Appeal No. VA97/2/032

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Cuddy McCarthy Associates **APPELLANT**

and

Commissioner of Valuation
(Galway Corporation Notice Party) **RESPONDENT**

RE: Surgery at Map Reference: 1.2/11 Bridge Street, Townland: Waterfront Bridge Street, Ward: Eyre Square, (East Ward), County Borough of Galway
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

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

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF OCTOBER, 1997

By Notice of Appeal dated the 21st April 1997 the Rated Occupiers, Cuddy McCarthy Associates appealed against the determination of the Commissioner of Valuation in placing a rateable valuation of £100 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-
"The RV is inequitable and bad in law. The Appellant has no record of a notification prior to revision in accordance with the *Act of 1988 Section 3(4)(a)* or in the alternative the notice issued was not sufficient or not delivered. (Galway Corporation has refused details of the notice or copies thereof). Appellant seeks to have RV struck out".

2. This case proceeded by way of an oral hearing which took place in Galway on the 17th day of September 1997. Mr. Eamonn Halpin appeared on behalf of the Ratepayers, Cuddy McCarthy Associates. Both the Respondent and the Notice Party were represented by Solicitor and Counsel. Evidence was given by Mr. Halpin, by Mr. Keogh, the Appeal Valuer and by Mr. McGovern, the Finance Officer for Galway Corporation. Arising therefrom the following are the material facts, either agreed or so found, which in our opinion are relevant to the issues, the subject matter of this appeal.

3. *(a)* **January 1994:**

The hereditament in this case, which has an agreed net lettable area of 1400 sq.ft. is part of a new small infill designated development located at Bridge Street, Galway. The complex, which is known as "The Waterfront" is a mix of retail units, offices/professional service suites and apartments. The unit in this case comprises of an office suite which are used by the Appellant for the purposes of his professional business. In January 1994 they entered into an agreement to acquire this unit.

(b) **July 1994:**

By this month the unit had been completed and Cuddy McCarthy Associates went into occupation thereof. At all times thereafter the same was so occupied by the Appellant for the purposes above stated. A name plate was appended on the external wall.

(c) **2nd May 1996:**

On this date, this said unit was listed for Revision.

(d) **10th May 1996:**

The results of that Revision were issued with the same placing a rateable valuation of £60 and £60 on the occupiers premises.

(e) **17th May 1996:**

On this date the Rating Authority, in compliance with the requirements of *Section 3(4)(b) of the Valuation Act 1988* notified the Occupier i.e. Cuddy McCarthy Associates of the results of this Revision.

(f) **May/June 1996:**

The Appellant by notice in writing of that date appealed to the Commissioner of Valuation.

(g) **10th December 1996:**

Mr. Halpin, on behalf of the Appellant Company, specifically raised with the Commissioner the issue of notification under *Section 3(4)(a) of the 1988 Act*.

(h) **December 1996/March 1997:**

During this period ongoing discussions took place between Mr. Halpin and the Appeal Valuer. The results were a combined RV reduced to an agreed valuation of £100 but without prejudice to the notification issue.

(i) **5th February 1997:**

Mr. Halpin by letter of 5th February 1997 wrote to the Finance Officer of Galway Corporation referring to eight occupiers of individual units in this development of which the subject was one and therein requested copies of all notices sent to his clients indicating an intention to have these units listed for revision.

(j) **17th February 1997:**

Mr. McGovern, the Finance Officer on behalf of his Corporation wrote in response and refused to supply copies of the documentation sought. As a justification therefore he said that it was the Corporation's policy not to issue proof of compliance except before the Valuation Tribunal.

(k) **20th February 1997:**

Again Mr. Halpin wrote to the Corporation repeating his request for a copy of the relevant documentation and pointing out that the position adopted by the Corporation in its letter of 17th February 1997 was unreasonable.

(l) **25th February 1997:**

A second response issued by Mr. McGovern. Therein he stated that *Section 3(4)(a) of the 1988 Act* had been complied with, but that otherwise the Corporation's policy had not changed.

(m) **25th March 1997:**

The Commissioner of Valuation issued the results of the First Appeal. The RV was reduced to an agreed £100 but without prejudice to the issue of notification.

(n) **20th April 1997:**

The Appellant appealed to this Valuation Tribunal on the grounds above recorded.

4. In addition to the aforegoing recital of facts as agreed or so found by this Tribunal the following should also be noted. Firstly, the Respondent in this appeal conceded, as he had to so do, that the Appellant was not notified of the request for revision: Secondly, that by way of letter dated 10th day of May 1996, the said Mr. McGovern wrote to the Developer of this complex, namely, T.B.D. Developments Limited at 17, Waterfront, Bridge Street, Galway and therein indicated that this unit, as well as others, had been listed for Revision: Thirdly, that the Corporation, once more in the person of Mr. McGovern, as the Finance Officer, had on the 5th February 1995 sent to the said Occupiers, Drs. Cuddy and McCarthy, at this unit, a demand for water rates: Fourthly, the Revising Valuer, Mr. Stewart, had commenced his Revision of this complex in October 1995 with that Revision continuing up to, including and indeed past the date upon which this unit had been listed for Revision and: Fifthly, the source of the Corporation's information upon which the results of the revision issued was the same Mr. Stewart, the said revising valuer.

5. On these facts two issues of law arise and one issue of practice. The first submission on behalf of the Appellant was that the Rating Authority had failed to comply with *Section 3(4)(a) of the 1988 Act* and that accordingly, the Revision was invalid. The second submission was to the effect that the Commissioner of Valuation had no jurisdiction to issue the results of this revision earlier than the 1st August 1996 being the first day following the quarter in which the Revision was made. The third submission concerned the Corporation's policy in refusing to supply to Mr. Halpin copies of the relevant documents when a specific written request therefore had been made. In response, both Mr. Gardiner, BL who appeared on behalf of the Commissioner and Mr.Daly BL who appeared on behalf of the Notice Party suggested that the letter dated the 10th May 1996, addressed to T.B.D. Developments, was a sufficient compliance with *Section 3(4)(a) of the 1988 Act*: alternatively it was suggested that even if there was a non-compliance therewith no adverse consequences could flow unless and until the Appellant could prove prejudice or inequity.

Furthermore, it was also submitted that even if there was a defect in compliance this defect was cured by the Appellant's appeal to the Commissioner at First Appeal Stage and by his continuing participation in the appeal process up to and to including Tribunal. To these issues we now turn.

6. The Notification Issue:

Since the hearing of this appeal, this Tribunal has considered, once more, this

question of notification. It did so in the case of **John Pettitt & Son Limited v. Commissioner of Valuation (VA95/5/015)** judgment which was given on 30th September 1997. Therein the statutory procedures which existed prior to 1988 were considered and in particular *Section 29 of the 1852 Act* and *Section 4 of the 1854 Act*.

The background, the purpose, the aim and intention of Section 3(4)(a) was then considered and set out. Having reviewed virtually all of the important decisions on this issue the Tribunal, at page 19 of the judgment, set out what general principles could be both identified and deduced therefrom. It said the following:-

"(a) When the issue is in a *bona fide* 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 depending 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 there with 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."

7. In addition, the Tribunal also decided:-

(a) That the words "if known", as contained in this Section, were relevant only to an enquiry as to whether or not the Owner/Occupier was "known" to the Rating Authority. Once that enquiry had taken place then these words were no longer of importance.

(b) As part of this enquiry the system in existence by which information is supplied to or obtained by the Rating Authority is of course relevant.

(c) "Knowledge", in the context of the words "if known", clearly includes actual knowledge but may also include constructive and imputed knowledge as these terms are used and applied in Property Law.

(d) Once the Section applies and has not been complied with then the Revision is invalid and the resulting declaration of invalidity will be made quite independently of any question of prejudice or injustice to the Ratepayer and

(e) Notice under Section 3(4)(b) is entirely irrelevant to the requirement of compliance with *Section 3(4)(a) of the 1988 Act* and furthermore a Ratepayer's continuing presence in the appeal procedures cannot excuse non-compliance.

The circumstances underpinning the obligation to notify are totally different from those prevailing in cases like ***Corrigan v. Irish Land Commission [1977] IR 317.***

8. Applying these principles to the facts of this case we have come to the following conclusions:-

(a) We have no doubt but that the letter dated the 10th day of May 1996, and sent to T.B.D. Developments Limited, could not under any circumstances be deemed as sufficient compliance to *Section 3(4)(a) of the 1988 Act.* This essentially is for two reasons. Firstly, the addressee of that letter was not in occupation of the unit at that time. The addressee had no connection whatsoever with Drs. Cuddy and McCarthy save for the fact that at one stage both were involved in either a vendor and purchaser relationship or a landlord and tenant relationship. Otherwise they were and remain separate and independent legal persona. Secondly, and in any event, we are equally satisfied that the letter of 10th May was a non-notification as distinct from a late notification. The latter would take place when the relevant notice was received by the Occupier prior to the publication of the Revision List. It would be considered late in the sense that the notification could not have

afforded a reasonable opportunity to take advise and make any representations which the Occupier saw fit. In this case the Revised List issued on 10th May.

The said notice of that date was posted and would not have been received, in the ordinary course of post, until the 13th at the earliest. In these circumstances, this notice even, if the addressee was the Occupier, was clearly defective as being a non-notification and therefore a non-compliance with the statutory requirements.

(b) In further considering this issued, the first enquiry demanded of us, is to determine whether or not Drs. Cuddy and McCarthy were "known" to the Rating Authority as of the 2nd May 1996. We are perfectly satisfied that he was and that the Corporation had express knowledge of his occupation from a date not later than the 5th day of February 1995. This date is of course the date of the demand issued by Mr. McGovern to Drs. Cuddy and McCarthy seeking water rates. This in our opinion is conclusive on the question of knowledge as against the Corporation. It was signed by the same Mr. McGovern who gave evidence before us. The suggestion that knowledge to one department of the Corporation is not knowledge to another department is one we firmly reject. Unless the distinction was made under Statutory Force it is one which in our view in general is legally unsustainable and in particular is unsustainable question of notification. Such a distinction should not be acknowledged. Accordingly, as in our opinion the Rating Authority had this express knowledge of Drs. Cuddy and McCarthy's occupation in February 1995, there can be no question of the Corporation not knowing of their existence or occupation in May 1996. Accordingly, the Revision is invalid.

(c) In the light of this determination it is not necessary to consider, for the purpose of deciding this appeal, whether or not the Corporation's system of collecting information to be used in the context of Section 3(4)(a) is or is not reasonable. However purely by way of *obiter dicta* it must be highly questionable whether a system which failed to detect the identity of an occupier who has been in occupation for more than twenty months prior to the request to revise could be either reasonable or a reasonable compliance with Section 3(4)(a).

(d) Given our decision therefore on this notification issue, it is not necessary to

consider the second submission made on behalf of the Appellant, namely that the Commissioner had no jurisdiction to issue the revised list when he did.

(e) On the third point as raised, we also agree with the submissions made by Mr. Halpin. In our view, his letters to the Corporation dated 5th February and 20th February 1997 were reasonable in content and in demand and should have been appropriately replied to. We cannot identify any rational base for the existence of the Corporation's policy with regard to the supply of documentation and if an application had been made to us prior to the hearing, for the discovery of these documents then it would have clearly and unequivocally been granted. We express the hope that when, in the future, a reasonable request is made for copy documentation, then the same is complied with.