Appeal No. VA15/4/040

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Conor Tuohy **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 2205655, Hostel At 8. 11. 12/1, Chapel Lane, Lahinch, Dough, Ennistymon, County Clare.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF JANUARY, 2017

B E F O R E:

Rory Lavelle - M.A., FRICS, FSCSI, ACI Arb	**Deputy Chairperson**
Aidan McNulty - Solicitor	**Member**
Dairine Mac Fadden – Solicitor	**Member**

By Notice of Appeal received on the 30th day of November, 2015 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €88 on the above described relevant property on the grounds as set out in the Notice of Appeal and in the letter attached as follows:

(1) It's not a hostel but a B & B with some group rooms;
(2) It's part residential with 3 rooms taken up by family and a staff member;
(3) It is a seasonal business;
(4) The rates are very excessive for the seasonal nature of the business.

An oral hearing of this appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 15th September 2016. Conor Tuohy, the Appellant, appeared in person and Mr. David Dodd BL, instructed by the Chief State Solicitor, appeared for the Respondent. James Costello, 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, took the oath. From the evidence tendered, the following emerged as being the facts relevant and material to this appeal.

1. Valuation History
On the 22nd June 2010 a final valuation certificate issued for the property with a valuation of €88.00. The property was described in the Valuation Certificate as a Hostel. On the 1st August 2015 the Appellant requested a revision of the property and on the 2nd November 2015 a No Material Change of Circumstances Notice was issued by the Valuation Office. On the 30th November 2015, a Notice of Appeal was submitted to the Tribunal.

2. Situation
The property is situated at Station Road, Lahinch, Co. Clare.

3. The Property
The property is a detached two storey over basement with attic space, comprising 19 bedrooms all of which are en suite, which accommodate 66 beds. The ground floor accommodation includes a reception area. A floor area of 871.23 sq. m was supplied by the Respondent and is not in dispute.

4. The Issues for Determination

The first question to be determined by this Tribunal is whether it has jurisdiction to hear the appeal, Counsel for the Respondent having submitted that the Appellant is not the occupier.

The second question to be determined by the Tribunal is whether there has been a material change of circumstances within the meaning of the Valuation Act 2001. The Appellant submits that the property should be excluded from the valuation list on the grounds that it is now a "domestic premises". The Respondent submits that the property is a not a domestic premises but is used overwhelmingly for a commercial purpose by the occupier.

5. The Appellant's Evidence

The Appellant provided a précis of evidence/legal submission in advance of the hearing.

He said that he had completed the building of the property in 1999 and opened it as the Lahinch Golf Lodge and lived in it with his partner and six children and operated a B & B guesthouse; that in 2009 he had leased the property and that unknown to him the property was reclassified as a hostel by the Valuation Office in 2010; that on termination of the lease in November 2013 he again took up residence in the property and has operated it as a B & B since; that his adult son occupies one room and that a staff member periodically occupies another; that the property is where his family come to stay and where they have all family get

togethers; that the property is not listed as a holiday hostel with Fáilte Ireland and that he did not advertise the property as a hostel; that it has a private kitchen and that he does not provide a laundry service as would be required in a hostel; that his son Stephen became the owner of the property in 2014 and was now in the USA; that he has an oral lease agreement with his son and pays rent of €1,600 per month to him and that he is now running the "place".

He said that he is the occupier and is living in the property and that it is his family home.

He referred to paragraph 13 of the Respondent's written legal submission ("His son paid the rates bill in 2015") and said that this was not correct. He said that his son had paid the Local Property Tax and the NPPR tax and he handed in a receipt and acknowledgement for such payments, counsel for the Respondent having first confirmed to the Tribunal that he had no objection to the admission of these documents in evidence. The Appellant said that you could not be liable for rates and Local Property Tax.

He handed in a report from Capita Customer Solutions setting out the actions which would be required to enable the property to achieve Fáilte Ireland approval as a Holiday Hostel.

In response to cross examination from Counsel for the Respondent, the Appellant said that he had told his son that he would look after the place until he got home; that they had agreed a lease for 5 years; that a domestic lease agreement had been drafted but not yet signed; that he had told his son that if things did not work out for him and he wanted to come back and if he wanted him out, there would be no problem with that; that he had inherited a house from his late Mother which he had occupied when the property was leased; that a staff member periodically occupied another room when he was not there as this was required for Fire Safety Regulations; that he operated as a sole trader and had submitted accounts to the Revenue; as regards the laundry room that this was occasionally used by persons staying in the property; that there were 3 washing machines in the laundry one of which was commercial taking a load of 10kg; that there were a number of dormer style group rooms which each cater for up to 12 people; that these rooms were used to cater for College students and that he would not have people in those rooms who did not know one another which would be usual in a hostel; that the food preparation area on the plan is now a bedroom; that continental breakfast is provided; that the kitchen is a domestic kitchen; that there are no toilets other than those in the bedrooms and specifically no toilets for the disabled; that he has never run the property as a hostel and has never advertised it as such; that the property was advertised a hostel by the previous occupier.

In response to questions from the Tribunal; as regards the "session lounge" referred to in one of the advertisements submitted in evidence by the Respondent, that this was for use by those staying in the property and that he did not engage musicians or other groups to come in and play; as regards the kitchen and whether this was open to guests, he said that it was on rare occasions; as to whether he ever arranged surfing packages for those staying in the property he said that on some occasions he had; as to the metering, that there was one metre only; as to water rates, that he had not got a bill; that the electricity account was in his name.

6. The Respondent's Evidence

Mr Costello adopted his précis of evidence as his evidence-in-chief. He said that he visited the property to determine if a material change of circumstance had occurred. He said that he met the Appellant's staff member and also later met with the Appellant. He said that he was shown the room occupied by the Appellant's son but that there was no mention that the Appellant was also living in the property. He noted the reception area, concrete stairs, use of a staff member and use of dormer rooms which he said would not usually be found in a B&B. He noted that there were in excess of 66 beds and said that in his opinion this was not a normal house. He did not deem that there had been a material change of circumstances and he therefore issued a no material change notice.

In response to questions from the Appellant, who put it to him that there was no commercial kitchen which would be expected in a hostel, Mr. Costello said that he accepted that there was no commercial kitchen in the property but that as far as he was concerned nothing had changed.

7. Appellant's Legal Submissions

Mr. Tuohy said that "occupier" is defined in the Valuation Act as "every person in the immediate use or enjoyment of the property" and that he was such a person.

Mr. Tuohy referred to section 3(4) of the Valuation Act 2001 which provided that a property was not to be regarded as being other than a domestic premises by reason only of the fact that it was being used to provide lodgings and to the judgment of the Valuation Tribunal in the case of *Craig Robinson v Commissioner of Valuation* VA14/4/011 issued on the 15th day of July 2015. He also referred to the High Court decision in the *Flynn v Slattery* case.

Mr. Tuohy said that the wording in the Valuation Act should be strictly applied and that there was no definition of dwelling in the Act. He handed in an extract from the Criminal Law (Defence and the Dwelling) Act 2011 and said that there was a definition of "dwelling" in that Act and that it included a building or structure which is constructed or adapted for use as a dwelling and is being so used.

8. Respondent's Legal Submissions

Counsel for the Respondent, Mr. Dodd, submitted as a preliminary issue that the Tribunal did not have any jurisdiction to hear the appeal as he said that the Appellant who was a previous owner of the property was not the occupier. He said that the property had entered the valuation list in 2010 and that the entry was not at that time appealed by either the owner or the occupier and that the Appellant sold the property to his son in 2014. He submitted that the Appellant did not have locus standi under section 30 of the Valuation Act 2001 and that the appeal should be struck out.

On the substantive issue, he referred to what he termed "the big picture" which was that commercial businesses ought to pay rates fairly and said that the property was being operated on a commercial basis.

Mr. Dodd referred to the High Court case of *Nangles Nurseries v Commissioners of Valuation* [2008] IEHC 73 and to the seven interpretative principles which Mc Menamin J set out in that case to be applied by the Tribunal to the interpretation of the Valuation Act 2001. In particular, he highlighted that Mc Menamin J said that impositions were to be construed strictly in favour of the rate payer, exemptions or relieving provisions were to be interpreted strictly against the rate payer and that ambiguities, if they were found in an exemption were also to be interpreted against the rate payer.

Mr. Dodd said that the words in the Valuation Act 2001 were to be given their ordinary and plain meaning and that artificial interpretations were to be avoided. Mr. Dodd said that the Tribunal ought to look carefully at the subject property in any case before it and referred to the decision of the Valuation Tribunal in the case of *Mr. John Spelman, Appellant and the Commissioner of Valuation*, issued on the 17th December 2002 (VA01/3/007). He said that the Tribunal found that the subject property in that case was "*most certainly not a private house in the accepted sense of the word, nor is it a private dwelling with a few rooms available for guest accommodation. On the contrary it is an establishment operating solely on a commercial basis offering overnight accommodation and food to paying guests and other members of the public".*

Mr. Dodd submitted that it followed from the definition of "Relevant Property" in Schedule 3 paragraph 1 of the Valuation Act 2001 that the reference to "any property" in the definition of "domestic premises" in section 3 of the Valuation Act 2001 must mean "any building". In his written submission he said that the Oireachtas intended for the word "property" and the word "premises" to both have a meaning. He said that the definition of "domestic premises" required that there must be an identifiable premises used as a dwelling.

Mr. Dodd then referred to the property the subject of the appeal and said that there was no domestic premises and no premises of a residential character in the property; that a room was not a dwelling and not a separate premises; that it was artificial to say that a bedroom was a premises and that the Appellant's application failed for that reason.

Mr. Dodd said that even if this were not so and the property contained a premises used as a dwelling, it was a "mixed premises" as defined in the Act and consequently did not qualify for an exemption.

Mr. Dodd referred to section 3(4) of the Act which provides that "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 "

Mr. Dodd said that the effect of this section was that if you had a domestic premises to start with that putting lodgers in it does not stop it from being a domestic premises; but that there must be a domestic premises to start with and that in the case before the Tribunal, there was no domestic premises, so the issue of lodgers did not arise.

Mr. Dodd said that the subject property was a hostel/B&B and not a domestic premises. In his written submission he said that the property could not be further from the rural homestead which has a few rooms available for use as a B&B and for which he says the definition of lodgers was provided to exempt.

Mr. Dodd referred to the decision of the House of Lords in the case of *Maunsell v Olins* [1975] 1 AER 16 in which the Court found that the reference to "premises" in the legislation considered by that case, meant "residential and said that while the decision was not binding on the Tribunal that it could be of persuasive value.

Mr. Dodd said that there were many pointers in the case before the Tribunal which clearly took away from the residential character of the property; the size, 19 bedrooms with 66 beds in total, the communal dormer type rooms, the reception area, the surfing packages offered occasionally, the filing cabinet area in the dining room.

Mr. Dodd referred to the decision of the Valuation Tribunal in the case of *Harcourt Inn Ltd"* and *Commissioner of Valuation* issued on the 19th April 2002, in which the Tribunal said that while there was no strict definition of what a hostel was *"the commonly held view perhaps would seem to indicate that it is directed at the short stay budget market and affords functional accommodation at somewhat basic levels that in most cases are self-catering"*

Mr. Dodd said that dormer rooms were a key characteristic of a hostel. He said that the Tribunal should not "get hung up" on whether it was hostel/B&B but that the key thing was that this was a business.

In summary, Mr. Dodd said that there were no separate premises; that the premises were not of a residential character. He referred to the decision of the Supreme Court in *Kerry County Council v Patrick Kerins,* [S.C No. 334 of 1994] and distinguished it from the case before the Tribunal on the basis that there was no separate dwelling in the case before the Tribunal. He also referred to the decision of the High Court in *Liam Slattery and Bernadette Flynn* [2002 WJSC-HC] and said that in that case there was separation between the part of the premises in which the family resided and had their meals and the part of the premises used by the guests. He said that there was no separate dwelling in the case before the Tribunal.

Mr. Dodd said that use for lodgings was not use as a dwelling and that lodging use was not domestic use and that the legislation did not exempt lodgings and was not saying that buildings used as lodgings was an exempt use.

Mr. Dodd referred to the decision of the Valuation Tribunal in the case of *First Citizen Residential Ltd v Commissioner of Valuation* VA04/2/035 issued on the 26th October 2004 and said that the Tribunal found in that case that self-contained units which had their own doors, letter boxes, kitchen and living room and which were located within a nursing home complex, were not domestic premises. He said that in the case before the Tribunal the Appellant's son had none of these and had merely a right to use a bedroom in the building.

Mr. Dodd referred to the decision of the Valuation Tribunal in the case of *Craig Robinson v Commissioner of Valuation* VA14/4/011 issued on the 15th July 2015. He said that the property in that case had been used solely as a family home for a period from 2004- 2009 and was only an 8 bedroomed house. He said that there must be an identifiable premises within the building which he said was not the situation in the case before the Tribunal. He said that the definition of "dwelling" in the Criminal Law (Defence and the Dwelling) Act 2011 was not relevant as it was not open to the Tribunal to take definitions from another Act.

As an alternative submission, Mr. Dodd said that staying in a hostel was not "lodging" within the meaning of the Act and that to "lodge" you must be in a house and that the subject property was a hostel and not a house and that the hostel was a business use.

9. Directions from the Tribunal

Prior to the conclusion of the hearing and as suggested by Counsel for the Respondent, the Appellant was directed to submit to the Tribunal within 14 days of the hearing, documents to vouch his submission that he was the occupier of the subject property and in particular; the draft lease agreement, front pages of utility bills and accounts relating to the subject property, the fire safety regulations certificate and the insurance certificate. Subsequently and in accordance with this direction, the following documents were received: (i) copy Lease Agreement made 11th July 2016 between Stephen and Ava Tuohy of the one part and the Appellant of the other part; copy of Banner Fire Prevention Services Certificate dated 13 July 2015 relating to Westcoast Lodge; copy Fire Safety Certificate issued by Clare County Council dated 23rd December 2008; copy of ESB bill in the name of the Appellant dated 16th August 2016 and 11th February 2016; copy of Clare Oil Statement addressed to the Appellant dated 31st March 2016; copy of extract from draft Income and Expenditure Account – Bed & Breakfast for year-end 31st December 2014 in the name of the Appellant; copy extract of insurance documents for the subject property . Additionally a photograph and extracts from the Valuation Office not requested to be produced were also enclosed. Copies of these documents were made available to the Respondent.

10. Analysis and conclusions

The first question to be determined by this Tribunal is whether it has jurisdiction to hear the appeal, Counsel for the Respondent having submitted that the Appellant was not the occupier.

The Tribunal finds on the evidence presented to it that the Appellant is the occupier of the property within the meaning of the Valuation Act 2001 and that it does therefore have jurisdiction to hear this appeal.

The second question to be determined by the Tribunal is whether there has been a material change of circumstances within the meaning of the Valuation Act 2001. The Appellant submits that the property should be excluded from the valuation list on the grounds that it is now a "domestic premises". The Respondent submits that the property is a not a domestic premises but is used overwhelmingly for a commercial purpose by the occupier.

The Act defines "material change of circumstances as follows:

(*a*) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or

(b) a change in the value of a relevant property caused by:

(i) the making of structural alterations to that relevant property, or

(ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or

(*c*) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

(*d*) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within *Schedule 4*, or

(*e*) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or

(f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or

(g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority, or

(h) relevant property or any part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;

As paragraphs (a), (b) and (e) to (h) inclusive are not relevant in the case before it, the Tribunal is required to consider only the applicability of sub-paragraphs (b) and (c) which require it to examine whether the property comes within a category of relevant property not rateable and in particular within the definition of "domestic premises".

The 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".

Section 3(4) of the Act provides that for the purposes of the Act a property shall not be regarded as being other than a domestic premises by reason only of the fact that the property is used to provide lodgings ". The Act at section 3 (1) defines "lodgings" and states 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.

The Tribunal was persuaded by Counsel for the Respondent's submission that the definition of "domestic premises" requires that there be an identifiable premises used as a dwelling and that the section 3(4) exemption in respect of lodgings is not engaged unless there is first such a premises.

The Appellant gave evidence that two of the rooms are in his and his son's use and of occasional use by other family members. He also sought to attach significance to the fact that he did not advertise the property as a hostel and that the property was not registered under the Tourist Traffic Acts. However, in the Tribunal's view none of this is sufficient to render the property or any part of it a "domestic premises" or change the nature of the property to bring it within the definition of properties not rateable. .

The Tribunal having noted the size of the property, the communal dormer type rooms, the reception area, the surfing packages offered occasionally, and the provision of occasional laundry facilities, finds that the property is not a "domestic premises" within the meaning of Schedule 4 (Relevant Property Not Rateable) of the Valuation Act 2001.

It follows therefore that there has been no material change of circumstances within the meaning of the Valuation Act 200 and the Tribunal affirms the rateable valuation of the property at €88 as fair and equitable.

And so the Tribunal so determines.