Appeal No. VA01/3/094

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Ger Kane & Mr. Moody **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Warehouse at Map Reference 5B/4a Unit 2 Greenhills Business Centre, Townland: Tymon North, Tallaght East, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Maurice Ahern - Valuer	**Member**
Michael McWey - Valuer	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF APRIL, 2003

By Notice of Appeal dated 17th October 2001 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £50 (€63.49) on the property concerned. The grounds of appeal as set out in the Notice of Appeal were that the Valuation is excessive, inequitable and bad in law.

The grounds of appeal relied upon by the Appellant are in relation to matters of notification pursuant to Section 3(4) (a) and or 3(4) (b) of the Valuation Act 1988. Since the appeal proceedings were initiated the Valuation Act 2001 has come into effect. Section 57 of this Act contains transitional provisions in relation to matters not completed under the now repealed enactments, in particular section 57 subsection (7) and (8) of the Act provide for appeals pursuant to Section 3 of the Valuation Act 1988 to be deemed to be valid.

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th March 2002.

2. At the hearing the appellant was represented by Mr. Eamonn Halpin BSC (surv) ASCS MRICS MIAVI of Eamonn Halpin & Company. Mr. Denis Maher MRICS a District Valuer in the Valuation Office represented the respondent.

3. Having taken the oath each valuer adopted as his evidence in chief his written submission that had previously been exchanged with the other valuer and submitted to the Tribunal.

4. Arising from the oral hearing the following are the material facts either agreed or so found which in the opinion of the Tribunal are relevant to the issues, the subject of this appeal.

5. On the 17th September 1998 Gerard Kane the owner of the premises now known as Unit 1, Greenhills Business Centre, applied to South Dublin County Council to add "first floor storage area and alterations to elevations at Unit 1 on Block 1 of previously approved building". The application was lodged on behalf of Mr. Kane by architects, Lorcan Green & Associates, acting as agents for and on behalf of Mr. Kane. In February/March 1999 the adjoining unit i.e. Unit 2 was subdivided and part of it amalgamated with Unit 1. It is not known if a planning application in respect of these works was either sought or obtained: nor indeed is it known if the permission sought on foot of the application dated the 17th September was granted.

6. In April 1991 Kaneco took up occupation of the now extended Unit 1 and in July 1999 the balance of Unit 2 was leased to Carlson & Company for a period of 25 years at an initial rent of £16,500 per annum.

7. The development now known as Greenhills Business Centre was constructed on lands forming part of premises occupied by Barrett's Warehousing and Distribution Ltd. The development consisted of two blocks, one containing 10 separate units of occupation and the

8. In mid 1998 the appellants entered into an agreement to purchase Units 1 & 2 of the development. The appellants Messrs. Kane and Moody are associated with Kaneco, which now occupies Unit 1 and part of Unit 2 as originally designed and constructed.

9. In July 1999 South Dublin County Council, applied for a revision of Lot No. 5b/4a the parent Lot occupied by Barrett with a request to "revise as necessary to include any new developments". The Council by letter dated 28th May 1999 notified Barrett's Warehousing and Distribution Ltd. of the request for revision in accordance with Section 3(4)(a) of the Valuation Act 1988. A similar notice was sent to Wheatfield Construction Ltd also dated May 28th. Neither the owner nor occupier of Unit 2 was notified of the request in May 1999. By letters dated the 23rd November 2000 the Rating Authority wrote to Carlson & Company Ltd. at Unit 2 Greenhills Business Centre and at 42 Morehampton Road, Dublin 4 advising them that the relevant property had been valued at a Rateable Valuation of £50. A similar notice dated November 22nd was sent to Lorcan Green & Associates. The owners of Unit 2 were not so notified.

10. Section 3(4)(a) of the Valuation Act of 1988 reads; " *Where an application under subsection (1) of this section in relation to any property is made by any person other than the owner or occupier of that property, the owner and occupier, if known, shall be notified by the rating authority of the application."*

Paragraph 3(4)(b) reads*: " the owner and occupier, where known, shall be notified by the rating authority of the determination of the application and of his right to appeal in accordance with Sections 19 and 31 of the Act of 1852 against the valuation determined by the Commissioner of Valuation and shall also be notified by the rating authority of the outcome of this appeal"*

11. This Tribunal has considered the issue of notification on several occasions. From these cases certain principles have been established which we propose to adopt and follow. Firstly that where the issue of non-notification is raised the onus of proof is on the rating authority and failure to do so has the effect of rendering the listing invalid. The obligation to notify relates to "the owner and the occupier" but this obligation is qualified by the words "if known" in relation to 3(4)(a) and "where known" in relation to 3(4)(b). It is clear from the

above that where the owners and occupiers are known to the rating authority then both must be notified in regard to the application for revision and the determination of the application as the case may be. In the circumstances therefore the rating authority must take appropriate steps to identify the owner and the occupier either by way of inspection, examination of planning applications or any other method that could reasonably be expected to provide the information required. If as a result of such enquiries the rating authority does not succeed in identifying either the owner or occupier as the case may be, then the rating authority cannot be held to be in breach of its statutory requirements for failing to notify under Sections 3(4)(a) and or 3(4)(b) as applicable.

12. The original scheme of development on the Barrett property on foot of the grant of planning permission dated the 25th March 1998 provides for 13 separate Units of occupation. On the 28th May 1999, when the letters of notification in compliance with Section 3(4)(a) were sent to Barrett's and Wheatfield, the rating authority must have been aware of the probability that there would be several different owners and or occupiers for the various individual units. In May 1999 Unit 2 was vacant and so remained until July 1999 when Carlson & Co. went into occupation. The revision requested in 1999 was not carried out until August /September 2000 and returned to the rating authority for issue in November 2000. The information provided to the rating authority by the Valuation Office in relation to Unit 2 was that it was owned and occupied by Carlson & Co. Ltd. On the 23rd November 2000 notices pursuant to Section 3(4)(b) were sent by the rating authority to Carlson and to Lorcan Green & Associates, Architects for the original scheme of development and coincidentally for Ger Kane (one of the appellants) in respect of alterations carried out to Unit 1 as previously referred to.

13. In previous cases before this Tribunal in relation to notification, the appellants have been either owner occupiers or occupiers. Nonetheless there is nothing to suggest that a lower standard of compliance should apply to owners not in occupation in relation to Sections 3(4)(a) and 3(4)(b). In regard to this appeal if the rating authority had inspected the property before sending out the letters of notification in May 1999 it would have found the subject property to be vacant and may have reasonably assumed that it was still in the hands of the developer. The only way to establish the true position would have been to contact the developer and establish the facts in relation to each unit. On balance the Tribunal considers

this course of action to be beyond the test of reasonableness and holds that the authority did not fail in its obligations under Section 3(4)(a) in this instance. In relation to the Section 3(4)(b) notification, the authority usually relies upon the information regarding occupation provided to them by the Valuation Office. The only way of verifying the information so provided would be to carry out an independent inspection and other enquiries in relation to each property contained in the revision list. Having regard to the time constraints under which rating authorities operate, once the revision list is received, it would not be reasonable to expect that such investigations would take place.

14. In the circumstances of this appeal the Tribunal finds that the rating authority did not fail in its obligations pursuant to Sections 3(4)(b) in relying upon the information provided to it by the Valuation Office to the effect that Carlson & Co. were the owners and occupiers of the subject unit. Accordingly therefore the Tribunal affirms the valuation of £50 (€63.49) and suggests that the listing in the Valuation List be amended to show that the immediate lessors are Messrs. Kane & Moody.