

Appeal No. VA07/3/063

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

UCD

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s), Land at Lot No. 2abc/ 0.25, 27, 29, 30; 1.06, 32, etc., Mt Merr Or Cal,
Clonskeagh Belfield, Clonskeagh, County Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF FEBRUARY, 2008

By Notice of Appeal dated the 9th day of August, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €122.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, a copy of which is contained in the Appendix to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 on the 6th December, 2007. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Ms. Edel Curley, Law Department, UCD, with Mr. Martin O'Donnell, BA Econ, FIAVI, Grad Dip Planning & Development Economics, Principal of O'Donnell Property Consultants. Dr. Pat Frain, a Director of UCD Nova Limited, and Mr. Donal Doolan, Head of Financial Management in UCD and a Director of UCD Nova Limited, gave evidence on behalf of the appellant. The respondent was represented by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor with Mr. John Smiley, a Valuer in the Valuation Office also present.

Introduction

The subject property is situated in the Michael Tierney building which is located on the university campus of UCD at Belfield, off Fosters Avenue in Dublin 4. The premises at UCD Nova is subject to a license agreement between the university as licensor and a limited company, UCD Nova Limited, as licensee. This limited company was established for VAT reasons. The entity known as UCD NOVA (not a limited company) otherwise known as "Nova UCD" is purely an office or programme of the university and is used as a vehicle to transfer technology out into the economy. Nova UCD is a programme and has no legal personality in its own right and is an integral part of the university's overall educational programme. This particular programme is concerned with innovation and transfer of technology to the outside world. Nova UCD is the vehicle used to do so. The programme is managed by Dr. Pat Frain. Now, for clarification and convenience purposes we list the three entities as follows:

- University College Dublin or UCD - the general body of the university.
- UCD Nova, known as "Nova UCD" and which we shall refer to as Nova UCD.
- UCD Nova Limited, an independent legal company set up for VAT purposes and we shall refer to it as "Nova Limited".

Accordingly, we have UCD, Nova UCD and Nova Limited.

Issue

It was agreed by both parties that the issue before the Tribunal is a legal one as to whether or not exemption applies to the subject property and is not concerned with the issue of quantum.

The Question of Occupier

At the commencement of the proceedings the Tribunal Chairperson asked the parties who the appellant was in this case: UCD, Nova UCD or Nova Limited. Nova Limited is stated as the “occupier” on the valuation certificate.

Mr. Hickey referred to Mr. O’Donnell’s précis of evidence and said that although Nova Limited was listed as the occupier, the actual occupier is University College Dublin. Mr. Smiley of the Valuation Office chose Nova Limited as the occupier. Mr. Hickey did not accept this and said that UCD is the occupier and that if the Tribunal finds UCD to be the occupier and that the premises are used for educational purposes then they are exempt under the legislation. He stated further that under section 30(1) (a) or (d) of the Valuation Act an occupier or a person as an interest holder in the property has the right to make an appeal.

Mr. Conway said that at first appeal stage a determination was made in the name of Nova Limited as the appellant and occupier. However, he said that if it was established that UCD/Nova UCD was the occupier, he was prepared to go ahead with the matter as they do not satisfy the requirements of the legislation anyway. He further stated that Mr. Hickey was right as regards section 30(1), that as an interest holder UCD/Nova UCD was entitled to make the appeal. With that Mr. Conway said that he was prepared to move on.

The Appellant’s Case

Submissions and examination in chief of Dr. Pat Frain

1. Mr. Hickey first stated that he agreed with Mr. Conway that the subject property had to pass 2 tests in relation to “occupation” and “exclusivity”:
 - i. Who is the occupier of the subject premises? Mr. Hickey said UCD is the occupier or paramount occupier.
 - ii. If UCD is the occupier than it must be exclusively used by it for the provision of educational services.

2. Mr. Hickey called Dr. Frain as a witness. Having taken the oath, Dr. Frain stated that he is the Director of the Nova UCD programme and has been employed by the university for the last 20 years. For all intents and purposes Nova UCD is a department of the university.

3. Mr. Hickey referred to the maps at Appendix B of Mr. O'Donnell's précis of evidence. The areas marked in yellow and pink are the areas that have been rated. However, Mr. Hickey pointed out that there was no license existing in relation to the property marked yellow. There was supposed to be a license in place in relation to the yellow area but it never transpired. Only the area marked in pink, being the first and second floor of the subject property, is what we are concerned with and this space is the subject property referred to in the license agreement. Dr. Frain gave evidence to this effect.
4. Mr. Hickey asked Dr. Frain to explain the difference between UCD and Nova UCD and Nova Limited. Dr. Frain stated that Nova UCD is an office or programme established for innovation and technology transfer out of the university into the economy and society. The programme has 16 employees, 14 are UCD employees and only 2 are employed by Nova Limited, as part-time receptionists. The reason there are 2 employees with the limited company is that there has to be flexible opening hours. If they were employed by UCD this would not be possible.
5. UCD Nova Limited, a wholly owned subsidiary of UCD, was set up under the VAT scheme as the university is not eligible to reclaim VAT. A loan was given to the company to build the building. Accordingly, the VAT paid on construction could be reclaimed by the company. Over time all the space in the building could be licensed out and the VAT paid to the government could be reclaimed by the company.

Which company or person occupies the incubation units is determined by Nova UCD, and the license agreement is negotiated by Nova Limited. For occupation the project must be innovative and knowledge intensive. These units are not part of the subject property.

The 2 receptionists, who occupy the ground floor near the entrance of the building, occupy an area marked in white and which is not part of the subject property. In Mr. Hickey's words they are "not in the take".

6. Dr. Frain gave evidence in relation to the yellow and pink spaces on the map of the ground and first floors of the building:
 - Yellow areas 0.01 and 0.25 on the ground floor - Area 0.01 is a restaurant used by UCD staff and others and area 0.25 is where the 14 staff of Nova UCD are based.

- Pink areas 0.27, 0.29 and 0.30 on the ground floor – Areas 0.29 and 0.30 are 2 large meeting rooms used by Nova UCD staff and by the finance committee of the university and, occasionally, by the companies for board room facilities. They like to encourage the companies to have board room facilities. Dr. Frain said the areas were “mixed” but predominantly used by the university for lectures and seminars.
- Yellow areas 1.06, 1.33 and 1.36 on the first floor – Area 1.06 is a meeting room used by the university and companies. Area 1.36 is Dr. Frain’s office and area 1.33 is Dr. Frain’s personal assistant’s office. Area 1.32 is more yellow than pink, and is used by the vice-president of the university.
- Pink areas 1.35 and 1.37 on the first floor - These are two large meeting rooms, used sometimes by the university and by Nova UCD staff. These rooms are used for seminars, training programmes and board meetings, by Nova UCD staff and sometimes by the companies. Again, while mixed, the predominant use is by the university, like the rooms on the ground floor.

Mr. Hickey submitted that insofar as there is a license agreement for space in the building between UCD and Nova Limited it applied to only one of the areas marked in pink. As far as occupation is concerned UCD and its staff is the paramount occupier. UCD Nova Limited is a device and not to be taken as the rateable occupier.

Object - to Transfer Knowledge and Technology out into the Economy

7. Dr. Frain gave evidence about the role of Nova UCD or, in other words, the programme and its policies as an educational service. Dr. Frain said that for all intents and purposes, Nova UCD is a department of the university. It is not there to make a profit, but to transfer knowledge and technology out into the economy. In the old days knowledge was transferred by publications and in many cases this no longer works. Where technology is involved it has to be properly managed if funding is to be given.

Nova UCD works on different levels:

- They try to develop a culture in the university whereby academics will look out for technological opportunities to cooperate with business in the transfer of technology. They run a number of training programmes and modules for Ph.D. students on knowledge

transfer so that they may develop interest in projects for the transfer of knowledge out for commercialisation purposes. There is a training and educational element involved.

- They run clinics across the campus and work with academics where they try to identify intellectual property with potential to transfer out into the community. They try to protect that technology by filing patents or other means.
- They try to get the best commercial strategy to license the technology out either through start-up companies or established companies. In the case of the “start-ups” they try to promote entrepreneurship and help those companies get off the ground and that is what the space is provided for in their building. They also invite expert companies to come in to give their expertise.
- Another role is to develop strategic partnerships with industry for collaborative research and to develop a relationship of trust with these companies whereby they will take on the technology and exploit it.

In order to succeed in these matters the programme has to be properly managed. It is very important for the university that it has a vision to become an internationally recognised research-intensive university, moving from an educational institution to a research-intensive university. To achieve this they must get grants from the State via agencies such as Enterprise Ireland. These grants are subject to certain conditions which are contained in a set of requirements and guidelines based on National Codes of Practice for Management of Intellectual Property Arising from Publicly Funded Research. The first such Code of Practice was launched by the Minister for Enterprise in 2004. The requirements and guidelines are included as terms and conditions in the agency contract to fund research within universities. The guidelines state that there must be consistency and transparency in managing intellectual property arising from the research. The reason the State is funding research is that it wants to build a knowledge-based economy. Enterprise Ireland commercialisation specialists work closely with the Nova UCD team. Nova UCD staff meet regularly with UCD researchers to advice them on the commercialisation aspects of the research and licensing of intellectual property.

In 1993 a joint venture took place between UCD and a UK firm, Proteus Molecular Design (now known as Protherics plc), and this led to the most successful licensing agreement to date following the development of a BSE (Bovine Spongiform Encephalopathy) or “mad cow

disease” test. This made some €2 million in royalties for UCD over a period of 7 years, which is relatively very little. This diagnostic test was licensed to an Irish firm, Enfer Scientific Ltd. in 1996. The real economic benefit was the fact that Enfer Scientific employed between 100 -150 people and turned over €20 to €30 million a year when BSE was a major issue. So it was actually creating value within the economy. The reason Nova UCD is given the research funding is to hold it on behalf of the public or taxpayer. The main object is to transfer the technology out into the economy, not to make a profit.

Dr. Frain also referred to a 2006 European Commission document (C323-01) on state aid for research and development and innovation. The Commission considers that licensing and technology transfer are of a non economic nature. Any income is reinvested in the activities.

Dr. Frain gave further evidence-in-chief in reply to questions put by Mr. Hickey. As to whether the occupational activities of UCD at the subject property are for educational purposes or commercial purposes, Dr. Frain replied that their objects and function are educational and not commercial. Nova UCD is not there to make a profit. Similar centres in Europe average 15% income of their total budget. As to whether the services are core educational activities, Dr. Frain stated that innovation and technology is a core activity of the university. In fact the university aspires to be a leading international university for innovation and technology. Dr. Frain also confirmed that the provision of meeting rooms and board rooms is an educational activity and said that as a university UCD could not operate without them.

Cross examination of Dr. Frain

8. Mr. Conway cross examined Dr. Frain with regard to the start-up companies. He asked Dr. Frain if the spaces in the subject property were available to and used by the start-up companies and Dr. Frain replied in the affirmative. In reply to further questions Dr. Frain said that about one third of the companies are started by academics. They would come up with a proposal. Nova would decide if it is suitable and knowledge-intensive. For example, the Agmed company was set up by a chemical engineering professor with the object of monitoring heart disease. The company hopes to be commercially successful. It is also hoped that in a year or two they will “spin out” from the university and make their own way in the world. That is what is intended for the start-up companies. Nova UCD

operate a 9-month programme about setting up a business and entrepreneurs come in and give talks to research students.

Dr. Frain then gave evidence as to how the licensing works. Nova UCD first of all have the technology. Generally they would patent that technology and then the patent is licensed out to companies. In the case of the BSE test it was a “know how” agreement, not a patent. Nova UCD negotiate the deal with the company to commercialise or exploit the patent under a licence agreement. This agreement is between UCD and the company. A licence fee is paid to Nova Limited and this becomes part of Nova UCD’s income.

Training and development modules for Ph.D. students, short courses for researchers and lectures for undergraduates can take place in the campus or in the subject property. Meeting rooms in the subject property are used by UCD and by Nova UCD and there is some start-up company usage also.

As a result of a survey on European universities it was estimated that 15% of the operating costs of entities or centres like Nova UCD might be achieved after 3 years. This was 15% of their annual budget. This income was in the form of royalties. This shows that innovation and technology transfer makes very little profit. The purpose is to develop the economy. The projected income for Nova UCD for 2007-2008 is 27% of the total budget. This figure includes 19% from license fees. UCD would provide 36% funding and there would be 29% grants from other sources. This leaves an 8% deficit. However, Nova UCD are ahead of the average in Europe.

Asked if the licence fee for space in the incubation units could be increased where a company made money, Dr. Frain replied that the fee could not be increased as it was part of a contract and was only for a period of one year but could be renewed thereafter on a quarterly basis. He added that he wanted to see the companies succeed and thereby help the economy. He thought it unlikely for the licence fee to be increased where a company made a profit. The rents charged were not economic rents.

Dr. Frain said that, apart from UCD, the rest of their funding comes from State agencies, mainly Enterprise Ireland and the Higher Education Authority (HEA). There are codes of practice and guidelines for the management of innovation and technology transfer. There

are requirements on transparency, and these guidelines are part of the research contract awarded by the agencies such as the HEA. High standards are necessary to get overseas investment in the economy. Without these codes of practice no funding will come from the State. There is no funding from private sources, but people from outside companies do pro bono work and give talks to students. He added that the function of a university today was to try and use its knowledge to generate economic benefit. In Ireland we have been slow to take this on and it is vital for the future of our economy. The role of a university today is education, research and innovation and the three are interrelated.

9. Mr. Hickey then called Mr. Donal Doolan, Head of Financial Management in UCD and a Director of UCD Nova Limited to give evidence. Having taken the oath, Mr. Doolan said that Nova Limited is a wholly owned subsidiary of the university and is registered for VAT purposes. The university is exempt from VAT and is therefore unable to reclaim it. UCD gave a loan to the company to help finance the building and also took shares in the company to help finance the loan. UCD is the owner of the building.

Appellant's Legal Submissions

1. Mr. Hickey referred to his written submissions and said that UCD was the paramount occupier of the subject property. He cited **Carroll v Mayo County Council [1967] IR** where Judge Henchy referred to Lord Wright in the **Westminster Case 1936 AC 511** by stating that "*what is material is not necessarily the terms of the grant, but the de facto occupation which may be greater or less than the terms convey.*" UCD is the occupier of the subject property and uses it for educational purposes. The license agreement with Nova Limited is purely a device for VAT purposes.
2. Mr. Hickey said sections 12 and 13 of the Universities Act, 1997 were very important to the foundation of this case. He referred to section 13(2)(c), that a university "*may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university.*" Thus the old idea of a university as purely a teaching institution no longer applies. Mr. Hickey further stated that the object of a university as contained in section 12(f) is "*to support and contribute to the realisation of national economic and social development.*" The Universities Act, 1997 supports Dr. Frain's position that a modern university is no longer

just a lecturing institution, but engages in research and cooperates with the business world with a view to national economic and social development and is not for making profit.

3. Mr. Hickey cited the Tribunal determination in **VA04/1/001 - City of Dublin VEC**, stating that the Nova UCD programme is inextricably linked to the functions and objects of the university.
4. Mr. Hickey also referred to Paragraph 10 of Schedule 4 of the Valuation Act and said that the inclusion of the words “*by it*” in “*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...*” makes a change from the old law of section 38 of the Poor Law Relief (Ireland) Act, 1838. That Act referred to premises exclusively used for a particular purpose. This has changed. So, if the university is the rateable occupier and if the subject property is exclusively used “*by it*” for the provision of educational services, that is sufficient to pass the test. Minor use by other persons or bodies is not fatal to his case.

The Respondent’s Case

Mr. Conway did not call a witness. He made the following legal submissions:

1. He referred to the submission on behalf of the university by Mr. Hickey and to Dr. Frain’s evidence that the concept of a university has changed over the years as reflected in the Universities Act, 1997. Section 13 provides that a university may establish corporations and participate in trading and research as it thinks fit and it is perfectly valid for UCD to do this. UCD could not involve itself with incubation units and start-up companies unless permitted by statute to do so. While it may be perfectly valid for UCD to do so, all of this however, is completely irrelevant. For UCD or Nova UCD, the test is whether or not the criteria in Paragraph 10 of Schedule 4 are met and it was his submission that they were not met.
2. Exclusivity - The requirement is that the subject building must be used exclusively by the university for the provision of educational services. To say that any minor use by some one other than the university is not fatal to the appellant’s case is fundamentally flawed. According to the evidence of Dr. Frain there is much more than minor use by persons other than the university. The start-up companies are separate legal persons, distinct from

the university and they occupy the incubation units. They occupy and use the facilities of the subject premises, the meeting rooms and the canteen area and they interact with the employees of Nova UCD. The moving impulse of a start-up company is commercial and is not about teaching or educating people. The purpose is the creation of commercial momentum for the start-up companies; it is not about educating people. This is not “*the provision of educational services*” as envisaged in the Valuation Act. The purpose is commercial. The test is not about paramount occupancy, the test is about exclusivity of use, and UCD by language or logic does not have exclusive use of the subject premises.

3. Profits - UCD says it is not established for the purpose of making a profit and the rents charged to the start-up companies are not economic rents. Mr. Conway says that it is conceivable that a commercial rent could be charged to a company that is successful and making profit.
4. Paragraph 10 of Schedule 4 refers to expenses in providing educational services being defrayed wholly or mainly out of moneys provided by the Exchequer. That is not the case here. For 2007- 2008, via the licence fee, some 19% of the income of Nova UCD will be paid to its wholly owned subsidiary, Nova Limited.
5. Paragraph 10 of Schedule 4 refers to educational services being made available to the general public. Educational services are not provided here. Even if they were they are not available to the general public. Nova UCD interacts with people from the business world to promote commercial success.
6. The tests in Paragraph 10 of Schedule 4 are the only tests and they are not met.

Conclusion and Findings

Occupation

Nova UCD is a programme of the university and, according to the evidence, is similar to a department of the university. It has no separate legal identity and therefore as a programme of innovation and technology is an integral part of the university itself. It is UCD which has the license agreement, dated 5th September, 2006, with Nova Limited for the premises at Nova UCD, Belfield, Dublin 4. These premises are marked in yellow and pink on the plans.

However, from the evidence given by Dr. Frain, only the areas marked in pink are the actual subject property. An agreement with regard to the yellow areas never transpired.

To establish who the occupier is we look to the *de jure* and also to the *de facto* situation. Paragraph 8 of the license agreement indicates that there is a strong element of control by the University over “use” of the subject property by the licensee. The licensor can make regulations “*for the regulation of the use of the building*” of which the subject premises forms part. We then look at the *de facto* situation. In this we are supported by the authority cited by Mr. Hickey, **Carroll v Mayo County Council**. The *de facto* position may be more or less than the agreement contains. The factual position, according to the evidence, indicates that the use of the subject property, with the exception of part of the unmarked area under area 0.29 on the ground floor, is by Nova UCD and accordingly the university, UCD, is the occupier or paramount occupier of the subject property.

Other Issues

Mr. Conway said that although the Tribunal may determine that UCD is the occupier of the subject premises it makes no difference to their case as the subject premises is not used for educational purposes and therefore does not meet the requirements of Paragraph 10 of Schedule 4 of the Valuation Act, 2001.

The Tribunal agrees with the respondent that the requirements of Paragraph 10 of Schedule 4 must be met if UCD is to qualify for exemption from rateability under the Act. Under the provision it states:

“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)."

However, we look to Paragraph 10 in its entirety and a key word in the provision is "university".

First Test – Meaning of "University"

The first test is to interpret the meaning of the term "university" within the meaning of the Valuation Act. The Act does not give any meaning of the word "university". It provides terms or conditions which must apply but gives no definition of a university as it does for example of a charitable organisation. The Act came into force some 5 years after the Universities Act, 1997. If the legislator intended a restricted or traditional meaning of university, they could have stated so. Accordingly, it is fair and logical to conclude that the word "university" within the Valuation Act must be understood, as regards objects and functions, as expressed in the Universities Act and in sections 12 and 13 of that Act in particular. However, before looking at the particular sections, we first look to the concept of a university generally.

Concept of a University Generally

A university nowadays is like a pyramid. At the base of the pyramid there is an undergraduate programme which usually involves teaching rather than research, leading to a bachelor's degree. Next is the graduate programme leading to a master's degree which may involve both teaching and research. Finally at the top of the pyramid there is a doctorate programme which is the highest degree of the third cycle and is always done by research under supervision. Research, not just teaching, is a core activity of any university. As we shall see this is supported by the Universities Act, 1997 which provides that the main objects are the advancement of knowledge through teaching, scholarly research and scientific investigation. We bear these facts in mind when making our determination. With respect to UCD, it is interesting to note that the top listed universities in the world like Harvard, Cambridge and Oxford are at the top of the list because of their high standards of research. Much of this research is done in collaboration with business. For example, Cambridge University is collaborating with British Airways on research on aircraft emissions.

The Law

Under the Universities Act, 1997 we look in particular to the relevant provisions of sections 12 and 13 which are, *inter alia*, as follows.

Section 12 -Objects

The objects of a university include:

- “(a) the advancement of knowledge through teaching, scholarly research and scientific investigation,*
- (f) to support and contribute to the realisation of national economic and social development,*
- (h) to promote the highest standards in, and quality of, teaching and research.”*

Section 13(2) - Functions

A university:

- “(b) shall promote and facilitate research,*
- (c) may establish by incorporation in the State or elsewhere or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, a university,*
- (d) may collaborate with educational, business, professionaland other interests, ... to further the objects of the university.”*

The activities of UCD through Nova UCD are research and innovation and the transfer of technology into the economy through licensing agreements, through cooperation with business and the transfer of technology into the economy which must by its very nature contribute to the realisation of national economic and social development. While teaching may be more related to undergraduate level, the advancement of knowledge through scholarly research and scientific investigation are at the core of Nova UCD's or the University's activities. Accordingly, there is no doubt in our minds that the work Nova UCD does conform with the provisions of the Universities Act and, therefore, within the meaning of "university" with the provisions of the Valuation Act, 2001. And this must involve not just teaching, but research, innovation and collaboration with business with the object of

economic and social development. Therefore, the first test is passed. However, UCD is far from out of the woods for it must meet the criteria in Paragraph 10 of Schedule 4.

Second Test - Exclusivity “.... and used exclusively by it for the provision of the educational services”

Mr. Conway says that the test is not about paramount occupancy but exclusivity of user for the provision of educational services as required by Paragraph 10 of Schedule 4. Mr. Conway says this is not the case. He asks how UCD can claim exclusive use of the subject premises for the provision of educational services when start-up companies, whose object is commercial, use the meeting rooms and other facilities in the subject premises. The provision states that the building occupied must be “used exclusively *by it*”. This means that any other user is debarred from using it. Further, Mr. Conway does not regard the activities as educational in nature but to promote the commercial success of the start-up companies. Even if the activities were educational, he submits, there is still no exclusivity of user which is required by the Act.

There are start-up companies and outside companies which use the subject premises. While the incubation units are outside the subject premises, the people from these companies, which are separate legal entities from UCD, use the subject premises - the restaurant and the meeting rooms - and they interact with the 14 staff members of Nova UCD.

The Tribunal addresses the exclusivity issue by looking at the broader picture of a university as understood within both the Universities Act and Valuation Act. Part of the function of a university is that it may collaborate with the business community to further the objects of the university. We ask how these objects and functions of a university could be fulfilled if people from the start-up companies cannot use the facilities at the subject premises. Moreover, this collaboration also involves people coming in to give lectures or seminars relating to the business aspects of innovation and technology. Further, a Ph.D. research student could discuss matters informally with a business person over a cup of coffee. If there was no interaction between the university and the companies in this way, the university would be frustrated in both its objects and functions as stated in the Universities Act. Surely this is not the intention. If the exclusivity principle was applied in such a rigid way the university could not function. Accordingly, we see the interaction of the university and business in this way as

inextricably linked to the functioning of the university and thus, in these circumstances, the principle of exclusivity is not violated.

Third Test - Educational Purposes

Is the use of the subject premises use for educational purposes? This test is linked to the second test. Mr. Conway approaches the question from the perspective of the companies and says the use is commercial. The companies set out to achieve commercial success and that is the reason UCD brings them to the sheltered environment of the campus with the expectation of “spin off”. We approach this question from the point of view of the university itself, which occupies and owns the subject property. There is no doubt in our minds that the activities of Nova UCD advance knowledge related to research, innovation and technology. Knowledge is the key word and the object of any university is to advance knowledge. (section 12 of the Universities Act) It follows that the activities of Nova UCD must be for an educational purpose. The companies themselves may be commercial, but that is another matter, as they are located outside the subject premises and while they may collaborate with the university, they are not the university. *Simpliciter*.

Fourth Test - Profit

The university is not established to make a profit. The main activity of the Nova UCD programme is innovation and technology and the transfer of this technology through patents and know-how agreements out into the economy. The object is to enrich economic and social development, not to make a profit. If the companies concerned make a profit, well and good, but they are not the university. If the university does get income from royalties they are few and far between. There is only one outstanding case, the BSE or “mad cow” test where the know-how was licensed to a small company in 1996, and the university did make a profit of €2 million over 7 years. This was exceptional. Besides, any profit which might be made is ploughed back into research. Moreover, considering the Dublin 4 location in Belfield, the university does not charge economic rents for the innovation units. Also, based on the survey mentioned earlier, similar research, innovation and technology centres in Europe earn some 15% of the operating costs over a three year period. This is hardly what one would call profit producing. With the long term objectives being economic and social, one could not say that the university and its programme were established to make a profit. Accordingly, the university passes the profit test according to Paragraph 10 of Schedule 4 of the Valuation Act, 2001.

Fifth Test - Expenses

Are the expenses incurred in providing the educational services defrayed wholly or mainly out of moneys provided by the Exchequer? Most of the funding comes from the university itself, which is a State university established by the Irish Universities Act, 1908 and from State agencies like Enterprise Ireland. Evidence was given that there was no private funding. Other funding comes from Nova Limited, wholly owned by UCD, which receives income from the license agreements on rented space at the university. The expected income for the Nova programme for 2007-2008 is only about 27% (including 19% from license fees.) of the annual budget, the rest of the funding of 36% and 29% coming from the university and state agencies respectively, leaving a deficit of 8%. While the expenses may not be “wholly” defrayed by the State, they appear to be “mainly” defrayed by the State, directly or indirectly. We are satisfied that the conditions in Paragraph 10 of Schedule 4 are met.

Sixth Test - General Public

As stated in Paragraph 10 the educational services concerned must be made available to the general public. We are also satisfied that the activities of Nova UCD are available to the general public by admission to the university in the first place, and offer opportunities in research and innovation for undergraduate and post graduate students in particular who wish to follow that particular path of scientific investigation. Again, as the university, UCD, is the occupier, the matter must be approached from the perspective of the university and what it does, and not from the perspective of the companies who are outside the subject property. The Tribunal concludes that the educational services are available to the general public.

Thus we are satisfied that the university or Nova UCD meets the requirements of Paragraph 10 of Schedule 4 and, accordingly, the subject property occupied by the university is relevant property not rateable under Schedule 4 of the Valuation Act, 2001.

And the Tribunal so determines.