSE, the Chief Executive of NTPF, the Chief Executive Officer of HIQA or the Minister for Health appear to the Tribunal to be persons who will be “directly affected” by the decision the Tribunal may make on the appeal.

Substantive Grounds

10.17 In the first instance the Appellant claims that the subject property is not relevant property. A property is relevant property if it satisfies the conditions of paragraphs 1 and 2 of Schedule 3. Paragraph 1(a) of Schedule 3 provides that ‘buildings’ are relevant property for the purposes of the Act. No argument was made that the condition in paragraph 2(a) of the Schedule 3 was not satisfied.

10.18 Four essential ingredients of rateable occupation were identified in *John Lang & Son Ltd V Kingswood* [1949] 1 KB 344 but as the first relating to actual occupation no longer applies in Irish law, the other three were adopted by O’Hanlon J. in *Telecom Éireann v Commissioner of Valuation* [1994] 1 IR 66 and they are: (1) the occupation must be exclusive; (2) it must be of value or benefit to the occupier; (3) it must not be for too transient a period. Based on the evidence of Ms Comerford and Ms Bryan, the Tribunal is satisfied that the Property is a building and the whole of the Property is occupied for the purpose of the Appellant’s business. The Appellant occupies and through its employees has the direct and immediate control of the day to day running of the premises as a designated centre and that occupation is of benefit to the Appellant. Accordingly, the three essential ingredients of rateable occupation are satisfied regardless of the Property description.

10.19 The Appellant also contends that if the Property is relevant property, it is relevant property exempt from rates on the grounds that it is: (i) a “domestic premises” within the meaning of s. 3 of the Act and as such falls within paragraph 6 of Schedule 4 or, if the Tribunal finds that it is not a domestic premises; (ii) it is a building used by a body that meets the requirements of paragraph 8 (a) or (b) of Schedule 4 for the purposes of caring for sick persons or for the treatment of illnesses or, alternatively; (iii) it is a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body that meets the requirements of paragraph 14 (a) or (b) of Schedule 4.

10.20 The Property is clearly not an apart-hotel and nor is it a mixed premises as it is used solely as a nursing home. The question as to whether a particular type of premises can be described as a 'domestic premises' cannot be answered solely by looking at it from a single point of view. Regard must be had to factors such as the Appellant’s control over the premises,

the extent of control over the admission of persons to the premises, whether and to what extent persons are engaged (whether for payment or voluntarily) to provide services at the premises and the degree of independence which the residents have in relation to their activities and routines there.

10.21 The Tribunal finds that the Property is not used wholly or partly as a domestic premises. The Property is a purpose-built private nursing home that is registered as a designated centre and was occupied at the valuation date by approximately 58 persons. The use and character of the Property is the provision of residential care and welfare services to those persons who are being looked after, supported and made comfortable in their daily lives because due to their respective health issues independent living or care in their own homes for whatever reason is no longer possible. The Property is not of a kind similar to a domestic premises referred to in paragraph 6 of Schedule 4. A domestic premises tends to be the dwelling of a household comprising one person living alone or a group of people (not necessarily related) on a short term or long-term basis. A 'domestic premises' is not required to be registered with and monitored by the Chief Inspector of Social Services or to be operated in compliance with the Health Act 2007 and the National Standards for Residential Care Settings for Older People.

10.22 The Appellant occupies the Property as the service provider responsible for exercising real and substantial management and control of the residential services required to be provided pursuant to its Statement of Purposes. In terms of management, it is the Appellant, not the resident occupiers, who decides who will be accommodated in the Property. The existing residents are not individually consulted prior to any person moving into the Property or moving from one household to another household and while it may be the case that some of the less dependent residents have freedom of choice over their daily routines and activities, it is the Appellant who exercises substantial control over their care, welfare and living arrangements.

10.23 In the alternative, the Appellant also claimed that the Property is exempt from rateability by reference to paragraphs 8 and/or 14 of Schedule 4 of the Act.

10.24 The two requirements to be satisfied for the Property to fall with the ambit of paragraph 8 of Schedule 4 are

(a) that the building or part thereof is used for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital and

(b) that the Appellant is not established, and its affairs are not conducted for the purpose of making a private profit from such activity or the expenses incurred by the Appellant in carrying on such activity are defrayed wholly or mainly out of moneys provided by the Exchequer and the care or treatment provided is made available to the general public.

The Appellant's evidence was that of care for elderly persons and/or care for persons with medical conditions, intellectual disabilities and psychiatric conditions. Ms Comerford offered no evidence of caring for sick persons or giving treatment for illnesses and it was undisputed evidence that the Appellant operates the Property to make a profit. The Appellant, therefore, cannot bring itself within the ambit of subparagraphs (a) or (b) of paragraph 8 of Schedule 4.

10.25 The requirements to be satisfied for the Property to fall with the ambit of paragraph 14 of Schedule 4 are that the building or part of the building is 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, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009.

Ms McCarthy's written evidence was that a proportion of the Appellant's income was derived from under the Nursing Homes Support Scheme Act 2009. In 2020, 52% of revenue was defrayed under the Nursing Homes Support Scheme Act 2009 for approximately 89% of residents. Therefore, the Appellant cannot bring itself within the ambit of subparagraphs (a) or (b) of paragraph 14 of Schedule 4.

10.26 For the reasons given the Tribunal concludes the Appellant is not entitled to claim exemption from rates under paragraphs, 6, 8 or 14 of Schedule 4.

10.27 The Appellant argued that the description of the Property as a nursing home is incorrect. Section 2 of the Health Act 2007 as amended contains a detailed legal definition of ‘designated centre’. Essentially there are three categories of designated centres:

- (a) an institution at which residential services are provided by the Executive, the Agency, a service provider under the Act or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 (i) in accordance with the Child Care Act 1991, (ii) to persons with disabilities, in relation to their disabilities, or (iii) to other dependent persons, in relation to their dependencies;
- (b) an institution that is a special care unit and,
- (c) an institution that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990.

10.28 The interpretation of a valuation certificate should not be overly pedantic. The ‘Use’ description of the Property as a nursing home is not a misnomer or misdescription rather it is a description of use of the Property as commonly understood. The Tribunal considers that the description ‘nursing home’ is appropriate having regard to the particular use of the subject property.

10.29 The Appellant contended for a nil NAV on the basis that the Property is not relevant property or, if held to be relevant Property, is exempt from rates or, in the further alternative, the determination of value did not accord with the requirements of section 19(5) of the Act. In the absence of the Appellant putting forward expert valuation evidence or comparative rental evidence of similar circumstanced properties on the valuation list to argue for a lower figure, the Tribunal has no jurisdiction to interfere with the valuation as determined by the Respondent.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

NOTIFICATION OF APPEAL RIGHTS

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.