

## **FILE NOTE**

### **RE: HOLY CROSS MONASTERY, NEWRY DOMESTIC OR OT**

#### **Definition of a dwelling house**

The “basic” definition of a dwelling house is that it is a hereditament “used wholly for the purposes of a private dwelling”.

The word “means” is used in the definition, which suggests that the class of dwelling houses is confined to hereditaments used wholly for the purpose of a private dwelling. Apart from specific exemptions provided for in Schedule 5 the existence of any other use in the hereditament will suffice to take it out of the definition.

It is the “use” of the hereditament, which constitutes the test, and not, for example the purpose for which it is designed or suitable. “Wholly” must be read, subject to the exceptions noted in the Schedule.

The words “private dwelling” are not defined in the legislation. The dictionary definition is the “dwelling house of a private person” or “in his private capacity”, and the Lands Tribunal has adopted this meaning.

Use for trade, business or professional purposes is clearly not use for the purpose of a private dwelling but partial use of a hereditament for some such purpose would not take the hereditament outside of the definition if it can be shown that the considerations noted in paragraph 3 of schedule 5 can be satisfied.

#### **Case Law**

##### (1) Harrison (VO) v Rolls Royce Ltd

A company provided a hostel for apprentices with 24 bedrooms, communal dining room, lounge, writing and television room, washrooms and locker room and a warden, matron-housekeeper and staff. Apprentices up to 21 years of age were admitted on payment of a weekly sum. They were free to use the hostel or not and occupied their rooms subject to week’s notice on either side. They could bring personal possessions but not furniture with them. They were not subject to written rules or regulations but were required to be in by 11pm Monday to Friday (not at weekends). They were given meals. In all of the circumstances it was held by the Court that the hereditament was not a dwelling house.

(2) Pollard (VO) v Congregation of Christian Brothers of Ireland

A religious teaching order with its headquarters in Dublin, owned a large detached house with 15 bedrooms and 4 living rooms standing in its own grounds at Cambridge. The house was staffed and managed by senior members of the order and was used for housing young members of the order while they were under-graduates at Cambridge University, subject to the strict rules of the order. The Court held that the house was not a dwelling house since it was not used wholly for the purposes of a private dwelling, being in the nature of a school house or hostel used by the order for those members who require to live in Cambridge to study or look after those studying, and who were not the whole of the owning order.

(3) Perrins (VO) v Bathurst and Others

A convent comprising 20 bedrooms, various sitting rooms, cloister, sacristy, chapel and inner chapel, with usual offices, was occupied by a community of nuns, who devoted themselves entirely to worship, prayers and meditation within their cloister, following the Roman Catholic belief that they so caused the intervention of God to bring about the spiritual improvement of the public, and providing an example of self denial and concentration on the life of the spirit. The Tribunal held that the convent, including the chapel, was a dwelling house since it was “used wholly for the purposes of a private dwelling by each individual member of the community.”

Relevant extracts from the decision of the Tribunal are as follows:

- The issue in the appeal is whether this hereditament is used wholly for the purposes of a private dwelling ..... The solicitor for the appellants valuation officer contends that it is not. He said that it is used for the purposes of an institution. It was suggested that this was in the nature of a test case for the purpose of assessing religious convents. Having heard the evidence and inspected the hereditament, I do not consider that it will serve this purpose, as it seems to me that each case will have to be considered on its merits in the light of the particular circumstances. It emerged from the evidence that there are many differences between convents, particularly in regard to the activities the community pursues, so that it would be difficult to lay down any general principle, which would apply to all. For instance some convents run highly successful private schools for education..; other convents organise orphanages and hospitals, and it would be difficult to say that such convents were used wholly for the purposes of a private dwelling house.
- This community at Branksome Park is an entirely autonomous community. 4 members hold the property in trust for the other members. They are subject to what I might call a “theoretical control”

by the bishop of the diocese and by the mother superior, but this control is only spiritual and probably derives from the general vow of obedience that those religious communities take. Neither the bishop nor the mother superior has any legal control whatsoever over the hereditament.

- *It was found as a matter of fact that apart from the sketching of holy pictures and the making of religious vestments, which uses were held to be de-minimus, the main use was for spiritual purposes. The judgement then continued.*

What then remains? As far as can be accepted in law only prayer and meditation and living life as human beings must live it; they must eat, they must sleep. It seems to me that this house is used by each of these nuns as a private dwelling – house where they can live their lives as they wish to live them. It does not seem to me to differ in principle from the case of a private house, which a number of people might take in joint ownership, and live their lives there in the study of philosophy.

- A point has been made by the valuation officer that included in the hereditament is a chapel in which mass is celebrated and to which the public are admitted ..... My inspection and the evidence convinces me that it is an ordinary convent chapel ..... I cannot see that this fact would detract from the character of a private dwelling house any more than the fact than an artist might convert part of his house into a studio.
- I cannot discover that in this hereditament ..... the nuns occupy the house for any other purpose than that of a private dwelling house for each individual member. The fact that they chose to band together for that purpose and lead a type of life which would appeal only to a very few does not alter the fact that it is used and occupied wholly as a private dwelling house.

### **Comment**

In the first two cases it seems to have been held that occupation was by the company or by the trustees rather than by the individuals in residence for the time being. In the “Harrison” case “Bathurst” was distinguished in the following terms –

“The distinction between the present case and “Perrins v Bathurst” rests, I think, not on ownership but on the fact that in that case it could not be said that anyone other than the nuns were using the premises and the tribunal found they were using it as their private dwelling”.

### **Subject Case**

This is a monastic community made up of 6 monks who are permanently resident in the Monastery as part of their vocation. The premises are held by

all 6 monks as trustees of the congregation. The community provides a spiritual facility to members of the public in activities such as prayer, worship and retreats. The premises comprise a suite of retreatment cells, with associated common rooms, kitchens, refractory, library etc all built for the purpose of offering facilities for the public to come for personal spiritual reflection and devotion. There is a sanctuary for public worship and prayer, which is held on a regular basis.

In my opinion the subject case can be distinguished from “Perrins v Bathurst” because the facilities are designed for use by members of the public. In simple terms it is not a private dwelling house to which on occasion others are invited rather it is an institution where monks reside as an aid to furthering the aims of the institution. I therefore agree with the recommendation that it not be considered to be a dwelling house.

**ALAN HANNA**