

Appeal No. VA07/3/078,
VA07/3/107, VA07/3/110 &
VA07/3/118

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Sean Lyne, Belamber Properties Ltd., Trinity Property Golf Limited & Donal Finn
APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Aparthotels at Lot No. Suite 3, Lodge Suites (078), Suite 33, Courtyard Suites (107),
Suite 37, Courtyard Suites (110) and Suite 45, Courtyard Suites (118), Carrowmore,
Doonbeg, Kilrush, 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 1ST DAY OF MAY, 2008

By Notices of Appeal received on the 21st day of August, 2007, the appellants appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of €19.00 (078), €30.00 (107), €22.00 (110) and €30.00 (118) respectively on the above described relevant properties.

The Grounds of Appeal as set out in the Notices of Appeal are :

"The subject property is a "domestic premises" as per the Valuation Act, 2001 and therefore is liable to be deemed "Relevant Property Not Rateable" as per Schedule 4, Section 6 of the Valuation Act, 2001."

1. With the consent of the parties these appeals were held contemporaneously on 12th November, 2007 at the Offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. It was agreed by the parties that each of the four appeals be considered as test cases in respect of another number of appeals where the properties concerned are similarly circumstanced within the meaning of Section 40 of the Valuation Act, 2001.
2. At the hearing, Mr. Donal O'Donnell, SC, instructed by Mr. Edward Leahy, Leahy & Partners Solicitors, appeared on behalf of the appellants. The respondent, the Commissioner of Valuation was represented by Mr. Denis McDonald S.C., and Mr. James Devlin, BL, instructed by the Chief State Solicitor.
3. Valuation evidence on behalf of the appellant was given by Ms. Dawn Holland, BSc (Hons) MIAVI, of GVA Donal O Buachalla. Mr. David Molony, BSc, MRICS, a District Valuer in the Valuation Office, gave valuation evidence on behalf of the respondent. Mr. Joseph J. Russell, General Manager of Doonbeg Golf Club Limited, gave information in relation to the development of the course and other facilities at Doonbeg and the role of the company in relation to the Lodges and Suites which are the subject of these appeals.
4. Prior to the oral hearing *précés* of evidence were received from Ms. Holland, Mr. Molony and Mr. Russell. At the hearing each witness adopted their *précis* as being their evidence-in-chief under oath and were subjected to examination and cross-examination in the usual manner. Each party also submitted a comprehensive book of authorities and schedule of cases and statutes referred to therein and a list of these are set out in the schedule attached to this judgment.

Facts

5. From the evidence tendered the following material facts were admitted or so found:
 - a. The Doonbeg development is a new purpose-built golf resort built to the highest standards and aimed at the international and national markets.
 - b. The golf links was designed by Greg Norman and the entire project was carried out by an American company, Kiawah Development Partners (KDP).
 - c. The construction of the links commenced in or about late 1999 and in 2002 KDP obtained planning permission for the development of the Lodge and Courtyard Suites.
 - d. Construction of the Suites began in April 2004 and was completed in May 2006.
 - e. The Lodge comprises the golf clubhouse, which provides all the usual facilities, such as bar, restaurant, administration rooms, professional shop, locker rooms and

full spa facilities. The clubhouse accommodation is within a 3/4 storey building which also contains 15 Lodge Suites, 4 of which are at ground floor level. There are an additional 11 Lodge Suites at First/Second floor level, some of which are split level. The clubhouse and Lodge units share a common entrance, but other than that the Suites are fully self-contained and fully fitted out for normal use as a dwelling. Users of the Suites can avail of wash and drier facilities in common with the users of the Courtyard Suites.

- f. The 32 Courtyard Suites are 2/3 storey in layout and, with the exception of 2 semi-detached units, are laid out in terraced formation.
- g. The Lodge is not a hotel nor is it registered as such by the Irish Hotels Federation. The clubhouse, however, does have a 7 day liquor license but this does not extend to the Suites in the Lodge, which are in separate ownership.
- h. Each Suite has been accorded a separate number, numbers 1-15 being in the Lodge and numbers 16-47 being the Courtyard Suites.
- i. Each Lodge Suite is held under a 999-year lease and the Courtyard Suites are held under a freehold title. All the Suites are liable for a service charge for the upkeep of the access road and the common areas within the development. In addition the Suites in the Lodge pay a further service charge for the maintenance of the designated common areas within the building. Each owner is responsible for all maintenance and repair costs in the usual manner.
- j. Following a marketing campaign the Suites were sold to a variety of owners, all of whom are required to be members of the Doonbeg Golf Club and have all the benefits of membership.

Rating History

6. On 24th October, 2006 a Valuation Certificate (provisional) was issued by the Revision Officer appointed by the Commissioner of Valuation pursuant to section 28(2) of the Valuation Act, 2001 to the effect that the property concerned being the Lodge building and the Courtyard Suites be valued in the sum of €1,635.00. The occupier shown was The Lodges at Doonbeg Golf Club and the property was described as an apart-hotel.
7. Following representations by Mr. Ronald Ryan of Doonbeg Golf Club Limited, the Revision Officer valued the clubhouse facilities at a rateable valuation of €60 and accorded separate valuations to Suites No. 1-46. Each suite was described as an apart-hotel. Suite No. 47 was not valued.

8. An appeal was lodged against the assessments of all 46 Suites on the basis that each suite was a “domestic premises” and hence relevant property not rateable under the provisions of Paragraph 6 of Schedule 4 of the Valuation Act, 2001. Following due consideration the appeals were dismissed by the Commissioner of Valuation and in due course appeals in respect of 45 Suites were lodged with the Valuation Tribunal.
9. Following discussion between the parties, the four properties which are the properties concerned in these appeals, were selected as being in the nature of test cases for 4 distinct ownership groups as follows:

Group 1 Appellant - Donal Finn

Test case VA07/3/118 – Related appeals VA07/3/092, VA07/3/093, VA07/3/094, VA07/3/096, VA07/3/097, VA07/3/098.

These appeals are concerned with 7 Courtyard Suites.

Group 2 Appellant - Sean Lyne

Test case VA07/3/078 – Related appeals VA07/3/076, VA07/3/077, VA07/3/079, VA07/3080, VA07/3/081, VA07/3/082, VA07/3/083, VA07/3/084, VA07/3/085, VA07/3/086, VA07/3/087, VA07/3/088, VA07/3/089 and VA07/3/090.

These appeals are concerned with 15 Suites in the Lodge building.

Group 3 Appellant - Belamber Properties Limited

Test case VA07/3/107 - Related appeals VA07/3/075, VA07/3/091, VA07/3/095, VA07/3/096, VA07/3/097, VA07/3/098, VA07/3/099, VA07/3/100, VA07/3/101, VA07/3/102, VA07/3/103, **VA07/3/104** VA07/3/105, VA07/3/108, VA07/3/109, VA07/3/112, VA07/3/116, VA07/3/119.

These appeals are concerned with 17 Courtyard Suites.

Group 4 Appellant - Trinity Property Golf Limited

Test case VA07/3/110 - Related appeals VA07/3/111, VA07/3/113, VA07/3/114, VA07/3/115 and VA07/3/117.

The properties concerned in these appeals are 6 Courtyard Suites.

The rateable valuation of each property is not in dispute, the only issue between the parties being whether they are “apart-hotels” within the meaning of Section 3 of the Valuation Act 2001 or “domestic premises” not rateable under Paragraph 6 of Schedule 4 of the 2001 Act.

The Lodge Suites

10. The 15 Lodge Suites are located within a 4-storey building which also houses the clubhouse and spa facilities. Each Suite is fully self-contained and fully fitted out for normal dwelling purposes.
11. All the Lodge Suites are owned by companies or individuals who have entered into a “Marketing and Rental Agreement” with Doonbeg. This agreement provides that the owners select a period during the high season (April to October) and the low season (November to March) when they will make use of the Suites for their own purposes. For the rest of the year the Suites are marketed by Doonbeg on short-term letting arrangements. The rental income derived from this activity is shared on a 60:40 basis between the owners and Doonbeg.
12. Doonbeg routinely make the Suites ready for incoming visitors who check in at Reception on arrival where they are requested to provide credit card details. Doonbeg provide towels, bathrobes, slippers and bed linen and on request will provide full room service for meals but not liquor which can only be purchased at the bar. A “turndown” service is also provided in the evenings and visitors can also avail of laundry and shoeshine facilities provided by Doonbeg. All services availed of are “signed” for and charged to account.
13. When purchased all Suites were fully fitted out, decorated and furnished to an agreed specification consistent with that found in the clubhouse and supplied with bed linen, towels, bathrobes and slippers, etc., at the cost of the purchaser.
14. Doonbeg maintain an account with each individual owner, to which is credited the appropriate share of rental income and to which is charged all costs which are the responsibility of the owner, including service charges and the cost of the utility services and maintenance costs.

The Belamber Group

15. Belamber Properties Limited is a private company, incorporated specifically for the purpose of operating and managing 17 Courtyard Suites which have been registered with Fáilte Ireland as “approved holiday cottages”. The appropriate registration certificate is dated the 21st December, 2006. One other Courtyard Suite (Suite No. 34) does not appear

to be so registered but nevertheless is included in the Belamber Group for appeal purposes.

16. Each Courtyard Suite is 2 or 3 storey and laid out in terraced configuration. Each Suite is self contained with its own individual and separate connections to all normal public services and utilities, and fully fitted out for normal residential occupation and use.
17. Belamber occupy the Suites under individual leases, each for a term of 21 years subject to the payment of an annual rent, calculated on a formula basis set down in the fifth Schedule of the lease. In effect the rent payable by Belamber in each instance is the total rental income achieved in any financial year, less all costs and expenses incurred by Belamber in managing, marketing, maintaining, repairing, renewing, insuring and servicing the demised premises. Belamber are also liable for the payment of a service charge in respect of each Suite to cover the cost of maintaining the common areas carried out by Doonbeg as property managers of the entire complex.
18. Under the provisions of each lease, Belamber is to use the demised premises solely for short term lettings as holiday homes, so as to ensure the continued registration of the demised properties in any register of holiday cottages established by Fáilte Ireland in order to ensure the owners/investors benefit from the tax allowances payable under section 268(3) of the Taxes Consolidation Act 1997.
19. Belamber Group participates in the Marketing and Rental Agreement scheme with Doonbeg, which also includes the Lodge Suites.
20. The owner of each of the Belamber Suites is a member of Belamber Properties Limited.

The Trinity Group

21. Trinity Property Golf Limited is a private company whose objects include “*To carry on the business of promoting fractional ownership property schemes*”. In other words, “time share schemes” whereby individuals purchase the right to occupy premises for a specific week(s) each year subject to a payment of a capital sum plus an annual service charge. This service charge would include the cost of maintaining the property and would include also the service charge payable to Doonbeg for the provision of common services.
22. Under the time share schemes the properties are fully fitted out and furnished and maintained by Trinity which routinely makes the premises ready for incoming occupiers on a self catering basis. Under the scheme participants who do not avail of their time slot can exchange them with properties in other similar type schemes.

23. Trinity are the occupiers of 6 Courtyard Suites, all of which are self contained with their own separate connection to public utilities and services and are fully fitted out for normal residential occupation. Trinity does not participate in the Marketing and Rental Agreement scheme.

The Donal Finn Group

24. The Donal Finn Group includes a number of individual investors/owners who own 7 Courtyard Suites. Each Suite is either 2 or 3 storey and is a self contained unit of occupation with its own separate connection to public services and utilities.
25. Each owner(s) participates in the Marketing and Rental Agreement scheme in common with the owners of the Lodge Suites and the Belamber Suites.

The Appellant's Submissions

Mr. Donal O'Donnell on behalf of the appellants submitted as follows:

- i. Each Suite is held under an individual title and valued separately in accordance with section 17 of the Valuation Act, 2001 and described as being an apart-hotel. The issue in this appeal is the interpretation and the application of the statutory term "apart-hotel"; unless each unit can be shown to be an "apart-hotel" it follows that they are relevant properties not rateable pursuant to Paragraph 6 of Schedule 4 of the Valuation Act, 2001.
- ii. If a property is to be made the subject of a valuation (and consequently rated) then clear and unambiguous words must be used (**Trustees of Kinsale Yacht Club v Commissioner of Valuation** [1994] 1 ILRM 457)
- iii. "Apart-hotel" is a concept that was known prior to the enactment of the Valuation Act, 2001. Individual Suites at Doonbeg are not apart-hotels and cannot be described as such. For example, several of the Courtyard Suites (Belamber Group) are registered by Fáilte Ireland as holiday cottages. The Lodge at Doonbeg is not a hotel and the use of the suite by the owner or person to whom it is rented is use as a "dwelling".
- iv. The provisions of the Local Government (Financial Provisions) Act, 1978 introduced machinery whereby domestic hereditaments which were hitherto rated, were no longer made liable for rates. In the 1978 Act, domestic hereditaments were defined as "*any hereditament which consists wholly or partly of premises used as a dwelling and which is not a mixed hereditament.*" This definition is to be compared to the

definition of “domestic premises” in the Valuation Act, 2001 which 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.*” Effectively the definitions are the same, save for the substitution of premises for hereditaments and the addition of the word apart-hotel.

- v. It is clear from a consideration of the provisions of the 1978 Act that the exemption that was granted was not restricted to private domestic houses, but included several other classes of dwellings, which were not exclusively used as a private house, such as Bed & Breakfast accommodation and holiday cottages. The precise scope and application of the provision arose in **Kerry County Council v Kerins** (1996 3IR 493) (“**Kerins**”) and in the context of these appeals, it is worth repeating the description of the complex of buildings which was owned by Mr. Kerins. The property consisted of “*a licensed guest house, a ballroom, and 6 detached blocks each comprising two self-contained fully furnished houses comprising 3 bedrooms, 1 bathroom and 1 sitting room/kitchen/dinette capable of being separately let, making in all 12 letting units, usually referred to as ‘The Chalets’.*”
- vi. It is significant that when the Oireachtas came to address the question of exemption from rates for domestic premises when framing the 2001 Act, it effectively re-enacted the provisions of the 1978 Act as interpreted in **Kerins**. It is plain that the Legislature did not intend to seek to reverse the effect of the decision in **Kerins**, but endorsed the decision that exemption did not exclude the use for commercial advantage such as holiday lettings. The exemption for domestic premises was re-enacted with the sole exclusion of an apart-hotel which embodies an apartment complex run in conjunction with a hotel. Such a description could not easily apply to the Suites which are the subject of these appeals.
- vii. The 2001 Act sets down four steps towards consideration of what is comprehended by the word apart-hotel. Firstly the 2001 Act treats as relevant property not-rateable - “*any domestic premises*”. Secondly, “*domestic premises*” are defined 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*”. Thirdly, “*apart-hotel*” is defined in turn as “*one or more apartments including any ancillary facilities associated with such apartments which are used for the purpose of the trade of hotel-keeping*”. Fourthly, “*apartment*” is defined as “*a self-contained residential unit in building which comprises a number of such units*”.

- viii. The interpretation of this aspect of the Act was dealt with recently in the case of **VA04/2/018 - Trabolgan Holiday Centre (“Trabolgan”)** and again in **VA04/2/068 - Gladstead Properties Ltd. (“Gladstead”)**. The Gladstead development comprised of an extensive self-catering holiday village which was valued by the Commissioner of Valuation as being an integral part of a mixed premises.
- ix. The Tribunal rejected the Commissioner’s approach and, looking to the **Kerins** judgment for guidance, concluded that each cottage must be considered as a single building unit and moreover was a domestic premises within the meaning of Paragraph 6 of Schedule 4 of the 2001 Act.
- x. At the time when the 2001 Act was passed, the concept of an apart-hotel was known and hence the decision of the Oireachtas to make such properties subject to rates. The definition of an apart-hotel in the Act is narrow and predicates an apartment facility within a hotel complex.
- xi. The properties at Doonbeg cannot be said to be collectively or individually an apart-hotel, nor can any Suite (particularly those described as Courtyard Suites) be said to be an apartment in the natural and ordinary meaning of that word, or by way of precise and careful statutory consideration.
- xii. None of the individual units can be described as a self-contained residential unit in a building that comprises a number of such units. The Courtyard Suites in particular are self-contained units like semi-detached or terraced houses.
- xiii. The Lodge at Doonbeg is not a hotel nor is it rated as such. It does not hold itself out to be a hotel or carry out the trade of hotel-keeping but it does hold a seven day publican’s licence. In **Kerins, Trabolgan** and **Gladstead** restaurant and other leisure facilities were also provided. The fact of the matter is that the Suites at Doonbeg are each owned by individuals as holiday accommodation. The fact that they enter into arrangements for rental during times when they are not using them is irrelevant.

The Respondent’s Submissions

Mr. Denis McDonald on behalf of the respondent submitted as follows:-

- i. The decision of the Supreme Court in **Kerins** established that a premises could avail of the exemption for domestic premises even if the owner does not make private use thereof or uses it for commercial advantage such holiday lettings. This case was decided under the Local Government (Financial Provisions) Act, 1978 which defined

- a “*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, the 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 purpose of the trade of hotel-keeping*”. In the context of these appeals therefore two issues are raised; are these subject premises apartments within the statutory definition and are they used for the purposes 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 of this definition for the purpose of these appeals 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 it 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 of the 2001 Act.
 - vi. In the 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.
 - vii. The Suites which are the subject of these appeals fall into two groups – namely those which are contained in the Lodge building and those which are contained in terraces and are known as Courtyard Suites.
 - viii. As regards the Lodge Suites, it is the premises known as the Lodge which is the relevant structure. As regards the Courtyard Suites, it is the terraces which are the relevant structures, and each Suite in turn is “*a self-contained residential unit in a building that comprises a number of such units*” and hence an apartment within the statutory definition of an apartment, contained in section 3 of the 2001 Act.
 - ix. Whether or not the subject properties are used for the trade of hotel-keeping raises questions of fact and law.
 - x. 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**

(North Edward Street) Properties Ltd. (Unreported, Laffoy J., High Court 27th July, 2004). In that case, Laffoy J. said at the conclusion that the premises were used for the purposes of the trade of hotel-keeping; it is not necessarily inconsistent with the findings 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 Fáilte Eireann was not determinative and there was no requirement for registration in s. 255(1)(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 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. 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.”

- xi. The fact that premises are not registered as a hotel does not preclude a finding that they are nevertheless used for the purposes of hotel-keeping. An examination of the facts in this appeal suggests that the Suites are not used merely for the purposes of

letting as holiday accommodation. The facilities, including house-keeping services, available to those who take the accommodation in the Suites are clearly in the nature of hotel-keeping.

- xii. Under the Marketing and Rental Agreement, Doonbeg are entitled to 40% of the income generated from units which participate in the scheme. This high percentage indicates that Doonbeg are involved in more than merely the management of properties. Under the Marketing and Rental Agreement, the owners of individual Suites may only occupy them for specific periods, and on all other occasions must make them available to Doonbeg for letting purposes.
- xiii. Whilst the Trinity Suites are not involved in the Marketing and Rental Agreement scheme, the investors are fully entitled to all the facilities and services offered in the Lodge and cottages. Investors in Trinity may also avail of the use of other similar properties at Quinta do Lago in Portugal.
- xiv. Under the Suite Management Agreement, which has been entered into by the owners of the Donal Finn Group, Doonbeg offer a range of services such as property management services, guest check-in at reception, house-keeping and other services. The provision of such services is consistent with the trade of hotel-keeping.
- xv. It is clear that the services Doonbeg offer are much more than property management in that visitors can avail of a comprehensive range of services and facilities which in normal circumstances can only be found in hotel premises.

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.

Mr. Molony, in his written presentation, went to extraordinary lengths to provide the Tribunal with documentary evidence regarding the various management agreements, lease details, corporate structures and other relevant material which was of great assistance to the Tribunal in arriving at its determination. The Tribunal is indebted to Mr. Molony for his efforts in this regard.

The Tribunal has carefully considered all the evidence proffered and legal argument adduced on behalf of the appellant and respondent and has examined all the wide range of authorities referred to it and makes the following findings:

1. It is common case that the golf resort, Doonbeg, has been designed and built to extremely high standards and that the quality of services and facilities provided in the Lodge are similar to those found in 5-star Hotels. It is also common case that the Suites are furnished and fitted out to similar high standards.
2. Doonbeg is one of several similar type developments which have been completed throughout the country in recent years. Initially, the scheme was aimed at overseas investors but, as the development proceeded, several Suites were purchased by Irish residents. Purchasers of the Suites are required to become members of Doonbeg Golf Club, which is a private members club but which is also open to visitors on a pay and play basis.
3. Doonbeg are the managing agents for the entire facility and provide management and maintenance of all the common areas within the complex, subject to the payment of an annual service charge by each individual owner. Doonbeg provide a wide range of property maintenance services to the owners of the Suites within the Lodge building, again subject to the payment of an annual service charge.
4. Owners of the Lodge Suites and the Belamber Courtyard Suites have all entered into a Marketing and Rental Agreement with Doonbeg whereby the Suites are let out on short-term holiday lettings. Rental incomes derived from these lettings are split on a 60:40 basis between the owners and Doonbeg. Visitors using the Suites may avail of a comprehensive range of services and facilities provided at a cost by Doonbeg. The services provided by Doonbeg are to 5-star hotel standards.
5. The owners of the Belamber Suites are members of the Belamber Company which is a special purpose company incorporated solely for the purposes of operating and managing 17 Courtyard Suites which have been registered with Fáilte Ireland as approved holiday cottages. The owners of these Suites are entitled to tax relief under the Finance Acts.
6. Trinity Property Golf Limited which own 6 Courtyard Suites, is a time share company whereby individual investors have the right to use the Suites for a specific week(s) each year. Trinity do not participate in the Marketing and Rental Agreement scheme organised by Doonbeg but, nonetheless are responsible for an annual service charge in respect of the maintenance of the common areas within the Doonbeg complex.

7. The Donal Finn Group comprises 7 individually owned Courtyard Suites, all of which participate in the Marketing and Rental Agreement with Doonbeg. The owners of these Suites are mainly non-resident.
8. The issue in these appeals is clear cut – namely are the Suites apart-hotels within the meaning of the definition contained in section 3 of the Valuation Act, 2001? In order for a property to be an apart-hotel it must meet two primary tests – firstly, is it an apartment and secondly, if it is, then is it used for the purposes of the trade of hotel-keeping? If the answer to the first test is no then it is not necessary to consider the second.
9. 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 physical services such as entrances, lobbies, stair-cases and elevators. Whilst an apartment in an apart-hotel may have the same physical characteristics, users of such apartments will enjoy the benefits of house-keeping services and other facilities normally provided to hotel residents. Apart-hotels are usually operated as an adjunct to a hotel.
10. A terrace house is somewhat different to an apartment, in that each house is not only self-contained but self-sufficient with regard to access, with its own front and back door and more often than not a garden or yard at the front and rear.
11. 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. From **Cement Limited v The Commissioner of Valuation** [1960 IR 283] (“**Cement Ltd.**”) it is worth repeating the following “*so 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 the primary meaning of the word as understood in its popular sense.*”
12. 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 and 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.

13. It is well established that words in a statute should be construed according to their plain and ordinary meaning, unless it is a construction that gives rise to an absurdity. 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 “building” or “structure” to exaggerated lengths to find that terrace houses are apartments as defined in Section 3 of the 2001 Act.
14. It follows from our findings at paragraph 13 above that the Courtyard Suites which are the subject of this appeal do not constitute an apart-hotel, but are holiday homes, which in the light of **Kerins** and **VA07/3/036 - Killerig Golf and Country Club Rentals** are domestic premises not rateable under Paragraph 6 of Schedule 4 of the Valuation Act, 2001.
15. As regards the Suites in the Lodge, they have all the attributes of an apartment within the meaning of the 2001 Act. Consequently therefore they pass the first test and hence their use has to be examined in some detail to establish whether or not they are an apart-hotel.
16. The Lodge Suites are owned by individual owners, all of whom have entered into a Marketing and Rental Agreement with Doonbeg. Under this arrangement the owners have pre-emptive rights to occupy the Suites for a period in the high season and the low season. At all other times the Suites are available for letting through Doonbeg. Doonbeg market the Suites either on an accommodation-only basis or on “special accommodation packages”, which can include complimentary meals and/or golf and treatments at the spa. These packages are in the nature of those which would normally be associated with hotels.
17. The rated occupiers of the Lodge Suites appearing in the valuation list are the owners who are either individual or corporate entities most of which are non-resident in Ireland. Under section 3 of the 2001 Act “*occupier means in relation to properties (whether corporeal or incorporeal) every person in the immediate use or enjoyment of the property.*” In accordance with Schedule 3 of the Act all relevant properties are rateable except for those listed in Schedule 4 which at Paragraph 6 thereof, includes domestic premises.
18. The fact that the owners of the Lodge Suites have each entered into a Marketing and Rental Agreement with Doonbeg is not evidence that they have given up possession. Indeed under the terms of the agreement Doonbeg have the right or obligation to market the Suites for short-term lettings when they are not being used by the owners,

subject to an income sharing arrangement. The marketing methods used by Doonbeg to achieve these lettings are not the concern of the owners, nor indeed is the scale and nature of the additional services and facilities Doonbeg offer to visitors in order to attain this end.

19. The owner's role in the letting program is passive and remote and is limited to the supply of the accommodation under the Marketing and Rental Agreement.
20. The owners individually use the Suites as holiday homes at specified periods only and during the rest of the year make them available to visitors for a similar purpose. Whether or not they are let with the benefit of additional services is dependent upon individual choice or the type of package offered directly by Doonbeg as part of their commercial role, distinct from that under the Marketing and Rental Agreement.
21. The fact is that the owners are in occupation of the Lodge Suites. The benefits they enjoy from such occupation are twofold: firstly, the use of them as holiday homes at times of their choosing and, secondly, the letting of them to others for commercial advantage. This latter use is not use for the purposes of the trade of hotel-keeping
22. It follows from our findings at the above paragraph that the premises known as the Lodge Suites which are indeed apartments do not constitute an apart-hotel within the meaning of the 2001 Act but are holiday homes which, in the light of **Kerins** and **Killerig** 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 finds that the properties concerned in these appeals and, by extension, those which are similarly circumstanced are "domestic premises not rateable" under Paragraph 6 of Schedule 4 of the Valuation Act, 2001.

And the Tribunal so determines.