Appeal Nos. VA10/5/072, VA10/5/073, VA10/5/080, VA10/5/096, VA10/5/098, & VA10/5/099

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Nethercross Ltd. t/a Roganstown Golf and Country Club **APPELLANTS**
Carlton Hotel Dublin Airport Ltd.
Dundas Ltd.
Newpark Care Centre Partnership
Beechtree Healthcare Ltd.
Humar Ltd.

and

Commissioner of Valuation **RESPONDENT**

Re: Property No. 359211 (VA10/5/072), Hotel at Naul Road, Swords, County Dublin, Property No. 2111846 (VA10/5/073), Hotel at Old Airport Road, Cloghran, County Dublin, Property No. 911759 (VA10/5/080), Nursing Home at Talbot Lodge Nursing Home, Kinsealy Lane, Malahide, County Dublin, Property No. 300804 (VA10/5/096), Nursing Home at Newpark Care Centre, Newpark, The Ward, County Dublin, Property No. 2179284 (VA10/5/098), Nursing Home at Beechtree Nursing Home, Murragh House, Oldtown, County Dublin, Property No. 305655 (VA10/5/099), Nursing Home at Marymount Care Centre, Westmanstown, Lucan, County Dublin.

B E F O R E

John L. O'Donnell SC **Chairperson**

RULING OF THE 19TH DAY OF APRIL, 2012

FOR THE APPELLANTS in VA10/5/072 & 073:	Mr Owen Hickey SC, instructed by Mr John Walsh of John Walsh & Company
FOR THE APPELLANTS in VA10/5/080, 096, 098 & 099:	Mr John, Kenneally MRICS, MIAVI of Kenneally McAuliffe
FOR THE RESPONDENT:	Mr David Dodd BL, instructed by the Chief State Solicitor

Background

1. Nethercross Limited ("*Nethercross"*) and Carlton Hotel Dublin Airport Limited ("*Carlton"*) are hotels. Dundas Limited, Newpark Care Centre Partnership ("*Newpark"*), Beechtree Healthcare Limited ("*Beechtree"*) and Humar Limited ("*Humar"*) are all entities involved in the provision of nursing care as nursing homes.

2. In the cases of Nethercross and Carlton, determinations were delivered by divisions of the Valuation Tribunal on the 24th February 2011. The Commissioner of Valuation ("*the Commissioner"*) was dissatisfied with those determinations as being erroneous in point of law and in accordance with Section 39 of the Valuation Act, 2001 declared in writing to the Tribunal its dissatisfaction in the required time period. The Commissioner has prepared a draft Case Stated for the opinion of the High Court.

3. Section 39(3) of the Act requires any such case to be "*stated and signed by the Chairperson of the Tribunal"*. It was agreed by all parties, having regard to the dispute between the parties on the issue, that I as current Chairperson of the Tribunal, should state and sign the case, notwithstanding that I did not sit to hear either of the appeals in question, which appeals were heard by different divisions (albeit with the same common Chairperson).

4. Counsel for the Commissioner has now prepared a draft Case Stated which the Commissioner wishes me to state and sign. However, Nethercross and Carlton contend that no point of law in respect of which an error was allegedly made has been identified by the Commissioner, and contend in the circumstances that no case should be stated by the Tribunal for the opinion of the High Court.

5. It should be noted that a similar issue to that raised in the Nethercross and Carlton hearing arose in the Dundas, Newpark, Beechtree and Humar hearings. Dundas, Newpark, Beechtree and Humar were not legally represented before me on the various dates on which the matter was mentioned before me, though they were ably represented by a valuer Mr. John Kenneally. Directions were given as to the service required to be made by the Commissioner of all of the relevant documents, including the draft Case Stated on a previous occasion.

6. The issue of whether or not it was appropriate for me to state and sign a case for the opinion of the High Court was then listed for hearing on the 12th March. On that occasion, Mr. John Kenneally, Valuer, who had previously appeared for Dundas, Newpark, Beechtree and Humar, attended at the Valuation Tribunal. He indicated that he had spoken to the owners of the four properties in question. He indicated that he had been informed they had received all of the relevant papers but had no interest in participating in the hearing before the Tribunal as to whether or not a case should be stated and signed. Mr. Kenneally indicated that the entities in question were concerned at the prospect of incurring costs in participating in this hearing, or in any High Court hearing, and that while they might reserve the right to participate in High Court proceedings in the future, at the moment they had no intention of so doing. He indicated he was satisfied that all four parties by whom he had been instructed in the Valuation Tribunal had received all of the relevant documentation and informed us that one of those parties had instructed a Solicitor. This was confirmed by Counsel for the Commissioner, who indicated that a firm called Campion & Company, Solicitors representing Beechtree, had contacted the Chief State Solicitors Office to indicate that they had no instructions and that it was not clear if they would attend.

7. In response to the concerns raised by Mr. Kenneally, on behalf of what I will describe as the four "*nursing home*" entities, Counsel for the Commissioner indicated the normal practice in the High Court on a Case Stated is that if no-one attends to oppose same, costs are not generally awarded against the person who does not participate or attend in the circumstances.

8. In these circumstances and having been satisfied that the four nursing home entities represented by Mr. Kenneally had been properly served and were aware of the hearing but had chosen deliberately not to participate in same, it was decided to proceed with the hearing.

REPRESENTATION

Mr. Owen Hickey, SC, (instructed by John Walsh & Company) appeared for Nethercross and Carlton.

Mr. David Dodd BL (instructed by the Chief State Solicitor's Office) appeared for the Commissioner of Valuation.

THE ISSUE

9. The issue to be decided is whether the draft Case Stated disclosed an issue of law arising from the Tribunal's determinations in the Nethercross and Carlton cases which could form the basis of a Case Stated.

10. Written submissions were made on behalf of Nethercross and Carlton and on behalf of the Commissioner. These were of considerable help to me and I am grateful for the able and careful manner in which oral and written submissions were presented by both sides.

11. As Section 39 provides expressly for an Appeal by way of Case Stated to the High Court, it was agreed by the parties that the appropriate sequence to follow was to allow the ratepayers to make their objection to the Case Stated first, followed by a response from the Commissioner; the ratepayers would then conclude by way of reply.

SUBMISSIONS ON BEHALF OF THE RATEPAYERS (NETHERCROSS AND CARLTON)

12. On behalf of the ratepayers, Mr. Owen Hickey SC submitted no specific point of law had been raised by the draft Case Stated in respect of which an error could be said to have been made. In his submissions, a revaluation (as occurred here) under Section 19 of the Act was a direction to value properties in a rating authority area, which valuation is to be carried out by estimating the NAV as provided for in Section 48 of the Act and in particular, Section 48(3) of the Act. Mr. Hickey submitted this was implicitly acknowledged in the précis of evidence submitted by the Commissioner at the original Tribunal hearing (at page 12 thereof under the heading "*Basis of Valuation"*) in the Carlton case.

13. In his submission, there was a hierarchy of valuation methods to be utilised.

14. The first was direct rental evidence of the subject property; if such evidence was available, it constituted primary evidence of how the NAV should be calculated in accordance with Section 48(3) though the Tribunal was entitled to go beyond that if it felt it necessary to do so.

15. If rental evidence was not available, it was appropriate to go to the next method of valuation in the hierarchy which he submitted was the comparative method, i.e. a method whereby one examines values in the Valuation List of other properties comparable to the subject property.

16. In addition, Mr. Hickey submitted there were two other methods of valuation which were used only in particular circumstances where there was no reliable rental or comparable property evidence. These two were the Contractor/Construction/Capital Value Method, and the Receipts and Expenditure Method. While there was no suggestion that the Contractor/Constructor/Capital Value Method should have been utilised here, there was a dispute as to whether or not the Tribunal should have used the Receipts and Expenditure Method. In his submission, however, the Tribunal was entitled to use the Receipts and Expenditure Method and indeed this was widely used in relation to hotels.

17. Mr. Hickey referred to the Guidance Note issued by the RICS in respect of the Receipts and Expenditure Method of valuation for non-domestic rating, and submitted that the Commissioner had requested that the "*shortened method provided for under this guidance note be used by the Valuation Tribunal in carrying out the valuation in question.*" However, instead the Tribunal had, he submitted, used a fuller version of the Receipts and Expenditure Method, rather than the shortened method. He observed, in any event, the guidance note was published by the Joint Professional Institutions Rating Valuation Forum in England and was of no statutory or binding effect. However, for the sake of completeness he noted that even within the section headed "*The Shortened Method*" in the said guidance note at paragraph 7.7 thereof:

> "*It must be emphasised that where there is no sufficient evidence of rents to arrive at a reliable proportion of gross receipts to determine the rental value,*

then the full R & E (Receipts and Expenditure) method may need to be employed."

18. Mr. Hickey noted the argument made by the Commissioner to the effect that Section 31 of the Act, when read in conjunction with the other relevant sections, meant that the Tribunal would not value a property without referring to the values of other comparable properties. In his submission, this was a misreading of the effect of the Act.

19. He referred us to the Determination in Appeal **VA/08/5/125 - Marks & Spencer (Ireland) Ltd.** In this determination, the Tribunal decided to allow the appellant to introduce market rental evidence of properties outside the specific rating authority area; this finding, Mr. Hickey submitted, was evidence of the wide margin of discretion which the Tribunal has when attempting to assess the NAV of a property. In his submission Section 31(a)(ii) of the Act did nothing more than impose a requirement on an Appellant to indicate what he considered was the correct value of a property by reference to values in the Valuation List of other comparable properties. In his submission, this did not constitute a statutory obligation on the Tribunal hearing an appeal to consider the value in the Valuation List of other comparable properties.

20. Mr. Hickey submitted that, if this appeal to the Tribunal had been a revision under Section 28, then Section 49(1) of the Act would have applied, which would have imposed a requirement to determine the value of the property by reference to other properties comparable on the Valuation List (i.e. the "*tone of the list"* method"). However, since this was a revaluation, rather than a revision, the utilisation of Section 49 simply did not arise.

21. Mr. Hickey also submitted that the determination of the division of the Tribunal in **VA09/4/023 - Regan Developments Ltd.** likewise emphasised the discretion available to the Tribunal in determining how to value a property. Even though this was a revision application and the Tribunal was therefore bound to have regard to the "*tone of the list"*, the division of the Tribunal noted in paragraph 5 of their findings that "*the principles of equity and fairness, however, would anticipate the prudent use of a trading based methodology in respect of hotels at revaluation stage, which may*

go to address some of the unfairness that a rate per square meter basis of valuation can produce at revision stage." In his submission, this emphasised the breadth of the discretion available to the Tribunal when valuating at revaluation stage a hotel.

22. In addition, Mr. Hickey also referred to the determination of the Tribunal in **VA11/5/171 - International Leisure Group**. In that case it was noted that valuation levels were derived from the analysis of available market rental value of comparable properties and applied to the subject property; on appeal to the Commissioner of Valuation, however, the valuation was determined by reference to the values of comparable properties stated in the Valuation List in which the property appears. In his submission, this indicated that on appeal to the Tribunal, the Tribunal had ignored the provisions of Section 31(a), though it may be observed that the Tribunal do appear to look at values of comparable properties in coming to their conclusions.

23. Mr. Hickey's primary submission was therefore that, there was no obligation on the Tribunal to have regard to the values of other comparable properties in the Valuation List and that the Tribunal were in effect *"at large"* in deciding how to value a property.

24. In the alternative, however, he submitted that even if Section 31(a)(ii) did have the effect contended for by the Commissioner, the Tribunal had had adequate regard to the values of other comparable properties. Mr. Hickey submitted it was apparent from the précis of evidence submitted by both sides, as well as from the determination itself, that the attention of the Tribunal had been drawn to other comparable properties but that the Tribunal had decided (as it was entitled to so decide) to prefer instead to utilise the Receipts and Expenditure Valuation Method as set out in the RICS Guidance Note, with some variations. In the circumstances, therefore, he submitted that even if there was an obligation on the Tribunal to have regard to comparable values they had done so, but had just not attached as much weight to those comparable values as the Commissioner would have liked.

SUBMISSIONS ON BEHALF OF THE COMMISSIONER

25. On behalf of the Commissioner, Mr. David Dodd, BL, submitted there was an issue of law to be determined by way of Case Stated, the issue being the correct interpretations

of Sections 30-35 of the Valuation Act, 2001. He referred us to the appendices to the Respondent's submission in the Carlton Hotel case. At Appendix 10 the Appeal Form to be lodged required, at paragraph 3, the Appellant to "*detail the comparative evidence on which you rely*". The covering letter accompanying this appeal referred to a number of hotels which could "*offer assistance and guidance in this exercise*" (i.e. by way of comparison). He also referred to Appendix 12 (the Appeal Report) in which the Appeal's Officer expressed the view that "*I am satisfied that the valuation is in line with the valuation of comparable properties on the Valuation list*". However, in Appendix 2 (the Notice of Appeal) there was no reference to other comparable properties.

26. Mr. Dodd referred also to the précis of evidence submitted on behalf of Valuation Office, wherein it was contended that in South Dublin the method approved by the Valuation Tribunal was the shortened method; he noted that a number of hotels had been referred to in that précis.

27. However, in the determination itself of the Tribunal in the Carlton case there was no reference, either in the decision or in its appendices, to any comparable properties, to the Valuation List or indeed to the Twelfth Lock Hotel, which was a hotel in respect of which rental evidence was available in respect of a similar property to the subject property. In his submission, therefore, it was clear that the Tribunal had had before it evidence of comparable properties, but had disregarded that evidence.

28. Mr. Dodd submitted that this disregard by the Tribunal of values of comparable properties on the Valuation List constituted an error of law. He referred us to the various relevant sections under the Act. He noted that an appeal to the Commissioner under Section 30 had to comply with the provisions of Section 31. The provisions of Section 31 require the appeal to specify, *inter alia*:

> "*…by reference to values stated in the valuation list in which the property concerned appears of other comparable properties, what the appellant considers ought to have been determined as the property's value.*"

This section (being Section 31(a)(ii)) imposes a statutory obligation on the Tribunal. In his submission, the obligation to have regard to the values of other properties in the Valuation List was in harmony with the underlying principle of the Act which is that similarly circumstanced properties should be treated equally.

29. Mr. Dodd referred also to Section 33 of the Act which sets out how the Commissioner is obliged to conduct an appeal to him; any such "*appeal"* made to the Commissioner was an appeal which had to comply with Section 31(a)(ii) in the first place. Section 34 then provided a right of appeal from the Commissioner to the Tribunal; again this was an appeal against the decision of the Commissioner to allow or disallow an appeal under Section 33, being an appeal which had to comply with the provisions of Section 31(a)(ii). Section 35 of the Act required an appellant to specify not only the grounds on which he believes the value determined or confirmed by the Commissioner was incorrect, but also, at Section 35(a)(ii):

> "*..the value the appellant considers the Commissioner ought to have determined under section 33 as being the value of the property concerned."*

30. In exchanges with the Tribunal, Mr. Dodd noted that the provisions of Section 35(a)(ii) were different to the provisions of Section 31(a)(ii) but contended nonetheless that the "*appeal"* heard by the Tribunal was in effect an appeal which had its genesis under Section 31.

31. In summary, in his submission Section 31(a)(ii) had the effect of requiring the Tribunal on appeal from the Commissioner to have regard to values of other comparable properties on the Valuation List.

32. Mr. Dodd sought by way of distinction to highlight the provisions applicable to appeals against global valuations in Section 54, where under Section 54(2)(a)(ii) an appeal was specified "*by reference to such matters as the appellant considers appropriate, what the appellant considers the global valuation in relation to the undertaking concerned ought to be"*. In his submission, far wider discretion was given to the appellant and on appeal to the Commissioner and on appeal thereafter to

the Tribunal in respect of the criteria to be taken into account when considering an appeal against a global valuation than was given to the Tribunal in considering an appeal from a revaluation.

33. Mr. Dodd also referred the Tribunal to the decision of the High Court in **Premier Periclase Ltd –v- Commissioner of Valuation, High Court (Kelly J) 1999 IEHC 8**. This was an appeal by way of case stated to the High Court from the Tribunal. In that case Kelly J noted the principles enunciated in **Mara –v- Hummingbird Limited [1982] ILRM 421** by the late Kenny J. Kelly J noted that the law in the area had developed since the decision in **Mara –v- Hummingbird** and referred to the decisions in **O'Keeffe –v- An Bórd Pleanála** and **Henry Denny & Sons (Ireland) Limited –v- Minister for Social Welfare**, noting the principle of curial deference to decisions of an expert administrative tribunal such as the one in suit in proceedings before him (being the Valuation Tribunal).

34. Hamilton CJ noted in **Henry Denny & Sons (Ireland) Limited –v- The Minister for Social Welfare [1998] 1 IR 34**:

> "*[The courts] should be slow to interfere with the decisions of expert administrative Tribunals. When conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal, such conclusions must be corrected. Otherwise it should be recognised that Tribunals which have been given a statutory task to perform and exercise their functions, as is now usually the case, with a high degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them, it should not be necessary for the Courts to review their decisions by way of appeal or judicial review.*"

35. Noting that he was dealing with appeal by way of Case Stated, Kelly J observed:

> *"There is no doubt but that the Valuation Tribunal is the type of body which Hamilton CJ had in mind when expressing the views which I have just quoted from his judgment in the Denny case. In the instant appeal, the Tribunal consisted of its Chairman, who is a Senior Counsel and two Deputy Chairmen.*

One is a Barrister and the other is a Fellow of the Royal Institute of Chartered Surveyors. This Court should be slow to interfere with its decision. It should only do so on the basis of an identifiable error of law or an unsustainable finding of fact."

36. For completeness, it should be noted that Kelly J had earlier referred to previous position sets out by Kenny J in **Mara –v- Hummingbird**:

"The case stated consists in part of findings and questions of primary fact, e.g. with what intention did the taxpayers purchase the Baggot Street premises. These findings and primary facts should not be set aside by the Courts unless there was no evidence whatever to support them. The Commissioner then goes on in the Case Stated to give his conclusions or inferences from these primary facts. These are mixed questions of fact and law and the Court should approach these in a different way. If they are based on interpretation of documents, the Court should reverse them if they are incorrect for it is in as good a position to determine the meaning of documents as is the Commissioner. If the conclusions from the primary facts are ones which no reasonable Commissioner could draw, the Court should set aside his findings on the ground that he must be assumed to have misdirected himself as to the law or made a mistake in reasoning. Finally, if his conclusions show that he has adopted a wrong view of the law, they should be set aside. If, however, they are not based on a mistaken view of the law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from the primary facts were ones that no reasonable Commissioner could draw."

37. Dealing with the draft questions to be stated by the opinion of the High Court, Mr. Dodd submitted that questions 1, 2 and 3 asked the same question in slightly different ways, i.e. did the Tribunal err in law in failing to have regard to the values of other comparable properties in the Valuation List in coming to its conclusions.

38. In exchanges with the Tribunal he accepted that the previous Division of the Tribunal made no "*finding*" that each relevant property is to be individually assessed by the

Tribunal in accordance with Section 48 as had been suggested in question 4, and he was content that this question should no longer form part of the Case Stated.

39. Likewise, he accepted that question 5 did not appear to indicate an area in which an error of law had occurred. In the circumstances it is clear that this question should not be included in the case stated.

40. So far as question 6 was concerned, he contended that Appendix 1 to the determination demonstrated implicitly that the Tribunal had not complied with the RICS Guidance Note's provisions; while he accepted that this note was of no statutory effect, he submitted the methodology used was flawed in not referring to or having regard to other comparable properties.

41. In response to the point made by Mr. Hickey that there could be no reference to other properties on the "*Valuation List"* in the context of a revaluation because no such "*list"* would exist, he indicated that the Valuation List was published on the 31st December 2009; the appellant had 40 days to consider same, the appeal being lodged on the 8th February 2010, and that in the circumstances the appellant had the Valuation List available at the time to consider.

42. In reply, Mr. Hickey re-emphasised the broad discretion available under Section 48 to the Tribunal to determine the NAV of the property in question. He again contrasted Section 48 which did not require comparative properties to be utilised with Section 49 (which applied in respect of revisions) where the tone of the list was mandatory. Mr. Hickey contended that it was clear from the précis and from the determination of the Tribunal in question that the Tribunal had sought the views of both sides on the various receipts and expenditures methodologies. In relation to the availability of the Valuation List he submitted that though one may have been available to the appellant in the instant case, the obligation to use the Valuation List and to refer to comparable properties on the list should not vary depending on when the Valuation List was published.

43. Both parties agreed that since the obligation of the Chairperson of the Tribunal under Section 39 was to state and sign a case to the High Court, the Chairperson was at

liberty to formulate the version or versions of the questions to be stated to the High Court which may differ in style, though not in substance, from the case stated by an aggrieved party.

THE LAW

44. It may be helpful to set out the relevant provisions of the Act. In the first place it is appropriate to point to the provisions of Section 39 of the Act:

"*39. (1) After the determination of an appeal under section 37 by the Tribunal, any party to the appeal, if dissatisfied with the determination as being erroneous in point of law, may declare in writing to the Tribunal his or her dissatisfaction and such a declaration shall be made within 21 days from the date of the Tribunal's having made its determination.*

(2) The party, having declared his or her dissatisfaction, may, within 28 days from the date of the said determination, by notice in writing addressed to the chairperson of the Tribunal, require the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.

(3) The case shall set forth the facts and the determination of the Tribunal and the party requiring it shall transmit the case, when stated and signed by the chairperson of the Tribunal, to the High Court within 7 days from the date of receiving it.

(4) At or before the time when he or she transmits the case to the High Court, the party requiring it shall serve notice in writing of the fact that the case has been stated on his or her application, together with a copy of the case, on each other party to the appeal referred to in subsection (1).

(5) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall

remit the matter to the Tribunal with the opinion of the Court thereon, or may make such other order in relation to the matter as the Court thinks fit.

(6) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgement shall be delivered after it has been amended.

(7) An appeal shall lie to the Supreme Court from the decision of the High Court under this section."

45. Unlike the Summary Jurisdiction Act, 1857, Section 4 of which allowed a District Judge to refuse to state a case to the High Court on the grounds that it was "*frivolous, but not otherwise"*, Section 39 gives no guidance whatsoever as to the circumstances, if any, which would permit the Tribunal to refuse to state a case to the High Court. It does appear, however, from Section 39(1) that the right to appeal by way of Case Stated can only arise where the appellant is dissatisfied with the Determination because it is "*erroneous in point of law"*. While it is obviously wholly inappropriate for the Chairperson of the Tribunal to decide whether or not the Determination of the Tribunal was (or was not) "*erroneous in point of law"*, it does seem to me that the jurisdiction to state a case depends on the appellant at least pointing to a "*point of law"* without of course requiring the appellant to establish that such an error has occurred.

46. It also appears to me that the jurisdiction to state the case is ultimately the responsibility of the Chairperson. Of course in most cases the parties are able to agree the question of law to be stated to the High Court and the Chairperson merely signs same. In the instant case the Commissioner has suggested matters on which the opinion of the High Court is sought; the ratepayers have, however, taken the view that no error of law has been identified and therefore, no case should be stated to the High Court at all. A combination of the provisions of Section 39(2) and 39(3) however seem to me to make the Chairperson ultimately responsible for the format in which questions are posed to the High Court, though as I say in the vast majority of cases the parties will agree these questions and it will be unnecessary for the Chairperson to

consider in any great detail the format of the questions which the opinion of the High Court is sought.

47. It may be helpful also to set out certain other sections of the Act referred to in the course of submissions:

"Appeals to the Commissioner.
30.—(1) Each of the following, namely—

(a) an occupier of property, in respect of that property,

(b) an occupier of relevant property, in respect of any other property situate in the same rating authority area as that relevant property is situate,

(c) a rating authority, in respect of any property situate in its area, and

(d) a person, in respect of any property in relation to which he or she is an interest holder,

may, within 40 days from the relevant date, appeal in writing to the Commissioner against—

(i) the determination under section 19 or 28 of the value of the property,

(ii) any other detail stated in the relevant valuation list in relation to the property,

(iii) any decision by the valuation manager, revision officer or other officer of the Commissioner concerned to include or not to include the property in the relevant valuation list or to exclude the property from that list,

(iv) in the case of a decision by the revision officer concerned to so exclude the property, any detail stated in the notice concerned issued under section 28 (7),

(v) any decision by the revision officer concerned that the circumstances referred to in section 28 (4) do not exist for the exercise of the powers under that section in relation to the property.

(2) In this section "relevant date" means, as appropriate—

(a) the date of the relevant valuation list being caused to be published under section 23 ,

(b) the date of issue under section 28 (6) of a valuation certificate in relation to the property,

(c) the date of issue under section 28 (7) of a notice in relation to the property, or

(d) the date of the making of the decision referred to in subsection (1)(v).

Grounds of appeal under section 30 to be stated.
31.—An appeal made under section 30 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 under section 19 or 28, is incorrect, and

(ii) by reference to values stated in the valuation list in which the property concerned appears of other comparable properties, what the appellant considers ought to have been determined as the property's value,

(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 or notice concerned is incorrect,

(c) specify the grounds on which the appellant considers that the property concerned ought or ought not to have been included in, or, as the case may be, to have been excluded from, the relevant valuation list 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.

Notification of occupier of an appeal.

32.—(1) If an appeal is made under section 30 by a person who is not the occupier of the property to which the appeal relates, the Commissioner shall serve on the occupier a copy of the appeal together with the notice referred to in subsection (2).

(2) The notice mentioned in subsection (1) is a notice stating that the occupier concerned may, within 28 days from the date of the service of the notice on him or her, make observations or submissions in writing to the Commissioner in relation to the appeal (and such an occupier may, within that period, make such observations or submissions accordingly).

(3) The Commissioner shall, in determining the appeal concerned under section 33 , consider any observations or submissions made to him or her under and in accordance with subsection (2).

Consideration of appeals by Commissioner.

33.—(1) In this section "the appeal" means an appeal made to the Commissioner under section 30 .

(2) 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—

(I) 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),

(II) 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.

(3) For the avoidance of doubt, the cases in which the powers under subsection (2)(b) are exercisable include the case where the Commissioner allows an appeal against a decision of a revision officer referred to in section 30 (1)(v).

(4) As soon as may be, but not earlier than 7 days, after the Commissioner has issued a valuation certificate under subsection (2) or made a notification under that

subsection, he or she shall amend the relevant valuation list in a manner consonant with his or her decision to issue that certificate or make that notification.

(5) The Commissioner may employ such procedures as he or she considers appropriate for the purposes of the consideration of the appeal.

(6) The Commissioner shall make a decision on the appeal within 6 months from the date of his or her having received the appeal.

Appeals to Tribunal.

34.—(1) A person referred to in subsection (1) of section 30 (whether or not he or she was the appellant or an appellant in the appeal concerned) may appeal in writing to the Tribunal against a decision of the Commissioner to allow or disallow an appeal under that section in relation to a property (whether or not the property falls within the same paragraph of that subsection (1) as the person falls within).

(2) Such an appeal shall be made within 28 days from the date on which the Commissioner issued the valuation certificate concerned or made the notification concerned under section 33 (2).

Grounds of appeal under section 34 to be stated.

35.—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."

48. In the instant case the Commissioner contends that the effect of Section 31(a)(ii) when read with Sections 30, 33, 34 and 35 requires the Tribunal, on hearing an appeal from the Commissioner, to have regard to the values of other comparable properties in the Valuation List in which the property concerned appears. Counsel for the Commissioner expressly refuses to be confined to the contention that the Tribunal must have regard <u>only</u> to the values of these comparable properties, contending instead that the Tribunal must at least have <u>some</u> regard to the values of those other comparable properties.

49. In my view this constitutes a point of law. The Commissioner contends that the effect of the statutory provisions referred to above require the Tribunal to conduct itself in a particular way; it contends, however, that the Tribunal did not do so in the instant case and that the Tribunal therefore erred "*in point of law*". My own views on the strengths or weaknesses of this legal argument, and its chances of success or failure in the High Court, are of course irrelevant.

50. However, it does seem to me that the question of law on which the opinion of the High Court is sought might be stated by combining the original suggested questions 1, 2 and 3 in the draft Case Stated as follows:

"*1.* *Did the Valuation Tribunal err in law by disregarding and/or failing to have regard to values stated in the Valuation List in which the*

> *properties concerned appeared of other comparable properties in its determinations of the instant appeals, as provided for by Section 31(a)(ii) of the Valuation Act, 2001 and having regard to, inter alia, the provisions of Sections 30, 33, 34 and 35 of the Valuation Act, 2001 and the effects thereof?*

51. It seems to me that draft question 6 does not identify a point of law. Even if the methodology utilised by the Tribunal did conflict with the Receipts and Expenditure Method set out in the Guidance Note, the Guidance Notice is agreed by all to have no force of law. A failure to comply with the Guidance Note therefore, does not and could not constitute an error in point of law. As observed by Kingsmill Moore J in **Roadstone Limited –v- Commissioner of Valuation [1961] I.R. 239 at 260:**

> *"It has been repeatedly decided that in arriving at his estimate of the hypothetical rent a Judge is not bound to use any particular method but may arrive at his determination whatever way is most suitable to produce the required result."*

52. In the absence of an obligation imposed by statute or by virtue of a clear and unequivocal direction to the High Court, it seems to me that failure by the Tribunal to comply with the methodology referred to in a Guidance Note does not of itself constitute an error in point of law in respect of which a question of law could stated for the opinion of the High Court.

53. I therefore propose to state a case for the opinion of the High Court in accordance with the draft provided, save that I have substituted for the remaining three questions set out in the draft the single question set out above instead. A copy of the Case Stated with the amended question will be appended to this determination.

54. There are two other issues which arise. I will deal first with the position of the "*nursing home"* ratepayers. It seems to me the Commissioner is entitled to have a Case Stated for the opinion of the High Court, notwithstanding the non-participation of nursing home ratepayers in the hearing on this issue before me. However, in the circumstances if the Commissioner wishes to pursue the application in circumstances

where there would clearly be no opposition in the High Court, this is a matter for the Commissioner.

55. The other issue which arises is the issue of costs. I did not have an opportunity to consider submissions in respect of costs in advance of my issuing this ruling. It seems to me the appropriate course is to make the costs of the application on which I have just ruled costs in the cause of the Case Stated to the High Court, and I propose to make an Order to that effect unless the parties ask me to do otherwise.

JOHN L. O'DONNELL SC