Appeal No. VA07/3/036

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Killerig Golf and Country Club Rentals **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Aparthotel at Lot No. 1/3, Bannogephlure, Grangeford, Carlow, County Carlow

B E F O R E

Fred Devlin - FSCS.FRICS **Deputy Chairperson**

Brian Larkin - Barrister **Member**

Aidan McNulty - Solicitor **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF NOVEMBER, 2007

By Notice of Appeal received on the 24th day of July, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €642.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, a copy of which is attached at the Appendix to this Judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 9th October, 2007. At the hearing the appellant was represented by Mr. Brian O'Shea, BL, instructed by Mr. Fergal Browne, Solicitor. Mr. Paul Browne, Director of the Appellant company, gave evidence on its behalf. Mr. Denis McDonald, SC, and Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent. Ms. Orlaith Ryan, MIAVI, B.Sc. (Surveying), Dip. (Property Economics), District Valuer with the Valuation Office gave evidence on behalf of the Respondent.

The Property Concerned

The property concerned is known as Killerig Golf Lodges and is located in a rural setting in the townland of Bannogephlure, Co. Carlow, approximately 5 miles from the village of Castledermot in Co. Kildare. The property comprises 37 Holiday Homes & Lodges and includes 9 detached houses, 22 semi-detached houses and 6 terraced houses. They are all self-catering and are managed by the Appellant on behalf of individual owners/investors.

There is an 18 hole golf course and clubhouse within the vicinity of the properties. The Golf Club is owned by the Dillon family through the corporate entity Killerig Golf and Country Club plc. The Killerig Hotel is also in the vicinity of the properties and is owned by Mr. Paul Browne, a Director of the subject property, and leased to Killerig Hotel Ltd t/a Ramada. The Hotel has its own distinct ownership separate from both the Killerig Golf Lodges and the Golf Club.

Valuation History

The property was assessed in 2006 as part of a large development at an RV of €1,775.00. An appeal was lodged to the Commissioner of Valuation and resulted in a separate valuation being placed on the subject Lodges in the amount of €642.00. An appeal was lodged with this Tribunal on the 24th of July, 2007.

Tenure

The Lodges were individually sold to private investors. The contract for sale included a condition of leaseback to the rental company for 21 years with a break option after year 10.

The Issue

Rateability

The Appellant contends that the description of the property/ies in the Valuation List as an Aparthotel as defined by Section 3 of the Valuation Act, 2001 is factually and legally incorrect. On the contrary, the Appellant contends that the properties are holiday homes and as such are not rateable. Both parties adopted their respective précis, which had previously been received by the Tribunal as their evidence-in-chief.

The Appellant's Evidence

Mr Paul Browne, having taken the oath, provided oral evidence on the Appellant's behalf. Essentially he outlined as follows; -

1. The properties were individually owned holiday homes known as "Killerig Golf Lodges".
2. The properties were distinctly owned by arm's length investors and were leased back to the Appellant who rented them out and managed them on behalf of the individual investors who benefited or otherwise from the performance of the properties.
3. The properties were developed on foot of planning permission granted on the 4th August, 2004 by Carlow County Council for the construction of 37 Holiday Homes and ancillary services. The application for and the grant of planning permission post dated the Valuation Act, 2001.
4. The properties were developed in two phases. 10 of the holiday homes were completed in November, 2004 and 27 more were completed in July, 2005.
5. The Hotel concept, driven by a separate tax investor syndicate, was developed in December, 2004 and the premises opened in August, 2006. The Hotel, t/a Ramada in the centre of the golf course, was in totally separate ownership to the subject properties which were 'in situ' for more than a year before the Hotel was opened.
6. The properties are located at distances between 400 and 500 metres from the Hotel. There is no physical nexus between the properties and the Hotel. In fact, in order to access some of the properties from the Hotel it would be necessary to re-emerge onto the public road and drive 400 metres approximately before entering the grounds on which the properties are located.
7. The properties are self catering holiday homes. There were no services such as room service, laundry or cleaning provided by the Hotel. For example, the properties had

their own cleaning ladies who also provided babysitting services. In the event that the Hotel services were used the properties were charged therefor.

8. The properties operate on a complete stand-alone basis. Each home has a standard residential kitchen, with full fit out. There are no utility connections to the Hotel in terms of phones, electricity, water or sewage.
9. Visitors to the properties are not residents of the Hotel within the meaning of the Liquor Licensing Laws.
10. Booking agents for the properties, of whom the Hotel t/a Ramada is one, have their own marketing strategies. Self-Catering Ireland Ltd. is the primary agent and all booking agents, including the Hotel, are paid 20% commission for their services.
11. The Revenue Commissioners deemed the properties to be Holiday Homes within the meaning of Section 268 of the Taxes Consolidation Act, 1997 and the owners/investors have qualified for the relevant tax allowances from the Revenue in respect of the properties.

Mr. Browne concluded his evidence by stressing that as a citizen he was and always wanted to be tax compliant. He accepted that the Hotel and the Golf Club were rateable but that in the case of the subject properties it was wrong to do so. The rateability of the Golf Lodges, Mr. Browne stated, arose from misinformation by an employee who described them as suites on the occasion of an inspection by Ms. Orlaith Ryan from the Valuation Office.

Cross examined by Mr. Denis McDonald, on behalf of the Respondent, Mr. Browne, confirmed that the subject properties commenced letting operations in December, 2004 and were in operation for a considerable length of time before the Hotel, which did not open until August, 2006. Mr. Browne rejected the suggestion by Mr. McDonald that the Hotel was subsequently built to beef up the package of facilities available to the Lodges. The notion, he added, that the Hotel and the 'Lodges' were so integrated, as presented on the Ramada website, such as to result in a gratuitous crossover of facilities and services between the two, was at variance with reality. It was the case, however, that the 'Lodges' were an intrinsic part of the Golf Resort, as was the Hotel, but crucially they were in separate ownership. Confusion, Mr. Browne admitted, had been created at a marketing level by reference on the Ramada website "to play and stay facilities" and "our" dedicated team, such as might have implied a corporate nexus between the Hotel t/a Ramada and the subject properties.

The Respondent's Evidence

Ms. Orlaith Ryan, having taken the oath, adopted her précis as being her evidence-in-chief. Asked by Mr. McDonald if she had any specific comment to make, Ms. Ryan referred him to the exhibits at Appendix (iii) of her précis entitled "Extracts from the Internet". In her view, the language used on the Ramada website was suggestive of a much closer link between the Hotel and the Golf Lodges than was contended for by the Appellant. "Play and Stay" features on the Ramada website quoted prices for the Hotel and the Lodges on the same page with "full Irish breakfast, evening meal and a round of golf".

There was Ms. Ryan added a further feature on the same website which referred to "*37 Holiday Lodges clustered on the fringes of the course and adjacent to the Hotel*" and, further down the page to "*Our dedicated team also offers services such as grocery delivery, baby sitting services and barbecue facilities*" and "*Our dedicated reception team are on call 24 hours to assist you…"* – all of which, taken collectively, did not fit with her understanding of 'self-catering' Golf Lodges.

Under cross-examination by Mr. Brian O'Shea, for the Appellant, Ms. Ryan agreed that

(i) The bulk of her information was gathered from the Internet.
(ii) The Ramada website was geared towards marketing mainly.
(iii) On the web at www.golflodges.ie the reference is to 'Lodges' only and not suites.
(iv) There was no physical nexus between the Hotel and the 'Lodges'.
(v) There were no common facilities between the Hotel and the 'Lodges'.
(vi) The reference on the website to a 'dedicated team' could refer to Mr. Paul Browne, a Director of the subject properties.
(vii) Under the Planning and Tax Laws the subject properties were recognised as Holiday Homes.
(viii) The terms and conditions for registration with Bord Fáilte required that the houses were available for short term letting purposes for holiday making.

Mr. O'Shea put to Ms. Ryan that in the circumstances the subject properties fell within the category of self-catering Holiday Homes.

Ms. Ryan would not be drawn into the definitional area re. Aparthotel, Apartments, etc. other than to say that in layman's factual language she viewed the Golf Lodges as an Aparthotel.

On a point of clarification by Mr. McDonald, Ms. Ryan advised that an employee of the Hotel led her to believe that the Hotel and Lodges were "all one".

When suggested to her by the Chairperson that Aparthotel might have been an incorrect description, Ms. Ryan agreed but only in the legal sense perhaps and said that in her opinion the Lodges were in the business of hotel keeping.

Appellant's Submissions

Mr. Brian O'Shea on behalf of the appellant indicated that his client's legal submissions were as per their précis of evidence and addressed the Tribunal on that basis. Mr. O'Shea contended that:

1. The description of the subject properties on the Valuation Certificate dated the 24.9.2007 as an aparthotel as defined in Section 3 of the Valuation Act, 2001 was legally incorrect.
2. An 'aparthotel' is defined in Section 3 of the Act as follows: "*one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping*."
3. An 'apartment' is defined in Section 3 of the Act as follows: "*a self-contained residential unit in a building that comprises a number of such units*."
4. A 'building' is defined in section 3 of the Act as "*includes a structure, whatever the method by which it has been erected or constructe*d."
5. Therefore, an apartment is a residential unit and requires the co-existence of other such residential units/apartments within the same building before it falls within the definition of apartment in the first place.
6. Consequently, to start with, it is clear that a detached self-contained house, of which there are 9 on site in this case, cannot be classed as apartments within the meaning of the Act.
7. The description 'aparthotel' cannot be ascribed to the other properties in issue in this case either viz the 22 semi-detached and 6 terraced 'Lodges', albeit 'buildings' within the meaning of the Act.
8. The **VA04/2/068 - Gladstead Properties Ltd.** judgment of the Valuation Tribunal issued on the 15 December, 2004 which relied on **Kerry County Council v Patrick Kerins** (1996 3 IR 493) was authority for the proposition that the Valuation Tribunal, being a Tribunal of limited jurisdiction, must interpret words in the literal meaning or

have regard to the object and purpose of the legislation concerned as interpreted by higher legal authorities.

9. Section 3 of the 2001 Act is unambiguous. When the literal meaning is applied to the wording of Section 3 the properties in issue do not fall within the definition of an 'aparthotel' within the meaning of the Act.
10. It was open to the authorities to legislate for the inclusion of buildings other than apartments within the definition of an 'aparthotel' within the meaning of the Act. This was not done and therefore it must be presumed that there was no intention to do so.
11. It was also factually incorrect for the Respondent to describe the subject properties on the Valuation Certificate and elsewhere as an 'aparthotel' when in fact they were Holiday Homes and thus non-rateable.

Respondent's Submissions

Mr. Denis McDonald, citing the written legal submissions of Mr. James Devlin, submitted as follows:

1. An aparthotel within the meaning of Section 3 of the Act was defined as "*one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping*."
2. The statutory definition embodied two requirements (a) there must be one or more apartments and (b) the apartments must be used for the purpose of the trade of hotel – keeping.
3. An 'apartment' should not be understood in the context of its colloquial or popular meaning. The statutory definition applied and in the Act an 'apartment' is defined as *"a self-contained residential unit in a building that comprises a number of such units*". The word 'building' was a key element of the Respondent's case.
4. A 'building' was defined in Section 3 of the Act, as including "*a structure, whatever the method by which it has been erected or constructed*".
5. On that basis it was conceded that the 9 detached units, being individual structures, fell outside the statutory definition and were not rateable.
6. Referring to the photo exhibits in Ms. Ryan's précis it was the Respondent's case, however, that the first requirement of the statutory definition of an aparthotel had been satisfied so far as the 22 semi-detached and the 6 terraced properties were concerned. It was the two units together which comprised the relevant "structure" in

the case of the semi-detached units and it was the entire terrace which comprised the relevant structure in the case of the terraced units.

7. The second requirement of the statutory definition i.e. "*used for the purposes of the trade of hotel-keeping*" had also been met. This phrase from the legal perspective was considered by the High Court in the case of **Kevin McGarry (Inspector of Taxes) v Harding (Lord Edward Street) Properties Limited** (Unreported, Laffoy J, High Court, 27th July, 2004**).** One of the questions which the High Court had to consider was whether the fact that a premises was not registered as a hotel precluded a finding that the premises were in use for the purpose of the trade of hotel-keeping. It was held that the fact that premises were not registered as a hotel did not preclude a finding that they nevertheless were used for the purpose of the trade of hotel-keeping.
8. The fact that the 'Lodges' were not part of the hotel was irrelevant. The statutory language only required that the premises be "used" for the purposes of the trade of hotel-keeping. A cursory visit to the Ramada and other websites substantiated that fact with graphic illustrations. The evidence suggested that the Appellant was not just engaged in the mere letting of accommodation but also in the provision of facilities and services found in the trade of hotel-keeping.

The Law

The following were the relevant legislative sources upon which legal argument was advanced:

Statute Law –

- The Valuation Act, 2001
- The Local Government (Financial Provisions) Act, 1978
- The Interpretation Act, 1937

Case Law –

- **Mc Garry (Inspector of Taxes) v Harding (Lord Edward Street) Properties Limited** (Unreported, Laffoy J, High Court, 27th July, 2004)
- **Kerry County Council v Kerins (1996) 3 I.R. 493**
- **VA04/2/068 - Gladstead Properties Ltd.** Judgment of the Tribunal issued on the 15 December, 2004.

Schedule 4, paragraph 6 of the Valuation Act, 2001 classifies 'domestic premises' as 'relevant property not rateable' and thus exempt from rates. Section 3 of the said Act defines 'domestic premises' as *"any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel*". Thus the domestic premises exemption does not apply to an aparthotel if such were established. The question of 'mixed premises' is not in issue.

An 'aparthotel' is also defined in Section 3 of the said Act as *"one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping*." An 'apartment' is defined as "*a self-contained residential unit in a building that comprises a number of such units"*. A 'building' is also defined in the interpretation section of the said Act as including *"a structure, whatever the method by which it has been erected or constructed*."

The **Kerins** case referred to above is particularly helpful in the context of the present appeal and is relied on indirectly by the Appellant via the Tribunal decision in the **Gladstead Properties Ltd.** case.

In the **Kerins** case which related to the letting of chalets for a two week period during the tourist season, the definition of 'domestic hereditaments' within the meaning of the Local Government (Financial Provisions) Act, 1978 was tested in the Irish Courts. At issue was whether such a short term letting disentitled the lessors, Kerins, from the benefit of exemption, equivalent to that provided by Schedule 4, paragraph 6 of the Valuation Act, 2001. It was held in the Supreme Court that a premises could avail of the exemption for domestic premises even if the occupier did not make private use thereof or used it for commercial advantage, such as holiday lettings. In the course of his judgment Hamilton, CJ. stated as follows:

> *"It is quite true that the rated occupier does not occupy them as a dwelling for himself and his family; he used them for commercial purposes of letting them out to other people who would reside in them for short periods during vacation and use them as their dwelling for those particular periods but the actual fact is that these chalets can only be described as dwellings and the definition does not require that the dwelling be used by the rated occupier, does not require that it cannot be*

used for commercial use in the sense of being let out for dwellings during the holiday period and I am satisfied that these chalets come within that definition of a domestic hereditament".

The principles of **Kerins** were applied by the Tribunal in **Gladstead Properties Ltd.** where an appeal for exemption from rates in the case of a holiday village was upheld.

Findings

The Tribunal having carefully considered the factual evidence and legal argument advanced on behalf of the parties makes the following findings:

1. The subject properties are self-catering holiday homes known as Killerig Golf Lodges owned by arm's length investors separate and distinct from the Killerig Hotel ownership. The properties are managed by the Appellant, Killerig Golf and Country Club Rentals Limited t/a Killerig Golf Lodges on behalf of the individual investor owners.
2. There is no physical nexus between the subject properties and the Hotel.
3. The subject properties operate on a complete stand-alone basis. There are no utility connections to the Hotel in terms of phones, electricity, water or sewage. Services furthermore such as laundry, cleaning, babysitting, etc. are also independently sourced by the subject properties as are booking agents to whom a competitive commission is paid.
4. Planning permission granted by Carlow County Council post dating the Valuation Act, 2001 described the subject properties as Holiday Homes.
5. The subject properties were constructed a considerable time before the Hotel was opened.
6. The Revenue Commissioners deemed the subject properties to be Holiday Homes within the meaning of section 268 of the Taxes Consolidation Act, 1999 and tax relief was obtained by the owners/investors on that basis.
7. It was conceded by the Respondent that the 9 detached properties/lodges fell outside the statutory definition of an Aparthotel and thus qualified for the domestic premises exemption.

8. The **Kerins** judgment is authority for the proposition that a premises could avail of the exemption for domestic premises even if the occupier did not make private use thereof or used it for commercial advantage such as holiday lettings.
9. The Valuation Tribunal is a Tribunal of limited jurisdiction and must interpret words in the literal meaning or have regard to the subject and purpose of the legislation concerned as interpreted by higher legal authorities.
10. The subject properties are independent, stand-alone Holiday Homes let by the Appellant on behalf of arm's length individual investors. There is no evidence to suggest that the 22 semi-detached and 6 terraced self-catering units is an Aparthotel.
11. The evidence suggested that the perceived nexus between the Hotel and the subject properties arose from a misunderstanding in the course of interaction between the District Valuer and a Hotel employee
12. The subject premises, accordingly, in the light of Section 3 – the interpretation section of the 2001 Act and the **Kerins** judgment in particular is not an Aparthotel but rather a domestic premises and thus qualifies for exemption from rates as a relevant property not rateable under Schedule 4, paragraph 6 of the 2001 Act.
13. In view of the finding that the subject properties are 'Holiday Homes' and entitled to the domestic premises exemption, and not an Aparthotel, the issue as to whether the premises constitute one or more apartments…..used for the purposes of the trade of hotel-keeping although canvassed at length, does not now require to be decided by the Tribunal.

And the Tribunal so determines.