Appeal No. VA07/3/009

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Kasterlee Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Aparthotel at Lot No: 1Ab5C, Clonard East, Clonpriest, Youghal 1, County Cork

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 20TH DAY OF MAY, 2008

By Notice of Appeal received on the 9th day of July, 2007, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,238.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"Kasterlee Limited is not the occupier. The Property comprises 52 houses. 26 houses are owned by Beechrock Properties. 26 are owned separately by individuals. All are 'domestic premises' which should be excluded by reference to Schedule 4, Valuation Act 2001 and do not fall within sec. 59 of this Act. The Property is not a Aparthotel."

1. This appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 29th November and 5th December, 2007.
2. At the hearing the appellant was represented by Mr. Owen Hickey, B.L., instructed by Ms. Imelda Reynolds, Beauchamps Solicitors, and the respondent the Commissioner of Valuation by Mr. Colm MacEochaidh B.L., instructed by the Chief State Solicitor.
3. Valuation evidence was given by Mr. Desmond M. Killen, FSCS, FRICS, IRRV, a Director of GVA Donal O Buachalla, and Mr. Peter Conroy, MIAVI, a Valuer in the Valuation Office, on behalf of the appellant and respondent respectively. Mr. Frankie Whelehan, Managing Director of Kasterlee, gave evidence in relation to the development and operation of the property concerned.

The Property Concerned

4. The property concerned comprises 52 houses in a development known as Mariners Bay in the holiday resort of Redbarn which is located on the coast about 2 miles south of Youghal.
5. Mariners Bay is located on both sides of a minor country road which leads to Redbarn beach. Numbers 1 – 26 are on the north side of the road and adjoin the site of the Quality Hotel. Numbers 27 – 52 are on the opposite side and adjoin a site used for holiday homes and caravans.

Rating History

6. On 15th September, 2006 the Revision Officer appointed by the Commissioner of Valuation pursuant to section 28(2) Valuation Act, 2001 issued a Valuation Certificate (proposed) to the effect that he proposed to value the property concerned as an apart-hotel with a rateable valuation of €1238.00. Following representations on behalf of the appellant, the Revision Officer issued a Valuation Certificate on 7th November, 2006 confirming the rateable valuation of €1238.00 and the description of the property concerned as being an apart-hotel in the occupation of the Quality Hotel Group. An appeal against this determination was made on behalf of the appellant on the grounds that the property concerned was not an apart-hotel but "domestic premises" and hence not rateable under the provisions of Schedule 4 of the Valuation Act, 2001. At that time it was said that 26 of the properties were owned by Beechrock Properties and the remainder owned separately by individuals. Following consideration of the appeal, the

Commissioner of Valuation affirmed the rateable valuation of €1238.00 and the description of the property as an apart-hotel but altered the occupier to Kasterlee Limited. The appellant, being aggrieved with the Commissioner's decision, referred the matter to the Valuation Tribunal. At the oral hearing the parties requested that the rateable valuation be adjusted from €1238.00 to €1188.00 to take account of a mathematical error.

Material Facts

At the hearing the following material facts were admitted or so found:

7. The Mariners Bay development was carried out by Beechrock Properties, a company owned by Mr. Frankie Whelehan and his wife.
8. Kasterlee Ltd. is owned by a number of investors including Mr. Whelehan who owns 12.5% of the company. Kasterlee are the rated occupiers of all the properties at Mariners Bay. Kasterlee lets the properties out under short-term arrangements as holiday homes for commercial advantage.
9. The Quality Hotel is owned by Mr. Richard Fitzgerald and is operated by Choice Hotels Limited subject to the payment of a management fee to Mr. Fitzgerald.
10. Planning permission for the Mariners Bay development was obtained in 2004 (Planning Register Number: 04/9741). An amendment to Condition 5 contained within that permission was obtained on 30th March, 2006 (Planning Register Number: 06/4583). Inter alia the March 2006 permission provided as follows:

    (i) *"The proposed holiday homes shall not be used as permanent or principal residences"* and the reason given for this restriction was that the development was permitted for tourist development and the houses would not be used as conventional housing.

    (ii) *"The holiday homes shall be developed by a single developer"* who *"shall enter into a legal agreement, pursuant to section 47 of the Planning and Development Act, 2000 which ensures that:*

    (a) the holiday homes shall be operated, managed and marketed in perpetuity as a single entity by a single operator.

    (b) The holiday homes shall be available in perpetuity for short-term holiday letting".

    (iii) The section 47 agreement *"shall be regarded as a burden against the title of the property and the title of the individual components of the development (eg each lodge) in the Land Registry or the Registry of Deeds".*

11. Twelve of the holiday homes have been sold to individual investors each of whom has entered into a 10-year full repairing and insuring lease arrangement with Kasterlee subject to the payment of an annual rent. Under the terms of this arrangement, Kasterlee have covenanted not to use the demised premises for any other purpose other than as holiday cottages and they are also required to register and keep registered the premises on the register of holiday cottages established by Fáilte Ireland. Kasterlee is also obliged not to do anything which may result in the demised premises ceasing to be qualifying premises under section 268(3) of the Taxes Consolidation Act, 1997.
12. Fáilte Ireland have issued a certificate to the effect that all 52 houses at Mariners Bay, Redbarn, are approved holiday cottages which are deemed also to be holiday homes within in the meaning of section 268 of the Taxes Consolidation Act, 1997.
13. The 40 unsold properties at Mariners Bay are on the market for sale but until they are sold they are under the control of Kasterlee which markets them and lets them out on a short-term self catering basis as holiday homes. As each property is sold it is envisaged that the owner/investor will enter into a ten year lease arrangement with Kasterlee. In the letting programmes priority is given to its 12 individually owned properties.
14. Each property at Mariners Bay is connected to all public utility services and is fully fitted out for normal residence use. There are no shared services with the hotel nor is there any physical nexus between the hotel and the premises at Mariners Bay. In fact, in order to access the premises from the hotel, it is necessary to enter onto the public road in order to enter the site(s) of the Mariners Bay development.
15. Quality Hotel as part of their overall marketing campaign advertise a number of self-catering options including Mariners Bay. Approximately 25% of the bookings for Mariners Bay come via the hotel and for this service they are paid a commission by Kasterlee. Visitors booking through the hotel may avail of the amenities of the hotel but are not classified as residents within the meaning of the Liquor Licencing Acts. They may also avail of the services of the hotel at a cost.

The Appellant's Submissions

Mr. Owen Hickey on behalf of the appellant submitted as follows:

(1) The buildings in question in this appeal are holiday cottages. They are not apartments and none of the cottages in question conform to the definition of an apartment in the Valuation Act, 2001.

(2) By reference to fundamental principles of statutory interpretation, in particular the plain meaning rule, an individual cottage comprising a semi-detached or terraced house cannot properly be construed in this statutory context as *"a self-contained residential unit in a building that comprises a number of such units"*.

(3) Accordingly the subject property cannot and does not comprise an apart-hotel and cannot be valued as such.

(4) If it is deemed that any ambiguity arises it is submitted again by reference to settled principles of statutory interpretation, where a finding that the subject property was rateable would constitute a *"fresh imposition"* of liability for property tax, that any such ambiguity must be construed in favour of the ratepayer.

(5) If it is contended by the respondent that the subject property comprises *"mixed premises"* it is submitted that the valuation is bad in law and that the valuation certificate is bad on its face and it is not open to the respondent to seek to have the subject property re-categorised in this manner at this juncture. Any contention of the respondent that the property comprises *"mixed premises"* is rejected on the grounds of *res judicata* by reference to the judgment of the Valuation Tribunal in **VA04/2/068 - Gladstead Properties Limited.**

The Respondent's Submissions

Mr. Colm MacEochaidh on behalf of the respondent submitted as follows:

(1) The buildings which constitute the subject of this appeal are not domestic premises within the meaning of Schedule 4 of the Valuation Act, 2001. No part of the subject premises constitutes a home and a premises cannot be domestic if use of the premises as a home is precluded. No person using any part of the premises could or would describe the premises as home. Any tenure by occupants other than short-term letting is prohibited.

(2) The character of any hereditament for rating purposes is determined by the use to which it is put by the rated occupier. In **Skittrall v South Hams District Council** [1976] 3 All ER 1;[1976] 75 LGR 106 it was held that in determining whether a hereditament was used solely for the purposes of a private dwelling/dwellings, the Court had to look at the use which the rateable occupier was making of the properties. In that case the plaintiff was found not be using the property as a private dwelling, but for the purposes of carrying on the business of letting holiday homes. That is also the use made by Kasterlee Ltd. of the subject property.

(3) Planning permission for the buildings in question was granted by the combined effect of Planning Decision 06/4583 and the earlier Planning Decision of 04/9741 given by Cork County Council. The recitals of the planning permission refer to the permission being granted for *"52 number holiday homes for managed short-term letting"*.

(4) In permission 06/4583 a number of conditions were attached to the planning permission. Condition number 2 provides:- *"The proposed holiday homes shall not be used as permanent or principal residences. Occupation of any specific house by the owner, a relative of the owner, or a tenant, for more than 4 months in any calendar year, or letting for more than 3 consecutive months, shall be regarded as evidence of breach of this condition. The developer shall only dispose of dwellings subject to a restrictive covenant to this effect in the manner to be agreed with the Planning Authority. Before development commences provision to this effect shall be embodied in an agreement with the applicant and the Planning Authority pursuant to Section 47 of the Planning and Development Act, 2000. The operator referred to in the condition immediately below this one shall monitor compliance with this condition and shall advise the Planning Authority of the results of such monitoring on request."* The reason given for the imposition of condition number 2 is as follows:- *"The proposed lodges were permitted on the basis that they were used for tourism development, and they would not be used as conventional housing"*.

(5) In relation to this appeal the definition of "domestic premises" in section 3 is of note; i.e. *"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"*.

(6) The first rule of statutory interpretation is the rule which is applicable in this case. This rule was described by the Supreme Court in **DB –v- Minister for Health** [2003] 3IR 12 at page 21 of the judgment as follows:-

> *"In construing statutes, words should be given their natural and ordinary meaning. The approach taken by the courts to the construction of statutes was described by Blayney J in* ***Howard –v- Commissioners of Public Works*** *[1994] 1 IR 101. He emphasised that the cardinal rule for the construction of statutes was that they be construed according to the intention expressed in the Acts themselves. If the words of the statute are precise and unambiguous then no more is necessary than to give them their ordinary sense. If the meaning of the statute is not plain,*

then a Court may move on to apply other rules of construction, it is not the role of the Court to speculate as to the intention of the legislature".

(7) It would be an absurdity if these buildings which were given permission *"on the basis that they were for tourist development and … not used for conventional housing"* could be found to comprise "domestic premises". The word "domestic" in the phrase "domestic premises" must be given particular weight. The question the Tribunal must answer in attempting to understand the phrase "domestic premises" is what is the natural and ordinary meaning of these words?

(8) The Concise Oxford Dictionary definition of "dwell" is "live, reside". The Concise Oxford Dictionary definition of "dwelling" is "a house, a residence, an abode". The Concise Oxford Dictionary definition of "domestic" is "of the home, household or family affairs". In order for Kasterlee Ltd. to succeed in this appeal it is required to establish that it uses the subject property as its home and for domestic life. Seen in this way it is impossible for the occupier to establish these facts.

(9) The purpose of the exemption granted in the statute is to remove the tax liability from persons who use a "domestic premises" as a home.

(10) The rateable occupier, being a corporate entity, is not entitled to benefit from an exemption from rates designed to grant the benefit to persons using a domestic premises as a home.

(11) A number of significant features distinguish this case from the decision in **Kerry County Council v Kerins** [1996] 3IR 394. The key features of the hereditament known as chalets in the **Kerins** case were found by the trial judge in the High Court to be as follows:-

(i) The chalets were built by the Defendant with the intention of letting them. Bookings were usually for one or two weeks and sometimes a little longer. The houses would usually be full in July and August and there would be a low percentage of occupancy other than at those times. The chalets were available for letting throughout the year and the Defendant was prepared to let them for as long as the tenant required.

(ii) During the years in question the chalets were fully let for the months of July and August at rents of about IR£200 per week. The letting agreements were verbal, the only matters usually specified agreed upon being the duration of the letting (usually 2 weeks) and the rent, and the only services provided by the Defendant being the disposal of refuse.

(iii) Each tenant was handed a key at the commencement of the letting and the Defendant had nothing further to do, apart from removing the refuse.

(iv) While the chalets were available for letting outside the tourist season, they were rarely let during that period.

(v) The Defendant had since 1986 been accepted for membership of the Irish Cottages and Self Catering Association which had 48 members, owning approximately 500 cottages similar to the chalets of the Defendant and none of those were ever required to pay rates.

(12) The question posed by the trial judge to the Supreme Court was whether the chalets constituted a domestic hereditament, as defined by Section 1 of the Local Government (Financial Provisions) Act, 1978. The Chief Justice found that the chalets *"are dwellings, are used as dwellings and can only be used as dwellings"*. The key difference between the chalets in the **Kerins** case and the buildings in the instant case is that the Supreme Court was not required to consider whether the chalets in **Kerins** could still be regarded as domestic hereditaments if the restrictions contained in the planning permission in this case applied. There is no evidence that any restrictions applied to the chalets which required them to be used for the purposes of tourism only. There is no evidence of any restriction on the owner of the chalets from living or dwelling in a chalet or in any of the chalets. There is no evidence of any restriction on the manner in which the chalets could be sold or managed. No legal restriction prevented the rateable occupier from using the chalets as a home.

(13) The Supreme Court gave no consideration to the effect of the word "domestic" in the use of the phrase "domestic hereditament" and the decision must be understood with this limitation built-in. In this case, the fact that the development was granted permission *"on the basis that they were for tourism development and would not be used as conventional housing"* is inimical to a conclusion that the buildings can be used as dwellings within the meaning of the phrase "domestic premises". When the Tribunal comes to consider the meaning of the planning permissions which govern the subject property its approach to the interpretation of the permissions is guided by the Supreme Court decision of McCarthy J in **In Re XJS Investments Ltd** [1986] 1 IR 750, at page 756 who said:

"*Certain principles may be stated in respect of the true construction of planning documents:-*

(a) *To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.*

(b) *They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning.*

(14) In order for a premise to be domestic in nature and use some significant manifestation of use of the premises as a home must be evident. The planning permission prohibits use of the property as a home or homes. Conventional housing use is prohibited. Long term lettings are prohibited. Any use other than tourism related use is prohibited.

(15) Issues similar to the point under discussion have been addressed by the Tribunal in a decision **VA04/2/068 - Gladstead Properties Limited.** The principle which appeared to guide the Valuation Tribunal in **Gladstead** appears to be whether or not the buildings are used as dwellings. The Tribunal said, at page 7 of its judgment, *"what is material is whether the cottages are used only as dwellings"*. The Tribunal appears not to have considered the importance of the word "domestic" in the context of the phrase "domestic premises". The Tribunal appeared to be of the view that any premises was capable of being a "domestic premises" once it found characteristics of "dwelling" taking place on the premises. The difficulty with this approach is that its logic would exclude hotels, motels and all premises used for the accommodation of persons on an overnight basis. The intention of the legislature was to exclude from rates buildings used as residential premises for domestic purposes.

(16) The subject property is not capable of constituting domestic premises. However, in the event that the Tribunal disagrees, the Commissioner argues that the subject property complies with the definition of an apart-hotel. The argument now addressed below is without prejudice to the foregoing.

(17) Two issues therefore arise for consideration:

(c) Are the premises "apartments" within the statutory definition?

(d) Are they used for the purposes of the trade of hotel-keeping?

(18) The word "*building*" was not defined in the repealed Acts, and in **Cement Ltd V Commissioner for Valuation** [1960] IR 283, Davitt P delivering the judgment of the High Court observed (emphasis added):

"it would be obviously unwise to attempt a definition of the word, "building". It is probably impossible to evolve a satisfactory one. It is, at any rate, beyond my competence. It does seem to me, however, that in construing the word as used in s. 12 of the Act of 1852 much regard should be had to the development of the Valuation Statutes in respect of what hereditaments had to be valued, and to the primary meaning of the word as understood in its popular sense. In that sense I understand it to mean a structure which is large when compared with an adult human being; which is intended to last a long time; which is intended to remain permanently where it is erected; and which, whatever its material, use, or purpose, is something in the nature of a house with walls and a roof. Though this primary meaning may have to be extended it should not, in my opinion, be enlarged to include structures of every kind."

(19) The 2001 Act provides that a *"building" "includes a structure, whatever the method by which it has been erected or constructed"*. Thus while under the old Acts, the word was to be construed with regard to the primary meaning of the word as understood in its popular sense, it now falls to be construed in accordance with the Act.

(20) The essence of the word "building" in its statutory sense is that it is a *"structure"*, and need no longer be *"in the nature of a house"*. The structure must be considered as a whole for the purpose of the definition of "apartment".

(21) Applying that approach to the subject premises, it must be conceded that the detached units are individual structures and do not meet the definition of "apartments". However, as regards the semi-detached units, it is the two units together which comprise the relevant "structure"; and as regards the terraced units, it is the entire terrace which comprises the relevant "structure".

(22) Accordingly, the semi-detached units and the terraced units constitute self-contained residential units in a structure that comprises a number of such units, and as such constitute "apartments".

"Used for the purposes of the hotel-keeping"

(23)This raises mixed questions of fact and law.

(24)From the legal perspective, the phrase "used for the purposes of the trade of hotel-keeping" was considered by the High Court in the case of **McGarry (Inspector of Taxes) v Harding (Lord Edward Street) Properties Ltd.** (Unreported, Laffoy J., High Court, 27th July, 2004).

(25)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 purposes of the trade of hotel-keeping.

(26)Laffoy J. felt that the conclusion that the premises were in use for the purposes of the trade of hotel-keeping is not necessarily inconsistent with the finding that the building was not a hotel:-

"In my view, one has to consider the finding that Kinlay House is not a hotel in the context of the conclusions of the learned Circuit Court judge which I have quoted above. While she recorded that she had made the finding that, as a matter of fact, it was not a hotel, she immediately made it clear that that was not the issue: the issue was whether it was in use for the purpose of the trade of hotel-keeping. She expressly stated that the fact that the premises were not registered as a hotel with Bord Failte Eireann was not determinative and there was no requirement for registration in s. 255 (l}(d}. In my view, she was correct in so determining. The summary of conclusions contained in the case stated subsumed two passages in the judgment delivered by the learned Circuit Court judge on 15th February, 1999. In relation to her ultimate determination, the transcript records that she stated:

"… I am of the opinion that the terminology used [in the Act] is such that it is wider than [counsel for the appellant] wanted to put on it. In other words <u>it includes others than strictly hotels. If they wanted to have hotels they would have put in hotel. They didn't. They put in the trade of hotel-keeping.</u> In my view Kinlay House falls within that terminology".

"I am satisfied that the learned Circuit Court judge did not adopt a wrong view of the law in her approach. The conclusion that the premises are in use for the purpose of the trade of hotel-keeping is not necessarily inconsistent with the finding that the building is not a hotel, the legislature having implicitly drawn a distinction between a hotel per se and a building used for

the purposes of the trade of hotel-keeping. In any event, the learned Circuit Court judge, in my view, correctly identified and determined the relevant issue, and it is that determination which is under scrutiny".

(27) In the event that the Tribunal decides that the subject premises are not capable of constituting an apart-hotel, application will be made pursuant to Section 37 (1) (iii) of the Valuation Act, 2001 to amend the description of the property to ensure its conformity with the description fashioned by the developer and accepted by the planning authority. That description is:- *"52 number holiday homes for managed short term lettings".*

(28) The description suggested by respondent is "Holiday Homes – non residential".

(29) In addition to the decisions referred to in these submissions, the Commissioner of Valuation may also rely on other decisions including **Slattery v Flynn** [2003] 1 IRLM, **VA02/5/004 - Corcoran v Commissioner of Valuation, VA01/3/007 – Spellman v Commissioner of Valuation, VA04/2/035 – First Citizen Residential Ltd v Commissioner of Valuation.**

(30) The Commissioner submits that the occupier of the subject premises is Kasterlee Ltd. That occupation arises from legal arrangements made and required to be made between Kasterlee Ltd. and purchasers of units in the subject premises. In argument and in presentation of evidence it will be demonstrated that Kasterlee Ltd. occupies the subject premises in accordance with the principles governing occupation as summarised by Keane in The Law of Local Government (1982) at page 283, as follows:

"(a) There must be actual occupation.

(b) The occupation must be exclusive.

(c) The occupation must be of value or benefit to the occupier.

(d) The occupation must not be far too transient a period".

Findings

The parties to this appeal were represented by Counsel and the Tribunal is indeed indebted to them for the depth and quality of their submissions. This, accompanied by the range of authorities, legal precedents and statutory provisions referred to, was of immense assistance to the Tribunal in its deliberations.

The Tribunal has carefully considered all the evidence adduced and the legal arguments advanced on behalf of the appellant and respondent and makes the following findings:

1. The Mariners Bay development is one of several similar type projects which have been carried out over recent years on a nationwide basis. In several instances, "holiday homes complexes" complement other tourist facilities in the vicinity or form part of an integrated complex which includes a hotel, golf course or other recreational activities.
2. The financial modelling behind these schemes is designed in a manner to enable investors to avail of tax breaks under the Finance Acts or other statutory enactments.
3. The facts in this appeal are similar in many material respects to those found in previous appeals before the Tribunal viz **VA07/3/036 – Killerig Golf and Country Club Rentals ("Killerig"), VA07/3/121 - Seno Hotel and Property Company Limited ("Seno")** and the "**Doonbeg"** appeals namely **VA07/3/118 – Donal Finn, VA07/3/078 – Sean Lyne, VA07/3/107 – Belamber Properties Limited** and **VA07/3/110 – Trinity Property Golf Limited).**
4. The rated occupier in the valuation list is Kasterlee Limited who occupy 12 units under a 10 year lease agreement and the remaining 40 on a short-term arrangement pending sales. All short-term lettings of the units as holiday cottages are entered into by Kasterlee for commercial advantage as holiday homes.
5. In the appeals listed at Finding No. 3 above, the Tribunal attached great weight to the findings of the Supreme Court **Kerry County Council v Kerins** (1996) 3 I.R. 493 **("Kerins")**. The judgment in **Kerins** is the authority for the proposition that a premises could avail of the exemption from payment of rates for domestic premises even if the occupier did not make private use thereof or used them for commercial advantage such as holiday homes.
6. The Valuation Act, 2001 is the only statute dealing with the valuation of property for rating purposes. The Legislature when framing the Act took the opportunity of bringing exemption from rates for domestic premises under the rating code.
7. Under section 3 of the Act, "*domestic premises*" are defined as being "*property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel"*. This definition is the same as that contained in the Local Government (Financial Provisions) Act, 1978 except for the addition of *"apart-hotel"*.

8. The definition of "*domestic premises*" in the 1978 Act came under close scrutiny in **Kerins.** It is clear from this case that the exemption from rates was not limited to private houses or residences but included other classes of dwellings which were for example used for holiday homes or bed and breakfast purposes, the critical test in **Kerins** being whether the premises were being used as a "*dwelling"*.

9. In the **Kerins** case, *Skittrall* and a number of other English and Scottish cases were opened and considered by the Supreme Court. In this regard the comments of Hamilton CJ are of note. *"A number of cases have been opened by counsel on both sides and while they are all very interesting and I am sure had direct application to the facts of cases in those particular jurisdictions the decisions made on foot of them are not of particular assistance to me in determining the question which was posed by Blayney J, because it involves an interpretation of a provision of an Irish statute, the Local Government (Financial Provisions) Act 1978, and in particular the interpretation of the definition of a "domestic hereditament" contained in that Act, because if the chalets which were the subject matter the claim for rates and which are referred to in the case stated are "domestic hereditaments" within the meaning of that definition, while they are rateable they are entitled to exemption or a waiver in respect of the rates and are in fact not rateable irrespective of the mechanics of the entire question of rating.*

Now there is no doubt whatsoever on any assessment of the situation that these chalets are dwellings, are used as dwellings and can only be used as dwellings. It is quite true that the rated occupier does not occupy them as a dwelling for himself and his family; he used them for the commercial purpose 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 theses chalets come within that definition of domestic hereditament and having come to that conclusion the only thing I can do in this case is answer the question posed by the learned trial judge in the affirmative."

10. When the Oireachtas came to consider the exemption from rates for domestic premises, it effectively re-enacted the provisions of the 1978 Act as interpreted by **Kerins.** It is the Tribunal's view that the Legislature did not intend to seek to reverse

the effect of the decision of the Supreme Court in **Kerins** but endorsed its decision which was the authority that a premises could avail of the exemption for domestic premises even if the occupier did not make private use thereof or use it for a commercial advantage such as holiday lettings. If the Legislature wanted to make changes or narrow the range of exemptions, as established by **Kerins** then it is to be expected that it would have done so in clear and unambiguous language. The fact that it did not choose to do so must be taken as an indication that it intended that the relief granted under the 1978 Act continue and be provided for under the rating code.

11. 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. It is our opinion until established otherwise that the principles on which **Kerins** is founded are still relevant and binding.
12. The definition of an apart-hotel in the Act is quite specific and for a property to be an apart-hotel it must meet two fundamental tests: is it an apartment within the meaning of section 3 of the 2001 Act and, if so, is it used for the purposes of the trade of hotel keeping?
13. Consideration of what is an apart-hotel was dealt with by the Tribunal in two recent cases, **Doonbeg** and **Seno,** and in both instances the Tribunal found that two-storey houses similar to those which are the subject of these appeals were not apartments simpliciter.
14. The Tribunal, in the light of the above finding, did not find it necessary to investigate whether the property concerned was used for the purpose of the trade of hotel keeping. Similarly, in **Killerig** the Tribunal found that there was no evidence that the properties concerned in that appeal (22 semi-detached and 6 terraced self-catering cottages) were an apart-hotel(s).

Determination

Having regard to the above findings the Tribunal determines that the property concerned in this appeal falls outside the statutory definition of an apart-hotel thus qualifying for a domestic premises exemption in accordance with Paragraph 6 of Schedule 4 of the Valuation Act, 2001.

And the Tribunal so determines.