Appeal No. VA10/4/001

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Tatton Ward Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2172880, Hostel at Lot No. 1 8 9 10 11/2, Drumgoask, Bellanode, Monaghan, County Monaghan.

B E F O R E

John Kerr - Chartered Surveyor	**Deputy Chairperson**
Patrick Riney - FSCS FRICS FIAVI	**Member**
Fiona Gallagher - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF APRIL, 2011

By Notice of Appeal dated the 21st day of October, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €345 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The valuation is inequitable and bad in law. Should not be in the list. (1) The occupier is incorrect. (2) This is not a hostel. Excluded on the basis that this is domestic property. The premises constitute "domestic premises" and consequently by virtue of S15(2) Schedule 4 of 2001 Act, the premises are not rateable. Tatton Ward Ltd are not the occupier. The property is occupied by the persons resident in the property or without prejudice to this they are occupied directly by the state. (Minister of Justice Equality and Law Reform or the Reception and Integration Agency).

This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 9th day of February, 2011. At the appeal the appellant was represented by Mr. Pronsias Ó Maolchaláin BL instructed by Ms. Maureen Black, M P Black & Co. Solicitors. The respondent was represented by Mr. David Dodd, BL instructed by the Chief State Solicitor Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, gave evidence on behalf of the appellant, as did Mr. Ian Skeffington, Director of the appellant company and Mr. James Keogh, Manager, St. Patrick's Accommodation Centre (i.e. the subject property). Mr. Liam Murphy, BSc, a valuer in the Valution Office gave evidence on behalf of the respondent, the Commissioner of Valuation.

Location

The subject property is located in a rural area in the townland of Drumgoask, approximately 1.5km to 2km from Monaghan Town.

The Property Concerned

The subject property is a former residential agricultural college, which has been used as a centre for accommodating asylum seekers since 2000/2001. The appellant company has a contractual agreement with the Minister for Justice, Equality and Law Reform (hereinafter referred to as "the Minister") for the provision of residential full-board accommodation and other services for asylum seekers, which is subject to the conditions laid down in that agreement.

Accommodation is spread over 7 blocks and includes bedrooms, bathrooms, a tv room, computer room, sitting room, communal kitchen and dining facilities, a playroom, laundry room, offices, reception and stores. There are two residential own-door units, consisting of bedrooms and bathrooms, known as the "Island Mews".

Rating History

The property was first valued as a hostel in 2004 with a RV of €320. Following a revision request from Monaghan County Council, the property was listed for revision in 2009. The Revision Officer proposed a RV of €390 on 28th October, 2009. Representations were submitted by the appellant seeking exclusion of the subject property from the Valuation List on the grounds that it was not rateable. Grounds were also advanced in relation to the quantum of the valuation. Following representations the property was deemed to be rateable

and the RV was increased to €399. A Valuation Certificate confirming the RV was issued on 18th February, 2010. The appellant appealed against this valuation by Notice of Appeal dated 29th March, 2010. Quantum was agreed between the parties at €345. The Appeal Officer deemed the property to be relevant property and rateable as such. The appellant appealed against that decision to the Tribunal by Notice of Appeal dated 21st October, 2010.

The Issues

The appellant contended that the subject premises was domestic premises and not rateable by virtue of Section 15(2) and Schedule 4 of the Valuation Act, 2001. In the alternative the appellant argued that it was not in rateable occupation of the premises, but that the premises were occupied by either the residents of the centre, the Minister or the Reception and Integration Agency (RIA).

The Appellant's Evidence

Three witnesses gave evidence on behalf of the appellant. Mr. Eamonn Halpin, Consultant Valuer, provided valuation evidence based on his written précis, which had previously been received by the Tribunal and the respondent. Mr. James Keogh, manager of the subject property and Mr. Ian Skeffington, director of the appellant company, also gave evidence in relation to the operation of the subject property and the ownership of the premises respectively.

Mr. Halpin stated that the property was used for the sole and exclusive purpose of providing accommodation to persons who had applied for asylum in the State, pursuant to a programme adopted by the Minister. Under cross-examination, he stated that, in his view, the residents had the immediate use and enjoyment of the premises and the appellant was simply performing a management function on behalf of the Department of Justice, Equality and Law Reform/RIA. He stated that he was unsure if the appellant was in possession of the premises and claimed that he was unable to think of any property interest it could have in the premises.

In Mr. Halpin's opinion, either the Minister or the RIA were in possession of the property as they could remove all the residents at will. He stated that the facility was held exclusively for the Minister and/or the RIA for the period of the agreement and that the appellant could not invite its own guests onto the property, nor could it perform any other business on the property. Mr. Halpin agreed that the Minister or the RIA were not the owners of the

property, nor were they tenants of the appellant and nor did they have any employees on site on a day-to-day basis, other than employees who visited from time to time to carry out inspections. He also confirmed that the revenue generated from the centre went to the appellant and that the fixtures and fittings situate on the property were the property of the appellant.

Mr. Halpin conceded that the appellant had control over the premises. He confirmed that the appellant's employees were on the premises on a day to day basis and that in accordance with the rules of the Minster and the RIA the appellant controlled entry and exit to and from the centre, prohibited alcohol on the premises, provided bedding for the residents, was responsible for cleaning the facility, prohibited residents cooking in the bedrooms and required residents to give notice if staying out overnight. With regard to cooking, Mr. Halpin stated that the main kitchen was a catering-type kitchen with a dining hall, which was administered by the appellant for the benefit of the residents and/or the Minister. He stated that there was another kitchen available to the residents should they wish to cook for themselves and that there were fridges in the newer rooms.

Mr. Halpin was asked whether a bedroom amounted to a dwelling and he replied that the person residing there would consider it as domestic premises. He distinguished the situation pertaining to nursing homes, which have been found not to be domestic premises, stating that there is an element of care provided in a nursing home, which is not provided in the subject property. Mr. Halpin said the fact that the appellant was seeking to generate revenue from the premises was not proof that it was not a domestic premises. He was asked whether the RIA rules were consistent with a domestic premises and replied that they were not what one would expect of a 3 bed semi-detached property, but that a facility of that size needed rules. Mr. Halpin referred to the RIA rules, which inform the residents that the centre will be their home while their asylum application is being processed and distinguished this scenario from a hotel, where one might only stay a night or two. He denied that the premises was a mixed premises and stated that in accordance with the conditions of the appellant's agreement with the Minister for Justice, the only activity that could be conducted on the premises was the provision of residential accommodation. It was put to Mr. Halpin that there were a number of areas in the centre that were unlike domestic premises. He responded that the applicant had no need for, say, a catering-type kitchen other than to provide food for the residents.

Mr. Halpin was referred to **VA10/3/001 - Jonathan M. Moore**, where the Tribunal held that a centre used to accommodate asylum seekers was a mixed premises and not a domestic premises and was thus deemed rateable. He admitted that he was unaware of any privately owned premises in the country used to accommodate asylum seekers which are exempted from rates. However, he stated that there were a number of properties, which although on the valuation list, were not being asked to pay rates by the relevant local authorities, including the largest centre in the country at Mosney, Co. Meath and another property in Dublin.

Mr. James Keogh stated that his role as manager of the subject property was to supply and facilitate the residents' needs as required by the RIA rules. He stated that the Department of Justice selects the people who are to reside at the centre and that when they arrive they are added to the register, which must be submitted to the Department every Monday morning. Mr. Keogh stated that if there is an issue with a resident, management must submit a report to the Department, but that it is the Department's decision whether or not to transfer that resident to another centre. He confirmed that neither the Department/RIA nor any other government agencies have any presence on the premises. There are offices in the centre which are used for a social welfare clinic once a week, local garda visits weekly or fortnightly and by the public health nurse who attends once a week. Mr. Keogh also stated that some of the residents have been living in the subject property for almost five years and that all residents have sole possession of a storage facility for their belongings.

Mr. Ian Skeffington stated that he and another individual, Mr. Hugh McGivern, are the owners of the premises and that they have a tenancy agreement with the company, of which they are both directors, for the use of the premises. He stated that he and Mr. McGivern purchased the premises with a view to offering it to the Department of Justice to accommodate asylum seekers. The first agreement with the Department was entered into around 2000/2001 and the agreement has been extended ever since, with the current agreement due to expire in April 2011. Mr. Skeffington stated that the centre is a business but that there is only one potential use for the business and so it must be run in conformity with the requirements of the Department of Justice/RIA. He stated that although there is no lease in favour of the Minister, in his view the Minister had some interest in the premises.

The Respondent's Evidence

Mr. Liam Murphy, a Valuer in the Valuation Office, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-in-chief. He stated that it was his belief that the appellant was in occupation of the subject property as it has the controlling interest in the property and exerts control over cleaning, catering and maintenance. Further when the property was revised in 2004, Mr. Murphy stated that the appellant was adjudged to be the occupier. Mr. Murphy stated that he did not believe that the Department of Justice/RIA had any interest in the property, nor could they exclude the appellant from the property. He also stated that he would not describe the property as domestic premises, as the residents' rooms are essentially only bedrooms, with no kitchenettes or living rooms attached.

Under cross-examination, Mr. Murphy accepted that the residents of the centre had no other home and stored their possessions in the units. He also accepted that the subject property was different to a holiday home or a hotel, as the occupants of the subject do not have freedom of choice as to where they reside but are allocated their accommodation by the RIA. Mr. Murphy stated that the premises could be described as lodgings and accepted that the Valuation Act 2001, states that the fact that premises are used as lodgings does not mean that they are not domestic premises.

Mr. Murphy stated that the subject property was the only asylum seeker accommodation centre in Monaghan, but that when valuing it he looked at other centres around the country and they were deemed to be rateable. With regard to the agreement between the appellant and the Minister, Mr. Murphy accepted that there is an obligation on the appellant to comply with the rules set down by the former. He was referred to a circular that was displayed in the subject premises by the Department of Justice, which states that an accommodation centre must be politically neutral in the same way as public service offices. He was asked whether this meant that these centres were seen as part of the public service, but replied that this was more in reference to the environment in the centre. He did, however, accept that circulars were not relevant in the private sector. In response to a question by the Tribunal, Mr. Murphy agreed that about 14% of the property was common areas and the rest was accommodation/dwellings.

Legal Submissions

Appellant's Submissions

Both parties provided comprehensive legal submissions, which are appended at Appendices 1 and 2 of this judgment. Mr. Ó Maolchalain submitted that the premises was a domestic premises, which in accordance with Section 15(2) and Schedule 4 of the Valuation Act, 2001 was not rateable. He submitted that there was an overlap between the concepts of home and domestic and that the subject property was the asylum seekers' home. He stated that it was clear that, apart from food, what was being provided at the property was accommodation.

Mr. Ó Maolchalain referred to the case of **Kerins v Kerry County Council** [1996] 3 IR 493, where the Supreme Court held that the use of a property for commercial advantage does not preclude it from being a domestic hereditament (the term used in Section 1 of the Local Government (Financial Provisions) Act, 1978). He also referred to **Slattery v Flynn** (Unreported, High Court Ó Caoimh J, 30th July, 2002), where the Court held that a family home and B&B constituted a domestic hereditament. Mr. Ó Maolchalain relied on Section 3(4) of the Valuation Act, 2001, which provides that a property should not be regarded as being other than a domestic premises, by reason only of the fact that it is used to provide lodgings.

In determining the rateable occupant of the premises Mr. Ó Maolchalain referred to **Telecom Éireann v Commissioner of Valuation** [1994] 1 IR 66, where O'Hanlon J stated that the essential ingredients were that, *"The occupation must be exclusive, it must be of benefit to the occupier and it must not be transient."* He stated that in determining whether occupation is in fact exclusive, the test is whether the person sought to be rated has the enjoyment of the premises *"to the substantial exclusion of all other persons."*(**Westminster City Council and Kent Valuation Committee v. Southern Railway Co.** [1936] AC 511).

The most relevant case in Mr. Ó Maolchalain's view was **Aer Rianta CPT v Commissioner of Valuation** (Unreported, Supreme Court, 6th November 1996), which he stated was similar to the instant case in that no business initiative was required by Tedcastles Fuel Limited in that case nor by the appellant in the instant case. Notwithstanding how well the subject premises is managed or run, the appellant cannot increase profitability, as the allocation of business is solely determined by the Minister and the appellant is paid a flat fee. In the **Aer**

Rianta case, the Court held that Tedcastles merely managed a facility at Shannon Airport in strict accordance with provisions dictated by the Minister for Transport in a deed granting Tedcastles a licence in the property and that, therefore, the State occupied the property.

Mr. Ó Maolchalain stated that it was Mr. Halpin's evidence that the residents had the direct use and enjoyment of the premises and they were thus in occupation. Some families had been living there for an extended period and their lives revolved around the premises. Alternatively, Mr. Ó Maolchalain submitted that in light of the control exercised by the Minister for Justice, Equality and Law Reform over the premises, as evidenced by the terms of the agreement between the Minister and the appellant, the Minister was in paramount occupancy. These terms included *inter alia* a requirement that the appellant accept any person referred to the centre by the RIA; mandatory recording of each resident in the official register on a daily basis, which had to be submitted to the RIA once per week; that the rules and procedures of the centre were those set down by the RIA; that the premises were reserved entirely for the reception and care of asylum seekers; that the appellant could not assign/sub-contract any or all of its obligations under the agreement without the prior written consent of the Minister; an indemnity to the Minister in respect of any claims arising from the operation of the centre and provisions with regard to the furnishing of the accommodation; the type of food to be provided; levels of staffing and the handling of complaints.

Mr. Ó Maolchalain referred to **V02/3/002 - Weir & Sons Dublin Limited**, where the Tribunal held that the level of control exercised by the owner of the property represented a degree of interference with the use and enjoyment of the unit by the licensee to the extent that it could fairly be stated that pre-eminent control rested with the owner, who was found to be in paramount occupation of the unit. He submitted that the degree of interference by the Minister/RIA with the use of the subject premises was such that the Minister/RIA should be found to be in paramount occupation of the premises.

Mr. Ó Maolchalain stated that it was Mr. Skeffington's evidence that the Minister had an interest in the property and submitted that, accordingly, it was a matter of construction whether or not the agreement between the appellant and the Minister amounted to a licence. He stated that it was settled law that a licensee can be in occupation.

Finally, Mr. Ó Maolchalain submitted that it is an inherent function of the State to control immigration and it is also a duty of the State to comply with its international obligations to afford certain rights to asylum seekers. He stated that the provision of accommodation for asylum seekers was part of the State's public law functions in controlling immigration and was a matter of public policy and thus the subject premises were used for the exclusive benefit of the Minister for Justice, Equality and Law Reform.

Respondent's Submissions

Mr. Dodd referred to **Nangles Nurseries v Commissioner of Valuation** [2008] IEHC 73, (Unreported High Court, MacMenamin, 14th March 2008), where the High Court set out the principles to be applied in interpreting the Valuation Act, 2001. In that case MacMenamin J stated that impositions were to be construed strictly in favour of the ratepayer but exemptions or relieving positions and ambiguities, if found in a exemption, were to be interpreted against the ratepayer.

Mr. Dodd submitted that the subject property was not a domestic premises. He referred to **VA04/2/035 - First Citizen Residential Ltd.**, where the Tribunal determined that the definition of domestic premises involves a positive test that the premises either in whole or in part be used as a dwelling and two negative tests that the premises cannot be a mixed premises nor an aparthotel. He also referred to **Jonathan M. Moore**, a recent decision of the Tribunal, which found that the corporate entity which ran a similar centre for accommodating asylum seekers was the occupier of the premises and that the premises was a mixed premises and not a domestic premises within the meaning of the Valuation Act, 2001. Mr. Dodd submitted that although the Tribunal was not bound by that decision, there must be some radical new facts or change in the law to justify departing from it.

In relation to the facts of this case, Mr. Dodd stated that there are bedrooms in the centre but they are not self-contained units and have no living rooms, kitchenettes or letter boxes. He submitted that bedrooms do not constitute domestic premises and that the evidence was that there are significant non-dwelling areas within the centre, which spaces are not found in homes or domestic dwellings. Mr. Dodd submitted that the subject property was not a home. There were significant restraints imposed on the residents, e.g. it is an offence for the residents not to reside there, there is a special procedure for visitors, residents cannot bring alcohol onto the premises or food into their rooms and their laundry is done for them. He

distinguished the instant case from **Kerins v Kerry County Council**, which involved self-contained houses, which were clearly domestic dwellings containing a living room, a kitchen and bathrooms.

Referring to Section 3(4) of the Valuation Act, 2001 and the definition of lodging, Mr. Dodd stated that the meaning behind it was that if a property was a domestic premises, the mere existence of a lodger did not preclude it from being considered a domestic premises. However, Mr. Dodd submitted that the subject premises was never a domestic premises to begin with and the fact that it may have been used for lodgings or to accommodate people could not render it a domestic premises. He stated that the subject property was used by the appellant to generate income and was not like a domestic premises.

Mr. Dodd submitted that the appellant was clearly in occupation and possession of the premises and that its employees were on site on a day-to-day basis. He stated that the appellant's case was that because the Minister exercised control over the premises, this meant that the Minister was in occupation thereof, which was an incorrect interpretation of the law. Mr. Dodd submitted that one only looks at the question of control where there is rival occupancy and the question is then who is in paramount occupancy of the premises. He stated that this occurs where both parties have some interest in, or occupancy of, the premises and that all the cases involve one individual or entity who owns the premises, who gives some rights of occupation in the premises to another.

However, in the instant case Mr. Dodd submitted that the Minister for Justice has no interest in the premises and is not in occupation and thus there is no rival occupancy. All the Minister has is a contract for services and so the issue of control is not relevant. Mr. Dodd distinguished **Aer Rianta**, where he stated there was rival occupancy, as Aer Rianta owned the relevant property over which they granted a licence to Tedcastles. However, in this appeal, he stated, the Minister for Justice was not occupying the property.

Mr. Dodd referred to **Westminster Council v The Southern Railway Company** [1936] AC 511 (approved and applied in Ireland in **Carroll v Mayo County Council** [1967] 1 IR 364), which he stated was the leading case on paramount occupancy, in particular p. 529, where Lord Russell of Killowen states,

"Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate."

All the other cases, Mr. Dodd stated, (including **Weir & Sons Dublin Limited**), involved an owner versus a licensee, but there was no evidence in this case that the Minister had any occupancy right over, or interest in, the subject property. Mr. Dodd submitted that there is no authority for the proposition that where someone with no interest in the property, who is not in possession and who only has a contract for services, is in occupation. He submitted that if he is wrong in that submission and if the Tribunal finds the Minister to be in occupation, it is the appellant who is in paramount occupation. No estate or interest has been conveyed to the Minister and the appellant is in *de facto* control on a day-to-day basis and is in sole receipt of the revenue from the property.

Findings

1. The definition of domestic premises in Section 3 of the Valuation Act, 2001 is *"any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel"*. The same section defines mixed premises as, *"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"*. Schedule 4, paragraph 6 provides that a domestic premises is not rateable (subject to Section 59(4), which provides that apartments are rateable in certain limited circumstances). Accordingly, if the Tribunal finds that the subject property is a domestic premises it is not rateable in accordance with Schedule 4.

2. There is no definition of dwelling within the Valuation Act, 2001. However, the Tribunal notes that a definition of a residential unit has been laid down in the Multiple Unit Developments Act, 2011, which unit is defined as, *"a unit in a multi-unit development which is -*

   (a) designed for—

(i) use and occupation as a house, apartment, flat or other dwelling, and

(ii) has self-contained facilities;

or

(b) designed and used as a childcare facility and such facility is not intended to primarily share amenities, services and facilities with commercial units in the development."

This is of some assistance to the Tribunal in the instant case, in that it envisages that dwelling having self-contained facilities.

3. In order to be considered a domestic premises a property must not be a mixed premises. Where a property is used to a significant extent for purposes other than a dwelling, it will be deemed to be a mixed premises. The evidence in this case was that the subject property had a number of non-dwelling aspects, such as offices, a reception area, a laundry room, a commercial-type kitchen, communal dining facilities and other common areas. The living quarters of the asylum seekers were not self-contained own door units, but amounted to bedrooms and bathrooms. Furthermore, not only do the asylum seekers reside in the premises, but other services are also provided for them such as food, cleaning, heating and bed linen.

4. Having regard to the evidence, the Tribunal finds that the subject property is a mixed premises, as it is used partly as a dwelling for asylum seekers to a significant extent, but also partly to a significant extent for other purposes. Accordingly, it cannot be a domestic premises within the terms of Section 3 of the 2001 Act and does not qualify for an exemption under Schedule 4 of the Act. In reaching this conclusion, the Tribunal has also had regard to **VA10/3/001 - Jonathan M. Moore**.

5. In accordance with Schedule 3, paragraph 2 of the Act of 2001 property is relevant property and thus subject to rates in accordance with Section 15(1) of the Act, where it,

"a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature, which under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property."

Occupier is defined in Section 3 as, *"every person in the immediate use or enjoyment of the property."*

6. It is common case that the property is occupied. However, the dispute between the parties centres on who is the rateable occupier. The appellant submitted that either the residents of the centre or the Minister for Justice, Equality and Law Reform was the occupier and the respondent submitted that the appellant was the occupier. In determining who is in rateable occupation of the subject property, the Tribunal has had regard to the definition in the seminal case of **Westminster Council v The Southern Railway Company**, quoted above. That case makes it clear that in order for there to be rateable occupation, there must be actual possession and that where there is no rival occupancy, i.e. where another party has to some extent occupancy rights over the premises, no difficulty arises. It is only where there is rival occupancy that the issue of paramount occupancy arises.

7. The appellant is the lessee of the subject property, which is owned by the appellant's two directors. The appellant manages the subject property, is in sole receipt of the income stream therefrom and its employees are on site on a day-to-day basis. Accordingly, such is sufficient for the appellant to be in the immediate use and enjoyment of the property and thus an occupier within the terms of the Valuation Act, 2001.

8. The residents are not occupiers within the meaning of Section 3 of the Act. They have no rights in relation to the subject property, have minimal control thereover and do not have the right to occupy the premises to the substantial exclusion of all others. They are residing at the centre under the direction of the RIA/the Minister for Justice, Equality and Law Reform and are subject to significant restrictions whilst residing there, including a requirement to notify centre management in the event that they will remain away overnight, a prohibition on bringing alcohol into the centre and restrictions in terms of visitors.

9. The Minister for Justice, Equality and Law Reform also has no interest in the property. He is not a licensee or a tenant of the appellant and the only connection which the Minister has in relation to the property is a contract for services with the appellant. The Minister has no power under this contract to exclude anyone from the property and his servants or agents are not on site on a day-to-day basis, other than when they inspect the property from time to time. Thus the Minister could not be seen to be in the immediate use and enjoyment of the property.

10. The Tribunal has had regard to the case of **VA00/1/033 - Dept of Social Community & Family Affairs** where the Tribunal found that a local Social Welfare Employment Office was occupied solely by the Branch Manager, rather than the Department. In that case the subject property was owned by the Branch Manager, who had a contract for services with the Department to provide certain facilities and services to be approved by the Department.

11. Having regard to the foregoing, the Minister for Justice, Equality and Law Reform is not an occupier of the subject property, not being in the immediate use and enjoyment of the property. As the Minister is not an occupier, the issue of rival occupancy and rateable occupation does not arise. The appellant is the only occupier of the premises and is rateable as such.

Determination

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines that the property is not a domestic premises and, accordingly, is not exempt from rating in accordance with Schedule 4 of the Valuation Act, 2001. The Tribunal further determines that the appellant is the occupier of the subject property and rateable in that capacity.

And the Tribunal so determines.