THE HIGH COURT

[2024] IEHC 606

Record No. HSS 2023/1624

BETWEEN

NCBI RETAIL

APPELLANT

AND

THE COMMISSIONER OF VALUATION

RESPONDENT

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 31st day of October, 2024.

INTRODUCTION

1. This matter comes before me by way of a case stated by the Valuation Tribunal pursuant to the provisions of s. 39 of the Valuation Act, 2001 (as amended) ("the 2001 Act"), upon a request on behalf of the National Council for the Blind of Ireland (hereinafter "NCBI Retail"), the Appellant.

2. The central issue on this case stated is whether the Appellant's occupation of Retail (Shops) at 6/2 Oldcastle Road, Virginia, County Cavan ("the relevant property") properly comes within the scope of Schedule 4 of the 2001 Act, paragraph 16(a), and is therefore not rateable pursuant to s. 15(2) of the 2001 Act. Focus on this appeal is on whether the Appellant uses the relevant property *"exclusively for charitable purposes"* and "*otherwise than for private profit*" within the meaning of Schedule 4 of the 2001 Act, paragraph 16(a), and not rateable in consequence.

BACKGROUND

3. On the 15th of March 2019, a copy of a valuation certificate proposed to be issued under s. 24(1) of the 2001 Act in relation to the relevant property was sent to the Appellant indicating a valuation of €7,930.00. A Final Certificate issued on the 10th of September, 2019 stating a valuation of €7,170. Neither the floor area nor the net annual value ("NAV") have been disputed by either party.

THE NCBI IS A CHARITABLE ORGANISATION

4. The Appellant is a company limited by guarantee registered under Part 18 of the Companies Act 2014. Its Constitution (comprising its Memorandum and Articles of Association) is dated 10th of April, 2013 (and as amended by Special Resolution on the 20th of March, 2019). The relevant property is one of the Appellant's 130 charity shops, with the result that this application has consequences reaching beyond this case.

5. The Appellant is a subsidiary of the parent company NCBI (National Council for the Blind) Group, which supports blind and vision impaired persons. The Appellant carries out retail activities in shops throughout Ireland for the sole purpose of generating funds to support the charitable functions and objects of NCBI Group. This is reflected in express terms at Clause 3.1 of its Memorandum of Associations which provides that the main object/purpose of the Appellant is to generate profits through its retail activities to support the charitable objects of its parent company, NCBI (National Council for the Blind) Group. Any income generated from the subsidiary and ancillary objects of the Appellant are to be applied for its main object only (see clause 3.2 of the Memorandum of Association). Furthermore, clause 5 of the Appellant's Memorandum provides that "*the income and property of the Company shall be applied solely towards the promotion of the main object"*.

6. The NCBI Group, the Appellant's parent company, is also a charity registered with the Charities Regulatory Authority pursuant to the provisions of the 2009 Act and has been granted charitable tax exemption by the Revenue Commissioners. NCBI Group's main object, as set out in its Memorandum of Association, is *"to enable people who are blind and vision impaired to overcome the barriers that impede their independence and*

participation in society and to support those living with sight loss to live lives of their own choosing and avail of life 'chances"'.

7. The Appellant's retail activity in the relevant property involves the sale of donated items for which income is received. Profits generated must, in accordance with its Constitution, be applied solely towards the promotion of its main charitable object. No portion of its income or property can be paid, or transferred directly, or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to members of the company. Accordingly, the object of the Appellant (set out at Clause 3.1 of its Constitution), is to generate profits through its retail activities to support the charitable objects of its parent company NCBI (National Council for the Blind) Group and Clause 5 provides that *"the income and property of the Company shall be applied solely towards the promotion of the main object."*

8. As noted above, both the Appellant and its parent company are registered charities, and each have separate registered charity numbers. Like its parent company, the NCBI Group, the Appellant has been granted charitable tax exemption by the Revenue Commissioners. Accordingly, the Appellant's charity shops are exempt from tax, on the basis that such income is utilised for charitable purposes.

THE APPEAL

9. By Notice of Appeal received by the Valuation Tribunal (hereinafter "the Tribunal") on the 10th of October, 2019, the Appellant appealed, pursuant to s. 34 of the 2001 Act, against the determination of the Respondent to include the relevant property in the Valuation List with a net annual value "the NAV" fixed in the sum of €7,170 on the Valuation Certificate issued. The Appeal was brought on the basis that the property concerned ought to have been excluded in the relevant Valuation List because the relevant property is *'Relevant Property Not Rateable'* falling within Schedule 4 to the 2001 Act, paragraph 16(a), and is therefore not rateable pursuant to s. 15 of the 2001 Act.

EVIDENCE BEFORE THE TRIBUNAL

10. The evidence offered on behalf of the Appellant was summarised in the Decision of the Tribunal (and confirmed on a full transcript of the hearing available as an exhibit before me). The evidence given was to the effect that income from all the Appellant's charity shops go to supporting the NCBI Group, particularly the gap in funding between the State in the form of the HSE and the cost of delivery services which is in the region of €3 million annually. It was confirmed that NCBI (being the parent group) are contracted through the HSE to provide services to every single person who applies including low vision assistance, rehab, counselling, technical supports, orientation employability, library and reading services, and child education and advocacy.

11. On the evidence adduced before the Tribunal, there are 54,000 people with sight loss in Ireland. The HSE contract pays €6.69 million but the cost of delivery is €10.5 million leaving a gap between the two. The evidence established that fundraising and retail activities make up the balance. It was confirmed that retail activity makes the larger contribution to bridging the gap (with retail accounting for approximately 25% of the money required to fund the charitable activities of the NCBI Group and contributing most of the shortfall between the State contribution from the HSE and the running costs of the NCBI Group).

12. The evidence before the Tribunal was to the effect that the lack of retail activity would be hugely catastrophic, meaning that they would have to close the blind library (which is utilized by I0,000 people) along with a reduction in services and staff and poorer outcomes for people already marginalized. It was also pointed out that such a reduction would result in higher costs to the State in having to provide such services.

13. It was further confirmed in evidence that both the NCBI Group and the Appellant are regulated by the Charities Regulatory Authority. They are both recognized as a charity by the Revenue Commissioners meaning that neither pay Corporation Tax, Stamp Duty on leases, VAT and DIRT. It was clarified that charity shops sell their goods for the first time as the stock is given to them for free in contrast to thrift shops where the stock has been acquired by them. It was also confirmed that the

relevant property was staffed by a paid manager, two volunteers and three Social Protection staff deployed by the Department of Social Welfare on a Back into Work course. Overall, it was confirmed in evidence that the organisation had 900 volunteers and 350 Social Protection staff.

14. It was confirmed that NCBI had 130 shops in Ireland with a head office based at PY Doyle House in Drumcondra. It was confirmed that no rates were payable on that building described as a three- story building which provided technical and children's services and adult retirement services on the first floor, fundraising on the second floor and advocacy on the third floor. The second and third floors are separated and inaccessible from the first floor by way of a coded door.

15. It was pointed out that rates are not paid by charity shops in England and Wales, with local authorities having been granted a mandatory 80% exemption and a further 20% discretionary exemption under the Finance Act 1988. It was confirmed that the only activity carried out by the organisation in the subject property was retail. It was explained that the funds raised in the subject property were used specifically for children, employability, and adult services in the border areas of Monaghan, Cavan and Carrick-on-Shannon.

16. The Respondent called evidence from a valuer who confirmed that the subject property is a standard retail unit being run as a business and is located on the main street in Virginia in a mix of other retail units such as a coffee shop, another charity shop, Virginia Shopping Centre, SuperValu and Aldi.

DETERMINATION OF THE TRIBUNAL

17. The Decision of the Tribunal issued on the 5th of December, 2022. The Tribunal determined that the property is rateable property, dismissing the Appellant's appeal and affirming the Respondent's valuation.

18. Based on the evidence, the Tribunal was satisfied that the Applicant is a registered charity recognised by both the Charity Regulation Authority and the Revenue

Commissioners and it occupies the relevant property solely for the purposes of retail in the sale of goods and products which have been donated to the organisation.

19. In its Decision, the Tribunal referred to its own decision in *Veritas v. Commissioner of Valuation* VA17/5/039 where it was not accepted that the words *"charitable purposes*" in the 2001 Act should be interpreted or construed in accordance with s. 3 of the 2009 Act, merely because a charitable organisation for the purposes of the 2001 Act means a charitable organisation within the meaning of s. 2 of the 2009 Act entered into the register of charitable organisations pursuant to s. 3 of the 2009 Act.

20. The Tribunal further referred to its decision in *New Start Addiction Centre v. Commissioner of Valuation* (VA12/019) and paragraph (4) of the findings:

> *"Mindful of the foregoing, the Tribunal is satisfied that the subject premises is remote from the main activities of the Appellant and is predominantly used by the members of the public. The Tribunal accepts the charity's occupation of the premises and while it is deemed a 'charitable organisation' as defined in the Valuation Act, the Tribunal finds that the occupation of the premises may not be necessary in the literal sense of the Appellants charitable pursuits".*

21. The Tribunal noted that it was not bound to follow the decision of another Division of the Tribunal. However, in the interests of comity and to avoid inconsistencies in decision making, it added that the Tribunal will normally follow a prior decision where the properties are similarly comparable, and the relevant circumstances are substantially the same (subject to any later material change in circumstances) (paragraph 10.8).

22. While the operative part of the Tribunal's Decision referred to one Irish authority, namely *St. Vincent's Healthcare Group v. Commissioner of Valuation* [2009] IEHC 113 (hereinafter "*St. Vincent's Healthcare*") and cited paras. 36-41 thereof, it did not address the principle of law emerging from the decision of Cooke J., at paras. 32 and 34 where he stressed the need to consider not only the nature of the actual user, but why that use is made by the occupier. This part of the Tribunal's Decision appears to be a "*cut and paste*" from an earlier Tribunal Decision *in New Start Addiction*

Centre Limited v. Commissioner of Valuation (VA12/2/019) where the same paragraphs of the judgment in *St. Vincent's Healthcare* were cited in identical terms including by repeating that the respondent relied on the case (when in this case it was the Appellant), again without any reference to or engagement with paragraphs 32, 34 and 35 of *St. Vincent's Healthcare*.

23. The Tribunal determined (at paragraph 10.9 of the Decision) that if the organisation operated a coffee kiosk in the grounds of NCBI's head office at PV Doyle House for the purposes of fundraising, then following on from Cooke J.'s analogy in *St. Vincent's Healthcare*, which had been relied upon by the Appellant, it would be very likely that this would fall within Schedule 4 as being ancillary to the main objects of the charity taking place in close proximity to the main building.

24. The Tribunal determined that given the remoteness of its location from the head office and the fact that it is not contributing directly to the company's objects, the Tribunal did not accept that the subject property fell within the definition of Schedule 4. The Tribunal further determined (at paragraph 10.11) that the net point which the Tribunal was required to consider was whether the use of the subject property as a retail property was sufficiently close to the Articles of Association and the objects of the organisation such as to place it within the provisions of Schedule 4 and be determined as a non-rateable property.

25. The Tribunal proceeded to note that there was a paid manager working in the subject property, as well as a number of volunteers and three employees on the Back to Work Social Protection Schemes (paragraph 10.12). It further noted (at paragraph 10.13) that the subject property is used solely for retail for the purpose of fundraising and that there is no rehabilitation aspect to it. Accordingly, the Tribunal concluded that *"what is taking place in the subject property is retail and not the provision of services and the Tribunal does not accept that this is ancillary to NCBI's main objects"* (paragraph 10.13).

26. On application on behalf of the Appellant, the Tribunal stated a case in which it posed the following question of law, namely, whether it was correct in law in its interpretation

of Schedule 4 to the 2001 Act, paragraph 16(a), and in determining that the relevant property is rateable property.

THE STANDARD OF REVIEW IN A CASE STATED TO THE HIGH COURT

27. The relevant standard of review in a case stated to the High Court from the Valuation Tribunal, was considered by the Court of Appeal in *Stanberry Investments Limited v Commissioner of Valuation* [2020] IECA 33 where, as stated by Murray J., the Commissioner "*prayed in aid of curial deference*". Murray J. summarised the role of the Court in an appeal on a point of law at para. 37 and then went on to address the "*curial deference argument*" at paras. 48-51. In particular, he stated at para. 49:

> *"The Commissioner says in this case, as parties in a similar position frequently do, that the Court should be "slow to interfere with the decisions of expert administrative Tribunals". Without significant qualification, this statement is apt to mislead. Administrative tribunals, expert or otherwise, obtain no deference on pure issues of law (see Millar v. Financial Services Ombudsman [2015) IECA 126 [2015) 2 IR 156 at - in particular - para. 62). The remarks of Kelly J. in Premier Periclase Limited v. Commissioner of Valuation [1999) IEHC 8, makes it clear that errors of fact simpliciter do not present any issue of curial deference either; "[w]hen conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal, such conclusions must be corrected" (at para 25). A similar statement of principle appears in Nangles Nursery v. Commissioner of Valuation [2008] IEHC 73 at para. 25. It follows that in both judicial review proceedings, and appeals on a point of law, the scope for 'deference' is limited."*

28. This decision of Murray J in *Stanberry Investments* was referred to and quoted with approval in the Court of Appeal judgment delivered by Collins J. in *Hibernian Wind Power v Commissioner of Valuation* [2023] IECA 121 and in the recent decision of the High Court (O'Donnell J.) in *Lyons v Commissioner of Valuation* [2024] IEHC 223. As the issue on this appeal by way of case stated concerns the proper

interpretation of statute, I have jurisdiction to correct errors of law made by the Tribunal in applying the legal test of Schedule 4 to the 2001 Act, paragraph 16(a), if so found, as this is not an area within which deference is due to the Tribunal.

SUBMISSIONS

29. The Appellant maintains that the key consideration for the Respondent in applying the exemption provisions under the 2001 Act is the purpose of the use of the property, not the *'activity'* carried on or on the nature (retail) of the use or activity. The Appellant relies on the decision in *Clonmel Mental Hospital Board v Commissioner of Valuation* [1958] IR 381 (Davitt P.) where it was found that *"for the purpose of"* is not to be equated to what is the property *'used as'* and the decision in *St. Vincent's Healthcare* (at para. 32) where *"it is necessary to ask not only what the nature of the actual user is but why that use is made by the occupier"* and para. 34 *"[i]t is therefore not just the nature of the activity carried on in the building (the user) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption").*

30. The Appellant submits that the Tribunal was obliged to follow this Irish line of authority, rather than follow its own earlier decisions which were based on the English decision in *Oxfam v Birmingham City District Council* [1976] A.C. 126 (hereinafter "*the Oxfam Case*"). The Appellant submits that the decision in the *Oxfam Case* and the earlier Tribunal decisions based on the *Oxfam Case* were inconsistent with the authority of the Irish Superior Courts.

31. The essence of the Appellant's case is that the proper test requires a focus on the purpose or objective of the Appellant in using the property as it does rather than the Appellant's actual use of the property. The Appellant maintains that while the use of the shop is undoubtedly for retail, the purpose of this use is charitable because it is used to generate funds to provide services and supports to the blind and vision impaired, and in consequence the Appellant is not subject to a requirement to pay rates.

32. On the other hand, the Respondent maintains that the fact that the Appellant is a registered charity is not evidence of their compliance with Schedule 4 to the 2001 Act, paragraph 16(a). The Respondent contends that the retailing of goods is not a charitable purpose. In this respect, the Respondent relies on the *Oxfam Case* where use for a purpose, such as getting in, raising, or earning money for the charity which benefits the charity indirectly, was found not to be use for charitable purposes within the meaning of s.40(1) of the General Rate Act, 1967 where the use was not wholly related to or did not directly facilitate the purposes of the charity.

33. The Respondent further relies on a series of earlier decisions of the Valuation Tribunal. Specific reliance was placed on decisions in *New Start Addiction Centre v. Commissioner of Valuation* (VA12/019) where the Valuation Tribunal applied a necessity test finding that retail activity at the subject premises by a charitable organisation did not mean the occupation was for charitable purposes as occupation of the premises may not be necessary in the literal sense of the appellant's charitable pursuits. Reference was also made to (VA18/1/0003-1005) *Limerick Animal Welfare Limited and Commissioner of Valuation* (20th April, 2021) where the Tribunal noted that no express amendment was made to the 2001 Act to make it clear that the phrase "*charitable purposes*" was to be construed in accordance with s. 3 of the 2009 Act and it should not lightly be assumed that the Oireachtas would have made such amendment merely by implication. In consequence, the Tribunal did not accept that the words "*charitable purposes*" in the 2001 Act should be interpreted or construed in accordance with section 3 of the 2009 Act merely because a charitable organisation for the purposes of the 2001 Act means a charitable organisation within the meaning of section 2 of the 2009 Act entered in the register of charitable organisations pursuant to Part 3 of the 2009 Act.

34. The Respondent submits that the fact that the income and profits generated from the sale of items is directed in accordance with its objects, which also provides that there can be no profit going to its members and/or directors does not rescue the Appellant; on the Respondent's case the Appellant must show that the property is used exclusively for charitable purposes within the meaning of the *Oxfam Case*, but that since the property is used for the sale of donated property in order to raise funds, it is the

Respondent's case that it is not used for charitable purposes in line with the decision in the *Oxfam Case*.

DISCUSSION AND DECISION

Statutory Provision – Words and Context

35. When interpreting the scope of a statutory exemption from a liability to pay rates, I remain mindful of the applicable principles of statutory interpretation long established. These principles were restated in the rates context in *Nangles Nurseries v. Commissioners of Valuation* [2008] IEHC 73. Notably for present purposes, I must remain vigilant to ensure observance of the requirement that I am not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute clearly and in express terms excepts from the burden of a liability to pay rates thereby imposed generally on the property type. Accordingly, the 2001 Act is to be strictly construed and any ambiguity as to the breadth of relief under Schedule 4 to the 2001 Act, paragraph 16(a), requires to be construed against the ratepayer insofar as that ambiguity is concerned.

36. Schedule 4 of the 2001 Act provides for "*Relevant Property Not Rateable*" and provides for the exemption of a range of properties from a liability to pay rates ranging from agricultural land, land developed for forestry, horticulture, sport, farm buildings, domestic premises, premises for use for religious worship, certain land, building or part of a building used for the purpose of caring for sick persons, treatment of illnesses or as a maternity hospital, certain burial grounds or crematorium, certain educational institutions and includes, at para. 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.*"

37. There are differences between each exempted property type (19 categories on my count) but a common characteristic of many of those categories which are exempted

because they provide a service for public benefit under Schedule 4 is that they are in use exclusively for that purpose and are not for private profit repeating a familiar statutory formula. The exemption under s. 16 entails three criteria:

(i) That the property concerned must be occupied by· 'a *charitable organisation*';

(ii) That organisation uses the property exclusively '*for charitable purposes*';

(iii) The organisation uses the property 'otherwise than for private profit'.

Tribunal Approach to Application of the Criteria

38. The Tribunal's Decision does not directly address the constituent criteria of Schedule 4 to the 2001 Act, paragraph 16(a), or expressly state which of those criteria it considers not to be met. The Tribunal seems to accept, however, that criterion (i) is met, and it has not been disputed that the Appellant is a '*charitable organisation'* within the meaning of the 2001 Act. A charitable organisation is defined in s. 3 of the 2001 Act by reference to the definition prescribed under s.2 of the 2009 Act, namely, an organisation that is entered in the register of charitable organisations pursuant to Part 2 of that Act. In light of the fact that the Appellant and the parent group are both registered charities, it is difficult to envisage circumstances in which the Tribunal might conclude otherwise than that the Appellant is a charitable organisation given that the 2001 Act defines "*charitable organisation*" by express reference to s. 2 of the 2009 Act.

39. Nor does the Tribunal Decision separately consider whether the property is used *'otherwise than for private profit'*; but, given the Appellant's Constitution and the failure to raise any issue in this regard combined with express and categoric statements contained in the Respondent's written submissions to this effect, it may reasonably be assumed that the Tribunal accepted that this criterion was also met and I proceed on this basis. It appears common case and I heard no real argument to the contrary, that the answer to the question of law presenting on this case stated turns on the net issue of whether the Tribunal applied the correct test in determining that the Appellant did not

use the property exclusively for charitable purposes for the purpose of the application of criterion (ii).

40. While it is accepted that to qualify as a charitable organisation pursuant to s. 2 of the 2009 Act, a charity must have exclusively charitable purposes, it is not accepted that having charitable purposes within the meaning of the 2009 Act means that use of a property by the registered charity constitutes use exclusively for charitable purposes. The issue on this application therefore is not whether the Appellant pursues charitable purposes but whether its *use* of the relevant property is for exclusively charitable purposes.

41. On this question, the Tribunal acknowledges in its decision (at paragraph 10.8), that it is not bound to follow the decision of another division of the Tribunal, but that *"in the interests of comity, and to avoid inconsistencies in decision making, the Tribunal will normally follow a prior decision where the properties are similarly comparable, and the relevant circumstances are substantially the same, subject to any later material change in circumstances".* It is noteworthy, however, that in each of its own decisions referred to by the Tribunal, reliance is squarely placed on the *Oxfam Case***,** the English decision which it had been forcefully submitted to the Tribunal does not represent the law in this jurisdiction.

Comity as between Tribunals, Courts of Horizontal Jurisdiction and other Courts

42. The argument pressed on behalf of the Appellant before the Tribunal had been that the *Oxfam Case* adopts a narrow focus on the nature of the use, the '*retail*' nature of the activity in the charity shop rather than its purpose in apparent contrast with the approach of the judgment of Cooke J. in *St Vincent's Healthcare* case and the High Court and Supreme Court authorities referred to in that case, where a broader approach to the assessment of purpose was adopted. Despite the submission made that the Tribunal's earlier decisions were based on UK authority and were not consistent with the case law of the Superior Courts in this jurisdiction, the Tribunal did not in its decision review whether its previous decisions actually represented the law of this State but maintained its reliance on the UK House of Lords in the *Oxfam Case* without further

interrogation of this question, in reliance on the fact that this had been the consistent approach of the Tribunal in other cases and in deference to these other decisions of the Tribunal.

43. While the Tribunal has consistently applied the decision of the UK House of Lords in the *Oxfam Case*, it seems not to have ever fully addressed the apparent tension between the *Oxfam Case* and the later decision of the High Court (Cooke J.) in *St. Vincent's Healthcare* in proceeding to do so, at least not in any decision to which I have been referred. Even in *Veritas Company DAC v. Commissioner of Valuation* (VA17/5/039) where detailed consideration was given to *St. Vincent's Healthcare*, the Tribunal treated that decision as a decision in the context of paragraph 8 of Schedule 4, seemingly ignoring that it was also a decision in the context of paragraph 16 in proceeding to apply principles deriving from the Oxfam Case which had been rejected by Cooke J. in *St. Vincent's Healthcare*.

44. If and to the extent that there is a conflict between these the *Oxfam case* and the *St. Vincent's Healthcare Case*, it is quite clear that it is the decision of the High Court which must prevail. The Tribunal may not properly favour authority from another jurisdiction which has persuasive value only as the basis for decisions taken if this authority conflicts with the jurisprudence of domestic superior courts. The decision of the High Court on a point of law, unless clarified or overturned in subsequent domestic case-law, is binding on the Tribunal absent legislative change (or in applicable circumstances not arising in this case through the mandatory application of EU law) and even the desirability of consistency as between Tribunal decisions cannot trump the primary obligation on the Tribunal to apply the law following due interrogation to establish for itself what the law is.

45. In the absence of circumstances where a judgment may be lawfully departed from in accordance with doctrines of precedent and *stare decisis*, the High Court judgment states the law in this State and is binding on the Tribunal. The Tribunal cannot lawfully prefer a contrary decision of the UK House of Lords, even dealing with similar legislative provisions, where it does not represent a statement of the law in this jurisdiction. Where the Tribunal elects to follow its own decisions in reliance on UK

authority even though this runs counter to the jurisprudence of the Irish courts, then the Tribunal errs in law.

46. Insofar as the Respondent intended to suggest by its reliance in argument on the decision of the Supreme Court in *A, S, S & I v. Minister for Justice and Equality* [2020] IESC 70 that I should not lightly depart from the decision of the House of Lords in the *Oxfam Case* and should provide good reasons for any decision to do so, I wish to record that unlike the position when I am asked to depart from a decision of a fellow High Court judge (such as that of Cooke J. in the *St. Vincent's Healthcare Case*), there is no duty on me to follow a decision of an English court interpreting and applying English law (even where the provisions may be in similar terms) nor to explain a refusal to do so, particularly where in so doing I am relying on relevant and binding Irish authority. The *Oxfam Case* does not enjoy precedential value in this jurisdiction. While reference to case-law from other jurisdictions may have persuasive value and may even be very helpful in the development of our domestic jurisprudence by enriching legal argument and improving judicial reasoning, they enjoy no special authority. Quite simply the *Oxfam Case* does not, nor does it purport to, pronounce on Irish law.

47. On the other hand, it is quite clear that were I invited to consider departing from a decision of the High Court such as that of Cooke J. in the *St. Vincent's Healthcare Case,* a position which the Respondent has certainly urged on me, I must be mindful that it is a "*horizontal precedent*" and the doctrine of *stare decisis* applies. Such a precedent should not be departed from without express and good reason guided by the principles set out in cases such as *Re Worldport Ireland Ltd. (in Liquidation)* [2005] IEHC 189 and *Kadri v. the Governor of Wheatfield Prison* [2012] IESC 27 and restated by the Supreme Court in two separate judgments (Charleton and Dunne JJ) in *A, S, S & I v. Minister for Justice and Equality* [2020] IESC 70.

48. In this case the Tribunal was clearly mindful to satisfy itself that *St. Vincent's Healthcare* had been opened to the Tribunal in those earlier Tribunal decisions in which a liability to pay rates was determined on an application of *Oxfam* principles. Having established that the decision had been considered by other Tribunals who nonetheless proceeded to apply *Oxfam* principles, the Tribunal did so without interrogating whether the decision had been properly and fully considered by earlier Tribunals so that it could

be satisfied that Irish law allowed for the application of *Oxfam* principles and there was no material difference between those principles and those identified in *St. Vincent's Healthcare*. The Tribunal ought to have considered more fully this question even though its approach had the merit of consistency, which undoubtedly is important in fair decision making, but not so important as to require the application of wrong law.

49. While the approach of the Tribunal in relying on its own decisions, which in turn were squarely based on a UK authority, without adequately interrogating whether these decisions properly stated Irish law as determined by Superior Courts of Ireland was wrong, it does not necessarily follow that the legal principles applied in reliance on UK authority were themselves in error of law and the decision of the Tribunal wrong in law in consequence. Whether the decision of the Tribunal is flawed by reason of error of law turns on the identification of the applicable legal test under Irish law, and whether this differs from the test applied by the Tribunal.

Use for Charitable Purposes under the 2001 Act

50. Turning then to what Irish law requires in the application of Schedule 4 to the 2001 Act, paragraph 16(a), it is appropriate to note the definition of "*charitable purposes*" under the 2009 Act. Section 3(1) of the 2009 Act provides that "*for the purposes of this Act*" a charitable purpose includes the prevention or relief of poverty or economic hardship (s. 3(1)(a)), the advancement of education (s. 3(1)(b)) and "*any other purpose that is of benefit to the community*" (s. 3(1)(c)). Under s. 3(11) a "*purpose that is of benefit to the community*" embraces the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability (s. 3(11)(a), the promotion of health, including the prevention or relief of sickness, disease or human suffering (s. 3(11)(d)) and the integration of those who are disadvantaged, and the promotion of their full participation, in society (s. 3(11)(l)).

51. As the provision of support to blind and vision impaired persons is of benefit to the community in that it is for the advancement of community welfare and, in particular, the relief of those in need by reason of disability, it is not surprising that the Charities Regulatory Authority satisfied that the Appellant pursues charitable purposes within

the meaning of s. 3 of the 2009 Act in engaging in fundraising retail activity to ensure the provision of such support. The question is whether it necessarily follows that such fundraising activity also constitutes a use for charitable purposes in a different statutory context. Section 3 of the 2009 Act only applies "*for the purposes*" of that Act, so this finding cannot be determinative of the existence of charitable purposes within the meaning of Schedule 4 to the 2001 Act, paragraph 16(a). This is fundamentally a question of statutory intent.

52. Although it might seem somewhat surprising were the Legislature to have intended that same charitable purposes recognised by the Charity Regulatory Authority would not be recognised in like manner in the separate statutory context when it has not expressly so provided, it has long been recognised that a different approach may be taken as between different statutory regime (see *O'Neill v. Commissioner of Valuation* [1914] 2 IR 447). It is after all clear that the Legislature used specific and non-ambiguous language in limiting the definition of charitable purposes to the purposes of the 2009 Act.

53. Furthermore, while the Legislature had express regard to the definition of "*charitable organisation*" in the 2009 Act and adopted the definition for the purposes of the 2001 Act (by amendment in 2015), it cannot be ignored that it did not similarly adopt the definition of "*charitable purposes*" in the 2009 Act. This difference of approach seems unlikely to have been accidental and tends to support a conclusion that the Legislature wished to leave open the possibility that a charitable organisation might pursue charitable purposes which were accepted as charitable by the Charities Regulatory Authority but rates authorities should remain free to make their own determination as to whether a use of a property was for charitable purposes notwithstanding that the purposes in question had been accepted as charitable by the Charities Regulatory Authority.

54. The issue of the separate meaning of "*charitable purposes*" as between the 2009 Act and the 2001 Act has been the subject of consideration in a number of decisions of the Tribunal which were referred to before me in this case (most notably *Veritas Company DAC v. Commissioner for Valuation* (VA17/05/039) and *Limerick Animal Welfare Limited v. Commissioner for Valuation* (VA18/1/003, 004 & 005). In the absence of a

definition in the 2001 Act, it appears to be accepted by the parties (supported by decisions of the Tribunal) that this question of law remains governed by the ordinary legal meaning of the words "*charitable purposes*" pronounced in *Commissioner for Special Purposes of the Income Tax v. Pemsel* [1891] UKHL 1 (hereinafter "*Pemsel's Case")* in the context of allowances from income tax.

55. The decision in *Pemsel's Case* was expressly approved by the Supreme Court (Kingsmill-Moore J.) in *Barrington's Hospital v. Commissioner of Valuation* [1957] IR 299 where the Supreme Court concluded that the meaning intended by the Oireachtas to be assigned to "*charitable purposes*" in Schedule 4 of the 2001 Act, paragraph 16, is the *Pemsel* meaning.

56. In *Pemsel's Case* it was found that the words "*charitable purposes*" were not restricted in meaning of relief from poverty but must be construed according to the legal and technical meaning given to those words by English law and by legislation applicable to Scotland and Ireland. In his judgment for the Court in *Barrington's Hospital v. Commissioner of Valuation,* Kingsmill Moore J. referred to the dicta of Lord Macnaghten in *Pemsel* as the "*locus classicus*" on the subject when he said:

> *"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."*

57. The test in *Pemsel's Case* is largely mirrored in the terms of s. 3 of the 2009 Act, although greater definition is given under the terms of s. 3(11) as to what constitutes a purpose that is for the benefit of the community. In matters of substance, however, there appears to be little difference between the two and none that appears material to any question I must decide.

58. For present purposes I am of the view that s. 3 of the 2009 Act cannot be said to have done more than give statutory expression to the established legal meaning ascribed to these words for the purposes of the 2009 Act, but without effecting radical change to the pre-existing common law position in a manner which results in two plainly different rules. Whether charitable purposes within the meaning of Paragraph 16 of Schedule 4 still falls to be determined on the basis of the test in *Pemsel's Case* or some different test applies having regard to s. 3 of the 2009 Act, will have to await a case in which the question necessarily arises for determination.

59. In my view, the fact that the Appellant is a registered charity and is accepted to exist for exclusively charitable purposes under the 2009 Act, while not determinative of this question for the purposes of the 2001 Act, is nonetheless a factor supportive of the Appellant in establishing the application of Schedule 4 to the 2001 Act, paragraph 16(a), to its use of the relevant property, because of the parallels between the common law test and the statutory test. In my view, some reasoned basis would be required to explain why what has been found to constitute charitable purposes for one should not be found to constitute charitable purposes for the other.

60. In short, where an organisation has been found to exist for charitable purposes only in accordance with s. 3 of the 2009 Act, it is highly likely that it will also meet the common law test absent a basis for finding that the tests differ insofar as a specific situation is concerned. Indeed, where an organisation has been found to exist for charitable purposes only for the purposes of the 2009 Act, this carries separate weight when considering whether its use of property is for charitable purposes if there is an alignment between the use and the charitable purpose for which the charity exists.

61. Where, as here, the activity of the Appellant's retail shops is accepted by the Charities Regulatory Authority as being for exclusively charitable purposes within the meaning of the 2009 Act and this is a factually sustainable conclusion not departed from by the Respondent following its own assessment of the facts, the most likely basis for finding that the use of the Relevant Property is otherwise than for charitable purposes under Schedule 4 to the 2001 Act, paragraph 16(a)is either:

(i) if "*use*" for charitable purposes in the 2001 Act imports a different element to the test laid down in the 2009 Act divorced from the existence of the charity being for charitable purposes and its activities being for these purposes by distinguishing between the direct purpose of a use (e.g. to provide rehabilitation or library services) and its indirect purpose (e.g. to fundraise for the provision of services when the provision of services is the object of the charity or the purpose for which it exists); or

(ii) charitable purposes embrace fundraising activities through retail for the purposes of the 2009 Act but not for the purposes of the 2001 Act.

62. As there is no basis for concluding that fundraising through retail is a charitable purpose within the meaning of the 2009 Act but not the 2001 Act, I propose to focus now on whether the addition of the concept of "*use*" changes the test such that retail for fundraising purposes falls outside the scope of Schedule 4 to the 2001 Act, paragraph 16(a).

63. Insofar as the test under the 2001 Act focuses on use of a property, in contradistinction to the 2009 Act where use is not considered, this must allow for the possibility of some uses by a charitable organisation not being for charitable purposes within the meaning of Schedule 4 to the 2001 Act, paragraph 16(a). The approach in law as to when the use is for charitable purposes appears different in Irish and English law. This is apparent from a review of the cases cited to me on behalf of the Appellant.

64. The Supreme Court considered the issue of whether use for a charitable purpose not for private profit could be maintained in a hospital context where some patients were well to do and contributed to the cost of their treatment in *The Committee of Management of Barrington's Hospital and City of Limerick Infirmary v Commissioner of Valuation*. In his judgment, Kingsmill-Moore J. had to consider whether the presence of some paying patients in the hospital prevented it from being used *'exclusively for charitable purposes'*. He stated at page 322:

> *"In Inland Revenue* v. *Peeblesshire Nursing Association, the question was whether the income on investments, and the annual value of a house owned*

by a nursing association should be exempted from income tax under s. 37, sub-s. 1 (b), of the Income Tax Act, 1918, on the grounds that the income was that of a "body of persons or trust established for charitable purpose only, or which, according to the rules or regulations....The Court of Session upheld the

decision of the Special Commissioners granting exemption. In the course of his judgment the Lord President says (at p. 221):-"There is nothing which is necessarily inconsistent with a purely charitable object in the inclusion in the organisation of the charitable association of some department intended to be run at a profit, and so to contribute to the accomplishment of the association's charitable purpose. A hospital, erected entirely for the benefit of the poor, is none the less solely directed to that purpose because, in order to provide it with some nucleus of revenue apart from voluntary subscriptions, it runs a special ward for paying patients. I see nothing to entitle one to say that to provide cheap first-class nursing for those who cannot afford it is any the less a purely charitable undertaking only because, as an incident and adjunct of its operation, it also provides some services to persons who are perfectly well able to pay, and actually pay, a full price for them."

65. He continued (at page 334):

"When the fees or income are subject to a trust which requires them to be applied for the charitable purpose their receipt does not make the user any the less "exclusively for charitable purposes."

66. In his separate judgment in the *Barrington's Hospital* case, O'Daly J. added in similar terms (page 343) that:

"The presence in the Hospital of a limited number of paying patients makes it possible for the visiting doctors to give their services free to other patients who could not afford to pay fees, and in that way the original purposes of the institution are advanced. I therefore think that the Hospital as it now operates is used for charitable purposes and exclusively so used. In my opinion it falls within the fourth or general head of Lord Macnaghten's divisions of charity…."

67. In *Clonmel Mental Hospital Board v Commissioner of Valuation* [1958] I.R. 381, the Commissioner argued that the nurses' residence known as *'Elmville'* and attached to a hospital was used by the Hospital Board "*for the purposes of a residence*" and was therefore not charitable. The relevant portion of s. 63 of the Poor Relief (Ireland) Act, 1838 provided for an exemption from an obligation to pay rates in respect of property where "*used exclusively for charitable purposes*". Davitt P. in the High Court, and the Supreme Court on appeal, did not agree, referring to a decision of Black L.J., dissenting, in *Commissioner for Valuation of Northern Ireland v. the Committee of Management of the Fermanagh County Hospital* [1947] N.I. 125 (hereinafter "*the Fermanagh Case*"), where he pointed out that while the expression "*for the purpose of*", as used in an enactment in a particular statute dealing with valuations, may be correctly interpreted to mean "*as*", it by no means follows that this construction must be applied to somewhat similar expressions in other valuation statutes. Thus, an argument that the precise terms use "*for the purpose of*" should be equated with use "*as*" was rejected and the High and Supreme Courts found that in residing at the residence the nurses were performing part of the duty they were employed and paid to perform. Davitt P stated (at page 389):

> *"we should, I think, assume that the legislature was not thinking in terms of an awkward colloquialism, but meant what it said; and that we should, therefore, consider, not merely the manner of user, but also the object and purpose of the user."*

68. This decision was upheld in the Supreme Court. Lavery J. delivered judgment and agreed with the analysis and the authorities relied on by Davitt P. stating:

> *"The argument for the Commissioner (I hope I state it fairly) is that the residential accommodation necessary for the staff is not charitable in purpose, when considered separately as it is contended it should be. In my opinion this contention is unsound."*

69. While *Barrington's Hospital* and *Clonmel Mental Board Hospital* differ from this case in that they both concerned hospitals and the treatment of charitable purposes under other legislation, it is striking from the judgments in both cases that regard was had to earlier and contrary authority from other parts of the common law world before arriving at a distinct, considered and Irish position whereby it was concluded that when determining whether a property was exempt when used for a charitable purpose, it was necessary to have regard to not only the manner of the user, but also the object and purpose of the user. Indeed, in *Clonmel Mental Board Hospital*, the Court expressly preferred the dissenting opinion of Black L.J. in the *Fermanagh Case* (also a hospital case) notwithstanding that his was a minority view in that case. This demonstrates a separate and distinct approach in this jurisdiction to the statutory interpretation of similar provisions when compared with other parts of the common law world.

70. The approach seen in these two Irish authorities is not readily reconcilable with the approach of the House of Lords in the *Oxfam Case* in interpreting s. 40 of the General Rate Act, 1967 where the phrase "*used for charitable purposes*" was under consideration. In the *Oxfam Case*, the House of Lords was concerned not with a hospital but with charity shops in which donated items were sold, very similar to the facts in this case. Oxfam was a charitable organization which had amongst its principal objects the relief of poverty, distress and suffering in any part of the world. On the evidence, Oxfam was largely dependent on voluntary helpers at local level who found that the most effective form of fund raising lay in the organisation and manning of gift shops. The shops were used for the reception and sorting of donated articles and for the sale of such articles which could not be used in Oxfam's overseas work.

71. Oxfam sought a declaration that shops which it occupied were entitled to rating relief, in that the shops were wholly or mainly used for charitable purposes. The House of Lords held that hereditaments occupied by a charity were wholly or mainly used for charitable purposes; where the use was for purposes directly related to the achievement of the objects of the charity. Accordingly use for a purpose, such as getting in, raising, or earning money for the charity, which, although it benefited the charity indirectly, was not wholly related to or did not directly facilitate the purposes of the charity, did not constitute use for charitable purposes within s.40(1). It followed the House of Lords

reasoned that, since the shops were mainly used for the sale of donated property to raise funds, they were not wholly or mainly used for charitable purposes within s. 40(1) and Oxfam was not therefore entitled to the relief claimed.

72. The House of Lords therefore concluded that "*used for charitable purposes*" meant user for purposes directly related to the achievement of the objects of the charity as opposed to user for the purpose of getting in, raising or earning money for the charity; and that accordingly, the charity's shops being used mainly for the sale of clothing given to the charity in order to raise money for use in the charity's work overseas, were not entitled to relief. In arriving at this decision, however, the House of Lords placed particular focus on ascertaining both Oxfam's charitable purposes and what was the user of the premises and then deciding whether the user was "*for*" the charitable purposes.

73. It further bears note that unlike the position of the Appellant in this case, the charitable purposes of Oxfam as set out in their registration and recited in the judgment (p. 148) did not entail fundraising through retail shops. The House of Lords drew a distinction between, on the one hand, activities which a charity may undertake, and, on the other hand, activities which consist in the actual carrying out of the charitable purposes. Lord Morris of Borth-y-Gest further stated (p. 149):

> *"I consider that user "for charitable purposes" denotes user in the actual carrying out of the charitable purposes: that may include doing something which is necessary or essential or incident part of, or which directly facilitates, or which is ancillary to, what is being done in the actual carrying out of the charitable purpose. There may, on the other hand, be things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which must in one sense be connected with the charitable purposes of the charity and which are properly within the powers of the charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. A charity may be entitled to occupy premises and to use them other than for its charitable purposes: only if*

to occupation by a charity there is added user "for charitable purposes" will the benefit given by the section accrue."

74. It is immediately clear that the approach of the House of Lords in the *Oxfam Case* is not on all fours with the approach of the Irish Supreme Court in *Barrington's Hospital* and *Clonmel Mental Board Hospital* which found that it was important to consider the purpose and object of the user in a manner which in those two cases permitted exemption where the provision of medical services for a fee or the making available of nurses residences was not directly part of the charitable purposes of the hospitals but, in the case of fees generated, the funds were applied for charitable purposes for which the hospital had been established and in the case of the nurses' residence in which nurses resided as a condition of their contract on foot of which they were employed for charitable purposes. It seems clear that at the time the Oxfam Case was decided the Irish courts had, up to then, been adopting a more expansive reading of user for charitable purposes than that espoused in the *Oxfam Case.*

75. More recently, the Irish Courts have returned to the issue of "*use for charitable purposes*" in the context of a liability to pay rates in *St. Vincent's Healthcare*. In *St. Vincent's Healthcare,* the question of exclusion from a liability to pay rates arose in the context of a hospital carpark. Two parts of Schedule 4 were relied upon, namely, paragraph 8 dealing with buildings used for the purposes of the care of the sick and paragraph 16. The Tribunal had decided, in express reliance on the decision in the *Oxfam Case*, that as the car park was not used for the purposes of caring for sick people, it did not qualify for exemption. The issue raised by way of case stated to the High Court was said to turn *"upon the question as to whether this car park in the grounds of the appellant's hospital is entitled to be treated as exempt from rates".*

76. In his judgment in *St. Vincent's Healthcare,* Cooke J. sets out the relevant principles that should be applied under the Irish statutory regime. The logic of Cooke J.'s approach in *St. Vincent's Healthcare* is rooted in the language of "*purpose*". Although, he was dealing with exemptions from rates under both paragraphs 8 and 16 of Schedule 4 to the 2001 Act, his reasoning applies equally to exemptions for hospitals and charities.

77. Having considered the decision of the Supreme Court in *Clonmel Mental Hospital*, Cooke J. observed at paras. 30-31 of his judgment that two propositions at least can be said to follow from *Clonmel Mental Hospital*, namely that the fact that the building is a separate structure and not part of the building where patients are treated does not prevent it being regarded as a "*part of a hospital*" and secondly, the use of a building or part of a building does not cease to be a use for the charitable purposes of a hospital by reason only of the fact that its particular use, if treated in isolation, would not itself be regarded as involving a service of care for the sick or the treatment of illnesses. In this way, Cooke J. rejected the argument that had focused on the activity being carried on in the property in isolation. Cooke J. was not concerned, as he stated, *"that no part of this car park is used by the Appellant literally for the purpose of caring for sick persons, for the treatment of illnesses or as a maternity hospital.*"

78. Having cited the judgments of the High Court and the Supreme Court in *Clonmel Mental Hospital* and expressly noted the two propositions identified above, Cooke J. said (at para. 32):

> *"In other words, it is necessary to ask not only what the nature of the actual user is but why that use is made by the occupier."*

79. The central principle of law emerging from the decision of Cooke J. in *St. Vincent's Healthcare*, at para. 32 is copper-fastened at para. 34 where he stated:

> "*It is therefore not just the nature of the activity carried on in the building (the user) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption".*

80. Thus, it is clear beyond any doubt that the test to be applied under Schedule 4 to the 2001 Act, paragraph 16, allows for consideration of both the nature of the actual user, but also why that use is made by the occupier.

81. Certain other aspects of the Tribunal's Decision in this case run directly contrary to

the decision of Cooke J. in *St. Vincent's Healthcare***.** The Tribunal's reliance on its earlier decision in *New Start Addiction Centre* in which it found that *"occupation of the premises may not be necessary in the literal sense of the Appellant's charitable pursuits"* (para. 10.7 of the Decision) flies in the face of Cooke J.'s rejection of such a '*necessity*' test at para. 35 of his judgment where he said:

> *"…the Tribunal erred in law in the test it applied namely, that the user must be inextricably linked as a matter of necessity to the proper operative elements of the functioning of the hospital….it is not the role of the Tribunal or of this Court to decide how a hospital should be organised and what is necessary in that sense."*

82. Furthermore, the Tribunal in this case seemed to consider that *St. Vincent's Healthcare* permits a test of *physical* remoteness, but this is inconsistent with what Cooke J. held at para. 24 of his judgment:

> *"It is also clear, however, that it is not the location or physical proximity of such non-medical facilities to the parts of the hospital comprising wards, operating theatres and nursing stations which permit such areas to come within the exception of heading No 8."*

83. The Tribunal's own decision in *St. Vincent's Healthcare* was that the property was rateable for reasons including that the car park *"has all the elements of a commercial activity and is so remote from the provision of medical services, so as to be not capable of being considered related to the main objects of the appellant"*. In his judgment on the case stated to the High Court from that decision, Cooke J. rejected this stating (at para. 36·) that:

> *"the car park exists and is so located, because of the hospital and not otherwise. It is there, because the hospital is there. In that sense, therefore the use of the car park is not remote from the main activity of the appellant"*.

84. The reference by Cooke J. to "*remote*" is made in the context of his consideration of

the correct test to be applied, which is of ascertaining the purpose of the appellant in using the structure as a car park, and not a reference to proximity. In essence, Cooke J. stated that the car park is there because the hospital is there, and therefore it is not remote from the main activity of the appellant.

85. Contrary to the Tribunal's understanding of the Decision, Cooke J. did not state that the premises must be *"in close proximity to the main building"* but stated quite the opposite and that "*it is not the location or physical proximity*" that is determinative. While Cooke J. uses the term "*remote*" (at para.36) he is not using the term in the sense of *physical* remoteness, and, in any event, he is citing the Tribunal's decision use of that term (see para. 37), which decision he ultimately overturned.

86. Although in the *St Vincent's Healthcare* case, the Tribunal relied on the authority of the *Oxfam Case*, it is impossible to ignore the fact that when that decision was appealed by way of case stated, Cooke J. expressly did not agree with the rationale of the Tribunal and overturned the decision. While Cooke J. does not expressly mention the *Oxfam Case* in his judgment, it is manifestly clear that he was aware of that decision but chose not to apply it. In this regard, it is telling that the Tribunal decision under appeal which Cooke J. found to have been incorrectly decided had squarely relied upon the decision in *St. Vincent's Healthcare*.

87. As for the suggestion that the decision has no application because it related to a different exemption in the form of clause 8, it is clear from the judgment that the Court considered both clauses. In his judgment Cooke J. refers to both clauses 8 and 16 at several reprises (notably at paras. 40 and 42) and clearly determined that the Tribunal had misinterpreted both clauses.

88. On the authority of *St. Vincent's Healthcare*, I agree with the submission made on behalf of the Appellant that the net point that the Tribunal should have considered, is whether *'the purpose of the appellant in using the premises"* is charitable (para. 36 of *St. Vincent's Healthcare*). It is clear from the use of the phrase *"charitable purpose"* in Schedule 4 to the 2001 Act, paragraph 16(a), that the focus of the statutory language is, on "*the purpose*"**,** which is distinct from "*the use*" which refers

only to the activity carried on in the property. It is clear from paragraph 16(a) and the authority of Cooke J., that the key issue is "*what is the purpose of the use*". It is only on consideration of this question that it can be established whether the "*purpose of the use*" is sufficiently close to the Articles of Association and the objects of the organisation and is charitable.

89. I am satisfied that the Tribunal misdirected itself by considering that the *"key issue"* is whether the "*use*" of the property is close to the Articles of Association. This would be the key question on the application of the test in the *Oxfam Case*. The test on an application of *St. Vincent's Healthcare* requires that not just the nature, but the purpose of the use be ascertained. It is only then that consideration can properly be given to whether the use is aligned with the charitable purposes of the organisation. Thus, the Tribunal considered the wrong question in failing to consider the purpose of the Appellant's retail activity.

90. I should add that the Tribunal not only identified the incorrect question for consideration, but also failed to consider the objects of the Appellant which clearly provide that it is established to generate profits through retail activity to support the charitable objects of NCBI (National Council for the Blind) Group, the parent group, which strives to enable people who are blind and vision- impaired to overcome the barriers that impede their independence and participation in society and to support those living with sight loss to live lives of their own choosing, and avail of life '*chances*'. Thus, the purpose of the Appellant in using the retail shops is to generate profits to support the charitable objects of the NCBI Group but the Respondent wholly failed to note the alignment between the charitable objects of the Appellant and its use of the relevant property, focusing instead on the purposes of the parent group. Despite acknowledging in its decision (at para.10.9) that *"what is taking place in the subject property is clearly a commercial or retail activity with the purpose of raising funds for the objects of the charity"* and later in its decision (at para. 10.13) that *"[t]he Tribunal notes that the subject property is used solely as retail for the purpose of fundraising"*, the Tribunal does not address the fact that this is the very charitable purpose for which the Appellant exists. The Tribunal appears to proceed on the basis that retail activity in fundraising could never be charitable, albeit without so stating.

91. This much is apparent from the concluding paragraph of the Tribunal Decision, it states, *"it cannot be denied that what is taking place in the subject property is retail and not the provision of services and the Tribunal does not accept that this is ancillary to NCBI's main objects",* a comment which can only be related to the objects of the parent group and not the Appellant. The evidence was that the fund generated by the use of the relevant property were specifically earmarked for the provision of services to vision-impaired children and adults in the Monaghan, Cavan and Leitrim areas. Accordingly, use of the relevant property is clearly aligned with the purpose of the Appellant is to raise funds for and advance NCBl Group's charitable objects and activities and not to provide for those objects and activities itself directly. Furthermore, where the purpose of the activity is fundraising, it is unclear on what rational basis a distinction might be drawn between the fundraising activities carried out in the Appellant's headquarters are treated differently to its fundraising activities carried out from the relevant property, the only explanation being a decision that retail cannot be use for a "*charitable purpose"* within the meaning of the 2001 Act regardless of the purpose or intention of the retail activity. In proceeding on this basis the Tribunal erred in law. On the authority of *St. Vincent's Healthcare,* the purpose or intention or the "*why*" of the use is the fundamental consideration.

92. The Appellant, a registered charity, carries out retail activities in a number of shops throughout Ireland. This is the exclusive use to which the relevant property is put. Exemption under Schedule 4 to the 2001 Act, paragraph 16(a), requires that the land, building or part must be used for charitable purposes. There is a distinction between the activities carried on in the Property (i.e. the retail activities) and the purpose which the Property is used for (i.e. the charitable purposes of the Appellant). The purpose of the Appellant is characterised by its main object. Pursuant to clause 3.1 of its Memorandum of Association and the evidence before the Tribunal, those purposes to which its retail activities are put is to generate money to support the charitable objects of its parent company, also a registered charity. Accordingly, the use of the Relevant Property is directly in line with the charitable purpose for which the Appellant exists.

93. I have concluded that the Respondent misdirected itself by its reliance on its own previous decisions, which were clearly based on the *Oxfam Case*, a decision which runs counter to several authorities of the High and Supreme Courts. To the extent that the Tribunal had regard to the judgment of Cooke J. in the *St. Vincent's Healthcare Case*, it misinterpreted relevant parts of that decision, ignored other parts, and accordingly misdirected itself in law.

CONCLUSION

94. I have concluded that the Tribunal applied an incorrect test in assessing whether the relevant property is or is not rateable and has failed to follow relevant authority of the Irish Superior Courts in this regard. In particular, the Tribunal has wrongly focused on what the relevant property is being used "*as*" (retail), rather than asking itself "*why"* the Appellant is engaging in that use or its *purpose* in so doing (to fund charitable activities). The approach of the Tribunal in this regard is contrary to a line of Irish authority culminating in the decision of the High Court in *St Vincent's Healthcare*.

95. The Tribunal has also failed to have regard to the fact that the Appellant is a registered charity with an identified charitable purpose of fundraising through its retails shops in support of the charitable activities of the NCBI Group, with the result that its activity or use of the property is entirely in line with its identified charitable purposes as reflected in clear terms in its Memorandum of Association. The Appellant does not exist to provide other services to vision impaired persons and these charitable activities are performed within the umbrella of the NCBI Group.

96. Accordingly, my answer to the question posed in the case stated is:

> *"No, the Tribunal was incorrect in law in its interpretation of paragraph 16(a) of Schedule 4 to the 2001 Act in determining that the relevant property is rateable."*

97. I will hear the parties on the form of the appropriate order under s. 39(5) of the 2001 Act in the light of the terms of this judgment.