Status of Judgment: **Draft**
Appeal No. VA01/1/020

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Edward Darcy t/a MorrisCastle Limited
APPELLANT

and

Commissioner of Valuation
RESPONDENT

RE: Caravan Park at Map Reference 2 (incl. pt. 2A Corkagh Demesne), Townland: Corkagh, Clondalkin, South County Dublin

B E F O R E

Frank Malone - Solicitor	**Deputy Chairman**
Finian Brannigan - Solicitor	**Member**
Michael F. Lyng - Valuer	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF FEBRUARY, 2002

By Notice of Appeal dated the 20th April 2001 the ratepayer appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €402.51 (£317) on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:

1. The valuation is excessive and inequitable.
2. The valuation is bad in law.

1. The appeal proceeded by way of an oral hearing which took place on the 22nd October 2001 at the offices of the Valuation Tribunal, Dublin. Mr Owen Hickey, Barrister-at-Law, instructed by Terence Liston & Company Solicitors appeared on behalf of the Appellant and Mr Dan Feehan, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the Respondent. Ms Sheelagh O Buachalla B.A. an Associate of the Society of Chartered Surveyors and a Director of GVA Donal O Buachalla was the Rating Consultant retained on behalf of the Appellant whilst Mr John P. Smiley with over 25 years of experience working in the Valuation Office was the Appeal Valuer. Having exchanged their written précis and having submitted same to this Tribunal both Valuers, having taken the oath, adopted their said précis as being and as constituting their evidence in chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process. Mr Edward Darcy the Appellant also gave evidence in chief and was cross-examined. Submissions then followed. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

2. LOCATION OF PROPERTY

The subject property is situated on the north side of the N7 Motorway approximately 1 mile south of Newlands Cross. Approaching the Caravan Park from the Kildare direction access is relatively straightforward as the entrance is off the dual carriageway. Approaching it from Dublin there is no direct access and the quickest access is to take the approach road to Citywest, cross over the bridge and turn back up the north side of the dual carriageway. If you are not familiar with the area unless you know to take the access to Citywest you must travel to the next junction to turn round and come back in the same direction adding approximately 5 miles to the journey.

3. DESCRIPTION OF PROPERTY

The subject property is called " Camac Valley Tourist Caravan & Camping Park" and covers an area of 6 hectares set in a large public park (Corkagh Park). It comprises a

new purpose built caravan and camping park which was constructed by South Dublin County Council in 1996 at a cost to it of £2 million. All of the buildings were constructed by South Dublin County Council and the site development works were carried out by the Council so the Appellant incurred no expenditure in either respect. The Caravan Park is well constructed and apart from the Offices, Reception, Shop is finished to a very high standard.

4. The buildings comprise: -

(a) Offices, Reception, Shop. Single storey timber framed building with basic finish. Area 257.8 sq. m
(b) Showers, WCs, laundrette, Dining and Wash Up. Single storey concrete building. Area 354 sq. m.
(c) Security Hut. Area 2.3 sq. m.
(d) Apartment (Manager's house). Area 93.6 sq. m.

In addition there are 115 Caravan hard stands and 50 tent sites. Each Caravan hard stand has electricity, water, and sewerage facilities.

There is a playground a photograph of which is contained in Mr Smiley's précis.

There is no swimming pool.

5. OPERATION OF PROPERTY

Mr Edward Darcy the Appellant is the operator and licensee of the subject property. He has over 30 years experience in the Caravan Park business and owns another Caravan Park in Wexford.

6. VALUATION HISTORY

The subject premises was first assessed in November 1999 when a new valuation was fixed at RV £470 apportioned, buildings £210 and miscellaneous £260. An Appeal was lodged against the new assessment. At First Appeal stage submissions were made to the Commissioner following which he reduced the valuation from RV £470 to RV €402.51 (£317 apportioned buildings £107 and miscellaneous £210). It is against this decision of the Commissioner of Valuation at first appeal that this appeal lies to the Tribunal the only issue being Quantum. The Valuation Date is November 1999.

7. TENURE

In November 1999 the property was held by the Appellant under Licence Agreement dated 19th May 1997 from South Dublin County Council a copy of which is set out at Appendix 1 to this judgment.

This Licence was for the period commencing on 15th July 1996 and expiring on the 31st day of December 1999.

The Licence Fee payable by the Appellant under the terms of this Agreement (See Clause 2(I) was as follows: -
£50,000 in the following manner, £10,000 before the 30th September 1997, £10,000 before the 31st December 1997, £15,000 before 31st July 1998 and £15,000 before 31st October 1998.

The licence fee for the final year of the operation of the Agreement from the 1st January 1999 to the 31st December 1999 was agreed at 20% of the gross income exclusive of VAT for the calendar year 1999 which income was to be calculated by reference to the overnight admission price income only for the park and which said fee for the final year

of the agreement was to be payable in two equal half yearly instalments the first on 31st July 1999 and the second on 31st
December 1999.The figure for the year 1999 amounted to £24,000.

The Original Licence Agreement of 19th May 1997 was extended for the period 1st January 2000 to 31st December 2002 on the same terms and conditions, the licence fee under the extended agreement being 20% of net overnight takings (exclusive of VAT). This amounted to £30,000. The documentation in relation to this extended agreement submitted to the Tribunal consisted of copy Record of Executive Business and Manager's Orders of South Dublin County Council Reference CPL/99/99 dated 14th June 1999 and copy letter dated 18th June 1999 Reference O.S. 375 A from South Dublin County Council to the Appellant. A copy of this documentation is set out in Appendix 2 to this Judgment.

Due to ongoing losses (the Tribunal was supplied with Copy Accounts dated 11th October 2001 from Messrs Hayden Brown, Chartered Accountants) the Appellant terminated the extended licence agreement which he was entitled to do under the terms of Clause 7 of the Original Licence Agreement dated 19th May 1997 with effect from 1st October 2000.

After Notice of Termination was served, South Dublin County Council by public advertisement sought Tenders for a new Licensee of the subject property. Only one tender was received and that was from the Appellant. This Tender was accepted and resulted in a Licence to the Appellant for the period from 1st October 2000 to 31st December 2003 at a Licence Fee of £3,250 for the entire period payable in sums of £250 quarterly in arrears. The documentation submitted to the Tribunal in relation to this new Licence consisted of copy Record of Executive Business and Manager's Orders of South Dublin County Council Reference CPL/111/00 dated 30th August 2000.A copy of this documentation is set out in Appendix 3 to this Judgment.

8. EVIDENCE OF EDWARD DARCY THE APPELLANT

Mr Darcy gave evidence as Operator and Licensee of the subject property. He said in the first three years he found it impossible to make a profit in the operation of the caravan and camping park and that the turnover did not reach the figures he had expected it would. He stated that even with extensive marketing and advertising the operation did not come up to expectations and he lost a certain amount of money. He produced the Accounts referred to above and he stated these were for the year ended 30th September 1998, the year ended 30th September 1999 and the nine-month period ending 30th September 2000.

When asked if there was any reason why other people did not tender for the subject premises in the year 2000, Mr Darcy stated that his opinion was people would realise that the subject premises was a difficult place to make money in. He further stated that there were high operational charges.

Mr Darcy was asked why he could not have mobile homes on the subject property and in reply he stated that he was forbidden by the terms of the agreement and possibly the terms of the original planning permission which was given to the site, to have mobile homes available for rent.

Mr Darcy referred to Clause 2(xi) of the Original Agreement dated 19th May 1997 relating to the fixing of the admission price to the Park and stated that the overnight charge for camping and caravanning had been fixed at £10. He went on to refer to Clause 2(xiii) of the said Agreement relating to the Manager's House and said he would normally have a manager working five or six days a week operating the Caravan Park on his behalf. This Manager he stated would live in the Manager's House on a full time basis.

Mr Darcy made reference to Clause 2(xix) of the said Agreement relating to security and said he had 24 hour round the clock security provided on site which he stated was an absolute necessity given that at any stage you could have up to 150 family units in

caravans or tents staying on the site. He went on to say that the provision of full time security on site was an absolute essential which he has done from day one in mid July 1996. He stated that there had never been an hour that there had not been security provided for the caravan and camping park. Mr Darcy said it was very important that people feel they have security and that nobody was going to break into their caravan, rip open their tent, take their belongings or interfere with their cars. He further stated that there was no way that a Caravan and Camping Park of this sort could be operated so close to the centre of the City without full time security and that absolutely full time security night and day was required. He said the Park was vulnerable and pointed out that there was an eight-foot fence there with people coming and going all the time. He mentioned that there were units within the Caravan Park that it was possible to break in to and that tents could be just slashed open and things taken out of them. He stated that you have cars, motorbikes and bicycles there. For security he said there had to be somebody circling around/ walking around all the time both night and day. In reply to cross examination by Mr Feehan, Mr Darcy stated that the security he provided was a requirement of "the original licence" and that it was a situation that any thing other than full time security would not be a runner because the situation would mean the caravan park would be wide open if the security was to leave.

In his evidence in chief Mr Darcy referred to the comparisons in Shankill and Rush set out by Mr Smiley in his précis. These Comparisons are set out in Appendix 4 to this Judgment. Mr Darcy said that the Shankill site had been there for about 40 years. He said it would not be an 'A' site which the subject property was. Shankill he stated would be slightly downmarket. He went on to say that the facilities at the subject property would be equal to any in any major European City. He said Shankill have mobile homes which are available to rent on the site which he stated was a considerable addition of income but that facility was not available to him. He further stated that Shankill was likely to be a more profitable enterprise and possibly privately owned without a rent to pay. On the question of security on the Shankill site, Mr Darcy stated that Shankill have a sign on the outside from a security firm who state that they maintain on site security but he understood this was periodic.

On the question of the Rush Comparison Mr Darcy said the site in Rush was two star as compared to the subject property which was four star. The Rush site he said he understood did not have mobile homes to rent but that Rush would get considerable income from the privately owned mobile homes which were on site and which would pay a yearly fee. Mr Darcy further stated that the Rush site was right beside the seaside so it was an attractive location for people who had mobile homes on site.

In cross examination by Mr Feehan, Mr Darcy stated that there were approximately four or five maybe six people who had shown an interest in operating the subject property when it was made available by South Dublin County Council in 1996. When further questioned by Mr Feehan on the tender in the year 2000, Mr Darcy stated he had lost between £25,000 and £28,000 and that the object of the exercise was that if he got the tender at a very low figure, he would try and recover some of the money which he had lost. In further reply to Mr Feehan, Mr Darcy stated that it was a condition of the licence that he had to keep the site open all year round. In answer to a question from the Tribunal, Mr Darcy stated that it would be an impossibility to close down the subject property at certain times of the year because of the nature of the location and that from a security point of view if the subject property was left vacant it would be vandalised almost overnight and the buildings would be damaged.

The Tribunal drew Mr Darcy's attention to the statement in the Record of Executive Business and Manager's Orders Reference CPL/99/99 dated 14th June 1999 (set out in Appendix 2 to this Judgment) to the effect that he, Mr Darcy, had indicated that he was very interested in continuing managing the subject property for another period and had requested that the Council consider extending the licence for a further three years and asked him if he was not making money out of the subject property why he was keen to continue and extend the licence. Mr Darcy in reply stated that he reckoned that it would take a while to get the business off the ground but that he felt that he had lost and was loosing money but that it could come right.

In answer to a further question from the Tribunal, Mr Darcy described the facilities at the subject property as excellent. He stated the site was good for visiting Dublin and that he had a bus that came into the site every morning that brought people in to the City. He said the Green Isle was 300-400 metres down the road, that you had the new pub up in Citywest and Clondalkin.

In answer to the Tribunal, Mr Darcy stated that he provided employer's liability and public liability insurance with the exception of the playground facility which he refused to take on and which was covered by South Dublin County Council. He stated that it was possible that South Dublin County Council may have also have insured themselves on top of his employers liability and public liability insurance. The Tribunal note that on the face of it Clauses 2(v) and 9(e) relating to employers liability and public liability insurance appear to contradict one another.

9. EVIDENCE OF MS SHEELAGH O BUACHALLA ON BEHALF OF THE APPELLANT

Ms O Buachalla in her evidence to the Tribunal said that the subject premises was an unusual property because most caravan parks are located in scenic areas and only operate for part of the year. She stated that the location of the subject property was unusual in that it was located practically on the N7 Motorway which meant in terms of noise it was not well located. She went further and stated that the subject premises was **unique** because there was no other caravan park in Ireland that she was aware of that was in a similar situation. In her précis Ms O Buachalla stated that the subject premises was **unique** in that it was difficult to compare it with any other Caravan Park due to the fact that it was located in a **non-tourist area**.

Ms O Buachalla stated that security was a major factor because of the location of the subject property.

There was said Ms O Buachalla a planning issue regarding mobile homes in that when planning permission was being granted for the subject property the residents objected to the presence of mobile homes. She stated that she thought part of this was to do with the

fact that the residents were afraid it would become a halting site. She said that any of the other caravan parks that she was aware of had mobile homes which was a steady source of income because people would either pay you to stay in mobile homes per night or else they would have mobile homes there that they would pay rent for to leave them there all year round. When questioned by Mr Feehan she said the information she had given in relation to planning had been told to her by Mr Darcy and that at First Appeal she did state that mobile homes were prohibited by the agreement but that at First Appeal she was not sure if she mentioned the planning restriction or not.

In her précis Ms O Buachalla set out her estimate of a fair valuation on the subject premises as follows: -

" It is witness' opinion, as a Valuer, that having regard to the Licence Agreements and Management accounts showing losses for the entire period of operation, the Licence fees paid were unsustainable in this particular market.

This is further demonstrated by the fact that a new Licence fee was agreed in October 2001,by tender, at £3,250 for a 3-year period.

It is Witness' Opinion that a fair NAV for November 1999 would be £15,000.

Adjusting this figure to 1988(JLW retail Index) = £8,400 @ .63% = RV £52.92 say RV €69.84 (£55)".

Asked how she made her Valuation Ms O Buachalla stated she looked at the Accounts and the licence fees paid over the period. She said that Mr Darcy had considerable experience of operating caravan parks. She stated that she had looked at the operation on the subject property, the accounts, what had been paid and the fact that losses had been made. She said that with hindsight the amounts that were paid were really unsustainable for the subject property. Ms O Buachalla stated she did an analysis of the accounts for rating purposes but that she was not relying on the profits method of valuation. She said

she had done an analysis of the accounts, looked at operating costs that were reasonable that any tenant would have to pay to run the subject property. Having done all of this for the particular year in question which was 1999 she said that she calculated that the rent that a tenant would pay and still make some profit would be £15,000. She said that was her view having had regard to the accounts and the location of the site. She further stated she had not relied on any other caravan parks because in her view there were no comparative caravan parks because there was no other caravan park that was in a similar location to the subject. She said the subject property had the difficulty already outlined with mobile homes and with its general location. Ms O Buachalla went on to say that the subject property had been extremely well managed. In answer to a question from the Tribunal she stated that as a check measurement she did an accounts valuation taking an average of three years and this produced an NAV in 1999 of £13,500 but she still felt the figure in her précis of £15,000 was fair. She further stated in reply to the Tribunal that the figure for the NAV of the Apartment/Manager's House which she had given in her précis as £3000 was included in her overall NAV of £15000. Asked by the Tribunal to explain the JLW Retail Index referred to on page 4 of her précis she said that this was an index compiled by Jones Lang Wootton looking at retail property and that the Consumer Price Index was generally used if the property was valued on a profits basis. She stated that the Consumer Price Index was not a property index.

Ms O Buachalla stated that she found Mr Smiley's approach to the valuation incredible. She said that generally if there was a Lease on a property that would be prima facie evidence of the rent that somebody would pay unless it could be proved that it was not an open market rent, that there was some concession agreement. She stated that the Valuation Office had tended to take the same view about licence agreements. She further said that in this particular case there was a licence agreement which showed licence fees that had been paid over a particular period and that while in her view the licence fees were high she thought they did assist in trying to arrive at some reasonable rent that a tenant might pay having regard to the outgoings and the operating costs. Ms O Buachalla stated that she thought that the accounts, the fees and the subsequent tender did show

what a reasonable tenant would pay and she went on to say that somebody was not going to take this site on unless they could make a profit. She stated that she found it extraordinary that Mr Smiley was choosing to ignore this as if it did not exist.

When questioned by Mr Feehan on behalf of the Respondent Ms O Buachalla stated that Mr Smiley relied on two comparisons to arrive at his valuation valuing the subject property similarly. She said that in her view she did not think this was possible because you were not comparing like with like. She stated that in her view there was not another facility like the subject property in the country.

The Tribunal drew Ms O Buachalla's attention to Clause 9(f) of the Original Licence Agreement of 19th May 1997 which appeared to place the liability for insurance on the buildings and structures on South Dublin County Council and Ms O Buachalla stated that as far as she was aware Mr Darcy was insuring the premises.

Ms O Buachalla in her précis stated that under the Licence Agreement the licensee is responsible for insurance, rates and repairs. In her précis she further stated that due to the proximity of the subject property to the N7 the noise levels are continuously high and that this had been a major complaint by people who have stayed overnight in the caravan park. She also said in her précis that access to the caravan park was difficult particularly coming from Dublin as there was no direct access from the south side of the dual carriageway.

10. EVIDENCE OF MR JOHN P. SMILEY ON BEHALF OF THE RESPONDENT

Mr Smiley stated that he dealt with the matter from First Appeal Stage. He said that he compared the subject premises with two other sites. One of these was in Shankill and the other was in Rush. He described the subject property as the finest caravan park he had seen in over 25 years working in the Valuation Office. He stated it was built on Corkagh Park a public park owned by South Dublin County Council. He further stated that when he considered the matter he divided the valuation into two components namely Buildings

and Other/Absolute which he described as an exceptional method of valuing caravan parks used by the Valuation Office over the years.

Mr Smiley said that the Shankill comparison was very similar in function to the subject premises and that the Shankill property was there to attract people visiting the Dublin area. In that regard the two properties were very similar.

He stated that the reason he used the Rush comparison was that it was shown in the book Caravan and Camping Ireland 2001.

Mr Smiley referred to the page of his précis setting out his Valuation a copy of which is set out in Appendix 5 to this Judgment.

Asked how he reached a Net Annual Value of £17,070 for the Buildings, Mr Smiley stated he looked at the buildings on the subject property and then he compared them with the ones in Shankill, he took into account the differences in location, condition of buildings and relative values and he came up with the NAV per square foot in each case. There were no tent pitches he said in either of the comparisons.

Mr Smiley stated that in his opinion if you were not allowed to have mobile homes it would restrict the flow of income.

Mr Smiley quoted Section 11 of the Valuation (Ireland) Act, 1852 and stated that was the basis on which he had valued the subject property. He stated that in his opinion there were conditions imposed by South Dublin County Council and to his mind they were not things that should be taken into account in the valuation.

He stated that at the location of the subject property there was an absolutely enormous volume of passing trade. Mr Smiley stated that he thought the subject premises were similar to any other caravan park in so far as the subject premises was no more difficult to find than any other caravan park and easier than a lot.

Mr Smiley said he did not agree with Ms O Buachalla's method of valuation. He said that his method was the correct one based on the open market rental value. To use any other method of valuation he thought would be discriminating against other caravan operators of other caravan parks. He stated that in his opinion the licence fee payable was artificial in that the Licence was subject to some very onerous conditions. He went on to state that the terms of the Licence did not equate with the terms of arriving at a valuation set out in Section 11 of the Act of 1852.

Mr Smiley then put in evidence three sheets of photographs which he stated were taken by him on Sunday 14th October 2001. He said this was a very wet day. Mr Hickey said he had no problem with the photographs being allowed in evidence. Mr Smiley said two sheets of photographs referred to the Shankill comparison and one sheet to the Rush comparison.

Mr Smiley commented on the first sheet of photographs containing two photographs of the Shankill comparison. He stated that the top photograph on this sheet showed the office which he stated was a prefab. This he stated was not up to the standard of the one in the subject property. Mr Smiley said that this photograph showed the office closed. He further stated that there was no security on the site. He said that the bottom photograph on this sheet showed the toilet and shower block.

Mr Smiley then commented on the second sheet containing he said one photograph of the Shankill comparison. This photograph he stated showed the caravan stand. Mr Smiley pointed out that there was a grass surface there not tarmac or concrete. He said that the hardstands have ESB but no water or sewerage facilities. He further said there were no security personnel. There were he stated mobile homes on site which looked permanently sited. He stated the mobile homes would provide a good income flow to the operator and he further said that given the fact that the mobile homes are permanent this would be less costly for the operator.

Mr Smiley further commented on the third sheet of photographs containing two photographs he said of the North Beach, Rush comparison. Mr Smiley said this comparison obviously had the advantage of being right on the beach. He described it as a beach destination rather than for visitors to the city. The site contained mostly motor caravans he said. He further stated that there were a lot of permanently sited mobile homes on site.

Mr Smiley said the main comparison he was relying on was the Shankill site in so far as he thought it served the same market as the subject property namely the class of people who wished to visit the Dublin City area.

Mr Smiley stated that the subject property was served every day by a bus service and further that there was also a tour bus which served the site. Mr Smiley said his understanding was that the office at the subject property was manned all the year round. He referred to the exclusion of mobile homes at the subject property and stated his understanding was that this was a condition of the licence. Mr Smiley said he was not told at any stage nor was any evidence produced of any planning restriction in regard to the exclusion of mobile homes. He stated that another restriction imposed by the licence was that no dogs were allowed in July or August. He stated that dogs were allowed on leads at other times. He further said that there were very restrictive conditions attached to the licence which might or might not be continued at the end of the licence. He stated he did not know if these restrictions would continue and that nobody knew.

Mr Smiley was then cross-examined by Mr Hickey. In answer to a question about the bus service Mr Smiley stated it might well be the case that this was provided by the Appellant but he said there was also another bus which stopped on a daily basis. He agreed that you valued the subject property as a caravan park and not as something else and that the principle ***Rebus sic stantibus*** applied. Mr Smiley said he saw the Licence Agreement and the fees payable thereunder. He agreed that he ignored the agreement and licence fees completely. He stated that in his opinion that when you have a caravan park which cost £2 million to build on land which was development land an NAV of

£15,000 was not sufficient. He again mentioned the extremely onerous conditions of the Licence which he listed out as follows: -

(a) Prohibition on mobile homes cutting the operator off from an extremely lucrative flow of revenue.
(b)The prohibition on dogs.
(c)24 hour security was required despite the fact that there was a full time manager living on the site. Mr Smiley stated that his experience of caravan parks throughout the country was that despite them being closed in the wintertime there was no security required.
(d)The subject premises must remain open all the year round.

Mr Smiley stated his opinion that these restrictions increased the operator's costs and reduced his income flow.

Mr Smiley confirmed the Shankill comparison was owner operated.

Mr Smiley said that there was no other caravan park that he knew of that had the same conditions attached.

He stated that he considered the licence fee to be so low because the subject property was subject to the onerous conditions.

He stated that he calculated the NAV in 1988 at £50,000 but he did not know what that would be in 1999. He considered the 1999 figure to be absolutely irrelevant.

Mr Smiley was asked by Mr Hickey about a letter he Mr Smiley wrote to Ms O Buachalla dated 13th February 2001. The letter was produced at the hearing before the Tribunal and was read out by Mr Smiley. Mr Smiley stated that this letter was in response to a letter from Ms O Buachalla in which she stated that the only other caravan park that could be located in the Dublin area and would be somewhat similar to the

subject was a caravan park in Shankill and requested a breakdown of the valuation of that caravan park. Mr Hickey referred to the portion of the letter which stated :-

Caravan pitches/stands 82 @ RV £1.50 = RV £125.

Mr Hickey put it to Mr Smiley that the foregoing was not a Net Annual Value at all and Mr Smiley agreed that this was the position and that it was an extrapolated net annual value and in fact it was an RV per pitch. Mr Hickey asked how the RV of £1.50 per pitch got you the NAV of the Shankill site and Mr Smiley replied that because of the way the fraction was arrived at years ago it was a reasonable ratio for getting from the old method of valuation to NAVs.

Mr Hickey asked Mr Smiley if the subject premises were put in the newspaper the following morning by way of open tender for an open market letting without the restrictions referred to, what rent might be bid and Mr Smiley replied that he did not know.

In reply to a question from the Tribunal Mr Smiley stated that maybe he could not find a comparison for the tent pitches and that he thought his basis for valuing @ £119 per tent pitch was that if a caravan stand was worth £238 per stand then he considered a tent pitch would be about half that.

In reply to a further question from the Tribunal Mr Smiley accepted that regardless of the fine nature of the buildings that they were only as good as the business they attracted if one took it as a whole and as a caravan park but he went on to say that he considered the restrictions imposed in the licence had given rise to the situation where the rent was very low.

11. CLOSING SUBMISSIONS BY MR OWEN HICKEY BL, FOR THE APPELLANT

Mr Hickey stated that it had been the practice of the Tribunal, where there was a rent or a licence fee before the Tribunal, it would be the first thing the Tribunal would look at and that where there was a letting or licence that must be the best guide to Net Annual Value. In his submission Mr Smiley adduced no evidence of NAV whatsoever before the Tribunal and that for Mr Smiley to ignore entirely the Licence Agreement, notwithstanding his reservations, was an extraordinary practice for a Valuer. Mr Hickey also said that the onerous conditions were largely a matter of speculation on behalf of Mr Smiley and that Mr Smiley had certainly no evidence to suggest that if mobile homes were allowed or if dogs were allowed, that the rent would in any sense be significantly different. In those circumstances Mr Hickey said that the only evidence of open market value validly put before the Tribunal was that of Ms O Buachalla. He also made a formal submission as a matter of law that no attempt had been made to establish the NAV of the comparisons. In that regard he relied on the decision of the Tribunal in the case of ***Irish Shell Limited -v- the Commissioner of Valuation – VA97/4/001.*** He referred in particular to Paragraph 8 Page 11 of the Judgment of this Tribunal in that case which said :-

"*It has not been argued on behalf of the Commissioner that the method adopted has as part of it, a process for ascertaining the NAV and from that to derive the RV. Of course by applying an agreed conversion factor and by making a calculation one could mathematically work out what the NAV might be. But this in truth would be a disingenuous submission given the near certainty of practice that like hereditaments have an RV placed thereon without any attempt to identify a rent. So it cannot be denied that factually the submission made on behalf of the Appellant is accurate. That being the situation then, if our interpretation of Section 11 is correct, it must follow that an essential ingredient in the process is absent and that accordingly the approach adopted by the Commissioner with regard to the tanks and pipelines is invalid."*

He stated that what Mr Smiley had done had been to look at the RV per pitch and to extrapolate an NAV which on the grounds of the Irish Shell case he would say was wrong. He submitted that under Section 11 of the Act of 1852 taken with Section 5 of

the Valuation Act, 1986, a valuer must attempt in the first instance to identify an NAV and that it is at that point that he looks at comparisons pursuant to Section 5(2) of the Act of 1986 in an affirmatory way or a check way to support his valuation in difficult circumstances. Mr Hickey stated that he appreciated these were difficult circumstances. He further said that for a valuer to come in and ignore completely an indication of NAV and simply pursuant to Section 5(2) of the Act of 1986 to look at comparisons of the rateable value of stands, was not a method of valuation which should recommend itself to the Tribunal. In those circumstances he asked this Tribunal to take Ms O Buachalla's approach and accept that as the proper method of valuation of the subject property.

12. CLOSING SUBMISSIONS OF Mr. DAN FEEHAN BL, FOR THE RESPONDENT

Mr Feehan stated that it was appropriate that Mr Smiley should look at the comparisons. He said that admittedly the comparisons were not on all fours in every respect but they were essentially caravan sites. He further stated that it was not true to say that there had not been a consideration of the net annual value of the premises. He said that the rent in 1999 was £24,000, in 2000 it was £30,000 and that the average would have been £27,000. He went on to say that therefore there were definite figures and that Mr Smiley could extrapolate a realistic rateable valuation on the premises. He said that from Ms O Buachalla's correspondence that appears to have been the situation. Mr Feehan stated that while it was true the Tribunal often considered the terms of the licence as well as rental they were not definitive. He submitted that the Tribunal had to look at the situation as it was in fact and that in this instance the licence fee and the licence agreement reflected the realities of running a particular type of facility in close proximity with the metropolitan area and that of course had certain consequences as to the costs or otherwise of running the facility. He said therefore Mr Smiley was correct to look at similar facilities and to adjust the comparisons to reflect the realities as existed in this particular site. He would not accept Mr Hickey's submission that Mr Smiley did not in any sense consider the NAV of the site or properly arrive at a rateable valuation for the premises.

He submitted the Tribunal had to look at the particular circumstances that existed in this instance.

FINDINGS

13. RESTRICTIVE COVENANTS- ONEROUS CONDITIONS

The Tribunal have examined the Licence documentation set out in Appendixes 1,2 and 4 of this Judgment. The Tribunal finds that there is no covenant or condition contained in this documentation in relation to the following or any or all of them:-
(a) Prohibition of Mobile Homes.
(b) Prohibition on dogs.
(c) Requirement of 24 hour full time security.
(d) Requirement that subject premises remain open all the year round.
The Tribunal appreciates that certain evidence has been given in relation to such conditions as hereinbefore outlined but has decided to ignore this as it is not borne out by the legal documentation. The Tribunal therefore find that no contractual covenants or conditions exist in relation to these four areas or any or all of them.

14. PROHIBITION OF MOBILE HOMES

Ms O Buachalla's evidence as to the planning situation regarding mobile homes is hearsay and accordingly inadmissible. Mr Darcy gave evidence in relation to planning restrictions on mobile homes but this was not given at First Appeal. The question therefore is whether Mr Darcy's evidence should be received by this Tribunal. The principle in this issue was stated by this Tribunal in the case of ***John Pettit & Son Limited v. Commissioner of Valuation VA95/5/015*** at page 8 of the Judgment as follows:-

"*So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before*

us nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced."

The interests of justice requires us to receive into evidence the statements of Mr Darcy in relation to planning restrictions on mobile homes and it would not be possible to fairly decide the case without such evidence. Moreover as this case proceeded both sides made many references to the prohibition of mobile homes. The Tribunal therefore allows in evidence Mr Darcy's statements in relation to planning restrictions on mobile homes. This is set out at Page 6 of this Judgement and was to the effect that mobile homes were possibly forbidden by the terms of the original planning permission. As no contractual prohibition exists in relation to mobile homes the question arises as to whether there is a prohibition on mobile homes and how it arises Mr Darcy having stated that ***possibly*** mobile homes were forbidden by the terms of the original planning permission and continued that it was not something he was permitted to do. There have been no mobile homes on this site since it opened in July 1996 to the date of the hearing. Mr Darcy was a very impressive and truthful witness and the Tribunal found him to be a hardworking and experienced caravan park operator. He must have had a good reason for having no mobile homes on site for a period of over 5 years as having mobile homes would normally generate extra income for a caravan park operator. This Tribunal must be practical and apply common sense and concludes that there was a prohibition on mobile homes. Mr Darcy's statement that it was not something he was permitted to do bears this out. As the prohibition was not contractual we conclude that mobile homes were prohibited on the subject property by the terms of the original planning permission and/or by some statutory provisions other than the planning laws. As there were no mobile homes on the property for over 5 years at the date of the hearing we conclude that this prohibition of mobile homes is likely to continue into the foreseeable future.

15. 24 HOUR A DAY FULL TIME SECURITY – SUBJECT PREMISES OPEN ALL YEAR ROUND

There has been full time 24 hours a day 365 days a year security provided on the subject property since it opened in July 1996 down to the date of the hearing. It was established in evidence that this was made absolutely essential by virtue of the closeness of the premises to the centre of Dublin City, the general vulnerability of the property to being broken into and the ever-present possibility of theft of or damage to caravans, tents, cars, motorbikes, bicycles, personal belongings and buildings. If the full time security were withdrawn the caravan and camping park would be wide open.

The subject premises remain open all the year round. It has been established by the evidence that it would be an impossibility to close down at certain times of the year because of the nature of the location of the subject property and that if the property were left vacant it would be vandalised almost overnight and buildings damaged.

The Tribunal finds that the foregoing full time security and all year round opening are due to the location and natural position of the subject property, its closeness to the centre of Dublin City and the other reasons herein mentioned and that since full time security has been present since the property opened in July 1996 to the date of the hearing full time security and all year round opening are likely to continue into the foreseeable future.

16. CONSEQUENCES OF FINDINGS 14 AND 15

The statement by Lord Buckmaster in the ***Port of London Authority v. Orsett Union,(1920) A.C. 273 ,at p. 305*** is the classical authority on the consequences of various covenants and restrictions and is in the following words:-

"The actual hereditament of which the hypothetical tenant is to be determined must be the particular hereditament as it stands, with all its privileges, opportunities, and disabilities created or imposed either by its natural position or by the artificial conditions of an act of Parliament".

In our view the prohibition of mobile homes on the subject property by the terms of the original planning permission and/or by some statutory provisions other than the planning laws hereinbefore referred to at 14, is clearly an example of the "artificial conditions of an Act of Parliament" mentioned by Lord Buckmaster in the *Orsett Union case*. Therefore this prohibition of mobile homes must be taken into account as every potential hypothetical tenant must be affected by the prohibition and the prohibition must be taken into account in assessing the NAV.

The full time security and all year round opening hereinbefore referred to at 15 are due to the natural position of the subject property namely its closeness to the centre of Dublin City and accordingly the full time security and all year round opening must be taken into account in assessing the NAV. Further the subject property must be valued as it in fact is by virtue of the principle ***Rebus sic stantibus*** and this being the case and in the light of the fact that the evidence establishes that the subject caravan and camping park could not operate without full time security for the reasons stated at 15 hereof and that it would be impossible to close down at certain times of the year for the reasons also stated hereinbefore at 15 the full time security and all year round opening must be taken into account in assessing the NAV of the subject property.

17. COMPARISONS

The Shankill and Rush Comparisons are not suitable and can not be relied on by the Tribunal for the following reasons :-

(a) The subject premises is situated in a non tourist area.
(b) The Shankill site has been there for about 40 years. The subject property is a new purpose built caravan and camping park.
(c) The subject property is a Grade A Four Star Facility. Shankill is slightly downmarket. Rush is a two star facility.
(d) Shankill has mobile homes whereas the subject property does not. Shankill would have the benefit of considerable additional income from mobile homes not available

to the subject property.

(e) Shankill is owner operated. The subject property is held under licence.

(f) Shankill have no or periodic security. The subject property has full time security.

(g) Rush has mobile homes whereas the subject property does not the Rush site having considerable income from mobile homes.

(h) Rush is right on the beach whereas the subject property is near the N7 motorway.

(i) The subject premises has excellent facilities which are better than either comparison.

(j) The subject property is located practically on the N7 Motorway which means in terms of noise, that it is not well located. There was no evidence of noise at the comparisons.

(k) We accept Ms O Buachalla's view that there is not another facility in the country like the subject property. It is unique.

(l) Access to the subject property is difficult.

(m) The office prefab in the Shankill comparison is not up to the standard of the subject office premises.

(n) Shankill hardstands have ESB but no water or sewerage facilities. At the subject property each caravan hardstand has electricity, water, and sewerage facilities.

(o) There are no tent pitches at either of the comparisons. There are 50 tent pitches at the subject property.

(p) The Shankill Caravan pitches/stands comparison and the valuation of the subject property caravan stands by Mr Smiley both suffer from the same defect namely, an RV of £1.50 was applied per caravan stand and an attempt to establish the NAV of the caravan stands in either case was not made. Accordingly as a result of the ***Irish Shell*** case the Shankill caravan pitches/stands comparison and Mr Smiley's valuation of the caravan stands on the subject property are both invalid and can not be relied upon.

(q) The subject property is subject to the prohibition on mobile homes hereinbefore mentioned at 14. There are no restrictions on mobile homes at either comparison that we have evidence of.

(r) The subject property requires full time security and opens all year round. There is no evidence that either of the comparisons have this present. Mr Smiley stated in his evidence that his experience of caravan parks throughout the country was that despite being closed in wintertime there was no security required.

(s) Comparing the subject property to either of the comparisons is not comparing like with like.

18. LIABILITY FOR INSURANCE AND REPAIRS

Clause 2(v) of the Original Licence Agreement dated 19th May 1997 appears to place the responsibility for public and employers liability on the licensee whereas clause 9(e) appears to place it on the County Council. Mr Darcy in evidence stated that he provided the employers and public liability insurance with the exception of the playground.

Clause 9(f) of the Licence Agreement requires the County Council to provide insurance on the buildings.

Clause 2(x) of the Licence Agreement appears to require the Licencee to repair the interior of the buildings and structures whereas Clause 9(a) seems to place on the County Council the repair obligation in relation to the Park including all buildings and structures erected thereon.

If this was not complicated enough Ms O Buachalla's précis states that the licencee is responsible for insurance, rates and repairs.

We make no finding at all in relation to the liability for Public Liability and Employers Liability Insurance, repairs and building insurance. The legal position with regard to these matters is unclear as is the position with regard to the rating hypothesis contained in Section 11 of the Act of 1852.These matters were not argued before us nor was sufficient evidence given to enable a decision to be made. We therefore propose to ignore these matters altogether.

19. BASIS FOR CALCULATING NET ANNUAL VALUE

RYDE ON RATING(TENTH EDITION) at page 275 states as follows:-

"But though the rent actually paid is not the measure of net annual value, or even conclusive evidence of value at the date when the rent was fixed, if a rent payable under a yearly tenancy has been fixed recently without payment of any premium or the like, it may be taken as prima facie evidence, liable to be rebutted."

The licence Agreement dated 19th May 1997 was negotiated at arms length between the parties. It was subsequently extended at arms length at a substantial figure. The Tribunal sees no need to rebut the licence fee of £24,000 payable in 1999 as it was fixed at arms length. This is the rent that a hypothetical tenant under Section 11 of the 1852 Act would have paid in 1999 and we do not regard it as misconceived and there is no evidence to show that the licence fee was not fixed by market forces. The Tribunal can see no reason to distinguish between licence fees and rents in this case. Ms O Buachalla gave evidence to the effect that the Valuation Office had tended to treat them the same and she agreed with this approach. We have no doubt when the Appellant and South Dublin County Council negotiated the various licence agreements the licence fees were lower than they normally would be due to the prohibition on mobile homes hereinbefore referred to at 14 hereof and the 24 hour a day full time security and all year round opening hereinbefore referred to at 15 hereof. The said prohibition on mobile homes, 24 hour a day full time security and all year round opening would have reduced the Appellant's income and increased his operating costs and the licence fees negotiated between the parties would have been adjusted to reflect this. We have already ruled that we are entitled to take into account in valuing the subject property the said prohibition on mobile homes, 24 hour a day full time security and all year round opening. Consequently the licence fees negotiated are in line with the rent a hypothetical tenant under Section 11 of the 1852 Act would have paid as every potential hypothetical tenant would have been affected by the said prohibitions of and paid a rent to reflect this.

Ms O Buachalla in her evidence and in her précis did not seek to establish the NAV in line with the tender licence fee of £3,250 negotiated in the year 2000. We are satisfied

that this is not the rent a hypothetical tenant would pay and that this tender licence fee was negotiated in special circumstances to see if the Appellant could make a go of the operation. The Tribunal therefore in view of all the foregoing find that the licence fee payable in 1999 represents the NAV of the subject property as of the valuation date and that this figure is the open market rent on the date in question . This figure will have to be adjusted to 1988 and this should be done on the JLW retail Index.

DETERMINATION

The Tribunal therefore determines the Net Annual Value and the R.V. of the subject property as follows :-

NAV November 1999 £24,000

Adjust this figure to 1988
(JLW Retail Index)
£24,000 x .56 = NAV £13,440

€17,065.28 (£13,440) x .63% = RV €107.51 (£84.67)

= €107.51
Say €108