AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

TRIBUNAL REF NO: CAT2024-001

UNDER SECTION 39 OF THE CHARITIES ACT 2009

Appeal of Tuckey Street Lodge Building Company Limited by Guarantee

Appeal against Charities Regulator Decision of the 23 May 2024, communicated by letter 12 June 2024 refusing the application to be registered in the Register of Charities

Determination in relation to the hearing held 2 October 2024

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THE CHARITIES TRIBUNAL AND MEMBERSHIP

1. The Charity Appeals Tribunal ("the Tribunal") was established under Section 75 of the Charities Act 2009 ("the Act"). The Tribunal is a statutory body established with effect from 1 August 2016. The function of the tribunal is to hear and adjudicate on appeals against certain decisions of the Charities Regulator, under Section 45 of the Charities Act 2009.

2. The members of the Tribunal at the time of the hearing of the Appeal were:

- Patrick O'Connor (Chairperson),
- Nuala Dockry BL,
- Carol Fawsitt,
- Bill Holohan SC, and
- Karen Horgan.

THE APPELLANT CHARITY

3. The name and address of the Appellant Charity is Tuckey Street Lodge Building Company Limited by Guarantee, ("the Appellant" or "TSLB") having a registered office at The Masonic Hall, 27 Tuckey Street, Cork, Cork, T12 Y232.

THE RESPONDENT AUTHORITY

4. The Respondent Authority ("the Authority") is the Charities Regulatory Authority established under section 13 of the Act.

BACKGROUND TO THE APPEAL

5. Prior to the establishment of the Act and in particular its Part 3 (section 39) which came into operation on 16 October 2014, there was no requirement for any charitable organisation operating in the State to register with any government authority. Those who had, as of this October date, an entitlement to an exemption under section 207 or section 208 of the Taxes Consolidation Act 1997 and held a CHY number provided by the Revenue Commissioners,

were deemed to be automatically registered in the Register of Charities ("the Register") established under section 39 of the Act. Such bodies were not obliged to apply for registration under the Authority's registration process.

6. The Appellant was incorporated on the 19 February 2023 and did not have exemption from the Revenue Commissioners.

THE APPLICATION

7. The Appellant, on 9 February 2023, submitted an application (Submission number SR 87199), for registration.

8. In identifying the Main Object, the Appellant stated:

> *"The Restoration of Masonic Hall, Tuckey Street, Cork, reflecting its heritage and history back to the 18th Century. It will operate both as a Masonic Hall and as a Cultural Centre for the use and enjoyment of the people of Munster. The restoration will be achieved by organising concerts and other cultural events in the Hall. All profits made from these events will be solely used for the restoration and maintenance of the Hall."*

9. In relation to Charitable Purpose, the Appellant stated that it was benefiting areas by:

> *"Preservation of buildings and ancient sites", this purpose being achieved by "providing a supportive place to view/appreciate arts and crafts"*

and

"Providing a supporting heritage or other visitor attraction".

10. In relation to Outcome Setup, the Appellant stated it would achieve this:

> *"By the upgrading and Restoration of the Masonic Hall, Tuckey Street, Cork, for the Public and Masonic membership benefit, achieving this by being a conduit for Government grants & Donations, and giving a structure to allow Heritage, arts & Cultural use of the Hall."*

11. In relation to a summary of activities and planned activities, the Appellant stated that it intended:

> *"To improve the fabric of the building known as The Masonic Hall (Tuckey Street, Cork) and develop facilities therein for use. The company will promote the Hall and mange those utilizing in for Non Masonic Activities".*

12. In relation to Beneficiary Selection Policy, the Appellant stated:

> *"Beneficiary will apply to the Board. Application is open to any activity which is not in conflict with the operation of an active Masonic Hall. The Company itself will not charge a fee for its own services. The Board reserves the right to wave fees / charges as it sees that as appropriate."*

13. In response to the query as to how the Appellant intended to fund its activities. The Appellant stated:

> *"Government, public body or local authority*
> *Philanthropic organisations*
> *Corporate sponsorship / donations*
> *Other Donations from Members of the Masonic Ledges in Cork."*

14. The use of the land or property owned by the Appellant was identified as: "*As a Masonic Hall*".

15. With this application, the Appellant also submitted:

Constitution or other governing document	TSLB Constitution	BC273910
Planned Charitable Activities Strategic	Plan for the Years 2023/24	BC273927
Business Plan	Financial Plan 2023/24	BC273930
Trustee Declaration	Gerard Murphy Trustee	BC273936
Trustee Declaration	Neville Sweetnam	BC274225
Trustee Declaration	Adam Murphy	BC274226
Trustee Declaration	John Barry Jenkins	BC274227
Conflict of Interest Policy	Managing-Conflicts-Of-Interest	BC273917

Other Additional	Data Information Pack on the Upgrading Project 07022023	BC273937
Other	TSB-CLG Code of Conduct 06022023	BC274228
Other	Managing-Conflicts-Of-Interest	BC274229

REVISED APPLICATIONS

16. Revised applications were submitted by the Appellant on:

- 3 April 2023 (Submission number SR 87199).
- 6 August 2023 (Submission number SR 87199)
- 20 September 2023 (Submission number SR 87199).

MAIN OBJECT

17. The Constitution of the Appellant company identified its main object as follows:

> *"The Restoration of Masonic Hall, Tuckey Street, Cork, reflecting its heritage and history back to the 18th Century. It will operate both as a Masonic Hall and as a Cultural Centre for the use and enjoyment of the people of Munster. The restoration will be achieved by organising concerts and other cultural events in the Hall. All profits made from these events will be solely used for the restoration and maintenance of the Hall."*

18. The Constitution of the Appellant company identified subsidiary objects as follows:

> "As objects incidental and ancillary to the attainment of the Main Object, the Company shall have the following subsidiary objects:
> Activities in line with the Main Objects only"

CORRESPONDENCE WITH THE REGULATOR

19. On 14 March 2023, by email at 12:47 hours, the Regulator requested the Appellant to submit a Strategic Plan and a Business Plan. Updated documentation was filed by the Appellant.

20. On 5 April 2023, the Regulator informing Appellant that the application had completed phase 1 of the application process and would be referred to a Registration Case Officer.

21. On 2 August 2023, by email at 11:28 hours, the Des Molloy (Case Officer, Registration and Reporting Unit), of the Regulator advised the Appellant that the application was that the charity test stage. The Appellant was requested to update and file:

(a) Beneficiary Selection Policy,
(b) More details of proposed activities,
(c) Amended Constitution (with specific reference to winding up clause),
(d) Amended Application Form to identify the main object using same wording as the constitution,
(e) Information in relation to any regulating bodies,
(f) Bank statements for the preceding 6 months,
(g) Information in relation to properties owned,

and

(h) Information in relation to trustees

22. On 18 August 2023, by email at 11.21 hours, Des Molloy (Case Officer) of the Regulator advised the Appellant that as it was more than 6 weeks since trustees had signed declarations, confirmation was required that the trustees were still qualified to hold the position of trustee.

23. In response, Mr. Gerard Murphy, Director of the Appellant, by email on 18 August 2023, at 13.01 hours, confirmed to Mr. Molloy that the trustees listed on the application were still qualified to hold the position of trustee.

24. On 23 August 2023, by email at 09.33 hours, Mr. Des Molloy (Case Officer) of the Regulator, requested the Appellant to provide:

(a) A copy of the Licence Agreement in relation to the use of the building.
(b) An Organisational Structure Chart clearly identifying relationships and control structures between proposed charity and all of the charities which relate to the Freemasons in Ireland and any associated entities.
(c) Information as to how the private benefit to be afforded to the owner of the building, was to be regarded as reasonable, ancillary and necessary.

25. A licence agreement (dated October 2023), providing for an annual licence fee of €10), between The Provincial Grand Lodge of Munster (as licensor) and Tuckey Lodge Building CLG (as licensee) was submitted. A relationship chart was also submitted.

26. In response to the query regarding private benefit, the Appellant responded:

"The Provencal Grand lodge of Munster is not a private entity in the true meaning. It is simply a Council of Masonic Members elected by the wider membership of the Masonic Order, Membership of which is open to all persons subject to few restrictions.
The current use of the building by Masonic bodies for Masonic meetings etc is circa 210 hours a year.
At present the building is accessed by the Public on Friday mornings, at Recitals and Heritage events for circa 220 Hours a Year.
Total current building usage circa 430 Hrs a year
The Building in its existing Structure can continue to be used strictly for Masonic purposes, as the numbers attending varies from 5 to 35, however in Recent years it has been used for Recitals Concerts), and on Heritage week and Heritage day.
In these cases, the numbers at any one time on the premises swell to 200+, which it is no longer suitable for. Hence the extension & renovation has been triggered by this non-Masonic activity.
Persons in wheelchairs & less abled for stairs cannot at this point access beyond the Ground Floor.
In addition, the Ground Floor only has been opened to the Community each Friday morning, for Tea / Coffee where local residents utilise same. There is no restriction

on access, Access to the upper floors is at present restricted due to upgrading being required for increased activity.
While the masonic bodies will indeed benefit from the activity of the CLG, at present that benefit will be limited to allowing older less abled persons access upstairs.
The development will allow the much wider use of the facility and further introduction of the facility into the community.
Cork City council have requested Public access 20 hours a month as a condition of the property transfer, this is already been met (sic) *by the Friday mornings & the Concerts / Heritage Day / week activities.*
With the total current annual usage by Public (Non Masonic) circa 210 Hours a year , however we envisage this moving up to circa 500 depending on volunteers and groups.
The Benefit to the Masonic order for use will indeed be Beneficial, however the greater benefit will be increased ability of public Access to the whole building, it is for this reason that the project has been supported by Cork City Council, in that they have Granted Planning permission and
Seeded 56 Sq. Meters of Public Realm lands to facilitate the works."

NOTIFICATION OF INTENTION TO RECOMMEND REFUSAL

27. The Registration Unit of the Regulator issued a notice to the Appellant dated 8 February 2024, indicating the reasons why the Unit was of the view that the Application should be refused.

28. The Appellant responded to the notice on 6 March 2024.

DECISION TO REFUSE APPLICATION

29. By letter dated 12 June 2024 from the Regulator to the Appellant, the letter confirmed that on 23 May 2024 the Board of the Charities Regulatory Authority ("the Board") refused the application to be registered.

30. At paragraph 3 of the Decision, it was indicated that the Board was of the view that the Appellant was engaged "*in mixed purposes*" and did not therefore promote a charitable

purpose only and was of the view that the potential private benefit outweighs any potential public benefit.

31. At paragraph 10 of the Decision, it was stated that in the view of the Board, while the use of the Building as a cultural centre might advance the Appellant's charitable purpose, the Appellant had not demonstrated how the use of the building as a Masonic all advanced its charitable purpose and the Board was of the view that the Appellant was established for mixed purposes and was not advancing a charitable purpose only.

32. At paragraph 14 of the Decision, it was stated that the restoration and improvement of the fabric of the building would increase the value of the building itself.

33. At paragraph 15 of the Decision, it was stated that the Appellant did not own the Building and therefore the increase in value of the Building would accrue to the benefit of the owner of the building, who would benefit from the restoration.

34. At paragraph 16 of the Decision, it was stated that the Board was of the view that the increase in the value of the building would accrue to the owner of the building, thereby conferring a benefit on the owner, other than in the owner's capacity as a member of our section of the public.

35. At paragraph 19 of the Decision, it was stated that the Board was of the view that the Appellant had been established for the primary purpose of restoring the Building and any benefits that may accrue to the public was secondary to this purpose, and that the Borders of the view that the benefit which would accrue to the owner of the Building was not reasonable in all the circumstances, ancillary to and necessary for the public benefit.

36. At paragraph 20 of the Decision, it was stated that the Board noted the use of the building by the Masonic Order for Masonic meetings, which was of benefit to the Masonic order, and that the view of the Board was the Appellant had not demonstrated that this benefit to the Masonic order was reasonable in all the circumstances, ancillary to and necessary for the furtherance of public benefit.

37. At paragraph 21 of the Decision, it was stated that the Board was of the view that the private benefit to the owners of the Building and to the Masonic order was not reasonable in all circumstances, ancillary to and necessary for the public benefit, and as such, the Appellant was not promoting a charitable purpose with charitable benefit.

38. At paragraph 22 of the Decision, it was stated that for the reasons outlined above, the Board was not satisfied that the Appellant was a charitable organisation within the meaning of the Act and consequently the Board was refusing the application made.

APPEAL

39. The Appellant duly entered an appeal dated 1 July 2024 against the Decision of the Authority. In the Appeal, the Appellant submitted the following further additional information:

> ***Promote a Charitable Purpose***
> *The Registrar in Point 10 of the Decision states:*
>
> *"the Appellant has not demonstrated how the use of the Building as a masonic hall advances its charitable purpose"*
>
> *The function of the Appellant is to preserve the building that it may continue to support the activities therein which are of both a Community and Masonic nature.*
>
> *Masonic activities are primarily comradery between members and the raising of funds for charities from the Members. Use of a Masonic Hall facilitates this activity. In the past monies have been raised via the activities held in this building alone for:*
>
> *The Ukraine appeal*
> *St Vincent de Paul*
> *Teddy's for Loving Care (Children in A & E)*
> *The Irish Heart Foundation*
> *Simon Community*
> *The Samaritans*

ADVIC – Advocates for victims.
Cork Penny Dinners
Guide Dogs for the Blind
R.N.L.I.
Cork University Hospital Charity Fund
The Carers association
Cork Choral Festival
Kilworth Village Theatre
The Royal British Legion – Ireland Branch

Plus, the Masonic Charities which have benefit from the facility:

Victoria Jubilee Masonic Annuity Fund (Widows / Orphans / Education)
Provincial Grand Lodge of Munster Masonic Benevolent Fund (For Widows)
Masonic Benevolence Fund

In addition, from a Community position
Tea / Coffee Morning every Friday for any Public / Local Resident to attend.

The building has ben (sic) *made available free of charge to all parties, the overhead has been covered separately by the Masonic Members.*

The maintenance of the building and upgrading will allow upon completion for the Appellant to promote the building more usefully within the Cork City and the Munster district, than heretofore.

Public Benefit Assessment
Paragraphs 13 to 19 appear concerned that the work on the Building, the Masonic Hall in Tuckey Street, Cork will accrue a benefit to an individual.

The building is ownership (sic) *is held under a Trust Deed of 1925, whereby all of the Masonic Lodges based in Cork City maintain a Trustee and the Building is under their guidance.*

This is a Public Trust composed of members all of whom are long serving volunteers of the Masonic Order.
It is akin to the ownership of similar assets by non-for-profit organisations. E.g. Churches, Community halls, etc.

The current Open Market Value is estimated at €650,000 (having made enquiry)
The cost of works is estimated at €1.6M
The Open Market value of the building after works is estimated at €750,000 (having made enquiry)
The works will not make a major difference to the valuation of the building.

The Appellant is therefore not promoting a benefit to the "Owners". The entire project is simple a facility for the preservation of the hall for both the Masonic Order and for the Public to utilise.
It was on this basis that Cork City Council has supported the project by the ceding of 590 Sq. Ft of land from Bishop Lucey Park in Cork City which is at the back of the Masonic Hall to facilitate the construction of a Lift Shaft and additional Stairs / Fire Escape.

As part of the City Council donation, it is conditional that the building be used for Public |Activities; the level of which has grown exponentially over the past fifteen years.

Technical point regarding the building:
It was constructed as an Assembly Rooms. – Theatre in the 1760s, and has operated as a Masonic Hall since 1844.

Point 20 Use of the Building for Masonic Meetings.
The Regulator states: "The Appellant has not demonstrated that this benefit to the masonic order is reasonable in all circumstances. Ancillary to, or necessary for the furtherance of the public benefit"

The use of the building by the Masonic Order is not a liability to the operation of the building and public activity as may be construed from this statement.
An analysis of the usage of the building by Public v Sole Masonic use was included with the submission. See Appendix 2 (Extract) and which is now summarised in Appendix 1, attached.

In short, the results are:

Use of the Building by Non-Member Public as a % of Hours of use is 66.27% -
With the balance being Masonic member use.
In addition, one will note from an analysis of the spreadsheet summary of annual use of the hall, that the number of persons who are non-members, who attend various tours, and events during the calendar year is in the order of 91.9%.

I believe that the building today supports Arts, Culture & Science as well as being a support to many charities; such activity, I believe, quality as a charitable purpose.
What the Appellant is doing is facilitating the restoration project & development of the Masonic Hall into an improved facility benefiting the Public and the Masonic membership; the majority of benefit accruing to non-members.

The principal points being

1. *There is no personal financial gain.*
2. *The works on the Masonic Hall are necessary to allow even the existing activities continue.*
3. *The increase in value of the property is less than 7% of the Funds needed to for this project.*
4. *In this way it is like most Public Realm / restoration projects.*
5. *The upgraded Hall will much improve its usage in the areas already listed in Appendix 2.*
6. *This project will assist less abled Freemasons to access the upper floors of the building, but also the non-masonic attendees at the various events.*

THE APPEAL HEARING BEFORE THE TRIBUNAL

40. The appeal hearing took place at the offices of the Residential Tenancies Tribunal at O'Connell Bridge House, Dublin 2, 2 October 2024.

REPRESENTATION AT THE HEARING

41. The following parties appeared at the hearing.

On behalf of Appellant:	Mr. Gerard Murphy	(Director and Trustee)
	Mr. David Butler	
On behalf of Respondent:	Brian Gageby BL	(Counsel for the Authority)
	Mr. Alan Fitzgerald	(Legal Advisor, Charities Regulator)
	Mr. Thomas Fleming BL	(Devil to Mr. Gageby BL)

TRIBUNAL MEMBERS

42. The following sat as members of the tribunal.

Patrick O'Connor, Chair
Nuala Dockry BL
Carol Fawsitt
Karen Horgan
Bill Holohan SC

43. At the opening of the hearing, the Chair and the members of the tribunal introduced themselves. In the interests of full disclosure, Mr. Holohan indicated that both he and Mr. Murphy (both being from Cork), knew each other professionally quite well, Mr. Murphy being described by Mr. Holohan as a "*very renowned and respected practitioner in the Insolvency world, in particular*", and that their "*paths crossed on many occasions*".

44. The Chair asked Mr. Gageby if that disclosure by Mr. Holohan gave rise to any difficulties. Mr. Gageby confirmed that none arose.

45. The Chair invited Mr. Gageby to indicate who was in attendance on behalf the Regulator and Mr. Gageby did so, confirming that he was instructed by Mr. Alan Fitzgerald, and he was also attended by Mr. Thomas Fleming, his pupil.

46. The Chair invited Mr. Murphy to introduce who was in attendance on behalf the Appellant. Mr. Murphy introduced himself as a practising accountant and director of the Appellant company, indicating that he was accompanied by Mr. David Butler, who was not a director of the board, but was very familiar with the activities of the building at Tuckey Street, and the activities conducted there.

47. The Chair referenced the documentation before the Tribunal and indicated that the Tribunal members were familiar with same.

48. Following some exchange in relation to the nature of the documentation before the Tribunal, Mr. Murphy referenced the reasons for the appeal. He referenced the nature of the building in Tuckey Street ("the Building"), its ownership and use as a masonic lodge hall. He referenced the hours of use for different purposes. Mr. Butler also spoke in relation to the use the building and access issues.

49. Mr. Murphy also referenced issues in relation to fundraising, both nationally and internationally, and questions which arose in relation to whether the Appellant had charitable status.

50. In response to questions from the Chair, Mr. Murphy confirmed that the Masonic Lodge would be granting a licence for use to the Appellant.

51. The Chair invited Tribunal member Ms. Fawsitt to ask any questions she might wish to put. In response to a question, Mr. Murphy confirmed that the Applicant Company was registered prior to making application for charitable status. Ms. Fawsitt referenced the main object of the company's Constitution, identifying the restoration of the Masonic Hall as its main object. Mr. Murphy acknowledged this was correct. Ms. Fawsitt enquired where was the charitable benefit in this object?

52. In reply, Mr. Murphy indicated that there would be a mixed use of the building, the Appellant making use of the Building in conjunction with the Masonic Lodge, the Appellant planning to "*bring structure into the activities*" carried on in the Building.

53. In response to a further question focusing on the issue of the charitable benefit in the object, Mr. Murphy indicated that the primary charitable purpose was to develop the facility, to be upgraded and to be structurally adapted to make it available for the greater benefit of the community, not just the members of the Masonic Lodge, particularly through the installation of a lift.

54. Ms. Fawsitt pointed out that the primary purpose object identified was the restoration of the Building, that this was not a charitable purpose and that any charitable benefit would be secondary, not primary.

55. Mr. Holohan pointed out that the restoration of the Building was identified as a time-limited primary objective, but that Mr. Murphy had identified a 2nd ongoing objective i.e. the provision of a cultural centre, but the Constitution did not identify the secondary objective, either as an enduring benefit or as a charitable purpose. Mr. Murphy acknowledged that it should be the other way around.

56. Mr. Holohan pointed out that a building project in the view of the Regulator was not a charitable purpose. Mr. Murphy acknowledged this.

57. Mr. Holohan pointed out that what the Appellant had identified as a secondary ongoing objective, was not identified as a primary charitable purpose. Mr. Murphy acknowledged this.

58. Ms. Fawsitt referenced the need for public benefit, and the definition thereof, pointing out that the company was incorporated with a view to restoration of the Building and only subsequently was consideration given to the question of an application for charitable status. In response, Mr. Murphy said that both were under consideration, but the focus was on the building project. He said he could see the point being made by the Tribunal members.

59. Ms. Fawsitt enquired if this issue had been raised by the Regulator with the Appellant and Mr. Murphy said that while the Regulator had been very helpful in certain respects, as a result of which there had been a number of revisions of the application, this issue had not been raised. Mr. Butler said that the Tribunal members with the first people to raise this issue with them. Mr. Murphy indicated that there would be no difficulty in amending the Constitution.

60. In response to further questions a discussion ensued in relation to the transfer of land by Cork City Council for the purposes of the intended project, and conditions attached by Cork City Council.

61. In response to questions from Tribunal Member, Ms. Horgan, Mr. Murphy clarified the position in relation to registration with the Revenue Commissioners and tax exemption status.

62. In response to a question from the Chair, Mr. Murphy acknowledged the benefits that would accrue to members of the Masonic Lodge as a result of the installation of a lift.

63. In response to a question from the Chair, Mr. Murphy confirmed that all members of the CLG were members of the Masonic Lodge, but not necessarily officers of the Masonic Lodge.

64. In response to a question from the Chair, Mr. Murphy confirmed that all necessary filings had been lodged with the Company Registration Office ("CRO").

65. In response to a question from Tribunal Member, Ms. Horgan, Mr. Murphy clarified the reason for the establishment of the Appellant as a special-purpose vehicle, rather than the Masonic Lodge itself undertaking the project. He also referenced the stable membership of the CLG, whereas the officers of the Masonic Lodge would change on an annual basis.

66. In response to questions from Tribunal Member Mr. Holohan, in relation to the activities of various Masonic charities, and non-Masonic charities, Mr. Murphy clarified that the Masonic orders themselves were not a charity, because charity regulations, according to his understanding, would not allow a charity to make donations to another charity.

67. In relation to the question of the lift in particular, Mr. Murphy explained that the level of usage by members. The Masonic order would be a small percentage of the level of usage, so would be non-Masonic members of the public, who in the main would benefit from the lift. Mr. Murphy said that the 8% level of usage of the lift by members of the Masonic order, would be incidental to the public benefit.

68. Tribunal Member Mr. Holohan referred to the information which had been submitted by the Appellant to and considered by the Regulator and pointed out that further information now available had not been submitted to and considered by the Regulator. Mr. Holohan pointed out that the Tribunal could only consider the information available to the Regulator and this point was acknowledged by Mr. Murphy.

69. In relation to the question of the amending of the constitution, Tribunal Member, Ms. Fawsitt pointed out that the Appellant had received a letter of 2 August 2023 in relation to the need to amend the Constitution to amend the reference to winding up provision, and the need to have the wording of the application in relation to the main object correspond with the wording of the Constitution, but no reference had been made to the necessary to change the primary object. Mr. Murphy confirmed that there would have been no difficulty in making such an amendment if it had been requested by the Regulator. Ms. Fawsitt pointed out that it was not for the Regulator to direct the objectives of the Appellant.

70. In response to questions from the Chair, Mr. Murphy also acknowledged that the beneficiary of any capital enhancement of the Building, given that the Appellant would only have a 12-year licence in relation to use the Building, would be the Masonic Lodge.

RESPONSE FROM THE REGULATOR

71. In response, on behalf of the Regulator, Mr. Gageby said that he would accept that one feature of the case law is that an organisation can be engaged in positive contributions towards the community in various respects but may not necessarily meet the definition of a charity. He said it certainly seemed to be the case that some of the activities of the Appellant in making the premises available for public use and in the advancement of arts and culture was very laudable, but the issue for the Tribunal was the same as had arisen a number of court cases, i.e. whether or not the statutory definition of charitable status and criteria were met.

72. Mr. Gageby said that there were 3 issues he wished to address. He said the first was the Act. He said that secondly, he then wanted to deal with 2 English cases and one more recent Irish case in relation to the issue of membership organisations and when they may or may not be considered charities. The third issue he said was the reasoning of the Regulator and why he would say it was correct.

73. Mr. Gageby said that he noted that Mr. Murphy accepted that the activities of the Appellant were mixed, and while there was nothing wrong with that, and indeed it was "*entirely laudable",* it is not a charitable purpose only. He also said that the benefits that accrue to the Masonic Lodge, whether it was the increase in value of the Building that would accrue as a result of the proposed works, was not an ancillary purpose, it was one of the main purposes. Consequently, he said he would have to suggest that it rendered it difficult for the Appellant to meet the statutory definition.

74. Mr. Gageby referred to the definition section of the Act, section 2, and the definition of a charitable organisation which "promotes a charitable purpose only." He said that the use of the word "only" was important. He said this section of the Act was codifying earlier case law. He referenced charitable activities carried on by commercial profit orientated companies, who are not charities.

75. He then referred to section 3 and the necessity for "public benefit" and the issue of incidental benefit. He said he would refer to 3 cases dealing with the issue of membership organisations. He firstly referred to the decision in the Commissioner of Inland Revenue v City of Glasgow Police Athletic Association, [1953] UKHL 1, [1953] AC 380, the Association in that case being open only to members of the Glasgow Police Force. He quoted extensively from the case in relation to the issue of the private benefit to members, particularly: "*The private advantage of members is a purpose for which the association is established and it, therefore, cannot be said for this, an association established for public charitable purpose only*".

76. Mr. Gageby then referred to the decision in The Commissioners of Inland Revenue v The Yorkshire Agricultural Society [1928] 1 KB 611. He again quoted extensively from this case report in relation to the issue of ancillary benefit.

77. Mr. Gageby said that finally he would refer to the decision of Mr. Justice Charlton in the case of National Tourism Development Authority regarding Killarney Golf Club, (Tourism Development Authority -v- Coughlan & Ors. [2009] IEHC 53). He referenced Mr. Justice Charlton approving of the decision in the Yorkshire Agricultural Society case.

78. Mr. Gageby again referred to the issue of mixed-use, and ancillary benefit, submitting that on the facts, the Appellant could not succeed.

79. There was a brief exchange between Mr. Gageby and Mr. Murphy in relation to the appropriate percentage level of use of the building by members of the Lodge.

FURTHER QUESTIONS

80. Tribunal Member Ms. Horgan posed a query in relation to the registered Masonic charities, and Mr. Fitzgerald indicated that he understood that they would have been registered on the Register through the grandfathering scheme under section 40.

81. In response to a question from Tribunal Member, Ms. Horgan, a discussion also ensued in relation to the issue of a charity donating money to another charity, it being pointed out by Mr. Fitzgerald that if money were raised by or donated to a charity for its particular charitable purposes, if donated to another charity, with different charitable purposes, the funds would not then be dispersed on the charitable objectives of the first charity. He said the issue would be case and facts specific.

82. Tribunal Member, Ms. Horgan also referenced a report that the Regulator had carried out in 2016 and 2017 in relation to four charities, set up as special purpose vehicles under section 110 of the Taxes Consolidation Act, (with shareholding) which were subsequently deregistered. Ms. Horgan indicated that she was interested in the Regulator's views in relation to Appellants having Revenue recognised special purpose vehicle status.

BREAK

83. The hearing having concluded, there was a break in the proceedings, allowing for lunch.

DECISION

84. After lunch, the Chair indicated that the Tribunal members had met and discussed and considered the matter. He said that the Tribunal members were very admiring of the work being undertaken by the Appellant and were very appreciative, from the point of view of the people of Cork and the greater Munster region, of that work. The Chair indicated that there is no doubt whatsoever that the work when completed, would be to the broader public interest and of benefit not just to the members of the Masonic Lodge, but those involved in the work of the Appellant, which was to be admired, as the work was very beneficial for the area and the public.

85. However, the Chair indicated that notwithstanding the foregoing, the Tribunal was constrained by the law as to whether or not the Appellant could satisfy the criteria set out in the Charities Act 2009 to be a registered charity. He said that the hearing disclosed that the long-term intentions of the Appellant were to carry out work of a charitable nature, but that it had been acknowledged that the company had been established for the purposes of restoring a building and that was the stated primary object. He indicated that in those circumstances, the Tribunal members were constrained by the law and had concluded that they could not reverse the decision of the Regulator in relation to the Application and therefore had to dismiss the appeal.

Dated this 04 day of February, 2025

Patrick O'Connor,

Chairperson,

The Charity Appeals Tribunal