

Appeal No. VA96/3/062 to
VA96/3/065

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988**

J. Brady (Advance Tyres) (Workshop & Yard - VA96/3/062)
J. Brady (Cleanalot) (Shop, Stores & Yard - VA96/3/063)
J. Brady (Eastern Health Board) (Workshop & Yard - VA96/3/064)
Jim Brady (Filling Station, Stores & Yard - VA96/3/065) APPELLANT

and

Commissioner of Valuation RESPONDENT

RE: Workshop, Yard, Shop, Stores & Filling Station at Map Refs: 32a/1, 2, 3 and 4, Fair Green Street, Townland: Naas West, Urban District of Naas, Co. Kildare
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Mary Devins - Solicitor

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JULY, 1997

By Notices of Appeal dated the 31st July, 1996 the Appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations on the above described hereditaments as follows:-

- | | | | | | |
|-----|------------|---|--------------------------------|---|----------------|
| (1) | VA96/3/062 | - | Workshop & Yard | - | RV£70 |
| (2) | VA96/3/063 | - | Shop, Stores & Yard | - | RV£30 |
| (3) | VA96/3/064 | - | Workshop & Yard | - | RV£30 (exempt) |
| (4) | VA96/3/065 | - | Filling Station, Stores & Yard | - | RV£70 |

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

"The valuation revision is invalid, inequitable and bad in law (VA96/3/063, 64 & 65); and
The valuation is excessive, inequitable and bad in law. The valuation revision is invalid (VA96/3/062)."

In these appeals to the Tribunal there are four different properties involved. VA96/3/070 and VA96/3/062 are in respect of one property occupied by Advance Tyres Limited, Lot No. 32a/1, Fair Green Street, Naas, Co. Kildare. VA96/3/070 had been taken by Lisney, Chartered Surveyors on behalf of the tenant. By letter dated 11th March, 1997 to the Registrar of the Tribunal, Lisney's withdrew on the instructions of their client, this appeal before the Tribunal. VA96/3/062 in respect of the same property had been lodged before the Tribunal by Mr. Patrick J. Nerney on behalf of the landlord, Mr. Jim Brady.

VA96/3/063 referred to Lot No. 32a/2 Fair Green Street, Naas, Co. Kildare with the property occupied by Cleanalot.

VA96/3/064 referred to Lot No. 32a/3 Fair Green Street, Naas, Co. Kildare with the property occupied by the Eastern Health Board.

VA96/3/065 referred to Lot No. 32a/4 Fair Green Street, Naas, Co. Kildare with the property occupied by Mr. Jim Brady.

A written submission prepared by Mr. Patrick J. Nerney, BE, Chtd. Eng., MIEI, MIAVI, Valuation Consultant on behalf of the Appellant with respect to VA96/3/062, VA96/3/063, VA96/3/064 and VA96/3/065 was received by the Tribunal on 11th March, 1997. The Appellant in each case was Mr. Jim Brady.

Mr. Nerney's written submission contained a history of the subject properties.

Mr. Brady purchased the premises at Fair Green Street, Naas, Co. Kildare as a going concern in 1988. Subsequently he subdivided the premises, portion of the building was leased to the Eastern Health Board, another portion was leased to Advance Tyres and ultimately a further portion was leased to Cleanalot. The remainder of the premises was operated as a filling station, shop and stores by Mr. Brady.

The premises were valued as a single unit until 1994/2 revision when four separate assessments of valuation were made.

Notices of First Appeal were lodged on behalf of Mr. Brady against each of the valuations on the grounds that they were excessive, inequitable and bad in law. An additional ground in respect of the premises occupied by the Eastern Health Board was that the valuation should be distinguished as exempt as the premises were devoted to public and charitable purposes.

The Appellant's agent further contended that the revision had not been conducted in accordance with the statutory provisions and was therefore invalid.

The Appellants point about the invalidity of the revision is grounded on *Section 3 of the Valuation Act, 1988*. *Section 3 subsection 4(a)* states:-

"where an application (for revision) in relation to any property is made by any person other than the owner and occupier of that property, the owner and occupier, if known, shall be notified by the rating authority of the application."

In due course the Commissioner of Valuation published his decisions on the appeals. Those valuations were appended in a schedule to Mr. Nerney's written submission. The Commissioner rejected the Appellants point about the invalidity of the revision.

The written submission stated that Mr. Brady had not applied for revision of the valuation on his property. Furthermore he did not recollect having received any notice from Naas Urban District Council of its intention to apply for revision of valuation on his premises.

The submission contended that in the circumstances as the requisite statutory notice had not been served on the Appellant by the Rating Authority indicating its intention to seek revision that therefore the revision was invalid. The Appellant therefore applied to the Tribunal to have the revised valuation struck from the Valuation Lists.

A written submission prepared by Mr. Patrick Berkery on behalf of the Respondent with respect to each appeal was received by the Tribunal on 20th March, 1997. Mr. Berkery is a

District Valuer with over 20 years experience in the Valuation Office. Each written submission contained a copy letter (dated 7th January, 1997) from the Town Clerk of Naas Urban District Council to the Valuation Office. The copy letters stated in each case:-

"I wish to confirm that the occupiers of the properties which are the subject of the appeals were not notified by Naas U.D.C. that their properties were being listed for revision by Naas U.D.C.."

The hearing of the appeals took place in Dublin on the 21st day of March, 1997.

Mr. Nerney called Mr. Brady to give evidence. In his sworn testimony he stated that he had never received notice of the intention by the Local Authority to seek revision with respect to his property. He had received a notice dated May, 1994 which stated the determination of the valuation of Lot No. 32a/4 after revision. This was the only notice he had received from the Local Authority.

Mr. Nerney in his sworn testimony adopted his written submission as his evidence to the Tribunal. He stated that Naas Urban District Council should have notified the Appellant of its intention to seek revision of the subject properties and it had not done so. He further stated that this appeal was similar to the appeal dealt with by the Tribunal in its decision in **VA93/4/013 - A.I.B. Plc v. Commissioner of Valuation**. In that case there had been an application to the Tribunal to amend the Valuation List. The Tribunal decided it did not have power to amend the list and struck out the revised rate. Mr. Nerney asked the Tribunal in this case to follow its previous decision.

Mr. Berkery in his sworn testimony adopted his written submission as his evidence to the Tribunal. He stated the appeals had been dealt with in early 1996. He confirmed that Mr. Nerney had raised the issue of absence of notice of revision by the Local Authority. When he was dealing with the appeals he did not know whether the Local Authority had notified the Appellant of the proposed revision. In January, 1997 he had been formally informed by the Local Authority that the occupiers had not been informed by it of the intention to seek revision with respect to the properties.

In his evidence Mr. Berkery stated that at the appeal stage he had a recollection that he had been informed by telephone by a Ms. Fitzgerald, an employee of Naas Urban District Council, that the Local Authority had not informed the Appellant of its intention to seek revision of the relevant properties.

Mr. Berkery stated as the Valuation Office had not received formal notification of this at the appeal stage it was decided not to strike out the entries in the Valuation List. The Valuation Office considered that the Tribunal should decide the matter.

Finally, Mr. Berkery did not raise any legal arguments or draw the attention of the Tribunal to any of its decisions or any relevant Court decisions.

Determination:

The issue here for the Tribunal to decide is whether the appropriate requirement as to notice had been given to the Appellant under *Section 3 subsection 4(a) of the Valuation Act, 1988*.

The Tribunal has decided in *VA92/6/119 - Sheen Falls Estate Limited v. Commissioner of Valuation* that when the issue of notice has been raised the onus was on the Rating Authority or Respondent to satisfy the Tribunal of its compliance with the Section. In each case here there has been an admission by the Respondent on behalf of the Rating Authority that the requirement as to notice had not been complied with.

Accordingly, as the requirement as to notice under *Section 3 subsection 4(a) of the Valuation Act, 1988* has not been complied with these appeals are not properly before the Tribunal. Therefore, the Tribunal finds that the rate as revised in each of these appeals ought to be struck out.

The Tribunal makes no decision on quantum on the foregoing basis.

