

Appeal No. VA10/3/001

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

**Jonathan M. Moore**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 1946707, Hostel at Lot No.75a, Railway Road, Tramore East, Tramore Urban, Waterford 1, County Waterford

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Aidan McNulty - Solicitor**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 22ND DAY OF DECEMBER, 2010**

By Notice of Appeal dated the 16th day of June, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €76 on the above described relevant property.

The grounds of Appeal are on a separate sheet attached to the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 27<sup>th</sup> September, 2010. The appellant represented himself. The respondent was represented by Ms. Grainne O' Neill, BL, instructed by the Chief State Solicitor. Ms. Orla Lambe, BSc. (Surveying), MIAVI, a Valuer in the Valuation Office also attended. Both parties adopted their written submissions, which had previously been exchanged between them and submitted to the Tribunal, as being their evidence-in-chief given under oath.

### **The Property**

The property is a former hotel. The areas are agreed between the parties.

### **Location**

The property is located at Railway Road, Tramore, County Waterford. The property is known as Atlantic House. The property is positioned in the town centre of Tramore.

### **Tenure**

The property is held freehold.

### **Description**

The subject property is a former hotel now in use to provide accommodation for asylum seekers. The property consists of 23 en suite bedrooms, communal living areas and laundry facilities for use by occupants. The premises are of a standard finish throughout.

### **Valuation History**

The Rating Authority is Waterford County Council.

- 8<sup>th</sup> September 2009 - a draft valuation certificate issued at a rateable valuation of €76.00.
- 5<sup>th</sup> October 2009 - representations were made to the Revision Officer and the valuation remained unchanged.
- 21<sup>st</sup> October 2009 - a final valuation certificate issued at a rateable valuation of €76.00.
- 28<sup>th</sup> October 2009 - the subject property was entered in the valuation list.

- 27<sup>th</sup> November 2009 – an appeal was submitted to the Commissioner of Valuation. The Revision Officer, Mr. Edward Hickey retired in December 2009. The subject property was subsequently re-inspected on 29<sup>th</sup> March, 2010 by Ms. Orla Lambe in accordance with Section 33(5) of the Valuation Act, 2001 to allow for a full consideration of this appeal.
- 26<sup>th</sup> May 2010 – first appeal was concluded and the valuation remained unchanged at €76.00. The matter was then appealed to the Valuation Tribunal.

### **The Issues/Grounds of Appeal**

The quantum of the valuation is not in dispute. The appellant asserts that the property should be removed from the valuation list as it is a domestic premises within the meaning of the Valuation Act, 2001 and therefore is a relevant property not rateable.

### **The Appellant's Case**

Mr. Jonathan Moore, having taken the Oath, adopted his written précis which had been previously received by the Tribunal as being his evidence-in-chief.

In his evidence, Mr. Moore informed the Tribunal that the property was once rated as a hotel in 1973 but was de-rated in 1983 and became a Bed & Breakfast. He stated that it accommodated 50 persons. He stated that the restaurant was rated in or around 1995/1996 and was open to non-residents. In 1999 he entered into a contract to accommodate asylum seekers with the Reception and Integration Agency (RIA), which is responsible for sourcing accommodation for asylum seekers in Ireland. This Agency falls under the Department of Justice and Law Reform.

Since 1999 Mr. Moore has provided accommodation to asylum seekers at the subject property, save for a nine month break in 2006. He informed the Tribunal that he was paid by the State for the provision of this accommodation and that he provides four meals per day. At this stage, the Chairperson questioned Mr. Moore as to whether the State could move the residents at any time. Mr. Moore replied that while the asylum seekers were originally meant to be accommodated for only six months, in practice they are not moved until their case is closed or until they are sent back to their country of origin. He also stated that the residents could move themselves but that they would lose their accommodation.

Mr. Moore also informed the Tribunal that the provision of accommodation had to be exclusively for asylum seekers and that he could not take on any paying guests. This, he said, is because the subject property is the home of the asylum seekers who are accommodated there; the place where they eat, sleep and from where they send their children to school. Mr. Moore stated categorically that the subject property was not a hostel. He stated that they provide a home for asylum seekers. The Chairman then put it to Mr. Moore that he was the Occupier. Mr. Moore denied this. Mr. Moore informed the Tribunal that the company who ran the premises was Atlantic Blue Limited and that the asylum seekers were the occupiers.

**Cross examination of Mr. Jonathan Moore by Ms. Grainne O'Neill**

Ms. O'Neill put it to Mr. Moore that the residents had no right to choose where they can live and that they can be moved at any time and that they don't stay there as a matter of right, and that this was in the Department of Justice & Law Reform's Guidelines. Ms. O'Neill also put it to Mr. Moore that very specific rules applied, such as;

- A. Alcohol is not permitted on the premises;
- B. Visitor restrictions are in place;
- C. Visiting times are restricted;
- D. That access can be restricted;
- E. That cleaning is provided by the accommodation;
- F. That there were common areas;
- G. That the residents were provided with hygiene products;
- H. That the heating was centrally controlled;
- I. That bedding clothes were provided;
- J. That bedrooms can be inspected;
- K. There is a general obligation on the asylum seekers to cooperate;
- L. Food cannot be kept on the premises;
- M. The asylum seekers are not allowed to cook;
- N. Pets cannot be kept on the premises;
- O. If staying out overnight notice must be given;
- P. That there were significant common areas, including lounges, dining room, laundry, outside grounds, administrative areas, kitchens, toilets, linen stores, plant rooms.

Mr. Jonathan Moore replied yes to all of these points, but stated that many of these rules may be also applied to somebody living in their own home. Mr. Moore also stated that the subject property doesn't have an up-front security or reception area and that there was no staff room. He accepted, however, that there were staff toilets and changing rooms and an office.

### **Respondent's Evidence**

Ms. Orla Lambe took the Oath and was questioned by Ms. Grainne O'Neill. Ms. Lambe adopted her written précis which had previously been received by the Tribunal as being her evidence-in-chief. In a reply to questions put by Ms. O'Neill, Ms. Lambe stated that she inspected the premises on 29<sup>th</sup> March, 2010 and valued it at €76.00. She described the location as being that in her précis. She described the premises as being a former hotel with 23 en suite bedrooms with communal areas and a basic finish with basic rooms. She described the services provided as akin to a small hotel with many of the rooms being en suite.

On cross-examination by Mr. Moore she stated that the premises did not appear overcrowded. She stated she did not notice whether there were significantly more personal belongings as compared to a hotel.

### **Submissions by the Respondent**

It was submitted by Ms. O'Neill, that the occupier is Atlantic Blue Limited which provides accommodation and food, and that the occupier is not the residents. She further submitted that the nature of the accommodation is quite restrictive and provided examples of such restrictions. Ms. O'Neill pointed out that there are significant house rules. She submitted that, at best, the subject property is a mixed premises with communal areas.

Finally Ms. O'Neill referred to the Valuation Tribunal's decision of **VA04/2/035 - First Citizen Residential Ltd.**

### **The Appellant's Submissions**

Mr. Moore pointed out that he believed that any of the points made by Ms. O'Neill would apply to a dwelling, except for, perhaps, the staff changing rooms. He further submitted that the subject property is not a mixed premises, and that while it may not be as free and easy as an apartment block it is not that far from it.

## **Findings and Conclusion**

The Tribunal has carefully considered all of the oral and written evidence produced by the parties and the arguments adduced at the hearing and makes the following findings;

1. That Atlantic Blue Limited is the occupier of the premises.
2. That there is a contractual agreement between the Reception and Integration Agency (RIA) and the appellant.
3. That this agreement provides for the provision of accommodation for asylum seekers by the appellant.
4. That the rooms used by the asylum seekers do not constitute residential units in themselves but are an integral part of the whole building occupied by Atlantic Blue Limited.
5. That the premises are used for a commercial purpose and is subject to planning constraints.
6. That the units do not have their own external door, letterbox, kitchen, or living room.
7. That the premises has significant non-dwelling aspects such as; administration offices, staff changing rooms and toilets, reception area, common areas, laundry, plant room, linen store room, laundry room, kitchen area.
8. That significant services are provided for the residents, such as: heating being centrally controlled; bedding clothes being provided; cleaning being provided; hygiene products being provided.
9. That there are significant restraints placed on the residents' use of the property such as: no alcohol; visitor restrictions; visitor times restricted; access restricted; inspection of rooms; obligation to cooperate; not being allowed to keep food or to cook; not being allowed to keep pets; and if residents stay away overnight they are required to give notice.

It is clear therefore from the above facts that the subject property has both dwelling and non-dwelling uses and that it is a mixed premises. In view of the facts of this case the Tribunal concludes that on the balance of probabilities the subject property is a mixed premises to a significant extent with regard to both dwelling and non-dwelling purposes within the meaning of the Act. Accordingly, the subject premises are not a domestic premises under the

Valuation Act, 2001. In these circumstances there is no provision for relief and the subject property is liable for rates.

And the Tribunal so determines.