Appeal No. VA14/4/011

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Craig Robinson **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

Re: Property no. 2214332, Hostel at Lot No. 11Aa/1, Ballynary, Kilmactranny, Boyle 2, County Sligo.

B E F O R E

Sasha Gayer – SC **Chairperson**

Rory Hanniffy – BL **Member**

Carol O'Farrell – BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF JULY 2015

By Notice of Appeal received on the 7th day of November 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €35.00 on the above described property.

The grounds of appeal are as set out in the attached copy Notice of Appeal and accompanying letter, both at Appendix 1 to this judgment.

Oral hearing of this appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 20th day of April 2015. Craig Robinson, the Appellant, appeared in person and Ms Rosemary Healy-Rae BL, instructed by the Chief State Solicitor, appeared for the Respondent. Tomás Cassidy, a valuer at the Valuation Office, was in attendance and gave evidence at the hearing on behalf of the Respondent.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

1. Valuation History

The subject property was previously a small hotel until it ceased business in or about 2004. In 2009 the property was advertised as a hostel and listed for revision by Sligo County Council. On the revision a rateable valuation of €35.00 was determined by the Revision Officer appointed pursuant to section 28(3) of the Valuation Act 2001. The effective date of valuation is the 13th October 2014.

2. Situation

The property is located on a minor road in Ballynary, County Sligo, in a rural area overlooking Lough Arrow. The minor road is situate off the N4 (Dublin to Sligo route) and is *circa* 12 kilometres from the nearest public transport.

3. The Property

The property is a two storey building comprising eight bedrooms, some of which have *en suite* facilities whilst others share a bathroom. The ground floor accommodation includes a reception area, lounge/dining room, kitchen and a

bar/lounge area which since the closure of the hotel is no longer licensed for the sale or supply of alcohol. The total area of the building measures 445.64 sq. metres.

4. Grounds of Appeal

The grounds of appeal, set out in a letter accompanying the Notice of Appeal are:

(i) The property description as stated in the Valuation Certificate is incorrect.
(ii) The property is no longer commercial premises.
(iii) The property is incorrectly described as a hostel yet operates as a part time self-catering B&B and as such should be excluded from the Valuation List.
(iv) The Appellant ceased to be commercial premises when the An Bord Fáilte registered hotel was closed *circa* 2005/2006.

5. The Issue for Determination

The single issue for determination by the Tribunal is whether the subject property constitutes "domestic premises" as to come within the provisions of Paragraph 6 of Schedule 4 to the 2001 Act.

6. The Appellant's Evidence

The Appellant provided a précis of evidence/legal submission in advance of the hearing and adopted the précis of evidence as his evidence-in-chief. His principal contention was that the property ought to have been excluded from the Valuation List on the basis that it is used as domestic premises for most of the year. He took issue with the description as a hostel clarifying that the property opened in 2000 as a small one star Bord Fáilte hotel but had by the end of 2004 become commercially unsustainable. Following the hotel's closure in around 2004 he stated that the property was used by himself and his partner as their residence. In 2009, they formed the intention to open a backpackers' hostel and to that end new signage was erected in February 2009

and a website created in order to promote the intended business. The Appellant stated that even before the hostel opened he was advised by a hostel operator that his plan would not work as he would need 50+ beds and a high occupancy rate. At most, he had 22 beds which included his own. He was also advised that his location was too far away from public transport. After opening, he had very few guests and by July 2009 he realized that the advice he had been given was proving correct and that he was self financing a hobby rather than running a business. Nonetheless, the Appellant stated that he soldiered on operating an *ad hoc* bed and breakfast establishment and used the income earned to pay for overheads and property maintenance. He clarified that basic materials were provided to guests for breakfast but that if a cooked breakfast was requested, it would be provided at an extra charge. He stated that the bed and breakfast is operated as a small and seasonal business for five months of the year, with the highest occupancy rates in the months of July and August at 40% and 70%, respectively. In September and October, two to three weekend guests are the norm. If a wedding takes place in a hotel in the area, the Appellant could have bookings if the hotel is fully booked. Overall, the income generated from the bed and breakfast operation is used to meet overheads with little or no profit being earned. The Appellant gave evidence that 2010 was his best year in that he earned €171 net of outgoings.

The Appellant stated that he lives in the property with his wife; that they share the dining/room lounge area and the kitchen with guest; that there are seven bedrooms, one of which is in private use; that the development works taking place at the back of the building where the former bar and function room are located is cordoned off and is presently being converted into additional private living space. Under cross-examination the Appellant accepted that the website uploaded in 2009 had not been taken down until March 2015 and that the property is still listed on the Hostelworld.com website; that the website states that parties and groups can book the venue. He accepted that he has provided group meals on odd occasions but that there were few such bookings because there is no longer a licensed bar in the premises. With regard to the house at the rear of the property, he confirmed that it is a three bedroom cottage with a kitchen, dining room and sitting area with one *en suite* bedroom on the ground

floor and two bedrooms upstairs, which he said are in use as a hobby room and care room. He stated that this house is his 86 year old mother-in-law's residence and has limited facilities due to her illness. He acknowledged that he used to live there but stated that he has not lived there since 2007/2008.

7. **The Respondent's Evidence**

Mr Cassidy adopted his précis of evidence as his evidence-in-chief. He confirmed that he inspected the property in December 2013. He referred to the plan of the property to point out two additional single storey extensions that had been added since the previous valuation. He confirmed that he had excluded from his valuation calculation the area at the rear of the subject property where construction work is in progress and the house to the rear by reason of its domestic status. He stated that the subject property has eight bedrooms, two on the ground floor and six on the upper floor and that the property is used as a hostel for five months of the year from May to September. Mr Cassidy contended that the subject property is trading as a hostel and accordingly is relevant property and rateable in accordance with Schedule 3 to the Valuation Act 2001.

8. **Appellant's Legal Submissions**

The Appellant contends that the description of the property as 'hostel' on the Valuation Certificate is incorrect. He says that the property is now known as Arrowrock Lodge and not "Arrow Rock Hostel". He submits that the property is the principal residence of himself and his wife and has been so for many years and only used to provide bed and breakfast accommodation for a small percentage of time. In this regard he pointed to section 3(4) of the Valuation Act 2001 which states that for the purposes of the Act a property shall not be regarded as being other than domestic premises by reason only of the fact that the property is used to provide lodgings and argued that the property is domestic premises and accordingly exempt by reference to Schedule 4, paragraph 6 to that Act. In support of his submissions, the Appellant stated that the property was formerly a hotel with licensed bar and that it does not have planning permission for hostel use and nor is it registered with Bord

Fáilte. In his written legal submissions the Appellant relied on the decision of the High Court in *Slattery v Flynn* (unreported 30th July 2001, O'Caoimh J.) and the judgment of the Valuation Tribunal in **Desm. & Una Corcoran v Commissioner of Valuation - VA02/5/004** in support of his argument that the subject property constitutes domestic premises.

9. **Respondents Legal Submissions**

Counsel submitted in the first instance that the property cannot be classified as domestic premises within the meaning of section 3(4) of the Valuation Act 2001 because it is used on a commercial basis for the business of a hostel for which there is no exemption under the Act. She referred to the fact that accommodation and facilities in the property are made available to paying guests, that the bar area is available for private party hire and that meals for groups can also be provided on request. In response to the Appellant's contention that the property is a bed and breakfast establishment, Counsel argued that a B&B is a private dwelling house which makes available a few rooms for guest accommodation whereas she asserted the Appellant was not using the property as a private dwelling.

Though accepting that domestic premises can still be classed as such even if lodgings are provided, Counsel argued that the subject property was originally a hotel, not domestic premises and that the hotel has been converted from hotel to hostel use. Counsel further submitted that the fact that a property is not registered under the Tourist Traffic Acts 1939 to 1998 is not determinative of the question whether or not the property is a 'domestic premises' and that the operation of a hostel business goes far beyond the meaning of lodgings as envisaged by the Act.

Counsel correctly contended that the Appellant has to satisfy the Tribunal that the property consists wholly or partly of premises used as a dwelling and that it is not a mixed premises and submits that the subject property falls within the definition of "mixed premises" by reason that it consists of hostel plus other accommodation which is domestic. Counsel took the Tribunal through the authorities to make good these contentions.

10. **Relevant Provisions of the Act**

Under the Valuation Act 2001 relevant property is not rateable if it is a domestic premises. For ease of reference, the relevant sections of the 2001 Act are set out below:

Section 3(1):
"Domestic premises" means any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel;

"lodgings" shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an apart-hotel;

"mixed premises" means a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent;

Section 3(4):
For the purposes of this Act a property shall not be regarded as being other than a domestic premises by reason only of the fact that—

(a) the property is used to provide lodgings,

…

Section 15

(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 shall not be rateable.

Schedule 4

Relevant Property Not Rateable

6. – Any domestic premises (but subject to *section 59(4)* (which provides that apartments are rateable in certain limited circumstances)."

11. Analysis and Conclusions

In view of the evidence and submissions adduced by the parties the Tribunal has come to the following conclusions in law.

The question to be determined is whether the subject property is "domestic premises" within section 3(1) of the Valuation Act, 2001. The Act clearly states that domestic premises means "any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel". Accordingly, the property must satisfy a positive test in that it must either "*in whole or in part ... be used as a dwelling*" as well as two negative tests in that it cannot be a "mixed premises" or an apart-hotel.

The Tribunal is satisfied that the subject property consists partly or wholly of premises used as a dwelling. The Tribunal accepts the evidence of the Appellant that both he and his wife occupy the subject property as a dwelling and that the property is used for the provision of lodgings.

The remaining question is whether the subject property is a "mixed premises" within the meaning of section 3(1) of the Act. The subject property consists wholly of a building and so the issue to be decided is whether it is used partly as a dwelling to a significant extent and partly used for another or other purposes to such an extent. In considering whether the property is a "mixed premises" regard must be had to the provisions of section 3(4) which provides -

> "For the purposes of this Act a property shall not be regarded as being other than a domestic premises by reason only of the fact that—
> (a) the property is used to provide lodgings.."

and to the fact that section 3 provides that lodgings shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an apart-hotel. It is common case that the property is not registered under the aforesaid Acts and that it is not an apart-hotel.

The High Court decision in *Flynn v Slattery* [2003] ILRM 450 is of assistance. This case stated concerned a dwelling house which contained 10 bedrooms, six of which were used for the occupation of paying guests. Two questions were stated for the opinion of the High Court: first whether the premises was a "domestic hereditament" and secondly, in the alternative, whether the premises was a "mixed hereditament" within the meaning of the Local Government (Financial provisions) Act 1978. The definitions of "domestic hereditament" and "mixed hereditament" in the 1978 Act are essentially the same as the definitions of "domestic premises" and "mixed premises" in the 2001 Act, the only difference being that the word "hereditament" is replaced by the word "premises". The High Court accepted that the use of a hereditament for lodgings did not *per se* take the property out of the category of "domestic hereditament" In considering the effect of the word "only" in section 1(3)(a)(i) of the 1978 Act, which is equivalent to section 3(4) of the 2001 Act, O'Caoimh J. stated:

> *"I consider that the use of the word 'only' is indicative of the fact that a partial use for the provision of lodgings will not change the character of the hereditament from being a domestic hereditament where there is a multiplicity of uses. Were the premises to be used for, for example, three uses, namely as a dwelling, the provision of lodgings and a doctor's surgery, the provision of lodgings will not change the character of the hereditament as domestic to any significant extent as a doctor's surgery will be such that hereditament must be regarded as a "mixed hereditament". I am of the view that the use of the word "only" must be seen in the context of a possible multiplicity of uses, all to a significant extent, such that one can disregard the use for the provision of lodgings*."

In the Tribunal's view, the subject property has three uses. It is used as a dwelling, for the provision of lodgings and for functions i.e. party hire and group meals. However, the definition of "mixed premises" requires non

dwelling use to a “significant extent”. With regard to the latter use, the Tribunal finds on the facts that the subject property is not used to a significant extent for functions.

The Tribunal concludes that the subject property is not a mixed premises to a “significant extent” with regard to non dwelling use within the meaning the Act. Accordingly, the subject property is “domestic premises” under the Valuation Act, 2001 and is not liable for rates.

And the Tribunal so determines.