Appeal No. VA94/3/006

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

A.I.B. Investment Managers Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Offices and car park at Lot No. 8 - 34a, Percy Place, Ward: Pembroke West C, County Borough of Dublin
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Paul Butler	**S.C. (Acting Chairman)**
Veronica Gates	**Barrister**
Patrick Riney	**F.R.I.C.S. M.I.A.V.I.**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF SEPTEMBER, 1995

By Notice of Appeal dated the 17th day of October 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,700 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is bad in law in that the Rating Authority failed to comply with the requirements of Section 3(4)(a) of the Valuation Act 1988".

The Property:

The property comprises the first to third floors of a five storey over basement level office development situated on the northern side of Percy Place, Dublin 4. Accommodation comprises approximately 23,755 square feet of offices together with 30 car spaces.

Valuation History:

Prior to the commencement of the present development on the site, the rated occupiers were Standard Triumph (Eire) Limited. The tenement was described as garage, showroom, petrol tanks with a rateable valuation of £280. In 1991 following a request from Dublin Corporation to "Revise for new development" the valuation was increased to £2,750. At first appeal this valuation was deleted as the building was incapable of beneficial occupation on the valuation date, 10th November 1991, and the description amended to "offices (unfinished)" with Sharnbrook Limited as immediate lessor and occupier listed as "vacant". A further revision request was received from Dublin Corporation in 1993 "Value new development". Two new lots were created the subject being assessed at £1,870. At first appeal the rateable valuation was agreed at £1,700 but appellants were aggrieved that notice under Section 3(4) of the Valuation Act 1988 was not correctly served. This matter is now the subject of this appeal to the Valuation Tribunal.

Written Submissions:

A written submission was received on the 12th day of June 1995 from Mr. Adrian Power-Kelly, ARICS ASCS of Harrington Bannon, Chartered Valuation Surveyors on behalf of the appellant.

In the written submission, Mr. Power-Kelly described the premises and set out in detail the valuation history thereon.

Mr. Power-Kelly concluded that despite evidence clearly showing that AIB Investment Managers were in occupation of the building no notice was served on them as known occupier for the premises of Section 3(4) of the Valuation Act 1988. Therefore, he said that the revision carried out in November 1993 is invalid and bad in law and the rateable valuation £1,700 should be struck out.

Mr. Power-Kelly included in his written submission the following documents:-

Exhibit 1 press cuttings relating to the occupation by AIB Investment Managers of the subject
premises.

Exhibit 2 notices from Dublin Corporation and the Valuation Office concerning the revision of the subject premises.
Exhibit 3 press cuttings concerning planning application on the subject premises.
Exhibit 4 photographs of the subject premises.

A precis of evidence was received from Mr. Ian A. Scott, Solicitor of Arthur Cox, Solicitors to the appellants. This precis of evidence gave details of the title history of the subject premises giving details of the lease taken out between AIB and Sharnbrook on the subject premises and dated the 16th November 1993.

A written submission was received on the 12th day of June 1995 from Mr. Peter Conroy of the Valuation Office on behalf of the respondent.

In the written submission, Mr. Conroy set out the grounds of appeal and the valuation history on the subject premises. Mr. Conroy said that evidence would be produced by Dublin Corporation stating that the required notice was served on Ickendel Limited who as far as could be ascertained were the owners and as the occupier was listed as vacant in the valuation lists, this notice was correctly served on Ickendel Limited. Mr. Conroy also included in his written submission copies of notices issued to the appellant in relation to the written submission and first appeal on the subject premises.

A written submission was received on the 26th day of June 1995 from Mr. Aidan Mullen, Senior Staff Officer of Dublin Corporation.

In the written submission, Mr. Mullen gave a detailed account of the valuation history on the subject premises. Mr. Mullen argued that the points to be considered on the matter included the following:-

1. The obligation to notify only applies where the identity of the occupier and owner is known to the Rating Authority.

2. It is reasonable that where a person is rated in respect of a premises and where no communication is received to the effect that such person should no longer be rated in respect of that property that by issuing a notice to such person the Rating Authority is complying with its obligations under the Valuation Act.

3. A Rating Authority should not be required to go to unreasonable ends to establish

ownership or occupancy to comply with this obligation under the Valuation Act 1988 having particular regard to the fact that it does not have the right to require people to give them information required for this purpose.

4. Ickendel Limited have been connected with 8-34 Percy Place from at lease 1988 through to 1993 covering the period of notification and he contended that by notifying them the Rating Authority was complying with the obligations as far as could be reasonably expected having regard to the information available to it at that time.

5. A standard practice in conveyancing is notifying the Rating Authority of a change of ownership, new leaseholders etc.

There is no record of any such notification being received by the Rating Authority in this case.

Oral Hearing:

The oral hearing took place in Dublin on the 26th day of June 1995. Marcus Daly, SC instructed by Messrs. Arthur Cox & Company, Solicitors appeared on behalf of the appellant. Mr. Peter Conroy appeared on behalf of the respondent and Mr. Terence O'Keeffe, Solicitor represented Dublin Corporation.

In opening, Mr. Daly said that the premises was the old Standard Triumph (Eire) Limited premises. He gave a history of the premises and said that since the 11th June 1990 Ickendel Limited had no title or interest in the property. The entire premises was listed for revision on the 9th November 1991. In relation to that listing, the appeal was struck out as the premises were incapable of beneficial occupation. The result of that appeal was published in April 1992.

In June 1992 there was a substantial article in the Irish Times indicating that the appellants were taking the premises. On the 30th November 1992 a certificate of completion of the fit out was executed by the Architect. The appellants have been in occupation and paying rent since the 1st December 1992.

On the 22nd October 1992 the appellants applied to Dublin Corporation for planning permission to erect signs on the premises. That permission was granted on the 4th December 1992 and these signs were erected. The premises were opened by the Minister for Finance on the 10th March 1993.

Mr. Daly submitted that it was well known to anybody that the appellants were the occupiers of the premises. He referred to the edition of *Thoms Directory* published on the 1st January 1993 and indicated that the appellants were named as occupiers.

On the 10th May 1993, Dublin Corporation requested the Commissioner of Valuation to "value new development". On the 31st May 1993 notice of that application was addressed to Ickendel Limited. No other notice was served. Mr. Daly said that Messrs. Harrington Bannon subsequently enquired as to whether there had been any listing in respect of the premises and that it was then that they discovered there had been an application addressed to Ickendel Limited.

On the 9th November 1993 the Commissioner of Valuation published the list of revised rateable valuations including the subject property. On the 7th December 1993, an appeal was lodged by the appellants. Quantum was agreed at £1,700, but the appellant remained aggrieved on the point of law relating to incorrect notice.

Mr. Daly submitted that the requirements of the 1988 Act are stringent and mandatory as regards the obligation of the Rating Authority. He submitted that "if known" meant that if on any reasonable enquiry the occupier can be ascertained he should be notified. Mr. Daly submitted that the failure to notify is fatal. He referred to the judgment of the Tribunal in appeal ***VA90/3/074 - Trustees of the Cork and Limerick Savings Bank v. Commissioner of Valuation***. In that judgment the Tribunal found, *inter alia*, that once failure to notify has been put in issue by the appellants, there is an onus upon the respondent to establish that there was in fact notification.

At this stage of the hearing it was agreed by all parties that the precis of evidence of Ian A. Scott, Solicitor dated 31st May 1995 and copy documents attached thereto should be treated as being in evidence.

Mr. O'Keeffe said that normal conveyancing practice is that the existing occupier notifies the Local Authority of a change in occupation. He referred to Section 3(4) of the Act and said that the occupier was not known to his clients.

Mr. Aidan Mullen, Senior Staff Officer, Dublin Corporation said that there was a procedure in place for notification. In many cases the owners of premises are not known to the Rating

Authority and enquiries are made. He said that notification was generally given by the solicitors and agents of the owners. Where notices are returned enquiries are generally made. No notice was returned in this case.

From the 10th October 1992, there is no record of any notices being returned. At all stages Ickendel Limited had been rated in respect of the subject property. He said that they had a certificate of postage of all notices and these were produced. On the planning application, the address was not indicated as being 8-34 Percy Place.

Mr. O'Keeffe said that while the 1988 Act puts an obligation on Local Authorities to notify, they are still required to leave open the lists for public inspection.

Mr. O'Keeffe pointed out that the planning application was made by **Allied Irish Fund Managers** and not the appellants; they were indicated as having a leasehold interest in the site. He referred to the photographs and said that one of them indicates **Allied Irish Capital Investment Markets** and another **AIB Investment House**. There was no return of the notification and, therefore, there was no reason to go out and check on the occupation.

Under cross-examination Mr. Mullen was asked how long he had been dealing with this file. He replied that his concern was with areas of notification and listings. He said that the Local Authority cannot rely on information it gets from the Commissioner. The position was that the Local Authority did not consider it necessary to make any enquiries.

Asked if did he not enquire as to why the appeal was struck out, he replied that he did not know that there was any problem. He was referred to *Thoms Directory* and it was pointed out that the occupier was therein listed as **"AIB Investment Services Limited"** and not the appellant. He agreed that Ickendel Limited never appeared on the valuation list and said that they were not relying upon what appears in the list.

Mr. Conroy said that prior to the enactment of the 1986-1988 Acts one of the Valuation Office recommendations was that the rate payers be notified of an intention to value property.

Mr. Maurice Cooper said that he was a director of the appellant and of the parent company, **AIB Investment Services Limited** and was secretary of the appellant. He said that the notice of the 31st May was not received by his company. If they had received such a notice they would have returned it. Under cross-examination, Mr. Cooper said that if such a notice

arrived in the office of his company and there was nobody to deal with it, it would normally end up on his desk.

Mr. Adrian Power-Kelly referred to his precis and confirmed same. Under cross-examination, he said that the firm obtained a copy of the notice subsequently and put it on their file. He first heard of the listing when he enquired in September 1993. He said that he enquired because it had been previously dealt with on appeal.

Mr. Scott referred to his precis. Under cross-examination he said that it is a question for the vendor's solicitor to decide to notify the Rating Authority.

It should be noted that Mr. Daly indicated to the Tribunal that while he was appearing for the appellants he was appearing under protest because, he said, the listing was bad.

Determination:

It is accepted by all that, where the identity of the owner or occupier of a premises is known, there is an obligation on the Rating Authority to notify the owner and occupier. It is further accepted that the occupier was not notified in this case.

While it is accepted that the evidence has established that notification was sent to Ickendel Limited at the appellant's address, the Tribunal accepts the evidence on behalf of the appellant that it did not become aware of that notification until sometime in September, 1993.

The only question for determination by the Tribunal is - was the failure to notify the appellant fatal in this case.

The Tribunal accepts that there is an onus on the Rating Authority to show that reasonable steps were taken to notify the occupier. Evidence is that no enquiries were made but that this was because the Rating Authority was not aware of any problem by reason of the system in place whereby it is normally notified by vendors of change of occupation and, where it is not so notified, does not make enquiries unless notice is returned.

The Tribunal is satisfied that the onus above referred to has been discharged and that this system of notification in place is reasonable and works in the great majority of cases. Had the appellant suffered any prejudice the Tribunal would find otherwise.

The rateable valuation of £1,700 is therefore, affirmed.