09TACD2019

**[NAME REDACTED]**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

## Introduction

1. This is an appeal against a decision made by the Respondent in determining that the Appellant was a person liable to account for Local Property Tax in respect of the liability date 1st May 2013.

2. The Appellant provides accommodation for students **[Location Redacted]**. It is the Appellant's position that the student accommodations do not constitute dwellings and are, therefore, not liable to Local Property Tax (LPT).

3. By way of letter dated 22 July 2013, the Respondent determined that all of the Appellant's student accommodation came within the meaning of "dwelling" for the purposes of the Finance (Local Property Tax) Act 2012 (LPT Act) as a building in use as or suitable for use as dwellings. The Respondent's determination was appealed by the Appellant on 2 August 2013 pursuant to LPT Act, section 34.

## Background

4. The Appellant provides accommodation **[Location Redacted] [to third-level and post-graduate students]**.

5. The question of whether or not the properties are liable to LPT depends on whether they are "*relevant residential properties*" which, in turn, depends upon whether or not they are "*in use as, or is suitable for use as, a dwelling*". There is no statutory definition of the word "*dwelling*"

**Legislation**

6. The charging provision is contained in LPT Act, section 16 and provides:

> *"Subject to the provisions of this Act … there shall be charged, levied and paid a tax to be known … as 'local property tax' in respect of the chargeable value of a relevant residential property.'"*

7. LPT Act Section 3 states:

> *"Subject to sections 4 to 10, where a building in the State is a residential property on a liability date, it shall for the purposes of this Act be a relevant residential property in relation to that liability date."*

8. The following relevant definitions are set out in the LPT Act, section 2:

> *"building" includes –*
>
> *(a) part of a building, and*
> *(b) a structure or erection of any kind and of any materials, or any part of that structure or erection, but excludes a structure that is not permanently attached to the ground, a vessel and a vehicle (whether mobile or not).*
>
> *"liability date" means—*
> *(a) 1 May 2013, in respect of the year 2013,*
> *(b) in respect of any other year, 1 November in the preceding year*
>
> *"residential property" means any building or structure which is in use as, or is suitable for use as, a dwelling and includes any shed, outhouse, garage or other building or structure and any yard, garden or other land, appurtenant to or usually enjoyed with that building, save that so much of any such yard, garden or other land that exceeds one acre shall not be taken into account for the purposes of this definition."*

**Evidence**

9. At the behest of the parties, I spent a full day visiting a sample of the type of accommodation provided by the Appellant **[Location Redacted].**

10. Thereafter **[Name Redacted] [the]** head of accommodation **[Location Redacted],** gave evidence **[in relation to the physical characteristics of the accommodation and the conditions attached to them, and was cross-examined by the Respondents in respect of same].**

**[All Evidence Redacted]**

**The Interpretation of Tax Statutes**

11. The approach to be adopted in matters concerning the interpretation and construction of tax statutes, as endorsed by both parties, are those as set out by Henchy J. in the Supreme Court case of *Inspector of Taxes v Kiernan* [1981] I.R. 117 in which he stated at page 121 of the reported judgment:

> *"Leaving aside any judicial decision on the point, I would approach the matter by the application of three basic rules of statutory interpretation. First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning. As Lord Esher M.R. put it in* Unwin v. Hanson *at p. 119 of the report:—*
>
> *"If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words"*
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> *"The statutory provisions we are concerned with here are plainly addressed to the public generally, rather than to a selected section thereof who might be expected to use words in a specialized sense . . . Secondly, if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language: see Lord Esher M.R. in* Tuck & Sons v. Priester *(at p. 638); Lord Reid in* Director of Public Prosecutions v. Ottewell *(at p. 649) and Lord Denning M.R. in* Farrell v. Alexander *(at pp. 650-1) . . . Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and*

*unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed.*

12. In the earlier Supreme Court case of *Revenue Commissioners v Doorley* [1933] 1 I.R. 750 Kennedy CJ stated in his judgment at page 763 of the report that the ordinary rules of statutory construction shall apply to the interpretation of taxing statutes. He then went on to state (at page 765:

*"It is no doubt, quite legitimate to cite antecedent legislation for the dictionary purpose of ascertaining the meaning and use of particular words and expressions by contemporary or nearly contemporary illustration, especially when we are interpreting old statutes, even if they be taxing Acts. It is not, in my opinion, legitimate for a Court, when interpreting a taxing Act, to use such antecedent legislation otherwise for the purpose of deducing an intention to impose or not to impose a tax upon a particular subject. A taxing Act (including of course any other Act or part of an Act incorporated in it by reference), of its own proper character and purpose, stands alone, and is to be read and construed as it stands upon its own actual language. In my opinion, therefore, the argument from the earlier Stamp Acts propounded by Pigot C.B. and adopted here, is not one which may be admitted by the Court in interpreting the Act before us. The duty of the Court, as it appears to me, is to reject an* a priori *line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute,* i.e. *, within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.*

13. Both authorities were cited by Laffoy J. in the case of *Twomey v Hennessey* [2011] 4 I.R. 395 where the High Court was asked to consider the meaning of the word "dwelling house" in the context of tax relief offered by section 42 of the Finance Act 1986.

14. The Respondent proceeded to cite *Revenue Commissioners v O'Flynn Construction Company Limited* [2013] 3 IR 533, a case which involved a consideration of the operation and effect of section 86 of the Finance Act 1989, a statutory provision described by O'Donnell J in his judgment as being of "*almost mind-numbing complexity*". The case involved the validity of a tax avoidance measure but in his analysis of the correct approach to be adopted to a construction of the meaning and effect of the statutory

provisions he referred to the judgment of the Supreme Court in the case of *McGrath v McDermott* [1988] IR 258 and at page 566 of the report he cited the following passage in the judgment of Finlay CJ from that case:

> *"The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts have not got a function to add to or delete from express statutory provision so as to achieve objectives which to the courts appear desirable . . . In some jurisdictions, such as Canada and Australia, general statutory provisions against tax avoidance have been enacted, which in cases to which they apply would, of course, affect the interpretation of specific provisions of taxation laws. In the absence of any such general provisions in our law, there are no grounds for departing from the plain meaning of these sections."*

15. O'Donnell J then came to the following conclusion at page 571 of the reported decision:

> *"Furthermore, the decision in* McGrath v McDermott *itself expressly contemplates an approach to the interpretation of legislation that has always been understood as purposive. In that decision Finlay C.J. restated at p. 276 the orthodox approach to statutory interpretation at the time when he adverted to the obligation of the courts in cases of doubt or ambiguity to resort to a "consideration of the purpose and intention of the legislature". Indeed, if* McGrath v McDermott *stands for* any *principle of statutory interpretation it implicitly rejects the contention that any different and more narrow principle of statutory interpretation applies to taxation matters. As Lord Steyn observed in the Northern Ireland case of* IRC v McGuckian *[1997] N.I. 157 at p. 166, there has been a tendency to treat tax law, almost uniquely in the civil law as continuing to be the subject of a strict literalist interpretation:-*
>
> > *"During the last 30 years there has been a shift away from literalist to purposive methods of construction. Where there is no obvious meaning of a statutory provision the modern emphasis is on a contextual approach designed to identify the purpose of a statute and to give effect to it. But under the influence of the narrow* Duke of Westminster *doctrine tax law remained remarkably resistant to the new non-formalist methods of interpretation. It was said that the tax payer was entitled to stand on a literal construction of the words used regardless of the purpose of the statute … [t]ax law was by and large left behind as some island of literal interpretation."*

16. The Respondent asserted that O'Donnell J. in *O'Flynn* found that it was implicitly acknowledged in *McGrath v McDermott* that tax statutes ought to be treated no

differently to other statutory provisions outside the criminal law and that the Interpretation Act 2005 made clear that a purposive approach should be adopted towards all statutory provisions outside the criminal law. He expressly rejected a "*narrow or literalist interpretation of taxation statutes*".

17. The Appellant cited the decision of the Supreme Court in *Patrick Meagher v The Minister for Social Protection* [2015] IESC 4 where McKechnie J. considered the approach to statutory interpretation in the application of a provision in the Social Welfare Consolidation Act 2005 where at paragraphs 36 and 37 he said:

> *"36. Both parties agree that a literal interpretation should be given to Section 21(1)(d) of the Act of 2005 and Article 23 of the Regulations 1996. Nobody has suggested that a different or even some modified approach is required for this type of statute. This is despite the fact that the making of the contributions in issue are not a matter of choice, but rather are compulsory under pain of breaching the civil law. And in the case of employers upon whom the requirement of statutory compliance is based, of also breaching the criminal law. Moreover, subject to any necessary preconditions being satisfied, an applicant has a statutory right to receive such pension and cannot in such circumstances be withheld on discretionary grounds. Therefore, one can readily think of other statutory codes which to some significant extent are analogous with the Act of 2005, which attract a more strict interpretation.*
>
> *37. For example it has long been accepted that penal statutes must be strictly construed. This is to preserve the liberty of the individual on the one hand and to avoid the imposition or extension of criminal liability by loose ambiguous or slack language on the other. …. The same approach is adopted with Revenue statutes, Inspector of Taxes v Kiernan [1981] I.R. 117. In fact, when dealing with the imposition of a tax or an exemption from its liability, Chief Justice Kennedy in Doorley [1933] I.R. 750 said at p.766 that unless a person was squarely within the expressed provisions he stood outside it, (McGrath v McDermott [1988] I.R 258, but see also Revenue Commissioners v O'Flynn Construction [2011] IESC 47, [2013] 3 I.R. 533). In any event given the submissions of the parties in this case I am prepared to proceed with a literal interpretation without holding or deciding that this is necessarily correct. The task therefore is to ascertain the intention of the legislature through the ordinary and natural meaning of the words and phrases used with the text being the primary reference source."*

18. The Appellant submitted that bedrock of both of the parties' submissions was that context is everything and that I must determine what the word '*dwelling*' means in the

context of the LPT Act, gaining whatever assistance I can from the other provisions of the Act to understand the true meaning of the word '*dwelling*'.

19. The Appellant submitted that the interpretation to be applied in this appeal is in accordance with *O'Flynn* and is a contextual or purposive approach. However, that approach does not diminish the 2nd rule in *Kiernan*:

> *"if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language."*

20. The Appellant argued that the first stage in the interpretation of a tax statute is the purposive contextual approach as outlined by O'Donnell J in *O'Flynn*. The second stage only applies if there is any residual ambiguity in the interpretation of the statute and in such an event the taxpayer gets the benefit of the doubt in accordance with the 2nd rule in *Kiernan*.

21. The Appellant therefore submitted that if there remains a looseness or ambiguity in the interpretation of the word '*dwelling*' whereby recourse cannot be made to the purposive contextual approach, the benefit of the doubt must be given to the taxpayer in respect of the construction of that word.

**Submissions**

*Appellant*

22. In the absence of a definition of *'dwelling'* in the LPT Act, the Appellant submitted that from a review of the Irish jurisprudence the word 'dwelling' is capable of having a different meaning in different contexts. It has a broad meaning in some contexts and a narrow meaning in others. Where the Court is concerned with the protection of an individual's property or tenancy rights, a broad interpretation of dwelling is adopted and therefore gives greater breadth to those rights. However, it was argued that precisely the opposite considerations apply when one is dealing with the imposition of a tax.

23. The Appellant argued that the term 'dwelling' must be construed in the legislative context in which it appears and given that the term has been given both broad and narrow meanings depending upon the context in which it has arisen for consideration, the Appellant submitted that no one Irish case could provide any direct assistance in the interpretation of the word '*dwelling*' for current purposes. As such this matter cannot be decided in a complete vacuum and recourse is required to be made to an assortment of jurisprudence notwithstanding the different statutory context.

24. In *Sfar v Louth County Council* [2007] IEHC 344, Mr. Justice Roderick Murphy analysed the meaning of dwelling but solely for the purpose of ascertaining whether outhouses formed part of a dwelling under the terms of the Control of Dogs Act. As such, in *Kerry Co Co v Kerins* [1996] 3 IR 493 the Supreme Court considered whether a holiday home was a dwelling for the purposes of exempting the owner from rates pursuant to the Local Government (Financial Provisions) Act, 1978 but again the arguments in that case centered on the fact that the property was not occupied by the owner rather than any physical or institutional limitations of the property itself.

25. Notwithstanding the fact that it is settled law that the definition of dwelling in one context is not determinative of its meaning in another context, *Twomey v Hennessy* [2011] 4 IR 395, whilst separate and distinct, the Appellant submitted, shared many features with the instant appeal. *Twomey* concerned, *inter alia*, a claim for capital allowances. In reviewing the statutory context, Laffoy J. at paragraph 82 observed:

> *"What it is reasonable to deduce from the foregoing is that the Oireachtas, in enacting the relevant legislation, had regarded a holiday cottage, but not a holiday camp, or a guesthouse or a holiday hostel, to be a "building or structure in use as, or as part of, a dwelling house". In my view, that approach is wholly logical and when one applies the first of the three basic rules of statutory interpretation of taxation statutes outlined in Inspector of Taxes v Kiernan. What is clear from the authorities relied on by the appellant is that the terms "dwelling" or "dwelling house" are not regarded in common law jurisdictions as terms of art. I agree with the view expressed by counsel for the respondent that if a member of the public was asked whether, having regard to their use as described in the case stated by the Circuit Court Judge, the units as a block forming a building at the material time were in use as, or as part of, a dwelling, the answer would be a clear negative."*

26. As such the judgment in *Twomey* was concerned with the definition of '*dwelling*' in the context of a piece of tax legislation, which similarity is underscored by Laffoy J's comment that in cases where the meaning of dwelling was "*considered in the context of the regulation of the relationship of landlord and tenant*" were "*not relevant*" to the construction of Section 42 of Finance Act 1986. It was submitted that the significance of this communality should not be overlooked.

27. Second, the accommodation under consideration in *Twomey* shared many of the features of the accommodation under consideration in this appeal. Although the students who occupied those properties were not under the jurisdiction of their respective university or college, the Case Stated recorded findings at paragraphs 9 -13, that "*accommodation was provided on a per bed basis and it was usual to have two beds in each room, it was quite common for a person to share a room with a person he or she did not know*." Students could also be moved between units at the behest of management and management conducted inspections of the properties on a regular

basis. The instant appeal sees the presence of all of those characteristics plus further significant restrictions on the user's right to enjoy the property brought about by the institutional environment in which the accommodation is offered.

28. Third, as highlighted earlier, Laffoy J held that:

> *"the use of the units on the second and third floors of block B … - the provision of accommodation by way of trade on a per bed basis to users in a manner similar to guest-houses or "bed and breakfast" establishments – is not use as a dwelling house."*

29. The Appellant submitted that it was necessary to have regard to the decisions in the UK where the concept of '*dwelling'* has been the subject of consideration in various contexts for well over one hundred years. Such purpose was to seek to gain an insight into the meaning of that term in the context of the legislation under consideration in those cases and not simply to apply the definition ascribed to that term in any one particular case or category of cases to that applicable for LPT purposes. In essence, it was submitted that the Appeal Commissioners should take cognisance of the approach which has been adopted to the identification of dwellings in the English cases so that the application of those principles can be considered in light of the facts and statutory provisions under consideration in this case.

*The English Case Law*

30. The earliest cases relate to the right to franchise or vote which under the Municipal Registration Act 1878 was bestowed only on those who inhabited a dwelling. The term was also the subject of extensive judicial consideration in the context of the UK rent acts which applied where a property was let as a dwelling and in the context of planning legislation.

31. The Appellant argued that while it was absolutely clear that 'dwelling' may have a different meaning in different contexts, the one point that was clearly made in all of the authorities was that the identification of a dwelling was not limited to a consideration of the mere bricks and mortar.

32. In the Court of Appeal's 1896 Judgment in *Clutterbuck v Taylor* [1896] 1 QB 395, the Court considered whether accommodation occupied by constables on a long term basis constituted a dwelling. Whilst, the physical attributes of the accommodation were considered and were held by Lord Esher MR of themselves to be "*inconsistent with the notion that the cubicle was occupied by the Appellant separately as a dwelling*". The learned Master of the Rolls also considered the restrictions which governed its occupation. In essence, the appellant was only allowed to occupy his room as a condition of his employment and the chief constable had the power to impose

significant restrictions on the officer's enjoyment of the premises such as requiring the officer to move to another unit or to preclude him from having visitors. The learned Master of the Rolls held at page 400:

> "*Are these incidents which are consistent with the ordinary idea of a man's dwelling? It is not as if one or other of them had to be considered alone; it is not the case of a man occupying a separate room alone, subject to one or some of these restrictions. The facts of the case must be looked at as a whole.*"

33. Lord Justice Lopes also confirmed the need to have regard to the limitations imposed on the occupancy of the rooms:

> *"In my opinion, in order that the occupation may come within the definition given by the statute, it must not be subject to disabilities substantially inconsistent with the ordinary rights which a man exercises in respect of his own dwelling, and, if it be subject to such disabilities, it cannot be said to be occupation of part of a house as a dwelling."*

34. Therefore, the Appellant submitted, it was the fact of the possibility of the exercising of control that rendered them not to be dwellings.

35. While the facts in *Clutterbuck* arose over one hundred and twenty years ago, it was submitted that this judgment remains authority for the proposition that, in assessing whether a property is a *'dwelling'* in any context, regard must be had to more than the mere bricks and mortar.

36. The matter was put succinctly in *Impey v Secretary of State* (1980) 47 P & CR 157 where Donaldson LJ held that:

> *". . . the physical state of [the] premises is very important, but not decisive. Actual use or intended use or attempted use is important, but not decisive. These matters have to be looked at in the round . . ."*

37. In *St Catherine's College v Dorling* [1980] 1 WLR 66 the Appellant college entered into a tenancy agreement with the owner of a furnished house to be occupied by five undergraduates under a scheme for providing residential accommodation for university undergraduates. Each undergraduate had the exclusive use of one room as a study bedroom and shared the kitchen and bathroom. The college covenanted in clause 2(1) of the agreement "*Not to use the demised premises otherwise than for occupation by a person or persons …pursuing or intending to pursue a course of study provided by*" the college and, in sub-clause (m) "*to use or permit the same to be used as private residence only in the occupation of one person per room ….*" The college applied to the county court for a declaration that it had a protected tenancy under Section 1 of the Rent Act 1977 being "*a tenancy under which a dwelling house (which may be a house or part of a*

*house) is let as a separate dwelling*". The Court of Appeal held that the house had not been let as a dwelling house but as a building for multiple occupation of a number of sub-units.

38. The Court held:

> *"The premises consisted of three rooms upstairs and two rooms downstairs. There was a small kitchen, a bathroom, and two W.C.s, one inside and one outside. One of the two downstairs rooms had a dining table and four chairs. There were no locks on the doors of the rooms. Each room was equipped with sufficient furniture for its use as a bedroom, a study and a sitting-room. The premises were occupied by the five undergraduates. Each took a room. Each gave a cheque for his share of the total rent; and generally speaking one of them would take all the cheques to Runyards. The dining-table was taken from the room where it was when they first occupied the premises and set up in the kitchen. The general practice was for these occupants to cook in relays, providing their own individual food, although on occasions, at weekends in particular, they might eat together around that table.*
>
> *The question in this case is whether the premises were let as a separate dwelling within the meaning of section 1. The important point in answering that question is to determine the contemplated use of the premises. In Ponder v. Hillman [1969] 1 W.L.R. 1261, 1263, Goff J. referred to Wolfe v. Hogan [1949] 2 K.B. 194 and to a particular passage in the judgment of Evershed L.J. and then continued:*
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> > *"… [Evershed L.J.] approved the following passage in Megarry on The Rent Acts (1967) 4th ed., p. 19: 'Where the terms of the tenancy provide for or contemplate the use of the premises for some particular purpose, that purpose is the essential factor, not the nature of the premises or the actual use made of them. Thus, if the premises are let for business purposes, the tenant cannot claim that they have been converted into a dwelling-house merely because somebody lives on the premises."*
>
> *So it follows that one has to consider the terms of the lease and the surrounding circumstances at the time that the lease was granted."*

39. In the same case, Eveleigh LJ put the matter as follows:

> *"Generally speaking, "a dwelling-house … let as a separate dwelling" envisages that at least someone — that someone being in most cases the tenant in occupation — will have the right to go to any part of the premises he chooses. It may well be that a tenant who takes a separate dwelling-house will sublet so as to preclude himself, vis-a-vis the sub-lessee, from entering another part of the premises for the period of the subletting; but that is something which occurs after the lease has been entered into*

*and in no way detracts from the right of the tenant vis-a-vis the landlord to go to another room. The existence of someone able to go of his own right to all the rooms of the premises is one of the hallmarks of a dwelling-house. That is completely absent on the findings in this case. That being so, I would agree with Mr. Etherton's submission that the arrangement envisaged in this case was inconsistent with the concept of a building which itself could be described as a separate dwelling."*

40. The evidence of **[The Head of Accommodation]** was that each student occupant is only permitted access to his or her own room and the communal areas. They have neither the right nor the ability to access the bedrooms assigned to the other students in their unit.

41. The Appellant submitted that the idea of identification of a '*dwelling*' is much more than a tick the box exercise of identifying the existence of a bed, bathroom and kitchen is also evident in *Court v Robinson* [1951] 2 K.B. 60, *Levermore v Jobey* [1956] 1 WLR 697, *Russell v Booker* [1982] 2 Eglr 86, and *British Land Co Ltd v Herbert Silver (Menswear) Ltd* [1958] 1 All ER 833.

42. The Appellant proceeded to consider the Respondent's reliance on *Uratemp Ventures Limited v Collins (AP)* [2001] UKHL 43. However, as Laffoy J. has already noted in *Twomey* at 429, paragraph 86*, Uratemp* is of no relevance to the interpretation of Finance Act 1986. Without prejudice to that position, given that it has formed the bedrock for the Respondent's analysis to date, it is worth commenting briefly on the *Uratemp* judgment.

43. There the Court considered the concept of a "*dwelling house… let as a separate dwelling*" appearing in Section 1(1) of the Housing Act 1988. The landlord was relying upon the absence of cooking facilities in the tenant's room in an effort to deny him tenancy rights in respect of a hotel room which had been occupied by Mr Collins for sixteen years.

44. The only question with which the House of Lords was concerned in that case was whether the absence of cooking facilities of itself prevented the accommodation from constituting a dwelling.

45. The judgment, the appellant submitted, though anchored in the terms of the Housing Act 1988, is entirely consistent with the need to look beyond the physical nature of the accommodation itself and to the conditions under which it is occupied. Lord Millet noted that Mr Collins had not been prohibited by the terms of his occupation from bringing furniture and basic cooking equipment into his accommodation and held that:

*"The words "dwell" and "dwelling" are not terms of art with a specialised legal meaning. They are ordinary English words, even if they are perhaps no longer in common use. They mean the same as "inhabit" and "habitation" or more precisely*

*"abide" and "abode", and refer to the place where one lives and makes one's home. They suggest a greater degree of settled occupation than "reside" and "residence", connoting the place where the occupier habitually sleeps and usually eats, but the idea that he must also cook his meals there is found only in the law reports."*

46. It was submitted that the Respondent's approach to the interpretation of *Uratemp* fails to show proper regard to the context in which that decision arose. That case is not authority for the proposition that any accommodation which has cooking facilities is a dwelling but rather that a dwelling will not cease to be a dwelling because it does not have cooking facilities and it must be recalled that the net question before the House of Lords was whether the Court of Appeal had been right to decide that the absence of more that rudimentary cooking facilities precluded Mr Collins from accruing any tenancy rights in respect of accommodation he had occupied as his home for sixteen years.

47. The Appellant submitted that *Uratemp* does not lay down a universally applicable definition of a dwelling has even been recognised by the English Courts. In *Gendon v First Secretary of State* [2006] EWHC 1711 (Admin), McCombe J distinguished the Supreme Court's decision in *Uratemp* and endorsed and reinforced the applicability of the approach outlined earlier which requires one to engage in a multifactorial appraisal of the property and consider whether it is a dwelling in the sense that the word is meant in the statute in which it appears:

*… In my judgment, this section in this Act must be construed in the context of this Act. Part of that exercise of construction is to have proper regard to the legislative purpose of the Act… Nor do I accept … that the relevant question in this case is simply answered by asking whether the Claimant was using this building as his home at the relevant date or dates.*

*As the cases under this Act and its predecessors have emphasised the question is to have regard, to an appropriate degree in each case, to both the physical state of the premises and their user, actual, intended and/or attempted… Moreover, it is tolerably clear to me that the House of Lords in Uratemp was not intending to lay down a universal definition of the term "dwelling-house" that was to apply across the board to that expression in any Act of Parliament."*

48. In light of the foregoing, it was submitted, that it is clear beyond doubt that not every place where a person can sleep and take their meals constitutes a dwelling. Regard must be had not just to the mere bricks and mortar but to the circumstances in which and the conditions pursuant to which that bricks and mortar are occupied.

49. Whilst the foregoing were strong authority for the general proposition that regard must be had to more than the mere bricks and mortar, the courts have previously considered accommodation closely analogous to the type involved in this case and repeatedly held that institutional accommodation of this type does not constitute a '*dwelling*'.

*Institutional Accommodation*

50. In *Martin Estates Company Ltd v Watt and Hunter* [1925] NI 79 the Northern Irish Court of Appeal held that it would be a "*perversion of language*" to describe a house let for public service and inhabited by public servants, a hospital or a prison as a dwelling.

51. It was submitted by the Appellant that the fact that such premises lack the character of dwellings is not a consequence of any physical limitations in the properties themselves. As the Appellant's Statement of Case records, there is no material difference between its student accommodation and the following description of the accommodation provided within Dóchas Women's Prison where the Inspector of Prisons, Judge Michael O'Reilly, Interim Report on the Dóchas Centre, October 2013 said:

> *"The Centre was opened in 1999 with a capacity for 85 women to be accommodated in single rooms. All rooms have an adjoining bathroom containing a shower, a toilet and a wash hand basin. When opened the Centre was divided into 7 houses. One house was designed as a step down facility for women coming near the end of their sentences. This house is divided into a number of apartments designed to mirror accommodation in the community. […] In 2012 a building, adjoining the original Centre, was refurbished and opened to accommodate a further 20 women. Accommodation is provided in one, two and three bedded rooms. This accommodation is bright and appropriate. The women in this house have their own kitchen and recreation rooms."*

52. As recently as 2015 the UK Supreme Court in *R(CN) v Lewisham London Borough Council* expressly endorsed the Judgment in *Martin Estates* holding at paragraph 29:

> *"Thus, for example, in Martin Estates Co Ltd v Watt and Hunter [1925] NI 79, in which police officers occupying police barracks sought to resist the recovery of possession on the basis that the property was let as a dwelling-house, the Northern Irish Court of Appeal rejected the defence. Moore LJ (pp 86–87) held that housing let for the public service and occupied by public servants was not a dwelling for the purposes of the Rent Acts and that policemen in police barracks, patients in hospital and inmates in a gaol could not claim security of tenure."*

53. In *Gravesham Borough Council v Secretary of State for the Environment* (1982) 47 P&CR 142, McCullough J gave examples of properties which were regarded as dwelling-houses and then contrasted these with those which "clearly are not" dwelling houses:

> *"The more helpful approach, in my opinion, is to consider a number of buildings that quite clearly are dwelling-houses and others that equally clearly are not and see whether this throws up any indication of what ought and what ought not to be taken into account.*

> …
> *What have these examples in common? All are buildings that ordinarily afford the facilities required for day-to-day private domestic existence.*
>
> *This characteristic is lacking in hotels, holiday camps, hostels, residential schools, naval and military barracks and similar places where people may eat, sleep and perhaps spend 24 hours a day. Quite clearly, none of these is a dwelling-house."*

54. This approach to the interpretation of 'dwelling house' was endorsed by the Court of Appeal in *Moore v Secretary of State for the Environment* (1998) 77 P&CR 114 where Nourse J held (at p70G) that McCullough J's Judgment "*contains a valuable discussion of the circumstances in which a building might or might not be regarded as a dwellinghouse*".

55. In *R (on the application of Innovia Cellophane Ltd and another) v Infrastructure Planning Commission* [2011] EWHC 2883 (Admin) the High Court cited McCullough J's analysis in *Gravesham* and the endorsement of that test in *Moore* and then continued:

> *"Particularly striking is that the statutory context there was quite different than in the Gravesham case but the same meaning was given to the term. So dwelling house has a well established meaning in the planning legislation and is distinct from hostels and other forms of non-permanent accommodation which is not self-contained. The obvious application here is that the proposed campus type accommodation on the Bridgwater land is akin to the hostel mentioned by McCullough J, with its single rooms, supported by catering and other facilities elsewhere on the site."*

56. The Court, in that case, interpreted the words dwelling and dwelling house interchangeably and endorsed the view that "*hotels, holiday camps, hostels, residential schools, naval and military barracks and similar places where people may eat, sleep and perhaps spend 24 hours a day*" were not dwellings. The analysis in respect of institutional accommodation does not constitute a commentary on the quality of the accommodation, or the comfort with which the guests, students, officers or inmates are accommodated but is simply a consequence of the fact that no matter how long a prisoner is accommodated in a prison, an officer is accommodated in a barracks or a student is accommodated in a university, the accommodation is not in use as a dwelling.

57. Whilst there is a requirement to interpret the word '*dwelling*' in the context of the LPT Act, it was submitted that regard must be had to the significant body of case law in which it has been held that institutional accommodation are not dwellings since those cases speak to the ordinary and everyday meaning of that term.

58. The Appellant highlighted that it was accepted by the Respondent that the buildings that constitute institutional residential accommodation rather than dwellings are not subject to LPT because due to their physical characteristics, nature and the conditions attached

to them they are not in use or suitable for use as a dwelling, similarly the Appellant's submitted that its **[student accommodation]** is institutional residential accommodation and not dwellings for the purposes of the Acts.

***'Dwelling' in Taxation Statutes***

59. As has been repeatedly stated the Appellant did not suggest that because the term *'dwelling'* has been given a particular meaning in one piece of legislation it must be given the same meaning in another piece of legislation and that the LPT Act must be approached on its own terms. However, it is submitted that it is reasonable to expect that the approach to the construction of '*dwelling*' in acts which impose tax is likely to be of the most direct relevance. In this context, in *Twomey v Hennessy*, the Court was concerned with the meaning of 'dwelling' in the Taxes Consolidation Act 1997 and is, therefore, of particular relevance but the following English cases are also noteworthy.

60. In *University of Bath v CC&E* (LON/95/2791A) the university provided accommodation to students which was, by and large, identical to the **[student accommodation in issue in this appeal]** to the extent that:

> *"Each of the students had exclusive use for the term of the letting of his or her own room, equipped as it was as a bedroom and study and with a wash basin, but shared a bathroom and kitchen with the other students with rooms in that particular section. With respect to Mr Milne, in our view he was right not to insist that each individual room was a dwelling. We also agree that if any part is a dwelling the vertical section is the most likely to qualify as containing within it "all the major activities of life, particularly sleeping, cooking and feeding" to quote a phrase from a passage in an earlier case cited by Eveleigh, LJ. in St. Catherine's College, [1979] 3 All ER 250, [1980] 1 WLR 66 plus toilet facilities…*

61. The Tribunal held:

> *The cases cited by Mr Milne show that the word "dwelling" is capable of a wide meaning, but our task, as we see it, is to have regard to the way in which it is used in the provision which we have to consider and the intention of the Legislature as it there appears…*
>
> *[The Tribunal then considered the fact that the Act applied to 'dwellings' and, in the alternative, to relevant residential buildings of a specified type and continued:] Upon this approach we hold that the arrangements we have described do not in any ordinary sense of that word constitute each vertical section "a dwelling" and that each such section is not a "dwelling" within the meaning and for the purposes of item 1."*

62. The decision in *University of St Andrews* (Decision 15243) was in a similar vein. There the Tribunal held that rooms in student halls in respect of which there were no kitchen facilities or private washing facilities were not dwellings.

63. The Appellant submitted that it was beyond doubt that the word '*dwelling*' must be given its ordinary and everyday meaning and that the other cases in which *dwelling* has been defined are not binding. Moreover, due regard must also be had to the applicable rules of statutory construction as set down by Laffoy J. in *Twomey v Hennessy*. However, the Appellant submitted that the Appeal Commissioners are not required to determine this appeal in a vacuum and it was submitted that a review of cases from several areas across the past 100 years makes it absolutely clear that the identification of a *dwelling* requires more than an analysis of the mere bricks and mortar. It has been consistently held for over a hundred years that, generally speaking, institutional accommodation does not constitute a dwelling and student accommodation analogous to that under consideration here has been held not to constitute a *dwelling* in either the UK or Ireland.

64. The totality of the relevant authorities considered by the Appellant indicates the approach taken by the Courts in interpreting the word dwelling in the different statutory contexts. The division the Appellant suggested, is not a division between Ireland and England, it's a division between statutory context. And even within statutory context, so within the Taxes Act, or within the CGT or CAT or LPT or rates or whatever it might be, one can have different meanings of dwellings. It just depends on the specific circumstances of the Act.

65. The Appellant submitted that of all of the cases closest to this appeal is *Twomey v Hennessy*. In addition Appellant argued, that the accommodation provided by the Appellant is less a dwelling than in *Twomey v Hennessy* because of all of the institutional considerations.

66. The Appellant argued that it cannot be said that *dwelling* is a word of art. It cannot be said that dwelling means the same thing everywhere it appears. It cannot be said that a building is a dwelling simply because somebody sleeps and eats there, it all depends on the statutory context. That said, it is undoubtedly the case that regard must be had to this term in the legislative context in which it appears.

*The Wider Context of the LPT Act*

67. The Appellant highlighted the lack of a definition of '*dwelling*' in the LPT Act. However, it was submitted that it was clear that if a building is either "*in use as*" a *dwelling* or "*suitable for use as*" a *dwelling* it is a relevant residential property. In this context, the Appellant submitted that these words simply ensure that buildings which are used as dwellings but which are vacant are liable to LPT whereas it would appear that the Respondent's interpretation that if one can render the building suitable for occupation by making "*non-structural alterations*" it is "*suitable for use*" as a dwelling if it is actually

'*in use'* as something other than a dwelling. In accordance with the approach taken by Laffoy J. in *Twomey* these competing constructions are best considered after setting out the full context of the LPT Acts.

68. The exemption provided under LPT Act, section 4(1)provides:

> *"A residential property shall not, for the purposes of this Act, be regarded as a relevant residential property where the property is a property which –*
>
> *a) is wholly used as a dwelling (other than a dwelling that forms part of a mixed hereditament within the meaning of the Local Government (Financial Provisions) Act 1978)), and*
>
> *(i) ……*
>
> *(ii) in respect of which municipal rates (within the meaning of the Valuation Act 2001) are payable."*

69. Therefore, only residential properties which are wholly used as dwellings and in respect of which rates are payable are exempt from LPT. Leaving aside mixed-use premises, the only properties which can meet this condition are properties which are used as dwellings and operated as aparthotels. Section 3 Valuation Act 2001 defines an "*apart-hotel*" as:

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

70. The Appellant stated that not all aparthotels are used as dwellings under the Valuation Act. Instead, section 3 of that act defines a '*domestic premises'* which is exempt from rates pursuant to schedule 4(6), 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"*

71. The definition of 'domestic premises' in Section 3 Valuation Act 2001, when read with schedule 4(6)) provides that it is only if a property is used as a dwelling and is an apart-hotel that it is does not benefit from the domestic premises exemption.

72. Returning therefore to LPT Act, section 4 and leaving aside mixed use properties, the Appellant submitted that the exemption from LPT applies only in respect of a building which is an apart-hotel as defined by the Valuation Acts and which is "wholly used" as a dwelling.

73. It was submitted, therefore, that the exemption for which LPT Act section 4(1) does not throw any significant light on the meaning of dwelling for the purpose of the LPT Acts

since the Valuation Act clearly implies that an apart-hotel may or may not be used as a dwelling within the meaning of that Act.

74. In the interests of completeness, the Appellant argued that it was worth considering how the definition of Residential – or, rather, the absence of any deeming provisions – in the LPT Act compares to other Acts.

75. Section 3(4) Valuation Act provides:

> *"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,*
> *(b) …*
> *(c) the property is partly comprised of a farm building."*

76. The Appellant asserted that neither of these deeming provisions in (a) or (c) above appear in the LPT Act. Furthermore, with regard to lodgings, Section 3(1) Valuation Act goes on to provide that:

> *"'lodgings' shall not be construed as including accommodation provided in premises registered under the Tourist Traffic Acts, 1939 to 1998, or in an aparthotel."*

77. Accordingly, if a building is used as a dwelling it remains "*used as a dwelling*" for the purposes of the Valuation Acts and thus exempt from rates even if it is used to provide unregistered lodgings. However, if the lodgings which are provided are registered under the Tourist Traffic Acts the 'saver' applicable to lodgings does not apply.

78. Section 3(1) Valuation Act leaves open the theoretical possibility that a property could be used as a dwelling under the Valuation Acts notwithstanding the fact that it was, say, a registered hotel. Section 3(1) does not exclude such properties from constituting dwellings it merely does not include them in the saver which is applicable to non-registered properties. However, the implication is that such properties, by virtue of their use for registered lodgings, are not to be regarded as in use as a dwelling. The Appellant argued that this was entirely consistent, with Laffoy J's finding in *Twomey* that use of properties "*by way of a trade on a per bed basis to users in a manner similar to guest-houses or 'bed and breakfast' establishments – is not use as a dwelling house*."

79. The Appellant also highlighted that in *Kerry Co Co v Kerins* where the legislation considered by the Supreme Court was the Local Government (Financial Provisions) Act, 1978 Section 1(3)(a)(i) of which provided a saver in respect of unregistered lodgings identical to that now contained in the Valuation Acts. The taxpayer who succeeded in establishing that the holiday cottage (which was rented to tourists) was a domestic hereditament expressly relied upon that saver. In holding that the chalets in that case

were domestic hereditaments the Supreme Court expressly noted that the definition of domestic hereditament in the Act:

> *"… does not require that it cannot be used for commercial use in the sense of being let out for dwellings during the holiday period and I am satisfied that these chalets come within that definition of a domestic hereditament…"*

80. And later:

> *"As far as this Act is concerned, its clear purpose was to provide relief to people insofar as they occupied premises as dwellings. It would be inconceivable, in my view, that the legislature engaged in this very far reaching exercise and intended not to extend that benefit to such chalets as are the subject of this litigation."*

81. The Appellant submitted that the LPT Acts does not contain any saver in respect of properties which are used as lodgings. It was submitted that the inference to be drawn from this is that the use of a property to provide lodgings is not use as a dwelling.

82. Finally, in this regard, the conclusion reached by the High Court in *Byrne v Killoran* where Ryan J. as he then was found that:

> *"It seems to me that the statutory regime on ground rents and acquisition of fee simple and the eventual abolition of such rents are indicative of a policy of protection of the interests of owners of private dwellings. Now I have added the word private to dwellings, but I think that it is implicit. My reading therefore of the provision in s. 2(1) is that it does not make sense to consider a commercial guesthouse to be a dwelling within this meaning. If one took the other interpretation, it would follow that every hotel is covered by the subsection and I do not think that was intended."*

83. The Appellant cautioned that while that Judgment must be read in the context of the legislation being considered the judgment lends significant support to the proposition that absent a provision deeming lodgings to constitute use as a dwelling, their use as lodgings is not use as a dwelling.

84. The Appellant observed that it was instructive to note that the subsequent LPT Act contains none of these deeming provisions which must be borne in mind when construing the LPT Act on its own terms. Therefore this appeal is dealing with legislation which imposes a tax and not legislation which is intended to protect property or tenancy rights.

85. It was submitted that the concept of dwelling involves a multi-factorial analysis which extends well beyond an examination of the mere bricks and mortar and that the institutional setting of these properties brings them well outside of the ordinary and everyday meaning of the term dwelling.

***Suitable for Use***

86. The LPT Act, section 2 provides that a property is liable to LPT if it is "*in use as, or suitable for use as, a dwelling*". There is no definition or explanation of what is meant by the phrase "*suitable for use*" but it was submitted that this provision is intended to ensure that dwellings which are vacant are liable to LPT. If the legislation were to have applied only to properties which were in use as dwellings then it would not apply to properties which were vacant on the valuation date. If the legislation had been limited in its scope to properties "*in use as a dwelling*" on the valuation date this would have created an extraordinarily simple tax avoidance strategy whereby vacation of the property on one day of the year would exempt the property from LPT.

87. The fact that LPT does apply to vacant properties is confirmed, if confirmation were needed, by LPT Act, section 6 which provides a specific exemption in respect of newly constructed residential properties which are vacant as of the valuation date. Were it not for this exemption, all newly completed properties including the vast number of empty properties which existed in Ireland at that time would be liable to LPT irrespective of whether they had ever been in use.

88. It was submitted, therefore that the words "*suitable for use*" have an important meaning in the context of the Act and it is simply not the meaning for which the Respondent contends.

89. The Appellant referred to a letter from the Respondent dated 22nd July 2013, where it was stated:

> *"However, the accommodation, apart from being in use as a dwelling is also suitable for use as such. Without having to make any structural changes, the various buildings would contain individual dwellings if they were occupied by a family or a group of friends so that fact that they are occupied by students (or **[delete]** summer occupants) does not impact on their suitability for use as dwellings."*

90. The Appellant posed a number of objections to this approach. First, the approach to a statutory hypothesis creates intolerable uncertainty. The Respondent's position contains layer upon layer of hypothesis as it requires the Tax Appeals Commission to decide that one can ignore the current use of the property and apply taxation not to the property which is in use but to the property which could be used if certain alterations were made. Obviously conscious of the far-reaching implications of such a proposition, it was argued that the Respondent proposed that the changes to the property which one can hypothesise in order to ascertain whether it is capable of being used as a dwelling exclude structural changes. However, it is permitted to make alterations to the property in order to establish suitability for use then there is nothing in the legislation which places any limits on the extent of these alterations. The Respondent's approach not only

requires the Tax Appeals Commission to infer from the legislation that such alterations are permitted but also invites them to define that which is not permitted namely, structural changes without any legislative basis for doing so. It was submitted that the Respondent's approach appears to invite the Tax Appeals Commission to involve itself in the task of legislation rather than construction.

91. Second, the Appellant argued that the Respondent did not specify what these non-structural changes would be and how the Respondent would transform these properties from properties not in use as a dwelling to properties in use as a dwelling given that the hypothetical properties would presumably remain under the ownership of the University and in their current location. The Appellant continued in noting that one is left with the distinct impression that in addition to proposing unspecified non-structural changes the Respondent wished that the Tax Appeals Commission further sanction the hypothesis that the properties were no longer contained within **[the grounds]** and could be lived in by non-students. The reality, of course, is that these properties are integral to the educational activities of the **[Institution]** and are made available to students and only to students under the conditions outlined in detail for nine months of the year.

92. Third, the Appellant argued, on the Respondent's construction of "suitable for use" a property can be "in use" as something which is not a dwelling but is liable to LPT if it can be transformed into something which can be used as a dwelling. Leaving aside the difficulties with this approach, the consequence of adopting such an approach is to render a building which is not actually used as a dwelling liable to LPT. This creates a very significant difficulty for the application of the exemption contained in LPT Act, section 4(1).

93. On the Respondent's approach, the Appellant argued, properties which are used for something other than a dwelling but which could theoretically be used as a dwelling are "*suitable for use*" as a dwelling and, therefore, liable to LPT. However, LPT Act, section 4(1) provides an exemption from LPT only where a property is liable to rates and is "*wholly used as a dwelling*". If one were to construe the phrase "suitable for use" as requiring one to ignore the actual use and tax according to possible use it would result in all manner of properties which were not in use as dwellings but which were capable of such use becoming liable to LPT and rates simultaneously as such properties could not avail of the section 4(1) exemption which only applies where the properties are "*wholly used as a dwelling*".

94. Fourth, the Appellant referred to the Respondent's construction of "*suitable for use*" had the effect of stripping away entirely the multifactorial analysis which is inherent in the concept of dwellings, since it renders LPT a tax which is exclusively concerned with bricks and mortar despite any indication that this is what the legislature intended. In essence, under the Respondent's approach, it becomes irrelevant whether a property is

actually used as a dwelling, the only relevant question is whether it would be theoretically possible to use that property as a dwelling.

95. Finally, the Appellant concluded that the Respondent's approach invites the Tax Appeals Commission to ignore reality in setting aside the institutional, physical and temporal limitations which limit the actual use to which the properties can be put in the real world and sanction the imposition of tax based upon hypothetical abstractions. The Appellant submitted that the TAC should refuse this invitation.

96. By contrast, the Appellant argued that its construction of the phrase "*suitable for use*" respects the concept that LPT is imposed and rates are excluded from properties which are in use as dwellings or would be so used if they were occupied. A property which is in use as something other than a dwelling it is not liable to LPT and so will be liable to rates unless some other exemption applies as is the case here. If, however, a property is vacant on the valuation date but is a property which, if it were occupied, would be used as a dwelling in its then current state it is suitable for use as a dwelling and LPT applies. Therefore, a house, flat or apartment which happens to be vacant on the valuation date is liable to LPT in the same way as if it were occupied.

97. It was submitted that this is the plain and ordinary meaning of the phrase "*suitable for use*", has a clear statutory purpose and avoids the imposition of tax to hypothetical abstractions.

98. Finally, as previously submitted, if, following this contextual analysis, a residual ambiguity persists as to the proper meaning of the word '*dwelling*' or the phrase '*suitable for use'* then the taxpayer relies upon the principal of strict construction as referred to in the second of the three tests in *Kiernan:*

> *"a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the* use of oblique or slack language"

99. Whilst the Appellant submitted that the meaning of '*suitable for use'* is clear, on the Respondent's construction of those words, they carry an extraordinary looseness and ambiguity which does not, in the Appellant's submission, form an appropriate basis for the imposition of a tax.

*Respondent*

100. The Respondent submitted the application of the LPT Act is straightforward, simple, and of broad application. The absence of deeming provisions or provisos supports the Respondent's contention that it is simply a straightforward tax of broad application

applying to all residential property within the State on the 1st of May of 2013, which is in use or is suitable for use as a dwelling.

101. The Respondent made reference to the structure of the Act coupled with that broad charging provision provides for a series of exemptions. There are ten exemptions as set out between LPT Act sections 4 and 10B.

102. In the Respondent's submission, both Rule 1 and Rule 3 of those set out in *Kiernan* are engaged. Rule 1 is the ordinary and natural meaning and the attempt to determine what the ordinary natural meaning is in the statutory context. Rule 3 is engaged also, because 'dwelling' is a simple word and what needs to be determined, considered and what guides the interpretation is personal experience. As Mr. Justice Henchy framed it, as it would fall from the lips of the ordinary man in the street in modern usage in the application of a public and general act.

103. Furthermore, the device proposed by Mr. Justice Henchy, as suggested by the Respondent is to consider how the word '*dwelling*' would be understood by the ordinary man in the street and is echoed, to some degree at least, by the approach that was taken by Ms. Justice Laffoy in *Twomey v Hennessy* where she posed the question of whether the ordinary person on the street would have considered the accommodation in question as in use as a dwelling.

104. The Respondent submitted that the life of a student living on campus is indicative of living within an academic or educational environment and did not detract from the ability of those students to live autonomously and independently within their private accommodation, what they do and what they operate as is nothing more or less than an enhancement of that living as opposed to a deprivation that impacts negatively on their autonomy and independence.

105. The Respondent argued that the accommodation that was in use on the valuation date as a dwelling, that there is no looseness in the meaning. There is no uncertainty as to what that word is. It's an ordinary natural and simple word, and the correct approach is to give it its ordinary and natural meaning. There is no ambiguity in the word dwelling, it's a perfectly commonplace word. Nor is there any looseness in the word dwelling, or in use as a dwelling if you want to look at the full expression in its statutory context. In this context the Respondent submitted that it is only Rule 1 and Rule 3 that are engaged in this appeal.

106. The Respondent disregarded the Appellant's assertions that the terms and conditions of the use of the accommodation by the students was such as to exclude it from the concept of private independent living. It was noted that the terms and conditions of the student's licence agreement are in the main analogous to the standard terms and conditions that one would find in any private tenancy agreement. Secondly, the

limitation on overnight guests to those that are registered, the requirement that there be parties only with consent, the imposition of fines is nothing more than a minimal deprivation to the autonomy and the independence of students.

107. The Respondent asserted that the student accommodation owned and operated by the Appellant **[Description Redacted]** is no different to ordinary apartment blocks which may contain a number of different configurations of accommodation. It was submitted that there is no practical distinction between the student accommodation operated by the Appellant and houses or apartments that are typically let to students by private landlords. It is not uncommon with such student lettings to find the occupants sharing rooms and sharing communal facilities such as kitchens, bathroom or laundry and utility rooms. Likewise, it is not unusual for the landlords in question to re-let the accommodation **[Content Redacted]** on some other such short-term basis during the college vacations. All such, the dwellings come within the scope of the Act and are liable for local property tax.

108. The Respondent was not of the view that each building owned and operated by the Appellant as student accommodation "contains numerous dwellings" that are each liable for LPT. It was however dependent upon the degree to which communal facilities were shared, it may be appropriate for the purpose of LPT to treat the building in which the accommodation is contained as the relevant residential property rather than each individual unit within that building. The Respondent does not generally treat bed-sit-type accommodation as a separate residential property for the purpose of Local Property Tax; it is the building in which the bed-sit(s) is/are contained that is treated as the relevant residential property.

109. It is the Respondent's view that a unit of accommodation in which one or more students sleep and which has available to it sanitary and cooking facilities is more than merely a "bedroom". In so far as the students may have a licence to use one part of the building and the common areas for sanitary or cooking or social functions, they are no different to occupants of an apartment block who live in "dwellings" but who do not have the freedom to enter into every single part of the building in which their apartment is situate.

110. It is the Respondent's submission that the word "*dwelling*" as it arises in the LPT Act is not to be construed as a technical or qualified term whose meaning must be ascribed on the basis of the size and dimensions of the unit in question or the terms and conditions or rules and regulations that govern its user or by measuring the quality and extent of facilities and amenities available to it or by reference to the degree of permanence with which it is used or occupied or the title or rights of the persons in occupation.

111. It is the Respondent's submission that a "dwelling" is to be understood very simply as a place where a person or persons live or may live.

*The Irish Constitution*

112. The word "dwelling" has a significant resonance in Irish law in so far as it is the focus of Article 40.5 of the Constitution of Ireland which states that "*The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law*".

113. What constitutes a "dwelling" in the operation of this constitutional guarantee has been considered in a number of cases, principally criminal law cases dealing with the entry onto premises by the Gardai and the admissibility of evidence thereby obtained.

114. The Respondent opened *The People (AG) v O'Brien* [1965] 1 IR 169 in which Walsh J. considered the constitutional definition of a "dwelling" in the following passage:

> *"In a case where members of a family live together in the family house, the house as a whole is for the purpose of the Constitution the dwelling of each member of the family. If a member of a family occupies a clearly defined portion of the house apart from the other members of the family, then it may well be that the part not so occupied is no longer his dwelling and that the part he separately occupies is his dwelling as would be the case where a person not a member of the family occupied or was in possession of a clearly defined portion of the house. In this case the appellants are members of a family living in the family dwelling-house and also appear to have their own respective separate bedrooms.*

115. In the case of *The People (Director of Public Prosecutions) v David Lynch* [2010] 1 IR 543 the Court of Criminal Appeal held that a flat occupied by a squatter or mere trespasser nevertheless constituted his "dwelling" such that a search of the flat conducted under an invalid warrant was unlawful. In referring to the Constitution at page 546 of the reported decision, Fennelly J stated:

> *"The court is satisfied that the question of whether a place is the "dwelling" of a person for the purpose of this provision, at least in the context of the criminal law, is one of fact, a view reinforced by the Irish language version. It is at least quite obvious that the constitutional protection would extend to a wide variety of people with dubious legal titles, such as an overholding tenant, the widow of a deceased legal owner, or a person in* bona fide *possession on foot of an invalid title . . . It is significant, on the facts of this case, that An Garda Síochána, had the address of the flat on their own records as one of a number of addresses for the accused. Indeed, the application for the warrant to search the flat was made precisely because the Gardaí believed that the accused lived there and that they would find stolen property there for that reason . . . The court concludes, therefore, that the flat was indeed the "dwelling" of the accused"*

116. While the operation of the word "dwelling" in these cases is not within a tax statute it was submitted nevertheless that the courts have adopted the same approach as that commended by the Supreme Court in the interpretation and construction of tax statutes, which is to apply the natural and ordinary meaning of the word to Article 40.5 rather than to try to develop a technical, restricted or qualified meaning. A "*dwelling*" in this context is simply a place where a person or persons live. The quality of their title to the place or the property, if any is immaterial and there is no requirement to consider the physical layout or configuration of the place or the facilities and amenities installed or available to it before defining it as a *"dwelling*".

117. While obviously not an issue in the within appeal, The Respondent stated that it would be very difficult to see a scenario in which an unlawful entry of one of the units of student accommodation operated by the Appellant would be excused or exempted from the protection of Article 40.5 by a Court on the basis that the accommodation was not a "*dwelling*" as such within the meaning of Article 40.5. It is equally difficult to envisage that the Appellant would take the view that the units of student accommodation in its ownership and under its control were excluded from the protection of the constitutional guarantee.

*The Irish Case Law*

118. In *Kerry County Council v Patrick Kerins* [1996] 3 IR 493 the Supreme Court was asked to determine whether twelve chalets typically used for two-week holiday lets constituted "domestic hereditaments" within the meaning of section 1(1) of the Local Government (Financial Provisions) Act 1978 and whether they were therefore entitled to relief from the imposition of rates by the local authority. Section 1(1) defined a "domestic hereditament" as "any hereditament which consists wholly or partly of premises used as a dwelling"

119. At page 506 of the reported judgment, Hamilton CJ came to the following conclusion:

> "*Now there is no doubt whatsoever on any assessment of the situation that these chalets are dwellings, are used as dwellings and can only be used as dwellings. It is quite true that the rated occupier does not occupy them as a dwelling for himself and his family; he used them for the commercial purposes of letting them out to other people who would reside in them for short periods during vacation and use them as their dwelling for those particular periods but the actual fact is that these chalets can only be described as dwellings and the definition does not require that the dwelling be used by the rated occupier, does not require that it cannot be used for commercial use in the sense of being let out for dwellings during the holiday period and I am satisfied that these chalets come within that definition of a domestic hereditament and having come to that conclusion, the only thing I can do in this case is answer the question posed by the learned trial judge in the affirmative.*

120. At page 507 of the reported judgment O'Flaherty J. examined the overall purpose of the legislation in question and he expressed his conclusion in the following passage:

> *"It is quite clear that the purpose of this legislation is to exempt premises in which people dwell. The dichotomy between premises used as dwellings and business premises is provided in the Scottish case which was cited to us, Forest Hills Trossachs Club v. Assessor for Central Region [1992] S.L.T. 295. In that case Lord Coulsfield makes the point that the dictionary definition of dwelling-house is more concerned to contrast residence with other purposes, such as business occupation, than to stress the extent of occupation or residence by a particular person.*

121. The Respondent highlighted that the Supreme Court in *Kerins* adopted the ordinary and natural meaning of the word "*dwelling*" in considering whether the holiday chalets came within the statutory exemption from rates. The word "*dwelling*" was not subjected by the Court to any technical analysis regarding, for example, the size or capacity of the chalets; the facilities or amenities installed in them or available to them or not available to them, as the case may be or the rules or regulations or the terms and conditions of the lettings under which they were held. The Supreme Court was satisfied that if a person or persons resided in the chalets, then they constituted a "*dwelling*". The Court took the view that "*dwellings*" could be distinguished simply from commercial or business premises without requiring any more detailed analysis of the term.

122. Even though the Court in *Kerins* was concerned with the construction of an exempting provision rather than a provision that imposes a liability, the Respondent submitted that the judgment of Kennedy CJ in the *Doorley* case made clear that the same approach to construction is to be followed by the Court in either case. At page 765 of the reported judgment, Kennedy CJ stated that:

> *"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.*

123. In the case of *Donna Sfar v Louth County Council and others* [2007] IEHC 377 in the context of a judicial review against the seizure by the Council of animals from the applicant under the Control of Dogs Act 1986 Murphy J gave some lengthy consideration to the proper definition and construction of the word "*dwelling*" as it was used in section 16 of that Act. At page 8 of the judgment, Murphy J. stated:

> *"However, apart from statutory definitions the courts have held that to "dwell" and "dwelling" are expressions nearly but not quite, equivalent to reside, residence. To "dwell" connotes, more definitely than "reside", where a person lives and sleeps (see* Pollock CB, AG v. McLean 1H&C 761. *See also* Campbell v. O'Sullivan *[1947] SASR 195 at 201, 206 cited in Stroud "Judicial Dictionary of Words and Phrases" (6th edition), 2000). Butterworth's cites Bovill C.J. in* Thompson v. Ward, Ellis v. Burch *[1871] LR 6 CP 327 at 358, 359, citing Lord Cooke in relation to burglary:*
>
> > *"A chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is* domus mansionalis *in law"*
>
> *"Lord Atkinson in* Lewin v. End *[1906] A.C. 299 at 304 states:*
> > *"By a 'dwelling house' I understand a house in which people live or which is physically capable of being used for human habitation"*
>
> *"It is established that a person may "dwell" in two or more places (*Butler v. Ablewhite, *28 LJCP, 292). A person can, however, scarcely be said to "dwell" in his place of business (*Kerr v. Haynes, *29 LJQB 70 and* Shields v. Rait, *18 LJCP 120). The word "dwelling" was held in* Rukwira v. D.P.P. *[1993] Crim. LR 882 to connote those areas which lay behind closed doors, and did not include common landings which were merely means of access to the dwelling. There is further authority that a house does not become a dwelling house until some person dwells in it; that a structure in which people live or which is physically capable of being used for human habitation is a dwelling house . . . The judicial definitions are narrower than conveyancing, tenancy and, indeed Revenue definitions. They are, of course, not affected by the statute in which they are defined. It is clear that the words "dwelling" and "dwelling house" may be used in different senses. The* People (Attorney General) v. O'Brien *assumes but does not define what a dwelling is. Lord Justice Black in Belfast Corporation v. Kelso [1953] N.I. 160 at 163 states that it is not difficult to see that the word "dwelling house" may be used in different senses and different connections. Thus, we may speak of a garden attached to or surrounding a dwelling house. In this sense by "dwelling house" we mean only the dwelling house itself, the actual bricks and mortar. On the other hand, a conveyance or a devise of a dwelling house will normally be construed as including all the land within the curtilage of the house. It would appear to this Court that the word "dwelling" in s. 16 of the Control of Dogs Act 1986 must be construed in the narrow sense as protecting a house where people*

*live and cannot be deemed to extend to outhouses or boiler houses, particularly where they are not capable of being accessed through the house, nor to the curtilage. It is a contradiction in terms to say that a place where animals, farm or domestic, are housed can be a dwelling where people live, whether permanently or temporarily."*

124. The Respondent argued that while the principal issue in *Sfar* was whether the word "*dwelling*" contained sheds and outhouses belonging to the applicant within its scope, it was clear that in his review of the authorities, Murphy J emphasised that the essential quality of a dwelling is simply a place where a person or persons "live" or "reside". The word was given its natural and ordinary meaning by the Court. It was not treated as a technical term or as a word of art or a word to be ascribed some qualified or restricted meaning.

125. The Respondent proceeded to open *Twomey v Hennessey* [2011] 4 I.R. 395 a case was stated to the High Court in relation to whether the taxpayer was entitled to relief under section 42 of the Finance Act 1986, subsequently paragraph 11 of schedule 32 of the Taxes Consolidation Act 1997. The crux of the matter was whether the accommodation owned by the taxpayer and which consisted of self-catering units in an apartment block let to tourists, business travellers and students, was other than "*a building or structure in use as, or as part of a dwelling house*".

126. In her judgment Laffoy J. firstly endorsed the approach to statutory construction that was laid down by the Supreme Court in *Doorley* and in *Inspector of Taxes v Kiernan*. In considering whether the units constituted a "dwelling house" or part of a "dwelling house" Laffoy J first took the view that certain facts emphasised on behalf of the appellant that the students resided in the units for a greater part of the year and that each apartment unit on its own had the features of a dwelling house were irrelevant.

127. Laffoy J then analysed the progression and development of the legislative provisions under which the relief claimed by the taxpayer could be obtained and she came to the following conclusion at paragraph 82:

*"What it is reasonable to deduce from the foregoing is that the Oireachtas, in enacting the relevant legislation, has regarded a holiday cottage, but not a holiday camp, or a guesthouse or a holiday hostel, to be a "building or structure in use as, or as part of, a dwelling house". In my view, that approach is wholly logical when one applies the first of the three basic rules of statutory interpretation of taxation statutes outlined in Inspector of Taxes v Kiernan [1981] I.R. 117. What is clear from the authorities relied on by the appellant is that the terms "dwelling" or "dwelling house" are not regarded in common law jurisdictions as terms of art. I agree with the view expressed by counsel for the respondent that, if a member of the public was asked whether, having regard to their use as described in the case stated by the Circuit Court Judge, the units as a block forming a building at the material time were in use as, or as part of, a dwelling, the answer would be a clear negative.*

128. At page 428 of the reported judgment Laffoy J rejected the proposition that a degree of permanence was required to constitute a "dwelling" having regard to the view of the Supreme Court in *Kerins*, where it was held that short-term holiday lets could nevertheless constitute the "dwellings" of those who were staying there.

129. She then arrived at the following conclusion at paragraph 83:

> *"The distinction in the legislation is between a building which is used as a residence, or part of a residence, for however short a period, on the one hand, and a building which is used for a business similar to that of guesthouse or lodgings, on the other hand . . .*

130. And continued at paragraph 84:

> *From a drafting point of view there is an element of artificiality in the relevant statutory provisions in the creation of the categories of enterprise, to use a neutral word, in respect of which relief for capital expenditure is allowed. For instance, a member of the public would not regard a hotel as an industrial building nor a guesthouse as a hotel. However, the draftsman, by various devices, such as focusing on "use for the purposes of the trade of hotel keeping" and the "deeming" mechanism has created categories which are capable of being clearly identified. In my view, similar clarity has been achieved in excluding a building in use as a dwelling house in s. 255 (now s. 268 of the Act of 1997), in that it distinguishes use for the trade of hotel keeping, as a guesthouse or as a holiday hostel from use as a holiday cottage. The implicit difference is that use as a holiday cottage is use as a dwelling house, whereas the other uses are not. By analogy, the use of the units on the second and third floors of block B as described by the Circuit Court Judge - the provision of accommodation by way of trade on a* per *bed basis to users in a manner similar to guesthouses or "bed and breakfast" establishments - is not use as a dwelling house.*

131. The Respondent submitted that if the test adopted by Laffoy J in *Twomey* is applied to the student residences the subject of the within appeal then it is submitted that a member of the public would not describe the student accommodation operated by the Appellant as "*the provision of accommodation by way of trade on a per bed basis to users in a manner similar to guesthouses or "bed and breakfast" establishments*" with all of the casual and transient elements that are thereby implied.

132. What is also of interest in the *Twomey* case as noted by the Respondent were the remarks made by Laffoy J in relation to how the word "dwelling" should properly be construed. At page 425 she found that it was instructive to consider the use of the word in the "broader legislative framework" within which the section under consideration was to be found. At page 428 of the reported judgment she found that a number of authorities cited which dealt with the meaning of the word "dwelling-house" in a

landlord and tenant context were not relevant to determining the meaning of the word "dwelling" in the tax provision under consideration in the case.

**The Broader Legislative Framework**

133. In considering the broader legislative framework within which LPT came to be imposed, there are two precursors which are of significance in assessing how the word "dwelling" is to be construed.

134. The Respondent referred me to the Local Government (Charges) Act 2009 which was a precursor to the Finance (Local Property Tax) Act 2012, as amended and as such, it is part of the "broader legislative framework" within which the liability to LPT arose. That being so, it is appropriate to consider how the word "dwelling" is defined in that Act, as per the approach adopted by Laffoy J in the Twomey case.

135. The purpose of the 2009 Act was to impose on the owners of certain residential properties liability for the annual payment of a charge in respect of such property to the relevant local authority. It introduced the 'Non Principal Private Residence' charge which was payable up to and including 2013 at which point it, and the Household Charge introduced by the Local Government (Household Charge) Act 2011 were succeeded by the Local Property Tax.

136. Section 2(1) of the 2009 Act defined "residential property" as a building situate in the State that is used or is suitable for use as a "dwelling" including any house, maisonette, flat or apartment including a bedsit but excluding a number of specific types of property.

137. Section 1 of the Act defined a "dwelling" as a building used, or suitable for use, by an individual as a separate dwelling, whether or not he or she shares or would be entitled to share with any other individual any accommodation, amenity or facility in the building or, as the case may be, the premises of which the building forms part.

138. The Respondent submitted that it was clear that the definition of the word "dwelling" in this statutory precursor to the Finance (Local Property Tax) Act 2012, as amended specifically excludes any consideration as to the amenities or facilities available to the building or its size or the conditions under which it is used.

139. A similar approach was adopted in the definition section of the Local Government (Household Charges) Act 2011. In section 2(1) of that Act, the term "residential property" was defined in the following terms:

> *In this Act "residential property" means, subject to subsection (2), a building that is situated in the State and that is occupied, or suitable for occupation, as a separate dwelling, whether or not the occupier shares, or would be entitled to share, in*

*connection therewith, any accommodation, amenity or facility with any other person, and includes—(a) a house, maisonette, flat or apartment (including the form of accommodation commonly known as a bedsit), and(b) a building containing a bedroom to which paragraph (e) of subsection (2) applies.*

140. Paragraph (e) of subsection 2 describes a bedroom that is let under a letting arrangement whereby the occupier of the bedroom is entitled to share with any other individual any other accommodation, amenity or facility in the building of which the bedroom forms part.

141. Taking into account both of these definitions it was submitted that in the two enactments that led up to the introduction of the Local Property Tax in the Finance (Local Property Tax) Act 2012, as amended, the Oireachtas sought to provide a definition of the word "dwelling" which does not require any analysis of the amenities or facilities that are comprised in the building or part of the building in question and which does not require any analysis of the size or dimensions of the building or the terms and conditions or rules and regulations that govern its user. It is not open to the Appellant to import into the word a technical or qualified meaning in order to try to place its student accommodation outside the scope of the 2012 Act.

*The English Case Law*

142. It was submitted by the Respondent that the construction of the word "dwelling" or "dwelling-house" by Courts in the United Kingdom can offer very little assistance to the case being made by the Appellant. While there are a variety of cases dealing with the meaning of those words in a number of different statutory settings, it seems clear from the position adopted by the Supreme Court in *Kiernan* and *Doorley* and *Kerins* and followed by Laffoy J in *Twomey v Hennessey* that a reliance on authorities from other jurisdictions dealing with the use of the word "dwelling" in completely different statutory settings is misplaced and that such authorities are largely irrelevant in trying to construe the meaning of the term within an Irish tax statute.

143. In his judgment in the *Kerins* case, Hamilton CJ noted a line of English authorities that had been opened to the Court and then expressed the following view (at page 506 of the reported judgment):

*"A number of cases have been opened by counsel on both sides and while they are all very interesting and I am sure had direct application to the facts of cases in those particular jurisdictions, the decisions made on foot of them are not of particular assistance to me in determining the question which was posed by Blayney J., because it involves an interpretation of a provision of an Irish statute, the Local Government*

*(Financial Provisions) Act, 1978, and in particular the interpretation of the definition of "domestic hereditament" contained in that Act"*

144. The Respondent argued that the significance of the decision of the House of Lords in the case of *Uratemp Ventures Limited v Collins (AP)* [2001] UKHL 43 is not to try to transplant some particular definition of the word "dwelling" into Irish law but merely to show that the Lords in England declined to impose upon the word "dwelling-house" as it arose in the Housing Act 1988 a restrictive or technical meaning. The decision is not relied upon to import into Irish tax statutes some specific definition of the word "dwelling". The case is relevant only in so far as it shows the House of Lords adopting an approach to the meaning of the word that is very closely aligned to the approach that has been consistently followed by the Supreme Court in this jurisdiction.

145. In his speech in *Uratemp* Lord Irvine stated that:

*"Dwelling" is not a term of art, but a familiar word in the English language, which in my judgment in this context connotes a place where one lives, regarding and treating it as home. Such a place does not cease to be a "dwelling" merely because one takes all or some of one's meals out; or brings take-away food in to the exclusion of home cooking; or at times prepares some food for consumption on heating devices falling short of a full cooking facility. Decisions on the infinite factual variety of cases are for judges of trial and their decisions on the facts of individual cases should neither be treated nor cited as propositions of law. I would not myself, for example, regard a bed, any more than cooking facilities, as an essential pre-requisite of a "dwelling": every case is for the judge of trial but I would have no difficulty with a conclusion that one could live in a room, which is regarded and treated as home, although taking one's sleep, without the luxury of a bed, in an armchair, or in blankets on the floor.*

146. Lord Steyn took a similar view in his speech where he stated as follows:

*"The starting point must be that "dwelling-house" is not a term of art. It is an ordinary word in the English language. While I accept that dictionaries cannot solve issues of interpretation, it nevertheless is helpful to bear in mind that dwelling-house has for centuries been a word of wide import. It is often used interchangeably with lodging. It conveys the idea of a place where somebody lives: see Johnson's Dictionary, s.v. "dwelling-house" and Murray's Oxford English Dictionary, s.v. "dwelling-house" and "lodging". In ordinary parlance a bed-sitting room where somebody habitually stays is therefore capable of being described as a dwelling-house. So much for generalities. The setting in which the word appears in the statute is important.*

147. In his speech Lord Millett gave a very long and comprehensive survey of the treatment in English case law of the word "dwelling". He preceded this with the following summary:

> *"The words "dwell" and "dwelling" are not terms of art with a specialised legal meaning. They are ordinary English words, even if they are perhaps no longer in common use. They mean the same as "inhabit" and "habitation" or more precisely "abide" and "abode", and refer to the place where one lives and makes one's home. They suggest a greater degree of settled occupation than "reside" and "residence", connoting the place where the occupier habitually sleeps and usually eats, but the idea that he must also cook his meals there is found only in the law reports. It finds no support in English literature . . . In both ordinary and literary usage, residential accommodation is "a dwelling" if it is the occupier's home (or one of his homes). It is the place where he lives and to which he returns and which forms the centre of his existence. Just what use he makes of it when living there, however, depends on his mode of life. No doubt he will sleep there and usually eat there; he will often prepare at least some of his meals there. But his home is not the less his home because he does not cook there but prefers to eat out or bring in ready-cooked meals. It has never been a legislative requirement that cooking facilities must be available for premises to qualify as a dwelling. Nor is it at all evident what policy considerations dictate that a tenant who prepares his meals at home should enjoy security of tenure while a tenant who brings in all his meals ready-cooked should not. How, then, have the courts reached the conclusion that, as a matter of law, the presence of cooking facilities is an indispensable characteristic of "a dwelling"?*

148. The case of *University of Bath v CC&E* (LON/95/2791A) cited by the Appellant as support for its proposition that the student accommodation it owns ought not be regarded as a "dwelling" or "dwellings" for the purpose of Local Property Tax. Again, it is well-established by the Irish authorities that English legal authorities, notwithstanding that they arise in the context of tax cases have little or no relevance to the construction and meaning of statutory provisions in Irish tax statutes. This does not require the Commissioners to operate in a vacuum. There are various Irish authorities which set out the appropriate way in which tax statutes should be interpreted and construed and it is respectfully submitted that these almost all support the view that particular non-technical words or terms used in tax statutes ought to be given their ordinary or colloquial meaning and that the statutory provision under consideration ought to be given a purposive reading in order to ascertain its true effect.

149. In any case, the *University of Bath* case appears to relate to an application by a developer for zero-rate of VAT in respect of works to student residences and involve entirely different statutory provisions to the ones that are under consideration in this appeal. The St. Andrews University case appears to have arisen in similar circumstances.

These cases, it was submitted, offer little or no assistance to the Commissioners in the context of the overall approach suggested by the Irish authorities.

*Suitable for Use as a Dwelling*

150. The definition of "residential property" in section 2 of the Act not only includes buildings that are being used as a dwelling but also buildings that are "suitable for use" as a dwelling.

151. It was submitted that the inclusion of the "suitable for use" formula is a recognition by the Oireachtas that the liability for LPT should be not capable of avoidance by owners of dwellings who, for example, simply arrange to have the property in question vacated on the liability date or otherwise used for a purpose that is not residential and which is not consistent with the nature of the property as a dwelling. Where a dwelling is vacant or unoccupied on the liability date it is nevertheless to be regarded as "residential property" within the meaning of section 2 of the Act if it is "suitable for use" as a dwelling. Likewise, where a dwelling is used for a commercial purpose, such as a guesthouse or a bed-and-breakfast facility on the liability date, and it is not subject to the payment of rates it will still be regarded as "residential property", provided that it is suitable for use as a dwelling on that date.

152. It was submitted that in so far as the student accommodation the subject of this appeal may be unoccupied or otherwise utilised **[by non-students of the University]** during certain times of the year, it continues to be liable for LPT provided that it remains "suitable for use" as a dwelling on the liability date. The use of this formula provides a level of certainty that is required for the imposition of a tax liability. A property that is occupied as a "dwelling" does not cease to be "residential property" within the meaning of section 2 of the Act merely because its owner puts it to some temporary **[other]** use provided that the property remains suitable to be used as a dwelling.

153. The Respondent highlighted the Appellant's heavy reliance on *Twomey v Hennessey* [2011] 4 I.R. 395. At issue in that case was the actual use of a building as a dwelling and not the suitability of a building for such use. The Respondent submitted that if one of the tests suggested by Laffoy J in the *Twomey* case was applied to this case and a member of the public was asked whether, having regard to the use of the buildings in question as described in the case stated by the Circuit Court Judge, the units as a block forming a building at the material time were suitable for use as a dwelling instead of whether they were in use as a dwelling, the answer would be a clear positive.

154. The Respondent argued that it did not appear that the student accommodation owned by the Appellant requires any modification or conversion in the transition from student occupation during the academic year to commercial user during the summer months

and similarly, once the summer has come to an end it appears that the student population is able to resume occupation without any hindrance or other interruption. In other words, the accommodation remains suitable for use as a dwelling at all times during the year, notwithstanding any change in user.

155. The Respondent submitted that there is no support in the Act or in any of the authorities for the proposition that the "suitable for use" formula is intended only to capture properties that would qualify as "dwellings" but for the fact that they happen to be vacant on the liability date. The Respondent will submit that the formula widens the scope of the Act beyond where people actually live to include units of accommodation where people could live.

*Institutional Accommodation*

156. The Respondent submitted that a building such as described by the Appellant was liable to LPT. Regardless of the use to which it is put it is clearly "suitable for use as a dwelling", and, indeed, is described as being "designed to mirror accommodation in the community". The Respondent argued that insofar as one has regard to the use to which it is actually put, the Appellant has ventured to suggest that there is no material difference between its student accommodation and a description of the accommodation available to female inmates of Dóchas Women's Prison was a startling claim. If one of the tests suggested by Laffoy J in the *Twomey* case was applied to this case and a member of the general public was asked whether the student accommodation owned by the Appellant was equivalent to a women's prison, the answer would presumably be in the negative. Presumably the students who live in the accommodation provided for by the Appellant would not subscribe to that view either.

157. Despite the admonition of Hamilton CJ in *Kerins* against the slavish reliance on English authorities to interpret and construe Irish legislative provisions, the Appellant has called in aid a number of English cases dealing with inter alia, police barracks, houses let to public servants, hospital, prisons, residential schools and navy and military barracks. In doing so, the Appellant has ignored the direction in the very case that it relies upon, *R (CN) v Lewisham London Borough Council* [2014] UKSC 62 that the word "dwelling" did not have a precise, technical meaning and had to be interpreted having regard to its legal and factual context and the purpose of the statute in which it was used. Further, the Appellant's reliance on these cases fails to take into account that the legislation at issue in this case applies not just to a building which is in use as a dwelling but extends to one which is suitable for use as a dwelling. The analogy that the Appellant seeks to draw between its student accommodation and what it calls generally "institutional accommodation" is wholly unreal and artificial and is inconsistent with the approach adopted by the Courts in this jurisdiction which is characterised by a refusal to impose a technical and qualified meaning on the term "dwelling".

*Finance (Local Property Tax) Act 2012*

158. The Respondent argued the LPT Act operates by imposing a liability in respect of "relevant residential property" on the particular liability date. What constitutes "residential property" is set out in section 2 by referring to "any building or structure which is in use as, or is suitable for use as, a dwelling". Sections 4 to 10B (inclusive) of the Act set out a number of express exclusions in so far as they identify "residential property" which is not deemed to be "relevant" and does not attract any charge to LPT. The exemptions specified are as follows:

(i) Section 4 exempts property that is "wholly used as a dwelling" and in respect of which "municipal rates" (as defined by the Valuation Act 2001) are payable.
(ii) Section 5 exempts property that is vacant by reason of the certified physical or mental infirmity of the occupant.
(iii) Section 6 excludes newly built property that has not yet been sold on the liability date and which is not occupied and which does not yield any income.
(iv) Section 7 exempts what is referred to as "special needs accommodation".
(v) Section 7A exempts property used by a charity as residential accommodation
(vi) Section 8 provides a specific exemption in certain tax years for "first time buyers".
(vii) Similarly, section 9 provides an exemption for newly built houses in a specific period up to the 31st of October 2016.
(viii) Section 10 exempts property that is situated in an unfinished housing estate.
(ix) Section 10A exempts property certified as having significant levels of pyrite damage.
(x) Section 10B exempts property purchased built or adapted to make it suitable for occupation by a permanently disabled person.

159. It was submitted that if the Oireachtas had intended student accommodation owned and operated by a college or university to be exempt from LPT, then it would have been a simple matter of deeming it to be "residential property" that is not "relevant" in common with the other examples which can be found at sections 4 to 10B of the Act. For example, in relation to the section 7A exemption for certain charitable bodies, the permissible use to which such a body can put its residential property is specified. It is interesting to note that the exemption in section 10 relies on a detailed specification of the facilities and amenities that are available in a housing estate before it can be considered as "unfinished" for the purpose of relying on the exemption.

160. LPT Act section 4 exemption applies to residential property that is "wholly used as a dwelling" but in respect of which "municipal rates" are payable. If the Appellant was able to show that the municipal rates are payable in respect of the student

accommodation the subject of the within appeal, then it could establish that the accommodation is not "relevant" residential property and is therefore exempt from LPT. However, that does not appear to be the case.

161. In light of the foregoing, the Respondent made the following submissions:

(a) The word "dwelling" is to be understood in its ordinary and colloquial meaning;
(b) LPT is charged not only on buildings in use as a dwelling but on buildings suitable for use as a dwelling;
(c) The word "dwelling" denotes simply a place where a person or persons live;
(d) the words "suitable for use as a dwelling" denote a place where a person or persons may live;
(e) The word "dwelling "is not to be construed in a technical, qualified or restricted way and it is not to be read or understood as a word of art;
(f) The title of the occupants to the property (if any) is irrelevant to any consideration of whether it constitutes a "dwelling";
(g) Whether a property is a "dwelling" does not depend upon its size or dimensions or its configuration and nor does it depend upon the facilities or amenities available within it or to it and nor does it depend upon the terms and conditions or rules and regulations under which it is occupied;
(h) It is not necessary that the occupation of the property has any degree of permanence to constitute a "dwelling";
(i) The definitions ascribed to the word "dwelling" in other jurisdictions in the context of other statutory provisions are of little or no relevance in an Irish context;
(j) The meaning of the word "dwelling" is to be understood by examining its use within the Finance (Local Property Tax) Act 2012 (as amended) and the purpose or purposes which the provisions of that Act were intended to achieve;
(k) The approach to construction being suggested by the Respondent in this appeal is entirely consistent with the approach adopted by the Supreme Court in cases involving the word "dwelling", whether constitutional, criminal or indeed tax cases;
(l) The same approach has been followed by the House of Lords in the *Uratemp* case;
(m) This approach is consistent with the way the 2012 Act operates in that it begins with a broad definition of "residential property" (and by implication "dwelling") and then goes on to provide a number of specific express exemptions from the charge to LPT;
(n) If it had been intended by the Oireachtas that the word "dwelling" should have a technical, restricted or qualified meaning, then the Act would make express reference to the necessary size or dimensions, facilities and

amenities, conditions of use, etc. in the same way that an "unfinished housing estate" is defined by the detailed provisions of section 10 of the Act;

(o) Similarly, if it had been intended by the Oireachtas that the student accommodation owned and operated by the Appellant should not be liable for Local Property Tax, then it would have been a simple matter to include it among the various kinds of residential property that are expressly exempted from the charge;

(p) The student accommodation owned and operated by the Appellant constitute a "dwelling" or "dwellings" within the meaning of section 2 of the 2012 Act in so far as they are where students of the college live;

(q) The student accommodation is not merely in the nature of a "guesthouse" or "lodgings";

(r) In so far as the student accommodation may be vacant for periods of time or otherwise subject **[to non-student use]** during summer months, it nonetheless remains "residential property" in so far as it continues to be "suitable for use" as a dwelling without any conversion or modification on the liability date;

(s) The student accommodation owned and operated by the Appellant is made up of residential properties that are either used as "dwellings" or that are suitable for use as "dwellings" within the meaning of section 2 of the Finance (Local Property Tax) Act 2012 (as amended).

**Analysis**

*Statutory Interpretation*

162. The issue between the parties is whether the accommodation provided by the Appellant is within the charge to LPT as "*a building or structure which is in use or suitable for use as a dwelling*" on the valuation date, 1st May 2013.

163. During the course of hearing, approximately 25 cases were opened for the purposes of highlighting the nuanced definition of the word '*dwelling*' as it applied in an assortment of statutes. Both parties agreed that no one single case could provide any definitive assistance in the interpretation of the word '*dwelling*' for LPT purposes. Therefore, the Appellant asserted that there was a continuum of cases that required a multifactorial approach.

164. My approach in the determination of this appeal is to rely primarily on the Irish jurisprudence with initial recourse to the decision of Mr Justice Roderick Murphy in *Dona Sfar v Louth County Council*, [2007] IEHC 344 in which a full historical review of how the term '*dwelling'* was interpreted in the Irish and UK courts. The issue considered in *Sfar* was whether the term '*dwelling'* extended and encompassed out buildings and

sheds attached to a dwelling house. In determining that such structures did not constitute a '*dwelling'*, Murphy J. concluded at paragraph 3.6:

> *"It would appear to this Court that the word "dwelling" in s. 16 of the Control of Dogs Act, 1986 must be construed in the narrow sense as protecting a house where people live."*

165. Therefore, what is clear from *Sfar* and the review of the relevant authorities is how the courts have approached the meaning of the word '*dwelling*' in different statutory contexts. As such, it cannot be said that '*dwelling*' is a term of art nor does it have the same meaning everywhere it appears. It cannot be said that a building is a dwelling simply because somebody sleeps and eats there but rather its meaning is to be derived from its statutory context.

166. In *Twomey v Hennessy* [2011] 4 IR 395, a case on which the Appellant placed significant reliance, the nuanced definition of the word '*dwelling*' was again considered where at paragraph 72, Laffoy J. observed:

> *"It is clear from the case stated that the Circuit Court Judge was referred to a very considerable body of law on the meaning of 'dwelling house' in various legislative contexts, both as defined in legislation and as interpreted by the courts. I agree with the submission made on behalf of the Respondent that many of the authorities are of no assistance in determining whether the building which comprises the units in block B qualify as 'qualifying premises' within the meaning of s.42 as not being in use as, or as part of, a dwelling house at the material time. As counsel for the respondent emphasised, the determination to be made as to the use as, or not as, a dwelling house or part of a dwelling house requires to be made in relation to the units as a block forming a building or structure."*

167. Therefore, such jurisprudence endorses the approach that each case has to be considered in the light of its own facts with reference to its specific statutory context.

168. Furthermore, both parties impressed upon me, to which I am in agreement, that the approach to be applied in this appeal is in accordance with the 1st rule of statutory interpretation as espoused by Henchy J. in *Kiernan* where it was stated at page 121:

> *"if the statutory provision is one directed to the public at large rather than to a particular class who may be expected to use the word or expression in question, in either a narrowed or an extended connotation, or as a term of art, then in the absence of internal evidence suggesting to the contrary the word or expression should be given its ordinary or colloquial meaning."*

169. This approach was subsequently approved in *Twomey* where Laffoy J. said at paragraph 82:

> *"In my view, that approach is wholly logical when one applies the first of the three basic rules of statutory interpretation of taxation statutes outlined in Inspector of Taxes v. Kiernan [1981] I.R 117. What is clear from the authorities relied on by the appellant is that the terms 'dwelling' or 'dwelling house' are not regarded in common law jurisdictions as terms of art. I agree with the view expressed by counsel for the respondent that if a member of the public was asked whether, having regard to their use as described in the case stated by the Circuit Court Judge, the units as a block forming a building at the material time were in use as, or as part of, a dwelling, the answer would be a clear negative."*

170. The Appellant submitted that the 2nd rule in *Kiernan* should only be invoked in the event that there is a looseness or ambiguity in the statutory wording. In such incidences that rule would apply:

> *"if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language"*

171. Having reviewed the submissions, I agree with the parties that the 1st rule in *Kiernan* is most appropriate requiring an interpretation that reflects the "*ordinary or colloquial meaning"* of the word '*dwelling*.' Therefore, as submitted by the Appellant, the 2nd *Kiernan* rule should only be invoked if there is a looseness or ambiguity in the statutory wording.

172. Having considered the word '*dwelling'* within the confines and context of the LPT Act, I consider that there is an insufficient level of "*looseness or ambiguity*" in the meaning of that word to warrant recourse to the 2nd *Kiernan* rule notwithstanding the extensive volume of jurisprudence that has deliberated over the meaning of the word '*dwelling*'. Therefore, in the context of the interpretation and application of the charge to LPT on dwellings in the State that are in use or suitable for use as a dwelling, I am of the view that the correct approach to be taken is in accordance with the 1st *Kiernan* rule, being the "*ordinary or colloquial meaning"* or as Laffoy J. in *Twomey* described as the "*member of the public"* test.

*Accommodation*

173. The Appellant provides an assortment of accommodation **[Information Redacted].**

174. There was no disagreement between the parties that students **[Information Redacted]** lived in buildings owned and managed by the Appellant for a period of over 150 days in an academic year.

175. In this context, I have no doubt that if "*a member of the public*" had accompanied me on the inspection of the accommodation **[Location Redacted],** that that person would conclude that such accommodation would constitute a dwelling, or as described in *Sfar*, by Murphy J. as a place "*where people live*". It is also relevant that the documentation issued by the Appellant to its student places significant emphasis on "*living on campus*".

*Institutional Impediment*

176. The Appellant sought to distinguish the traditional form of dwelling from institutional type facilities due to the significance of the obligations, impediments and restrictions imposed on the students. In particular, the Appellant submitted, that the limitations that apply to the student's occupation of the property, the type of restrictions that are not found in normal commercial leases, the licenses over individual bedroom, the implied right to use the common areas are all inconsistent with the concept of dwelling.

177. It was also submitted that one must look not just at the bricks and the mortar, but the institutional context in which the properties are occupied **[Content Redacted].**

178. Reliance was thereafter placed by the Appellant *on Clutterbuck v Taylor*, where at page 399, Lord Esher opined:

> *"in order that the occupation may come within the definition given by the Statute, it must not be subject to disabilities substantially and consistent with the ordinary rights which a man exercises in respect of his own dwelling. And if it be subject to such disabilities it cannot said to be occupation of part of a house as a dwelling house."*

179. The Appellant argued that the manner and the circumstances of occupation are relevant to deciding whether or not a property is or is not a dwelling. As such, in accordance with *Clutterbuck*, the Appellant submitted that the circumstances by which the students occupied the properties cannot be said to be occupied as a dwelling.

180. Furthermore, *Innovia Cellophane*, a planning case and while not on all fours with the facts of this appeal, reinforced, the Appellant asserted, that the view in *Gravesham* that

certain accommodation because of the nature of occupation rather than the nature of the property is not a dwelling, because by quoting *Gravesham,* the law in this area was confirmed. In *Gravesham,* McCullough J. gave examples of properties which were regarded as dwelling-houses and then contrasted such properties with those which "*clearly are not*" dwelling houses:

> *"What have these examples in common? All are buildings that ordinarily afford the facilities required for day-to-day private domestic existence.*
>
> *This characteristic is lacking in hotels, holiday camps, hostels, residential schools, naval and military barracks and similar places where people may eat, sleep and perhaps spend 24 hours a day. Quite clearly, none of these is a dwelling-house."*

181. However, I agree with the Respondent that the accommodation provided by the Appellant cannot be compared with the type of accommodation provided in hotels, holiday camps, hostels, residential schools or in naval or military barracks.

182. What distinguishes hotels, holiday camps and hostels is that they are all short term occupation for one reason or another, whether for travel, business purposes, or the need for a vacation. Furthermore, a person does not live in a hotel, except in possibly exceptional circumstances.

183. A residential school is where minors reside and are subject to supervision in relation to the manner in which they lead their lives. Similarly, in a barracks, a person is obliged to live by reason of their employment or by reason of their office.

184. In this context, **[Content Redacted], [I have considered the disciplinary process for incidents occurring in the accommodation including the ability of the institution to impose a fine or other sanction if the student is in breach of a minor offence or to revoke their licence in more serious circumstances].**

185. In my deliberation, the particular provisions pointed out by the Appellant that deprives the accommodation of the necessary independence and autonomy to constitute a dwelling are not sustainable. From the evidence adduced, there was no prohibition on guests during the course of the day. All that was required in relation to overnight guests was that they were required to be registered and **[Location Redacted] [they could not stay for more than a small number of consecutive nights].** Furthermore, no inspections were made as to whether unregistered guests were on campus. Such persons only came to the attention of the Appellant if there was some complaint made arising from a disturbance or a party and the College security authorities attended in order to bring the disturbance to an end.

186. Therefore, the restriction on students with regard to entertaining guests overnight was minimal. No evidence was adduced nor was there anything in the terms and conditions to suggest that the Appellant had any role in vetting guests. All that was required was that each overnight guest had to register with the College authorities

187. Similarly, there was no ban on holding parties. All that is required was that the students in accommodation notify and obtain permission. **[Content Redacted] [Furthermore, it was reasonable to impose a ban on parties in certain circumstances].**

188. As such, there was no evidence of any unnecessary deprivation of the students' autonomy. I was satisfied that the terms and conditions of occupancy did not undermine the quality of their occupation. Any imposition of fines arose from breaches of the terms and conditions of the licence, ultimately leading to revocation, which as **[Name Redacted] [the Head of Accommodation]** confirmed in his evidence, happened **[Content Redacted] [very rarely]**.

189. As such, the Appellant has a responsibility to ensure that any inevitable breach of the rules or any dispute between the occupants is promptly resolved to ensure that each rent paying student has peaceful occupation and enjoyment of his or her accommodation. The terms and conditions associated with the student's occupancy are a fundamental component to ensure that enjoyment. I would therefore disagree with the Appellant that the terms and conditions of occupancy are some form of controlling process that imposes punitive measures. On the contrary, such rules are necessary when one considers that many of the residents **[Location Redacted]** are teenagers.

190. I am therefore of the view that such conditions are not imposed for the purposes of extinguishing the energies of youth but merely to ensure that exuberances of students are proportionate and appropriate. **[Content Redacted]**

191. **[Content redacted] [Such]** terms and conditions are necessary to ensure that the student's attention is focused on the need for consideration of others specifically in context of living in a bespoke close-knit academic community.

192. **[Subject Redacted]**

*Twomey v Hennessy*

193. While the Appellant submitted that of all of the cases opened and considered, *Twomey v Hennessy* was the most relevant to this appeal, it was acknowledged that the determination in *Twomey* in holding that accommodation provided to students were not dwellings does not necessarily apply for LPT purposes. It was also accepted by the Appellant that there were differences from a factual and legal perspective. However, where *Twomey* is relevant, the Appellant submitted, was to the extent that both cases deal with tax legislation and focused on use.

194. I have therefore given careful consideration to such submissions and I am of the view that *Twomey* can be distinguished as the quality of the occupation by the students was not considered in that judgement. Rather, the Court considered the distinction between the carrying on of a trade analogous to or equivalent to that of hotel keeping as opposed to a building used as a dwelling for the purposes of determining whether the taxpayer was entitled to capital allowances under section 42 of that Act or a rental deduction under Section 43 of the same Act. Therefore, the crucial difference with the Appellant's case is as highlighted by the following extract in *Twomey* where at paragraph 72, Laffoy J. held:

> *"In my view, certain facts emphasised on behalf of the appellant - that the students reside in the units for a greater part of the year and that each apartment unit on its own has the features of a dwelling house - are irrelevant."*

195. The same significance can be derived from the following extract from that judgement at paragraph 74:

> *"As will be clear from so much of subs (2) of s 42 as I set out when outlining the statutory framework, fundamentally what the case stated is about is whether the respondent, as a member of the partnership, was entitled to avail of the provisions in relation to the making of allowances or charges in respect of capital expenditure which applied to the construction of an industrial building or structure as defined in s 255 of the Act of 1967. He was if he could establish that the building comprising the units in block B came within the definition of "qualifying premises"."*

196. The definition of "*qualifying premises*" as noted by Laffoy J. at paragraph 6 was "*at the core of the issues between the parties*" and defined by section 42(1) of the Finance Act 1986 as a "*building or structure the site of which is in a designated area*" and which "*is in use for the purpose of a trade or profession …. but does not include any building or structure in use as, or as part of, a dwelling-house*"

197. The impediment ventilated in *Twomey* was that the taxpayer was not entitled to capital allowances under section 42 of the Finance Act 1986 if the building or structure was "*in use as, or as part of, a dwelling-house."*. In finding that the property was not in use as a '*dwelling*', the Court concluded at paragraph 82:

> *"What is clear from the authorities relied on by the appellant is that the terms "dwelling" or "dwelling house" are not regarded in common law jurisdictions as terms of art. I agree with the view expressed by counsel for the respondent that, if a member of the public was asked whether, having regard to their use as described in the case stated by the Circuit Court Judge, the units as a block forming a building at*

*the material time were in use as, or as part of, a dwelling, the answer would be a clear negative".*

198. Therefore, the capital allowances issue considered in *Twomey* was concerned with whether a trade was being conducted in a building analogous to hotel keeping irrespective of the fact that at certain times there were students there on a longer term basis. In concluding that a trade was conducted in such a property without any consideration of the quality of student's occupation clearly distinguishes the appropriateness of the decision in *Twomey* with the Appellant's appeal.

199. Finally, the importance of statutory context was emphasised in *Twomey* by Laffoy J. at paragraph 85:

*"However, in my view, what constitutes use as a dwelling for the purposes of those provisions falls to be determined in the context of those provisions. Similarly, the meaning of "dwelling house" in s 604(2) of the Act of 1997, the provision which exempts a disposal of a principal private residence from capital gains tax, which was also invoked by counsel for the appellant, falls to be construed by reference to the provisions of s 604 as a whole and the other relevant provisions of the taxation code in relation to such relief."*

**Conclusion**

200. In this appeal I have found that from visiting and inspecting the properties, the evidence adduced, a consideration of the terms and conditions of occupancy and the parties' helpful submissions, the accommodation provided by the Appellant was residential property within the State in use as a dwelling on the valuation date 1st May 2013. I found that the terms and conditions of occupancy were not onerous so as to deprive that occupation of the necessary characteristics as a dwelling. Furthermore, for the reasons outlined above, the Appellant's reliance on *Twomey* is not appropriate.

201. In this regard, a charge to Local Property Tax applies in respect of accommodation provided by the Appellant in respect of the valuation date 1st May 2013 and the Appellant was a person liable to account for Local Property Tax in respect of the liability date 1st May 2013.

202. The appeal is therefore determined in accordance with TCA, section 949AL.

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**Conor Kennedy**
**Appeal Commissioner**
**13th December 2018**

**No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.**