THE HIGH COURT

[2023] IEHC 660

Record Number: 2021/872 JR

BETWEEN

UNIVERSITY OF LIMERICK and PLASSEY TRUST COMPANY LIMITED

APPLICANT

AND

IRISH WATER

RESPONDENT

JUDGMENT of Ms. Justice Bolger delivered on the 27th day of November 2023

1. The University of Limerick ("UL") is a customer of Uisce Éireann ("UÉ") for the provision of water services. In June 2021, UÉ determined that the units comprising UL's student accommodation were liable to charges for the provision of water services, which is now challenged by UL. Various reliefs are sought, the most significant of which is at (ii) of the Statement of Grounds:

> *"A Declaration that the units constituting the Student Accommodation constitute dwellings within the meaning of section 21 (6) (a) of the Water Services (No. 2) Act, 2013 (as amended) ('the 2013 Act')".*

2. For the reasons set out below, I find in favour of the applicant.

Agreed background facts and issues

3. The parties are both public bodies and have adopted a commendable approach by agreeing the relevant background facts and distilling the issues to be determined.

4. Under s. 21(1) of the Water Services (No. 2) Act 2013 (as amended) ("the 2013 Act"), UÉ is required to charge each customer for the provision by it of water services. Section 21(6)(a) provides that UÉ shall not charge for the provision of water services to a dwelling. Up until the

decision under challenge UL's student accommodation had been allocated domestic allowances similar to that allowed to ordinary dwellings, resulting in a reduction in UL's overall water services bill.

5. The main UL campus is supplied with water via UÉ meters, most of which is used for UL's business of providing education. A small amount is distributed by UL to its student accommodation. During the academic year, from September to May, the student accommodation is made available exclusively to students of UL. Outside the academic year, from June to August, the student accommodation is used by some UL students but mainly by non-students such as conference delegates and tourists. UL only seeks to challenge UÉ's approach to its student accommodation during the academic year and does not dispute its obligation to pay water charges in respect of the student accommodation outside of that time.

Issues

6. The parties agree that the issue to be determined by the court is whether the supply of water by UÉ to UL's student accommodation is the provision of water services to a "dwelling" within the meaning of s. 21(6) of the 2013 Act. The parties have agreed the following factors may be relevant in determining the ultimate issue and if they are, what weight should be given to each.

(a) The physical characteristics of the buildings and accommodation units comprising the student accommodation, including:
   (i) the physical capacity to exclude other persons from the building and unit of accommodation;
   (ii) the extent to which facilities are communal:
      - within the buildings, and
      - within the accommodation units.

(b) The licence terms pertaining to the student accommodation, including:
   (i) the right of the licensee and/or the licensor to exclude other persons from the unit of accommodation;
   (ii) the right of a licensee to have visitors;
   (iii) the licensor's right of inspection;
   (iv) whether a licensee has any discretion in respect of or control over which room is allocated to him or her;

(v) whether a licensee has any discretion in respect of or control over the number or identity of other persons in the unit of accommodation;

(vi) any system of fines imposed by the licensor.

(c) Whether the student accommodation can be a dwelling within the meaning of the 2013 Act for the academic year and not a dwelling outside the academic year.

(d) The use of the student accommodation outside the academic year and the terms relating to the booking of the student accommodation outside the academic year.

(e) The registration of the unit of accommodation with the Residential Tenancies Board.

(f) The liability to local property tax in respect of the student accommodation.

(g) The purpose for which the student accommodation is licensed.

(h) The duration of the licence of the unit of student accommodation.

(i) The identity of the customer of UÉ.

(j) The ownership of the student accommodation.

(k) Whether UÉ is notified of the persons to whom the student accommodation is made available.

7. Determining whether there has been the provision of water to a dwelling by UÉ within s. 21(6) of the Act requires consideration of statutory interpretation, any relevant legislative history, whether assistance is to be garnered from previous decisions that considered statutory definitions of 'dwelling' and the identity of the 'occupier' of any such dwelling for the purposes of the Act. It is also necessary to examine the licence relationship between UL and the individual students availing of UL's accommodation during the academic year to see if that has any impact on the application of the statutory definition.

Relevant statutory provisions

8. The obligation of UÉ to levy water charges arises under s. 21(1) of the 2013 Act:

"*Subject to subsection (6), Irish Water shall charge each customer for the provision by it of water services*."

"Customer" is defined in s. 2 as:

"*the occupier of the premises in respect of which the water services are provided*".

"Occupier" is defined in the 2013 Act as:

> "*the person for the time being entitled to the occupation of the premises*".

Section 21(5) sets out a presumption that is relevant to identifying the customer:

> "*It shall be presumed, unless the contrary is proved, that the owner of a premises is also the occupier of that premises*."

Section 21(6) provides for an exemption from water charges for the provision of water services to a dwelling:

> *"(6) Irish Water shall not charge —*
>
> > *(a) for the provision of water services (other than water services referred to in subsection (6A) to a dwelling (including its curtilage)".*

The following definition of *"dwelling"* in s. 2 is inserted by way of amendment to the 2013 Act by s. 14 of the Water Services Act 2017:

> "*'dwelling' means a premises occupied by a person as his or her place of private residence (whether or not as his or her principal private residence)*".

The term "dwelling" is also defined in s. 23A(7), to mean, for the purposes of that section only:

> "*a premises occupied, or which may be occupied, by a person as his or her place of private residence (whether or not as his or her principal private residence).*"

Section 23A(1) provides:

> *"Where water services are provided to a dwelling by Irish Water, the owner of the dwelling shall, subject to subsections (2) and (3)—*
>
> > *(a) register with Irish Water as a customer and confirm whether or not the dwelling is his or her principal private residence, or*
> >
> > *(b) notify Irish Water, in writing or in such other form and manner as Irish Water may specify, that he or she is not the occupier of the dwelling and provide—*

> *(i) the date of commencement of any agreement for the occupation of the dwelling, and*
>
> *(ii) the name of each person with whom the owner has such an agreement for the occupation of the dwelling..."*

Section 23A(3) disapplies the requirement under s. 23A(1)(a) where "*the Residential Tenancies Act 2004 applies to the dwelling concerned*". Under s. 23A(1)(b), where the owner of a dwelling as defined for that section is not the occupier, they must notify UÉ of this fact and say who the occupier is and when this occupation commenced. UL has never notified UÉ of the identities of the persons to whom the student accommodation units are made available, whether in or outside of the academic year.

9. The 2013 Act provides that "*premises*" has the same meaning as it has in the Water Services Act 2007 and includes "*part of a premises*". The 2007 Act defines "*premises*" as including:

> "*any building, vessel, vehicle, structure or land (whether or not there are structures on the land and whether or not the land is covered with water), and any plant or related accessories on or under such land, or any hereditament of tenure, together with any out-buildings and curtilage*".

Principles of statutory interpretation

10. The literal rule, whereby words are given their plain and ordinary meaning, guide statutory interpretation as long as there is no ambiguity. In giving the natural and ordinary meaning to a simple word which has a widespread and unambiguous currency, a judge should draw primarily on their own experience of its use (*Inspector of Taxes v. Kiernan* [1981] IR 117). Guidance can also be derived from the context in which the Oireachtas usually employs such words (*Breathnach v. McCann* [1984] IR 340). The words used in a statute are to be given effect as it is to be presumed that the Oireachtas do not use words in a statute without meaning (*Goulding Chemicals Ltd v. Bolger* [1977] IR 211).

Legislative history of "dwelling" and water charges

11. Prior to the 2013 Act, s. 66 of the Public Health (Ireland) Act 1878 conferred the power to charge a water rate on local sanitary authorities. The term "dwelling" was first defined in this scheme

by an amendment to s. 65A of the 1878 Act by the Local Government (Financial Provisions) Act 1997 which added a new subsection (13):

> "'*dwelling house' means a building or part of a building used by a person as his or her place of private residence (whether as his or her principal place of such residence or not) and includes accommodation provided in such a residence to one or more students to enable them to pursue their studies but does not include any part of a building used for the provision, for the purposes of reward, with a view to profit or otherwise in the course of business, of accommodation, including self-catering accommodation, (other than accommodation provided in a place of private residence aforesaid to one or more students for the purposes aforesaid) unless the person to whom the accommodation is so provided uses the accommodation as his or her principal place of private residence*".

12. UÉ contend that the definition of "*dwelling house*" under the 1878 Act informs the definition of "*dwelling*" in the 2013 Act, that the difference between the two definitions sheds light on the legislative intended treatment of student accommodation for the purpose of water charges and that it was necessary to expressly include a reference to student accommodation in the 1878 Act, without which such accommodation would not qualify as a "*place of private residence*". UL dispute any inference that student accommodation is excluded from the definition of *"dwelling"* and suggest that, having previously taken steps expressly to include student accommodation within the concept of a dwelling, a definition omitting those steps was not intended to exclude student accommodation.

13. A different type of student accommodation to what is at issue here is included in the 1878 Act by s. 65A(13) in referring to accommodation provided in a person's *"place of private residence … to one or more students to enable them to pursue their studies".* That type of accommodation provided to a student in someone's private residence, colloquially known as 'digs', was commonplace for students of generations past. It is less common today but is still availed of by students and other persons renting accommodation, now known as 'Rent a Room' for which specific revenue relief is available. It is different to the student accommodation at issue here on UL's campus which is clearly not accommodation in a person's private residence. The definition of "*dwelling*" in the 1878 Act does not, in my view, confirm any legislative intent to exclude the type of student accommodation at issue here from the definition of *"dwelling"* in the 2013 Act.

<u>Previous decisions on statutory definitions of 'dwelling'</u>

14. UL highlight that a non-technical approach has been adopted in other cases where the court was asked to consider the ordinary and natural meaning of the word "*dwelling*". In *Kerry County Council v. Kerins* [1996] 3 I.R. 493, the Supreme Court considered whether chalets used for holiday lets, typically for periods of two weeks, constituted "*domestic hereditaments*" within the meaning of s. 1(1) of the Local Government (Financial Provisions) Act 1978 and whether they were therefore entitled to relief from the imposition of rates. Section 1(1) defined a "*domestic hereditament*" as "*any hereditament which consists wholly or partly of premises used as a dwelling*." The court found that that the chalets were dwellings notwithstanding that they were occupied by persons for short holiday periods. UÉ submit that O'Flaherty J. found it "*significant that there is no mention of the dwellings having to be private dwellings*" (emphasis in the original), which they say suggests the holiday chalets would not have been held to be "*private*" dwellings, had that been at issue.

15. The High Court decision of Baker J. in *McDonough v. Irish Water* [2014] IEHC 646 is heavily relied on by UÉ. This was a judicial review of Meath County Council's decision to charge for the supply of water to a single point in a caravan park, from where it was transmitted through the park's internal conduits to each caravan unit. It was accepted that each of the units were dwelling houses within the meaning of the pre-2013 legislative scheme (at s. 65A as discussed at para. 13 above) which led Baker J. to find that the water was supplied for wholly domestic purposes. But what was at issue was "*whether the supply of water is to those individual dwelling houses or to the park itself*" (at para. 41). Group water schemes had a statutory exemption from water charges but Baker J. found that this did not include the type of water distribution scheme that operated in that park and concluded:

> "*The mobile home units are not directly supplied by the water authority, and the direct supply is made through the park operators. It being accepted that there is no scheme of distribution which creates a group water scheme within the wide definition in the legislation, I consider that the water is not supplied to a dwelling house or to a group of dwelling houses which have the benefit of a group water scheme."*

16. This judgment does not add as much assistance to the appropriate interpretation of the definition of *"dwelling"* in the 2013 Act as is contended for by UÉ and does not support UÉ's case that UL's student accommodation cannot come within the statutory definition of *"dwelling"* in s. 2. The particular water distribution system in that case was found to fall outside of the then statutory

exemption from water charges, which does not particularly assist the court in determining whether UL's student accommodation comes within the statutory definition of "'*dwelling*'" in s. 2 or not.

17. UÉ also relies on the decision of a UK VAT Tribunal in *University of Bath v. Commissioners of Customs and Excise* decision no. 14235, 5 February 1996, in which the Tribunal was asked to determine whether student accommodation comprising of individual bedrooms and shared kitchens off a corridor arranged around vertical staircases, comprised buildings "*designed as a dwelling or number of dwellings*" under then UK VAT legislation. UÉ's written submissions assert that the student accommodation at issue there was "*strikingly similar to that at issue in the present case*", whereas counsel for UL described it as quite different student accommodation of a standard more common in student hostels or college student rooms of a bygone era. UL exhibited a detailed independent engineer's report describing its student accommodation which comprises of units ranging from one to six bedrooms in which students reside together. Each student has their own bedroom for which they have a private access key. They share kitchen and living spaces and sometimes share bathrooms with other students, not necessarily of their choosing. Each of the units has its own front access door. The plans look far more like stand alone apartments than the student hostels and student rooms off corridors of long ago, including those in the University of Bath. The UL students provide their own bed linen and towels and are responsible, as a group, for cleaning and housekeeping. They share some kitchen utensils. The engineer's inspection confirmed the presence of personal items belonging to the students including some of a type that one might find in a hotel room such as personal toiletries and clothes alongside other items more usually found in a home such as pot plants, family photographs, fairy lights, county flags and beach towels with beer logos, which seemed to be the students' favoured wall decorations.

18. From the engineer's report and from my own review of the descriptions and plans for each of the accommodation blocks that are made available to UL's students, I am satisfied that the type and quality of this accommodation renders it entirely different from the student accommodation in the University of Bath in 1996. What is perhaps more striking about the reliance UÉ seek to place on a UK VAT Tribunal decision from 1996 is how it illustrates the absence of binding or even persuasive authorities involving accommodation sufficiently similar to that at issue here to be of assistance.

19. However the layout and quality of this accommodation is not, in itself, determinative of it satisfying the statutory definition of "*dwelling"* in s. 2. UÉ also relies on the terms of the licence between UL and each student that allows them to reside in this accommodation for their academic year, in disputing that the students are residing in a private dwelling. UL seeks to compare it with the accommodation a group of their students might privately arrange in the locality pursuant to a lease with a private landlord. In reality the control exerted by UL over their on-campus accommodation and the access and inspection rights that they reserve in the licence agreements, places this accommodation in a somewhat different category to a private tenancy. However that in itself does not mean the accommodation does not fit within the statutory definition of "*dwelling"*.

20. UÉ also rely on the terms of the licence agreement in making the case that it is UL and not the students that occupy the accommodation. The identity of the occupier is important because the definition of *"dwelling"* in s. 2 is *"a premises occupied by a person as his or her place of private residence (whether or not his or her principal private residence"* (my emphasis). Section 2 defines the customer as *"the occupier of the premises in respect of which the water services are provided"*. Occupier is defined as *"the person for the time being entitled to the occupation of the premises"*. Section 21(5) creates a rebuttable presumption that the owner of a premises is also the occupier. Section 23A(1) requires the owner to notify UÉ if it is the case that they are not the occupier of the dwelling.

21. Here, UL is the owner of this accommodation and is therefore presumed to be the occupier unless the contrary is proved. UÉ disputes that the contrary has been proved and point to UL's failure to comply with their obligations under s. 23A(1)(b) to notify UÉ that they are not the occupier, to confirm the date of commencement of any agreement for the occupation of the dwelling and to furnish the name of each person with whom the owner has such an agreement for the occupation of the dwelling. No such notification has ever been provided by UL to UÉ. However I do not find that surprising given that up to the decision that has been challenged in these proceedings, UÉ had allowed UL domestic allowances for its student accommodation in line with the arrangements previously applied by Limerick County Council, which meant a reduction in their overall water services bill. In any event, whether UL did or should have notified UÉ that they were not the occupier and should have furnished the name of each of the students with whom they had a licence agreement allowing them to reside in the accommodation during the academic year, cannot inform the court's

task of interpreting the relevant statutory provisions and, in particular, determining whether the student accommodation satisfies the statutory definition of a *"dwelling"* set out in s. 2.

22. UÉ also rely on the use of meters on UL's campus for the distribution of water to the student accommodation which they say is similar to the distribution system in *McDonough* where Baker J. confirmed, at para. 41, that what was at issue was *"whether the supply of water is to those individual dwelling houses or to the park itself"* and found that to be a supply of water that did not fall within the statutory exclusion for group water schemes. She went on to conclude:-

> *"the Oireachtas did not intend to exclude from charges all water supplied to collective recipients, even when they use the water for domestic purposes, and where the supply is to a dwelling house. The tests in the legislation are cumulative, and while the water is used for domestic purposes, the supply is neither to a dwelling house nor to a group water scheme and no other supply is exempt."*

23. Baker J. found the supply was to the caravan park and not to the individual units which she found constituted dwellings within the meaning of the legislation. That decision was heavily influenced by the statutory inclusion of a group water scheme from the exempting provisions in the previous legislation, which persuaded the court that the Oireachtas did not intend to exempt all water supplied to collective recipients from charges, even when the water was supplied to a dwelling house and used for domestic purposes. The 2013 Act does not replicate that exemption. The only exemptions it provides for are at s. 21(6) in respect of provision of water services to a dwelling and to a fire authority.

24. UÉ say they supply water to the UL campus for all of UL's services including education services and the provision of accommodation for reward. To that end they suggest that UL's student accommodation can and should be compared with a hotel or a business offering accommodation in self-catering rooms. That comparison might be valid in respect of the provision by UL of accommodation outside of the academic year, for which they do not claim an exemption and which they recognise as a different type of activity to the provision of accommodation to their students during their academic year. But there is a significant difference in UL's use of its student accommodation for its students during the academic year, being the exact reason for which the accommodation was built, and its use of the same accommodation for secondary, commercial purposes during the summer months when the accommodation would otherwise remain empty as

UL's students are not on campus. This is reminiscent of a school that might allow its premises to be used during the summer months by commercial summer camps, but it could not be suggested that the school thereby evolves from being an educational institution to a property business. There is far more than the length of stay that distinguishes the manner in which UL uses its student accommodation during the academic year from its use of it to let short-term accommodation to conference attendees and tourists during the summer months.

25. UL's use of its student accommodation during the academic year is not comparable to the business of a hotel or self-catering accommodation, but the rejection of that comparison is not sufficient to determine whether or not the accommodation satisfies the statutory definition of *"dwelling"*. It is necessary, as UÉ has emphasised, to review the terms of the licence agreement pursuant to which UL's students reside in this accommodation during the academic year. The licence provides for the right of the individual student to "*occupy*" a bedroom on a *"non-exclusive basis"* and to the "*use"* of the common kitchen, bathroom and living areas. UL retains the right to change the location of the room provided to the individual student, to end their occupation at any time, for any reason and without notice, to restrict the student from having strangers on the premises and to carry out an inspection, in particular to search for drugs and/or illegal substances. UÉ say those provisions are consistent with UL's continued right of occupation which means that UL's status as occupier cannot be rebutted and UÉ were, therefore, entitled to treat UL as its customer. UL say that the terms of their licence only impose minimal restrictions on the student's autonomy and independence and do not detract from the private nature of the accommodation provided to the student. UL describe the restrictions as mere house rules, similar to the right of any private landlord to put terms and conditions into a private tenancy agreement, which they suggest might be particularly common in dealing with young students living in an educational setting and potentially predicted to be involved in what UL refer to as *"youthful exuberances"*.

26. The licence agreement does contain restrictions that are relied on by UÉ but there has been no suggestion or evidence of the extent of any actual practice of moving students around or of inspections whether for the purpose of locating illegal substances or otherwise. In any event, if or when UL exercise their right to move a student, they will be simply moved from one part of the student accommodation to another. Those restrictions on a student's use of the accommodation does not mean that they are not in occupation of the premises. Indeed, the terms of the licence agreement expressly state that upon payment of the security deposit and licence fee, the student

"shall be permitted to occupy the Premises". In addition, the licence agreement must be registered with the Residential Tenancies Board and their terms are subject to s. 12 of the Residential Tenancies Act which requires as the first obligation of a landlord to *"allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling"*.

27. I do not consider the terms of the licence agreement mean that UL has failed to rebut the presumption that it, as owner of the accommodation, is also the occupier. Nor should the manner of the distribution of water to the accommodation by way of meters affect the interpretation of the relevant statutory provisions. The Oireachtas could not have intended that the rights and obligations conferred on water suppliers and water users in the 2013 Act was to be determined by how the water supplier and/or the owner designed the system of water distribution.

28. For the reasons set out above, I am not satisfied that UL is the occupier of the student accommodation during the academic year either by reference to UL's non-compliance with the notice requirements of s. 23A, the design of the distribution of water to the campus by way of meters or the terms of the licence agreement between UL and individual students who take up residence in the student accommodation during the academic year.

The interpretation of section 2

29. I return to the central issue of determining whether or not UL's student accommodation satisfies the definition of *"dwelling"* in s. 2. The statutory definition of *"dwelling"* focuses on the person occupying the premises. The definition requires the premises to be:-

(1) occupied by that person;

(2) occupied as their private residence, whether or not their principal private residence.

In seeking to give the words their ordinary and natural meaning, it is necessary to consider how the individual student availing of the accommodation would view their presence in the student accommodation during the academic year. I think they would view themselves firstly, as occupying the student accommodation and, secondly, as occupying it as their then current private residence. I do not think their views in that regard would or could be tempered by terms of the licence agreement they have entered into with UL. Neither do I think they would view their permitted use

of the common kitchen and living areas as restricted or different to how they might use the kitchen and living room areas in a rented house or apartment off campus.

30. The definition makes it clear that the person whose use determines whether the definition is satisfied is the occupier rather than the owner. For the reasons outlined above, I am satisfied that the student is the occupier of student accommodation during the academic year, despite the restrictions placed on their occupation by the terms of their licence, which restrictions are not so extreme as to mean that the student is not in occupation of the accommodation and albeit that their occupation is subject to conditions imposed by UL.

31. In determining the nature of the occupation, the definition focuses on the perception of the student occupier, i.e. do <u>they</u> see it as their place of private residence. A student whose homeplace is too far from their college to allow them to commute each day will have to live away from home at least during the week and may or may not return to their parents' home at weekends. The definition of "*dwelling"* allows for a person to have dual residence whereby their homeplace may continue to be their principal place of residence while they are also living in other accommodation during (or even after they have finished) their studies. The ordinary and natural meaning of the words used in the section is such that a student's occupation of UL's student accommodation during the academic year will be as their place of private residence. I find support for this in the fact that the accommodation was built to provide accommodation for UL's students and not to allow UL to run a commercial property business similar to a hotel or self-catering accommodation. The commercial use that UL makes of its student accommodation outside of the academic year is not the purpose for which the accommodation was built, but rather is a sensible and commercially prudent use of the resources available to UL during those times of the year when UL is not engaged in their primary purpose of educating their students.

<u>Conclusions</u>

32. UL's student accommodation satisfies the definition of "*dwelling"* in s.2 and therefore the supply of water by UÉ to UL's student accommodation is the provision of water services to a *"dwelling"* within the meaning of s. 21 (6) of the 2013 Act. As s. 21(6)(a) provides that UÉ shall not charge for the provision of water services to a dwelling, UÉ is not entitled to charge for the water provided to UL's student accommodation within the statutory constraints of the level of use and the allocation of domestic allowances.

33. As I am dealing with two public bodies, it seems to me that it is not necessary to quash the decision and that it is sufficient to grant a Declaration that the units constituting the Student Accommodation constitute dwellings within the meaning of s. 21(6)(a) of the Water Services (No. 2) Act, 2013 (as amended). I expect that Declaration will be properly respected by the parties, but I will hear counsel on whether any further orders are required.

Indicative view on costs

34. My indicative view on costs is, in accordance with s. 169 of the Legal Services Regulatory Act 2015, that the applicant is entitled to their costs. I will put the matter in for mention before me on 11 December 2023 at 10:30am for the purpose of hearing such further submissions which the parties may wish to make both in relation to costs and the scope and application of the final orders to be made. Any written submissions should be filed with the court at least 48 hours before the matter is back to me.

Counsel for the applicant: Micheál O'Connell SC, Nathan Reilly BL

Counsel for the respondent: Neil Steen SC, Emile Burke-Murphy BL