

Appeal No: VA23/5/0487

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

PATRICK O'DONNELL AND MARY O'DONNELL

APPELLANT

And

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of

Property No. 1360209, Industrial Uses at Shore, Porturlin, Ballina, County Mayo.

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 2ND DAY OF MARCH 2026

BEFORE

Sarah Reid – BL

Deputy Chairperson

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 12th 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 €2,260.
- 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 : *(e) Other grounds: The Property has not been in Commercial use since 2011. It is located on our home site and since 2011 has been used to store personal stuff (odds and ends) Please remove property from 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. RE-VALUATION HISTORY

- 2.1 On the 23rd 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 €2,260.
- 2.2 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €2,260 and a floor area of 116.98 m².
- 2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 1st 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

From the evidence adduced by the parties, the Tribunal finds the following facts.

- 4.1 The Subject Property is a vacant single storey industrial type structure constructed of part block with corrugated sides and pitched roof. It has an eaves height of circa 4 meters and the interior of the building is currently laid out for use in fish processing. Internal finishes include PVC hygienic wall and ceiling cladding, screed floor, cold stores and stainless-steel fittings (tables/wash hand basins etc) extractor fans, sliding door cooling rooms/stores etc
- 4.2 The Property is located on the grounds of the Appellant’s private residential dwelling in Porturlin in Mayo approximately 35 km southwest of Belmullet and 60km northwest of Ballina. The Property is owned by the Appellants in their personal capacity and is one of three buildings on the site: the first being the Appellants residential dwelling, the second being a concrete block building located to the rear of the main residential dwelling and comprising three rooms at ground level and an attic store, the third building is the Subject Property previously used as a domestic garage but converted and extended (following planning permission) to provide facilities for fish processing.
- 4.3 The Subject Property was previously used by the Appellants as a fish processing facility for their family business (Sligoeisc Phort Duirlinge Teoranta). The said business officially ceased trading in March 2021 but had not traded since 31st July 2011. No other commercial arrangements and/or letting agreements have been put in place in respect of the Property since the Appellant’s ceased using for their business and it was only ever used by them for the purposes of their business enterprise.

- 4.4 At the Valuation Date, the Property was vacant and not used by the Appellants, or any other party, for commercial purposes.
- 4.5 The floor areas in the Property, measured following an inspection by the Respondent are:

	Floor	Area (m2)
Block Store 1	(0)	58.35
Block Store 2	(0)	203.42
	Total (G.E.A)	261.77

5. ISSUES

- 5.1 This Appeal turns on the proper construction of certain provisions of the Valuation Act, as amended, specifically whether the Property is a not rateable under paragraph 6 of Schedule 4 of the Act being used for domestic purposes and no longer used in connection with the Appellant's commercial enterprise (the said business is no longer trading at the Valuation Date). The Respondent argues that the Property, though used by the appellant for storage of domestic items, is nonetheless capable of being the subject of rateable occupation by the owner of the property, within the meaning of Schedule 3, paragraph 2(b) of the Act.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 All references hereinafter to a particular 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 [Relevant Property] Schedule 3 of the Act

1. Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act:

(a) buildings,

(b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development,

(c) railways and tramways, including running line property and non-running line property,

(d) harbours, piers, docks and fixed moorings,

- (e) mines, quarries, pits and wells,*
- (f) rights of fishery,*
- (g) profits á prendre, other than rights of fishery,*
- (h) tolls,*
- (i) easements and other rights over land,*
- (j) rights to drill for and take away petroleum,*
- (k) canals, navigations and rights of navigation,*
- (l) advertising stations and land and any buildings used as advertising stations,*
- (m) electricity generating stations, including where appropriate—*
 - (i) all buildings and structures,*
 - (ii) all tanks, including fuel oil tanks, water tanks and chemical tanks,*
 - (iii) boilers, furnaces and ancillary fuel handling equipment,*
 - (iv) cooling water inlet and outlet facilities, including pump-houses, culverts, pipe-works, weirs and outfall works,*
 - (v) natural gas installations,*
 - (vi) effluent disposal works, including chimneys and treatment plant,*
 - (vii) wind generators, turbines and generators, together with ancillary plant and electrical equipment, including transformers,*
 - (viii) docks, cooling towers, embankments, canals (head race, tail race), locks, penstocks and surge tanks,*
 - (ix) dams, weirs, bridges, jetties, railways, roads and reservoirs,*
 - (x) all ancillary on site developments,*
 - (xi) all electric lines.*
- (n) the entire networks subsumed in an undertaking including, as the case may be—*
 - (i) signal transmission and reception equipment, all associated masts, lines, cables, posts, pylons, supports, brackets, ducting, tubing and all equipment necessary for normal effective functioning of the networks up to the supply point for each individual consumer,*

(ii) all pipeline networks and systems, including pressurising and pressure reducing equipment, together with associated site developments,

(iii) storage and containment facilities, including tanks, silos or other plant or developments used for the storage and for containment of any substance whether solid or fluid (liquid or gaseous),

(iv) gas works, gas pipelines and natural gas terminals,

(v) telecommunications, radio and television relay and rediffusion networks, including lines, cables and ancillary appendages necessary for the working of such networks,

(vi) electricity transformer stations, including—

(I) all buildings and structures,

(II) all site developments,

(III) transformers,

(IV) electrical equipment, including switchgear, circuit breakers and associated developments,

(V) all electric lines,

(vii) electric lines (within the meaning of the Electricity (Supply) Act, 1927, as amended by section 46 of the Electricity (Supply) (Amendment) Act, 1945), including transmission and distribution networks and consumer service mains and networks on, over, or underground, together with lines and cables with their respective supports (including poles, pylons and brackets), culverts, cuttings, ductings and pole transformers, used in association with those electricity conductors.

2.—The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property,

or

(b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.

6.3 [Relevant Property Not Rateable] Schedule 4 of the Valuation Act, 2001, as amended:

1. Agricultural land.

2. Land developed for horticulture.

3. Land developed for forestry.

4. Land developed for sport.

4A.

(1) Any building or part of a building used exclusively for community sport, and otherwise than for profit and not being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904.

(2) In this paragraph "community sport" means sport, the principal participants in which are—

(a) inhabitants of the locality in which the building concerned (or part of the building concerned) is situate,

(b) inhabitants of localities neighbouring the first-mentioned locality, or

(c) in the case of sporting activities involving teams and with the consent of those responsible in the first-mentioned locality for organising sporting activities in that locality, persons from any geographical area.

4B.

(1) Any building or part of a building used exclusively for community sport and otherwise than for profit, and being the premises of a club for the time being registered under the Registration of Clubs (Ireland) Act 1904, but not including any building or part of a building—

(a) used on a regular or occasional basis for the sale or consumption of alcohol

or in conjunction with the sale or consumption of alcohol, or

(b) used directly or indirectly in the generation of income, not being—

(i) club membership fees,

(ii) income received from community organisations for the use of the building or part for community purposes, or

(iii) income received from participants in community sport for the use of the building or part for the purposes of community sport.

(2) In this paragraph "community sport" has the same meaning as it has in paragraph 4A of this Schedule but with the modification that, in the case of subparagraph (1)(b)(iii) of this paragraph, the definition of that expression in that paragraph 4A shall be read as if for "the principal participants in which are—" there were substituted "the principal participants in which are, ordinarily—"

5. Farm buildings.

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

7. Any land, building or part of a building used exclusively for the purposes of public religious worship.

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).

9. Any burial ground or crematorium which is not established or operated for the purposes of making a private profit and the income derived from the operation of which is used wholly to defray the expenses (including expenses of a capital nature) incurred in its operation.

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).

11. Any art gallery, museum, library, park or national monument which is normally open to the general public and which is not established or maintained for the purpose of making a private profit.

12. Property (whether falling within paragraph 11 or not) occupied by—

- (a) the National Museum of Ireland,*
- (b) the National Library of Ireland,*
- (c) the National Gallery of Ireland,*
- (d) the Irish Museum of Modern Art Company,*
- (e) the Arts Council,*
- (f) the Heritage Council,*
- (g) the National Concert Hall F97[...],*
- (h) the Chester Beatty Library, or*
- (i) the National Theatre Society Limited.*

12A. Property, being a building or part of a building, land or a waterway or a harbour directly occupied by—

- (a) any Department or Office of State,*
- (b) the Defence Forces, or*

(c) the Garda Síochána, or used as a prison or place of detention, wherever situate, but in this paragraph "harbour" does not include a harbour in respect of which a company has been established pursuant to Section 7 of the Harbours Act, 1996.

13. Any buoy, beacon or lighthouse.

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 F100], other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 200.

15. Any building or part of a building used exclusively as a community hall.

16. Any land, building or part of a building which is occupied by a body, being either—

(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or

(b) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and—

(i) the principal activity of which is the conservation of the natural and built endowments in the State, and

(ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.

17. Any land, building or part of a building occupied by a society established for the advancement of science, literature or the fine arts and which is used exclusively for that purpose and otherwise than for private profit.

18. Any turf bog or turf bank used exclusively for the purpose of cutting turf or for making turf mould therefrom for fuel or manure.

19.

(1) Any building or part of a building occupied by a member of either House of the Oireachtas or a representative in the European Parliament which is used exclusively for the purposes of accommodating his or her constituency office and the whole or part of the expenses incurred in maintaining that accommodation are defrayed by that member or representative.

(2) In this paragraph "constituency office" means an office which is used solely for the provision of representative services by the member of the House of the Oireachtas or representative in the European Parliament concerned in his or her capacity as such a

member or representative but does not include the head office of a political party or any other office occupied by a political party.

20. Any land, building or part of a building occupied by the Health Service Executive other than any land, building or part of a building referred to in paragraph 8 or 14.

21. The entire network (within the meaning of section 2 (1) of the Water Services Act 2007) used for the provision of water services (within the meaning of that subsection) by Irish Water or a person who holds a water services licence under section 79 of the Water Services Act 2007 or land and buildings occupied by Irish Water or such a licence holder.”

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.

6.4 [Appeals to Tribunal] Section 34:

34(1) In relation to a property, a specified person may appeal in writing to the Tribunal against—

(a) a determination under section 19 or 28 of the value,

(b) any other detail stated in the relevant valuation list,

(c) any decision under this Act to include or not to include the property in the relevant valuation list or to exclude the property from that list,

(d) any decision by the revision manager under section 28(4)(a) or (b),

(e) in the case of a decision by the revision manager concerned to so exclude the property, any detail stated in the notice concerned issued under section 28(7), or

(f) any decision of the revision manager concerned that the circumstances referred to in section 28(4) do not exist for the exercise of the powers under that section in relation to the property

6.5 [Consideration of appeals by Tribunal] Section 37

37. (1) The Tribunal shall consider an appeal made to it under section 34; in considering the appeal, unless the issues in the appeal do not relate to the value of property, the Tribunal shall achieve a determination of the value of the property concerned that accords—

(a) with that required to be achieved by section 19(5), or

(b) in the case of an appeal from a valuation made under section 28, with that required to be achieved by section 49.

(2) Having considered the appeal, the Tribunal may, as it thinks appropriate—

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, valuation manager or revision manager, as appropriate, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate—

(i) decide that the circumstances referred to in section 28(4) existed for the exercise of the powers under that section,

(ii) in accordance with the matters set out in section 19(5) or 49, as appropriate, increase or decrease the valuation as stated in the valuation certificate,

(iii) decide that the property ought to be included in the relevant valuation list, and determine the valuation in accordance with the matters set out in section 49,

(iv) decide that the property, ought to be excluded from the relevant valuation list,

(v) decide to amalgamate relevant properties, the subject of 2 or more appeals, and determine the valuation of the amalgamated property, in accordance with the matters set out in section 49,

(vi) decide that the property ought to be subdivided into 2 or more relevant properties, and determine the valuation of each such subdivided property in accordance with the matters set out in section 49,

(vii) amend any detail, other than the valuation, as stated in the valuation certificate,

(viii) amend any detail stated in the notification made under section 28(7).

(3) The Tribunal shall endeavour to make a decision on an appeal made to it under section 34 within 6 months from the date of its having received the appeal.

(4) For the avoidance of doubt, neither subsection (1) (a) or (2) (b) (ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.

7. APPELLANT'S CASE

- 7.1 The Appellant was represented by Mr. Henry Hewson of MacHales Solicitors LLP and though not a formal précis of evidence, the following points were submitted by letter dated 6th December 2024 and relied on in support of the appeal:

Ground of Appeal – (e) Other grounds as set out in Notice of Appeal attached

Appeal on the basis that the property is now a 'relevant property not rateable'. This property should be classed as a relevant property not rateable by virtue of Schedule 4 paragraph 6 Valuation Act 2001 as amended

Argument relied on:

The premises has been used solely in conjunction with the adjoining family home since the company ceased trading in 2012.

Facts relied on:

1. Patrick and Mary O'Donnell started the former business from their garage adjoining their family home in. As the business grew, they obtained planning permission to renovate and extend the garage to suit needs of the business, in or around 1997. See photograph of extension plans dated February 1997
2. The company Sliogeisc Phort Duirline Teoranta, was incorporated in March 2000 and eventually dissolved in March 2021.
3. The premises is located on property which comprises the Family Home of Pat O'Donnell and Mary O'Donnell and was never an asset of the company. Pat O'Donnell and Mary O'Donnell own the property in their personal capacity.
4. The property has never been used outside O'Donnell family and it is not proposed to let or lease the property for any reason or for any further commercial purpose. The premises was used to support O'Donnell's crab fishing business only.
5. The company has not traded since 31st July 2011 see photograph of letter of Ignatius Mangan, the company's Accountant, dated 23rd January 2012
6. As stated above the premises is contained on the Pat O'Donnell and Mary O'Donnell's family home. The residential nature of this property is visible from the attached google street view image from 2009 attached.
7. Included herewith are more recent photographs taken by Mary O'Donnell of the exterior of the dwelling and the interior of the premises showing the unused (in a commercial sense) nature of the premises.

- 7.2 Subsequent to using the Property for their business enterprise, the Appellants state they have used the building for domestic storage purposes only with no other parties letting or otherwise using it.

- 7.3 In the circumstances, it is the Appellant's case that the Property is in domestic use by them, with no further commercial activity being carried on in the Property and no such commercial activity being extant at the Valuation Date of 1st February 2022. The present use of the Property is one of domestic storage and no commercial arrangements or lettings arise meaning it falls to be considered as a "domestic premises" not rateable per Schedule 4 paragraph 6 of the Act.

8. RESPONDENT’S CASE

- 8.1 The Respondent filed a précis of evidence dated 3rd January 2025 prepared by Mr. Kevin O’Doherty, valuer with the Respondent. It was the Respondent’s case that although the Property is vacant, it remains ‘Relevant Property’ within the meaning of Schedule 3, paragraph 2 of the Act where it is unoccupied but capable of being the subject of rateable occupation by the owner of the Property. Further, Mr. O’Doherty’s evidence was that having inspected the Property, he was not satisfied that it was in domestic use and accordingly remained liable to commercial rates.
- 8.2 Having inspected the Property, the Respondent is satisfied that though vacant, it is still to all intents and purposes laid out as a commercial industrial store ideally suited for the requirements and purpose of fish processing. Further, and relying on photographs included in their précis, Mr. O’Doherty states there is evidence of fishing nets and nylon bags together with some other items pursuant to the previous activity of fish processing as well as fishing crates presumably for the storage of fish together with other items used in the preparation and processing of fish. A reception area is noted in the Property with stainless steel items such as sink, sluice together with a foot bath for disinfection together with two toilets and an open plan processing area with various cold storage units off together with stainless steel tables, extractor fan, fishing nets and other equipment. The Property also benefits from a prep area and cold storage unit with stainless steel table all of which confirm the Property is capable of beneficial rateable occupation.
- 8.3 It is the Respondent’s case that the Subject Property is capable of beneficial occupation and in the circumstances is appropriately entered on the Valuation List. The present NAV assigned to the Property is €17 / m² and in support of this level Mr. O’Doherty relied on four NAV comparisons in similar settings to the Appellant (ie commercial units co-located or otherwise connected to residential dwellings) all of which are entered on the List at that rate. The four comparison properties are set out in Appendix 1 hereto (N/A to public).
- 8.4 Arising from the Respondent’s inspection of the Subject Property, the floor areas were found to be incorrect and so a revised floor area of 261.77 sq. m is sought to be recorded in respect of the Property (116.98 sq. m. being the current entry on the Valuation List and producing a NAV of €2,260). Calculating the NAV based on the revised floor areas, the Respondent asks the Tribunal to approve the following Valuation:

Use	Floor Level	Floor Areas (Sq. M)	NAV per Sq. M	NAV
Store	Ground	261.77	€17.00	€4,450.09
Total NAV				€4,450.09
NAV, Say				€4,450.00

- 8.5 In summing up his case, Mr. O’Doherty confirms that arising from his inspection of the Property, he is satisfied it is not in domestic use and further is capable of beneficial occupation given the accommodation and fit out of the Property. Where the floor areas in the Property have been confirmed to be greater than previously recorded, he asks that the Tribunal affirms a valuation of €4,450 of the subject property based on the revised measurements and that the above NAV contended for represents the correct Net Annual Value in accordance with Section 48 of the Valuation Acts 2001 - 2020 and the requirements of section 19(5).

9. SUBMISSIONS

- 9.1 The Appellants were sent a copy of the Respondent’s legal submissions on 13th February 2026 and no replying submissions, or legal submission of their own were filed with the Tribunal in respect of this Appeal.
- 9.2 The Respondent submitted formal written legal submissions supporting the Valuation, and inclusion of the Property on the List on the basis that although the Property is vacant, it remains a ‘Relevant Property’ within the meaning of Schedule 3, section 2(b) of the Valuation Act, being “*unoccupied but capable of being the subject of rateable occupation by the owner of the property*”. Further and on the basis of an inspection of the Property, the Respondent’s valuer was not of the view that the premises was in domestic use.
- 9.3 The Respondent maintains there are two legal issues that arise for determination when assessing whether the Property is subject to commercial rates:
- (i) whether the Property is capable of rateable occupation; and,
 - (ii) whether the Property qualifies as a domestic premises within the meaning of Schedule 4, paragraph 6 of the Valuation Act.
- 9.4 It was the Respondent’s case that the mere fact a Property is vacant, does not remove it from Schedule 3 of the Valuation Act paragraph 2(b) of which provides that commercial rates will still apply to a Property that is: “*unoccupied but capable of being the subject of rateable occupation by the owner of the property*”. In order to for a building to be ‘capable of’ rateable occupation, the Respondent argues its occupation must be:
- (1) exclusive, in the sense that the person using the hereditament can prevent any other person from using it in the same way;
 - (2) of value or benefit to the occupier, but not necessarily of financial benefit (per *Sinnott v. Neale*. (1948) Ir. Jur. Rep. 10); and,
 - (3) not for too transient a period (per *Telecom Éireann v Commissioner of Valuation* [1994] 1 IR 66)

- 9.5 Further, when assessing whether or not the Property is ‘of value or benefit to the occupier’, “one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether [the owner or occupier] is in ‘immediate use and enjoyment of the land’” as held in *Fibonacci Property ICAV v Commissioner of valuation* [2020] IEHC 31.
- 9.6 In assessing the possibility of rateable occupation, the Respondent argues there is an “*obligation to consider hypothetical tenants. The case law suggests that there is an obligation to consider whether the property ‘is capable of being beneficially occupied in the hands of any other person’ or whether, alternatively, the ‘land is by law struck with sterility when in any and every body's hands, so that no profit can be derived from the occupation of it’*”, (paragraph 38 *Fibonacci Property ICAV v Commissioner of valuation* [2020] IEHC 31). It is only in the event that the Property is “*struck with sterility*”, such that no occupant could derive financial benefit from its occupation, that it will be deemed incapable of rateable occupation and exempt from the Valuation Act.
- 9.7 Having inspected the Property, the Respondent’s valuer was of the view that the Property was effectively ready for occupation by any party who wished to use it for commercial purpose, and in particular for the purpose of processing fish. While they accepted that Sliogeisc Phort Durling Teoranta, the former company through which the Appellants ran their fish processing business, may have been wound up, the Respondent argues this is separate to the fact that the Appellants themselves or a hypothetical tenant could, with almost immediate effect, occupy the building and use it for a commercial purpose.
- 9.8 Insofar as the Appellant maintains the Subject Property should be classed as a relevant property not rateable, the Respondent argues same arises in the context Schedule 4, paragraph 6 of the Act and covers “*domestic premises*” as defined in section 3 of the Valuation Act being : “*any property which consists wholly or partly of premises used as a dwelling [...]*” (emphasis added). It is the Respondent’s case that where the Property is not being used as a dwelling it cannot therefore constitute a “*domestic premises*” within the meaning of s.15(6) in Schedule 4 of the Valuation Act. Further, where the Property does not qualify as a “*domestic premises*” within the meaning of s.15(6) in Schedule 4 of the Valuation Act, it remains the case that the Property must be categorised within Schedule 3 of the Valuation Act and is subject to commercial rates.

10. FINDINGS AND CONCLUSIONS

- 10.1 On this appeal the Tribunal has to determine whether the Property is ‘Relevant Property’ properly entered on the Valuation List or ought to be excluded, either by virtue of Schedule 4 or Schedule 2 of the Act. The Tribunal can only decide an Appeal based on the evidence placed before it and the onus in Appeals rests with the Appellant to prove their case. Furthermore, in order to successfully avail of an exemption under the Act, an Appellant is required to establish that the exemption applies clearly, without doubt and in express terms.

Exclusion from the List

- 10.2 The Appellant in this appeal didn't expressly state whether the exemption sought was being pursued under Schedule 2 (that the Property was incapable of beneficial occupation and therefore should be excluded from the List) or Schedule 4 that, although capable of beneficial occupation, the Property was nonetheless exempt, for example because it was in 'domestic' use.
- 10.3 The default position under the Valuation Act, 2001 is that all property listed in Schedule 3 falls to be valued as 'Relevant Property', unless covered by paragraph 2 of that Schedule, for example where the Property is incapable of beneficial occupation. Separately, a property may be excluded from the List notwithstanding it is 'Relevant Property', if it falls into a class of properties listed as exempt under Schedule 4 of the Act. Both Schedules are set out in full in Section 6 above.
- 10.4 The Tribunal's powers are dictated by the claim an Appellant makes. If an Appellant claims a property is not 'Relevant Property' and incapable of use (pursuant to Schedule 3 paragraph 2) then the Tribunal must decide, based on the evidence, as to the state of the property and its potential use to an occupier. Alternatively, if an Appellant claims that a property is or ought to be exempt from valuation, the Tribunal is required to consider if the property falls within the category of exempted properties listed in Schedule 4 of the Act.
- 10.5 In the present case, the Appellant simply stated in their grounds of Appeal that the Property has not been in commercial use since 2011 and is located on their 'home site' and has been used since 2011 to store personal 'odds and ends'. Absent further argument and/or evidence as to whether the contended exclusion was justified under Schedule 3, paragraph 2 or Schedule 4 of the Act, the Tribunal had before it, limited evidence substantiating the Appellant's claim.
- 10.6 Insofar as beneficial occupational falls to be considered in this Appeal, the decision of Mrs. Justice Hyland in *Fibonacci Property Ica v Commissioner of Valuation* [2020] IEHC 31 refers wherein she found that:
- "27. It is common case that in a deciding whether an owner is in beneficial occupation one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether it is in "immediate use and enjoyment of the land" (as characterized in Sinnott v Neale [1984] (IR JUR. REP. 10, even though in that case the defendant was not in occupation of the property) or whether the occupation was of value (O'Malley v The Congested Districts Board 2 [1919] IR 28)"*
- 10.7 The legal position is well established and was considered by the English Court of Appeal in *Williams v Scottish & Newcastle Retail Ltd & Ors* [2001] ALL ER (d) 173 wherein the Court considered the threshold for beneficial occupation which was described as a low one:

"57. The first and most important of these principles is the distinction between the determination of a person's liability to be rated (on the one hand) and the

quantification of that liability by determination of the rateable value (on the other hand). Mr. Holgate submitted that the Lands Tribunal fell into serious error by failing to make this distinction. He also relied on what he called the principles of reality and uniformity. These submissions call for serious consideration.

58. A person cannot be liable to pay non-domestic rates unless he is in occupation of a non-domestic hereditament within the meaning of the 1988 Act, and there is a long line of cases (starting, so far as the modern law is concerned with the Mersey Docks case in 1865) on the concept of rateable occupation. It is a concept which imports the notion of beneficial occupation, but not necessarily in the same sense of being profitable to the occupier personally. Moreover, the need for benefit is (as Mr. Holgate urged, referring to the advice of the judges given by Blackburn J in the Mersey docks case (1865) II HLC 443, 461) a low threshold. Once a hereditament has passed this threshold and is shown to be ratable, the valuation process requires a determination of annual value to a hypothetical tenant holding under a hypothetical annual tenancy and the actual occupier ceases to be relevant.”

- 10.8 The Appellant gave evidence that no business was conducted from the Property since 2011. The Respondent maintained that the subject Property was capable of being used by the Appellant and/or a hypothetical tenant and in fact benefited from purpose-built accommodation (cold stores, processing areas etc) that lent itself to immediate occupation and commercial use with photographs of the building’s interior relied on in that regard.
- 10.9 Having assessed the evidence provided by the parties, the Tribunal finds that insofar as Schedule 3 permits exclusion of a Property if it is incapable of use and beneficial occupation, this has not been proven by the Appellant. From the evidence before it, the Tribunal finds that the Property is capable of use by the Appellant or a hypothetical tenant including for example for storage purposes. In addition, the Property does not fall within the category of properties listed in Schedule 4 of the Act and no express argument was put forward in that respect by the Appellant save that the Appellant referenced the Property as being adjacent their residential dwelling on the site and used for storing ‘personal’ items.
- 10.10 The Appellants maintain that, by reason of the Property not being in commercial use since 2011 and being on the same plot of land as their domestic dwelling, the Property ought to be removed from the Valuation List. In support of this position, they rely on a letter from the accountant to their former fish processing business (Sliogeisc Phort Durling Teoranta) as evidence that the said company ceased to trade on 31 July 2011.
- 10.11 The Tribunal takes particular note of that an inspection of the Property was undertaken by the Respondent’s valuer (the photographs from same being included in the documents before the Tribunal) and arising from which the Respondent’s valuer was of the view that the Property was effectively ready for occupation for commercial purposes, and in particular for the purpose of processing fish. While the Appellant’s former company has been wound up, the Tribunal finds this to be a separate issue to the

question of whether the Appellant or a hypothetical tenant could, at the Valuation Date have occupied the building using it for commercial purposes.

- 10.12 Further the Tribunal notes that the Respondent provided expert valuation evidence and formal legal submissions, regarding the Property and its potential use, whereas the Appellant's evidence was confined to the points recited above (at paragraph 7.1). These arguments focused on the Appellant's actual use of the Property, absent a valuation consideration of a hypothetical tenant or potential use that could be made of the Property. In addition, the Appellant was furnished with a copy of the Respondent's precis and despite requesting and being granted an extension of time to provide comments on same, no observations were submitted by the Appellants to the Tribunal. In the circumstances the Tribunal is entitled to weigh the respective parties' evidence accordingly.

The use of the Property

- 10.13 The Appellant asks the Tribunal to remove the Property from the Valuation List. This eventuality could arise where the Property was found to be relevant property not rateable by virtue of Schedule 4, paragraph 6 of the Valuation Act. The Respondent maintains this designation is reserved for and can only be availed of by Properties that are "*domestic premises*" as defined in section 3 of the Valuation Act. In that regard, the Respondent argues the Subject Property is not being used as a dwelling and cannot therefore constitute a "*domestic premises*" within the meaning of s.15(6) in Schedule 4 of the Valuation Act. The Tribunal finds that the Subject Property was at all stages used by the Appellants for non-domestic purposes, specifically fish processing as a commercial venture, and accordingly the question to be determined is whether the Property was capable of ongoing use and rateable occupation by the Appellant or a hypothetical tenant at the Valuation Date.
- 10.14 The Tribunal finds that the Appellant is misconceived in their view that because the Property is not used by them for commercial purposes, it therefore falls to be considered 'domestic' and not rateable. The fact that the Subject Property is located adjacent to the Appellant's domestic dwelling does not change the fact that it is capable of use for commercial purposes and indeed was so used in that way up to 2011 according to the evidence put before the Tribunal.
- 10.15 It is well established that in assessing the possibility of rateable occupation, the hypothetical tenant falls to be considered and whether the Property '*is capable of being beneficially occupied in the hands of any other person*' or '*struck with sterility when in any and every body's hands, so that no profit can be derived from the occupation of it*'" (paragraph 38 *Fibonacci Property ICAV v Commissioner of valuation* [2020] IEHC 31). The Tribunal finds that unless an Appellant can satisfy the Tribunal that the Property is "*struck with sterility*", such that no occupant could derive financial benefit from its occupation, then it will be deemed capable of rateable occupation and lawfully included on the Valuation List.
- 10.16 The Tribunal agrees with the Respondent that in assessing whether or not a property is 'of value or benefit to the occupier', per in *Fibonacci Property ICAV v Commissioner of valuation* [2020] IEHC 31:

“one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether [the owner or occupier] is in ‘immediate use and enjoyment of the land’”

10.17 In light of the evidence, and legal submissions relied on in this Appeal, the Tribunal is not satisfied that the Appellant has shown that the Respondent erred in entering the Property on the List. The Tribunal finds that the evidence was the Property was capable of ongoing use and ‘immediate occupation’ by a hypothetical tenant in the view of the Respondent’s valuer following an inspection of the building accommodation. This was not addressed or commented on by the Appellant nor was distinct legal or valuation evidence provided by them to support their claim for exemption.

Respondent’s request to amend the valuation certificate

10.18 In addition to contesting the Appellant’s grounds and basis for exemption under the Act, the Respondent seeks to amend the floor areas of the Property and accordingly asks the Tribunal to amend the Valuation Certificate to reflect the corrected size and floor area of the Property. In that regard the Tribunal notes the floor areas entered on the List for the Property are recorded as 116.98 sq. m compared to the revised floor areas confirmed as 261.77 sq. m following an inspection of the Property.

10.19 The Tribunal is bound by the Appellant’s grounds of Appeal and may not extend their deliberations beyond same, specifically where valuation has not been put in issue in the present Appeal. For reasons of jurisdiction outlined below, the Tribunal finds that the Appellant has expressly limited their grounds of Appeal to the eligibility of the Property for inclusion on the List and where that is so, matters of valuation do not arise. There can be no ‘Appeal within an Appeal’ and having regard to Section 37 of the Act and confirmed by the High Court in *Honeybridge Ltd* (VQA 14/4/021), the Tribunal cannot entertain the Respondent’s request to revise and increase the valuation of the Property in the circumstances.

Statutory jurisdiction of the Tribunal

10.20 In this, as in all Appeals, the Tribunal is confined to its statutory remit. Specifically, and as confirmed by Mrs. Justice Hyland in *Honeybridge Ltd and Rory Burgess and the Commissioner of Valuation* (VQA 14/4/021), the Tribunal can only proceed based on the powers afforded to it under Section 37 of the Valuation Act, as amended:

“26. Section 37 provides that the Tribunal shall consider an appeal made to it under s.34 and may under s.37(1)(a) “disallow the appeal and accordingly, confirm the decision of the Commissioner” or may allow the appeal and then take one of a number of decisions under s.37(1)(b), depending on the nature of the decision appealed against, being (i) to amend the value or any other detail in relation to the property; (ii) decide the property ought to be included in the relevant valuation list or (iii) amend any detail in relation to the property. What is clear from the nature of the various decisions specified is that the jurisdiction of the Tribunal is circumscribed by the nature of the appeal. It may amend the

value – precisely that which it had been asked to do in the instant case. It may decide the property ought to be included or excluded in the relevant valuation list. It may amend any detail in relation to the property.

27. In other words, the Tribunal is not at large to make a decision that is not encompassed by the provisions of s.37. Its jurisdiction is derived exclusively from the Act. This has two separate consequences in the instant appeal.

28. First, there is no provision in s.37 for the Tribunal to decide a matter not encompassed in the appeal. It is clear from the wording of s.37 that the Tribunal is only entitled to consider the appeal before it. Section 37 expressly obliges it to consider “an appeal made to it”. Section 37(1) provides that, having considered the appeal, the Tribunal may either disallow the appeal or allow the appeal.”

10.21 The Tribunal finds that the Appeal advanced by the Appellant is that the Property should not have been included on the list (whether under Schedule 3 paragraph 2 or under Schedule 4 of the Act) and as such the within Appeal constitutes an Appeal under Section 34(1)(c) of the Act. Where that is so, the Tribunal must either agree or disagree with the Appellant’s contention and accordingly allow or disallow the Appeal retaining or removing the Property from the List.

10.22 Arising from the above, the present Appeal was not an Appeal contesting the determination of value under Section 19 of the Act wherein the obligation to ensure correctness of value would arise. The Tribunal therefore finds that the Respondent does not have a right of appeal against its own decision to enter the Property on the list with a floor area of 267.77 m² and accordingly the power to amend the Valuation Certificate is precluded in this Appeal.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent to enter the Property on the Valuation List.

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.