

**Appeal No: VS21/6/0007**

**VALUATION TRIBUNAL  
AN BINSE LUACHÁLA**

**URBAN REGENERATION AND HOUSING ACT 2015  
AN TACHT UN ATHGHINÚINT UIRBWEACH AGUS TITHÍOCHT 2015**

**STARGEM PROPERTIES LTD**

**APPELLANT**

**and**

**DUNLAOGHAIRE-RATHDOWN COUNTY COUNCIL**

**RESPONDENT**

**In relation to the valuation of the property at  
Clonard Lodge, Sandyford Road, Dublin 16 (ref. no. VS-0049) (“the Vacant Site”)**

**B E F O R E**

**Dairine Mac Fadden Solicitor - Deputy Chairperson**

**Claire Hogan BL - Member**

**Mema Byrne BL – Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 15<sup>TH</sup> DAY OF MARCH, 2023**

**1. THE APPEAL**

**1.1** By Notice of Appeal received on the 7<sup>th</sup> day of October, 2021, the Appellant appealed against the determination of the Respondent pursuant to which the market determination value, of the Vacant Site was fixed in the sum of €700,000.

**2. THE HEARING**

**2.1** The Tribunal (which had no involvement in any of the events referred to by the Appellant and as outlined at 5.1 below) was convened to determine a preliminary issue which had arisen in the appeal, whether the appeal had been lodged within time according to the provisions of the Urban Regeneration of Housing Act, 2015 (“the Act”). However, further to that, the Appellant submitted by way of preliminary submission/objection that the Tribunal did not have any jurisdiction to deal with the issue as a preliminary issue.

**2.2** The Appeal proceeded by way of a remote hearing held via Zoom, on the 26th day of January 2023. At the hearing the Appellant was represented by Mr. Michael Devitt BL, instructed by BHSM Solicitors and the Respondent was represented by Ms. Isabelle Aylmer BL instructed by the Law Agent of the Respondent. The parties had exchanged outline legal submissions prior to the hearing.

### **3. FACTS**

**3.1** From the evidence adduced by the parties, the Tribunal finds as a fact that the Notice of Determination of Market Value of the Vacant Site (“the Notice of Determination”) issued in accordance with section 12 (4) of the Act, was dated the 23<sup>rd</sup> September 2019.

### **4. RELEVANT STATUTORY PROVISIONS:**

**4.1** The market value of a vacant site has to be determined in accordance with the provisions of Section 12 of the Act which provides as follows:

*12. 1) A planning authority shall determine, as soon as may be after it is entered on the register, and at least once every 3 years thereafter, the market value of a vacant site by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site.*

*(2) The market value of the vacant site shall be estimated by the planning authority and it shall authorise a person it considers suitably qualified for that purpose to inspect the site and report to it the value thereof and the person having possession or custody of the site shall permit the person so authorised to inspect at such reasonable times as the planning authority considers necessary.*

*(3) Where a person authorised under subsection (2) is not permitted to inspect a property for the purposes of providing an estimate, he or she shall make an estimate of the market value of the site based on his or her knowledge of the site and property and the prevailing local market conditions.*

*(4) Where the planning authority has determined the market value of a vacant site it shall enter particulars of the determination in the register (together with the date of entry in the register), and give written notice to the owner of the vacant site of the valuation or the revised valuation, as the case may be, which it has placed on the site and inform the owner of his or her right to appeal under section 13.*

*13. (1) The owner of a vacant site may appeal to the Tribunal against a determination made by a planning authority under section 12(1) within 28 days after the date of the notice given under section 12(4).*

*(2) The Tribunal shall hear and determine appeals under subsection (1).*

**4.2** The Valuation Tribunal ( Appeals) Rules, 2019 (“the Rules”) provide as follows:

*89. Subject to the Second Schedule of the Act, a Tribunal may regulate its own procedure and conduct the appeal in the manner it considers fair and proportionate to the importance of the appeal, the anticipated costs and the resources of the parties. The following Rules do not restrict that general power. A Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses as far as appropriate to clarify the issues or elicit the evidence. A Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.*

93. *In particular, and without restricting the general power in Rule 89, a Tribunal may-*
- (d) *deal with any issue in the appeal as a preliminary issue;*
  - (f) *give a direction in relation to the conduct of the appeal, adjourn the appeal hearing at any time including a direction amending, suspending or setting aside an earlier direction;*
142. *An appeal under section 13(1) of the Act of 2015 shall be lodged within 28 days after the date of the notice given by the planning authority under section 12(4) of that Act. Any appeal received by the Valuation Tribunal after the expiry of the 28-day period shall be invalid and will be returned with any fee paid.*

## **5. PRELIMINARY OBJECTION TO TRIBUNAL DEALING WITH THE ISSUE BY WAY OF A PRELIMINARY HEARING – APPELLANT’S CASE**

**5.1** Mr. Devitt BL first outlined the chronology of events to date:

23<sup>rd</sup> September 2019: the Respondent sent a purported notice of determination of market value to the Appellant herein. The accompanying correspondence from the Respondent stated that “*Details of the market value estimated for the above site will be afforded to you under separate cover.*”

10th September 2021: the letter from the Dublin City Valuer dated 6<sup>th</sup> September 2019 was received by the Appellant.

7th October 2021: the Appellant lodged a Notice of Appeal with the Valuation Tribunal promptly, which he said was accepted by the Tribunal without mention of any preliminary hearing.

23<sup>rd</sup> May 2022: directions were made by the Chairperson of the Tribunal and the Appellant was directed to get a valuation report which it did at significant expense. The Chairperson of the Tribunal listed the Appeal for hearing on the 20th of September 2022.

On or about the 8<sup>th</sup> August 2022, about a month and a half before the hearing date and some ten months after the Appellant’s Appeal was accepted by the Tribunal, an objection was raised by the Respondent herein to the Appeal, and shortly thereafter a representative of the Tribunal unilaterally, and without authority or jurisdiction to do so, dismissed the Appeal.

By letter dated the 7th of December 2022, a staff member of the Valuation Tribunal acknowledged that a procedural irregularity had occurred, and that a decision to dismiss the Appeal was made by a person who lacked authority to do so. The dismissal took place without the objection being raised with the Appellant, and without affording the Appellant a right of reply. The matter has been set down for hearing on a preliminary point, namely whether the Respondent is correct in their contention that the appeal was lodged out of time.

**5.2** Mr. Devitt BL submitted that the Respondent had raised no objection to the hearing of the Appellant’s Appeal until the 9th of August 2022. He argued that the Respondent was on

full notice of the Appellant's Appeal since at least October 2021, when it received the Appellant's Notice of Appeal. Mr. Devitt BL argued that the objections to the Appeal only emerged long after the time that directions were made by the Tribunal and the said directions were complied with, including obtaining a costly report.

**5.3** On the issue of the jurisdiction of the Tribunal to deal with the issue by way of a preliminary hearing, Mr. Devitt BL submitted that the Tribunal had accepted the Appellant's appeal, issued directions and set a hearing date. He argued that the Tribunal did not have jurisdiction to dismiss the appeal or to reopen and reconsider the matter of whether or not the Notice of Appeal had been lodged in time. Rather, he submitted that the matter should proceed immediately to full hearing, as determined by the Tribunal when the appeal was accepted.

**5.4** Mr. Devitt BL referred to the principle of legal certainty which he said would be contravened if the Tribunal, having accepted the appeal, issued directions and set a hearing date was to be allowed to resile from or revise its decision. Further he submitted that to revisit the issue would demonstrate arbitrariness and confusion to the point of prejudice to the Appellant. It was argued that certainty was an underlying and fundamental principle of the administrative process, and that it had not been demonstrated in the present case. He argued that the appeal had been irregularly dismissed before being reinstated albeit for a preliminary hearing and that this represented flux and uncertainty rather than certainty.

**5.5** The Appellant submitted that the appeal had been subject to numerous and manifest breaches of fair procedures and due process because of the unilateral and unauthorised dismissal of the Appellant's appeal, depriving the Appellant of the right to be heard and to make submissions and the right to prior notice and to reasons. In particular he referenced the letter from the Tribunal dated 7<sup>th</sup> December 2022. He argued that the breach was further compounded by the fact that instead of reinstating the matter and resuming a full hearing, it was proceeding in a modularised manner, with a preliminary hearing relating to the timing of the Notice of Appeal.

**5.6** The Appellant submitted that the principle of issue estoppel was applicable. He argued that the Tribunal had already accepted the appeal, issued directions which the Appellant had complied with a significant expense, had not directed a preliminary hearing and had fixed a hearing date. He argued that it was estopped from now re-visiting the matter. The Respondent had not objected and had not challenged the acceptance of the appeal at that point. If the Tribunal was to re-open the matter, it would effectively be making a determination on the issue of the timing of the appeal on two separate occasions.

## **6. PRELIMINARY OBJECTION TO TRIBUNAL DEALING WITH THE ISSUE BY WAY OF A PRELIMINARY HEARING- RESPONDENT'S CASE**

**6.1** On the issue of the jurisdiction of the Tribunal to deal with the timing of the Notice of Appeal, by way of a preliminary hearing, Ms. Aylmer BL noted that the Appellant's representative had not made any reference in his submissions to the Rules. She drew attention to Rule 89, which she said provided that the Tribunal could regulate its own procedure and conduct an appeal in the manner it considered fair and proportionate. She also referred to Rule 93 which stated that it was without restriction of the general power in Rule 89 and to (d) which provided that the Tribunal could deal with any issue in an appeal

as a preliminary issue and to (f) which allowed the Tribunal to give directions including a direction amending, suspending or setting aside an earlier direction.

- 6.2** Addressing the Appellant's submission that the Respondent had been late objecting to the lodgment of the Notice of Appeal, she said that initially the Tribunal had corresponded with the Rates department rather than the Planning department of the Respondent. She said that it was in fact not until the 7th of July 2022 that the planning department which she said was the relevant department, actually became aware of the Notice of Appeal and at that stage raised an objection to the Notice of Appeal having been accepted by the Tribunal.
- 6.3** She submitted that the issue of whether an appeal is out of time is a matter of jurisdiction and is not in fact an issue to be raised as a defense, such as could be raised as regards an action being out of time under the Statute of Limitations. It was a matter for the Tribunal not to accept a Notice of Appeal when it was out of time. She submitted that Rule 142 was very clear: "*An appeal under section 13(1) of the Act of 2015 shall be lodged within 28 days after the date of the notice given by the planning authority under section 12(4) of that Act. Any appeal received by the Valuation Tribunal after the expiry of the 28- day period shall be invalid and will be returned with any fee paid*".
- 6.4** The Respondent argued that the Notice of Appeal which had been lodged on the 7<sup>th</sup> October 2022 clearly referred to the Notice of Determination of Market Value dated 23<sup>rd</sup> September 2019. She stated that there may have been an administrative error on the part of the Tribunal in accepting it but the Respondent should not be faulted because of that.
- 6.5** The Respondent argued that the Tribunal was a creature of statute and has to abide by the statutory procedures and rules under which it operates. The Respondent argued that the principle of certainty referred to by the Appellant required certainty in respect of the statutory framework that exists. The Respondent argued that the authorities referred to by the Appellant in his submissions required certainty for all parties and in this case, both parties should be able to rely on the provisions in the Act and in the Rules that provided that the Notice of Appeal had to be lodged within 28 days and which further provided that any Notice lodged after that period would be invalid. The Respondent argued that to accept an appeal lodged over 700 days late would be to fly in the face of certainty and fair procedures. The Respondent argued that the preliminary hearing provided fair procedures and certainty to both parties.

## **7. PRELIMINARY OBJECTION – REPLY AND TRIBUNAL QUESTIONS**

- 7.1** Mr. Devitt BL responded that the statutory framework and the Rules did not exist in a vacuum but were subject to the rules of administrative law as regards certainty and fair procedures. He disagreed that the Respondent could not have been on notice until July 2022 as they would have got the Notice of Appeal in October 2021 and the directions had been given on the 23<sup>rd</sup> May 2022. He argued that the fact that that correspondence may have gone to the wrong Department was not the fault of the Appellant who had been prejudiced by the irregularities in the entire process.
- 7.2** Under questioning from the Tribunal as regards the Rules, Mr. Devitt BL submitted that the powers to deal with an issue by way of a preliminary hearing or to vary any direction previously given were discretionary powers which should be exercised in the Appellant's favour, given the prejudice it had suffered. The Appellant maintained that it was a private

company compared to the Respondent which was a public body and it had gone to the expense of getting the Valuation Report directed by the Tribunal.

**7.3** Ms. Alymer BL responded that the directions letter had not gone to the Respondent but had been sent to the Appellant.

**7.4** Under questioning by the Tribunal as to whether the Respondent had been furnished with the Notice of Appeal, Ms. Aylmer BL stated that it had gone to the Rates department of the Respondent rather than to the Planning department. Further, she maintained that the Appellant had been consistently on notice throughout the separate appeal process brought by the Appellant to An Bord Pleanála under section 18 of the Act, that the Respondent's position was that the Notice of Appeal was out of time.

## **8. APPELLANT'S CASE ON WHETHER THE NOTICE OF APPEAL HAD BEEN LODGED WITHIN TIME**

**8.1** On the issue of whether or not the Notice of Appeal had been lodged in time, Mr. Devitt BL said that there were two substantive legal points he wished to raise.

**8.2** Firstly, he addressed the issue of when the right to appeal crystallised. He referred to what he described as the purported Notice of Determination of Market Value dated 23<sup>rd</sup> September 2019 and which included the paragraph ...*"and details of the market value estimated for the above site will be forwarded to you under separate cover"*. He said that those details did not arrive until the 10<sup>th</sup> September 2021. He said that it was the position of the Appellant that the right to appeal did not crystallise until that second letter arrived and the Appellant did appeal within 28 days of receiving that letter. The Appellant argued that it did not have the full material information to enable it to decide in an informed and rational manner, on whether or not to appeal or what to appeal until those further details arrived. The Appellant argued that the purported notice was a bare notice with no reasons given.

**8.3** In support of his submission, Mr. Devitt BL referred to the decision of *EMI Records (Ireland) Ltd and Others v Data Protection Commissioner and Eircom Plc* [2013] 2 IR 669 in which it was held by Clarke J. that a party is entitled to sufficient information to enable it to assess whether a decision is lawful and if a right of appeal exists to enable it to assess the chances of success (at paragraph 739).

**8.4** Mr. Devitt BL also referred to *International Fishing Vessels Ltd v Minister for the Marine (No. 1)* [1989] IR 149 and to paragraph 155 where Blayney J. held that in refusing to provide anything ancillary to the bare decision (be it a list of reasons or other relevant information) the respondent in that case had placed a *"serious obstacle"* in the way of any challenge and that the applicant for the fishing licence had been *"deprived of the material it needs in order to be able to form a view as to whether grounds exist"* on which the decision could be challenged and that *"[t]he Applicant is at a great disadvantage firstly in reaching a decision as to whether to challenge the... decision or not and secondly if he does decide to challenge it in actually doing so since the absence of reasons would make it very much more difficult to succeed."*

**8.5** The Appellant submitted that notwithstanding matters of strict statutory wording, a substantial vein of jurisprudence in this jurisdiction has consistently held that in order to interpret legislation in a constitutionally compliant manner, a right to fair procedures must be read in. This follows,

he said from the line of precedent flowing from *East Donegal Co-Operative Livestock Mart Ltd v Attorney General* [1970] 1 IR 317 and *McDonald v Bord na gCon* [1965] IR 217. It was argued that a right to fair procedures must be read in to the Act and that it follows naturally that as a matter of fair procedures, where an appeal based on the merits is provided for (as in the Act), one is entitled to sight or consideration of the said merits before a decision can be said to have crystallised or, in the language of the 2015 Act, been determined.

**8.6** The Appellant argued that it had received a bare purported Notice of Determination of Market Value and that it was indicated that a future valuation would issue. The Appellant argued that it was at a severe disadvantage until all the correspondence promised was furnished. Mr. Devitt BL submitted that the determination for the purposes of section 12(4) of the Act was not completed until the 10<sup>th</sup> September 2021.

**8.7** Secondly, there was the issue of estoppel *viz-a-viz* the Respondent. The Appellant submitted that having outlined the chronology of events, the Respondent was on full notice of the Notice of Appeal from a very early stage, regardless of which department it was sent to. The Appellant submitted that it had acquiesced and sat back as the Appellant expended money on obtaining a valuation report. He submitted that there was estoppel by acquiescence and referred to the cases of *State (Byrne) v Frawley* [1978] IR 326, *Dowling v An Bórd Altranais & Ors* [2017] IEHC 62 and *Corrigan v Land Commission* [1977] IR 317.

## **9. RESPONDENT'S CASE ON WHETHER THE NOTICE OF APPEAL HAD BEEN LODGED WITHIN TIME**

**9.1** On the issue of whether or not the Notice of Appeal lodged on the 7<sup>th</sup> October 2021 was out of time, Ms. Aylmer BL referred to the Notice of Determination of Market Value dated 23<sup>rd</sup> September 2019, which she said was the relevant date for the purpose of assessing whether the statutory time limit had been complied with. She referred to the chronology of events set out in her submissions and submitted that the Appellant had not gone through all events.

**9.2** The Respondent maintained that the letter dated 23<sup>rd</sup> September 2019 was a cover letter for the formal section 12(4) Notice of Determination of Market Value also dated 23<sup>rd</sup> September 2019. It was argued that this letter very clearly set out the appeals process: “..you may appeal against the market value of the site as determined under Section 12(1) of the Act to the Valuation Tribunal within 28 days after the date of this notice”. It was argued that the venue and time limit were very clear, and there was no doubt as to the appeals process. The Notice of Determination repeated the appeals process and referred also to section 13(1) of the Act. The Respondent submitted that this was the formal determination under section 12(4) of the Act, setting out the valuation of €700,000 and informing the Appellant of the right to appeal.

**9.3** On 2<sup>nd</sup> June 2020, the Council issued the Notice of Demand for Payment of the Vacant Site Levy for 2019 and the Respondent submitted that it was very clear from this that the Council was relying on the Notice of Determination of Market Value dated 23<sup>rd</sup> September 2019. The Appellant appealed this Notice of Demand to an Bord Pleanála on 26<sup>th</sup> June 2020 and in their Notice of Appeal referred to the Notice of Determination of Market Value received on 24<sup>th</sup> September 2019. This, she submitted indicated that they had accepted receipt of the Notice of Determination, as required under the Act. However, in their Notice of Appeal, they also made reference to the sentence in the cover letter dated

23<sup>rd</sup> September 2019 with the Notice of Determination, which stated that details of the market value estimated would be sent under separate cover and said that they were still waiting on same.

9.4 The Respondent argued that on 7<sup>th</sup> July 2020, the Respondent submitted a number of documents to an Bord Pleanála as part of that appeals process, including the letter from the Dublin City Valuer dated 6<sup>th</sup> September 2019. The Respondent argued that there was no requirement for the Respondent to furnish that estimate, but the Appellant was aware of the letter from the Dublin City Valuer from that date. The Respondent also made submissions to An Bord Pleanála and outlined that the Appellant had not lodged an appeal under the Act against the determination of market value. The Respondent argued that demands were subsequently issued for 2020 and 2021, but no appeals were lodged by the Appellant. The Respondent argued that the Inspector's report in respect of the appeal against the levy for 2019 made reference to the Notice of Determination of 23<sup>rd</sup> September 2019, that no appeal had been lodged by the Appellant, and the Inspector stated that he could see no flaws in the notices served. A direction of the Board followed, confirming the demand for payment.

9.5 On 3<sup>rd</sup> September 2021, the Appellant wrote to the Respondent seeking a waiver of the demand or to engage with the Respondent to review the market value. Ms. Aylmer BL said that on page 2 of this letter, the Appellant stated they had been misled by correspondence from the Respondent and further that they had missed their legitimate opportunity to appeal the determination of DLRCC. She did not accept that they had been misled and further submitted that it was clear from that date that the Appellant had acknowledged that they had missed the deadline for appealing. The Respondent had replied to the Appellant by letter dated 10<sup>th</sup> September 2021 refusing a waiver and enclosed a further copy of the Notice of Determination and a copy of the letter from Dublin City Council's Valuer, which she reiterated had also been provided by the Respondent to An Bord Pleanála. She further reiterated that there was no requirement to provide that letter from the Dublin City Council's valuer to the Appellant. It was argued that there was no provision under the Act and no other authority had been referred to by the Appellant to support its submission that time was to run from any date other than the date of the Notice of Determination of Market Value.

9.6 Ms. Aylmer BL submitted that the provisions of section 12(4) of the Act were complied with. She argued that section 13 (1) of the Act was clear and unambiguous. She argued that the Appellant had not lodged the Notice of Appeal within the required time. It was maintained that the Tribunal was a creature of statute, and was bound to comply with the statutory requirements, and in particular bound by Rule 142 which provided that "*Any appeal received by the Valuation Tribunal after the expiry of the 28-day period shall be invalid and will be returned with any fee paid*". Ms. Aylmer BL submitted that the appeal had been lodged 745 days late and was very clearly outside the time limit which was mandatory as the word "*shall*" was set out in the relevant rule. It was submitted that there was nothing in the Act or in the Rules that afforded the Appellant or the Tribunal an opportunity to extend the strict time limit of 28 days.

9.7 Ms. Aylmer BL referred to the judgment of Lavan J in *McCann v An Bord Pleanála* [1997] 1 IR 264 who she said had adopted the reasoning of Henchy J in *In The State (Elm Developments) v. An Bord Pleanála* [1981] LL.RM. 108 at 110: "*Whether a provision in a statute or a statutory instrument, which on the face of it is obligatory (for example, by the*



*use of the word 'shall'), should be treated by the courts as truly mandatory or merely directory depends on the statutory scheme as a whole and the part played in that scheme by the provision in question” and at page xxx “ Since an extension of that time is not provided for, the requirement as to time is mandatory, so that a departure from it cannot be excused.” She submitted that this is also applicable as regards the Notice of Appeal lodged by the Appellant.*

- 9.8** The Respondent argued that as regards the Appellant’s arguments in relation to certainty, all the parties within the statutory process should have certainty with respect to any time limits specified. She further referred to the judgment of Lavan J. in ***McCann v An Bord Pleanála [1997] 1 IR 264*** at page 271 in respect of the time periods where it was stated: *“The imposition of rigid time periods for appealing is an attempt by the legislature to balance the interests of the developers and the public with the need for certainty. Such strict deadlines may on occasion cause hardship but such is the price of certainty”.*
- 9.9** The Respondent argued that the Valuation Tribunal was a creature of statute and had no jurisdiction to extend the time limit for the lodging of an appeal. The Respondent argued that time limits prescribed go to the jurisdiction of the Tribunal, and that the Tribunal had no discretion to extend time.
- 9.10** The Respondent referred to a decision of the Valuation Tribunal in ***Cork County Council v Commissioner of Valuation Appeal No. VA02/1/034***, where the Tribunal considered whether an appeal brought under section 3 (5) (a) of the Valuation Act 1988 in force at the time, was out of time, and in particular page 9 where the Tribunal found that it did not have any discretion. The Respondent submitted that the situation was similar in the case now before the Tribunal.
- 9.11** Reference was also made to another Valuation Tribunal decision, ***J. Buckley & Company v Commissioner of Valuation Appeal No. V A06/1/019*** at pages 7-9, where it was held that if the appeal was entertained in that case, the effect would be to extend the time provided by statute. The Respondent pointed out that the Tribunal in that case found that the Act gives no discretion to the Tribunal to extend the time for such an appeal *“no matter how harsh or unjust that may appear to be”.*
- 9.12** In support of the submission that the Tribunal had no inherent jurisdiction, Ms. Aylmer BL referred also to the judgment of Peart J in ***Celtic Roads Group (Portlaoise) Ltd and Celtic Roads Group (Waterford) Ltd v Valuation Tribunal [2013] IEHC 180***.
- 9.13** The Respondent argued that the Appellant had not engaged with the wording of the statutory requirements. It was argued that there had much emphasis on the covering letter and the sentence as regards further details to follow. However, the Respondent emphasised that there was no requirement for the Appellant to provide any further information, and that if the Tribunal was to find for the Appellant, it would be in error and going outside the clear statutory time limits.
- 9.14** The Respondent argued that the requirement of fair procedures was for every party to have certainty as regards the statutory framework. It was maintained that a notice of appeal lodged over 700 days outside the statutory time limit could not be fair to the Respondent.

**9.15** The Respondent argued that there had been no acquiescence by it, and that the correct department had not been aware of the issue until July 2022. Ms. Aylmer BL maintained that *The State (Byrne) v Frawley* and the *Corrigan v Land Commission* cases referred to by the Appellant were very different. She argued that these were cases where the matters had progressed to hearings and the issues had been raised at a very late stage. The issue in the current case had been raised before the hearing. However, she argued it was a matter of the Tribunal's jurisdiction and that the Notice of Appeal should have been deemed invalid from the outset.

## **10. PRELIMINARY ISSUE - REPLIES AND TRIBUNAL QUESTIONS**

**10.1** In reply to the Respondent's submissions, Mr. Devitt BL said that it was the firm position of the Appellant that the first time they saw the letter from the Dublin City Valuer was on the 10<sup>th</sup> September 2021. He maintained that it had not been remitted to them by An Bord Pleanála and there was no evidence before the Tribunal to show otherwise. He argued that the letter from the Dublin City Valuer was hugely material and of great significance and it went to the reasons for the determination. Mr. Devitt BL argued that the Constitutional requirements of fair procedures must be read into any statutory framework and he referred to the decisions in *East Donegal Co-Operative Livestock Mart Ltd* and *McDonald v Bord na gCon* cases, as referenced in his submissions. Mr. Devitt BL argued that the Respondent, which was a well-resourced public body with a legal department had not objected to the Notice of Appeal until a month and a half before the hearing date. He argued that the Tribunal had accepted the appeal and set directions, which the Appellant had followed.

**10.2** In response to questions from the Tribunal, Mr. Devitt BL stated that the Appellant had no idea what further details would be provided until it got the letter from the Dublin City Valuer dated 6<sup>th</sup> September 2019. He accepted that he had not submitted any authorities to support a position that a statutory time limit would be suspended until a party got reasons they deemed sufficient. He was not making that submission, but rather that the Notice of Determination had promised further details which had not been sent to the Appellant until the 10<sup>th</sup> September 2021. The Appellant was not submitting that the Notice of Determination dated 23<sup>rd</sup> September 2019 was invalid, but rather that it was incomplete

## **11. FINDINGS AND CONCLUSIONS**

**11.1** On this preliminary hearing the Tribunal has to determine whether the appeal had been lodged within time according to the provisions of the Act. However, the Appellant submitted by way of preliminary submission/objection that the Tribunal did not have any jurisdiction to deal with the issue of the timing of the appeal as a preliminary issue. This is therefore the first issue that falls to be addressed by the Tribunal.

**11.2** After hearing the parties submissions on the Appellant's objection to the Tribunal convening for a preliminary hearing, the Tribunal rose to consider the matter and having done so the Tribunal advised the parties that the Tribunal was satisfied on a *pro tem* basis that the Tribunal did have jurisdiction and would give its reasons in the full judgment.

**11.3** The Tribunal is satisfied that that in accordance with the Rules, it has the power to deal with any issue as a preliminary issue ( Rule 93 (d)) and further that it also has the power under Rule 93 (f) to set aside an earlier direction given. The Tribunal is bound by the provisions of the Act and the Rules regarding the time limit within which an appeal must be lodged; whether or not a respondent objects to a Notice of Appeal is not the test, as the

provisions of the Act and Rules are clear “*Any appeal received by the Valuation Tribunal after the expiry of the 28-day period shall be invalid and will be returned with any fee paid*” (Rule 142). The provisions in respect of the time limit give certainty to both parties; to an appellant who wishes to lodge an appeal and to a respondent who can move on to the next stage of the vacant site process if an appeal is not lodged. The earlier directions given on the 23rd of May 2022 and the fixing of a hearing date could not restrict the Tribunal’s powers and particularly when the issue regarding the timing of the Notice of Appeal which had been accepted, was brought to the Tribunal’s attention by the Respondent. At that point, it was incumbent on the Tribunal, notwithstanding that the Notice of Appeal had been accepted, to consider the objection raised and having done so, the Tribunal was entitled to direct a preliminary hearing on the issue, at which both parties could make submissions. Any complaint which the Appellant had as regards a breach of fair procedures in respect of the earlier issues highlighted by Mr. Devitt, has been cured now by the preliminary hearing.

**11.4** On the substantive issue of whether the Notice of Appeal was lodged within time, the Tribunal is satisfied that 28-day time limit set out in the Act and in the Rules is mandatory and that the Tribunal has no jurisdiction or discretion to extend same. The Tribunal adopts the reasoning of the Tribunal as regards the interpretation of a statutory time limit in **Cork County Council v Commissioner of Valuation Appeal No. VA02/1/034**, when the Tribunal considered section 3(5) (a) of the Valuation Act 1988 in force at that time and which required an appeal to be brought within “*28 days after the publication of the list of determinations*”:

*“It seems to us however that the very strict statutory timetable provided for in the Act means the Tribunal does not have a discretion to extend the time permitted, harsh though this may be. There is no basis for interpreting the time limit as being directory rather than mandatory. Further it is clear (and was agreed by all sides) that there is no provision in the legislation which allows the Valuation Tribunal to extend the time limit in question or indeed to waive it. Indeed the Tribunal as a creature of statute with its jurisdiction confined to what is conferred upon it by statute could be said to be acting in excess of its power and junctions were it to take upon itself a right or entitlement to extend a clear and unambiguous time limit of the sort described.”*

**11.5** It is accepted by both parties that the Notice of Appeal was lodged on the 7<sup>th</sup> October 2021. The Tribunal must determine the date of the Notice of Determination of Market Value required to be given under section 12(4) of the Act, so as to calculate whether or not the Notice of Appeal was lodged within the required time limit. The Appellant accepted that they did receive the letter dated 23<sup>rd</sup> September 2019 and the Notice of Determination of Market Value also dated 23<sup>rd</sup> September 2019. In the Notice of Determination of Market Value, it is stated that the Respondent had “*determined*” the market value of the Property at €700,000. The Appellant is not contending that the Notice was invalid but rather that it was incomplete because they were waiting for the “*details of the market value*” which in the cover letter had been said would be “*forwarded .... under separate cover*”, and further that it was lacking in reasons sufficient to enable the Appellant to evaluate the merits of the Notice. The Appellant contended that the right to appeal did not crystallise until 10<sup>th</sup> September 2021, being the date the further “*details*” were issued, and that this is the date by reference to which the time period of 28-days has to be calculated. The Appellant further submitted that the Respondent was estopped from raising an issue now in respect of the timing of the Notice of Appeal having regard to the lateness of their objection.

**11.6** The position of the Respondent is that the Notice of Determination of Market Value as required under the Act issued on the 23<sup>rd</sup> September 2019 and that under the Act there was no requirement for the Respondent to issue any other information or documentation with that Notice. The Notice and the cover letter informed the Appellant of his right to appeal under section 13(1) of the Act. Consequently the Respondent's position was that the strict 28-day time limit ran from the 23<sup>rd</sup> September 2019. The Respondent denied that there had been any acquiescence on the part of the Respondent.

**11.7** The Tribunal finds that the Notice of Determination of Market Value required to be issued pursuant to section 12(4) of the Act was dated 23<sup>rd</sup> September 2019 and that the 28-day period within which to appeal commenced on that date. There is no requirement in section 12(4) of the Act that the notice to be given to the owner of the vacant site is to include anything other than the valuation. It would have been open to the Oireachtas to specify further documentation to accompany the valuation, such as a minimum number of comparator properties relied on in support of the valuation. However, the Oireachtas did not do so and it is not a matter for the Tribunal to add to the requirements set out in section 12(4) which are clear and unambiguous. The jurisdiction of the Tribunal is limited. As stated by Peart J in **Celtic Roads Group (Portlaoise) Ltd and Celtic Roads Group (Waterford) Ltd v Valuation Tribunal [2013] IEHC 180**, in the following paragraphs:

*25.....The Tribunal has no inherent jurisdiction. The Tribunal has only such powers as are conferred upon it by the Oireachtas. The words used by the Oireachtas are the best source for determining the intention of the Oireachtas when enacting legislation. If those words are clear and unambiguous, then one does no more than read the words and give to them the ordinary meaning of the words used. The same is equally applicable to the words of the Rules made thereunder.*

*26...To impute a further jurisdiction in the Tribunal in the face of such a provision And such a Rule so that an appeal could be adjourned sine die, and potentially for several years, seems to me to be going farther than giving sensible efficacy to the statutory code. It would amount to changing the legislation and the Court cannot do that. It is for the Oireachtas to legislate, and for the Courts to interpret that legislation, but not to alter it.*"

**11.8** The Tribunal further finds that the Notice of Determination informed the Appellant of their right to appeal, as required by section 12(4) of the Act.

**11.9** The Appellant strongly contended that the Respondent was late in objecting to the lodging of the Notice of Appeal and consequently was estopped by acquiescence from now objecting. The Respondent contended that the Appellant was aware from in or around July 2020 in the course of the appeal to an Bord Pleanála, that the Respondent's position was that time had passed for an appeal to be lodged, while the Appellant contended that it did not become aware of the Respondent's position on the timing of the Notice of Appeal until December 2022. The communication that occurred between the parties and An Bord Pleanála is not a matter that this Tribunal can have any regard to as it concerned an appeal under section 18 of the Act. The Tribunal has no role whatsoever in appeals made under that section. Further, even if there had been acquiescence on the part of the Respondent as contended by the Appellant ( and the Tribunal makes no finding in that regard), any such acquiescence could not confer a jurisdiction on the Tribunal which it clearly does not have, that is to go outside the strict time limit set out in section 13(1) for lodging an appeal.

**11.10** The Appellant’s submission that the Notice of Determination dated 23<sup>rd</sup> September 2019 was a “bare” decision, lacking in reasons, is not a matter for this Tribunal, having regard to the fact that the Tribunal has no inherent jurisdiction and enjoys only such powers as conferred by the Act and the Rules. Further, to permit the owner of a vacant site to defer lodging an appeal until they considered that sufficient reasons had been provided, would be to introduce uncertainty and unfairness, into the appeals process.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal determines that the Notice of Appeal by the Appellant received on 7<sup>th</sup> day of October, 2012, is invalid.

**RIGHT OF APPEAL:**

Any party who is dissatisfied with the Tribunal’s determination as being erroneous on a question of law, may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.