Appeal No: VA23/2/0011

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Sinead O'Connor & Pascal Flaherty **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 5021252, Domestic House at Twin Peaks, Doonmacfelim, Doolin, County Clare.

B E F O R E
Eoin McDermott - FSCSI, FRICS **Deputy Chairperson**
Caroline Murphy - BL **Member**
Michael Brennan - BL, MRICS **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JUNE, 2024

1. THE APPEAL

1.1 By Notice of Appeal received on 4th May 2023 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €35**.**

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: "Property concerned ought to have been excluded in relevant valuation list."

1.3 The Appellant considers that the property is exempt as a domestic premises under Schedule 4(6) of the Valuation Act 2001 ("the Act").

2. VALUATION HISTORY

2.1 On 26th November 2021 a copy of a valuation certificate proposed to be issued under section 28 of the Act in relation to the Property was sent to the Appellant indicating a valuation of €35.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on 13th April 2023 stating a valuation of €35.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing heard remotely, on 17th October 2023. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor and Mr. Herbert Mulligan, MSCSI, MRICS of the Valuation Office.

3.2 The hearing was held in tandem with *VA23/02/0010 Susan Daly v Commissioner of Valuation*.

3.3 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

3.4 At the outset of the hearing Mr. Dodd advised that the parties were agreed on all the facts in relation to the property and that he would not be cross examining Mr. Halpin on his précis.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts: -

4.2 A revision request was made by Clare County Council on 3rd March 2020 on the grounds that the property was a new property that had never been valued before. The property was described as comprising 6 bedroomed guesthouse accommodation.

4.3 The subject property is located in a residential area close to Doolin, Co. Clare. It comprises a purpose-built residence constructed in 2004 with six guest bedrooms used for Bed and Breakfast ("B&B"). The accommodation in the property comprises a shared entrance hallway, a kitchen used by the occupiers and guests, a dining room and 3 bedrooms (one for the occupier and two for guests) all at ground floor level. There are a further four occupiers bedrooms at first floor level.

4.4 The property has a 4* B&B rating from Bord Failte. It is not registered under the Tourism Acts.

5. ISSUES

The single issue for determination by the Tribunal is whether the subject property constitutes "domestic premises" so as to come within the provisions of Paragraph 6 of Schedule 4 to the 2001 Act.

6. APPELLANT'S CASE

6.1 Mr. Halpin opened his evidence on behalf of the Appellant by expressing his clients surprise at finding themselves at the Tribunal, that in his experience as a valuer one has to take the property as one finds it and upon inspection, he had found the subject property to be a house, used as a principal private residence ("PPR") by the owners and also providing some guest accommodation in the form of lodgings. As such, he did not consider the property to be rateable. He also noted that the property was liable for the Local Property Tax ("LPT") and this tax is discharged annually by the owner.

6.2 Mr. Halpin noted that the property had been constructed in 2004, that it had been in use as a residence since then and it was, to his knowledge, the first time that the Respondent had attempted

to rate B & Bs such as his clients. He acknowledged that the Respondent had taken action preciously on properties with significant numbers of rooms but noted that these were properties with over 30 rooms. He stated that the subject property was the PPR of the owners and one uniform dwelling and that the Respondent had never taken issue with this before.

6.3 Mr. Halpin stated that his first task in valuing the property was to determine whether or not it was a dwelling and he determined that it was, based on the fact it was a single building, with a common entrance, a common kitchen and no physical division between the parts of the property used by the owners and the parts used for guests. He defined the B & B use as a business within the home and said that this was what lodgings are – guest accommodation within one's own home. He also stated that this was not a mixed premises, there was no restaurant, pub or shop in the property. Finally, he confirmed that he had enquired whether the occupiers paid Local Property Tax and was told that the occupier was paying the tax on the entire structure.

6.4 Based on the above Mr. Halpin could not find anything to shake his opinion that the property was a dwelling. He noted that the Valuation Acts provided for lodgings and that the provision of lodgings did not disqualify a property from being a dwelling. He said that the property was not a mixed premises as defined in the Act. In his opinion this was an open and shut matter and the premises should not be rated.

6.5 In response to a query on mixed uses from the Tribunal, Mr. Halpin said that mixed use premises were not unusual, but the use was generally commercial. The subject property provided lodgings, which specifically under the Act does not disqualify the property from being classified as a domestic premises. He noted that in a situation where one had a single property with a pub on the ground floor, with six guest bedrooms and the owners PPR on the upper floors then both the pub and the six guest bedrooms would be rateable. It was his opinion that as there was no commercial use in the case of the subject property then the issue of mixed-use premises does not arise.

7. RESPONDENT'S CASE

7.1 Mr. Mulligans précis briefly set out the circumstances leading to the hearing, noting that the property had been valued at the request of the Local Authority on the grounds that the property was a new property that had not been valued before. He stated that the parts of the property used by the owner were not valued, and that these areas included two bedrooms, a living room and kitchen at ground and first floor level. He defined the valued area as comprising two double guest bedrooms, a living room and a dining room at ground floor level, together with two double bedrooms, a triple bedroom and a quad bedroom at first floor level. It was noted that the dining room was used occasionally by the Appellant. The area valued comprised 255.91 M2.

7.2 Mr. Mulligan put forward four NAV comparisons as follows: -

Property No.	Location	Use	Area (M2)	NAV/M2
5021573	Doolin	Guesthouse/Bed & Breakfast	230.90 M2	€27.33
5021430	Doolin	Guesthouse/Bed & Breakfast	218.28 M2	€27.33
5021542	Lahinch	Guesthouse/Bed & Breakfast	123.61 M2	€27.33
5021209	Shannon	Bed & Breakfast	130.70 M2	€27.33

7.3 Mr. Mulligan sought a valuation of €35, calculated as follows: -

Use	Area (M2)	NAV/M2	NAV	Multiplier	RV
Guesthouse	255.91 M2	€27.33	€6,989.40	0.005	€35

7.4 In the course of cross examination by the Appellants representative, Mr. Mulligan stated that he had handled somewhere between 200 and 300 revisions in his time at the Valuation Office. In that time he had dealt with the issue of rateability of properties, particularly the occupation of properties by charitable bodies, but this was the first time that he had dealt with the issue of the rateability of a domestic property in part use as a B&B. Mr. Halpin noted that the Respondent had been asked by the Local Authority to value a "guesthouse" and questioned what procedures the

Respondent had in place to deal with a situation where it was asked to value a property that may not be rateable. Mr. Mulligan described the property as a guesthouse/bed and breakfast but accepted that the term "guesthouse" had a specific definition for the purposes of the Tourism Acts. He also accepted that the term "bed and breakfast" was not a defined term under the Tourism Acts. However, he argued that the descriptions were not legal terms, but merely indicative of the use. A valuer had to look at the property and decide if it was rateable or not. He would not have taken a different approach if the Local Authority had asked it to value a B&B rather than a "guesthouse". He confirmed that the Revision requests for his comparisons 1-3 had been made at the same time as the request for the subject property. No appeals had been made for those properties.

7.5 Mr. Mulligan accepted that there was a common entrance and shared kitchen but noted that these had not been valued.

7.6 In response to a query on mixed uses from the Tribunal, Mr. Mulligan said that the property had two uses, as guest accommodation and as a private dwelling. He said that the property was valued in accordance with the guidance. When asked what this guidance was, he was unable to provide a source but noted the size of the guest accommodation relative to the domestic use, en-suite bathrooms and the fact that accommodation at the property could be booked online. He believed that the use of the property was seasonal and Mr. Halpin confirmed this point, estimating that the property was closed for approximately four months per year.

8. SUBMISSIONS

8.1 Mr. Dodd made an oral submission on behalf of the Respondent, noting that the landscape within which B&Bs operated now was completely different to that which existed when the provisions were enacted in 1978 and followed through to the 2001 Act. In 1978 B&Bs generally comprised one or two rooms in a person's house, the scheme was run through Bord Failte, it was seasonal, the standard would be low, and it did not compete with guesthouses or hotels. He stated that now the standard was much higher, the operators had their own online booking operation and B&Bs were now effectively competing with hotels. He stated that the rates were the same as Blue

Book rates in popular tourist areas. Mr. Dodd noted that the Respondent has a duty to be equitable and the current position was not equitable.

8.2 Mr. Halpin stated that while he could understand the Respondents position, the Act did not encompass the rateability of B&B's. He pointed out that the Respondent had valued some 25 properties similar to the subject property and that it was concerning that the Respondent had at no time appeared to ask itself if what it was doing was correct under the Act. He noted that the property is not registered under the Tourism Acts, which would disqualify it as Lodgings under the Valuation Act. He drew attention to the Tribunals decision in *VA14/4/011 Craig Robinson and Commissioner of Valuation* and to the High Court decision in the Aberdeen Lodge case [2020] IEHC317 (218 no. 666 SS). He also noted that the Respondent had not been able to put forward a single legal authority to support its case and it was at the Government's discretion to rate B&B's but required new legislation to be introduced.

9. FINDINGS AND CONCLUSIONS

9.1 In reaching a decision in this appeal, the Tribunal has had regard to the précis of evidence, the Appendices thereto, the legal submissions and the authorities of both parties. The fact that the Tribunal does not make specific reference to any particular document or submission does not indicate that it has not been into taken account.

9.2 The Tribunal in this case must decide whether the subject property should be excluded from the valuation list because it falls within Schedule 4 Paragraph 6 of the Act and is a "domestic premises".

9.3 Whilst the Appellant's claim for exemption as a domestic premises is advanced pursuant to Paragraph 6 of Schedule 4, the definition of same is provided under section 3. The domestic premises exemption relevant to this appeal contains a number of components, as follows:

> *" '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:"

9.4 The above definition, is subject to two general exceptions as follows:

"mixed premises" means 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;

"apart-hotel" means one or more apartments, including any ancillary facilities associated with such apartments, which are used for the purposes of the trade of hotel-keeping;

9.5 In addition to the above, section 3(4)(a) is a also a relevant consideration as follows:

"(4) 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,"

Lodgings also being defined in section 3 as follows:

"lodgings" shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an apart-hotel;

9.6 Having assessed the evidence adduced by Mr Halpin and Mr Mulligan, it is apparent that from a factual viewpoint, no controversy arises in relation to the physical use and characteristics of the subject property. The issue in dispute is entirely legal in nature and centres on the legal interpretation of "domestic premises", "mixed premises" and "lodgings" as defined within the Act.

The Tribunal notes that the subject property is not an apart-hotel, therefore the definition of same is not applicable to this appeal.

9.7 Having assessed this evidence, the Tribunal makes the following findings of fact in relation to the building under appeal:

(i) The subject property consists partly or wholly of premises used as a dwelling.
(ii) The property comprises a single structure with a single shared entrance and a single shared entrance hallway.
(iii) The interior of the property is designed as a typical residential dwelling.
(iv) The subject property is occupied by the owners as their PPR with a designated part of the property being occupied by paying overnight guests on a seasonal basis.
(v) The property is not registered under the Tourist Traffic Acts, 1939 to 1998.
(vi) The property is not an apart-hotel.

Statutory Interpretation

9.8 The issue in this appeal arises on the legal interpretation of "mixed premises" having regard to the definition contained within the Act. The Tribunal therefore has to have regard to the principles of statutory interpretation and the ordinary meaning of the words contained within the exemption unless an ambiguity or absurdity arises from this strict interpretation.

9.9 The words contained within definition of "mixed premises" are not ambiguous nor create an absurdity. The Tribunal notes under this definition that in addition to the building being used to a "significant extent" as a dwelling, the other purpose of the building most also be significant having regard to the ordinary meaning of the word "such" in the latter part of this definition "… *another or other purposes to such an extent".* It is undisputed by the evidence of both parties that the guest accommodation is seasonal and is occupied for a maximum of 8 months. The use of the building as a dwelling is permanent. On this basis, the Tribunal considers the guest accommodation to be used to a less significant extent and cannot therefore be considered to be a "mixed premises" within the meaning of the Act.

9.10 With regard to whether the use of the guest accommodation constitutes "lodgings" as defined by the Act. The definition of lodgings states that it "*shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an apart-hotel;".* The Tribunal notes that it is agreed by the parties that the property is not registered under the aforesaid Acts and that it is not an apart-hotel. Having regard to this fact, the use of the property for guest accommodation is aligned to the definition of "lodgings" under the Act.

9.11 The Appellants argument is that the property comprises a single unit used as a dwelling with lodgings and that this is a domestic premises as defined in the Act. The Respondents position is that they have not valued those parts of the premises used exclusively or shared by the owner and that the subject property as valued by the Respondent consists entirely of guest bedrooms, guest breakfast rooms and a sitting room.

9.12 The Appellant included the Tribunals decision in the case of *VA14/4/011 Craig Robinson and Commissioner of Valuation* in his précis. This decision refers to the High Court decision in *Flynn v Slattery* [2003] ILRM 450 and the Tribunal described its findings as follows: -

"This case stated concerned a dwelling house which contained 10 bedrooms, six of which were used for the occupation of paying guests. Two questions were stated for the opinion of the High Court: first whether the premises was a "domestic hereditament" and secondly, in the alternative, whether the premises was a "mixed hereditament" within the meaning of the Local Government (Financial provisions) Act 1978. The definitions of "domestic hereditament" and "mixed hereditament" in the 1978 Act are essentially the same as the definitions of "domestic premises" and "mixed premises" in the 2001 Act, the only difference being that the word "hereditament" is replaced by the word "premises". The High Court accepted that the use of a hereditament for lodgings did not per se take the property out of the category of "domestic hereditament" In considering the effect of the word "only" in section 1(3)(a)(i) of the 1978 Act, which is equivalent to section 3(4) of the 2001 Act, O'Caoimh J. stated:

"I consider that the use of the word 'only' is indicative of the fact that a partial use for the provision of lodgings will not change the character of the hereditament from being a domestic hereditament where there is a multiplicity of uses. Were the premises to be used for, for example, three uses, namely as a dwelling, the provision of lodgings and a doctor's surgery, the provision of lodgings will not change the character of the hereditament as domestic to any significant extent as a doctor's surgery will be such that hereditament must be regarded as a "mixed hereditament". I am of the view that the use of the word "only" must be seen in the context of a possible multiplicity of uses, all to a significant extent, such that one can disregard the use for the provision of lodgings."

9.13 The Tribunal noted that the Respondents valuer was unable to offer any evidence as to why the property should now be considered rateable, some 20 years after its construction. The Respondents valuer indicated that the property had been valued according to "guidelines" but was unable to state what these "guidelines" were. Counsel for the Respondents did not put forward any statutory authority or case law to support the Respondents case, beyond noting the requirement for equity and uniformity.

9.14 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the burden of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination. The Tribunal finds that the Appellant has discharged that burden in this case.

9.15 The Tribunal finds that the property is used as a dwelling, and for the provision of guest accommodation on a seasonal basis which accord to the definition of "lodgings" and does not cease to become a "domestic premises" by reason only of the fact that the property is used to provide lodgings.

9.16 The Tribunal finds that the subject property is a domestic premises as defined in the Act and is therefore not liable for rates.

And the Tribunal so determines.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.