

Appeal No. VA02/5/004

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

**Desm. & Una Corcoran**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Guesthouse at Lot No. 2Jcd Carrowcurry, Castlebar, Castlebar Urban, Castlebar UD,  
County Mayo

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Brian Larkin - Barrister**

**Member**

**William K. Nowlan**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 20TH DAY OF MAY, 2003**

By Notice of Appeal dated the 15th day of November, 2002 the appellant appealed against the Determination of the Commissioner of Valuation in fixing a rateable valuation of €105 on the relevant property described above.

The Grounds of Appeal are: -

"that the valuation is excessive and bad in law. The description is incorrect. The property is not a registered Guesthouse. The property comprises a "Bed & Breakfast". The description "Guesthouse" is incorrect. The property is not similarly circumstanced to registered guesthouses and should not be described as a guesthouse but rather as "B & B" or "House (as B & B)".

The appeal proceeded by way of an oral hearing which was held in the Valuation Tribunal Offices on 24<sup>th</sup> January, 2003. The appellant was represented by Mr. Patrick Nerney, BE, Chtd. Eng. MIEI, MIAVI and the respondent was represented by Mr. Frank O'Connor, MSCS, MIAVI, a valuer in the Valuation Office. Both valuers prepared written summaries of their evidence which they exchanged with each other and supplied copies to the Tribunal and these were adopted as their evidence-in-chief given under oath at the oral hearing.

The property consists of a detached building known as "Carragh House" and was constructed on the site of two semi-detached houses. It is used as a guesthouse consisting of 13 guest bedrooms, all en-suite and has a residents lounge and dining room. The one kitchen is used both commercially and by the owner family. The domestic accommodation consists of 5 bedrooms (3 en-suite), a living/dining room and a bathroom. There is car parking provided to the front of the property.

The rateable valuation has been agreed at €90 with a breakdown of the domestic apartments at €22 and the commercial area at €68. Tenure is freehold.

The focus of this appeal to the Valuation Appeals Tribunal is the definition and description of the property in the Valuation List.

The appellants argue that the property should be described as 'house' or 'house with B & B', the Valuation Office argue that the proper description of the property is 'guesthouse'.

It is the responsibility of the Commissioner of Valuation to prepare a valuation of a listed hereditament. Part of that responsibility is to accurately describe the relevant property in the rating list in accordance with the legislation and with good practice.

It is the responsibility of the Valuation Tribunal to ensure that the Commissioner properly prepares the valuation list including the proper description of each relevant property. It is not the responsibility of either the Commissioner of Valuation or the Valuation Tribunal to have regard

to legislation other than legislation which is relevant to the preparation of the Valuation List in question.

The appellant has submitted that the description of the property in question should be “house” or “house with B & B”.

- (i) “Domestic premises” is defined in Section 3 of the Valuation Act, 2001 as meaning “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 subject property fits within the description of domestic premises unless it is otherwise excluded.
- (ii) There is no suggestion that the premises could be regarded as an apart-hotel.
- (iii) A “mixed premises” is defined in Section 3 of the 2001 Act as being “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”.

This is a somewhat tortuous definition. However the decision cited by the Appellant in the case of Liam Slattery – v – Bernadette Flynn (High Court unreported 30<sup>th</sup> July 2002, - O’Caoimh J) appeared to suggest that in order to be regarded as a “mixed hereditament” the property must be used for a multiplicity of uses all to a significant extent such that one can disregard the use for the provision of lodgings. In essence this appears to suggest that if the property is used for some purpose other than to dwell and other than lodging to a significant extent then this could lead to it legitimately being described as a “mixed hereditament” or “mixed premises” in Section 3(1) of the Valuation Act 2001.

There is a slight difference in the wording between the section under consideration herein (Section 3(1) of the 2001 Act) and Section 1 (3)(a)(i) of the Local Government (Financial Provisions) Act, 1978 which was under consideration in the Slattery case.

However it must be regarded as being a decision which is of very considerable assistance.

- (iv) If the premises is not an apart-hotel and is not a mixed premises is there any other reason why it should not be regarded as a domestic premises? Section 3, (4) of the 2001 Act 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,

It is clear that the subject property is used to provide lodgings but that of itself does not turn the premises from a domestic premises into some other form of premises (it is notable that in Section 3 of the 2001 Act it is stated that ‘lodgings’ shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939-1998 or in an apart-hotel.)

Again it appears from the Slattery case referred to above, that property was held by the High Court to have been correctly described as a domestic hereditament notwithstanding the fact that the hereditament was used to provide lodgings. The property in question was not registered under the Tourist Traffic Acts.

- (v) Schedule 1 of the Valuation Act, 2001 repeals Section 3 of the Local Government (Financial Provisions) Act, 1978. The provisions of the 1978 Act in regard to domestic premises have been replaced by Schedule 4 of the Valuation Act in which are set out the categories of relevant property not rateable. Section (6) states as follows:

“Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain circumstances))”.

The description “domestic premises” is the one that most accords with the provisions of the Valuation Act, 2001 and indeed with the decision of the High Court in *Slattery – v – Flynn*.

Accordingly the Tribunal holds that the description of the premises in the valuation list as “domestic premises” is the most appropriate one in all the circumstances having regard to the provisions of the Valuation Act, 2001.