

Appeal No: VA23/5/0164

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

RUTH QUINLAN t/a OUR LADY’S GROVE MONTESSORI

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5015372, Creche (House) at 187 Trimbleston, Goatstown, County Dublin.

B E F O R E

Ms Fiona McLafferty – Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF MAY 2025**

1. APPEAL

1.1 By Notice of Appeal received on 4th October, 2023 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value (‘NAV’) of the above relevant Property was fixed in the sum of €25,300.

1.2 The ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19(5) of the Valuation Act 2001 (as amended) because: *“Property Concerned ought to have been excluded in relevant Valuation List. Since July service offers ECCE scheme only to preschool children. Keeping it community based. It should be exempt from Rates.”*

1.3 The Appellant considers that the Property ought to have been determined as exempt from rates.

2. REVALUATION HISTORY

2.1 On 23rd September, 2022 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (as amended) in relation to the Property was sent to the Appellant indicating a valuation of €25,300.

2.2 A final Valuation Certificate issued on 15th September, 2023 stating a valuation of €25,300.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1st February, 2022 ('the valuation date').

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Rules of the Tribunal, the parties exchanged their respective précis of evidence and submitted them to the Tribunal. The Respondent delivered legal submissions.

4. ISSUES

4.1 The issue in the appeal is whether the Property is rateable. The Appellant requests the Tribunal to determine that the Property is not rateable. The Respondent requests the Tribunal to determine that the Property is rateable. On the basis of the Property being rateable, the Respondent requests the Tribunal to determine the NAV in the sum of €25,300.

5. FACTS

5.1 The following findings of facts are made:

5.2 The property is a two-storey building located in a residential development at Trimbleston, Goatstown, County Dublin. It is in use as a Montessori facility.

6. RELEVANT STATUTORY PROVISIONS

6.1 All references to a section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act 2015.

6.2 Section 15(1) of the Act provides:

“Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.”

6.3 Section 15(2) of the Act provides:

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

6.4 Paragraph 22 of Schedule 4 provides:

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

6.5 Section 20(1) of the Act provides:

“A valuation order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the order, shall be determined.”

6.6 Section 19(5) of the Act provides:

“The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —

- (a) *correctness of value, and*
- (b) *equity and uniformity of value between properties on that valuation list,*

and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.”

6.7 The value of a relevant property has to be determined in accordance with the provisions of section 48(1) of the Act which provides:

“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.”

6.8 Section 48(3) of the Act provides the following meaning of ‘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 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.”

7. APPELLANT’S CASE

7.1 In the précis of evidence delivered by the Appellant it is stated that since July 2023 the service provided at the Property changed from part-time to sessional early childhood care and education only and, accordingly, the Property is exempt from rates. The Appellant provided a floor plan of the Property, on which 33 m² is handwritten on the ground floor plan and 24 m² on the first floor plan. There is as separate typed description of ‘total area for crèche 128 sqm’.

7.2 The Appellant provided a communication from Tusla dated 17 July 2023 which states as follows: *“Dear Provider, I refer to your application for proposed change in circumstances. I am pleased to advise that your proposed change in circumstance has been approved. The approved change is as follows: **Change in Service Type: From Part Time To Sessional.** Your service can commence operation according to the proposed change stated in your application. The National Register will be amended to reflect the change.”*

7.3 The Appellant also provided a ‘Certificate of Registration’ issued by Tusla, which is reproduced at Appendix A (N/A to public). It is stated as a certificate confirming *‘this service is registered as an Early Years (pre-school) service under VIIA Section 58C of the Child Care Act 1991’*. It describes the service type as ‘sessional’ and the registration period as 16th December 2023 to 16th December 2026. The registration period is stated as *‘subject to compliance with the relevant regulations’*.

7.4 In those circumstances, the Appellant requests the Tribunal to determine that the Property is not rateable.

8. RESPONDENT’S CASE

8.1 The précis of evidence on behalf of the Respondent was given by Fidelma Malone, MSCSI, MRICS, B.Sc. (Hons). Ms Malone stated that revaluation refers to the process whereby the valuation of every relevant property in a particular rating authority area is updated by reference to one specified date. She submitted that revaluation brings greater equity, uniformity, fairness and transparency into the local authority rating system, resulting in more equitable distribution of the commercial rates burden among ratepayers.

8.2 Ms Malone stated that the Property was inspected and her précis included both internal and external photographs of the Property. She stated the Property was in excellent condition. Ms Malone provided details on the letting of the Property as being a year-to-year lease to the Appellant for the yearly rent of €19,200, being the amount fixed as at February 2023.

8.3 In response to the submission made by the Appellant, Ms Malone stated that the Property is not exempt under paragraph 22 of Schedule 4 of the Act as the building is not used exclusively for the provision of early childhood care and education, and not occupied by a body which is established and the affairs of which are not conducted for the purpose of making a private profit. She stated that the Appellant has not provided any evidence to confirm that her occupation of the Property is not conducted for the purpose of making a private profit. Ms Malone stated that the Appellant has not included any comparable evidence and has not disputed the value applied to the floor area of the Property.

8.4 Ms Malone submitted that the valuation of the Property was conducted according to the provisions of the Act. She further submitted that the value of the Property was determined by reference to the values of other properties comparable to the Property appearing on the valuation list in the same rating authority area as the Property, in accordance with correctness of value, equity and uniformity. The estimate of the NAV is what a hypothetical tenant would pay in rent on the terms set out in section 48 of the Act, which is not necessarily what any particular tenant is paying. Ms Malone submitted that the actual rent for a property may be material in deriving an estimate of the NAV but is not conclusive.

8.5 Ms Malone submitted that having investigated the particulars of the appeal, and considered the grounds of appeal and the evidence of the Appellant, the opinion of the Respondent is that the Property is rateable and the correct NAV of the Property is €25,300, calculated as follows:

Floor Level	Floor Use	Floor Area (m ²)	€ per m ²	Total Valuation
0	Crèche	51.46	€280	€14,408.80
1	Crèche	54.69	€200	€10,938
Valuation (rounded)				€25,300

9. SUBMISSIONS

9.1 The Respondent delivered written legal submissions. The Respondent submitted that, in light of the statements made by the Appellant in the Notice of Appeal and her précis of evidence, the Appellant appeared to be seeking to rely on paragraph 22 of Schedule 4 of the Act to claim an

exemption from rates. The Respondent submitted that the evidence adduced by the Appellant failed to support any claim for an exemption, and nothing to support the claim that the Appellant is entitled to an exemption under paragraph 22.

9.2 The Respondent referred to the principles of interpretation applicable to the Act set out by MacMenamin J. in *Nangles Nurseries -v- Commissioner of Valuation* [2008] IEHC 73 and highlighted the principle that ‘*exemptions or relieving provisions are to be interpreted strictly against the ratepayer*’. In those circumstances, the Respondent submitted that the onus is on the Appellant to satisfy the Tribunal that the Property is exempt under the Act and that the exemption sought is to be interpreted strictly against the Appellant.

9.3 The Respondent referred to two previous judgments of the Tribunal – *Kangakare Arklow Limited -v- Commissioner of Valuation* (VA19/5/0492) and *Faylinn Education Limited -v- Commissioner of Valuation* (VA18/2/0015) – to submit that even if the Appellant had sought to rely on paragraph 10 of Schedule 4, the conclusion in those judgments on the interplay of paragraph 10 and paragraph 22 would apply to this appeal, namely that ‘*the two provisions would, at best, be incongruous and, in those circumstances, paragraph 22, as the leading, later and more specific provision must take precedence over paragraph 10*’.

9.4 The Respondent submitted that the exemption in paragraph 22 of Schedule 4 has a number of components, all of which must be established by an Appellant, namely (a) the property (or part thereof) is used exclusively for the provision of early childhood care and education; (b) the property is occupied by an established body; and (c) the occupying body is not established and the affairs of which are not conducted for the purpose of making a private profit.

9.5 In relation to whether the Appellant has proven that the Property is used exclusively for the provision of early childhood care and education, the Respondent submits that the ‘Certificate of Registration’ provided by the Appellant does not establish that the Property was used exclusively for early childhood care and education purposes. The Respondent submits that the certificate simply recounts that it is registered as an early years’ pre-school. The Respondent submits that the only evidence connected to the concept of exclusive use is the assertion by the

Appellant that the services are ‘sessional only’ supported by a communication dated 17 July 2023 which confirms a change in service type from ‘part-time to sessional’. The Respondent submits that in the absence of further evidence on the exclusive use of the Property, the Appellant has not met this criteria for the exemption to apply.

9.6 In relation to whether the Appellant has proven that the Property is occupied by an established body, the Respondent submits that although the question of what may be construed as a body has not been the subject of much scrutiny before the Tribunal, an unincorporated sole trader, such as the Appellant, could not be construed as a body for the purposes of the exemption in paragraph 22. The Respondent referred to a judgment of the Tribunal – *Lavelle -v- Commissioner of Valuation* (VA06/2/035) – which was considering the exemption under paragraph 8 of Schedule 4 and highlighted the statement ‘*Indeed it is questionable whether or not Dr Murray and/or his partner would be deemed to be a ‘body’ within the meaning of paragraph 8 of Schedule 4 at all.*’

9.7 The Respondent submitted that the term ‘body’ is not defined in the Act. However, it is clear that the exemption in paragraph 22 requires the body be ‘established’ which tends to suggest that the body needs to be incorporated or have formal constitutional-type documentation as would apply in respect of an unincorporated association. The Respondent submitted that on a first principles basis, it is difficult to envisage how an individual can be established. If the intention of the Act was to include occupiers such as the Appellant, the Act could simply have used the term ‘person’ or ‘occupiers’, both of which would have clearly encompassed individuals. The Respondent referred to section 18(c) of the Interpretation Act 2005 which states ‘*“Person” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “person” shall be read accordingly.*’ The Respondent submitted that the term ‘person’ is repeatedly used in the Act, which is different to the term ‘body’.

9.8 The Respondent submitted that it was difficult to envisage how an individual/sole trader can be ‘established’ for a not-for-profit purpose. The Respondent submitted that while undoubtedly an individual/sole trader may carry out some activities without seeking a profit therefrom, it could not be the case that a sole trader never seeks a profit from any of its activities. The Respondent

submitted, having regard to the judgment in *Lavelle*, that a sole trader would appear to be ‘*in business on their own account*’.

9.9 The Respondent submitted that the Appellant had not provided any constitutional-type documentation or any evidence to show she could be construed as being a ‘body’ or ‘established’. The Respondent submitted that the Appellant was an unincorporated sole trader and, in those circumstances, could not come within the words in paragraph 22.

9.10 In relation to whether the Appellant has proven that she is not profit-making, the Respondent submitted that no evidence has been proffered by the Appellant to prove that she is not profit-making. The Respondent submitted that even if the Property only offered early childhood care and education services, whether it is in fact not profit-making is unclear due to a fundamental lack of evidence in respect of its finances. The Respondent submitted that the typical clauses that may appear in constitutional-type documents to support a position that a body was not established for the purpose of making a private profit included that it is established on a not-for-profit basis; that no dividends are paid to its members; that only reasonable costs are incurred; that no unreasonable drawings are made from the entity; and how the assets are to be distributed in a winding-up. No such documentation has been offered by the Appellant. Furthermore, the Respondent submitted that paragraph 22 requires that the body itself be not profit-making, not that the property be not profit-making. Even if the Appellant was a ‘body’ and did or did not make a profit from the Property, it would be necessary to examine any other properties from which the Appellant operates to consider if those properties are profit-making. No evidence in that regard has been proffered by the Appellant.

9.11 In all the circumstances, the Respondent submitted that the Appellant has not proven that the exemption applies and that the appeal should be dismissed and the valuation affirmed. The Respondent submitted that if the Tribunal determined that the appeal was not well founded, the Respondent was seeking costs in accordance with the Tribunal judgment of *Killarney Country Club Lodge Limited -v- Commissioner of Valuation* (VA98/2/006).

10. FINDINGS AND CONCLUSIONS

10.1 Section 35 of the Act provides that the appeal from the Appellant must specify the grounds on which the Appellant considers that the NAV determined by the Respondent is incorrect and the value the Appellant considers the Respondent should have determined as the NAV.

10.2 There is a lack of specificity in the Notice of Appeal and précis of evidence of the Appellant as to the relevant provision in the Act under which the Appellant claims an exemption from rates. On the basis that the Appellant has referred to early childhood care and education at the Property, the Tribunal proceeds on the basis that the appeal concerns the issue of whether the Property is a relevant property not rateable by virtue of paragraph 22 of Schedule 4. Further, if the Tribunal determines that the Property is rateable and should not be excluded from the valuation list, the Tribunal must then determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Dun Laoghaire Rathdown County Council.

10.3 It is recognised that the onus of proof in appeals before the Tribunal rests with the Appellant. The Tribunal also takes account of the principles of interpretation of the Act set out by MacMenamin J. in *Nangles Nurseries -v- Commissioner of Valuation* [2008] IEHC 73 as outlined in submissions on behalf of the Respondent.

10.4 Section 15(1) of the Act provides ‘*Subject to the following subsections and sections 16 and 59, relevant property shall be rateable*’. Section 15(2) of the Acts provides ‘*Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable*’. Schedule 4 of the Act prescribes what is ‘relevant property not rateable’. Paragraph 22 of Schedule 4 provides “*Any land, building or part of a building used exclusively for the provision of early childhood care and education, and occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit.*” Having regard to the principles of interpretation enunciated in *Nangles Nurseries*, exemptions or relieving provisions are to be interpreted strictly against the ratepayer, meaning the Appellant must demonstrate that she comes squarely within the exemption.

10.5 The documentary evidence proffered by the Appellant, in conjunction with the statements made by the Appellant in her précis of evidence, to demonstrate that the Property is exempt from rates is a communication from Tusla dated 17 July 2023 which states that the service at Ruth's Montessori has changed from part-time to sessional and a Certificate of Registration which describes the service type at Ruth's Montessori as 'sessional' with the registration period given as 16th December 2023 to 16th December 2026. The name of the registered provider in the Certificate of Registration is Ruth Quinlan. It is noted that both documents post-date the valuation date. It is further noted that the provider is described as the name of an individual. There is no explanation or submission on the consequence of a change to 'sessional' having regard to the requirements in paragraph 22. There is no explanation why the trading name in the Notice of Appeal differs from the name in the Certificate of Registration, or if any significance arises therefrom. In all the circumstances, the Tribunal is not satisfied that the Appellant has discharged the onus of demonstrating that she comes squarely within the exemption, namely that the Appellant has not proven that the Property (or part thereof) is used exclusively for the provision of early childhood care and education, that the Property is occupied by a body which is not established for the purpose of making a private profit and that the affairs of the body are not conducted for the purpose of making a private profit.

10.6 Having examined the particulars of the Property and carefully considered the evidence and submissions of the Appellant and the Respondent, the Tribunal is satisfied that the Appellant has not demonstrated that the Property is not rateable.

10.7 In those circumstances, the Tribunal must determine the value of the Property. The Appellant did not provide information or evidence on the quantum of valuation. Having examined the particulars of the Property and carefully considered the matters presented by the Appellant and the Respondent, the Tribunal is satisfied that the Appellant has not demonstrated that the value of the Property at a net annual value of €25,300 put forward by the Respondent does not accord with that required to be achieved by section 19(5) of the Act.

DETERMINATION

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

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.