Appeal No. VA95/5/007

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Waterford Harbour Commissioners
(Kilkenny County Council - Notice Party) **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Wharf and Yard at Lot No. 1 (part Tideway adj. to 19B, 19N & 25), Townland: Tideway, DED/Ward: Rathpatrick, RD: Waterford II, Co. Kilkenny
Exemption - Public purposes

B E F O R E

Con Guiney - Barrister at Law	**Deputy Chairman**
Fred Devlin - FRICS.ACI Arb.	**Deputy Chairman**
Rita Tynan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF OCTOBER, 1997

By Notice of Appeal dated 5th October 1995 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,900 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are:

"that the subject property is owned by a public authority for public use and should be included in the Distinguished List and is therefore exempt."

The Property:

The property consists of a Container Terminal known as the Belview Port facility. Situated in South County Kilkenny four miles downstream of Waterford City and eleven miles from the mouth of the estuary.

The Container Terminal has 450 metres of container wharf, serviced by two high-output gantry cranes with a design capacity of 150,000 T.E.U.s per annum each. The Terminal is serviced by direct rail spurs and a new road link to the M25.

Relevant Valuation History:

The relevant valuation history is that in November 1993 the subject property was inspected and revised. On 10th November 1993 the valuation lists were issued and an RV fixed at £2,100 on the hereditament described as a wharf and yard. On 3rd December 1993 an appeal was lodged by Waterford Harbour Commissioners against the revised valuation. On 20th September 1995 the Commissioner issued his decision pursuant to the appeal and fixed the valuation at £1,900. Bell Lines Limited continued to be shown as the Rated Occupier.

Written Submissions:

Two written submissions prepared by Mr. Kevin Heery on behalf of the Respondent were received by the Tribunal on 12th February 1997. One of these submissions contained the written agreement between Waterford Harbour Commissioners and Bell Lines Limited which had been furnished by the Appellants at first appeal stage with the request that it be treated in the strictest confidence. The other one of these written submissions contained *inter alia* three comparisons which were stated to be rateable. A further written submission was received by the Tribunal on behalf of the Respondent and prepared by Mr. Heery. This written submission clarified certain details of one of the comparisons and was received by the Tribunal on 7th March 1997. Mr. Heery is a District Valuer with twenty six years experience in the Valuation Office.

A written summary of the evidences, comments on the grounds of appeal and details of Case Law to be opened prepared by James Harte & Co., Solicitors, on behalf of Kilkenny County Council was received by the Tribunal on 21st February 1997. Furthermore, a written statement of the evidence proposed to be given by Mr. Anthony Walsh on behalf of Kilkenny County Council was received by the Tribunal on the same date.

A written précis of the evidence of Waterford Harbour Commissioners was received by the Tribunal on 21st February 1997 and a written reply of Waterford Harbour Commissioners to the submissions of Kilkenny County Council and the Commissioner of Valuation was received by the Tribunal on 14th March 1997.

For the purposes of the appeal quantum has been agreed between the parties at an RV of £1,900. Therefore the issue before the Tribunal is a legal one: namely who is in rateable occupation of the subject of this appeal and if it is determined that the Occupier is Waterford Harbour Commissioners, then the Waterford Harbour Commissioners are a public authority operating the subject property for public use and therefore that the hereditament should be included in the Distinguished List.

Oral Hearing:

The oral hearing of this appeal took place in Kilkenny on 26th February 1997 and was resumed in Dublin on 10th March 1997.

Mr. Bill Shipsey S.C. instructed by Hayes & Co., Solicitors appeared for the Appellant Company.

Mr. James Macken instructed by James Harte & Co., Solicitors appeared for Kilkenny County Council.

Mr. Michael Counihan BL instructed by the Chief State Solicitor appeared for the Commissioner of Valuation.

Mr. John Butler gave sworn testimony on behalf of the Appellant Company, Waterford Harbour Commissioners. He stated he had been employed by the Waterford Harbour Commissioners for 31 years and he was now Deputy General Manager of the organisation and second in command of it. He stated that the Harbour Commissioners owned the property which is the subject of this appeal. It had been purchased in 1988 and was situate in County Kilkenny.

In his evidence, Mr. Butler said that the Harbour Commissioners operated a common user facility on the South Quay in Waterford City.

In 1968 the Harbour Commissioners opened a dedicated port facility for container traffic on the North Quay within the city boundary. The facility here had the advantage of rail and road links. This facility was known as the Frank Cassin Wharf.

Mr. Butler stated that container facility was undertaken by the consortium which operated the facility inasmuch as that the consortium provided an interest free loan of £100,000. This loan amounted to one third of the capital cost of the project.

Mr. Butler referred to the written agreement between the Harbour Commissioners and the consortium dated 11th September 1997 which is at Appendix 3 of the précis of evidence of Waterford Harbour Commissioners received by the Tribunal on 21st February 1997. The consortium comprised the Clyde Shipping Company, the Atlantic Steam Navigation Company and George Bell & Company. George Bell & Company is a business ancestor of Bell Lines Limited.

The agreement provided that the consortium would have "absolute priority" in the use of the wharf (Clause 12 of the agreement). Mr. Butler stated that the Harbour Commissioners did not grant exclusive use of the facility to the consortium. The Commissioners are charged with the proper management and control of the port. They are required to provide adequate facilities to accommodate shipping. They do this on a public use or common user basis. Mr. Butler stated that the Commissioners retained control and the right to direct shipping.

Another aspect of this agreement is that the consortium contracted to ensure a certain minimum amount of container traffic through the facility. The Commissioners required this commitment so that their port charges would be sufficient to meet the Harbour Commissioners' repayments to the financial institutions.
Mr. Butler stated that the consortium never got a lease of the facility. It was and is the policy of the Harbour Commissioners to retain control of their properties.

Waterford Corporation in 1970 attempted to charge rates on the Frank Cassin Wharf. This matter came before the Circuit Court on the 18th February 1971. The Circuit Court decided that the Bellferry Group as the representative of the consortium should be discharged with respect to liability for rates. In effect the Court decided that the facility was exempt from rates.

Mr. Butler stated that over the years the capacity of container ships increased substantially. Due to the navigational difficulties in the entrance to Waterford Harbour encountered by large ships there were delays in discharging these ships. Again no vessel beyond certain dimensions could enter the port at all. These constraints on shipping were threatening the viability of the port.

Mr. Butler stated that a townland called Belview further inland on the estuary was identified as a suitable site for a new port. It had the advantage of deep water suitable for the larger ships. Furthermore it had a railway link to Rosslare and Wexford. Again there was a road link via the M25 to Rosslare and Cork.

Mr. Butler stated 1,000 acres of land were purchased at the Belview townland in co-operation with Kilkenny County Council. The intention was to develop an industrial site on the land adjacent to the port. The project cost in the region of £20,000,000, £10,000,000 was provided by the European Regional Development Fund. The Commissioners borrowed the balance from the European Investment Bank on foot of a guarantee as to repayments by the Irish Government.

The new port was a dedicated container facility. Mr. Butler stated the Commissioners canvassed approximately thirty companies to operate the facility. At the end of the process Bell Lines Limited were the only party prepared to operate the facility. Bell Lines Limited was the corporate successor to the Bellferry Group which had operated at the Frank Cassin Wharf. The other two members of the consortium had been taken over by the Bellferry Group.

Mr. Butler stated that prior to the entering into the agreement with Bell Lines the Department of the Marine insisted that the port be a common user facility. Mr. Butler stated that the agreement for the new port was analogous to the agreement at the Frank Cassin Wharf. Bell Lines Limited, were required to guarantee a certain minimum throughput of container traffic. This would enable the Commissioners to charge port dues sufficient to meet the bank loan repayments. Bell Lines guaranteed a throughput of 175,000 T.E.U.s. T.E.U. means Twenty foot Equivalent Unit and it is the standard unit of measurement in the container business. The agreement between the parties was dated 26th March, 1992 and Mr. Butler stated this was the only agreement existing between the Harbour Commissioners and Bell Lines Limited with respect to the facility at Belview. He further stated that the Harbour Commissioners operated a common user facility there and there was control of the facility by them. He stated

that the Commissioners actively canvass for non Bell business at the facility. The facility opened for business in September 1993.

In his evidence Mr. Butler said that cruise ships were berthed at a 50 metre facility which is immediately adjacent to the 450 metre facility which is the subject of this appeal. He stated that because the 50 metre facility was so small the cruise ships inevitably berthed on part of the 450 metre quay. Mr. Butler stated that in the near future they would have a representative at a Miami conference promoting Belview as a cruise destination. In his evidence, Mr. Butler detailed cruise ships which docked at the 450 metre facility since it opened for business; these included the Caledonian Star and the Astra. He stated that six or seven cruise ships used Belview last year.

Mr. Butler stated that in the efforts to attract business to the facility the Commissioners had succeeded in bringing Fyffes banana ships to the port. These ships were 150 metres long. Mr. Butler said that on average one banana boat a week used the facility since the end of 1994. He said these boats landed their cargo at the container terminal.

Mr. Butler gave further evidence of other uses of the Belview container facility. A number of companies were involved in exporting boxed meat. The ships involved are chartered on the spot market. Again steel products and all the heavy machinery for the Louisanna Pacific were landed at the Belview facility. Louisanna Pacific is a factory located adjacent to the Port which uses forestry thinnings from Coillte forests in Ireland. The finished product liner board, is shipped out from the facility on ships chartered on the spot market.

Mr. Butler stated that a vessel belonging to I.C.L. docked at Belview. It was a 12,000 ton container vessel, the largest container ship ever in Waterford. The Waterford Harbour Commissioners wanted to develop a North Atlantic container business from Ireland. This would be a more economical service as it would eliminate the present feeder system to Europe and then transhipment to North America. Mr. Butler stated that the I.C.L. were very satisfied with the trial run but the business could not be developed due to the damage to the gantry cranes in 1996.

Mr. Butler stated that the large gantry cranes at the Belview facility were owned by the Waterford Harbour Commissioners. The Commissioners also owned the offices and warehouses on the quay and that the précis of evidence of Mr. Anthony Walsh which stated the contrary was incorrect.

Mr. Butler stated that Mr. Heery's written submission was incorrect in that it stated that there was no other user of the terminal since it commenced operations in 1993, other than Bell Lines Limited. Mr. Butler stated that Mr. Heery's written submission was incorrect when it stated that other users of the port primarily used the 50 metre wharf and only marginally overlapped onto the 450 metre quay.

On cross-examination Mr. Macken pointed out that the agreement with respect to the Frank Cassin Wharf at paragraph 12 provided for the multiple use of the facility and queried why there was no such provision in the 1992 agreement. In reply, Mr. Butler stated that because of the magnitude of the investment it was the policy of the Commissioners to provide a public facility and common user at Belview. The Commissioners had never deviated from this policy.
Again Mr. Macken referred to paragraph 7 of the 1992 agreement which relates to access to the facility by persons designated by the Commissioners. In reply Mr. Butler stated that priority use to Bell Lines Ltd. does not give them exclusive use. The Commissioners control the facility as a public one. Mr. Butler further stated that 75% of the business at the facility was sourced to Bell Lines Limited and 25% of the business is accounted for by other users.

In further replies to Mr. Macken, Mr. Butler stated that a subsidiary of Bell Lines performed stevedoring facilities at the port and that another subsidiary of Bell Lines as a ships' agent collected the harbour dues for Waterford Harbour Commissioners.

In his cross-examination, Mr. Counihan referred to the fact that under the 1992 agreement Bell Lines Limited were obliged to pay the Harbour Commissioners £300,000 annually for throughput even if Bell Lines Limited brought in a quantity of T.E.U.s which would give rise to a lessor charge. Mr. Counihan referred to para. 2(d) of the 1992 agreement which obliged Bell Lines Limited to pay a charge to the Department of the Marine for the foreshore lease an obligation which was imposed on no other user of the port. Again Mr. Counihan referred to para. 2(f) of the 1992 agreement which obliged Bell Lines Limited to pay any rates and all repairs to the terminal no matter who uses it.

Mr. Counihan put it to Mr. Butler that the Commissioners power to direct shipping in the port is a policing power for safety reasons and is a performance of the Commissioners statutory duty.

Mr. Counihan produced a copy advertisement to Mr. Butler which stated that Bell Lines Limited had a facility at Belview which operated 24 hours on a seven day week. Mr. Counihan put it that any other user would be subject to this agreement. In reply, Mr. Butler stated that the material used in conjunction with the advertisement showed a capacity of 150,000 T.E.U.s. The actual capacity was 250,000 T.E.U.s. Mr. Butler stated that ship owners would know that capacity for other users existed at the port.

Mr. Hayden was the next witness called to give evidence by Mr. Shipsey. In his sworn testimony he said he was Managing Director of Bell Lines Limited. He stated he had been an employee of the company for 26 years. He said that the crane at the Frank Cassin Wharf was owned by George Bell & Company Limited.

In his evidence Mr. Hayden said that his company saw the need for a new facility at Waterford due to the problems already outlined by Mr. Butler. Again he said the crane at the Frank Cassin Wharf was too low to get over bigger vessels.

He described the working of the 1992 agreement. When a ship was due, the harbour master would contact the Terminal Manager asking for accommodation. There was an understanding that there would be accommodation for shipping. Mr. Hayden stated that Bell Lines Limited wanted to attract business to the port. The Company was in the transport business. By attracting volume to the port they reduced costs on the liner trains, this was important as 60% of the company's costs were incurred in the land transport side of the business. Mr. Hayden stated that in his company's desire to attract more business to Belview that this included the business of competitors.

Under cross-examination by Mr. Macken, Mr. Butler stated Bell Lines Limited charters space on trains and trucks and they would also charter ships for containers. Mr. Butler further replied that Bell Lines Limited would provide transport facilities for the banana boats as requested.

In further replies to Mr. Macken, Mr. Hayden stated that stevedoring on the non-container business is carried out by a subsidiary of Bell Lines Limited. The container business is stevedored by Bell Lines Limited. In further replies he stated that the Bell Lines Limited ship's agent gets 70% of the non-container business. The ships agency for container ships is operated by Bell Lines Limited.

Under further cross-examination by Mr. Macken, Mr. Hayden stated that at present one ship in six is non container. Mr. Hayden further stated in reply that in 1994 and 1995 the banana ships got priority at the Belview facility.
Under cross-examination by Mr. Counihan that the berthing of other users at the 50 metre quay was as described by Mr. Heery's précis at page 4 (section 6), Mr. Hayden stated this was impossible. He stated that 150 metre boats could not dock at a 50 metre berth. It was impossible to unload cargo and unsafe for passengers at the 50 metre quay.

Mr. Counihan showed Mr. Hayden a photograph of the Belview facility which in his view showed the 450 metre quay full of Bell containers. Mr. Hayden did not agree. He stated the facility had a capacity of 300,000 T.E.U.s but it was operating at 50% of capacity. In further replies Mr. Hayden said the banana boat had absolute priority for unloading.

Mr. Counihan put it to Mr. Hayden that the reason Bell Lines Limited had responsibility for repairs and maintenance under the 1992 agreement is that the company was in a dominant position in the Port. Mr. Hayden replied that the repairs at the Frank Cassin Wharf had been carried out by Waterford Harbour Commissioners and were very expensive. His company found it more economical to do their own repair and maintenance.

Mr. Counihan asked Mr. Hayden where was the provision for shared use in the 1992 agreement. Mr. Hayden said that it was in the management agreement. If Bell Lines Limited did not manage the facility properly they would be evicted by the Harbour Commissioners.

Mr. Macken put in evidence the planning permission for the Belview facility by way of questions to Mr. Butler in connection with the copy planning permissions which Mr. Macken produced to the Tribunal.

Mr. Butler agreed that permission number 241/89 was in respect of the original construction of the facility. Mr. Macken referred to para. 3 of the permission which limited the user to "lift on/lift off unitised cargo". Mr. Butler stated that unitised cargoes could include bananas secured on pallets.

The second planning permission put in evidence was number 683/94. This permission allowed retention of the 50 metre quay for cruise liners and other purposes and extended the range of goods which could be unloaded at the Belview facility.

In opening his case, Mr. Macken called Mr. Anthony Walsh. Mr. Walsh stated in his sworn evidence that he was Chief Executive of the Kilkenny County Enterprise Board. He further stated that as part of his employment he was extensively involved for the last five years in the development of the Belview facility. He further stated that he frequently visited the facility and that the 450 metres quay appeared to be exclusively controlled by Bell Lines Limited.

In cross-examination, Mr. Shipsey put it to him that there were other users of the facility.

Mr. Counihan called Mr. Heery. In his sworn testimony Mr. Heery adopted his written submissions as his evidence to the Tribunal. Mr. Heery stated that he inspected the facility twice in 1995. He spoke to a Ms. Dempsey on the site who told him about the cruise ships docking at the 50 metre quay. Mr. Heery stated that his impression from the site was that Bell Lines Limited had exclusive control of the facility. This impression had been added to by his conversations with Bell Lines Limited employees and conversations with Waterford Harbour Commissioners employees. As to his three comparisons he believed they were similar and rated. He had not inspected his comparisons. He had obtained the information from the valuation records. He further stated that a security company was employed by Bell Lines Limited to control access to the facility.

Under cross examination by Mr. Shipsey, Mr. Heery stated that his visits to the facility lasted approximately two hours each. He stated that he had spoken to Mr. Claney General Manager of Waterford Harbour Commissioners but he had not spoken to Mr. Butler.

Mr. Shipsey put it to Mr. Heery that his visits to the facility were only impressions. If Mr. Heery had been there when the non Bell Lines Limited boats were there he would have a different impression and he could not then say that Bell Lines Limited use of the facility was exclusive. Mr. Heery further replied that the written agreement of 1992, his own observations on site and conversations with the personnel of Bell Lines Limited were evidence on which he based his conclusions contained in his précis of evidence.

At the resumed hearing in Dublin, Mr. Richardson gave sworn testimony. He stated that the was General Manager of Dublin Ferryport Terminals. Mr. Shipsey asked him to comment on Mr. Heery's written submission dated 7th March 1997 which dealt with Mr. Heery's second comparison. Mr. Richardson stated that his company had licence to operate at specific times at Dublin Ferryport. He stated that no employees of Dublin Port and Docks Board operated the facility. Dublin Port and Docks Board were however responsible for the maintenance of

the facility. He stated there was only one other user of the Ferryport. His company the I.C.G. Group operated two sailings per day, 363 days per year. The other user was the Isle of Man Steam Packet Company which in the last year had operated approximately 30 summer sailings.

Mr. Heery in his written submission, dated 7th March 1997 had stated that the Ferryport had been distinguished as being exempt in 1969 on the basis of it being a common user facility controlled by Dublin Port and Docks Board.

Under cross-examination by Mr. Counihan, Mr. Richardson stated that I.C.G. Plc had two locations in Dublin Port

(a) Ferry port
(b) Container port

In further replies he stated that at the Ferry port his company only operate within specific time slots and if the company wants to increase its time slots it must obtain the permission of the Dublin Port and Dock Board.

In his legal submissions, Mr. Shipsey stated that the evidence produced by the Appellants had established that the port at Belview was a common user facility.

Mr. Shipsey then dealt with the meaning and effect of some terms which had arisen in the hearing. Exclusive meant to the exclusion of all others. Paramount use he accepted in some limited circumstances gave rise to a liability for rates. The legal definition of paramount was Supreme Lord of a fee. He stated that Bell Lines Limited was not in supreme control of the facility at Belview, the Waterford Harbour Commissioners were.

Mr. Shipsey compared the 1967 agreement for the Frank Cassin Wharf with the 1992 agreement for Belview. He stated that "absolute priority" in 1967 conferred greater exclusivity than "priority use" in the 1992 agreement. Again at the Frank Cassin Wharf the crane was owned by the consortium and the Commissioners had to obtain permission to use it. At Belview the Commissioners owned all the cranes. Mr. Shipsey pointed out that the Frank Cassin Wharf had been part financed by the consortium whereas the Harbour Commissioners had been responsible for all the financing at Belview. Again he pointed out that the 1992 agreement provided no security of tenure (leasehold or freehold) for Bell Lines

Limited. The Priority Use Agreement is a licence but one which imposes heavy obligation on Bell Lines Limited in Mr. Shipsey's submission. These obligations are set out in para. 2 of the 1992 agreement.

Mr. Shipsey submitted that if the Harbour Commissioners had intended to give Bell Lines Limited exclusive use of the facility they would have inserted a term to that effect in the 1992 agreement.

Mr. Shipsey referred to Clause 7 of the 1992 agreement which gave power to the Commissioners to designate persons including third parties to conduct checks in the facility and Bell Lines Limited being obliged to accede to this. Again in para. 10 of the 1992 agreement the Commissioners had a right to unilaterally terminate the agreement in certain circumstances and that there was no corresponding right accruing to Bell Lines Limited.

Mr. Shipsey submitted that the predominating right of control was reserved to the Commissioners. There was no specific term in the 1992 agreement reserving control. There was no need for it. The Commissioners were owners of the facility and the three recitals at the beginning of the 1992 agreement clearly shows the Commissioners as being owners of the facility.

Mr. Shipsey then referred to his authorities. ***Aer Rianta CPT v Commissioner of Valuation*** (Supreme Court unreported 6th November 1996) is authority for the proposition that decisions on Rating Law in the United Kingdom Courts are persuasive in the jurisdiction. He then referred to ***City of Westminster v Southern Rail Company and others [1936] AC511***. Mr. Shipsey referred to 531 and 532 of the judgment which enunciated the landlord-control principle with respect to a tenant. There the landlord is rateable because he retains general control over the property in which the tenants reside. In the Westminster case it was stated that the landlord control principle extended to other situations.

The judgment went on to state that two such cases were ***Allan v Liverpool Overseers [1894] Law Reports 9QB 180*** and ***Rochdale Canal Co. v Brewster [1894] 2QB 852***. There the Mersey Docks Board were held in each case to be in rateable occupation of premises (part of their dock system) which they had appropriated to the use of others. The judge in the Westminster case considered that the true ground of the decisions was that the use made of the appropriated premises was subject to the general control of the Board.

Mr. Shipsey said that these two cases were his principal authorities for the proposition that Bell Lines Limited were not in rateable occupation of the Belview facility. The facts in each of these cases were similar and in addition were similar to the subject matter of this appeal in Mr. Shipsey's submission. In each of these cases the Docks Board had appropriated quay space and other facilities to individual occupiers. The Docks Board had however not parted with the exclusive possession of the appropriated facilities (in the judgment of the Court) and therefore the individual occupiers were not in rateable occupation of their respective facilities.

Mr. Shipsey contended that the facts in relation to the Belview facilities were directly equivalent to the facts in his two principal authorities. Indeed he contended that the facts in ***Allan v Liverpool Overseers*** went beyond the facts in this appeal. In the Allan case the occupier of the appropriated space on the quay had exclusive use of it.

Mr. Shipsey contended that Waterford Harbour Commissioners enjoyed the paramount control of the Belview facility. They are the paramount occupiers for the purposes of rating legislation. He said that Bell Lines Limited are the principal user of the facility but it does not enjoy the degree of paramount occupation to which the authorities refer.

Mr. Macken then made legal submissions on behalf of Kilkenny County Council. He drew attention to the original planning permission for the Belview facility, granted 10th October 1990, and the second planning permission granted on 29th March 1996. Mr. Macken contended that it was not until 29th March 1996 that the use of the terminal for cruise ships and general cargo was lawful and then only at the 50 metre quay which was outside the scope of the 1992 agreement.

Mr. Macken contended that the 1992 agreement contains all the elements one would expect to find in a lease. Mr. Macken pointed out that there is no specific provision in the 1992 agreement requiring Bell Lines Limited to allow other users access to the wharf. Mr. Macken submitted that priority use in the 1992 agreement is exclusive use. Mr. Macken stated that the facts in ***Dublin County Council v West Link Toll Bridge Ltd. H.C. (1994) 2IRLM 232*** are directly comparable to the facts in this appeal. There the defendant enjoyed an exclusive franchise to collect tolls on a Road. The Court considered the agreement between the Council and the defendant was a rates avoidance mechanism which it decided it was not going to uphold.

Mr. Macken submitted that Mr. Shipsey's principal authorities were old law and should be treated with caution. They were decided when it was thought that to be in rateable occupation the occupier needed to have a lease agreement.

In connection with the use of the Belview facility by non container ships and cruise ships Mr. Macken submitted that these were controlled by the Bell Lines Limited Terminal Manager and unloaded by a subsidiary of Bell Lines Limited.

Finally, Mr. Macken submitted that even if Waterford Harbour Commissioners are in exclusive control of the Belview facility it would still have to show that the facility was used for public purposes with no private profit or use being derived therefrom. Mr. Macken cited the authority of **Mr. Justice Keane at 297** of his book, **The Law of Local Government** in the Republic of Ireland where he stated that "used for public purposes" where

(1) "it belongs to the government or
(2) each member of the public has an interest in the property."

Mr. Macken submitted the property belonged to the Waterford Harbour Commissioners and was subject to the 1992 agreement. In addition Bell Lines Limited derived a private profit from the facility.

In his submissions, Mr. Counihan stated that Bell Lines Limited were in rateable occupation of the Belview facility. He pointed to the contrast with the facility at Dublin Ferryport on which Mr. Richardson had given evidence. There Mr. Richardson's company could only berth at specific times whereas Bell Lines were under no such restraint. He submitted that this was the reason why Mr. Butler spoke about co-operation between the Harbour Commissioners and the management of Bell Lines Limited.

Mr. Counihan again referred to the antiquity of Mr. Shipsey's authorities and stated that the modern law on rateable occupation has its origin in the ***Westminster Council v Southern Railway Company and others [1936] AC511***. This case established that the criterion for rateable occupation is *de facto* occupation.

Mr. Counihan submitted that the decision in the Westminster case had been approved in this jurisdiction in cases such ***Carroll v Mayo County Council [1967] IR 361***. Mr. Counihan submitted that in entering into the 1992 agreement Waterford Harbour Commissioners had divested themselves of control of the Belview facility for valuable consideration for a period

of fifteen years. Therefore Bell Lines Limited were in *de facto* occupation of the Belview facility and rateable.

Determination:

In arriving at a determination in this appeal the Tribunal must consider the evidence offered before it. The Tribunal must also construe the terms and effect of the 1992 agreement. Finally, the authorities opened by the parties to the appeal must be evaluated.

The evidence heard by the Tribunal must be the primary ground in arriving at a decision. The two witnesses for the Appellants were very experienced, senior and long time employees of their respective organisations. They gave detailed and comprehensive evidence to the Tribunal. On the other hand the two witnesses for the Respondent did not produce evidence with a similar range or comprehensiveness. Mr. Heery's evidence as to the user of the facility was based on impressions he had formed during a very limited number of visits he had made to the site of very short duration. Mr. Walsh was quite familiar with the site and his evidence was a generalised statement that Bell Lines Limited were in exclusive control of the Belview facility. Nowhere in his evidence however was there a detailed rebuttal of the very detailed evidence provided by the Appellant.

The Tribunal therefore considers that greater weight must be attached to the evidence of the Appellant. The Tribunal accepts that the evidence of the Appellants, which is already recited in this judgment is the more accurate description of the facts pertaining to the Belview facility.

Leading on from this evidence in construing the 1992 agreement the Tribunal considers that the decisive parts are the initial three recitals and Clause 10 of the agreement. The Tribunal considers that these parts of the agreement show that Waterford Harbour Commissioners remained owners of the facility and had permitted Bell Lines Limited into it on foot of a management agreement which could be unilaterally terminated by the Commissioners if any terms of the agreement were being operated in an unsatisfactory manner by Bell Lines Limited.

Finally, the Tribunal considers that the authorities opened by the Appellant are more relevant than the authorities opened by Counsel for Kilkenny County Council and Counsel for the Commissioner for Valuation. In particular ***Dublin County Council v West Link Toll Bridge***

Limited and ***Carroll v Mayo County Council*** are clearly distinguishable on the facts; in each of these cases there was exclusive user by one party of the facility in question.

Accordingly, the Tribunal determines that Bell Lines Limited is not in rateable occupation of the subject matter of this appeal; that Waterford Harbour Commissioners are not in rateable occupation of the said facility as the same is being used by the Commissioners for public purposes and should be distinguished and exempted pursuant to the proviso contained in *Section 63 of the Poor Relief (Ireland) Act 1838.*