

Appeal No. VA02/4/038
Appeal No, VA02/4/040

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Mc Inerney Construction Ltd.
Hogan and Associates Chartered Accountants

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Relevant Properties as set out in the first schedule to this judgment.

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

Patrick Riney - FSCS. MIAVI

Member

Joseph Murray - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 15TH DAY OF MAY, 2003

By the two Notices of Appeal copies of which are set out at the Second and Third Schedules hereto each of the above named Appellants individually appealed to this Tribunal against certain decisions made by the Commissioner. As the subject relevant properties were both situated in the Rathfarnham Gate development, Main Street, Rathfarnham, County Dublin and as the legal issues and the majority of the submissions of both parties were common to the two appeals it was agreed at the suggestion of the Tribunal and with the consent of the parties that these two Appeals should be heard and dealt with simultaneously.

1. These Appeals proceeded by way of oral hearing which took place at the offices of the Valuation Tribunal, Dublin on the 19th day of February 2003. Mr Eamonn S. Halpin B.Sc.(Surveying), A.S.C.S., A.R.I.C.S., M.I.A.V.I. of Eamonn Halpin & Co. appeared on behalf of the Appellants while Mr Patrick Kyne B.E., Graduate Diploma in Planning & Development Economics, A.S.C.S., M.R.I.C.S., a District Valuer in the Valuation Office with over 17 years experience was the Appeal Valuer. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing exchanged their précis of evidence in both appeals and submitted the same to this Tribunal. At the oral hearing both Valuers having taken the oath adopted their said précis in each appeal 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.

2. **LOCATION AND DESCRIPTION OF SUBJECT RELEVANT PROPERTIES**

Mc Inerney Construction Ltd. - VA02/4/038

The property is located on the first floor of an office and apartment development that consists of four office and four shop units with apartments at the rear, known as Rathfarnham Gate in Rathfarnham. The property fronts Rathfarnham Road North at the junction with Butterfield Avenue. The subject property comprises a ground floor reception area with first floor office overhead and forms part of a larger office unit consisting of an additional first floor office to the rear. The ground floor accommodation consists of a reception area with two small interview rooms. The first floor consists of an open plan office area, offices, conference room, kitchen and toilets. Access to the rear office is via a passage from the first floor through a common landing area. The office is standard fit out with plastered ceilings, lighting inset and carpet on concrete floors. The windows are double glazed pvc. There is a lift from the car park to the offices. There are a total of 17 car spaces with the entire suite of offices of which 5 are attached to this property with the balance (10) attached to the first floor offices, VA02/2/052.

Hogan and Associates Chartered Accountants VA02/4/040

The property comprises a standard ground floor lock up office unit in the Rathfarnham Gate development, above described. The accommodation consists of a reception area conference

room, kitchen and toilets. The offices are used by an accountancy firm. The office is standard fit out with plastered ceilings, lighting inset and carpet on concrete floors. The windows are double glazed pvc. There is a lift from the car park to the offices. There are a total of 10 car spaces with this suite of offices.

3. TENURE OF SUBJECT RELEVANT PROPERTIES

Mc Inerney Construction Ltd. - VA02/4/038

The property is held leasehold. Part of a 20 year lease from April 2001 @ €87,891.27 (£69,220 pa).

Hogan and Associates Chartered Accountants VA02/4/040

The property is held leasehold from 28 September 2000 @ €80,816 pa (£63,648) The lease has a break clause after 10 years and the passing rent includes 10 car parking spaces valued at €635 each.

4. SERVICES

All main services are attached to the building.

5. VALUATION HISTORY OF SUBJECT RELEVANT PROPERTIES

(a). McInerney Construction Limited.

Rateable Valuation	€	Publication Date
Revision	190.46 (£150.00)	10th November 2000
Revision at Appellants Request	190.46 (£150.00)	1st May 2002.
First Appeal	190.46 (£150.00)	17th October 2002.

The First Appeal was against the determination of the Revision on the 1st of May 2002. It is against the decision of the Commissioner on First Appeal (Publication Date 17th October 2002) that this Appeal lies to the Tribunal. Both Valuers agreed that there was a mistake in Mr Kyne's précis in relation to the Valuation Date and that the correct Valuation Date was 1st May 2002.

(b). Hogan & Associates Chartered Accountants.

Rateable Valuation	€	Publication Date
Revision	222.20	10th November 2001
First Appeal	Nil – Valuation Struck Out	26th March 2002
Revision	244.00	1st May 2002
First Appeal	230.00	17th October 2002.

The First Appeal was against the determination of the Revision on the 1st of May 2002. It is against the decision of the Commissioner on First Appeal (Publication Date 17th October 2002) that this Appeal lies to the Tribunal. Again in this Appeal both Valuers agreed that there was a mistake in Mr Kyne's précis in relation to the Valuation Date and that the correct Valuation Date was 1st May 2002.

6. APPELLANTS' CASE**(a). Notice Issue and the Law applicable to these Appeals.**

Mr Halpin stated that in these two cases the Appellants had not been notified of the outcome of the First Appeal (Publication Date in both cases 17th October 2002.) He indicated generally the nature of the evidence that would be given by his clients in this regard some of which was of a hearsay nature. In both of these cases on a chance visit to the Valuation Office he discovered the outcome of the First Appeal a short number of days before the time for Appeal to the Tribunal expired. He said there was an element of doubt as to what legislation governed the notice question and the quantum issues in these appeals and he could not say with certainty under which legislation each issue was dealt with. Mr Kyne intervened at this stage to state that he imagined the Revisions on the 1st of May 2002 in relation to quantum were determined under the old Valuation Acts and that the question of notice was dealt with under the provisions of the Valuation Act, 2001. Mr Halpin said he would be inclined to go along with that. Mr Halpin stated that before the Valuation Act, 2001 came in to force on the 2nd of May 2002 the practice was that Appellant's Agents were notified by the Commissioner that the results of First Appeals were about to be issued in certain districts and if an Agent had clients in those districts he would attend at the Valuation Office and get the results of the First Appeals. Mr Halpin said that the practice changed after the new Act came

in to operation and the Commissioner ceased to give this notice to Agents and just notified the parties. Mr Halpin further stated that under the old system the accepted practice was following a number of Tribunal Judgments that Local Authorities kept a proper record of notices sent out and that it became accepted practice that such notices be sent by registered post.

The Tribunal questioned Mr Halpin as to the effect of Section 63(3) of the Valuation Act, 2001 which provides as follows :-

“(3) The fact that a valuation certificate or new valuation certificate, or a draft of such a certificate proposed to be issued to the person concerned—

- (a) has not been issued, as required by this Act, to the person concerned, or*
- (b) has been issued in accordance with this Act to that person but has not been received by him or her,*

shall not deprive of its effect for the purposes of this Act, or any other enactment, any matter or particular entered in the relevant valuation list.”

Mr Halpin in reply referred to Section 66 of the Valuation Act, 2001 which provides as follows :-

66.(1) A certificate, notice or other document under this Act shall, subject to subsection (2), be addressed to the person concerned by name, and may be issued to, given to or, as the case may be, served on the person in one of the following ways:

- (a) by delivering it to the person,*
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,*
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address*

- (d) *where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the certificate, notice or other document relates to land, by delivering it to some person over 16 year of age resident or employed on the land or by affixing it in a conspicuous position on or near the land or*
- (e) *by such other means as may be prescribed.*

(2) *Where a certificate, notice, or other document under this Act is to be issued or given to, or served on, a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry it may be addressed to the person by using the words the owner or, as the case may require, the occupier.*

(3) *A person who, at any time during the period of three after a certificate, notice or other document is affixed under subsection (1)(d), removes, damages or defaces the certificate notices or other document without lawful authority shall be guilty of an offence.*

(4) *For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office of place of business.*

This Section as can be seen relates to the issue of certificates and the service of notices etc. Mr Halpin submitted that Section 63(3) was completely contrary to the spirit of the Act and inconsistent with the entire Act. Mr Halpin further submitted that Section 66 which appeared to guarantee the delivery of notification of the outcome of an appeal would be destabilised if Section 63(3) were followed. He asked what was the point in having Section 66 in the Act at all if Section 63(3) were followed and further submitted that Section 63(3) might be unconstitutional. Mr Halpin submitted that the whole slant of the Act was to be fair to the ratepayer and to enshrine his rights for various different challenges and it did not seem consistent to say that if a fundamental mistake was made in relation to serving the ratepayer with a notice that that should be ignored.

(b). Quantum.

Mr Halpin stated that whilst this is a good office location, it would be still regarded as secondary in terms of the prime city centre areas.

The following points were also made to support his case.

1. The actual passing rent reflected the secondary nature of the location of these offices.
2. He stated that the NAV adopted was excessive in view of the passing rent and the established tone for similar specification buildings in the general south city and county areas and referred to a series of his comparisons in other locations.
3. He pointed out the Commissioner had traditionally added for air conditioning in offices where it was installed for example in the Dublin city centre Eastpoint Business Park, this generally accounted for between (50p - £1 per square foot) or €0.63 - €1.27 per square foot of NAV.
4. He felt that because the appellants had moved to less expensive space in Rathfarnham, they should not be penalised now in paying higher rates per square metre.
5. He stated that he considered that by using comparable office units in this development, it did not reflect the best evidence in order to assess a reasonable RV on the subject property.

Mr. Halpin referred in some detail to his comparisons which were:-

- 1) 18a Main Street, Rathfarnham Village
- 2) 16 Main Street, Rathfarnham Village
- 3) Rathfarnham Credit Union, Main Street, Rathfarnham Village
- 4) Lot 67/Suite 1 Village Green Centre, Tallaght Village
- 5) Lot 67 Suite 2 Village Centre, Tallaght
- 6) Dundrum Office Park
- 7) Dundrum
- 8) Unit 12 Leopardstown Office Park
- 9) Soft Tec Telecom, South County Business Park
- 10) 2nd Floor Blessington House, The Square Tallaght

Mr. Halpin also referred to a number of suburban rent and NAV comparisons in the following locations:

- 1) A new 1st Floor Office Unit at the Park Shopping Centre, Cabinteely, Dublin 18
- 2) Lot 20b Lower Kilmacud Road

- 3) Unit 14 Ballymoss House, Sandyford Industrial Estate
- 4) Secondary City Centre Office, Lot 29 Westland Square, Pearse Street,
Dublin 2

VA 02/4/038 – McInerney Construction Ltd;

Mr Halpin set out his opinion of the rateable valuation on the offices and 5 car spaces at an RV of €120 assessed as follows:

Estimated NAV (1988 tone)

Agreed area

Offices net 173 sqm @ €05.51/sqm =	€7,743
5 Car spaces @ €254 =	€1,270
	€19,004.23

RV @ .63% = €19.72 say €120

Or

Apportioned passing rent (April 2001) for 173 sqm + 5 cars €5,599.64

Form comparative suburban lettings

NAV at 30% passing rent €19,007

RV @ .63% = €19.74 say €120

Note : These levels adopted to reflect

- (1) location
- (2) quality of offices
- (3) total unit size 245sqm (2637sqft.)

Hogan & Associates Chartered Accountants – VA02/4/040

Mr Halpin set out his opinion of rateable valuation as follows

Est NAV (1988 tone)

Offices net 225sqm @ €02.51/sqm =	€3,064
10 car spaces @ €254 pa. =	€2,540.00
	€5,604.75

RV @ 0.63% = €61.30

Under cross-examination Mr. Kyne asked Mr. Halpin as to how the comparison at 18 Main Street i.e. a very old building compared to a new structure. Mr. Halpin accepted that a tenant would probably pay more for a new structure, however this was within the immediate vicinity. He accepted that Comparison No. 1 was not entirely comparable. However in his view Comparison No. 3 i.e. the Rathfarnham Credit Union Building, which had been recently built was particularly relevant and located at the northern end of the village.

7. RESPONDENTS CASE

(a). Notice Issue and the Law Applicable to these Appeals.

Mr Kyne stated that service of notices was dealt with in Section 66 of the Valuation Act 2001 and under that Section there was no obligation to register letters. He said the personnel section of the Valuation Office dealt with outgoing post and they kept a Mailing List on which details of all outgoing post were noted. He indicated the general nature of the evidence that would be given on behalf of the Respondent in relation to the notification of the outcome of the First Appeal in these two cases (Publication Date in both cases 17th October 2002) some of which was of a hearsay nature. He indicated that the evidence to be tendered on behalf of the Commissioner would be to the effect that on 17th October 2002 the personnel section of the Valuation Office posted to each of the Appellants a letter notifying them of the outcome of the First Appeal enclosing a Valuation Certificate.

In reply to a question from the Tribunal Mr Kyne said he was not a legal expert and had no instructions from the Commissioner as to what legislation governed the notice question and the quantum issues in these appeals. In reply to a further question from the Tribunal Mr Kyne stated that Section 63(3) of the Valuation Act, 2001 looked like it shut the door on the notice question but he would have to get instructions from the Commissioner in this matter.

(b). Quantum.

Mr Kyne said that the properties were part of a development which consisted of four office, and four shop units with apartments at the rear of Main Street, Rathfarnham. There is an over and

underground car park. The car park is accessed from the Main Street with pedestrian access from the Main Street the bypass road and Rathfarnham Road. In general the development enjoyed a prominent location off the Rathfarnham Road.

In Mr. Kyne's opinion the RVs established were in line with the tone of the list for offices in the adjoining area.

In VA02/2/052 – McInerney Properties, which forms part of the lease on the first appeal herein VA02/4/038, the Valuation Tribunal affirmed the RV in which the Valuation Office used three other adjoining units in evidence. Also in VA01/3/098 – Sureslim Wellness Centre, a shop unit in the same development as the subject properties, the Valuation Tribunal affirmed the RV and the Valuation Office had used the three other adjoining shop units as evidence.

Mr Kyne calculated the net annual values on the premises under appeals as follows:

VA02/4/038 – McInerney Construction

Ground floor Reception /Office	38.66sqm @ €160.00/sqm =	€6,185
First floor Office	134.28sqm @ €143.37/sqm =	€19,252
Car Park	5 spaces @ €317 =	€1,585
Total		€27,022

RV @ .63% = €170*

Current valuation as in valuation lists is €190. Propose to reduce to €170 in line with Tribunal judgment in VA02/2/052.

VA02/4/040 – Hogan and Associates

Ground floor Offices	225sqm @ €148.1/sqm	=	€33,323
10 car spaces	@ €317/space	=	€3,170
			<hr/>
TOTAL			€36,493

RV @ 0.63% = €230*

1. Lease 35 years from 28/9/2000 with five year reviews @ €80,816 pa 10 year break
Car spaces included
2. Property located on the ground floor of the same development

3. Area taken on net internal basis
4. Passing rent €/sqm = €330/sqm at October 2000 excluding car spaces @ €635/space.

Mr. Kyne referred in some detail to his comparisons 1-7, located in the subject development and on the Main Street Rathfarnham, and he was of the opinion that, taking all matters into consideration, including the recent comparisons referred to, that the rateable valuations applied were fair and reasonable.

In his cross-examination, Mr. Halpin referred to the fact that comparisons 5 and 6 were for properties which were located in the Main Street of Rathfarnham Village, of an older structure and in a more established location. He also submitted that Mr. Kyne's comparisons of the shop units in the Rathfarnham Gate Mall were not relevant.

8. FURTHER SUBMISSIONS

The Tribunal requested and both Valuers agreed to get instruction from the parties as to what legislation governed the notice question and the quantum issues in these appeals and to submit letters to the Tribunal dealing with these matters.

The Tribunal indicated that they would consider these appeals as they stood after these letters came in and that it might be necessary to re-enter the appeals for further hearing.

Mr Halpin indicated that he also would need to obtain instructions from his clients.

The Tribunal have received a letter from Mr William M. Walsh, Managing Valuer, Valuation Office dated 8th April 2003 a copy of which is set out in the 4th Schedule hereto. The Tribunal have also received a letter from Mr Halpin dated 11th April 2003 a copy of which is set out in the 5th Schedule hereto. Both of these letters deal with the questions raised and copies of the relevant letter in each case have been sent by the Tribunal to the other party. After the receipt of these letters in the Tribunal Office and the copying of the same by the Tribunal to the other party both Valuers were contacted by the Tribunal Registrar and indicated to her that they did not wish to have the appeals re-entered for further hearing.

It is noted by the Tribunal that Mr Halpin now appears to take a different view on the notice question from the one he expressed at the hearing. This is understandable as although he is a highly experienced Valuer and Rating Consultant he is not a legal expert and had to deal with complex legal issues at the hearing at short notice. The Tribunal would like to thank both Valuers for their assistance in dealing with these complex legal issues.

FINDINGS

9. LAW APPLICABLE TO THE DETERMINATION OF QUANTUM

The Valuation Act, 2001 came into force on the 2nd of May 2002 (Valuation Act, 2001 (Commencement) Order 2002 SI 131/2002). This Act repealed the old Valuation Acts in particular Section 11 of the Valuation (Ireland) Act, 1852 and Section 5 of the Valuation Act, 1986 which contain the old law on the determination of quantum. The basis of determination of quantum under the new law is set out in Part 11 of the Valuation Act, 2001.

It is clear that the applications for Revisions were determined by the Commissioner on 1st May 2002 under the provisions of the old Valuation Acts and that this was the correct law on that date to determine quantum.

The question arises as to which law applies to the determination of quantum on First Appeal and Tribunal Appeal in these cases, viz is the applicable law to be found in the old Valuation Acts or in the Valuation Act, 2001.

Maxwell on The Interpretation of Statutes Twelfth Edition at pp. 220 and 221 states :-

“In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.”

Maxwell (same edition hereinbefore referred to) at pp. 221 and 222 states :-

“The effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision was discussed by the House of Lords in Att.-Gen. V. Vernazza. Lord Denning said (at p. 978) that it was “clear that in the ordinary way the Court of Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for then Parliament has shown an intention that the Act should operate on pending proceedings, and the Court of Appeal are entitled to give effect to this retrospective intent as well as a court of first instance.”

Applying the principles enunciated in these quotations from Maxwell to the question of what quantum law applies to the First Appeals and the Appeals to this Tribunal the Tribunal find that for the reason that the Revisions in these case were published on 1st May 2002 before the Valuation Act, 2001 came into force and accordingly were governed by the quantum law contained in the old Valuation Acts and for the further reason that in so far as quantum is concerned the First Appeals and the Tribunal Appeals are part of a process begun by the Revisions the First Appeals and the Tribunal Appeals against First Appeal are governed by the quantum law set out in Section 11 of the Valuation (Ireland) Act, 1852 and Section 5 of the Valuation Act, 1986. The Valuation Act, 2001 does not contain any words making its quantum provisions retrospective to First Appeals from Revisions where the Revisions were made before the 2nd of May 2002 and/or to Tribunal Appeals where the Revisions were made before the 2nd of May 2002. The provisions for the determination of quantum in the Valuation Act, 2001 relate to substantive quantum law and are not of a procedural nature.

10. LAW APPLICABLE TO THE NOTICE QUESTION, TRANSITIONAL PROVISIONS OF SECTION 57 OF THE VALUATION ACT, 2001 AND ESAT TELECOM V. COMMISSIONER OF VALUATION VA01/1/015 and VA01/1/016

The Valuation Act, 2001 repealed the Valuation Act, 1988 which contained in Section 3 (4) (b) thereof provision for the notification of the outcome of First Appeals.

Section 3 (4) (b) of the Valuation Act, 1988 provided as follows:

“ 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”

Section 33(2) of the Valuation Act, 2001 provides as follows :-

“The Commissioner shall consider the appeal and may as he or she thinks appropriate –

(a) disallow the appeal, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate -

(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the relevant valuation list and accordingly, issue a new valuation certificate in relation to the property to –

(I) the occupier of the property,

(II) the rating authority in whose area the property is situate, and

(III) if the said occupier or authority is not the appellant, or is not the only appellant, to the appellant or each other appellant, as the case may be,

(ii) decide that the property, the subject of the appeal ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and –

(1) in the case of a decision that the property ought to be so included-

(A) determine the value of the property, and

(B) issue a valuation certificate in relation to the property to each of the persons referred to in subparagraph (i),

(11) in the case of a decision that the property ought to be so excluded notify each of the persons referred to in subparagraph (i) of that decision,

- (iii) *amend any detail in relation to the property, the subject of the appeal, stated in the relevant notice under section 28(7) and, accordingly, notify each of the persons referred to in subparagraph (i) of that amendment.”*

The question arises as to which law applies to the notification of the outcome of these First Appeals, viz is the applicable law the Valuation Act, 1988 or the Valuation Act, 2001.

Maxwell (same edition hereinbefore referred to) at page 222 states the following :-

“The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.”

The Notice of Appeal to the Tribunal in the McInerney Construction Ltd Appeal is dated the 14th November 2002 and in the Hogan & Associates Chartered Accountants Appeal is dated 13th November 2002 both being received in Tribunal Office on 15th November 2002. Both Notices of Appeal are headed :-

**“NOTICE OF APPEAL TO THE VALUATION TRIBUNAL
(VALUATION ACT, 2001)”**

Both Notices of Appeal to the Tribunal make various references to Sections of the Valuation Act, 2001.

The Tribunal have found that the law applicable to the determination of quantum by the Commissioner both on Revision and at First Appeal and by the Tribunal on Appeal from the Commissioner is that set out in the old Valuation Acts. This being the case and applying the principles last quoted from Maxwell the Tribunal find that the question of Notice in these Appeals is

governed by the Valuation Act, 2001 because these are procedural provisions. The Tribunal is reinforced in this finding by the references to the Valuation Act, 2001 in the heading and in the body of the Notices of Appeal to this Tribunal. The Tribunal can find no good reason why the provisions as to notice in the Valuation Act, 2001 should not apply to the notification of the outcome of the First Appeals in these cases.

Section 57 of the Valuation Act, 2001 contains certain transitional provisions which are of no assistance to the Tribunal. Section 57(1) of the Act provides as follows :-

“A property in relation to which an application has been made under subsection (1) of section 3 of the Act of 1988, being an application in respect of which a determination under subsection (3) of that section has not been made before the commencement of this Act or in respect of which such a determination has been so made but that determination has not been issued under the said subsection (3) before such commencement, shall be deemed to be the property in relation to which the Commissioner had made an appointment of an officer of the Commissioner under section 28.

This Subsection relates to applications for Revision under Section 3(1) of the Valuation Act, 1988 in which a determination has not been made before the commencement of the Valuation Act, 2001 or in respect of which such determination has been so made but not issued under Section 3 (3) of the Valuation Act, 1988 before such commencement. The Publication Date of the Revisions herein is 1st May 2002 and Section 57(1) of the Valuation Act, 2001 does not apply.

Section 57(5) of the Valuation Act, 2001 provides as follows :-

“An appeal made to the Commissioner under, and in accordance with, section 19 or 31 of the Act of 1852, being an appeal in respect of which a determination by the Commissioner under that Act has not been made before the commencement of this Act or in respect of which such a determination has been so made but that determination has not been published under that Act before such commencement, shall be deemed to be an appeal made to the Commissioner under section 30(1).

This Subsection relates to Appeals to the Commissioner under Section 19 or 31 of the Valuation (Ireland) Act, 1852 where a determination has not been made before the commencement of the

Valuation Act, 2001 or in respect of which such a determination has been so made but that determination has not been published before such commencement. This subsection clearly does not apply to the First Appeals herein.

Section 57(7) of the Valuation Act, 2001 provides as follows:-

“An appeal made to the Tribunal under, and in accordance with, section 3(5) of the Act of 1988, being an appeal which has not been heard by the Tribunal under that Act before the commencement of this Act or which has been so heard but in respect of which a determination has not been made by the Tribunal before such commencement, shall be deemed to be an appeal made to the Tribunal under section 34.

This Subsection only applies to an Appeal to the Tribunal under, and in accordance with, Section 3(5) of the Act of the Valuation Act, 1988 which has not been heard by the Tribunal under that Act before the commencement of the Valuation Act, 2001 or which has been so heard but in respect of which a determination has not been made by the Tribunal before such commencement. The appeals in these cases were launched by Notices of Appeal in November 2002 (a considerable time after the Valuation Act, 2001 came into operation on the 2nd of May 2002) and accordingly the transitional provisions do not apply. There was no Appeal before the Tribunal in May 2002 in these cases.

Mr Halpin in his letter of 11th April 2003 to the Tribunal relies on the Judgment of the Tribunal in the cases of **Esat Telecom v. Commissioner of Valuation VA01/1/015 & VA01/1/016.**

These cases must be distinguished entirely from the present appeals for the following reasons:-

(a). All relevant steps from Revision up to Notice of Appeal to the Tribunal in the **Esat** Appeals were taken under the old Valuation Acts before the 2nd of May 2002 whereas in the current Appeals only the Revisions (Publication Date 1st May 2002) were made before the 2nd of May 2002 and all other steps apart from the Revisions were taken after the 2nd of May 2002.

(b). The **Esat** Appeals were subject to the transitional provisions set out in Section 57 of the Valuation Act, 2001 whereas these transitional provisions do not apply to the present Appeals.

11. CONSEQUENCES OF FINDINGS AT 10

In the case of McInerney Construction Ltd the Commissioner on First Appeal affirmed the Revision. We find that under the provisions of Section 33(2) there is no duty imposed on the Commissioner to issue a new valuation certificate to the appellant McInerney Construction Ltd arising out of the First Appeal. Section 33(2) imposes no such duty on the Commissioner after determining a First Appeal where he affirms the Revision.

In the case of Hogan & Associates Chartered Accountants the Revision of €244 was reduced on First Appeal by the Commissioner to €230. By virtue of the provisions of Section 33(2)(b)(i) of the Valuation Act, 2001 on allowing the First Appeal of Hogan & Associates Chartered Accountants the Commissioner was obliged to issue a new valuation certificate to the appellant. Such a new valuation certificate may be issued in any of the ways described in Section 66(1) of the Valuation Act, 2001. By virtue of the provisions of Section 63(3) of the Valuation Act, 2001 if the new valuation certificate was not issued to Hogan & Associates Chartered Accountants or if it was issued to them but not received by them that does not deprive of its effect any matter or particular entered in the valuation list. The Tribunal find that in the circumstances outlined there are no adverse consequences for the Commissioner and that the matters and particulars set out in the extract from the Valuation List contained in the Valuation Certificate appended to Mr Kyne's précis in the appeal of Hogan & Associates Chartered Accountants have full effect as if a new valuation certificate had been issued to Hogan & Associates Chartered Accountants and received by them.

If we are wrong in our finding in the matter of notice in the Appeal of McInerney Construction Ltd hereinbefore set out in relation to the duties of the Commissioner under Section 33(2) of the Valuation Act, 2001 and the Commissioner was obliged to issue a new valuation certificate and if it was not issued to McInerney Construction Ltd or if it was issued to them but was not received by them the Tribunal find that the consequences of this are the same as those set out in the immediately preceding paragraph of this Judgment for the reasons therein stated.

12. GENERAL

(a). The Tribunal have not considered it being unnecessary in the circumstances to do so whether the Notices of Appeal to the Tribunal in each of these appeals was such as to allow the question of “Notice” to be raised.

(b). The Tribunal make no findings on the question as to whether or not new valuation certificates were issued and received in each of these appeals it being unnecessary in the circumstances to do so and the Tribunal not having heard sufficient evidence to decide the issue.

(c). The legal argument before the Tribunal was confined to the submissions of the respective Valuers at the oral hearing hereinbefore summarised and the letters set out in the 4th and 5th Schedules hereto. The Tribunal would have preferred to have had a further hearing for legal submissions or written legal submissions after these letters were received by the Tribunal but as the time limit for decision by the Tribunal is about to expire this is not possible.

13. QUANTUM FINDINGS

The Tribunal has carefully considered all the evidence adduced and arguments proffered and makes the following findings:

1. The relevant properties were built as part of a substantially residential apartment development with some office accommodation at the south and north elevations.
2. The Tribunal accepts the evidence given by Mr. Kyne that this is a unique development of four office, four shop units and apartments at the rear of the Main Street in Rathfarnham. Both properties have frontage to the Rathfarnham Road / Butterfield Avenue junction. The Tribunal consider the following comparisons to be most relevant:
 - i. Network Appliance (Sales) Ltd. which occupies the ground floor of the same development.
 - ii. VA02/2/052 - McInerney Properties , Tribunal decision issued on the 18/12/2002 , referring to offices at first floor level at Rathfarnham Gate.

14. DETERMINATIONS

(a). Appeal of McInerney Construction Ltd.

In view of the foregoing and having taken all the evidence in to consideration the Tribunal determines the Net Annual Value and the RV of the relevant subject property in the appeal of McInerney Construction Ltd as follows:-

NAV assessed on a net lettable area

Ground Floor Reception/Office	38.66m ² @ €150m ²	=	€5,799
First Floor Office	134.28m ² @ €43.37m ²	=	€9,252
Car Park	5 spaces @ €317 space	=	<u>€ 1,585</u>
Total			€26,636

RV @ 0.63% of NAV = €167.8 RV €168

The Tribunal therefore determines the Rateable Valuation of the subject relevant property in this appeal to be €168.

(b). Appeal of Hogan & Associates Chartered Accountants.

In view of the foregoing and having taken all the evidence in to consideration the Tribunal considers the Valuation contained in Mr Kyne's précis as amended at the oral hearing in relation to this appeal to be fair and reasonable and that the Rateable Valuation of €230 as determined by the Commissioner of Valuation is fair and reasonable and should be affirmed.

Rateable Valuation of the subject relevant property of €230 is affirmed.

FIRST SCHEDULE

(1) Appeal of McInerney Construction Limited. Appeal No VA02/4/038.

Relevant Property : Offices at Lot Number 58E/Unit 46A (South Block), Property Number 2145018, Rural District : Rathfarnham, Electoral Division/Ward : Rathfarnham Village, Townland/Street : Rathfarnham
Rathfarnham Gate, County Dublin.

(2) Appeal of Hogan & Associates Chartered Accountants. Appeal No VA02/4/040.

Relevant Property : Offices at Lot Number 58E/Unit 45, Property Number 2165824, Rural District : Rathfarnham, Electoral Division/Ward : Rathfarnham Village, Townland/Street : Rathfarnham
Rathfarnham Gate, County Dublin.