

**Appeal No: VA23/5/0230**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**LITTLE ACORNS MONTESSORI PLAYSCHOOL**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2212548, Creche at Unit 16 Gaelic Park, Chapel Street, Carndonagh, County Donegal.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 8<sup>TH</sup> DAY OF OCTOBER 2025**

**BEFORE**

**Sarah Reid -BL**

**Member**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 6<sup>th</sup> day of October 2023 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 €79,100.
- 1.2 The sole 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 Act because:

*GROUNDS FOR APPEAL Note that the Valuation Office has valued the building as a single unit, termed “Unit 16” in its correspondence address. In actuality, there is a combination of small commercial units located side-by side all with internal access. The building is split into sub-units or rooms within which varying classes and ages of child are supported. A floor area plan is supplied for ease of reference and it refers to units 8 through 17. All are occupied by the appellant with the sole exception of unit 9 which is occupied by*

*a dental practice. Nursery Units These units (numbered 12 & 13) together house a nursery for very young children (ages 12 months to 24 months).*

*The nursery was formed to provide a key service for working parents in the community. The nursery children, although young, follow a curriculum specifically designed for them. The nursery is not profitable, has not been nor is it ever expected to be. This is principally because of the ratios of staff to children required due to the very young ages involved. The appellant made a conscious decision some years ago to provide this service as a 'loss leader' to generate parents faith in the service and to encourage parents to return their children to the older child services over time. The latest management accounts of the business reveal that the nursery incurred a loss of €6,609.76 for the eight-month period ending 31st August 2023.*

*The appellant is happy to provide historical figures in further support of their position. The principal source of funds generated by the nursery are from Exchequer funds. Please see turnover percentages of the appellant's business for the most recent years to June 2022 and June 2023, further below. As of September 2022, the dept of Education inspectorate governs all classes caring for children in age range 0 - 6. The protocol dictates that a strict educational programme of care is developed and that the early years curriculum in each class is linked to the framework within this department, in similar fashion to all national schools.*

*We consider that these units fall within para. 10 of Schedule 4 to the Valuation Act 2001, being an educational provider running a service at a loss and the expenses of which are defrayed mainly by Exchequer funds. The service is fully accessible to the general public. All Units Each unit has been fitted out to support the inclusion of all children regardless of physical or intellectual disability. Currently, there are children with disabilities attending that have been awarded additional funding through the Better Start programme which helps to promote their inclusion in an educational early years setting.*

*The Appellant business currently cares for children who are on the pathway for diagnosis through the HSE early intervention unit. Diagnoses include intellectual disabilities such as ASD, ADD, ODD, dyspraxia, physical disabilities such as hypomobility, cerebral palsy and Downs' syndrome. These conditions or diseases are often multimorbid. The Appellant business also provides school aged child care differentiated educational programmes that promote inclusion for children with disabilities. Each of the commercial units stores specialist medicines for children with additional needs that are required to be administered in the event of emergency. Eg Epilepsy, Anaphylaxis, Diabetes, Febrile seizures. Again the Exchequer is the main provider of supporting funds.*

*We consider that para. 14(b) of Schedule 4 to the Valuation Act 2001 should apply here as the funds for the disabled children source principally from the exchequer. 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. The term “mainly” at 14(b) above is ordinarily taken to mean greater than 50%. See Exchequer contribution percentages below.*

*Section 14 also includes the wording “any...part of a building occupied for the purpose of caring for...disabled persons”. Note that the wording above does not include ‘sole purpose’, thereby not limiting the exemption to bodies established with a sole purpose to care for disabled persons. Section 3 of the Valuation Act 2001, concerning interpretation, does not define “disabled persons”. Therefore the term must take its ordinary meaning. The term ‘disability’ is defined in the Oxford English dictionary as follows, “a physical or mental condition that makes it difficult for somebody to do some things that most other people can do”*

*The following units contain disability equipment for children: Unit 8 - padded sensory rooms for children with reduced mobility and extreme levels of need. Unit 10 - a padded sensory room and therapy bench for children with physical disabilities Unit 11 - A wheelchair swing to accommodate children in wheelchairs. Units 12 and 13 are our designated Junior Nursery Rooms. Unit 14 – has a sensory ‘dark den’ which offers a safe space or cool down spot for children who can become easily overwhelmed by sensory stimuli during the course of their care. Unit 15 – same ‘dark den’ Unit 16 – a specialised Swedish climbing ladder has been installed to support children with sensory processing disorders Unit 17 - has a tracking hoist installed into the ceiling and a mechanical changing table that can be modified to accommodate children at different heights. Also a further Swedish climbing ladder. All units have equipment to keep life-saving medicine stored safely and refrigerated in a specialised lockable storage unit: Epi Pens & Insulin.*

*The service also provides electric motorised prams to support inclusion in the community for children with mobility issues and developmental delays. Presently, the service cares for 15 preschool children (2 years 8 months to 6 years of age) who have been on the pathway for diagnosis whilst attending our early years services. They receive AIMS (Access & Inclusion Model govt funding) level 4 and level 7 support. A further 10 children in this age category are attending standalone specialist therapies (physiotherapy, occupational therapy and speech therapy). These children have individual education plans incorporated into their childcare programme to support their therapies. Additionally, the service cares for 25 early years children (12 months to 2 years 8 months of age) who are on the pathway for diagnosis for a range of disabilities. For many of these children, this service provides their first educational setting outside of the home. The service provides the support for parents to begin the process in accessing supports provided by the HSE.*

*The service receives referrals from Tusla Social Services and the HSE for families requiring support. We can confirm that according to the latest prepared accounts for the business, total turnover sourced is as follows: Year ended 30th June 2022 Exchequer contribution to turnover 86.44% Parental contributions 13.56% Year ended 30th June 2023 Exchequer contribution to turnover 87.84% Parental contributions 12.16% Revised valuation workings: Nursery Units 12 & 13 % of floor area (see working 1 below) Reduction €79,100 x 17.95% = €14,198 Disabled persons care exemption Reduction*

*€79,100 x 100% = €79,100 in full as all units care for at least one disabled person Revised Valuation €0 Working 1 Total area of building per attached floor area plans: (please ignore colour coding) Unit 8 88.8sqm Unit 9 {occupied by another business} Unit 10 147.7sqm Unit 11 140 sqm (est incl kitchen) Unit 12 89 sqm Unit 13 80 sqm Unit 14a 93 sqm Unit 14b 65.27sqm Unit 15 81sqm Unit 16 81.5sqm Unit 17 75 sqm (est) Total area 941.27sqm Junior Nursery Units 12 & 13 = 169sqm  $169/941.27 \times 100/1 = 17.95'$*

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0 where it benefits from exclusion under Schedule 4 of the Act.

## **2. RE-VALUATION HISTORY**

- 2.1 On the 23<sup>rd</sup> day of September 2022 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 €79,100.
- 2.2 A Final Valuation Certificate issued on the 15<sup>th</sup> day of September 2023 stating a valuation of €79,100.
- 2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1<sup>st</sup> day of February 2022.

## **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 Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

## **4. FACTS**

The parties are agreed as to the following facts.

- 4.1 The Property is located in the town centre of Carndonagh on the Inishowen peninsula in County Donegal and comprises a series of commercial units, including ground floor units, that have been adapted to provide internal access and thereby a connected Property.
- 4.2 The Appellant operates an early years childhood education facility and creche services from the Property and accommodates varying classes and ages of children onsite.

- 4.3 The total floor area of the Property is agreed as 942.71 m<sup>2</sup>.
- 4.4 The Appellant offers state funded childcare places under the Early Childhood Care and Education programme (ECCE) in addition to childcare and/or educational services that fall outside this scheme. The Appellant also offers, and can accommodate, childcare and/or educational services to children with disabilities and for that purpose, the Subject Property has been adapted with equipment and other modifications.

## 5. ISSUES

- 5.1 The present Appeal concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemptions contained in Paragraphs 10, 14(b) and 22 thereof, and the extent to which same apply to the Subject Property.
- 5.2 The Appellant seeks an exemption under paragraphs 10 and/or 14(b) of Schedule 4, and the Respondent maintains that these provisions do not apply to the Subject Property and accordingly the Property is ‘relevant property’ within the meaning of the Act.

## 6. RELEVANT STATUTORY PROVISIONS:

- 6.1 The value of a property falls to be determined by the Commissioner of Valuation under Section 13 of the Valuation Act, 2001 as amended (hereafter ‘the Act’), which provides as follows:

*(1) 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.*

- 6.2 Schedule 4 of the Act provides that certain properties that are exempt from the payment of commercial rates with a list of circumstances provided in that regard. Paragraph 10 of Schedule 4 provides:

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

*(a) (i) it is not established and the affairs of it are not conducted for the purposes of making a private profit,*

*or*

*(ii) the expenses incurred by it in providing the educational services concerned are defrayed wholly or mainly out of moneys provided by the Exchequer,*

*and*

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

6.3 Paragraph 14 of Schedule 4 of the of the Act also exempts:

*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”*

6.4 Paragraph 22 of Schedule 4 of the of the Act also exempts:

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

## **7. APPELLANT’S CASE**

7.1 The Appellant provided a précis for consideration together with appendices and detailed grounds of appeal as well as their observations on the Respondent’s valuation and position, per the Respondent’s précis. The Appellant’s grounds of appeal and argument before the Tribunal was two fold: in the first instance that the ‘Nursery Units’ (being the commercial units numbered 12 & 13) were not profitable and the principal source of funds generated

in that regard are Exchequer funds. Further where the Dept. of Education protocols dictated education programmes and an 'early years' curriculum for children aged 0-6 years, the Appellant argued that their service fell within the scope of paragraph 10 of Schedule 4 being an educational provider running a service at a loss, the expenses of which are defrayed mainly by the Exchequer funds. The second argument advanced by the Appellant was that in fact all units in the Property fall within the exemption of paragraph 14(b) of Schedule 4 where each unit has been fitted out to support the inclusion children with physical and/or intellectual disability and accordingly the Property should be viewed as catering for 'disabled' children noting the funds for these services are principally derived from the Exchequer.

- 7.2 In respect of the 'Nursery' units, the Appellant's evidence was that this component of the business was operated as a loss-making exercise in order to provide key services for working parents in the community. Management accounts were provided in support of the position that the 'Nursery' runs at a loss and the principal source of funds generated by these units are Exchequer funds, namely childcare subsidies and state funding for working parents. Insofar as an educational curriculum applies to this cohort of children, the Appellant notes that as of September 2022, the Department of Education protocol requires a strict educational programme of care be developed by service providers that is linked to the Department's own educational framework and the Appellant confirms that same is applied and adopted by them across each of their childcare rooms in the Property.
- 7.3 In respect of the remaining units / childcare rooms operated in the Property, the Appellant submitted evidence that each unit had available to it various adaptations as would support the inclusion of children with physical or intellectual disabilities. Details were provided of the current number of children being catered for by the Appellant with additional needs as well as an overview of the breath of intellectual disabilities that arose and were capable of being catered for by the Appellant. The Appellant also noted that a number of children in their care are on the pathway for diagnosis through the HSE early intervention unit and potential diagnoses that could result were ASD, ADD, ODD, dyspraxia, hypomobility, cerebral palsy and Downs syndrome. The Appellant also stated that their business provides school aged childcare via differentiated educational programmes and these were designed to promote inclusion for children with disabilities.
- 7.4 It was the Appellant's evidence that the following units in the Property contained adaptations and/or elements that accommodated children with additional needs: Unit 8 – padded sensory rooms for children with reduced mobility and extreme levels of need. Unit 10 – padded sensory room and therapy bench for children with disabilities. Unit 11 – wheelchair swing to accommodate children in wheelchairs. Units 14 & 15 – sensory 'dark den' which offers a safe space or cool down spot for children who can become easily overwhelmed by sensory stimuli during the course of their care. Unit 16 – specialised Swedish climbing ladder to support children with sensory processing disorders. Unit 17 – tracking hoist into the ceiling and a mechanical changing table that can be modified to accommodate children at different heights. This unit also has a Swedish climbing ladder. Insofar as medications arose, the Appellant stated that all units in the Property have equipment to keep lifesaving medicines (eg Epi pens & insulin) stored safely and

refrigerated in specialised lockable storage unit and the Appellant provides electric motorised prams to support inclusion in the community to children with mobility issues and developmental delays.

- 7.5 The Appellant gave evidence that they provide various childcare services including the provision of services under national schemes and programmes including the National Childcare Scheme (NCS) the Early Childhood Care and Education Programme (ECCE) and Access and Inclusion Model (AIMS). These programmes contractually bind services providers with the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) and are paid by POBAL on behalf of the Department. It was noted that the level of funding provided under the foregoing schemes varies depending on the individual service provider's staffing costs and additional costs incurred by a provider, for example securing specialised training in the use of equipment for children with disabilities.
- 7.6 Insofar as the Appellant's provision of care to children with disabilities fell within paragraph 14(b) of Schedule 4, it was submitted that the reference in that section to funds 'mainly' being defrayed by the Exchequer is ordinarily taken to mean greater than 50%. Further, the Appellant argued that paragraph 14(b) does not state the 'whole purpose' of the business must be to care for disabled persons and where that is so, its application was not limited to bodies established with a sole purpose to care for disabled persons.
- 7.7 In light of the foregoing, the Appellant submitted that the Respondent's estimation of NAV was incorrect where the Property was not relevant property arising from the exemption(s) claimed. In the circumstances the Appellant contended that an appropriate valuation for the Subject Property was €0.
- 7.8 Having regard to the Respondent's précis and the commentary therein, the Appellant took issue with the assertion that the Appellant had contend they are 'exclusively' in receipt of Exchequer funds. The Appellant maintains they never claimed this and note that in any event the word 'exclusively' does not appear in the wording (and requirements) of paragraph 14(b). The Appellant also clarified that while a loss is claimed for the Nursery component of the business (paragraph 10 referring), it is nonetheless the case that all areas of the Subject Property are used for the provision of education services including the caring of disabled persons.
- 7.9 In their response to the Respondent's observations, the Appellant also noted that their Statement of Purpose (a copy of which was included in the Respondent's précis) was not an exhaustive list and their service had more than one 'purpose'. In support of this, they referred the Tribunal to their Withdrawal and Exclusion section of the document which states "*We are an inclusive service and open our door to children with abilities and disabilities. We ask parents to share with us as much information as possible to ensure the child's individual needs are met. Our aim is to make reasonable accommodation to be inclusive, once it is within our resources and within the interest of the individual child and group of the children.*" Where this was so, it was the Appellant's case that their services covered both the provision of childcare, generally, and the provision of care to disabled children.

- 7.10 In respect of the legal and Tribunal decisions cited by the Respondent and put before the Tribunal in this appeal, the Appellant argues that *Faylinn Education Ltd. V Commissioner of Valuation* (VA18/2/2015) is not comparable to this appeal where the facts differ to the Appellant and where there is no mention of a loss arising to the Appellant in that case. In respect of *Kangakare Arklow Ltd Vs Commissioner of Valuation* VA19.5.0492 the Appellant argues that that case focused on incompatibility between paragraphs 10 and 22 of Schedule 4 and paragraph 10 was not ultimately considered rendering it irrelevant to the present appeal. Further, the question of a loss being incurred was not considered in that case which the Appellant argued distinguishes it from the within facts.
- 7.11 In light of the foregoing and the evidence put before the Tribunal to support their position, the Appellant maintains that the ‘Nursery’ units operated in the Property come within the definition of ‘educational provider running a service at a loss, the expenses of which are defrayed mainly by Exchequer funds, per paragraph 10 of Schedule 4. Further, where all of the units / childcare rooms in the Property are capable of providing specialised facilities and/or catering for the care needs of disabled children, including the provision of medications, it is the Appellant’s case that this suffices as catering for ‘disabled’ persons the expenses of which are defrayed mainly by Exchequer funds, per paragraph 14(b) of Schedule 4.

## **8. RESPONDENT’S CASE**

- 8.1 The Respondent denies that the Subject Property qualifies for any exemption and maintains the NAV entered on the List is appropriate and correct in the circumstances. Legal submissions were filed in respect of the interpretation and application of Paragraphs 10, 14(b) and 22 of Schedule 4 and these are recited hereunder. In terms of the opinion of value and the justification of a NAV of €79,100 as applied to the Property, the Respondent relied on NAV comparisons which demonstrated a level ranging between €90 and €110 per sq.m. These are set out in Appendix 1 hereto (N/A to public). Against these comparisons, the Respondent argues that the NAV of €84 is reasonable and ought to be let stand.
- 8.2 Having considered the Appellant’s evidence, the Respondent maintains that the Appellant has not included any comparable evidence and has not disputed the levels applied to the floor areas in the Subject Property. In respect of the Appellant’s claim that an exemption should be permitted for the nursery or ECCE area of the building, pursuant to paragraph 10 Schedule 4, the Respondent maintains that any consideration of the rateability arising from the provision of ECCE services must fall under Schedule 4, paragraph 22 of the Valuation Act 2001, as amended following on from the decisions in *Faylinn*, *Kangacare* and *Small Steps* (outlined below). In support of this, the Respondent argues Paragraph 22 of Schedule 4 requires that the Property be occupied by a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and no evidence has been provided to show the subject property satisfies these criteria.

- 8.3 In addition to the foregoing and in the context of paragraph 22 of Schedule 4, the Respondent refers to Appellant’s ‘Statement of Purpose and Function Policy 2023’ which states *“The purpose of Little Acorns Nursery, Playschool & Acorns After School is to provide quality, affordable early education and school aged childcare services in the local community. It is a private service and is classified as a full-day care service under the Child Care Act 1991 (Early Years Services) Regulations 2016. It is open for 52 weeks per year from 1st September to 31st August. We can cater for 214 children at any one time.”* It is the Respondent’s case that this document sets out the services offered by the Appellant in respect of their Preschool Sessional Service (ECCE) as well as their Full Day Care and Part-Time Day Care. The Respondent also notes that the Appellant charges optional extras services, including to ECCE children, at an additional charge for example a weekly lunch or nappies to be provided.
- 8.4 In the circumstances and in the context of the for profit model operated by the Appellant, the Respondent maintains no evidence or information was provided by the Appellant to suggest they are anything other than operating “other than for private profit” and regard should be had to the fact that the Appellant states in their précis that they are a business, which would indicate that the subject’s affairs are conducted to make a private profit, whether a profit is made or otherwise is irrelevant.

## 9. SUBMISSIONS

- 9.1 The Appellant did not make formal legal submissions in this Appeal, however following on from paragraph 7.6 above, they argued that based on the wording of paragraph 14(b), specifically that there was no express exclusion for those whose sole purpose was not the provision of services to people with disabilities, the Appellant referred to Section 3 of the Valuation Act which it was noted does not define ‘disabled persons’. In that regard, the Appellant argued the term must therefore be given its ordinary meaning which, per the Oxford English Dictionary was “a physical or mental condition that makes it difficult for somebody to do somethings that most other people can do”.
- 9.2 In response to the Respondent’s commentary regarding ‘main purpose’ as it appears in paragraph 14, the Appellant argued that same is not the focus of the exemption afforded under the Section and the key words are “occupied for the purpose of”. To that end, and in support of their point the Appellant maintained that the legislation neither narrows nor broadens the definition of “purpose” to exclusive, solely, wholly, mainly, partial or otherwise. In addition, the Appellant relied on the decision of Mr. Justice McMenamin in Nangles Nurseries that the Act is to be applied strictly and in the case of ambiguity, the Court must have resort to the strict and literal interpretation of the Act.
- 9.3 The Respondent filed formal written submissions in support of their case and maintains that the within Appeal falls to be determined by reference to two questions: Firstly, does the Subject Property enjoy an exemption under either paragraph 10 or 22 of Schedule 4?

Secondly, does the Subject Property enjoy an exemption under Paragraph 14(b) of the Schedule 4 of the 2001 Act? The Respondent submits that if the Tribunal answers both of these questions in the negative then the appeal must fail and it is their case that none of the aforementioned provisions can apply to the Appellant.

- 9.4 Insofar as the principles of interpretation that applied to the within Appeal, the Respondent submits that these were summarised by McMenamin J. in *Nangle Nurseries v. Commissioner of Valuation* [2008] IEHC 73 as follows:

*“(1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;*  
*(2) the Act is to be strictly interpreted;*  
*(3) impositions are to be construed strictly in favour of the rate payer;*  
*(4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;*  
*(5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;*  
*(6) if however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;*  
*(7) in the case of ambiguity the court must have resort to the strict and literal Interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.”*

- 9.5 The Respondent noted that the question of exemption for creche providers under the Valuation Act has been the subject of several Tribunal determinations and in most of those the Tribunal has been asked to consider whether paragraphs 10 and/or 22 ought to apply in that setting. It was the Respondent’s submission that in each case the determinative factor was that the businesses operated on a “for profit” basis and therefore no exemption was available. In support of this point, the Respondent relied on the Tribunal decision in *Faylenn Education Ltd -v- Commissioner of Valuation* VA18/2/2015 where the Tribunal was satisfied that neither paragraphs 10 nor 22 could apply to the subject property as it was a for profit enterprise. Similarly, in *Kangacare Arklow Limited v Commissioner of Valuation*, VA19/5/0492 the Tribunal considered whether it was possible for a creche offering the ECCE scheme to claim exemption under both paragraphs 10 and 22 and in reaching its determination the Tribunal held:

*“10.15 If one accepts Mr Halpin’s argument – endorsed by the relevant division of the Tribunal at least for the time period the Sharon Smyth case concerned – that paragraph 10 deals with ECCE, then there is undoubtedly some element of incongruity between the provisions of paragraph 10 and paragraph 22 in that the former paragraph would provide an exemption for ECCE in circumstances where the operator seeks to make a profit provided expenses are wholly or mainly defrayed by the Exchequer, whereas the latter paragraph, in all cases where the relevant business is conducted for the purpose of making a private profit, excludes*

*the entitlement to an exemption. Mr Kennedy invites the Tribunal to avoid the incongruity by concluding that paragraph 10 does not apply to ECCE property at all or, alternatively, to resolve the incongruity by concluding that paragraph 22 prevails over the provisions of paragraph 10...*

*10.19 The Tribunal notes that paragraph 22 was introduced after paragraph 10 and is thus, obviously, the later provision. Moreover, in contradistinction to the earlier paragraph which refers in a general way to the provision of “educational services”, paragraph 22 refers to “the provision of early childhood care and education”. Accordingly, paragraph 22 is the more specific or “special” provision and, in the view of the Tribunal, must also, for the same reason, be regarded as the leading provision on the subject of the exemption for ECCE.*

*10.20 These observations, when considered in the context of the cases referred to above, lead the Tribunal inexorably to the view that where there is an incongruity between paragraph 10 and paragraph 22, the latter provision must prevail. The Tribunal does not need, for the purposes of this decision, to consider [Counsel for the Respondent’s] argument that paragraph 10 does not deal at all with ECCE because it takes the view that even if paragraph 10 did so deal with ECCE, 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.*

*10.21 In circumstances then where the Tribunal finds that paragraph 22 prevails, the Appellant, because it conducts its business for the purpose of making a private profit, cannot avail of an exemption under Schedule 4.”*

- 9.6 Insofar as the within appeal considered paragraph 14(b) of Schedule 4 the Respondent submitted that this provides an exemption from rateability for buildings that are used for *inter alia*, the care of disabled person and where the issue has arisen previously before the Tribunal, it was almost exclusively in the context of Nursing Homes. Further and on this point, the Respondent relied on the decision in *Glendale Nursing Home -v- Commissioner of Valuation* [2012] IEHC 254 which held that funding was not meant as a subvention or to defray expenses but was to ensure that the elderly were cared for. In light of that decision the Respondent argues that even were the premises to operate solely for the purpose of providing care to disabled persons, per *Glendale*, the contribution that is paid by the Government is for the care of the persons who reside or utilise the facility, not for the defrayment of operating expenses.
- 9.7 Applying that to the Appellant, the Respondent argues that it is accepted they are operating on a for-profit basis and where that is so, the % portion of their turnover that is exchequer funded, is irrelevant for the purpose of applying for an exemption as this funding was not provided for the defrayment of expenses. It was the Respondent’s case that the key issue facing the Appellants in this appeal, as with the Appellant in *Glendale*, is that the funding is not paid to the Appellants directly for their own benefit, but rather it is paid on a per

person basis depending on the number of children requiring additional supports. In those circumstances, it is the children, rather than the rateable occupier, who is in receipt of the funding, albeit the rateable occupier is paid those sums to offer their specialised creche service. Based on this, the Respondent argues that the state funds received by the Appellant are not used to defray the expenses of the rateable occupier and therefore, just as with *Glendale*, the exemption claimed simply does not apply.

- 9.8 As regards the remit and scope of paragraph 22 of Schedule 4, the Respondent argues this provision was inserted into the 2001 Act by the Valuation (Amendment) Act 2015 with the intention of the Oireachtas that specific organisations such as the Appellant, which provided childhood care and education services would only fall under Paragraph 22 of and not Paragraph 10 of Schedule 4. Furthermore, it was submitted that the ordinary meaning of the words “other educational institution” in Paragraph 10 clearly does not include a crèche or childhood care and education services but refers to institutions such as universities or second level education schools. Further, the Respondent argues that in light of the Tribunal’s decision in *Kangacare* it is clear that paragraph 10 is simply not available to the Appellants, and the only potential exemption, if it arose would be under paragraph 22.
- 9.9 As to the fact the Appellant is a profit making entity, the Respondent argues that the decision in *Faylinn*, is authority for the point that Paragraph 22 was intended to provide a specific exemption for community based childcare services which operated on a not-for-profit basis and conversely where a business is a for-profit enterprise, regardless of its size, purpose or profitability, such a business cannot avail of an exemption under paragraph 22. It was the Respondent’s case that this view accords entirely with the finding made by the Tribunal in *Kangacare* and the Tribunal was asked to uphold this reading of the legislation.
- 9.10 Insofar as the Appellant is noted to operate ECCE and other funded schemes alongside their childcare offerings, the Respondent argues that it cannot possibly be argued that the business is an educational facility. Even if it were, such a situation would be irrelevant since the Appellant is clearly a for-profit enterprise and that fact alone disposes of the present Appeal. The Respondent further argued that although the Appellants appear to have installed facilities to assist with the care of children who have various sensory and physical disabilities, these facilities are a constituent part of the suite of services that the Appellants are offering and are not a stand-alone facility falling within Paragraph 14 of the 2001 Act. In the circumstances the Respondent argues that the main purpose for which the building is used is to act as a crèche which is open to the general public, rather than to act as a care facility for a specific section of the general public to which Paragraph 14 applies.
- 9.11 In light of these points and relying on the decision in *Nagles Nurseries*, the Respondent asks that the Schedule 4 be construed strictly against the Appellant and the Appeal denied. It was the Respondents case that where the Appellant submits that paragraph 10 applies to their situation, based on the facts, neither paragraph 10 nor paragraph 22 can be availed of by the appellant where they operate a for profit enterprise. Similarly, in the context of the Appellant’s claimed relief pursuant to Paragraph 14, the Respondent rejects that same

applies where the Appellant does not conduct their business solely for the purpose of providing facilities for disabled people and because the expenses incurred by the Appellant in carrying out such an activity, are not defrayed wholly or mainly out of monies provided by the Exchequer. Where neither of these requirements are met, the Respondent maintains the Appellant cannot avail of an exemption under Paragraph 14 of Schedule 4.

## 10. FINDINGS AND CONCLUSIONS

10.1 The present Appeal concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemptions contained in Paragraphs 10, 14(b) and 22 thereof, and the extent to which same apply to the Appellant's Property. The Tribunal must decide if the decision of the Respondent to include the Property on the List was correct or whether, on the basis of the case put forward by the Appellant, the Property should be excluded from the valuation List because it falls within one of the exempted properties described in Schedule 4 of the Valuation Act, 2001, as amended.

### *Paragraph 10 versus paragraph 22 of Schedule 4*

10.2 The Appellant argues that the Property comes within paragraph 10 of Schedule 4 being, amongst other things, an educational facility used for the provision of educational facilities. The Respondent rejects that position, noting that Schedule 4 was amended in 2015 to insert paragraph 22 and with it, the express reference to providers of Early Childhood Care and Education. Where this was so, the Respondent maintained paragraph 10 could not apply.

10.3 Insofar as paragraph 10 falls to be considered, the Tribunal agrees with the Respondent that a key determinant of eligibility under that section is whether the Appellant operates a 'for profit' enterprise. In that regard the decision of the Tribunal in *Faylinn Education Ltd -v- Commissioner of Valuation* VA18/2/2015 was instructive. The Tribunal also notes the overlap with paragraph 22 of Schedule 4 in the context of the services provided by the Appellant, (notwithstanding the Appellant relied only on paragraphs 10 and 14(b) in support of their case) and that this situation was expressly considered in *Faylinn* with the Tribunal being satisfied that neither paragraphs 10 nor 22 could apply to the subject property where it was a for profit enterprise.

10.4 The Tribunal notes that the Appellant, being provided with the Respondent's legal submissions filed a response stating the *Faylinn* case was not comparable or of use in the present Appeal where it did not consider paragraph 10 of Schedule 4 and focused instead on an exemption under paragraph 22. A similar submission was made by the Appellant in respect of the Kangakare decision also relied on in the Respondents submission, which the Appellant states did not consider or concern paragraph 10 and accordingly has no bearing on this Appeal.

- 10.5 The Tribunal notes that the application of paragraph 22 of Schedule 4 falls to be considered in this Appeal where the Subject Property offers early years educational services, same being expressly referred to in the provision. To that end, the Tribunal does not accept that if the Appellant does not advance their Appeal under a particular provision, then the Tribunal is precluded from considering the application of that provision to the facts of a case before it. This is particularly so where the Respondent relies on paragraph 22 to defeat the Appellant's claim that paragraph 10 applies. In that context and where the Respondent has put paragraph 22 in issue, the Tribunal must consider the merits of both parties positions in the Appeal.
- 10.6 The Appellant accepts that they operate their business on a 'for profit' basis and have continued the provision of loss-making elements in the business (namely the nursery classes) with the intention that it would benefit the wider operation of their business as a whole. The Tribunal finds this to be a commercial decision adopted by the Appellant, and while the basis and logic of same may be well founded, it is nonetheless a commercial decision that the Appellant has chosen to adopt. In light of what a 'hypothetical tenant' may do, the Tribunal is not satisfied that the commercial decisions of one operator, can be presumed to apply to another operator who would take the Property and operate early childhood educational services therein. Further, where the argument for exemption under paragraph 10 is advanced on the basis that the Nursery rooms/ units are run at loss and thereby deserving of exemption, the Tribunal is not satisfied that this fact can or should be viewed separately to the Appellant's evidence that they offer childcare and educational services from nursery age up to and into school going age, the total of which constitute the Appellant's business operated in the Property.
- 10.7 The Tribunal finds that the business operated by the Appellant in the Subject Property is, and was accepted by the Appellant, as being operated for profit. Where that is so, an exemption either under paragraph 10, or paragraph 22, is not available. While the Appellant argues that they fall under paragraph 10 and the Respondent argues that if anything, they would under fall under paragraph 22, the Tribunal notes that the for profit nature of the enterprise would in any event exclude them from accessing either provision.

*Paragraph 14 and provision of care to 'handicapped or disabled persons'*

- 10.8 The Tribunal notes that paragraph 14 of Schedule 4 includes the phrase 'handicapped or disabled persons', and that these terms, specifically the term 'handicapped' is not a term used by the parties in this Appeal or by those presently working in this area. For the purpose of this determination however, the legislative phrasing is used here simply for consistency with the statutory scheme.
- 10.9 In advancing an Appeal under this section, the Appellant asks the Tribunal to interpret the definition of 'handicapped or disabled persons' as including the children being cared for in their service. In support of their case, the Appellant provided evidence of the range of equipment that was installed by them and staff training that has been provided in the area of disability accommodation for children. Based on the accepted offering of care to

additional needs children, the crux of the dispute between the parties is whether the services provided by the Appellant in the Subject Property render it a *'building occupied for the purpose of caring for elderly, handicapped or disabled persons'* as described in paragraph 14 of Schedule 4 of the Act.

- 10.10 The Appellant provided evidence to the Tribunal that they were in receipt of State funds (arising from various schemes outlined in paragraph 7.5) including funds aimed at or otherwise connected to the provision of services for persons with disabilities. The Appellant also argued that it was not a requirement that their 'sole purpose' be the provision of such services and where they had shown they do so provide such services, then they qualified for exemption under paragraph 14(b). The Respondent rejected this position on the basis that the Appellant does not conduct their business solely for the purpose of providing facilities for disabled people and further because the expenses incurred by them in carrying out such an activity are not defrayed wholly or mainly out of monies provided by the Exchequer, same being required for relief under Paragraph 14 of Schedule 4.
- 10.11 As to the question of exclusivity of purpose, the Tribunal notes that paragraph 14 does not require exclusivity in the provision of the services described. However, based on the evidence before it, the Tribunal is of the view that the Appellant is a childcare provider who is capable of, and does so make accommodations for children with additional needs wishing to use their services as opposed to being a specialist facility whose purpose is caring for persons with disabilities. In that regard, and reading paragraph 14 in its entirety, the provision encompasses "any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body..." (Emphasis added). The Tribunal does not accept that the Appellant occupies the Subject Property for the purpose of caring for disabled persons but rather it extends its services to such persons, when the need arises, and if same is feasible. In that regard the Tribunal notes the Appellant's 'Withdrawal and Exclusion' provision contained in its 'Statement of Purpose' document which states the Appellant *'aims to make reasonable accommodation... once it is within our resources and within the interest of the individual child and group of children'*.
- 10.12 Insofar as the funding situation of the Appellant falls to be considered within paragraph 14 of Schedule 4, the Tribunal was given a % financial turnover breakdown from the Appellant between parents' contributions and 'exchequer funding' for their services. This breakdown showed a majority of 'exchequer funding' for the trading years provided however no substantive arguments were made by the Appellant, nor discussion provided regarding the *Glendale* decision, in the context of whether this funding constituted 'expenses' 'defrayed by the Exchequer', same being express terms of the provision at issue. Accordingly, and based on the evidence put before it, the Tribunal finds that the Appellant has not satisfied the Tribunal that they come within the remit of paragraph 14(b).
- 10.13 Accordingly and the aforementioned reasons, the Tribunal finds that Appellant has not satisfied the Tribunal that the Respondent was incorrect in deeming the Property relevant Property and thereby rateable under the Act.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the Appeal and confirms the decision of the Respondent to include the Subject Property on the List at €79,100 per the Final Certificate.

**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.