

THE HIGH COURT

2018 No. 666 SS

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857 (AS  
EXTENDED BY SECTION 51 OF THE COURTS SUPPLEMENTAL PROVISIONS ACT 1961)

BETWEEN

JOHN CLARKE

RESPONDENT

-AND-

PATRICK HALPIN AND ANN KEANE T/A THE ABERDEEN LODGE

APPELLANTS

**JUDGMENT of Ms. Justice Murphy delivered on the 26th of June, 2020**

1. This is an appeal by way of case stated, against a decree granted in favour of the Respondent by District Court Judge, John Brennan, on 16th January, 2018. The case stated is set out in full below.

***Introduction***

1. *This is an Appeal by way of a case stated pursuant to the provisions of section 2 of the Summary Jurisdiction Act, 1857 as extended by section 51 of the Courts Supplemental Provisions Act, 1961 of the Orders, made by me sitting in Dublin District Court on the 16th January 2018.*
2. *By a summons dated 5th October 2017 Mr John Clarke, Rate Collector for Dublin City Council (hereafter 'the Claimant') instituted District Court proceedings (bearing Record No. 96757/2017) against Patrick Halpin and Ann Keane trading as Aberdeen Lodge (hereafter 'the Defendants') in respect of their premises situate at 53/55 Park Avenue Sandymount Dublin 4 (hereafter 'the Premises') seeking a decree against the Defendants jointly and severally for alleged unpaid rates for the years 2013-2017 inclusively, in the sum of €75,195.12 together with costs.*
3. *The Defendants claimed that the Premises were exempt from rates on the grounds that the Premises were 'domestic premises' within the meaning of section 3 of the Valuation Act, 2001 and were therefore not liable to rates.*

***Findings of Fact by the District Court***

4. I found the following facts:
  - (i) *The Defendants reside in the Premises as their family home with their two children.*
  - (ii) *The Premises has 16 en suite bathrooms and is listed on some websites as a boutique guesthouse. The Defendants have no control over such listings.*
  - (iii) *The Premises had been registered as a guesthouse under the Tourist Traffic Acts 1939 to 2011 until 2012 and operated by a limited liability company, Elektron Holdings Limited, (hereafter 'the Company') until that time. Rates were paid for 2012 by the Company. Following the appointment of a receiver*

*to the Company in July 2012 the guesthouse was shut down and the registration was allowed to lapse.*

- (iv) Thereafter the second-named Defendant commenced the use of the Premises as a B&B, but did not re-register the Premises.*
- (v) The second-named Defendant's profit and loss account for 2016 shows a substantial turnover of €537,000.*
- (vi) The first-named Defendant was paid a not inconsiderable consultancy fee for 2016 in the sum of €32,800 for services provided to the second-named Defendant.*
- (vii) An application for a revision of the rateable valuation of the Premises under section 28 of the Valuation Act, 2001 was not submitted by the Defendants to the Valuation Office until 21st November 2017.*
- (viii) The Premises is located in a high spending area for visitors and tourists in Dublin.*

**Findings based on the facts as found**

5. *I made the following findings based on the facts as found:*

- (i) While the Act may be silent as to the level of commercial activity that was required, I was satisfied that the substantial turnover for 2016 and the availability of the 16 en suite bedrooms in the Premises meant that it would defy common sense to hold that the Premises were not commercial premises.*
- (ii) I took judicial notice of the locus of the premises, and its location in a high-spending area for visitors and tourists to Dublin.*

**Determination of the District Court**

6. *In light of the foregoing, I found that the Premises were commercial premises and liable to rates. I granted a Decree in favour of the Claimant for the sum of €75,195.12 plus costs which I measured at €1,000 plus VAT.*

**Applicable Law**

- 7. *Section 3 of the Valuation Act, 2001 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."*
- 8. *Section 3(4)(a) of the Act provides that "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...the property is used to provide lodgings".*
- 9. *Section 3(1) of the Act provides that '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.*

10. *Section 15(2) of the Act provides that relevant property referred to in Schedule 4 shall not be rateable.*
11. *Schedule 4 of the Act lists categories of property which are not rateable. Paragraph 6 of the Schedule applies to 'Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain limited circumstances)).'*

**The Questions of Law Arising**

12. *Arising out of the foregoing the following Questions of Law arise for the determination of the High Court:*
  - (1) *Did I err in law in determining that the Premises were 'commercial premises' and were therefore liable to rates.*
  - (2) *Did I err in law in failing to hold that the Premises fell within the definition of 'domestic premises' in section 3 of the Valuation Act, 2001 and therefore were exempt from rates.*
  - (3) *Did I err in law in taking judicial notice of the locus of the Premises in a high spending area for visitors and tourists to Dublin and in having regard to same in making my determination.*
  - (4) *Did I err in law in considering whether the Premises were 'commercial premises' and in failing to consider whether the Premises were nevertheless 'domestic premises' within the meaning of the Valuation Act, 2001.*
  - (5) *Whether I erred in law in having regard to, or taking into account the following:*
    - (i) *The second-named Defendant's substantial turnover for 2016;*
    - (ii) *The availability of 16 en suite bedrooms; and / or*
    - (iii) *The fee paid to the first-named Defendant."*
2. The matter came before this court on 22nd January, 2019, and was adjourned in order to allow both parties to prepare submissions. The matter next came before the court on 19th and 20th February, 2019, and the court reserved its judgment. At the hearing of this case in January and February, 2019, the court expressed its concern that a debate as to whether the premises are domestic or commercial, does not address the real issue, which is whether as a matter of fact as found by the District Court, and law, the rates demanded are payable.

**Statutory background to the collection of rates**

3. In its submissions, the respondent set out the statutory background to the collection of rates, which is not in dispute and which the court therefore adopts.
4. The power to make and levy rates is provided for under s. 61 of the Poor Relief (Ireland) Act 1838, with s. 71 providing that rates are levied on the occupier:-

*"71. And it be enacted, that every rate made under the authority of this Act shall be paid to the person authorised to collect the same by the person in the actual occupation of the rateable property at the time of the rate made, and on his default then by the person subsequently in the occupation of the rateable property from whom such rate shall be demanded."*

5. In every financial year, the local authority is required to prepare and adopt a local authority budget. The local authority, which is a rating authority, is then directed to determine in accordance with the budget, the annual rate on valuation to be levied (the striking of the rate). This direction is made subject to s. 10 of the 1978 Act, which empowers the Minister (for the Environment) to set limits on the amounts that a local authority may charge in respect of the rates. The amount to be assessed on each relevant property is computed by taking the valuation of the property, as determined by the Commissioner of Valuation, and as notified to the local authority, and multiplying that by the annual rate on valuation as determined. The rating authority is obliged to publish a statutory notice of the rate having been made. The rating authority is then required to issue a rates bill to each ratepayer, demanding payment of the rates due as soon as may be. The right of appeal against the rate is founded in s. 106 of the 1838 Act, as amended by the Poor Relief (Ireland) Act 1849 and the Valuation (Ireland) Act 1852. The grounds upon which an appeal may be made are as follows:-

- i. The appellant is aggrieved by the rate;
- ii. The appellant has material objection to any person or persons being included in or excluded from the rate;
- iii. The appellant has material objection to the sum charged on any person.

The lodging of an appeal does not prevent the local authority from collecting the rate, as provided for in s. 110:-

*"Provided always, And be it enacted, That notwithstanding any such appeal or notice thereof every rate shall be payable and shall be levied as if no appeal had been made, until such rate shall be actually quashed or amended."*

6. In a situation where an appeal is taken, there is a defence to a demand for payment, on the grounds as provided for in the case of *The Guardians of the Poor of New Ross Union v Byrne* (1892) 30 LR Ir 160. These grounds are as follows:-

- a) The rate is bad on its face;
- b) The person rated is not in occupation; and
- c) The property is outside the rated area.

7. The origin of the summary procedure for the recovery of rates in the present case, is found within s. 152 of the Grand Jury (Ireland) Act 1836. This procedure was subsumed

into s. 73 of the Poor Relief (Ireland) Act 1838, with s. 152 being repealed by the 1898 Act. It was held in the case of *County Council of Clare v Patrick McInerney* [1920] 2 IR 536 that notwithstanding the repeal of s. 152, the poor rate was still recoverable summarily.

8. The above procedure remained the same on the foundation of the state, and was confirmed in the Rules of the District Court:-

*"Where under any statute proceedings for the recovery of any sum of money claimed to be due are directed to be brought summarily or in the District Court or before a Judge, and neither the statute in question nor any other enactment nor any of these or any other Rules lays down the procedure to be followed in bringing the proceedings, such proceedings shall be brought by summons and not by civil summons."*

This rule was incorporated into O. 12, r. 11 of the District Court Rules 1997.

### **The striking of rates**

9. In the respondent's submissions at para. 5, the process involved in striking the rate is set out. The Commissioner of Valuation is empowered to appoint a valuation manager, and a valuation list of rateable properties is then compiled. At a specified date, anticipated on the appointment of the valuation manager pursuant to Valuation Order, the valuation list is published and is made available for inspection. Before the publication of the list, a certificate of valuation is issued to the occupier of the relevant property, and to the relevant local authority. Accompanying the valuation certificate, is a note informing the occupier that they are entitled to make representations to the valuation manager, within 40 days. The valuation manager is empowered to amend the valuation certificate, or to replace it. Pursuant to s. 27 of the Act, an occupier may apply for the appointment of a revision manager. Under s. 29, the occupier has the right to make representations. The Valuation Commissioner may direct the valuation manager to amend or replace the valuation certificate, in exceptional circumstances. The occupier may then appeal to the Valuation Tribunal, pursuant to s. 34. The Tribunal has the power to decide whether that property should be excluded from the valuation list. An occupier has a further right of appeal to the High Court and the Supreme Court, pursuant to s. 39 of the Act. In order to appeal the determination of the Valuation Tribunal, the occupier must first declare in writing, within 21 days, the party's dissatisfaction with the Determination and must within 28 days, request the Valuation Tribunal to state a case to the High Court.

### **Submissions on behalf of the appellants**

10. It is the appellants' case that the District Judge erred, in holding that the premises constituted "*commercial premises*" and were therefore liable to rates. It is the appellants' case that the premises constituted "*domestic premises*" and were not liable to rates. On this basis, the appellants submit that the questions of law stated should be answered in the affirmative.
11. The appellants submit that the determination was made, on the assumption that premises can be either "*commercial premises*" or "*domestic premises*". They submit that the fact

that premises are used for commercial use, does not mean that they may not also constitute “*domestic premises*”, within the meaning of the 2001 Act.

12. The appellants cite the case of *Kerry County Council v Kerins* [1996] 3 IR 493, where the plaintiff brought Circuit Court proceedings, seeking the payment of arrears of county rates that were allegedly due by the defendant, as occupier of rateable hereditaments. The defendant operated twelve chalets, with each chalet having a separate rateable valuation. The defendant disputed his liability to pay the relevant rates, on the basis that his premises were “*domestic hereditaments*” within the meaning of the s. 1 of the Local Government (Financial Provisions) Act 1978, and that he was therefore entitled to relief under the Act. On appeal to the High Court, it was held that the premises constituted a “*domestic hereditament*”. A case was stated for the opinion of the Supreme Court, and it was held by a majority that the premises came within the definition of “*domestic hereditament*”. The appellants submit that it was also held that the Act did not require the occupier to make private use of the dwelling, nor did it preclude him from using it for commercial advantage. The appellants also submit that the Supreme Court did not consider the extent of commercial usage of the premises, nor the profitability of the operator, in reaching this conclusion.
13. The appellants submit that the applicability of this case is unaffected by the enforcement of the 2001 Act, and that the definitions given to “*domestic premises*” and “*mixed premises*” under s. 3 of the 2001 Act are almost identical to those contained in s. 1(1) of the 1978 Act, save that that Act instead referred to “*domestic hereditament*” and “*mixed hereditament*”. The appellants submit that this decision was applied in *Gladstead Properties Ltd v Commissioner of Valuation* VA04/2/068, a case which they submit, was determined under the provisions of the 2001 Act.
14. The appellants submit that in the case of *Killerig Golf and Country Club Rentals v Commissioner of Valuation* VA07/3/036, it was held by the Valuation Tribunal that the 37 holiday homes and lodges, made up of nine detached houses, 22 semi-detached houses and six terraced houses, were held to be “*holiday homes*”, and were therefore entitled to the domestic premises exemption.
15. The appellants submit that s. 3(4)(a) provides that for the purposes of the Act, a property shall not be regarded as being other than a “*domestic premises*”, by reason only of the fact that the property is used to provide “*lodgings*”. The appellants submit that in enacting the 2001 Act, the Oireachtas was conscious that dwellings may be used to provide short term accommodation on a commercial basis, i.e. “*lodgings*”.
16. The appellants cite *Slattery v Flynn* [2003] ILRM 450, which was a case stated from the District Court, in which two questions were stated for the opinion of the High Court; firstly, whether the premises was a “*domestic hereditament*”; secondly, whether the premises was a “*mixed hereditament*” within the meaning of s. 1(1) of the 1978 Act. The appellant in that case submitted that the wording of s. 1(3)(a)(i) pre-supposed that the use of a premises to provide lodgings could bring a premises within the definition of “*mixed hereditament*”, where that use is significant. In answering the first question in the

affirmative, Ó'Caomh J. considered the significance to be attached to the word "only" within the provision, which provided that a property should not be regarded as being other than a "domestic premises", by reason only of the fact that the property is used to provide "lodgings":-

*"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 are a multiplicity of uses. Were the premises to be used for, for example, three uses, namely as a dwelling, the provision of lodgings and as a doctor's surgery, the provision of lodgings will not change the character of the hereditament as a domestic hereditament while the use to any significant extent as a doctor's surgery will be such that the 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."*

It is submitted that this analysis of the "domestic hereditament" provisions of the 1978 Act, must be equally applicable to the "domestic premises" provisions of the 2001 Act.

17. The appellants submit that the decision of the District judge in taking into account the locus of the premises in a high spending area for visitors and tourists of Dublin, is a significant factual error, such that it amounts to an error of law. The appellants submit the decision of *E v Secretary of State for the Home Department* [2004] QB 1044, where they submit, the English Court of Appeal set out four 'ordinary requirements' that will usually have to be met before a mistake of fact will give rise to the necessary unfairness, though it has been observed they submit, that the requirements do not constitute a precise code:-
- (1) There must have been a mistake as to an existing fact. The fact must have existed before or at the time of the decision;
  - (2) The fact or the existence of the evidence must be established, in the sense that it is uncontentious and objectively verifiable;
  - (3) Thirdly, neither the individual seeking to rely upon the mistake nor his advisors must have been responsible for the mistake; and
  - (4) The mistake must have played a material (but not necessarily decisive) part in the public body's reasoning.

The appellants submit that this decision was been quoted with approval in the recent decision of O'Regan J. in *Stanberry Investments Limited v Commissioner of Valuation* [2018] IEHC 620.

18. It is submitted on behalf of the appellants that the street on which the property is located is entirely residential, and comes within the scope of "domestic premises" within the

meaning of s. 3 of the 2001 Act. The appellants also submit that the level of spending by visitors and tourists, whether high or low, was not a relevant consideration for the District Judge to take into account. The appellants further submit that private homes in the area which are not used for lodgings, would not lose their status as "*domestic premises*" and become liable for rates, even if the *locus* was in fact a "*high spending area for visitors and tourists*". It is equally submitted that if a hotel or guesthouse registered under the Tourist Traffic Acts, were located in a residential area with limited numbers of visitors and tourists, that it would not be entitled to be treated as exempt from rates for that reason, notwithstanding the *locus*. The appellants concede that the *locus* of a rateable property would be relevant when the valuation of the property was being determined, but submit that that is an entirely separate matter.

19. The appellants submit that in considering the extent of the second-named appellant's turnover, the number of available bedrooms and the fee paid to the first-named appellant, that the District Court judge fell into error in placing properties into mutually exclusive categories of "*domestic premises*" on one hand, and "*commercial properties*" on the other. The appellants submit that in *Kerry County Council v Kerins*, the court found that the construction of the 1978 Act did not require the occupier to make private use of the dwelling, nor did it preclude him from using it for commercial advantage. It is submitted that the same principles apply in respect of the Valuation Act 2001.
20. The appellants submit that the fact that the occupiers were making a commercial advantage from the premises was never in doubt, but that the issue to be determined is whether the premises were "*domestic premises*" within the meaning of the 2001 Act. The appellants submit that in the *Kerins* and *Slattery* decisions, these three factors were not relevant considerations. The appellants submit in particular, that in the *Kerins* decision it is likely that the turnover of the chalets was considerable, but that it was never suggested by the Supreme Court that this could bring the chalets into the category of rateable properties, or that some greater level of turnover might have that effect in a future case.

#### **Submissions on behalf of the respondent**

21. The respondent raised two points of defence. The first is that the appellant's defence that that their premises were exempt from rates on the grounds that the premises were 'domestic premises' within the meaning of section 3 of the Valuation Act 2001 and were therefore not liable to rates, is wholly misconceived having regard to the provisions of the Valuation Act 2001. The second point of defence is that the appeal is an impermissible attack on the validity of the rate which can only be challenged by means of judicial review and that the time for judicial review had long since expired. The second point of defence elicited a trenchant riposte from the appellants who argued that the issue of estoppel or acquiescence had not been raised in the District Court and that had it been, other factual matters would have been advanced. Fortunately, from this Court's viewpoint, it has been able to decide this appeal on the respondent's first line of defence and for that reason has not found it necessary to wade into the complex and evolving jurisprudence as to what constitutes an impermissible attack, nor has it had to disentangle the parties arguments on that issue.



### **The Defence is Misconceived**

22. The respondent submits that the Valuation Acts 2001 to 2015 provide an elaborate, fair and exhaustive scheme for establishing rates, notifying the occupier and for contesting rateable valuations, or to contend for exemptions. The respondent submits that no such opportunities were availed of by the appellants at any time, nor, it is submitted, have they brought any challenges by way of judicial review, arguing illegality in the process of arriving at a valuation of this property. The respondent submits that the elaborate provisions and the strict timetables provided under the Act, are put at nought, if the appellants are permitted to raise these issues at this stage. Additionally, the respondent submits that the public law remedies of *certiorari*, *mandamus* and prohibition together with ancillary remedies, were at all times available as a possible means of testing the valuation made.
23. The respondent submits that the summons procedure for enforcement of rates before the District Court is not a forum for contesting valuations, on the basis that it does not admit of any defence, once it is established to the satisfaction of the District Court that the appellants were in occupation, and the rate is due and has been lawfully struck. The respondent submits that the court is only concerned with whether the ratepayer is or was in occupation, that procedural formalities have been complied with, that the property has a rateable valuation, and that the local authority rate as struck for the year in question, has been applied to the property. The respondent submits on this basis that the District Court was not required to hear any evidence or submissions on the issue of whether or not the premises were "*commercial premises*". The respondent submits that that issue was for determination exclusively under the procedures provided for under the 2001 Act or, in the event that any of the offices or bodies exceed their jurisdiction, by way of judicial review.

### **Decision**

24. On the facts of this case and as a matter of law, the Appellants' purported defence to the respondents claim for rates is entirely misconceived. It is based on the law and jurisprudence which predated the enactment of the Valuation Act 2001 and takes no proper account of the significant changes to rating law effected by that Act.

In the case of *St Vincent's Healthcare Group Ltd V Commissioner of Valuation* [2009] IEHC 113, Cooke J. observed at paragraph 3: -

*"The Act has the effect of repealing and re-enacting in consolidated but substantially revised and modernised form almost the entirety of the law relating to the valuation of property for rating purposes in this jurisdiction since 1838. The terminology familiar to practitioners in this field of "rateable hereditaments" and "tenements" has been replaced by the term "rateable property" and Schedule 4 of the Act lists 19 types or categories of relevant property which are designated as "not rateable" by s.15(2) of the Act."*

25. Later in the same judgment, Cooke J. expressed the view that caution must be exercised in relying on case law which predated the 2001 Act. In that case, the issue to be

determined was whether a carpark which was purpose-built, stand alone and owned and operated by the plaintiff, came within paras. 8 and/or 16 of Schedule 4, and was as a consequence not rateable. At para. 25, Cooke J. stated as follows:-

*"It is accepted that although the pre 2001 legislation comprising the Valuation Acts from 1838 onwards are not repealed many of the analogous cases considered in judgments on these provisions still remain useful and authoritative in considering these questions. It is important to bear in mind, however, that in the case law prior to the introduction of heading No 8 of the current Act, the exemption of hospital properties turned upon their use for 'charitable purposes'. Thus, the cases which deal with issues such as the use of a building for Nurses Homes or the residence of a Church employee are heavily influenced by the concept of charitable purposes in the sense of eleemosynary, gratuitous or voluntary endeavours. Because heading No 8 accords exemption to hospital properties independently of the possible charitable object of the occupying body, it is necessary to exercise some caution in having recourse to that case law for the purpose of construing heading number 8."*

26. Exercising that caution, this court concludes that the decisions of the Supreme Court in *Kerry County Council v Kerins* [1996] 3 IR 493, and of the High Court in *Slattery v Flynn* [2003] ILRM 450, to the effect that it is a defence to a demand for payment of rates, to establish that the property is a domestic dwelling, based as they are, on the previous statutory regime, is no longer the law under the Valuation Act 2001.
27. Prior to 2001, domestic dwellings were rateable and each had a rateable valuation. By virtue of the operation of the provisions of the Local Government (Financial Provisions) Act 1978, domestic dwellings though rateable, were exempted from having rates levied on them. In such circumstances, it was clearly a defence to a rate demand to assert that the rated property was exempt from having rates levied upon it. Such a defence appears to the court to be congruent with the long established principles set out in the case of *New Ross Guardians v Byrne* (1892) 30 LR IR 160, that it is a defence to a demand for payment to show:
  - (a) The rate is bad on its face;
  - (b) The person rated is not in occupation;
  - (c) The property is outside the rated area.
28. It seems to me to be arguable that a rate demand in respect of a property which is exempt by law, is an unlawful demand, which could render the rate bad on its face. There is no doubt that the Supreme Court in *Kerins* and the High Court in *Slattery v Flynn* proceeded on the basis that the ratepayer was entitled to defend the demand for payment by establishing that the rated property was a domestic dwelling and therefore, exempt from the payment of rates.

29. In the court's view such a defence is no longer available since the enactment of The Valuation Act 2001. The Act made significant changes to the existing statutory scheme. It creates a whole new regime for the classification and valuation of rateable properties and the method by which rates will be levied in respect of them. The long title of the Act is:

*"AN ACT TO REVISE THE LAW RELATING TO THE VALUATION OF PROPERTIES FOR THE PURPOSES OF THE MAKING OF RATES IN RELATION TO THEM: TO MAKE NEW PROVISION IN RELATION TO THE CATEGORIES OF PROPERTIES IN RESPECT OF WHICH RATES MAY BE MADE."*

30. The Act is an extensive and comprehensive piece of legislation. In the words of the Respondent, *"The Valuation Acts 2001 to 2015 provide for an elaborate, fair and exhaustive scheme for establishing, notifying occupiers and for contesting valuations."* Part 1 deals with preliminary matters and includes a lengthy interpretation section. Part 2 provides for the role, powers and duties of the Commissioner of Valuation. Part 3 provides for the continuation of the Valuation Tribunal notwithstanding the repeal of the Valuation Act of 1988. Part 4 identifies the rateable properties to be valued. S. 13, directs the Commissioner to provide for the determination of the value of all relevant properties (other than relevant properties specified in *Schedule 4*) in accordance with the provisions of the Act. It is s. 15(2)(Schedule 4) of this part which provides that domestic properties shall not be rateable. Part 5 provides for the valuation process; the making and publication of valuation orders; the issuing of valuation certificates; the frequency with which the valuation list is to be updated (not less than 5 and not more than 10 years); and the right of the occupier of rateable property to make representations to the valuation manager if she/he is dissatisfied with any material particular stated in the valuation certificate. Part 6, which is of particular relevance to the circumstances of this case, provides for the revision of valuations. Where there is a material change of circumstances, as defined by the Act, an occupier of a property that appears on a valuation list may apply in writing to the Commissioner for the appointment of a 'revision officer' to review the valuation. If the revision officer is satisfied that there has been a material change of circumstance then he has power *inter alia* to exclude the property from the valuation list on the ground that the property falls within *Schedule 4* (non-rateable properties) To take an example away from the facts of this case, if the occupier of a shop decides to convert his shop into a domestic dwelling then he is entitled to apply to the Commissioner to have his property valuation revised for the purpose of excluding it from the valuation list because now, being a domestic premises, it is no longer rateable. Absent a successful appeal of the original or subsequent valuation under the Act, or a successful application for revision, the property remains on the valuation list. On the other side of the coin, if an occupier converts her dwelling into a business premises, then the occupier or the rating authority can apply to the Commissioner for its inclusion in the valuation list.
31. Part 7 of the Act provides for extensive rights of appeal in respect of all aspects of the valuation process, including a decision made by a revision officer. The first appeal is to the Commissioner. The Commissioner's decision can be appealed to the Valuation

Tribunal. A further appeal lies to the High Court on a point of law. A final appeal lies under the Act to the Supreme Court.

32. The foregoing are the parts of the legislation most relevant to this case.
33. The Act introduces the concept of 'relevant property' in place of 'hereditament' 'Relevant property' is defined in *Schedule 3*. Paragraph 1(a), of the *Schedule*, provides that 'buildings' are relevant property for the purposes of the Act. It follows that all domestic dwellings are 'relevant property'. S.15(2) provides that relevant property referred to in *Schedule 4* shall not be rateable. Item 6 in *Schedule 4*, specifies 'Any domestic premises'. S. 3(1) of the Act defines 'domestic premises' as:
- "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.*
34. The effect of these provisions is that domestic premises are 'relevant property' but are no longer rateable. Domestic premises do not appear on valuation lists of rateable properties, compiled after 2001. S. 13, of the Act, empowers the Valuation Commissioner to determine the value of all relevant properties (other than relevant properties specified in *Schedule 4*). If a property appears on a valuation list compiled after the 2001 Act came into force, that property is *ipso facto* not a domestic premises, within the meaning of the Act. The defence to a demand for payment of rates, available under the previous statutory regime, that the rated property is a domestic dwelling and exempt from having rates levied on it, no longer exists, because domestic dwellings are not rateable at all, and consequently there can be no demand for payment of rates in respect of domestic premises.
35. It is true, that the Act does retain many of the definitions contained in the previous statutory regime. The definition of 'domestic premises' is essentially unchanged. Under the 2001 Act it is defined as *"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.* The definition of 'lodgings' is also essentially unchanged. It remains *"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.* The words 'or in an apart-hotel' have been added to the original definition. The definition of "mixed premises" (previously "mixed hereditament"), is exactly the same as in the previous statute. *"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.* Section 3(4) of the Act imports the provision of s. 1(3) of the 1978 Act into the 2001 Act. It provides that *"a property shall not be regarded as being other than a domestic premises by reason only of the fact that the property is used to provide lodgings"*.
36. The fact that the definitions are unchanged means that the jurisprudence relating to those definitions and in particular *Kerry County Council v Kerins*, remain relevant, authoritative

and indeed binding on an inferior Court or Tribunal called upon to determine whether or not a particular property is a 'domestic premises'. This is what occurred in the cases of *Gladstead Properties Ltd v Commissioner of Valuation and Killerig Golf and Country Club Rentals v Commissioner of Valuation*, cited by the appellants. In both those cases the rated parties challenged the Commissioner's valuation of their property on the basis that part of their property consisted of 'domestic premises' within the meaning of the Act. They each brought their respective challenge pursuant to the provisions of the Valuation Act, to the Valuation Tribunal, and were in each case successful because the Tribunal in each case applied the test of 'domestic premises/hereditament' set out by the Supreme Court in *Kerins*. Had *Gladstead* and *Killerig* accepted the Commissioner's Valuation, could they subsequently refuse to pay rates on the grounds that part of their respective properties were domestic dwellings? In the Court's view, they could not. Under the Valuation Act 2001, a relevant property on the valuation list remains on the list unless and until the valuation is either challenged in accordance with the provisions of the Act or revised in accordance with Part 6 of the Act.

37. A valuation may be revised where there is a 'material change of circumstances'. That term is defined in the Act and includes "circumstances which consists of- the happening of any event whereby any relevant property begins, or ceases to be treated as a property falling within Schedule 4" In the event of a material change of circumstances an occupier may apply to the Commissioner pursuant to S.27(1) for the appointment of a revision officer to exercise the powers conferred on him/her by S. 28 of the Act. If the revision officer considers that a material change of circumstance has occurred since the last valuation of the property, he/she may "exclude that property from the list on the ground that ....the property falls within Schedule 4" S.28 (4)(a)(ii).
38. Since the enactment of the Valuation Act 2001, an application for revision or a lawful challenge under the Act, to a valuation, are the only means by which a rateable property can be excluded from the valuation list. By virtue of the extensive appeals procedures set out in Part 7 of the Act, the determination of the revision officer as to whether a property is a domestic premises, or any other decision of the Valuation Tribunal, may find its way to the High Court on a point of law. (S. 39.) In that event, the High Court would be bound by the Supreme Court decision in *Kerry County Council v Kerins* as to what constitutes a 'domestic premises'.
39. Alternatively, of course, the validity of the rate demand or any other decision in the valuation process, can be challenged in the High Court by means of judicial review. In that event, if the definition of 'domestic premises' were in issue in the proceedings, then the court would similarly be bound by the findings of the Supreme Court in the *Kerins* case.
40. The Appellants have neither challenged the valuation of their property nor sought a revision of that valuation in the relevant years, being 2013 to 2017. Nor have they judicially reviewed any decision in the valuation process during that period. By virtue of the provisions of the Valuation Act 2001, it can no longer be a defence to a rates demand

in respect of a relevant property on the valuation list, to assert that the property is a domestic dwelling, because by definition, if a relevant property is on the valuation list it is not a domestic premises.

41. On the facts as found by the District Court it is clear that the Appellants property was placed on the valuation list because it is a property which was registered as a guesthouse under the Tourist Traffic Acts and as such was rateable. It is not clear when the property was first placed on the valuation list. Up until 2012 the property was operated by a company, Elektron Holdings Ltd, of which the appellants were Directors. Rates were paid by the company until 2012. In July 2012 a receiver was appointed to the company. The guesthouse was shut down and the registration under the Tourist Acts was allowed to lapse. The second named appellant continued to use the premises as a B&B but did not register the premises under the Tourist Traffic Acts. It was open to the appellants to challenge the valuation of their property or to apply for a revision of the valuation of their property. They did not do so until 21st November 2017. Accordingly, their property, as a matter of law, continued to be a rateable property in respect of which rates were payable.
42. No issue has been raised in the case stated from the District Court as to any procedural infirmities in the summons procedure. The only basis on which the demand for payment was resisted was that the property was a 'domestic premises' and not liable to rates. The proofs for the complainant are that the ratepayers were at the material time in occupation of the relevant property; that procedural formalities have been complied with; that the property has a rateable valuation and that the local authority rate as struck for each year in question has been applied to the property.
43. The District Court was, by reason of the misconceived defence that the property was a domestic premises and so not liable to rates, diverted into consideration of a binary choice of 'domestic premises' or 'commercial premises'. Quite apart from the fact that such consideration is on the law irrelevant, and probably outside the jurisdiction of the District Court when adjudicating upon a summons for unpaid rates, it also fails to address the real issue in the case, which is whether on the facts found and the law, the rates are payable. The Court sees no benefit in answering the questions posed in the case stated, as it follows that because the purported defence is misconceived, questions arising from that defence are also misconceived. Taking the facts as found by the District Court, it seems to me that the proper question in this case, is "*Was I right in law in granting a Decree in favour of the Claimant?*".
44. The Court therefore substitutes for the questions of law posed by the District Court, the question "Was I right in law in granting a decree to the complainant?" and answers the question in the affirmative.