Appeal No. VA07/3/121

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Seno Hotel & Property Company Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Hotel, Aparthotel at Lot No.1'S'1, Bunratty East, Drumline, Ennis, County Clare

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 6TH DAY OF MAY, 2008

By Notice of Appeal dated the 23rd day of August, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2,812.00 on the above described relevant property.

The Grounds of Appeal are as set out in the Notice of Appeal and pages attached thereto copies of which are attached at the Appendix to this judgment.

1. This appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 22nd November and 13th December, 2007.
2. At the hearing the appellant was represented by Mr. Brian O'Shea, BL, instructed by Mr. William Cahir, Cahir & Co. Solicitors, 36 Abbey Street, Ennis, Co. Clare. Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent, the Commissioner of Valuation.
3. Mr. Brian Dunne, the Managing Director of the appellant company, gave evidence of fact in relation to the development and operation of the property concerned.
4. Valuation evidence was given by Mr. David Molony, B.Sc., MRICS, a District Valuer in the Valuation Office, and Mr. Patrick Nerney, B.E., Chtd. Eng, MIEI, MIAVI, on behalf of the respondent and appellant respectively.

The Property

5. The property concerned in this appeal comprises the Bunratty Shamrock Hotel and 57 "holiday homes" in a development within the curtilage of the hotel known as Castle Gardens. The hotel which formerly traded as Fitzpatrick's Shannon Shamrock Hotel is a 3-star establishment with 115 en-suite bedrooms together with bar and restaurant accommodation. There is also a leisure centre with a 20-metre swimming pool, kiddies' pool, gymnasium and a range of other ancillary amenities and facilities. The holiday homes are two-storey and include 3 detached properties and 54 laid out in terrace configuration.
6. The subject property is located in Bunratty Village just off the N18 dual-carriageway and about 15 miles south-east of Ennis and 9 miles north-west of Limerick city.

Valuation History

7. On 24th October, 2006 the Revision Officer appointed by the Commission of Valuation issued a valuation certificate to the effect that he proposed to value the property concerned at a rateable valuation of €3,380.00. Following representations by Mr. Dunne the Revision Officer issued a valuation certificate on the 5th of June, 2007 confirming the rateable valuation of the property concerned at €3,380.00 and described the property as hotel/apart-hotel. Following an appeal to the Commissioner the rateable valuation was reduced to €2,812.00 and at this stage in the proceedings it was agreed that the valuation

attributed to the hotel was €1,780.00. In due course the appellant lodged an appeal to this Tribunal.

The Issue

8. The quantum of the valuation as such is not at issue. It is the respondent's contention that the holiday homes in Castle Gardens constitute an apart-hotel as defined in Section 3 of the Valuation Act, 2001. The appellant, on the other hand, contends that the holiday homes are "domestic premises" as defined in Section 3 of the Act and as such are "relevant properties not rateable" in accordance with Paragraph 6 of Schedule 4 of the Act.
9. At the hearing the respondent conceded that the 3 detached properties fell outside the statutory definition of an apart-hotel and hence qualified for domestic premises exemption. In the circumstances the respondent sought leave to amend the rateable valuation of the property concerned to €2,760.00, and of this €1,780.00 being attributed to the Hotel.

Facts

10. From the evidence tendered at the oral hearing and by way of written submissions the following material facts were admitted or so found:
    i The Castle Gardens development has been constructed and completed in accordance with the requirements of two separate planning permissions – one for the construction of 40 holiday homes and one for 17 holiday homes granted in early 2003 and mid 2004. These planning applications post-date the introduction of the Valuation Act, 2001. The adjoining Hotel has been in situ for approximately 40 years.
    ii The properties in Castle Gardens are recognised as holiday homes by the Revenue Commissioners under section 268 of the Taxes Consolidation Act, 1997 and the owner/investors have been certified for the relevant tax allowances by Revenue.
    iii The properties in Castle Gardens are registered with Fáilte Ireland as "approved holiday cottages", which requires that the cottages be available for short-term lettings for the purposes of holiday making.
    iv The relevant planning permissions require that the houses be used for holiday homes.
    v Each property is fully self-contained with its own individual and separate connection to all standard public services and utilities, and fully fitted out for normal residential occupation and use. There are no shared services or connections to the Hotel.

vi All the properties are individually owned by investors and leased to the appellant company under a 10-year arrangement subject to the payment of an annual rent. The appellant company which occupies the Bunratty Shamrock Hotel is part of the Dunne Group which operates seven hotels in Ireland, including two in Limerick and one in Ennis.

vii Whilst the Hotel and Castle Gardens to some extent share a common site, each has its own access and they are totally separate entities.

viii The appellant markets the properties as self-catering holiday homes, as do several other well-known booking agencies. There are no long-term arrangements between the investors/owners and the booking agents. Several of the properties are let on a month-to-month basis and in some instances for periods of up to six months.

ix The appellant maintains the properties and makes them ready for incoming visitors on a routine basis. The appellant provides bed linen and towels to visitors, but not day-to-day service and cleaning facilities.

x Visitors to the holiday homes may use the leisure facilities at the Hotel on a complimentary basis and otherwise avail of dining and other facilities in the same manner as other non-residents. Visitors to the holiday homes are not residents of the Hotel within the meaning of the Liquor Licensing Laws.

The Appellant's Submission

11. Mr. O'Shea, on behalf of the appellant contended:

(i) That that part of the property concerned valued and described as an apart-hotel as defined in Section 3 of the Valuation Act, was legally incorrect and should be struck out.

(ii) Section 3 of the 2001 Act defines:

- ''apart-hotel'' as *"one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping."*
- ''apartment'' as *"a self-contained residential unit in a building that comprises a number of such units."*
- ''building'' *"includes a structure, whatever the method by which it has been erected or constructed."*

(iii) Having regard to the above definitions it follows that:

(a) An apartment is a residential unit that requires the co-existence of other such residential units *within the same building* before it falls within the definition of an apartment in the first place.

(b) A detached self-contained house cannot be an apartment within the meaning of Section 3 of the 2001 Act.

(c) A house within a terrace (as opposed to a "residential" unit "within a building") is not an apartment within the meaning of Section 3 of the 2001 Act. The terrace blocks consist of individual structures or buildings under a common roof rather than apartments in a building.

(d) The existence of at least one apartment is a prerequisite of the existence of an apart-hotel.

(e) Accordingly, the detached and terrace properties in issue in this case do not, under the current legislation, amount to an apart-hotel.

(iv) In support of his contentions Mr. O'Shea drew the Tribunal's attention to the findings of the Tribunal in an earlier case, **VA04/2/068 – Gladstead Properties Ltd.,** which stated that *" The Valuation Tribunal is a Tribunal of limited jurisdiction and must interpret words in the literal meaning or have regard to the object and purpose of the legislation concerned as interpreted by higher legal authorities."* This finding, Mr. O'Shea said, was recently reaffirmed by the Tribunal in the appeal **VA07/3/036 - Killerig Golf and Country Club Rentals ("Killerig").**

(v) Section 3 of the 2001 Act is unambiguous and when the literal meaning is applied to the wording of Section 3 the properties do not fall within the definition of apart-hotel within the meaning of the Act.

(vi) It was open to the Legislature to enact that buildings such as houses (even terrace houses), being other than apartments as defined in Section 3 of the 2001 Act, could constitute a hotel for the purpose of rates. This was not done and therefore it must be presumed that there was no intention to do so.

(vii) A finding by the Tribunal that semi-detached or terrace houses are rateable, while detached holiday homes are not, would be to conclude that the Oireachtas consciously decided to make an arbitrary distinction between them. The more obvious

explanation, he said, was that it was not the purpose of the legislation that holiday homes be encapsulated within the meaning of the definitions in the 2001 Act at all. Similarly, if it was intended that holiday homes were to be rated, then the Legislature could have expressly stated so.

(viii) The question of whether or not the properties concerned are used for the trade of hotel-keeping does not need to be addressed if they are found to be holiday homes.

The Respondent's Submissions

12. Mr. Devlin submitted as follows:

(i) The decision of the Supreme Court in **Kerry County Council v. Kerins** (1996 3 IR 493) **("Kerins")** established that a premises could avail of the exemption for domestic premises even if the occupier does not make private use thereof, or uses it for commercial advantage such as holiday lettings. This case was decided under the Local Government (Financial Provisions) Act 1978 which defined "domestic hereditament" as *"any hereditament which consists wholly or partly of premises used as a dwelling and which is not a mixed premises."*

(ii) The Valuation Act, 2001 has repealed the above definition and now 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"*. In other words a domestic premises exemption does not apply to an apart-hotel.

(iii) An "apart-hotel" is defined as *"one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping"*. In the context of this appeal therefore two issues were raised: are these subject premises apartments within the statutory definition and are they used for the purpose of the trade of hotel-keeping?

(iv) An "apartment" is defined as *"a self-contained residential unit in a building that comprises a number of such units."* The key element in this definition for the purposes of this case appears to be the word "building" which is defined in Section 3 as *"a structure, whatever the method by which it has been erected or constructed"*.

(v) Under the now repealed Valuation Acts the word building was not defined and was therefore to be construed with regard to the primary meaning of the word as understood in its popular sense. This is no longer the case and it is now necessary to construe the word in accordance with Section 3.

(vi) In its statutory sense the essence of the word "building" is that it is a "structure" and it is that "structure" that must be construed as a whole for the purposes of the definition of an apartment. In the context of this appeal, each terrace is a structure, and each unit within the terrace or structure is "a self-contained residential unit in the building that constitutes a number of such units" and as such is an "apartment" within the definition in Section 3.

(vii) Whether or not the subject properties are used for the purpose for the trade of hotel-keeping raises questions of fact and law.

(viii) From the legal perspective the phrase "used for the purposes of the trade of hotel-keeping" was considered in depth in **McGarry (Inspector of Taxes) v Harding (Lord Edward Street) Properties Limited** (unreported, Laffoy J. High Court, 27th July 2004). In that case Laffoy J said that the conclusion that the premises were in use for the purpose 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. Whilst she has 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 Fáilte Éireann 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 purposes 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."

(ix) The fact that the premises are not registered as a hotel does not preclude a finding that they are nevertheless used for the purposes of the trade of hotel-keeping.

(x) Section 268(3) of the Taxes Consolidation Act, 1997 provides that for the purposes of Part 9 of that Act, in relation to capital expenditure incurred on or after 1st July 1968, a building or structure in use as a holiday cottage and comprised in premises registered in any register of holiday cottages established by the National Tourism Development Authority shall be deemed to be a building or structure in use for the purpose of the trade of hotel-keeping.

(xi) The subject properties in this appeal are let to a "hotel and property company" which markets them as *"our premier self-catering option with 57 Holiday Homes available for your enjoyment. The village… is nestled within our grounds with residents enjoying all the facilities of the complex."*

(xii) The evidence suggests that the appellant, insofar as the subject property is concerned, is engaged not just in the mere letting of self-catering accommodation, but also in the provision of facilities and services found in the trade of hotel-keeping.

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 proffered and legal arguments adduced on behalf of the appellant and the respondent and makes the following findings:

1. The Castle Gardens development is one of several similar type projects which have been developed throughout the country in recent years. In several instances the "holiday homes" form part of a much larger complex which includes a hotel, golf course or other recreational/tourist amenities.
2. The financial modelling behind these schemes is designed in a manner such as to enable investors, be they corporate, consortia or individuals, to avail of a range of financial incentives and tax breaks available under the Finance Act and other enactments.
3. The Castle Gardens development is located within the grounds of the Bunratty Shannon Shamrock Hotel which was formerly known as Fitzpatrick's Shannon Shamrock Hotel. The hotel is now occupied by Seno Hotel and Property Company Limited (Seno) which is part of the Dunne Group of hotels. Other than sharing a common site but with two separate entrances, there is no physical nexus between the holiday homes and the hotel.
4. The Castle Gardens development consists of 57 holiday homes developed on foot of two planning permissions, one for 40 units and one for 17 units – granted in early 2003 to mid 2004, after the passing of the Valuation Act, 2001. All the houses are two-storey and are laid out in terrace configuration, save for 3 which are detached. The hotel has been in situ for more than 40 years.
5. Each holiday home is a self-contained unit of occupation individually connected to all standard public utility services which are separately metered and charged where appropriate.
6. The holiday homes are owned by a number of individual investors who have all entered into lease arrangements with Seno for terms of 10 years subject to the payment of an annual rent of €9,000 or €10,000 per depending upon the accommodation available.
7. The Revenue Commissioners have deemed the properties to be holiday homes within the meaning of Section 268 of the Taxes Consolidation Act, 1997 and tax relief has been obtained by owners/investors on that basis.
8. The respondent conceded that the 3 detached properties fall outside the statutory definition of an apart-hotel, and are domestic premises as defined in Paragraph 6 of Schedule 4 of the 2001 Act.
9. The holiday homes are marketed by Seno and a host of other recognised booking agencies on a short-term self-catering basis. The owners/investors have no contractual relationship

with the booking agencies and play no part in the short-term lettings of the holiday homes.

10. The holiday homes are maintained by Seno and made ready for incoming visitors on a routine basis. Seno also provide bed linen and towels to visitors but not day-to-day cleaning and servicing activities. It is not disputed that Seno are the occupiers of the holiday homes concerned and use them for commercial advantage, in that they are let out as holiday homes on a short-term self-catering basis.
11. Whilst visitors have complimentary use of the leisure facilities at the hotel and may also avail of the restaurant and bar, they do so in the nature of "passing trade" and not as residents of the hotel within the meaning of the Liquor Licensing Laws.
12. The facts in this appeal are similar in many material respects to those found in an earlier appeal to this Tribunal, **Killerig.**
13. The Tribunal in **Killerig** attached great weight to the findings of the Supreme Court in the **Kerins** case. The judgment in **Kerins** is the authority for the proposition that a premises could avail of the exemption from the 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 lettings.
14. The **Kerins** case was decided under the Local Government (Financial Provisions) Act, 1978 and the relevant Section 3 thereof was repealed under the Valuation Act, 2001 insofar as it relates to a domestic hereditament, a community hall or farm building. In that Act a domestic hereditament was defined as *"any hereditament which consists wholly or partly of premises used as a dwelling and which is not a mixed hereditament."*
15. In the Valuation Act, 2001 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."*
16. In plain English an apartment is a self-contained suite of rooms equipped for dwelling purposes, in a building containing a number of other such suites, sharing a range of common services of a structural nature such as entrance, lobbies, staircases and elevators. Whilst an apartment in an apart-hotel may have the same physical characteristics, users of such apartments usually enjoy the benefits of housekeeping and cleaning services and other facilities normally provided to hotel residents.
17. A terrace house is somewhat different to an apartment, in that each house is not only self-contained, but self-sufficient in regard to access, with its own front and back door and more often than not, a garden or yard at the front and rear. Each house in a terrace is

bound on either side by other houses of a similar type, except for those at the end of the terrace.

18. In **Cement Ltd. v Commissioner of Valuation** [1960] IR 283 **("Cement Ltd.")** introduced by Mr. Devlin two comments by Davitt P. are particularly apposite in the context of this appeal *"It would be obviously unwise to attempt a definition of the word "building"*. And secondly *"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."*

19. The word "building" was not defined in the Act of 1852, nor indeed was it defined in the two amending Acts of 1986 and 1988. It would appear that the attempt to do so in the 2001 Act may have been precipitated in the light of a number of major High Court cases (including **Cement Ltd.**) which resulted in what arguably were considered to be items of plant or machinery being held to be buildings for the purposes of Section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act 1860, now repealed.

20. It is well established in law that words in a statute should be construed according to their plain and ordinary meaning, unless such a construction would give rise to an absurdity. Whilst this applies to the construction of any statute it is even more critical when one is dealing with a possible new imposition of a financial liability. The Valuation Act, 2001

21. It is our opinion that in the plain and ordinary sense of the words an apartment and a terrace house are distinctly different entities. Furthermore it would, we believe, be stretching the definition of a building or structure to exaggerated lengths to find that terrace houses are apartments as defined in Section 3 of the 2001 Act.

22. It follows from our findings at paragraph 21 above that the properties which are the subject of this appeal do not constitute an apart-hotel but are holiday homes which in the light of the **Kerins** and **Killerig** cases are "domestic premises" not rateable under Paragraph 6 of Schedule 4 of the Valuation Act, 2001.

Determination

Having regard to the above findings the Tribunal determines that the current entry in the Valuation List should be amended as follows:

Rateable Valuation	€1,780.00
Description	Hotel

And the Tribunal so determines.