

Appeal No. VA02/5/032

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
NA hACHTANNA LUACHÁLA, 1852-2001
VALUATION ACTS, 1852-2001

Motor Services Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

and

Dublin City Council

NOTICE PARTY

RE: Showroom, Carpark at Lot No. on 2 -62/1, Navan Road, Cabra West D, Cabra West,
County Borough of Dublin

B E F O R E

Frank Malone

Deputy Chairperson

John Kerr -BBS. ASCS. MRICS. FIAVI

Member

Frank O'Donnell - B.Agr.Sc. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF MARCH, 2006

By Notice of Appeal dated the 27th day of November 2002 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,500.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal, a copy of which is set out in the First Schedule hereto.

The Grounds of Appeal are set out in Paragraph 6 (a) of the said Notice of Appeal in the following words:-

“(a) The Valuation is incorrect

- (i) Set out the grounds on which the appellant considers that the rateable valuation of the property is incorrect as no notification Served under Section 3 Valuation Act 1988, premises on 2 Valuation Lots **and**
- (ii) State the rateable value which the appellant considers ought to have been determined as being the rateable value of the property concerned €300”.

Emphasis has been added by underlining to the words written in handwriting in the said Notice of Appeal by the Appellant’s Agent.

1. A different Division of this Tribunal sat on 26th May 2003 in relation to this appeal when an application was made on behalf of the Appellant for an adjournment of the notice issue the question of quantum having been agreed. At this hearing at which the Appellant and Respondent were represented the Tribunal noted the agreement of the Appellant and the Respondent to a Rateable Valuation of €1500 on the subject relevant property or in the alternative depending on how the issue of notification was determined a Rateable Valuation of €300 on Lot 2 – 30/1 Navan Road and the Tribunal on that occasion adjourned the appeal on that basis to a date to be fixed.
2. This Appeal proceeded by way of oral hearing which took place at the offices of the Valuation Tribunal, Dublin on the 21st day of July 2003. Mr. Donal O’Donnell, SC, instructed by Messrs Whitney Moore & Keller, Solicitors, appeared on behalf of the Appellant. Mr. Ronan Browne, ASCS, MRICS, ACI Arb, a District Valuer in the Valuation Office, was the Appeal Valuer and represented the Respondent at the hearing. Mr. Paul Coughlan, Barrister-at-Law, instructed by the Law Agent of Dublin City Council appeared on behalf of the Notice Party. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing exchanged their précis of evidence and submitted the same to this Tribunal. Ms. Sheelagh O Buachalla, B.A., ASCS and a Director of GVA Donal O Buachalla prepared the Appellant’s précis, Mr. Ronan Browne prepared the Respondent’s précis and Mr. Noel Mulhair, an Administrative Officer with the Rates Department of Dublin City Council, prepared the précis of the Notice Party. Written submissions on behalf of the Appellant prepared by Mr. O’Donnell, SC and a book of legal authorities were handed in on the day of the hearing to the Tribunal and a copy of the written submissions are set out in the

Second Schedule hereto. Copies of these submissions and legal authorities were supplied to the other parties at the hearing. Most of the contents of the respective précis were common case and Mr. Browne was the only person to give sworn evidence. Mr. Edwards, the Assistant Secretary of the Appellant, and Mr. Ayton of the Rates Department of the Notice Party attended the hearing. Mr. Mulhair of Dublin City Council was not present at the hearing.

From the evidence tendered to the Tribunal the following relevant facts either agreed or so found emerged as being material to this appeal.

3. LOCATION AND DESCRIPTION OF PROPERTY

The subject relevant property is located on the west side of the Navan Road and it is approximately two miles from the City Centre. This property comprises two new purpose built buildings used as car showrooms above a common basement. The basement extends across the two buildings and this basement is mostly an underground car park. The buildings are shown on the Valuation Office Map dated 8th July 2003 a photocopy of which is set out in the Third Schedule hereto and are rectangular in shape and are shown hatched on the map. One building contains a Volkswagen showroom, linkage area and Audi showroom. The other building contains a Mazda showroom, linkage area and a Mercedes – Benz showroom.

4. ACQUISITION OF SUBJECT RELEVANT PROPERTY BY APPELLANT

The subject relevant property was acquired by the Appellant from the Minister for Health and Children by Deed of Transfer and Conveyance dated 10th July 1998 and is held by the Appellant in fee simple.

5. OCCUPATION

In the month of July 2001 the Appellant was known to Dublin Corporation (as it then was) the Rating Authority as the occupier of the subject relevant property.

6. VALUATION HISTORY

Prior to Revision the subject relevant property was divided into three Lots as shown on the Valuation Office Map namely Lot 2-30 Navan Road (coloured yellow on the Map), Lot 32-58 Navan Road (shown coloured pink on the Map) and Lot 60 and 62 Navan Road (shown coloured green on the Map). For ease of future reference the areas coloured yellow, pink and

green on the map have been numbered 1, 2 and 3 respectively on the copy map attached at Schedule 3 hereto. It is clear that these three Lots were entered in the Valuation Lists prior to the Revision the subject matter of this Appeal. As can be seen from the Valuation Office Map the Lot Numbers on the subject relevant property side of Navan Road are even numbers and on the far side of the Navan Road the Lot Numbers are odd numbers.

Copy extracts from the Valuation Office Books setting out the pre revision valuation history are set out in the Fourth Schedule hereto.

Prior to Revision Lot 2 -30 was occupied by the State and was held by it in fee simple. At that time an Employment Exchange stood on this Lot and the Rateable Valuation was Buildings etc €304.74 (£240). This property was distinguished as exempt from rates.

One of the buildings hereinbefore referred to at Paragraph 3 is as can be seen from the Valuation Office Map partly situated on Lot 2 - 30 and partly on Lot 32 - 58 and as can also be seen from the Map the other building is situated on Lot 32 - 58.

It is of interest to note the following extract taken from the Valuation Office Books hereinbefore referred to:-

“Reference to Map On 32 –62. Occupiers An Bord Telecom. Immediate Lessors In fee. Description of Tenement Telephone Exchange & grounds. Rateable Annual Valuation. Buildings £200. Total £200.” The Telephone Exchange which is still there is shown on the Valuation Office Map on the left hand side thereof as the slightly off square building.

Dublin Corporation (as it then was) as the relevant Rating Authority sent to the Commissioner of Valuation a form known as a Form R.2. dated 10th July 2001. This document is an application for revision pursuant to Section 3 of the Valuation Act, 1988. A copy of this document is set out in the Fifth Schedule hereto.

By letter dated 13th July 2001 Dublin Corporation (as it then was) wrote to the Appellant pursuant to the provisions of Section 3 of the Valuation Act, 1988 informing it that an application was made to the Commissioner of Valuation on 10th July 2001 for a revision of the valuation of the property therein detailed. A copy of this letter is set out in the Sixth

Schedule hereto.

The Revising Valuer's (Mr. Noel Norris) Report in this case is dated 26th October 2001 and a copy is set out in the Seventh Schedule hereto.

By letter dated 19th November 2001 Dublin Corporation (as it then was) wrote to the Appellant notifying it of the outcome of the revision and of its right to appeal. A copy of this document is set out in the Eighth Schedule hereto. Under the heading Pre Revision Position of that letter where the address was given as "On 2 – 30 Navan Road" where the figure 30 is something was tippexed out and the figure 30 handwritten in. The word Exempt in brackets where it appears under the heading Pre Revision Position after Rateable Valuation £240 and the word Active in brackets where it appears under the heading Post Revision Position after Rateable Valuation £2150 are both handwritten. Under the heading Post Revision Position in this letter the Address is given as On 2-62/1 Navan Road. As already explained Lot 2 –62 Navan Road is the entire of the property shown coloured yellow, pink and green on the Valuation Office Map. This is the parent Lot. There are two sub Lots namely the subject relevant property Lot 2 – 62/1 Navan Road which is all of the parent Lot except the Telephone Exchange and Lot 2 – 62/2 Navan Road which is the Telephone Exchange.

There was a First Appeal in this case the outcome of which is recorded in a document headed "FIRST APPEAL OUTCOME" and a copy of this is set out in the Ninth Schedule hereto. At First Appeal quantum was agreed at €1500 the appeal documentation noting that only Lot 2 – 30 Navan Road had been listed and notified and requesting that any valuation attributable to other lots should be deleted.

7. AGREED VALUATION

Without prejudice to the legal issues referred to in this Judgment raised by the Appellant at the hearing of this Appeal the parties agreed that the Rateable Valuation of Lot 2 – 30/1 Navan Road (the same property as Lot 2 – 30 Navan Road) is €300 and that the Rateable Valuation of Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road is a total of €1200.

8. RATE NUMBER

It was agreed at the hearing of the Appeal that the Rate Number (Referred to in Column 2 of the Form R.2. dated 10th July 2001 as "No. and Letter of "Reference to Map" in Valuation Lists") 1040139000 relates only to Lot 2 – 30/1 Navan Road.

9. ISSUES AND SUBMISSIONS

(a). Is the question of Application for Revision included in the Notice of Appeal to the Tribunal and if not should the Tribunal amend the said Notice of Appeal to include the issue of Application for Revision?

During Mr. O'Donnell's opening statement the Tribunal raised with him whether the Notice of Appeal to the Tribunal included the issue of Application for Revision and Mr. O'Donnell replied that he thought it was implied in the Notice of Appeal because it was always part of the appeal.

In his submissions to the Tribunal Mr. Coughlan stated he assumed when he came to the hearing that day he was coming to meet a case of Notification and that Listing for Revision and Notification were two different issues entirely. He said no notice of appeal had been delivered in respect of the Listing issue. Mr. Coughlan referred to the words used in heading 6 of the Notice of Appeal to the Tribunal which were :-

“as no notification served under Section 3 Valuation Act 1988, premises on 2 Valuation Lots”.

Mr. O'Donnell in reply stated Mr. Coughlan's submissions invited the Tribunal to be extremely strict in an area (amendment of the Notice of Appeal to the Tribunal) where the Tribunal had an identified discretion but to exercise considerable latitude when it came to the application of the principles where there was no such discretion (Application for Revision and Notification – see heading 9 (b) of this Judgment). He further said that the question of Listing was always to the forefront of this matter and was so identified at First Appeal stage. There was he thought no question of anybody being taken by surprise. Mr. O'Donnell submitted that the only argument made against him was that Listing for Revision was not included in the explicit terms of the Notice of Appeal to the Tribunal. He further submitted that Paragraphs 7 and 10 of the Judgment of the Tribunal in the case of *John Pettitt & Son Limited v. Commissioner of Valuation VA95/5/015* established that the Tribunal had a jurisdiction and a discretion to amend the Notice of Appeal to the Tribunal and further that no injustice could be caused to anybody by the Tribunal exercising that discretion in favour of the Appellant. Mr. O'Donnell read out Paragraph 10 of the Judgment the last two sentences of which are 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 a law none of which have previously been so raised or so adduced. We are satisfied that the previous judgments of this Tribunal, on this point, were all intended to be read in this manner.”

Mr. O’Donnell stated that the latitude referred to in this quotation was more significant than the amendment sought in the current appeal because the point about Listing was made at First Appeal stage. Mr. O’Donnell submitted that the Tribunal should have regard to the point about Listing and permit it to be made in this appeal because it was a jurisdictional point and a fundamental issue.

Mr. O’Donnell was specifically asked by the Tribunal at this stage of the hearing if the Listing for Revision issue was included in the Notice of Appeal to the Tribunal and he replied that he could not say that issue was included in the Notice of Appeal and he was accepting it was not included in the Notice of Appeal. He stated that the Notice of Appeal referred to Notification. He said that he was taken by surprise by the issue of whether or not Listing for Revision was included in the Notice of Appeal to the Tribunal because he believed from the other documents that he had that the Listing and Notification points were being treated indistinguishably. When the Tribunal enquired from Mr. O’Donnell if an amendment was required in the Notice of Appeal to the Tribunal on the question of Listing for Revision Mr. O’Donnell replied that it was but then qualified his reply by saying not precisely as he did not believe anyone was taken by surprise by the Listing for Revision issue because it was included in the précis of Ms O Buachalla.

(b). Issues of Application for Revision and Notification.

A copy of Mr. O’Donnell’s written submissions are set out in the Second Schedule hereto so his oral submissions at the hearing are only touched on here to avoid repetition.

Mr. O’Donnell cited the authorities and material referred to in the Tenth Schedule hereto on behalf of the Appellant.

Mr. O'Donnell stated that on 10th July 2001 in the Form R.2. Dublin Corporation (as it then was) made a request for revision under the terms of the then applicable legislation namely Section 3 of Valuation Act, 1988. The property in respect of which an Application for Revision of valuation was made was described in the Form R.2. as Electoral Division or Ward : Cabra West D, No. and Letter of "Reference to Map" in Valuation Lists : 1040139000, Townlands, Towns, Streets, &c. : 2 – 30 Navan Road, Occupiers : Motor Services Ltd, Description of Tenement : Employment Exchange, Valuation £240. The Nature of Revision Required was described in the Form R. 2. as : Value new development of Car showrooms etc – Urgent Please return Nov.2001.

Mr. O'Donnell continued by stating that by letter dated 13th July 2001 from Dublin Corporation (as it then was) to Motor Services Limited the Appellant was informed that pursuant to the provisions of Section 3 of the Valuation Act, 1988 an application was made to the Commissioner of Valuation on 10th July 2001 for a revision of valuation of property described as follows:

Address : 2 –30 NAVAN ROAD

Description : EMPLOYMENT EXCHANGE.

Rate No : 1040139000

Valuation : IR£240.00

Mr. O'Donnell went on to refer to a further letter dated 19th November 2001 from Dublin Corporation (as it then was) to Motor Services Ltd informing the Appellant that the determination of the Commissioner of Valuation on an application for a revision of the valuation of the premises hereinafter detailed at (A) was received in the office of the Finance Officer & Treasurer's Department of Dublin Corporation on 8th November 2001 and that details of the determination were as hereinafter detailed at (B).

(A) PRE REVISION POSITION

Address	ON 2 – 30 NAVAN ROAD
Description	EMPLOYMENT EXCHANGE
Rateable Valuation	£240.00 (EXEMPT)
Rate No.	1040139000

(B) POST REVISION POSITION

Address ON 2-62/1 NAVAN ROAD
Description SHOWROOM & CARPARK
Rateable Valuation £2,150.00 (ACTIVE)
Rate No. 1040139000

All of this documentation has already been referred to at Heading 6 of this Judgment.

Mr. O'Donnell stated that what happened here was that one Lot was listed for revision, one Lot was notified and three Lots were revised.

Mr. O'Donnell submitted that the focus of this case was Lot 32 – 58 which was coloured pink on the Valuation Office Map and which contained almost all the buildings that were in issue in this appeal. He asked was that ever listed for revision and if so was that ever notified to the occupier? Mr. O'Donnell submitted that the answer to both questions was clearly no.

Mr. O'Donnell continued by saying that in his submission the valuation was bad and that it must fall on this appeal. Mr. O'Donnell submitted that the entire Revision was invalid.

Mr. Browne submitted that the Commissioner's Valuer went out and finding one unit which was in one occupation he valued it and seeing that it included extra area which was outside the original Lot he assumed part of the adjoining lot in to the new valuation Lot and called it on 2 - 62/1 Navan Road. Mr. Browne said that it was clear what was to be valued and the listing identified it as motor showrooms. He continued by saying that the Revising Valuer went out and he found a motor showrooms and he valued them as such. Mr. Browne submitted that there was no onus to list in accordance with Lot Numbers. He stated that the quantum was agreed at First Appeal but the Appellant reserved the right to pursue the matter of notification before the Tribunal. The Valuation Office did not feel constrained to go with Lot Numbers when it was clear what was to be valued.

Mr. Coughlan stated that the Tribunal had raised the point as to whether the Notice of Appeal to the Tribunal included the issue of Listing for Revision and the issue of Listing for Revision had been embarked upon to a certain extent in the hearing before the Tribunal. Mr. Coughlan said that he could have simply interrupted Mr. O'Donnell but he wouldn't do such a thing.

Mr. Coughlan said that for the record he was formally objecting to the manner in which the Listing issue had been dealt with.

Mr. Coughlan made submissions to the Tribunal relating to the Listing for Revision issue without prejudice to his objection regarding the expanding of the grounds of appeal into the Listing for Revision issue. In his submission it could not be said that the Form R.2. unambiguously referred to and was confined to Lots 2 – 30. He would like to place reliance on the Nature of Revision Required under Column 8 of the Form R. 2. Mr. Coughlan read out that Column which is as follows :-

“Value new development of Car showrooms etc – Urgent Please return Nov. 2001.”

Mr. Coughlan pointed out that the Form R. 2. was a communication between Dublin Corporation (as it then was) and the Valuation Office and that it was a document which did not go to the owner or occupier. Mr. Coughlan submitted that the question that had to be asked was - was the Form R. 2. understood namely did the person who sent the R. 2. understand what they were asking and did the person who received the R. 2. understand what they were being asked. Mr. Coughlan said there had been no direct evidence on the point from Dublin City Council but it could be offered but it was certainly the understanding of Dublin City Council that what they were asking for was a revision in respect of a new facility which had appeared on the Navan Road. Mr. Coughlan continued that it was most certainly not the understanding of Dublin City Council that they were asking for a revision in respect of so much of the facility as fell within Lot 2 – 30. Mr. Coughlan stated that there was no doubt that the properties over which this particular development was straddled were on the Valuation Lists. Mr. Coughlan said the question was – was it identified? He further said that it does most certainly not have to be identified by Lot Number. He continued that one could not be hidebound by the absence of Lot Numbers or the absence of specific information relating to Rateable Valuation or address or the description of Employment Exchange. Mr. Coughlan submitted that at the end of the day the question was did the Form R. 2. identify property which was in the Valuation Lists in respect of which a revision was required and in his respectful submission it did. He stated the Form R. 2. read “Value new development” not “Value part of the new development” and not “ Value part of the new development that falls within Lot 2 - 30”.

Mr. Coughlan drew the attention to the Judgment of the Tribunal to the case of Ormonde

Cinema (Mr. A. O’Gorman) v. Commissioner of Valuation VA99/2/021.

Mr. Coughlan argued that the only point raised in the Notice of Appeal to the Tribunal was the Notification issue for the purposes of Section 3 (4) (a) of the Valuation Act, 1988. That notification was contained in the Letter dated 13th July 2001 from Dublin Corporation (as it then was) to Motor Services Limited hereinbefore referred to. He submitted that that document could not be given an overly restrictive interpretation or an interpretation out of context and that it was essential to interpret a document like that in the context in which it manifested itself namely the development of a substantial property on the Navan Road namely a substantial facility which consisted of a dealership where four separate or interrelated makes of car were sold. Mr. Coughlan said the letter of 13th July 2001 stated the Address of the property in respect of which an application had been made as 2-30 Navan Road. He stated that the person receiving this letter if they examined the situation and applied a modicum of common sense would know that 2 - 30 Navan Road was part of the facility and they must have deduced that the revision had more to do with the entire exercise than to do with a part of it.

The Tribunal enquired from Mr. Coughlan if he was going to call any evidence and he replied that Mr. Noel Mulhair was not available and that Mr. Aiken of the Rates Department of Dublin City Council was present and he could call him to give evidence of what would have been intended by the R.2. Form. Mr. Coughlan pointed out that Mr. Aiken did not sign the R. 2. Form. Mr. Coughlan further said that he could call such evidence as the Tribunal required to be of assistance. The Tribunal informed Mr. Coughlan that it was up to him as to what evidence he called and Mr. Coughlan did not call any witnesses on behalf of the Notice Party.

10. EVIDENCE OF MR RONAN BROWNE, DISTRICT VALUER IN THE VALUATION OFFICE, ON BEHALF OF THE RESPONDENT

Mr. Browne gave sworn evidence at the request of the Tribunal and each member of the Tribunal questioned him.

The Tribunal asked Mr. Browne if he could show in the Form R. 2. anywhere the Numbers 32 - 62 were included in the document and he replied in the negative. He stated that it was a clear cut Listing for Revision making it abundantly clear what was to be valued. Mr. Browne agreed the Listing for Revision only referred to 2 - 30 but the wording of the Form R. 2. was

to value motor showrooms and that is what the Commissioner did. He stated the emphasis on Lot Numbers was certainly reduced by Pettitt's case and by other Judgments. He continued by stating that Pettitt's case would seem to indicate that it was not necessary to identify by Lot Numbers.

The Tribunal referred to the letter dated 13th July 2001 from Dublin Corporation (as it then was) to Motor Services Limited hereinbefore referred to and asked Mr. Browne where in this pre revision notice Numbers 32 - 62 were included and Mr. Browne replied that they were not included. He continued by stating that the interpretation of the Judgments to date was that the Valuation Office did not feel that was necessary. Mr. Browne further stated that once the building to be valued was clearly identifiable the Commissioner had jurisdiction to value. On being pressed by the Tribunal as to whether he could give any help at all as to where 32 - 62 was included in the said pre revision notice Mr. Browne replied "Its not" and that he could not help. Mr. Browne said he understood notification would be dealt with by the Dublin City Council Valuers. He said the stance the Valuation Office took was that they had jurisdiction because of the Listing which pointed out what they had to value and that was identifiable and they valued it as such.

Mr. Browne was pressed by the Tribunal to state where the occupier was informed of an Application for Revision in relation to 32 - 62 Navan Road and Mr. Browne replied that the occupier was not informed as far as he was concerned. Mr. Browne further stated that in the actual wording with regard to Lots the occupier was not notified and that it was not written anywhere that 32 - 62 was included in the notification but presumably the occupier knew they were coming out to value premises.

The Tribunal referred to the said pre revision notice and to the references therein to 2 - 30 Navan Road, the description of Employment Exchange and the Valuation of IR£240 and asked Mr. Browne if the occupier would have just said it was only 2 - 30 Navan Road and Mr. Browne said yes but presumably they would be thinking more of what they occupied.

FINDINGS

11. The Tribunal notes the Grounds of Appeal which are set out in the Notice of Appeal to this Tribunal and these are reproduced at Page 2 of this Judgment

In her précis received in the Tribunal Office on 10th July 2003 Ms O Buachalla stated inter alia :-

“AT ISSUE

Notification issue under Section 3, Valuation Act, 1988.

Quantum has been agreed subject to the outcome of the above issue.”

" SUBMISSION

(a) Witness contends that the valuation attributable to the portion of the property located on lot 'on 32-62 Navan Road' is invalid as no notification was served under Section 3(4)(a) Valuation Act, 1988.

(b) On examination of the Valuation Office maps, the Revision Officer could have advised the Local Authority that only part of the property had been listed and requested that lot 'on 32-62 Navan Road' be listed for Revision, as he proposed to amalgamate both lots, as per note page 4 Valuer's Report, "part of lot 32-62 now subsumed in the valuation". (**Appendix 6**)

(c) However, no such action was taken and thus while there is a statutory requirement regarding listing and notification - see Section 3, 1988 Act - the appellant was not aware of any reference to Lot 32-62 Navan Road until the Revision issued.

(d) It is my contention that failure to comply with the above statute invalidates the making of an assessment in respect of the portion of the purported hereditament, which is located on Lot on 32-62 Navan Road.

The valuation should therefore be reduced to €300."

Mr. O'Donnell in his oral submissions to the Tribunal and in his written submissions to the Tribunal dated 21st July 2003 (See Paragraph 20 Page 9 thereof) submitted that the entire Revision involved in this Appeal was invalid. This obviously is a much wider plea than that contained in the Notice of Appeal to this Tribunal and in Ms O Buachalla's précis both of which are limited to seeking to reduce the rateable valuation to €300 and seeking to invalidate the assessment on Lot 32 -62 Navan Road. The Tribunal finds that it is confined to dealing with the Grounds of Appeal originally inserted by the Appellant in the Notice of

Appeal to the Tribunal and any additional grounds inserted by way of amendment by the Tribunal in the Notice of Appeal. Mr. O'Donnell did not at the hearing of the Appeal apply to amend the Grounds of Appeal to include a plea that the entire Revision involved in this Appeal was invalid and consequently the Tribunal is confined to the Grounds of Appeal set out in the Notice of Appeal to the Tribunal. These Grounds of Appeal in the Notice of Appeal to the Tribunal do not include a plea that the entire Revision involved in this Appeal is invalid and accordingly that plea can not be entertained as a Ground of Appeal by the Tribunal.

If the Tribunal is wrong in the foregoing it finds that the Appellant is estopped by each of the following from claiming that the entire Revision involved in this Appeal is invalid:-

- (i). The Appellant's Notice of Appeal to this Tribunal.
- (ii). Ms O Buachalla's précis.
- (iii). The agreement recited at Heading 1 of this Judgment.
- (iv). The Grounds of Appeal at First Appeal. These were partly stated in the First Appeal Outcome (See Ninth Schedule hereto) as follows :-

"Excessive. The question of correct listing was also brought up as only a percentage of the development is on the listed lot."

The Grounds of Appeal at First Appeal are dealt with more fully in Mr. Browne's précis as follows :-

"Valuation Appealed: documentation noting that only Lot on 2 – 30 Navan Road had been listed and notified, and requesting that any valuation attributable to other lots should be deleted."

- (v). The fact that at First Appeal quantum was agreed at €1,500 the Appellant reserving the right to pursue the matter of listing and notification before the Tribunal. Again see First Appeal Outcome a copy of which is set out in the Ninth Schedule hereto.

12. In relation to the issues raised at Heading 9 (a) of this Judgment the Tribunal finds as follows :-

- (a). The question of Application for Revision pursuant to Section 3 of the Valuation Act, 1988 was not raised by the Appellant in its Notice of Appeal to the Tribunal.
- (b). The question as to whether or not the entire subject relevant property was included in the Application for Revision must have occurred to the Revising Valuer, Mr. Noel Norris, because he included the following in his Valuation Report dated 26th October 2001 :-

Page 1 : Lot No. On 2-62/1

Page 4 : Additional Information : Part of Lot. 32 – 62 now subsumed in the valuation.

(c). The Tribunal notes the First Appeal Outcome document already referred to and a copy of which is set out in the Ninth Schedule hereto wherein it is inter alia stated :-

“Grounds of Appeal (in brief) : Excessive. The question of correct listing was also brought up as only a percentage of the development is on the listed lot.

Comments on points or comparisons made by the appellant :

It is proposed to rely on the judgment in the Pettit case to cover the listing issue, i.e. the intention to value this property was clear.

Comments & Recommendations of Staff Valuer : Quantum agreed. Validity of Listing (wrong lot) may be contended.”

(d). Mr. Browne in his précis noted the following :-

“Valuation Appealed : documentation noting that only Lot on 2-30 Navan Road had been listed and notified, and requesting that any valuation attributable to other lots should be deleted.”

The appeal referred to as “Valuation Appealed” is the First Appeal.

(e). The question of Application for Revision was always to the forefront of this matter and was so identified at First Appeal stage.

(f). The question of Application for Revision was raised in Ms O Buachalla’s précis at Submissions (b), (c) and (d) set out on page 4 thereof and quoted at page 12 hereof.

(g).The Respondent or the Notice Party were not taken by surprise by the raising of the Listing for Revision issue at the hearing of the Appeal before this Tribunal.

(h). No injustice would be caused to the Respondent or the Notice party by amending the Notice of appeal to the Tribunal to include a plea by the Appellant that Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road were not Listed for Revision.

(i). The case for allowing the amendment hereinbefore referred to at (h) is much stronger than the case for allowing the mapping issue to be raised in Pettitt’s case. In Pettitt’s case the Appellant was allowed to raise the mapping issue which it had not advanced as a ground at

First Appeal whereas in this Appeal the question of Application for Revision was always to the forefront of the matter and was so identified at First Appeal stage.

(j). Application for Revision is a jurisdictional point and a fundamental issue.

(k). The Judgment of the Tribunal in *Pettitt's* case was appealed to The High Court by way of case stated on various points of law pursuant to Section 5 of the Valuation Act, 1988. The Judgment of Butler J. (Unreported) on the case stated was delivered on 1st May 2001 and the following is taken from pp. 10 and 11 of the Judgment :-

“6. Questions for determination by this Court are set out at sub – paragraphs (a) to (h) inclusive of paragraph 10 of the Case Stated I shall deal with the same in chronological order as follows :-

(a) Was the Valuation Tribunal entitled to conclude that the justice of the case demanded that the appellant company was entitled to raise in the Appeal before it issues as to the boundaries of Lots appearing in the Valuation Maps, and in this regard, what portion of the hereditament had been listed for revision in 1992 and 1994, notwithstanding that these issues were not raised at first appeal in the Appeal to the Commissioner of Valuation pursuant to Section 19 of the Act of 1852?

I am satisfied that the Valuation Tribunal was entitled to so conclude. The Tribunal concisely reviewed the law and came to the view that it ought and must follow the principles which it referred to as enunciated by the Supreme Court and held that it would be quite wrong that the practise of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. It accepted 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 the Tribunal nevertheless, in exceptional circumstances where the interest of justice requires, the Tribunal will permit the raising of a ground, the reception into evidence and the reliance of a point of law none of which have previously been raised so far or adduced. I conclude that, as the instant case proceeded, and as confusion after confusion emerged and abounded it would not have been possible in any equitable way to proceed with the appeal and to make a decision thereon without first having the issue fully explained, debated and discussed. The Tribunal was, plainly, entitled to so conclude.”

The Tribunal notes that *Pettitt's* case was decided by the Tribunal and on Appeal by the High Court when the Valuation Act, 1988 was in force. The contents of the Notice of Appeal to the Tribunal are provided for in Section 3 (5) (b) of the Act of 1988 as follows:-

“ The notice shall contain the particulars of the valuation as entered in the Valuation Lists and a statement of the specific grounds for the appeal.”

All matters relating to the Notice of Appeal in the Appeal presently before the Tribunal are governed by the Valuation Act, 2001 and Section 35 of that Act deals with the grounds of appeal to the Tribunal. Section 35 states :-

“An appeal made under section 34 shall, as appropriate –

(a) specify –

(i) the grounds on which the appellant considers that the value of the property, the subject of the appeal (in this section referred to as “the property concerned”), being the value as determined or confirmed by the Commissioner under section 33, is incorrect, and

(ii) the value the appellant considers the Commissioner ought to have determined under section 33 as being the value of the property concerned,

(b) specify the grounds on which the appellant considers any detail in relation to the property concerned (other than the property’s value) as stated in the valuation certificate concerned issued under section 33(2) or in the notification concerned made under that section is incorrect,

(c) specify the grounds on which the appellant considers that the property concerned ought to have been included in, or, as the case may be, ought to have been excluded from, the relevant valuation list by the Commissioner under section 33 (2), and, in case the appellant considers the property concerned ought to have been so included, what he or she considers ought to be determined as the property’s value.”

Paragraph 6 (a) of the Judgment of Butler J. hereinbefore quoted does not explicitly approve the principle enunciated by the Tribunal in Pettitt's case which is set out in the quotation from the Tribunal's Judgment in Pettitt's case appearing on page 6 of this Judgment. However it does so by implication.

The Tribunal finds that there is nothing contained in Section 35 of the Valuation Act, 2001 which would affect the principle hereinbefore referred to.

(l). The Tribunal is not enunciating a general principle to be applied in cases where amendment should be allowed the issue having been pleaded at First Appeal but not in the Notice of Appeal to the Tribunal. The criteria cannot however be higher than the criteria enunciated in Pettitt's case and applying these criteria to the Appeal currently before the Tribunal finds that in view of the findings at Paragraphs 12 (b) to (j) inclusive of this Judgment which are exceptional circumstances and by reason of these exceptional circumstances in the interests of justice being these exceptional circumstances which require it the Tribunal should allow an amendment to the Notice of Appeal to the Tribunal to include a plea by the Appellant that Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road were not included in the Application for Revision and that accordingly the Commissioner of Valuation had no jurisdiction to carry out the revision of Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road. The Tribunal expressly reserve to a future Appeal when the matter is fully argued before it exactly what principles apply in cases where amendments are sought to the Notice of Appeal to the Tribunal the issue having been pleaded at First Appeal but not in the Notice of Appeal to the Tribunal. It might be argued that in these circumstances the criteria for amendment are lower than those set out in Pettitt's case but the Tribunal reserve this point to a future appeal where the matter is fully argued.

13. DETERMINATION – AMENDMENT OF NOTICE OF APPEAL TO THE TRIBUNAL

In the exceptional circumstances hereinbefore mentioned and by reason of these circumstances in the interests of justice being these exceptional circumstances which require it the Tribunal makes an order for the amendment of the Notice of Appeal to the Tribunal to include the following additional Ground of Appeal :-

Lot 32 –58/1 Navan Road and Lot 60 and 62/1 Navan Road were not included in the

Application for Revision and accordingly the Commissioner of Valuation had no jurisdiction to carry out the revision of Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road.

FURTHER FINDINGS – THE LAW - APPLICATION FOR REVISION - NOTIFICATION – JURISDICTION OF THE COMMISSIONER TO REVISE

THE LAW

14. In the case of *Switzer & Co. v. The Commissioner of Valuation (1902) 2 I. R. 275,294* Lord Justice Holmes on appeal in the Court of Appeal at page 309 of the report said :-

“But this and the preceding section were repealed in 1854, and the 4th and 5th sections of the Act of that year were substituted therefor. These provisions differed in three or four essential particulars from those which they replaced, and one of the alterations is the omission of the discretionary powers to which I have referred. It is, I think, impossible, consistently with the language of the substituted sections, and especially having regard to the contrast between them and the repealed provisions, to hold that the Commissioner is not now confined to a revision of the valuation of the tenements contained in the lists furnished to him by the local authority.

I hold, moreover, that he is not only so confined when making his primary revision, but also when hearing appeals therefrom under the 20th section of the Act of 1852.”

15. *Switzer’s* case clearly decided that under the provisions of the 1854 Act that the Commissioner of Valuation had no jurisdiction to make a valuation of any property other than that in the Town Clerk’s list.
16. Section 3 (1) of the Valuation Act, 1988 provided as follows :-

“An owner or occupier of any property, the rating authority or an officer of the Commissioner of Valuation may apply at any time for a revision of the valuation of any property entered in the Valuation Lists or for the inclusion therein of any property not so entered.”

Emphasis has been added by underlining to an important change in the law made by the Act

of 1988 in the foregoing quotation. Prior to the Act of 1988 coming in to force the only parties who might request a revision were local authorities and ratepayers whereas after it came into force “an officer of the Commissioner of Valuation” was also enabled to cause a revision. This change in the law is significant in so far as this Appeal is concerned.

17. The 1988 Act does not specifically repeal Sections 4 and 5 of the Valuation (Ireland) Amendment Act, 1854. Section 3 (7) of the Valuation Act, 1988 provided as follows :-
- “ This section shall have effect notwithstanding anything to the contrary in the Valuation Acts.”*
18. Section 3 of the Valuation Act, 1988 was succinctly explained at Paragraph 18 of the Judgment of this Tribunal in **Pettitt’s** case as follows :-
- “The 1988 Act does not specifically repeat Sections 4 & 5 of the 1854 Act. Section 3 however is an inclusive section in that, by virtue of subsection 7 thereof, its provisions have effect not withstanding anything to the contrary in the Valuation Acts. Within this section there is contained a new procedure for the method, by which and by whom, property may be listed for Revision. There is provision for the Rating Authority to submit to the Commissioner a list of applications requiring revision and for the Commissioner to determine all such applications. In our view whilst the procedure is different the substance remains the same and the principles of law, being those enunciated in the Kildare and Switzer cases, equally apply to the 1988 Act and to the Commissioners jurisdiction thereunder.”*

The word “repeat” in the first line of this quotation is clearly an error for the word “repeal”.

19. The law on the question of identification of property in Applications for Revision and in Notifications under Section 3 of the Valuation Act, 1988 was comprehensively reviewed in the Tribunal Judgment in **Pettitt’s** case and to avoid duplication this review is not being repeated here. The law on this question is set out in Paragraph 23 of the Tribunal Judgment in **Pettitt’s** case in the following words :-

“Accordingly the list so returned by the Commissioner does not, as a matter of law have to include any reference to Maps either by way of Lot numbers or otherwise. That being the case it could not in our view be successfully argued that the Commissioner’s statutory jurisdiction is nullified by the subsequent use of maps which might be erroneous as to area or

boundary or as to lot numbers or which might not be accurate or accurately reflect the factual position. This of course is not to say that an aggrieved party may not in certain circumstances, have an argument under the heading of “natural or constitutional justice”. But that is a separate point. In so far however as his statutory jurisdiction is involved we are quite firmly of the opinion that once the request for revision contains an adequate identification of the hereditament in question, however so described, then the Commissioner has jurisdiction to revise and that jurisdiction is not nullified by the absence of or indeed even by the incorrect use of lot numbers in the request for revision or in the list itself. These views we are satisfied are equally applicable to the procedure specified under Section 3 of the 1988 Act.”

Similar language was used by Mr. Justice Barron in The High Court in his unreported Judgment in the case of **R. & H. Hall PLC v. The Commissioner of Valuation** delivered on the 16th of December 1994. See page 3 of the Judgment where it is stated as follows :-

“There is nothing in the judgment which indicates that the revision list must refer to the tenements to be revised by specific lot numbers.”

The foregoing quotation referring to a judgment is to the judgment in **Switzer’s** case.

At Page 5 of his Judgment Mr. Justice Barron continued :-

“In my view, for a revision list to give the Commissioner jurisdiction to re – value premises, it is sufficient that such lists indicate clearly the tenements to which they refer. Once they do so, the Commissioner has jurisdiction. But at the same time, he cannot revise the valuations of premises not so indicated. He is limited to those indicated even though, as in the Switzer case, they form part of a larger entity in the occupation of the rated occupier.”

The facts in **Pettitt’s** case and in the **R. & H. Hall** case are extremely difficult to follow.

APPLICATION FOR REVISION – NOTIFICATION – JURISDICTION OF COMMISSIONER TO REVISE

20. Mr. Coughlan relied on the **Ormonde Cinema** case hereinbefore referred to which dealt with

listing only and not with notification. In that appeal 24% of the subject hereditament was on the listed lot number 1/1b Stillorgan South and the balance of property amounting to 76% of its total area was situated on the unlisted Lot No. 2A. The Tribunal considered an application to strike out the rateable valuation on the lot number which had not been listed and rejected that application. The Tribunal Judgment states “*This decision was based on the finding that the subject hereditament had been adequately identified in the request for revision.*” The Judgment of the Tribunal does not quote the description used in the Listing for Revision and consequently is of no assistance in the present appeal. Further it is not clear if Switzer’s case was opened to the Tribunal in the Ormonde Cinema case and Switzer’s case is certainly not mentioned in the Tribunal Judgment in the Ormonde Cinema case.

21. Columns 2, 3, 6 and 7 in the Application for Revision dated 10th July 2001 being the form R. 2. hereinbefore referred to set out information which relate exclusively to Lot 2 - 30/1 Navan Road. As already noted this is the same property as Lot 2 – 30 Navan Road. The Map Reference (Rate Number) in Column 2 namely 1040139000 relates only to Lot 2 - 30 Navan Road. Column 3 refers exclusively to 2 – 30 Navan Road. Prior to revision an Employment Exchange stood on Lot 2 - 30 Navan Road and Employment Exchange is the Description of Tenement given in Column 6 of the R. 2. Again prior to revision the Valuation of Lot 2 - 30 Navan Road was IRP £240 (€304.74) and this is the Valuation set out in Column 7. Columns 2, 3, 6 and 7 direct and point towards Lot 2 - 30/1 Navan Road only and away from other Lot Numbers.
22. Columns 2,3, 6 and 7 govern and override Columns 1, 4 and 8 of the form R.2. and the heading at the top of the form R.2. namely “County Dublin Corporation District of Cabra West”. Column 1 states the Electoral Division or Ward as Cabra West D which is the Electoral Division or Ward of inter alia three Lots namely Lot 2 to 30/1 Navan Road, Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road. Column 4 lists the Occupiers as Motor Services Ltd and Column 8 states the nature of the revision required as “Value new development of Car showrooms etc – Urgent Please return Nov. 2001.”
23. The Tribunal finds that Lot 2 - 30/1 Navan Road is the only property adequately identified and indicated clearly in the Form R. 2. Lot 32 to 58/1 Navan Road, which contains almost all of the buildings that are in issue in this appeal, and Lot 60 and 62/1 Navan Road are not adequately identified or indicated clearly in the Form R. 2. Lot 2 – 30/1 Navan Road was

the only property in respect of which there was a valid Application for Revision and the Commissioner of Valuation had no jurisdiction to make a revision of the valuation of any property other than that in the Application for Revision.

24. Full details are already given in this Judgment of the pre revision notification of 13th July 2001. These are set out in the Sixth Schedule hereto and Page 8 hereof. The Tribunal finds that Lot 2 – 30/1 Navan Road is the only property adequately identified and indicated clearly in this pre revision notification. The foregoing finding is strengthened by the addressing of the notification to the Appellant at 2 – 30 Navan Road. There is no reference in this document as there was in the Form R. 2. to a new development of car showrooms. Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road are not identified at all in any way or indicated at all in any way in the said pre revision notification. Accordingly there was no notification pursuant to Section 3 (4) (a) of the Valuation Act, 1988 in relation to the said Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road. Lot 2- 30/1 Navan Road was the only property in respect of which there was notification pursuant to the provisions of Section 3 (4) (a) of the Valuation Act, 1988. It is clear from Pettitt's case that compliance with Section 3 (4) (a) of the Valuation Act is mandatory.

25. The appeal under consideration is clearly distinguishable from Pettitt's case for the following reasons:-

(a). In the Pettitt's case on 28th July 1992 Wexford County Council as the relevant rating authority sent to the Commissioner of Valuation a Form R2 wherein the property to be revised was described by reference to a Map as being “Lot No. 73”, with the Owners and Occupiers being given as the Appellant Company. A description of the tenement was included in the Form R2 and then, under the heading of “Nature of Revision Required”, the following is stated “value extensions to supermarket and car park”. As part of the 1992 Revision, the Revising Valuer, during the course of his inspection, noticed that part of the hereditament had, by that date, been extended into Lot No. 74. On the 5th July 1994 a second R2 form was completed by an officer of the Commissioner of Valuation, pursuant to the new provisions in Section 3 of the Valuation Act, 1988 which enable an officer of the Commissioner of Valuation to cause a revision, thereby initiating a revision of the property therein described as Lot 74. In the present Appeal before the Tribunal the Application for Revision related to Lot 2 - 30 Navan Road only and there was no later Application for

Revision by an officer of the Commissioner of Valuation pursuant to the new provisions in Section 3 of the Valuation Act, 1988 in relation to Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road. The absence of a later Application for Revision in the present Appeal before the Tribunal by an officer of the Commissioner of Valuation clearly distinguishes the two cases.

(b). It is clear from the Judgment of the Tribunal in Pettitt's case that the major part of the supermarket was situated on Lot 73 and that the extension was a lesser part of the premises situated on part of Lot 74. In the present Appeal before the Tribunal the Application for Revision related to Lot 2 - 30 Navan Road only which contains only a part of one of the buildings that are in issue in this appeal and that most of the buildings the subject of the appeal are situated on Lot 32 – 58/1 Navan Road.

26. Accordingly the Revision in so far as it affects Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road in respect of which there is a total agreed Rateable Valuation of €1200 is invalid for the reasons already stated namely:-

(a). Lot 32 – 58/1 Navan Road and Lots 60 and 62/1 Navan Road are not adequately identified or indicated clearly in the Application for Revision (Form R.2. dated 10th July 2001). Lot 2 - 30 Navan Road (being as already noted the same property as Lot 2 – 30/1 Navan Road) was the only property in respect of which there was a valid Application for Revision and the Commissioner of Valuation had no jurisdiction to make a revision of the valuation of any property other than that in the Application for Revision.

(b). The said Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road are not identified at all in any way or indicated at all in any way in the Pre Revision Notice dated 13th July 2001. There was no notification pursuant to Section 3 (4) (a) of the Valuation Act, 1988 in relation to Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road and accordingly the Commissioner had no jurisdiction to revise Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road.

27. To hold that Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road are validly included in the Revision would be a dramatic and completely unjustified extension of the decision in Pettitt's case to a point where the decisions in Switzer's case, which has now stood the test of over one hundred years, and in the R. & H. Hall case would be reversed and subverted. Mr.

Coughlan appeared to argue that any sort of “glancing blow” at the property was sufficient and the Tribunal finds that this does not represent the law on the subject.

- 28.** As the parties have agreed a Rateable Valuation of €300 on Lot 2 – 30/1 Navan Road and as there are no valid issues as to listing or notification before the Tribunal in relation to Lot 2 – 30/1 Navan Road the Tribunal finds that the Rateable Valuation of Lot 2 – 30/1 Navan Road to be €300.

29. DETERMINATION

In view of the foregoing and having taken all the evidence in to consideration the Tribunal therefore:-

- (a). Strikes out the Revision the subject matter of the appeal in so far as it affects Lot 32 – 58/1 Navan Road and Lot 60 and 62/1 Navan Road in respect of which there is a total agreed Rateable Valuation of €1200.
- (b). Determines the RV of Lot 2 – 30/1 Navan Road to be €300.