Appeal No. VA95/5/015

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

John Pettitt & Son Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Supermarket & yard at Map Ref: 73/74 (including 69b/70b Main Street), Main Street, RD: Gorey Urban, Co. Wexford
Notification of revision, mapping error, lot description

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Fred Devlin - FRICS.ACI Arb.	**Deputy Chairman**
Marie Connellan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF OCTOBER, 1997

1. By Notice of Appeal dated the 13th day of October 1995 the Appellant Company, Messrs. John Pettitt & Son Limited, appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £450 on the above described hereditament.

The grounds of appeal as set out in the said notice are:-

(a) "The valuation is excessive, inequitable, unwarranted and bad in law and

(b) The Commissioner of Valuation has not complied with Statutory procedures in assessing the valuation of Lot No. 74, Main Street. This both at revision and first appeal stage."

2. Messrs. John Pettitt & Son Limited is a company with limited liability and is both the Owner in Fee Simple and Occupier of the above described hereditament which said hereditament is used for the purposes of carrying on a supermarket business and is located at Main Street, Gorey, Co. Wexford. This property, which fronts on to Main Street, is laid out in typical supermarket form and is serviced by car parking facilities at both the side and rear. Throughout the years, many extensions and enlargements have taken place with the result that the total area, both of the ground and first floor, is now in excess of 22,000 sq.ft. Again throughout the years, as one would expect, there have been many Revisions and Appeals relating to this property. This Judgment is concerned solely with the Revisions which were carried out in 1992 and 1994 and with the Valuation and Legal consequence thereof.

3. In the context of this appeal the following are the relevant dates and events which are material to this Tribunal in determining the issues currently before it.

(a) **28th July 1992:-**

Wexford County Council, as the Relevant Rating Authority, sent to the Commissioner of Valuation a form known as Form R2. Therein, the property to be revised is described by reference to a Map as being "Lot No. 73", with the Owners and Occupiers being given as the Appellant Company. A description of the tenement is included and then, under the heading of "Nature of Revision Required", the following is stated "value extensions to supermarket and car park".

(b) **11th August 1992:-**

The Rating Authority on this date wrote to Messrs. John Pettitt & Son Limited and gave to that company, pursuant to *Section 3(4)(a) of the Valuation Act 1988*, notice of the fact that the holding, described therein, had been listed by the County Council for revision. That holding was given as "Lot No. 73" and was not otherwise identified or described.

(c) **5th July 1994:-**

On this date a second R2 form was completed by an Officer of the Commissioner of Valuation, thereby initiating a revision of the property

therein described as Lot No. 74 being in fact two separate hereditaments; the first occupied by a Mrs. Finn (immediate lessor Ruth McDonagh) which had a rateable valuation of £5 thereon with the second being owned and occupied by a Miss Cahill which had a valuation of £15.50 thereon. On that Form under the heading of "Nature of Revision Required", the entry, opposite Lot No. 74, read "premises now part of Pettitt supermarket/amalgamate with Lot No. 73". *(d)* **10th August 1994:-**

The Commissioner of Valuation issued a Revised List placing a Rateable Valuation of £450 on "Pettitt Supermarket".

(e) **23rd August 1994:-**

Agents, on behalf of the Ratepayer, appealed to the Commissioner of Valuation against this determination of £450.

(f) **18th September 1995:-**

The Commissioner issued the results of this First Appeal process which showed no change in the rateable valuation.

(g) **13th October 1995:-**

The Appellant Company appealed against that decision to this Tribunal.

4. In addition to the matters referred to in the paragraph immediately preceding, the following are also facts, either agreed or so found, which emerged during the course of the hearing and which are both relevant and material to this Appeal.

(a) As part of the 1992 Revision, the Revising Valuer, during the course of his inspection, noticed that part of the hereditament had, by that date, been extended into Lot No. 74 and hence his initiative in the 1994 Revision.

(b) The Rating Authority did not, in the process of the Revision last mentioned, serve any Notice on the Appellant Company under *Section 3(4)(a) of the 1988 Act.*

(c) At the 1994/3 issue an administrative error occurred in that no amendment was made to Lot No. 74 in the Valuation Office Book. That error was observed by the Appeal Valuer, who with the sanction of the Commissioner,

proposed that the hereditaments above mentioned being these formally comprising Lot No. 74 should be deleted and that a corrected list should issue with the First Appeal results on the 18th September 1995. Unfortunately such a correction did not take place at that time.

(d) Following the service of the Notice of Appeal to this Tribunal, the Appeal Valuer once again noticed the continuance of this error. Accordingly, on the 18th January 1996 he wrote to the Rating Authority, pointing out what the problem was and requesting a deletion from the list of the entire of Lot No. 74, being the hereditaments occupied by Mrs Finn and Miss Cahill respectively.

On the same date he also wrote to the agents retained on behalf of the Appellant Company pointing out the error, its history and his suggested course of action.

(e) In the months following Wexford County Council looked into this matter. During the course of their enquiries it emerged that the extension to the supermarket, whilst incorporating the hereditament formally occupied by Mrs Finn, did not in any way encroach upon the property occupied by Miss Cahill. It so informed the Commissioner. Accordingly on the 21st May 1996 the Appeal Valuer once again wrote to Messrs. Hennigan & Company and having set out the latest position, then proposed that Lot No. 74 should be subdivided with that portion formally occupied by Mrs Finn but by that date incorporated into the supermarket, being designated Lot No. 74a with the remainder, being the chemist shop owned and occupied by Miss Cahill being designated as Lot No. 74b.

(f) A mention was also made of Lot Numbers 69b and 70b which Lot Numbers were first created at the Annual Revision in 1944. However no valuation map could be produced which showed these Lot Nos. or the Boundaries thereof. In addition a doubt and uncertainty arose as to whether Lot No. 72 was or was not included in the valuation.

5. At the hearing of this Appeal a number of issues arose between the parties not only in relation to what should be the correct measure of valuation but also as to the validity of both the 1992 and 1994 Revisions. The legal issues so raised were and can conveniently be dealt with as follows:-

Firstly, it was submitted on behalf of the Ratepayer that by reason of the inadequacy of the Maps and the mapping system used, the resulting Revisions were invalid.

Secondly, it was submitted that by reason of both this inadequacy and the administrative errors above identified, the Commissioner had no jurisdiction to embark upon either Revision and that accordingly the results were null and void and of no effect.

Thirdly, it was claimed that in relation to the 1994 Revision the Rating Authority had not complied with the requirements of *Section 3(4)(a) of the 1988 Act*, that such compliance was a mandatory prerequisite to the valid listing of the subject property and accordingly because of this failure the results were totally flawed and,

Fourthly, it was suggested that even if the listing was valid, the Commissioner had no jurisdiction to issue the results of that Revision at any time prior to the 1st day of November 1994, that day being the first day next following the quarter in which the Revision was made.

As well as joining issue with the Appellant Company on all of these submissions the Commissioner further raised as a defence to the alleged Mapping inadequacy, the point that since the Appellant had not advanced that ground at First Appeal Stage it should not now be allowed to do so.

To these legal issues we now turn.

6. **The Notice of Appeal & Grounds Thereof:-**

There is no doubt but that the Appellant Company did not, at First Appeal Stage, make any case about the inadequacy of the maps or the mapping system used or

adopted by the Commissioner. Hence it is argued that the Company should not now be permitted to raise this point before us. In support of this submission the Tribunal was referred to a number of its own decisions, including **Ebeltoft Limited t/a "Hunter's" Licensed Premises v. Commissioner of Valuation (VA88/0/165)**, **Starlighting v. Commissioner of Valuation (VA92/6/050), Dublin County Council v. Commissioner of Valuation (VA92/5/008 - 012) and Topline Fashions v. Commissioner of Valuation (VA92/3/017).**

7. If the case being made on behalf of the Commissioner was to the effect, that the rule of practice underpinning this submission was to operate, without exception or qualification, then the submission so made would be rejected by us. The Appeal process in Valuation matters, is governed by the provisions of the Valuation Acts, 1852/1988. It involves two stages after the initial Revision. The First Appeal process has a mechanism within its application which enables representations to be made by or on behalf of a Ratepayer. These may be verbal or in writing and may be supported by such evidence as is available and material. There is not however, any forum at which both parties can be heard and which, independently and in its own right, makes and reaches a decision. The appeal to this Tribunal, which makes that forum available, is, as everybody knows, by way of an entire re-hearing. Evidence is adduced by both parties; evidence can be called on their behalf and submissions can be made. It is in effect a hearing *de novo*. In that way both appeal procedures but in particular that prevailing before this Tribunal is more akin to what happens with District Court Appeals and Circuit Court Appeals than it is to the jurisprudence followed by the Supreme Court. In the Rules of both the Circuit Court and the Superior Courts, dealing with Circuit appeals, the appropriate Judge is vested with full discretion to allow such amendments as he sees fit. He is given full power to permit the reception of evidence which had not been presented in the Court below. He can, in all of these circumstances, make whatever order the justice of the case requires.

Quite frequently that element of justice will be served by simply permitting an amendment or by allowing the introduction of further evidence, without more. In other incidences, which are quite rare and quite limited, it may be necessary to

exclude any expansion of either the grounds of appeal or the evidence previously adduced. In the vast majority of cases however, the Rules of Court and the powers of Judges are sufficiently extensive to ensure that if such amendment is allowed or such evidence permitted, then by the imposition of costs or by the granting of an adjournment or otherwise, the balancing of the scales of justice is achieved admirably as between the parties. In neither Court however is there any Rule of Practice, much less of Statutory origin which, without exception forbids such an amendment or refuses the reception of such evidence.

8. The procedure before the Supreme Court is of course quite different than that prevailing in either of the Courts last mentioned. Essentially, though by no means exclusively it is an appellate jurisdiction confined to points of law. As might be imagined the issue presently under discussion has frequently been raised in the Supreme Court. This question is not to be confused with other though different circumstances. For example there is no doubt but that the Supreme Court has jurisdiction to raise, of its own motion, an issue which had never been raised in the High Court. See ***Keenan v. Shield Insurance Company Ltd. [1988] I.R. 89***.
Equally so, on a number of occasions that Court has permitted a point of law to be raised, argued, debated and judged upon even though the same was not raised in the High Court or even by the Appellant himself in the Supreme Court. See ***Burke (minor) v. Dublin Corporation [1991] I.R. 341*** and ***Manning v. Shackelton [1997] 2ILRM 26***.
See also ***Rooney v. Connolly [1986] I.R. 352***.

9. On the precise issue as raised in this first submission the Supreme Court has given a number of decisions including that in the case ***K.D. (otherwise C.) v. M.C. [1985] I.R. 657***. In that case, the facts of which are not relevant, the Chief Justice at p701 of the Report said:-

> *"it is a fundamental principle, arising from the <u>exclusively appellate jurisdiction of this Court</u> in cases, such as this that, save in the most exceptional cases, the Court should not hear and determine an issue which*

has not been tried and decided in the High Court. To that fundamental rule or principle there may be exceptions, but they must be clearly required in the interests of justice. This case can not, in my view, however provide such an exception".

In applying that principle the Supreme Court has permitted parties to raise before it, issues which had not been raised in the Court below for example the Constitutional validity of a statute (***O'Shea v. DPP [1988] I.R. 655***), and an issue as to whether or not a statutory instrument was *ultra vires* the power of the rule making person. (***Harvey v. Minister for Social Welfare, Supreme Court, 10/5/88***). See also ***O'Keeffe v. O'Flynn Exhams & Partners Supreme Court, 26/7/93***. There are, it should be said several other such decisions. Some permitting the raising of a new ground whilst other rejecting it. The test in all cases is whether, given the importance of the issue on the one hand and the rights of the Respondent on the other, it is, in the interests of justice, desirable or necessary to permit the amendment. In all such cases it is for the Court or Tribunal to make that decision and for the moving party to discharge the onus of proof.

10. This Tribunal is of course a creature of statute. It is not a Court established by or under the Constitution or by or under the *Courts (Establishment & Constitution) Act 1961*. Whilst its existence depends on the 1988 Act, the validity of its actions and decisions must surely be constitutionally safe as falling within the Provisions of Article 37 thereof. In any event it would in our view be quite invidious for a Tribunal of this nature to have a rule of practice or procedure or to adopt a jurisprudence which is at variance with that practised in the Courts above mentioned and in particular in the Supreme Court. It seems to us therefore that we ought, and indeed must follow the principles enunciated in the cases above identified. Accordingly it is our firm view that it would be quite wrong to have a practice of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us nevertheless, in exceptional circumstances where the

interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced. We are satisfied that the previous judgments of this Tribunal, on this point, were all intended to be read and understood in this manner.

11. Applying these principles to the facts of this case, we are quite certain that not only does the justice of the situation suggest but indeed it demands that the Appellant Company be permitted to raise the mapping issued before us. A brief consideration of the facts, as outlined above, justifies this conclusion. Moreover as the case proceeded and as confusion after confusion emerged and abounded it would not in our opinion have been possible, in any equitable way to proceed with this appeal and make a decision thereon without first having this issue fully explained, debated and discussed.

12. **The Mapping Issue:-**

At the resumed hearing we had further evidence from the Appeal Valuer, Mr. McBride and also from Mr. Patrick Gallagher, a Superintendent in the Commissioners Office. From that evidence the following, confined to the relevant lot numbers emerged:-

Lot Nos.: 69a & 70a and 69b & 70b: were created at the Annual Revision in 1944. These however were not mapped at that time or indeed, prior to 1994, in any subsequent maps. In 1980 Nos. 69b and 70b were valued with Lot 73 and the rateable valuation of £185 placed thereon. In all the lists published since then, Lot Nos. 69b

and 70b have been included in the description of the tenement referred to as Lot Nos. 73.

Lot No. 72 first appeared in the primary valuation book of 1853. In 1855 this was amalgamated with Lot No. 73 but shortly thereafter was again separated. Since then Lot No. 72 has retained a separate lot number in the valuation office books.

Lot No. 73 also appeared for the first time in the primary valuation book of 1853.

Following its amalgamation and subsequent separation from Lot No. 72, Lot No. 73 has, either alone or with additions, appeared as such ever since. As above stated Lot No's 69b and 70b were valued with Lot No's 73 in 1980. In 1985 a rateable valuation of £320 was placed on Lot No. 73 with the occupier and immediate lessor given as the Appellant Company. On appeal the figure was reduced to £265. In 1990 annual revision Lot No. 73 had its valuation increased to £295 but otherwise there was no change.

The relevant history of Lot No. 74 is given above.

13. There is no doubt but that throughout the years certain discrepancies have existed with regard to the various maps and in particular with regard to the placement on these maps of specific Lot Nos. In addition from time to time the correct boundaries have not been delineated. All of this must inevitably give rise to confusion and must make it quite difficult to piece together in any logical way a sequence of valuation with regard to certain hereditaments. However, it should be said that, we have considerable sympathy for the Commissioner in this context in that with the multiplicity of what now constitutes a "unit of valuation" it is almost impossible to be fully accurate given the inherent limitations of what can be depicted on a plan. Perhaps some simpler and easier method of identification can be discovered. In any event we are quite satisfied with this further evidence given on behalf of the Commissioner and thus having considered this issue of mapping in some depth we are of the view that whatever confusion or errors did exist the same did not of themselves invalidate the entire revision process.

14. **Jurisdiction of the Commissioner to Revise:-**

Either as part of the submission immediately proceeding or also as a separate and distinct ground of appeal it was urged upon us that these mapping difficulties and also the incorrect use of lot numbers meant that the Commissioner had no jurisdiction to embark upon the revisions in which he did.

Under *Section 29 of the 1852 Act* the Secretary of a Rating Authority, on or before a specified date in each year, was obliged to send to the Commissioner a list of tenaments/hereditaments the valuation of which required revision and/or a list of

property the annual value of which was liable to frequent alteration. Under Section 30 of the same Act the Commissioner was then empowered to cause a revision of the tenements/hereditaments so mentioned in such list. In addition however Section 30 also empowered the Commissioner to revise units of valuation "whether such tenements or hereditaments so altered in limits or value shall have been included in the said lists or not". Thus his jurisdiction to embark upon a Revision did not depend solely upon the initiative of a Rating Authority in completing and forwarding to him the aforesaid list but could also be invoked of his own motion under the Section last mentioned.

15. *Sections 29* and *30 of the 1852 Act* were however repealed by the 1854 Act. Section 4 of that Act contained provisions similar to *Section 29 of the 1852 Act* in that the Secretary of a Rating Authority was obliged by a certain date in each year to send a list to the Commissioner of property that required revision. Section 5 however was at least in one fundamental respect, different from *Section 30 of the 1852 Act*. As previously stated the Commissioner of Valuation could revise independently of the Rating Authority List, under Section 30. He has no such power under Section 5. He could not undertake a revision, *proprio motu*; he had to be put in action by a list sent to him. It was the receipt of that list which gave the Commissioner jurisdiction and that jurisdiction extended to the entirety of the property therein mentioned. It did not extend to or include any other hereditament not so specified or included.

16. The provisions of the 1852 Act and the 1854 Act were considered in two celebrated cases many years ago. In ***The Queen v. the Commissioner of Valuation*** and ***The Great Southern and Western Railway Company [1901] 2I.R. 215 (The Kildare Case)***, the Court had to consider *Sections 4 & 5 of the 1854 Act*. The principal judgment is that of Palles CB. In that case the Secretary of Kerry County Council had sent a list, under Section 4, to the Commissioner requiring a revision of the valuation of that part of the company's railway which was situated in that County. Instead of so confining himself, the Commissioner revalued the entire railway. Fortunately, most Counties benefited from the result in that their rateable valuation was increased.

Unfortunately, however the valuation of that part which went through Kildare was reduced by about £5,000. Kildare County Council challenged the Commissioner's right to revise any part of the railway other than that as specified in the aforesaid list. At p219 of the Report of Chief Baron Palles, having considering *Sections 4 & 5 of the 1854 Act* as well as the list sent to the Commissioner said:-

> *"the only subject matter in respect of which the Commissioner of Valuation is entitled to exercise his judgment in the way of revision"* is *"the tenements so requiring revision, that is the rateable hereditaments mentioned in the list of the Secretary of the County Council - a list which ought to be confined to such tenements as are mentioned in the several lists of the collectors and ratepayers. It is as to these tenements, and these only, that the Commissioner of Valuation can have, under section 4, the opinion of the County Council as to the necessity of revision".*

In addition he held that the act of revision was a Judicial act. The Court of Appeal did not find it necessary to make an independent decision on sections 4 & 5 but, on whether the act of revision was or was not a judicial act, Lord Justice Holmes at p229 of the report had this to say:-

> *"His valuation was undoubtedly a judicial act, involving the consideration and decisions of questions of law and fact, with the result of imposing liability on, or affecting the rights of, members of the public; and although he does not hold a Court, nor adopt the usual course of legal procedure he is constituted by the statute a Tribunal with powers essentially judicial".*

17. The other case is ***Switzer v. Commissioner of Valuation [1902] 2I.R. 275***. In that case two points arose. The first was to determine what truly constituted a unit of valuation and the second was this question of the Commissioner's jurisdiction to the revise. Dealing with the latter point CB Palles reviewed *Sections 29 & 30 of the 1852 Act* and concluded that so long as those sections remained in force the jurisdiction of the Commissioner could be invoked either by himself under Section 30 or by receipt of the list compiled and sent in accordance with Section 29. But, as he pointed out, these provisions were repealed in 1854. Of Sections 4 & 5 of the Act he said that the

Commissioner's jurisdiction was exclusively based on the list sent to him by the Secretary of the Rating Authority. On appeal Lord Justice Holmes, at p309 of the report said:-

> *"but this and the preceding section* (Section 29 & 30 of 1852 Act) *were repealed in 1854 and the 4th and 5th sections of the Act of that year were substituted therefore. These provisions differed in three or four essential particulars from those which they replaced, and one of the alterations is the omission of the discretionary powers to which I have referred. It is, I think, impossible, consistently with the language of the substituted sections, and especially having regard to the contrast between them and the repealed provisions, to hold that the Commissioner is not now confined to a revision of the valuation of the tenements contained in the list furnished to him by the local authority. I hold, moreover, that he is not only so confined when making his primary revision, but also when hearing appeals therefrom under the 20th section of the Act of 1852."*

Accordingly, there is no doubt but that under the provisions of the 1854 Act the jurisdiction of the Commissioner is that as set out above.

18. The 1988 Act does not specifically repeat *Sections 4 & 5 of the 1854 Act.* Section 3 however is an inclusive section in that, by virtue of subsection 7 thereof, its provisions have effect not withstanding anything to the contrary in the Valuation Acts. Within this section there is contained a new procedure for the method, by which and by whom, property may be listed for Revision. There is provision for the Rating Authority to submit to the Commissioner a list of applications requiring revision and for the Commissioner to determine all such applications. In our view whilst the procedure is different the substance remains the same and the principles of law, being those enunciated in the Kildare and Switzer cases, equally apply to the 1988 Act and to the Commissioners jurisdiction thereunder.

19. Support for this view can we think be obtained from the decision of Mr. Justice Barron, given on the 16th December 1994 in the case of **R & H Hall Plc. v.**

Commissioner of Valuation. We say "we think" because it is not absolutely clear to us as to what were the primary findings of fact upon which that decision was based. The point at issue was whether or not hereditaments described by reference to Lot No. 19bc, which were listed for revision, included a building or part of a building beyond the high water line at Ferry Bank in Waterford. Whatever about the precise findings of fact the learned judge referred to the Switzer case and quoted with approval certain extracts therefrom. These extracts were to the effect that the Commissioners jurisdiction stemmed from the list submitted to him and was confined to revising the property therein specified. He then, at p4 of the judgment said:-

> *"in the instant case it seems to me quite clear that the Commissioner was asked to revise the valuations of the particular tenements in question not withstanding that having regard to the orders of the learned Circuit Court judge, they may not properly have been described as being part of Lot No. 19bc. I am satisfied, nevertheless, that he had the jurisdiction to revise the valuations of these tenements".*

And, at p5 he continued:-

> *"in my view, for a Revision list to give the Commissioner jurisdiction to revalue premises, it is sufficient that such lists indicate clearly the tenements to which they refer. Once they do, the Commissioner has jurisdiction. But at the same time he cannot revise the valuations of premises not so indicated. He is limited to those indicated even though, as in the Switzer case, they form part of a larger entity in the occupation of the rated occupier".*

20. What is abundantly clear from the foregoing is that the learned judge accepted that the Commissioner had been requested to revise the hereditament in question. It is also quite clear that in his view no particular method of request is necessary and that there is no obligation to describe the property, the valuation of which is to be revised, by reference to lot numbers. Once it can be ascertained from the list sent to the

Commissioner that the hereditament in question is included within a request for revision then that is sufficient. In our respectful view this is correct and is further supported by the analysis hereinafter mentioned of *Section 17 of the 1852 Act* and, the appropriate forms referred to therein and there following.

21. The case of ***Coal Distributors Limited v. Commissioner of Valuation [1990] IRLM 172*** has also been mentioned as an authority on this point and as been supportive of the views above cited. That case raised two net questions of law. The first was whether land reclaimed from the sea, being land, which never previously existed, could be valued by the Commissioner following a request under *Section 4 of the 1854 Act* and secondly, whether the Commissioner, in valuing as a single unit, two adjoining properties held under separate titles acted *ultra vires*. In support of the second point the appellant company argued that since the request for revision, made pursuant to section four, did not specify, separately, the two properties in question then the entire revision procedure was vitiated *ab initio*. The learned judge refused to accept that submission. At p479 of the report he said:-

> *"there is nothing in Section 4 of the 1854 Act, pursuant to which the request for revision is made, which requires the tenements to be listed in the units in which they should be valued by the Commissioner. It is the Commissioner's duty to value each tenement separately as is provided by Section 11 of the Valuation (Ireland) Act 1852.... In my opinion once the request for revision has been made, specifying certain tenements, it is then the duty of the Commissioner to decide in what units they should be valued so as to comply with the requirements of Section 11 and if he should err in this regard his error can be corrected on appeal....."*

22. This in our view, is indeed support for the general proposition above mentioned. In the first instance it is clear that the Section 4 request does not have to accurately specify, as "units of valuation", the hereditaments the valuations of which are sought to be revised. And, secondly it seems that once the request contains an

adequate description of the tenements then that is a sufficient compliance with Section 4 and sufficient to invoke the Commissioner's jurisdiction. Thereafter, it becomes a matter for the Commissioner to revise in accordance with law.

23. Our view on this point is we think established beyond doubt by the following. Having carried out a revision the Commissioner was obliged under *Section 17 of the 1852 Act* to send to the Rating Authority a list of the hereditaments so revised which list was to be in the Form set forth in the Schedule to that Act. Compliance with that form was mandatory. See ***Switzer v. Commissioner of Valuation, infra at p283***. The Form so appearing in the Schedule had a column headed and we quote "Reference to Map". That Schedule however was repealed by the *Statute Law Revision Act of 1875*. It was replaced by Section 6 and the schedule attached to the *Rateable Property (Ireland) Amendment Act of 1860*. That Schedule, quite significantly, omits the column headed "Reference the Map" which was contained in the Schedule to the 1852 Act. It was not replaced by any other or similar column. Accordingly the list so returned by the Commissioner does not, as a matter of law have to include any reference to Maps either by way of Lot numbers or otherwise. That being the case it could not in our view be successfully argued that the Commissioner's statutory jurisdiction is nullified by the subsequent use of maps which might be erroneous as to area or boundary or as to lot numbers or which might not be accurate or accurately reflect the factual position. This of course is not to say that an aggrieved party may not in certain circumstances, have an argument under the heading of "natural or constitutional justice". But that is a separate point. In so far however as his statutory jurisdiction is involved we are quite firmly of the opinion that once the request for revision contains an adequate identification of the hereditament in question, however so described, then the Commissioner has jurisdiction to revise and that jurisdiction is not nullified by the absence of or indeed even by the incorrect use of lot numbers in the request for revision or in the list itself. These views we are satisfied are equally applicable to the procedure specified under *Section 3 of the 1988 Act*.

24. **<u>The Notification Issue:-</u>**

Section 3(4)(a) of the 1988 Act reads as follows:-

> *"where an application under sub-section 1 of this section in relation to any property is made by any person other than the owner or occupier of that property, the owner and occupier, if known, shall be notified by the rating authority of the application".*

In this case the Appellant Company, by letter dated the 11th August 1992 did receive notification of the 1992 Revision. It will be recalled that as given in this letter, the sole description of the property sought to be revised, was by reference Lot No. 73".

There was no other description. In particular the description as contained in the notice seeking revision the R2 Form, namely "value extensions to supermarket and car park" was not referred to in this letter. It is common case that no notification was given to the company in relation to the 1994 Revision.

25. On behalf of the Appellant Company it is claimed that compliance with this provision is mandatory and that where a failure is established the only result permissible is to declare the Revision invalid. On behalf of the Commissioner the contrary suggestion is made. He alleges that the Section is directory only and not mandatory, that this view is supported by the presence of the words "if known", that in any event the owner or occupier, as the case may be, must establish prejudice or injustice before any adverse consequences follow from non-compliance and finally, in the context of this claim, it is urged upon us that the occupiers participation in the appeal process both to the Commissioner and to this Tribunal cured any defect of non-compliance.

26. This issue is not new and has been raised in several previous cases brought before this Tribunal and hence is the subject matter of several decisions thereof. Before looking at these cases however it is instructive to consider what the comparable position was under the 1852 Act as amended. This exercise may be helpful in trying to identify the purpose of Section 3(4)(a) and the correct approach in determining whether or not its application is mandatory.

27. (A) Under *Section 29 of the 1852 Act* the following was provided for:-

(a) The appropriate Rate Collector, by a specified date, was obliged to prepare a list for his Council of the tenaments/hereditaments the valuation of which required Revision or of any property the annual value of which was liable to frequent alteration.

(b) The secretary of the council who received the list was obliged to leave it on public display for 21 days and to permit extracts to be taken therefrom.

(c) The Secretary was then obliged to prepare a full and complete list of all such tenements and hereditaments and to submit this to the Commissioner of Valuation along with the opinion of his council as to the necessity of Revision.

(d) If the Rate Collector made default in producing this list then he was subject to a penalty not exceeding £5 but in addition any rate payer could in those circumstances provide such a list.

(B) *(e)* That Section was repealed and replaced by *Section 4 of the 1854 Act*. Some changes were made. For example the period of 21 days was reduced to 10; in addition whether or not the Rate Collector made default a ratepayer could also produce his own list to the secretary of the Council. Otherwise it essentially remained the same as Section 29.

28. As can therefore be seen there was a statutory obligation on the council to put and retain on public display for 21 days (later 10 days) a list of the tenements which it, the Council, sought to have revised by the Commissioner. Furthermore during that period the Council was obliged to permit extracts to be taken therefrom. All of this means that a person whose property was on this list could ascertain that fact from an inspection thereof and could also obtain relevant extracts appropriate to his property. There must have been some purpose in this. The purpose in our view, was not only to inform that occupier but also to afford him a right or an opportunity to make, or to have made on his behalf representations to the Commissioner. Whether such representations were made or were successful or otherwise is wholly immaterial. What is crucial is that a mechanism

and procedure existed whereby any steps a foot to revise their property owners could have themselves appraised of property and take whatever action they saw fit.

29. *Section 3 of the 1988 Act* changed this mechanism and procedure. Instead an obligation was placed on the rating authority to inform the owner and occupier, if known, of the steps afoot to have his or her property revised. That was the only change. However, it was much more beneficial to such owner and occupier: instead of actively having to inspect the list which was on public display such owner and occupier would henceforth be notified of the intended revision. The reason and purpose must in our view have remained the same.

30. The following cases, are a selection only of all of the cases which have come before this Tribunal and in which this point has been argued. They are however, we feel representative of the judgments as a whole which have been so delivered.

(a) **Trustees of the Cork and Limerick Saving Bank v. Commissioner of Valuation (VA90/3/74)**

In this case the Tribunal held, firstly that where the issue was raised then the onus was on the Respondent to prove compliance with the section, secondly that the power to apply for revision was subject to such notification and thirdly that since there had been no notification the revision was invalid.

(b) **Brian McKenna, McKenna's Dingle Limited v. Commissioner of Valuation (VA92/6/001)**

In considering this case the Tribunal, in **Blueflite Logistics v. Commissioner of Valuation (VA95/1/030 & VA95/1/031)**, which is again herein after referred to, felt that perhaps the true issue in McKenna was not one of Notification but rather one of non-listing for Revision. Whether that be correct or not, it is clear that the deciding Tribunal felt that the sanction for non-compliance was to strike out the revision.

(c) **Topline Fashions v. Commissioner of Valuation (VA92/3/017)**

Having heard evidence from both parties and having considered the submissions made, the Tribunal in this case decided, that there had been

non-compliance with Section 3(4)(a) but that since the Rating Authority furnished notice of the results of the Revision and the Appellant Company participated in the first appeal process and in the appeal to this Tribunal, then these steps cured the defect in question. The said judgment then went on to hold that since this issue of non-notification was not raised at first appeal stage it could not be raised before this Tribunal. Accordingly, the Tribunal, proceeded with the hearing and determined the issue of quantum.

(d) **Sheen Falls Estate Limited v. Commissioner of Valuation (VA92/6/119)** and **Meath County Council v. Commissioner of Valuation (VA95/6/020)** were cases wherein the Tribunal determined that there had been compliance with Section 3(4)(a).

(e) **A.I.B. Investment Managers Limited v. Commissioner of Valuation (VA94/3/006)**

In this case the Tribunal held that the identity of the owner and occupier were not known to the rating authority and that the system in place to operate Section 3(4)(a) was reasonable. Accordingly even though no notification was given this was still a compliance with the relevant section.

(f) **J. Brady (Advanced Tyre)(Workshop and Yard) v. Commissioner of Valuation (VA96/3/062)**

In this case the section applied, was not complied with, and the revision was struck out.

(g) **Blueflite Logistics v. Commissioner of Valuation (VA95/1/030)**

In this case the Tribunal reviewed many of the decisions herein mentioned as well as others. On the facts of that particular case it concluded that there had been compliance with Section 3(4)(a). In addition it went on to hold that the use of the words "if known", as contained in the section, did not change the character thereof. If the section was mandatory in form then its provisions did not become directory simply because these words were included. Secondly it left open the issue as to whether or not the method of interpretation as specified by the Supreme Court in the case of ***Kinsale Yacht Club v. Commissioner of Valuation [1994] 1 IRLM p457*** was applicable to Section 3 and thirdly it felt

that the primary time of compliance with this section was as close or as approximate to the time at which the property was listed for revision as was feasible. In addition it held that, depending on circumstances, late notification may amount to non-notification.

31. From these cases the following general principles can be arrived at:-

(a) When the issue is in a *bona fida* way so raised then the onus is on and remains on the Respondent to prove compliance with Section 3(4)(a).

(b) The validity of the application for revision is dependent on compliance with the section where it so applies.

(c) Non-compliance results in the revision being declared invalid.

(d) In none of the judgments, when non-compliance was established, was the question of prejudice/injustice as a possible excusing factor for such non-compliance, relied upon.

(e) The *ratio decidendi* of the Topline judgment was that the issue of notification could not be raised before the Tribunal as it had not been raised before the Commissioner at first appeal stage. All other views so expressed were *obiter*.

(f) No time or time limit is expressly mentioned in the section by which compliance therewith must be made. It is clear that the application for revision must first be made. It is also clear from Section 3(4)(b) that notification must be given before the results of the Revision are notified.

(g) Late notification, by which we mean notification which does not afford a reasonable opportunity of responding, may amount to non-notification.

(h) Such notification should be given at or as close to the application for Revision as is feasible.

(i) The words "if known" do not change the character of the section.

(j) No concluded view has been expressed as to whether Section 3 should have applied to it that method of interpretation as is specified by the Supreme Court in the Kinsale Yacht Club case.

32. As against this background we are of the opinion that compliance with this section is mandatory. We feel that in order to fulfil and give effect to the purpose and aim of the section such an interpretation is required. If the intention of the legislature was to render the section directory, then it could so easily have provided. Nowhere is the obligation proposed by the section qualified. It is in our view quite incorrect to believe that the words "if known" have any significant bearing on this issue. These words are of relevance and importance only when one has to consider whether or not the section applies. Clearly the section has no application if the owner and occupier are not known. "Knowledge" in this context clearly includes actual knowledge but it may very well also include constructive and imputed knowledge as these terms are used and applied in Property Law. In this context the existence and operation of a system, by which information is obtained by a Rating Authority, becomes relevant in its own right, but all of this is designed and directed to ascertaining whether or not the Owner and Occupier "are known" to the Rating Authority, and thus whether or not the section applies: if such persons are known then this enquiry is entirely redundant. Therefore once that exercise has been completed the relevance of these words cease. The result may be that the owner and occupier were not known. In such circumstances the section does not apply. If the result is the opposite then clearly it applies and must be complied with.

33. We would reject any view that compliance with Section 3(4)(b) and the subsequent involvement by the Owner/Occupier in the appeal process (whether at 1st appeal stage or before this Tribunal) can ever be sufficient so as to excuse non-compliance with Section 3(4)(a) where this section applies. The requirement of notice under Section 3(4)(b) is entirely different and entirely distinctive from the requirement under Section 3(4)(a). The former deals with the notification of the results of revision whereas the latter deals with notification of the listing for Revision. To suggest that compliance with the former is an adequate compliance with the latter is to misunderstand the true nature of the distinctive steps available in the valuation process. Such owner/occupier has in our opinion the same right of notification of listing as he has of notification of results. It is difficult in our view therefore to see how the principles of Estoppel, which are not based on any statutory provision,

could be used to prevent an owner/occupier from raising the issue of non compliance. The circumstances in which and surrounding which this question arises, are in our view, quite different and quite distinct from those prevailing in cases like ***Corrigan v. Irish Line Commission [1977] I.R. 317***.

34. The argument, that non-compliance can be excused unless the owner/occupier can prove prejudice or injustice is also one that we reject. Such an approach would in a great number of cases render the obligation contained in this section meaningless. It would have the effect of reversing the onus of proof and of doing so at an Appeal before this Tribunal where the first appeal procedure had already been pursued. In a great number of cases there is no doubt but that an Owner/Occupier will not make any representations at revision stage and therefore the argument goes that once his right to appeal to the Commissioner has been preserved then that is sufficient. In our view that is not the case. Furthermore, in many instances, where this notification issued remains alive, the actual rateable valuation of the subject hereditament is, without prejudice, agreed. In such circumstances an argument can be forcibly made that the occupier, as a reasonable person must know that his property is liable to be valued and that since he has agreed the rateable valuation, albeit without prejudice, he has suffered no injustice. We believe that such an ethos would be highly detrimental to the public confidence in the valuation process, where undoubtedly such public confidence so exists. We believe that obligations imposed by statute must be complied with.

35. In any event, we are quite satisfied that in all cases every owner/occupier suffers prejudice. The prejudice is that immediately upon his property being revised he is potentially liable for the rate placed thereon: This has implications for and may well create a limitation on his property rights as set out in Article 40.3.1, 40.3.2 and perhaps Article 43 of the Constitution.

36. Finally in this context we refer, in support of our view, to the use of the word "shall" in Section 3(4)(a). To render that section directory as distinct from mandatory it would be necessary to effectively substitute the word "may" for the word "shall" where it so appears. If one does so one immediately recognises that

with such a change the section is meaningless. Accordingly in our opinion the section where applicable is mandatory.

37. In this case there is no dispute but that the Appellant Company was known to the Rating Authority when the 1994 request for Revision was made. There is no dispute but that no separate notification was given to the Appellant Company with regard to this Revision. It has not been suggested to us that the August 1992 notification of the request for the first Revision would in itself be a sufficient notification of the 1994 Revision. Nor in our view on the particular facts of this case could such an argument be made. That being the situation there is a clear non-compliance with the section with the consequences thereof being that the resulting Revision is invalid. If it were possible to separate that Revision from the 1992 Revision then we would so do. We are satisfied that the earlier Revision, in isolation, was valid but since the hereditaments, the subject matter of the 1994 Revision are now treated as "one unit" with the hereditaments the subject matter of the 1992 Revision, we are of the opinion that we cannot sever one from the other. Accordingly, the entire Revision the results of which were given on the 10th August 1994 is invalid.

This being our decision it is not necessary to consider the effect of Section (3) in this case or the question of quantum.

The Tribunal therefore strikes out the Revision issued on the 10th August 1994 in respect of the above described hereditaments.