AN BINSE LUACHÁLA
VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Sydney Cooper Distribution Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: **Warehouse at Map Reference 4ca6.4Ja, Drimnagh, Ward: Inchicore B, C.B. Dublin.**

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
George McDonnell - F.C.A.	**Member**
Finian Brannigan - Solicitor	**Member**

RECORD OF DETERMINATION OF VALUATION TRIBUNAL

THE TRIBUNAL:-

HAVING READ
the Notice of Appeal dated the 20th day of April, 1998, against the determination of the respondent and the written materials adduced by both parties,

HAVING HEARD
evidence and submissions on behalf of both parties on the 8th day of January, 1999,

ISSUED
a written judgment on the 5th day of May, 2000

DETERMINES
(a) that the appeal be upheld and that the revision in relation to the subject hereditament be deemed invalid.
(b) that costs be awarded to the appellant.

NOTED: that the respondent expressed dissatisfaction with the determination of the Tribunal

PERFECTED THIS THE 30TH DAY OF MAY, 2000

SIGNED:

Marie McLaughlin
Registrar

1. This case proceeded by way of an oral hearing at which Mr. Owen Hickey, B.L. appeared on behalf of Sydney Cooper (Distribution) Ltd. The Rating Consultant so retained, was Mr. Conor O'Cleirigh, a Chartered Valuation Surveyor, from Messrs. Conor O'Cleirigh & Co., 7/8, Mount Street Crescent, Dublin 2. Mr. Andrias O'Caoimh, S.C. (now Mr. Justice O'Caoimh), instructed by the Chief State Solicitor appeared on behalf of the Commissioner of Valuation. The Appeal Valuer was Mr. David Molony, a Valuer with over 15 years experience in the Valuation Office. The Valuers, in accordance with practise, had prior to the commencement of the hearing, exchanged their precis of evidence and, having taken the oath, adopted their said respective precis, as being and as constituting their evidence in chief. This evidence was supplemented by further oral evidence obtained directly and via the cross examination process. Submissions were made and judgment was reserved.

2. The property, which comprises the hereditament above described, now known as Unit No. 8 is located within Carriglea Industrial Estate. This estate is an established industrial complex situated on the southern side of the Naas Road between the intersection with Davitt Road and Kylemore Road and is approximately four miles from the City Centre. Unit No. 8, is one of eight units constructed within this estate, all of which are of varying sizes. The subject property is sited at the southern end of the estate. The estate has a common entrance off a distributor road. The Rating Authority for the area is Dublin Corporation.

3. The following dates and events, which are not in dispute, are relevant to the issues the subject matter of this decision:

Date:	**Event:**
1990:	Planning Permission granted to Allied Bath Investment Company by Dublin Corporation for a new single storey warehouse at Carriglea Industrial Estate.
01/08/95:	Sydney Cooper (Distribution) Limited goes into occupation of Unit No. 8 and does so pursuant to the Lease next hereinafter mentioned.

05/09/95: Allied Bath Investment Company grants to Sydney Cooper (Distribution) Limited a Lease of this unit for a term of 35 years commencing from the 1st day of August, 1995.

10/07/97: On this date an R2 form is sent by the Rating Authority to the Commissioner of Valuation with a request "to value new industrial/ warehouse units", on lot numbers described as 4BA/4CA.

31/07/97: Dublin Corporation, "pursuant to the provisions of Section 3 of the Valuation Act 1988", serves a notice on four named parties indicating its previous application to the Commissioner for a revision of certain properties detailed to him.

October 1997: The revising Valuer inspects certain properties.

9/11/97: The Valuation List issues wherein an RV of £600.00 is placed on the said Unit No. 8.

04/12/97: Mr. O'Cleirigh appeals this valuation as being excessive "*having regard to the tone of the list and as being bad in law”*.

30/01/98: Mr. O’Cleirigh writes to Dublin Corporation, alleges that his client has no record of notification in accordance with Section 3(4)(a) of the 1988 Act and seeks from it a copy of the relevant notice.

25/02/98: In response Dublin Corporation indicates that notifications in accordance with this section were issued on the 31st of July 1997 "*to the known owner and occupier - copies attached*".

30/03/98: The Commissioner of Valuation, issues the results of first appeal. The RV of £600.00 remains unchanged.

02/04/98: Mr. O'Cleirigh seeks a copy of the R2 form from the Rating Authority.

17/04/98: In response a copy of an R2 form is furnished together with three maps.

20/04/98: The Appellant Company appeals to this Tribunal in the terms set forth at paragraph 1 above.

4. The R2 form, as sent by the Rating Authority to the Commissioner had written upon it, in the context of lot No's only, the inscription above. During the course of the revision further entries were made on this form which entries appear on a 2nd copy furnished to this Tribunal. The further notation in so far as is relevant is as follows:

"Map Ref.	**Twld.**	**Occupier**	**Description**	**Val.**
4BA	Old Naas Road	Lamb Bros. Dublin Ltd	Building Ground	0.00
4BA	Old Naas Road	William Madigan	Garden	0.25
4CA/2	Old Naas Road	Irish Estate Mgmt. Ltd.	Warehouse & Yard	295.00
4CA/2	Old Naas Road	Schenkers Ltd.	Warehouse	250.00"

As can be seen in the column headed "Occupiers", four names are given as being the entities in occupation of the hereditaments both described and linked to them by reference to the given Lot. Nos. These four names are Lamb Brothers Dublin Ltd., William Madigan, Irish Estate Mgmt. Ltd. and Schenkers Ltd. It was to each of these entities that the Rating Authority, on the 31st of July, 1997 served a notice purportedly under Section 3 of the 1988 Act. As is evident, none of the Companies mentioned include the Appellant either by its correct description or by any close or analogous or associated description.

5. During the course of the hearing the following also emerged as being factually material to the issues at hand:-

(a) Unit No. 8, in occupation of Sydney Cooper (Distribution) Limited, is, as to more then two thirds thereof, on lot number 4CA with a small portion of the hereditament on lot no. 4J. The Valuation Certificate, extracted from the Valuation list, includes the latter 4Ja as being part of the lands upon which the entirety of this said hereditament is constructed. Accepting as we do, that the practice of the Valuation Office when given a Parent Lot No. is to value all buildings not previously valued, nonetheless it is clear that lot no. 4J had not been referred to, in any designation, on the R2 form above mentioned.

(b) The building occupied by Sydney Cooper, consists in part of a warehouse extending to 29,290 sq. ft. and in part of a small office of 930 sq. ft. As above stated, this unit was occupied, firstly in August 1995 and has so remained continuously in the occupation of this Company since then. It employs, at this location, 25/26 staff and is open normal working days, from 9.00am to 8.30pm. It has circulating on a daily basis within its curtelage, several trucks, with the name Sydney Cooper evidently and clearly displayed on their outside. Prior to the hearing of this Appeal, in December 1998 a photograph was taken showing a trailer with the name "Trailer Freight", on its outside. There is no sign on the front elevation or elsewhere on this building indicating the name of its occupier. Whilst the office is small and has a separate entrance from the warehouse it is nonetheless located immediately adjacent to the principal access to that warehouse.

(c) This estate has at its entrance a security hut manned by security personnel during all relevant times. This is the only way in which lawful access can be gained to the estate and thus obviously to the unit in question.

(d) In Thom's Directory, 1997 Edition, Unit 8 of Carriglea Industrial Estate, is shown to be occupied by C.B. Cooper Distributors.

(e) Finally, this Company also has an office at Ballymount Road, Walkinstown in the City of Dublin.

6. Arising from the aforegoing, on what might be described as the issue of "rateability", the first question for our consideration is whether, in the circumstances above described, there has been a sufficient compliance by the Rating Authority of Section 3(4)(a) with the 1988 Act. In this context we should say that we are quite satisfied that having regard to the Letter of Appeal dated the 4th day of December 1997 and the subsequent correspondence, outlined above, there is no substance in the argument that the notification issue was not raised at First Appeal Stage. Secondly, if this question is answered in the affirmative an issue then arises as to what affect if any, the absence of any mention of lot 4J, on the R2 form has on the resulting valuation. And thirdly if neither of these questions are answered in favour of the Appellant Company then the question of quantum, in respect of which there is as serious divergence of opinion, must be considered.

7. Section 3(4)(a), of the Act of 1988 reads as follows:

"*When an application under sub-section 1 of this Section in relation to any property is made by any person other then the owner or occupier of that property, the owner and occupier, if know, shall be notified by the Rating Authority of the application".*
Paragraph (b) of this sub-section reads:
"*The owner and occupier, where known, shall be notified by the Rating Authority of the determination of the Application and of his right to appeal in accordance with sections 19 and 31 of the Act of 1852 against the valuation determined by the Commissioner of Valuation and shall also be notified by the Rating Authority of the outcome of that Appeal".*

It will be observed immediately that the notification requirement under sub-paragraph (a) is separate and distinct from the notification requirement under sub-paragraph (b); with the former being aimed at and being intended to apply where the property in question has been listed for revision whereas the latter becomes applicable only after a determination of that application has been made. Hence, where circumstances exist, compliance with both sub-paragraphs may be required.

8. This section and in particular Section 3(4)(a), of the 1988 Act, has been the subject matter of several decisions of this Tribunal. Most are both mentioned and

summarised in the decision of ***John Pettit & Son Limited, -v- Commissioner of Valuation, VA95/5/015***. Therefrom the following conclusions, on the interpretation and applicability of this sub-paragraph of sub-section 4 can be thus stated:-

(a) When an issue as to notification is raised in a bona fide way then the onus is and remains on the Respondent to prove compliance with the sub-section,

(b) The validity of an application for revision is dependent on such compliance and where the same is absent the resulting revision will be declared invalid,

(c) In none of the cases, where non-compliance was established, was the question of prejudice/injustice as a possible excusing factor raised or relied upon,

(d) Compliance with the Section 3(4)(a) is mandatory in that notification must take place if the owner/occupier is known: in such circumstances there is a strict obligation on the Rating Authority which has no independent discretion in the matter,

(e) The words "*if known*", do not in any way affect the mandatory interpretation of the sub-section, in the sense as outlined above,

(f) The words "*if known*", clearly include but are not confined to actual knowledge and their interpretation must be considered both in the general context of Valuation Law, and of the financial burden which results from the creation of a lawful Valuation and in the specific context of what is an adequate performance of this statutory duty and finally,

(g) In so considering, the existence and operation of a system by which information is or can be obtained by a Rating Authority becomes relevant.

9. In this case it is quite clear that the Appellant Company, above so named, was not served with any notification under Section 3(4)(a) of the 1988 Act. Service, of the notices dated the 31st of July 1997, on the entities therein named, cannot be a substitute for and cannot be regarded as service on Sydney Cooper (Distribution) Ltd.

No information was given to us about Mr. Madigan or about any of the other addresses to whom such notices were sent save that, the company known as Schenkers Limited was never in occupation of any unit in this Industrial Estate. It must follow therefore that factually non-notification has been sufficiently well proved in this case.

10. As stated above Sydney Cooper has been in occupation of this property since August 1995, that is almost two years prior to the R2 form having been completed. During this time it engaged a considerable number of people as staff who worked full time and during normal business days and hours at its premises. It had several vehicles going into and exiting on a daily basis. Its presence in the unit, obviously, was known to its staff and must surely have been known to the security personnel at the hut. Notwithstanding therefore the absence of any sign on the elevation of the building, a simply inquiry, either verbally or in writing, should have elicited its occupation of the property which property, is over 30,000 sq. ft. in area. And so there was available for almost the entirety of this two year period a readily available means by which its name and identity could be ascertained.

11. No evidence was given to us on behalf of the Rating Authority or the Respondent which indicated even the existence of any system, however minimal, by which the name of an occupier could be established so that compliance with Section 3(4)(a) might take place. It was never suggested that during this period the Rate Collector or any other Agent of these Parties attended at the premises or inspected the same, or that any inquiries of any type were made or that any steps, no matter how trivial, were taken so that the identity could be ascertained.

12. How the name of Schenker Ltd. came to be relevant remains unexplained, as does the transmission from Dublin Corporation of the four notices referred to at paragraph 4 above, this in response to Mr. Ó'Cléirigh's request for a copy of the Section 3(4)(a) Notice as it applied to his client. In consequence we are driven to the conclusion that no system so existed and that no steps, inquiries or searches were undertaken or carried out so that the true occupier of unit No. 8 could be notified of the revision request.

13. In these circumstances, we cannot see how it can be said that there has been a compliance with the statutory duty imposed by and as contained in Section 3(4)(a). We are therefore satisfied that the Appeal must be allowed on this ground and that the resulting revision is invalid.

14. Given our decision on this point it is unnecessary to consider either the second or the third questions as so raised during this Appeal.