Appeal No. VA04/2/068

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Gladstead Properties Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Holiday Complex at Lot No. Pt.1D.2, Brookfield, Kilbarron, R.D. Borrisokane, North Tipperary, County Tipperary

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Joseph Murray - B.L.	**Member**
Patrick Riney - FSCS FRICS FIAVI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 2004

By Notice of Appeal dated the 15th day of June, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €445.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:
6(a)(i) "Valuation is excessive having regard to quality, nature and use of accommodation, trading losses and construction costs."
6(c)(iii) "Without prejudice to item 6(a), the property comprises a private complex with sports pavillion & resendential properties which should be excluded by ref to 4th Schedule of 2001 Act and not falling within S.59."

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 13th of October, 2004. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Messrs Eugene F. Collins & Co. Solicitors and the respondent by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor. Expert valuation evidence was given by Mr. Adrian Power Kelly, a partner in Messrs Harrington Bannon and Mr. Denis Maher, a Valuer in the Valuation Office, on behalf of the appellant and respondent respectively. Both parties having taken the oath adopted their respective précis, which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

The property was constructed in 2000 – 2001 and modelled on a 19th century Irish folk village and includes 6 apartments and 17 self catering cottages (3 of which were incomplete at Revision and are not included in the determination of the RV) and is located on the eastern side of Lough Derg, North Tipperary, about 12 miles from Nenagh.

Facilities include:

- Clubhouse
- Restaurant/bar
- Leisure centre, salon and crèche
- Marina which has 65 berths
- Office
- Fisherman's hut
- Various Stores
- Conference Centre

At the commencement of the hearing the parties informed the Tribunal that quantum was no longer at issue. The quantum was agreed at €430 of which €250 applied to the 14 cottages and €180 to the remainder of the subject property.

The apartments are not self-contained and are without kitchens so therefore it was agreed by the parties that they should be rated. The rateability of the 14 cottages which were valued is at issue. The appellant says that they are domestic premises and entitled to exemption under paragraph 6, Schedule 4, Valuation Act, 2001 as relevant property not rateable. The respondent says they are a "mixed premises" and not entitled to exemption under the Valuation Act, 2001.

Appellant's Submissions.

- The cottages are used for dwelling purposes only and there is no question of their being mixed premises. The submission of Mr. Conway that they are a mixed premises is totally misconceived.
- Mixed premises within the meaning of Section 3 of the Valuation Act, 2001 is "*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*." The section does not use the plural word "buildings". The section is identical in wording, apart from the word "hereditament" to the corresponding section 1 of the Local Government (Financial Provisions) Act 1978, now repealed.
- In **Kerry County Council v Kerins, Supreme Court, IR (3) 1996** (the **Kerins** case) the *res judicata* was based on the fact that the chalets were individually let out as holiday homes and were not used for any other purpose, apart from that of dwellings. Accordingly they were held to be domestic hereditaments under the Local Government (Financial Provisions) Act, 1978. The fact that they are commercially let does not matter as there was no mention of the dwellings having to be "private".
- If it was the intention of the Legislature to rate property of this type, then the Legislature could have done so.
- As the cottages are used for dwelling purposes only they are domestic premises within the meaning of the Valuation Act, 2001 and accordingly are relevant property not rateable under Schedule 4 of that Act.

Respondent's Submissions.

- Mr. Conway departs from Mr. Hickey's analysis and says that his concept of "mixed premises" is too narrow.
- The property inclusive of the cottages must be seen in its entirety as a single holiday resort complex and should be rated as such. It is a single business unit. When a guest takes a cottage he buys a package of which the residential side is only one aspect, just as an apart-hotel is part of the hotel business.
- The definition of mixed premises is met. The complex has to be assessed in its entirety. It is composed of various buildings used wholly or partly for accommodation, and it is also composed of other buildings used for purposes other than accommodation such as the restaurant, bar, clubhouse, leisure centre and the berths at the marina. These facilities are not generally open to the public.
- An experienced valuer would not construe the word "building" as used in the Act in the singular only, but would interpret it in its broadest sense to embrace the whole property.
- The facts are fundamentally different from those in the **Kerins** case cited above. The **Kerins** case was concerned basically with the letting of holiday homes, whereas this case concerns a large holiday complex where you buy into the package with all the facilities aforementioned. These facilities are linked to the lettings and not separate from them. They are not generally open to the public. In the **Kerins** case there was the facility of a ballroom but there was no evidence to show that this was confined to the residents only.

Findings

The facts indicate that there is definitely similarity of purpose between the subject property and the **Kerins** case. The present "village" is a modern development, which commenced in 2000 while the **Kerins** chalets go back to 1984. The difference is in scale only when one considers the range of facilities available at the subject premises. The facilities in the **Kerins** case comprised a complex of buildings consisting of a licensed guest house, a ballroom and six detached blocks, each with two fully furnished self contained chalets or houses.

As regards both properties the same economic principle applies. They were both set up to run a holiday enterprise on a commercial basis whereby guests could come and stay in detached buildings used as dwellings.
However, we must examine to see if the legal principle established in the **Kerins** case, namely that the chalets were held to be "domestic hereditaments" under the previous legislation [the Local Government (Financial Provisions) Act, 1978] and entitled to relief, can also be applied to the cottages in this case under the Valuation Act, 2001.

"Domestic premises" within section 3(1) of the Valuation Act, 2001.
There are 3 tests, one positive and two negative.

- The premises either in whole or in part must be used as a dwelling and
- Cannot be a mixed premises
- Nor an apart-hotel

We start with the last test and work backwards. The question of an apart-hotel was not an issue in this case. However, the respondent raised the issue that the subject premises is a mixed premises under the 2001 Act. The main submission in this regard is that the Gladstead property has to be taken as a whole business unit from the point of view of valuation and not just the cottages by themselves. The respondent submits that the property meets the criteria for mixed premises within the Act.

- Property which consists wholly or partly of a building
- Used partly as a dwelling to a significant extent and
- Used partly for other purposes to such an extent.

He submitted that the word building has to be interpreted in the plural. The business has to be valued as a whole unit and any true valuer would value the premises as a whole business unit and not just in part. The reality is that the premises are used for both residential and non-residential purposes. One should not put a narrow interpretation on the word "building". Accordingly it is a mixed premises within the meaning of the 2001 Act.

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. We look to the Supreme Court for guidance. Apart from the word "hereditament" the wording in the present legislation is identical to the previous. In the **Kerins** case the chalets were held to be separate dwellings independent of the other buildings. The Supreme Court judges interpreted the word "building" in the singular to ascertain if each individual chalet was a domestic hereditament. They did not treat the 12 chalets as an integral part of the complex along with the other buildings, each was evaluated as an individual unit. Similarly we must treat the cottages in this case in a similar way and not treat them for the purposes of rating law as part of the whole complex. We must evaluate each as a separate building unit.

By way of contrast we might refer to a recent Tribunal determination with regard to **First Citizen Residential Ltd.-VA04/2/035**, which operates as a nursing home. The residential and non-residential aspects of the business were integrated within the one building complex and so the building was evaluated as a whole and held to be a "mixed premises" within the meaning of the Valuation Act, 2001.

Again the **Kerins** case is the main guidance in law in this matter.

- Each of the 12 chalets were used for dwelling purposes only and accordingly were not mixed premises and were held to be " domestic hereditaments" as defined by section 1 of the Local Government (Financial Provisions) Act 1978. Similarly in this case the cottages are used for dwelling purposes only and are not mixed premises within the meaning of the Valuation Act.
- We appreciate that under section 11 (a) of the Interpretation Act, 1937 every word importing the singular shall, unless the contrary intention appears, be construed as also importing the plural and vice versa. The Tribunal interprets the word building in its literal meaning as singular which appears to be in line with the thinking of Judge Blayney at High Court level when he referred in the **Kerins** case to "each" of the chalets as a domestic hereditament (page 504 IR 1996). This may be a narrow interpretation but it is the law as it stands. In a similar way we must look to each cottage as a single unit or building to ascertain if each one is a domestic premises.

- Whether the holiday complex is open to the general public or not is not a material fact.
- Whether the individual buys into a package or not is not material. What is material is whether the cottages are used only as dwellings.
- The fact that they are used on a commercial basis is not material.
- If the Legislature wanted to rate these types of dwelling units as part of a holiday complex, they could easily have provided for such in the legislation.
- Nevertheless it must be said that the Tribunal has a degree of sympathy with the respondent in so far as the subject premises is clearly a commercial enterprise and run solely for the purposes of making a profit and as such should be liable for rates. However in the light of the **Kerins** case and the lack of guidance in the Valuation Act, 2001 we conclude that the cottages are in fact domestic premises within the meaning of paragraph 6, Schedule 4, of the Valuation Act, 2001 and as such are relevant property not rateable.

And the Tribunal so determines.

Obiter dictum

It is worth bearing in mind that at the time of the Supreme Court judgement on the 1st February, 1996 in **Kerry County Council v Kerins**, the defendant was a member of the Irish Cottages and Self Catering Association which had then 48 members owning approximately 500 cottages similar to the defendant's chalets and none of these was ever required to pay rates.