Appeal No. VA05/2/012

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Lidl Ireland GmbH **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Supermarket at Lot No. 2Aa, Cahir Road, Sundry Townlands, Cashel Urban, South Tipperary, County Tipperary.
PRELIMINARY LEGAL ISSUE: Concerning Section 49(1) of the Valuation Act 2001

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI	**Deputy Chairperson**
Michael F. Lyng - Valuer	**Member**
Joseph Murray - B.L.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF OCTOBER, 2005

By Notice of Appeal dated the 12th day of April, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €524.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are: "The R.V. is excessive in comparison to the level assessed on other supermarkets in Cashel town."

Preliminary Legal Issue

The Tribunal dealt with the following as a preliminary issue. The issue, which was raised at hearing by the witness for the Respondent, concerns the true meaning and intent of Section 49 (1) of the Valuation Act, 2001 and also whether the words expressed in the plural in the section, *values* and *properties* can also be construed in the singular.

Section 49 (1) and the "Tone of the List"

The section provides as regards a relevant property that determined valuations "….shall be made by reference to the *values* as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other *properties* comparable to that property."

Here there is a clear obligation on the parties which is mandatory (with the use of the word *shall*), to refer to the values of other comparable properties appearing on the valuation list in the same rating authority area. This obligation is conditional on the fact that a material change of circumstances (MCC) takes place for the purpose of section 28(4).

Tone of the list

While section 49(1) makes no express reference to the "tone of the list", it nevertheless lays the legal basis upon which a "tone of the list" may be established with the use of the words "values, as appearing on the valuation list..…., of other properties comparable to that property". Precedents show that the "tone of the list" was well established in valuation practice before the Valuation Act 2001 came into force. The tone of the list did not appear from nowhere but originated in a legal instrument and today the legal basis is section 49(1) of the 2001 Act. Accordingly section 49(1) and the tone of the list are effectively inseparable. Moreover, the values of other properties on the list are no guarantee that a tone may be established, as they may not be fully comparable to or similarly circumstanced as, the subject property. However, it is in the interest of justice and equality before the law that a tone should be established. The weight of the tone can depend on a number of factors such as the number of comparisons involved or the level attained in the appeal process. Rational common sense dictates that a tone cannot be established with just one comparison and to rely on one comparison would be folly. A tone is established by comparisons and rental evidence of comparable or similarly circumstanced properties and valuation practice bears this out. A High Court decision cited below holds that

when a tone of the list is established there is a legal obligation on the parties to "arrive at a uniform figure having regard to the tone of the list". This uniform figure should help one to arrive at the correct Net Annual Value and accordingly the rental value which the hypothetical tenant would expect to pay.

Irish Management Institute Case 1990 2IR 409

A uniform figure having regard to the tone of the list.

The Valuation Tribunal stated a case to the High Court on four questions of law, two of which asked:

- Whether the Tribunal properly applied section 5, subsection 2 of the Valuation Act 1986.
- Whether the Tribunal came to a uniform figure having regard to the tone of the list.

Mr. Justice Barron held that the Tribunal did not properly apply section 5, subsection 2 of the 1986 Act. One of the grounds was that the Tribunal had regard *only to the most suitable comparison or comparable premises* and therefore did not come to a uniform figure having regard to the tone of the list. In this case the Tribunal had regard to the Trinity College Buildings only, and disregarded other comparisons. Judge Barron held that this evidence was insufficient to support the valuation. The figure determined should have uniformity with regard to the tone of the list and the tone cannot be established with one comparison.

Section 5(1) of the 1986 Act provided that there should be a relationship between the amount of the valuation and the valuation of other tenements and rateable hereditaments. To ensure that such a relationship existed, section 5(2) provided that regard should be had to the "valuations of tenements and rateable hereditaments which are comparable and of similar function." Section 49(1) of the Valuation Act 2001 relates to section 5(2) of the 1986 Act and to the legal principle of determining valuations with reference to the values of comparable properties.

Tribunal Judgment VA96/4/035 - Ray Murray Ltd. Tone of the list.

The Tribunal stated that in order to establish a tone of the list it is necessary to have a *number of properties* similarly circumstanced or which can, with adjustments reasonably based, be so similarly circumstanced. Having established a tone, the Tribunal went on the say, it is then

necessary to consider what weight should be given to that tone. The first criterion in this regard which the Tribunal would consider is again the *number of properties involved.* Again this case upholds the principle that a tone cannot be established with just one property.

Interpretation Act 1937

Section 11 provides that every word importing the singular shall, *unless the contrary intention appears,* be construed as if it also imported the plural, and every word importing the plural shall, *unless the contrary intention appears,* be construed as if it also imported the singular. The Tribunal is of the view that the contrary intention does appear in section 49(1) and that the legislator intended that a tone of the list be considered where possible and the section establishes the legal basis for such a tone in providing that the determined valuation shall be made by referring to values on the list of other comparable properties. This being the case the words *values* and *properties* cannot be construed in the singular but must be construed in the plural form. This is supported by the precedents mentioned above.

Teleological, Schematic or Purposive Approach

The Tribunal applies the literal meaning to section 49(1) and is satisfied that the legislator intended that the relevant words be used in the plural only. Without such construction a tone of the list could not be established and this could prove to be prejudicial to the interests of justice.

From a teleological/schematic or purposive perspective the Tribunal comes to the same conclusions, whether we look to the purpose of the 2001 Act as a whole or to the particular section in question. The Act aims to establish a better and fairer administration of rating law and valuations than had hitherto been the case and section 49(1) helps to promote this end by providing a basis to establish a tone. In the **RAY MURRAY** case cited above the Tribunal stated that the tone of the list *"is of considerable assistance and considerable help in adjudicating upon what the correct NAV should be and therefore the correct RV of any given property."*(P.8(11)). Accordingly an NAV estimated in this manner should result in a just and fair valuation with a uniform figure in accordance with the tone of the list. This fits into the general scheme of the Act as a whole.

Alternatives

The Respondent provided only one comparison, namely, Garveys Supervalu. In view of our interpretation of section 49(1) the Tribunal cannot consider the comparison in isolation. However, this does not mean that we reject the evidence, on the contrary we say that the evidence should be considered with other evidence, even if it means going outside the rating authority area where the subject property is situate in. Section 49(2)(b) provides, for the purposes of section 49(1), that if there are no comparable properties in the same rating authority area (as *the subject)* in which an *existing* valuation list is in force, then reference can be made to net annual values of properties (as determined under the repealed enactments) on 1st November 1988 with adjustments. The Respondent did not exercise this option under section 49(2)(b) to look for supporting evidence. If they had this evidence could have been considered by the Tribunal together with that of Garveys Supervalu to comply with section 49(1).

Decision

Considering the jurisprudence of the High Court and Tribunal cited above, considering the purpose and objective of the Valuation Act 2001 and particularly section 49(1) and also having considered the submissions of both parties, we are of the view that the Respondent did not conform with the mandatory provisions of section 49(1) in that they supplied only one comparison contrary to the intention of the legislator. Moreover, we also hold the view that the true meaning and intent of section 49(1) is to lay the legal basis for the establishment of the tone of the list and a better administration of justice. Accordingly words used in the plural in the context of section 49(1) cannot be construed in the singular.

In these circumstances we regard the Respondent's failure to comply with the relevant section to be prejudicial to the interests of justice with consequential effects for the Appellant. Accordingly, we determine the valuation to be a nullity and the rate at the foot of the valuation also a nullity and the rate to be struck out. The revision process commenced under section 27 of the Valuation Act 2001 is therefore at an end.

And the Tribunal so determines.