[2017] IEHC 660

THE HIGH COURT

[2015 No. 461 JR]

BETWEEN

MARIE BOLAND

APPLICANT

AND

VALUATION TRIBUNAL

RESPONDENT

AND

COMMISSIONER OF VALUATION

NOTICE PARTY

JUDGMENT of Ms. Justice Murphy delivered on the 1st day of November, 2017.

1. This is an application for an order of *certiorari* quashing the determination of the respondent tribunal made 13th May, 2015 that the net asset value (hereinafter referred to as "*NAV*") of the applicant's commercial premises situate at 37 Clanbrassil Street Lower, Dublin 8 is €10,450. The applicant also seeks relief in the form of a declaration that the decision made on 13th May, 2015 is contrary to and in breach of the provisions of fair procedures and/or natural and constitutional justice and/or the respondent's duty to give reasons. Further the applicant seeks a declaration that the respondent's decision is irrational and of no legal effect, and an order remitting the issue of quantum back to the respondent for further consideration and determination in accordance with law and in accordance with the rules of natural and constitutional justice.

2. The grounds on which leave to seek judicial review was granted all revolve around an alleged failure by the respondent tribunal to give reasons for the decision. They are:-

> *"1. The Respondent's decision fails to set out any or any adequate reasons as to its grounds for refusing the Applicant's appeal […] in breach of the Respondent's duty to give reasons.*
>
> *2. By failing to give proper reasons for its decision, the Applicant has been denied the opportunity to properly assess the Respondent's reasoning in refusing her appeal.*
>
> *3. The purported reason given by the Respondent for refusing the Applicant's appeal, i.e. 'The Tribunal is persuaded by the Respondent's arguments in relation to the interpretation of Section 48(3) of the Valuation Act 2011' [sic] is not a proper reason and/or sufficient to discharge the Respondent's duty to give reasons for the decision reached by it.*
>
> *4. The Respondent's decision is contrary to the principles of constitutional and/or natural justice in circumstances where the Respondent appears to have completely ignored the Applicant's submissions in coming to its decision […] and/or failed to provide any reasons for rejecting same.*
>
> *5. The Respondent's decision flies in the face of reason and common sense and/or is irrational in circumstances where its decision to refuse the Applicant's appeal appears to have completely ignored one of its previous decisions entitled* ***Michael McGuirk v. Commissioner of Valuation*** *(VA11/5/041). Had the Respondent followed the said decision, which the Applicant contends is binding on it, the Applicant's appeal ought to have been upheld.*
>
> *6. The Respondent's decision flies in the face of reason and common sense and/or is irrational in circumstances where the reason given by the Respondent for refusing the Applicant's appeal, namely that 'The Tribunal is persuaded by the Respondent's arguments in relation to the interpretation of Section 48(3) of the Valuation Act 2011' [sic], in circumstances where the Notice Party never advanced any arguments in relation to the interpretation of Section 48(3) of the Valuation Act 2001 (not 2011 as referred to in the decision).*

3. The notice party who was the successful party before the respondent tribunal, purporting to act as *legitimus contradictor*, filed a statement of opposition. Having denied the applicant's entitlement to the relief claimed, he asserts that the appeal was conducted properly in accordance with the tribunal's rules and in accordance with law. He sets out extensive extracts from the transcript of the hearing before the tribunal, and seeks thereby to justify the decision of the tribunal.

Background

4. Sometime prior to 2011, a decision was taken to revalue all commercial properties throughout the State. In pursuance of that task and in accordance with part 5 of the Valuation Act 2001, the notice party appointed a valuation manager to carry out a valuation of every relevant property situate in the same rating area as the applicant's property. The date fixed as the valuation date was 7th April, 2011.

5. The applicant is the freehold owner of a property situate at 37 Clanbrassil Street Lower, Dublin 8. The property is situate in the middle of a block of commercial properties built in the 1870s. It has approximately eight units.

6. The applicant bought the premises in 2004. It has been vacant and "*to let*" with estate agents since 2008, and remained vacant and "*to let*" throughout the valuation process and appeals process. Because it was unoccupied since 2008, the property, according to the applicant, had fallen into significant disrepair and remained in such a state at the valuation date.

7. Prior to the revaluation of the property in 2013 the rates on the property were €1,777.70. The revaluation has resulted in an increase of in excess of 50% in the rates payable on her property. The applicant does not dispute that her property is a relevant property for rating purposes, but she has consistently challenged the NAV attributed to the property as a result of the revaluation. There are two main elements to her challenge to the correctness of the NAV. First, she maintains that the valuation manager failed to apply s. 48(3) of the Valuation Act 2001 properly. That section provides:-

"… for the purposes of this Act, 'net annual value' means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant."

Relying on that section as interpreted by the respondent in its decision in Michael *McGuirk v. Commissioner of Valuation* (VA11/5/041) given in 2011, the applicant has consistently maintained that her property "*in its actual state*" has a NAV far lower than that assessed by the notice party. The second limb of her challenge to the correctness of the NAV is that the valuation office used inappropriate comparators in assessing the NAV of her premises.

8. The Valuation Act 2001, which both parties accept is the legislation relevant to this application, provides quite an extensive process for an aggrieved ratepayer to challenge decisions of the valuation commissioner, including his decisions as to the valuation of a property. The applicant availed of all of these remedies which are set out at part 7 of the Valuation Act 2001. She made representations as to the incorrectness of the valuation to the revision officer and invited the revision officer to inspect her property to satisfy himself that the NAV was incorrect. Without inspection of the applicant's property, a valuation certificate issued on 16th December, 2013 which contained a NAV of €10,130. She then launched an appeal, referred to as an internal appeal, to the notice party, the commissioner of valuation. She again invited an inspection of her property so as to show that in "its actual state" it had a NAV less than that certified. Her appeal was refused by the notice party. He did so without having inspected her property. The decision of the commissioner was given on 8th August, 2014. The applicant appealed that decision to the respondent tribunal on 29th August, 2014. As required by the Act, the applicant set out the grounds of her appeal as follows:-

"REVALUATION APPEAL

PROPERTY 37, Lower Clanbrassil St., Dublin 8 (The Property)

Appellant Marie Boland

Continuation sheet:-

6 (a) The valuation is incorrect

(i) According to the website of the Valuation Office, valoff.ie, the revaluation is supposed to reflect 'the Net Annual Value (rental value) of a property. The most common method used is direct comparison with annual rental values of similar properties in the area.'. I am appealing on the grounds that The Property does not have a rental value of €10,130. My appeal is based on

(a) the fact that The Property has been vacant for over 6 years. During all that time The Property has been reputable estate agents for letting, but no tenant has been found; Therefore, how can it be stated that it has a rental value of €10,130 when it has proved impossible to let?

(b) The current poor condition of The Property and the amount of money which would be required to carry out the extensive works to bring it to a condition where it was suited for retail renting does not appear to have been taken into account by the Valuation Office in considering my appeal. In particular I requested that they would carry out an inspection of The Property, but they never did so. The Valuation Office did not take into account the rundown and 'ethnic' nature of the block of commercial premises where The Property is located.

(c) The Property when compared to similar properties in its immediate neighbourhood is not valued correctly. I will supply details of comparison properties in my full submission to the Tribunal

6 (a)(ii)

The valuation which I consider ought to have been determined as being the valuation of the property concerned is €2000. I say this as in the market and with the lack of interest in The Property, coupled with its current condition, the most I could hope to get for rent is that amount given that, at best, The Property, could be used for a store for non-perishable goods.

6 (b)(i)

The detail on the Valuation Certificate which is incorrect is the following. The layout as set out below bears no relation to the layout of the premises and its potential for letting. In particular there is no Retail Zone B.

0 STORE 7.14 30.00 214.20

0 RETAIL ZONE B 5.72 150.00 858.00

0 RETAIL ZONE A 30.22 300.00 9,066.00

6 (e)

The other grounds on which I wish to appeal are that the increase in the rates on The Property have rendered it even more difficult to find a tenant for it. The Valuation Office did not take this into account in assessing the rental value of The Property. Given that The Property has been impossible to let in over six years I would submit that the Valuation Office should be providing an incentive to possible tenants by reducing the rates and not the opposite.

I hereby give notice of appeal to the Valuation Tribunal

Signed

Marie Boland

Dated 28th August 2014"

9. On 5th March, 2015, six weeks before the appeal hearing, a joint inspection of the property finally took place. In attendance were the applicant and Mr. Paul Mooney, an official in the office of the notice party. The immediate result of the inspection was that having measured the area he found that the retail area was slightly larger than that contained in the valuation certificate and that the storage area was less than that specified. He amended the valuation certificate accordingly, and he assessed the NAV taking into account the changed measurements to be €10,450.

The hearing

10. The appeal came on for hearing before the valuation tribunal on 23rd April, 2015. The applicant represented herself. The notice party was represented by the said Mr. Paul Mooney. Each party had prepared a précis of evidence which each adopted as their evidence in chief.

11. The applicant's case before the tribunal, as already stated, had two main limbs. The first was that the notice party had not properly valued her property in accordance with s. 48(3) of the Valuation Act 2001. Her contention was that the actual state of her property was as such that its NAV was manifestly less than other properties in the area. She produced an estimate from a builder detailing the works that required to be done to the property to bring it to an equivalent standard to other let properties in the area. The works alleged to have been necessary included rewiring, re-plumbing, reroofing of one of the two one storey flat roofs, installing a damp proof course and installing a boiler and heating system at an estimated cost of €31,795.50.

12. She produced a letter from her letting agents, Douglas Newman Good, setting out the difficulties facing her in letting the property, having regard to its condition. The applicant also produced a number of photographs showing the state of parts of the property.

13. In addition to the foregoing evidence, the applicant relied on a previous decision of the tribunal, *McGuirk v. Valuation Tribunal*, in which the tribunal, in what the Court considers an exemplary judgment, held that in applying the provisions of s. 48(3):-

> *"… the subject must be valued in its actual state rebus sic stantibus. This means the Tribunal must take the condition of the property into account.*
>
> *Judging by the photographs and submissions of the appellant the Tribunal finds that the subject property is in very poor condition. It needs more than 'a cosmetic job'."*

14. The reason the Court considers the *McGuirk* judgment to be an exemplary judgment is that even though brief, it contains all the requisite elements of a written judgment. It sets out the fact of the appeal, and the parties to the appeal. It identifies the matter at issue in the hearing, being quantum of the valuation. It describes the nature of the property the subject matter of the appeal, and the basis upon which a valuation of the property had been arrived at. It sets out the appellant's case and his comparators. It sets out the respondent's case and his comparators. Following that it sets out in numbered paragraphs the law and the findings and concludes on the basis of all of the foregoing, its determination of the NAV. As will become clear, none of these elements are included in the judgment in the instant case.

15. During the hearing the notice party complained that as the authors of the builder's estimate and the estate agent's letter were not present, he could not cross-examine them. In this connection the Court notes that the *McGuirk* hearing appeared to have relied exclusively on photographic evidence. In any event, no ruling was sought from nor given by the tribunal on the admissibility of this evidence. The Court accepts that had her proffered evidence been ruled inadmissible, the applicant would have sought an adjournment to procure the attendance of the relevant witnesses. In the absence of a ruling on admissibility she proceeded with her appeal.

16. A second basis on which a challenge to the NAV was made was that inappropriate comparators had been used by the notice party's valuation manager. The applicant listed a number of other rateable properties in the area and gave evidence as to why she considered that they were more appropriate comparators than those chosen by the valuation manager. The Court observes that given that the applicant's property is in a block of commercial properties of similar dimensions, those other properties would appear to be the most obvious comparators for the purpose of establishing the NAV.

17. The notice party's valuation manager, in his précis of evidence, had set out the process that had been followed in arriving at the NAV and maintained that the process was correct. He placed reliance on the statutory provision that a certified valuation carries a presumption of validity, so that the onus of rebutting the presumption lies on the ratepayer.

18. In relation to "*the actual state*" of the applicant's property, he submitted without independent evidence to that effect, that he felt that the property only required cosmetic repairs. He produced one photograph of the retail area.

19. At one point in his evidence the commissioner's representative appears to accept that "*the actual state*" of the property as referred to in s. 48(3) is a relevant factor in determining the NAV. Elsewhere in his evidence, there is certainly a suggestion that in placing a valuation on a property, he assesses the property as it should be, assuming a proper landlord and a proper tenant maintaining the property in a lettable state. On the face of it, there appears to be some contradiction between these two positions. It is not for this Court in an application for judicial review to assess or determine the merits of either party's claims.

20. Questions were asked of the parties by members of the tribunal. At the conclusion of the hearing the respondent tribunal reserved its decision.

The determination

21. Schedule 2 of the Valuation Act 2001 sets out in some detail the rules governing the composition of the appeals tribunal and the manner in which appeals are to be conducted and determined. In the context of this application, the most important provision of the rules is rule 4(3) which provides:-

> *"The Tribunal shall issue a written judgment setting forth the reasons for its determination in each appeal."*

22. The tribunal produced a judgment on 13th May, 2015. It is a brief judgment and is worth setting out in full in the context of the complaint being made by the applicant in this case:-

> *"Appeal No. VA14/5/045*

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Ms Marie Boland APPELLANT

And

Commissioner of Valuation RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 797805, Retail (Shops), Clanbrassil Street Lower, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 13TH DAY OF MAY, 2015

BEFORE:

Rory Lavelle – M.A., FRICS, FSCSI, ACI Arb Deputy Chairperson

Brian Larkin – BL Member

Dolores Power – MSCSI, MRICS Member

By Notice of Appeal received on the 29th day of August, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €10,130.00 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

'The Valuation is incorrect'

'I am appealing on the grounds that The Property [sic] does not have a rental value of €10,130'

'The fact that the property has been vacant for 6 years'

'The current poor condition of The Property [sic] and the amount of money which would be required to carry out the extensive works to bring it to a condition where it was suited for retail renting does not appear to have been taken into account'

'The Property [sic] when compared to similar properties in its immediate neighbourhood is not valued correctly'

'The valuation which I consider ought to have been determined as being the valuation of the property concerned is €2000'.

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal,

DETERMINES

That the net annual value of the subject property be as set out below:

€10,450 (unchanged).

The reasoning being

The Tribunal is persuaded by the Respondents (sic) arguments in relation to the interpretation of Section 48 (3) of the Valuation Act 2011."

23. In the Court's view, this judgment is manifestly deficient and accords neither with the tribunal's statutory obligation to give reasons for its determination nor with the requirement of constitutional fairness. There is a mere recitation of the applicant's grounds of appeal. There is no reference to the case made by her, nor is there any reference to the response of the notice party. There are no findings of fact, nor is there reference to the applicable law. Having set out the grounds of the applicant's appeal, there follows a formulaic statement that the tribunal has considered all relevant material. It is not sufficient for the tribunal to baldly state that they have considered all the evidence, they must show by their judgment that they have done so. This in turn is followed by the tribunal's determination that the NAV is €10,450. Finally, the tribunal purports to set out its reasons for its determination:-

> *"The Tribunal is persuaded by the Respondents (sic) arguments in relation to the interpretation of Section 48 (3) of the Valuation Act 2011."*

24. The purported "*reason*" for the determination is in fact a statement, not a reason. It immediately begs the following questions:-

> (1) What is the interpretation of the notice party which the respondent tribunal preferred?

(2) On what basis did the tribunal prefer that interpretation?

Counsel for the notice party suggests that all becomes clear when you marry the judgment to the transcript of the hearing and the précis of the evidence. First of all, the Court does not agree with that submission. Armed with the "*judgment*", the précis of evidence and the transcript of evidence, the Court still cannot discern the findings made by the respondent tribunal nor the reasons for its determination. Even if one takes all of the material before the tribunal into account, the process by which the tribunal reached its determination and the reasons for that determination are not at all clear.

25. Secondly, and more importantly, the Court is satisfied that the judgment of a statutory tribunal such as this, which is required by law to give reasons for its determination, must be a judgment which stands on its own two feet. Reliance cannot be placed on a transcript of the evidence as interpreted by the notice party to give it sense and meaning. This is particularly so where the notice party, as in this case, is the beneficiary of the tribunal's determination. The notice party has an interest in having the decision of the tribunal upheld and as such cannot truly be described as a *legitimus contradictor*. The notice party is not competent to tell the Court how the tribunal arrived at its decision, only the tribunal can do that in a properly written judgment. An earlier judgment of the respondent tribunal *Orange Tree Ltd. v. Commissioner of Valuation* (VA 06-2-045) expresses succinctly the nature and purpose of statutory appeals:-

> *"An appeal is defined in Black's Law Dictionary as being 'a proceeding undertaken to have a decision reconsidered by a higher authority'. Any appeal process must, procedurally, be and be seen to be carried out in a transparent manner and in compliance with the principles of fairness and in accordance with the law. Rating is a form of taxation and it is important therefore that any appeal process dealing with the valuation of property for rating purposes must not only be fair in operation, but be clearly seen to be so if it is to maintain respect and acceptance by the ratepayer."*

The judgment in this case does not meet this standard because of its failure to set out the facts, the arguments, the findings, the relevant law and the basis for its determination.

26. A comparison of the judgment in *McGuirk* on which the applicant relied heavily in the course of her appeal with the judgment in this case reveals the extent of the deficiency of this "*judgment*". The *McGuirk* judgment is a short judgment but as already stated, it sets out all of the elements necessary to satisfy the requirements of a written judgment. None of these elements are present in the judgment in this case.

Submissions on law

27. In attempting to stand over the validity of the judgment of the respondent, the notice party relied on a number of decisions in which the courts have held that decision makers do not have to give extensive reasons for a decision. Particular reliance was placed on the decision of O'Neill J. in *Kenny v. Coughlan* [2008] IEHC 28 and the Supreme Court decision in the same case [2014] IESC 15, and the decision of Barrett J. in *O'Brien v. Minister for Justice and Equality & Anor*. [2017] IEHC 199. *Kenny v. Coughlan* concerned an alleged failure to give reasons by a District Court judge. The Supreme Court noted in its decision:-

> *"…that the extent to which the duty to give reasons applies may vary according to the nature of the decision and must be determined in all the circumstances in the case".*

The Supreme Court referred to domestic and European Court of Human Rights precedents in support of that proposition. In essence, the simpler the issue for determination, the less the explanation required for the decision. Denham C.J. cited a passage from *Delany v. Judge Donnchadh O Buachalla & Anor.* [2011] IEHC 138 on the extent of the duty to give reasons in District Court decisions. In that case, on the issue of failure to give reasons, McMahon J. held:-

> ***"(c) Failure to give reasons***
>
> *33. It is an inherent element of fairness and justice that when a person is convicted of a crime he should be furnished with the reasons and an adequate explanation for the conviction. He or she must know not only what the court's decision was but also the reasons why the court reached its decision. Confidence in the judicial process is based on the assumption that decisions are based on rational foundations and are not arbitrarily arrived at. Moreover, public confidence is best secured when the reasons for the decision are explained and furnished.*
>
> *34. The onus which this places on a particular judge will vary in any given case. Clearly, it is more important in the higher courts where the issues may be complex and numerous, where frequently the parties have made written submissions and where the decisions are reserved by the judge for further consideration before being finally delivered. At this level, too, the reasons for the decision are very relevant for the parties and their advisers who have to consider whether an appeal should be taken or not. In contrast, in the lower courts, and in the District Court in particular, where heavy lists and crowded schedules do not always afford the district judge the luxury of reserving judgments, the judge does not always have the time to compose an articulate, orderly and expansive exposition of the reasons for the judgment. It is essential even in such cases, however, that the accused when leaving the court knows what he has been convicted of. There is no room for uncertainty in that aspect of the matter. In my view, it is also essential that the reasons for the conviction are likewise clear, although the judge may not have had the time to fully or comprehensively articulate the reasoning. In some cases, the reasoning may be obvious and may not require elaboration. This would particularly be the case where the judge prefers the evidence of one witness over the evidence of another on a critical matter or where the issue for determination is a single factual issue e.g. whether the defendant was driving at a speed which exceeded the permitted speed limit. There is no requirement for the judge in such situations to elaborate the obvious. A pragmatic view must be taken of the time pressures imposed on the district judge by heavy lists."*

The Supreme Court also cited *Ruiz v. Spain* (2001) 31 EHRR 22 and *Vrabec & Ors. v. Slovakia* (Application no. 31312/08) (Unreported, European Court of Human Rights, 26th March, 2013), before concluding at para. 24:-

> *"As the case-law of the European Court of Human Rights indicates, and as also stated earlier in this judgment, the degree and extent to which a decision of the District Court must be explained by giving reasons will depend in turn on the nature and circumstances of the case. In some cases it may be necessary to succinctly but fully explain the reasons for the decision so that the parties have a proper understanding of the reasons upon which it was based. In this case the offence was simply that of speeding and the mode of trial was summary. This was one of hundreds of such cases that come before the District Court routinely every day of the week. There had been a clear presentation of the issues by the parties, in adversarial proceedings. The District Court Judge indicated that he preferred the evidence given on behalf of the prosecution. The District Court Judge said that he was accepting the evidence of the prosecution. In*

the circumstances that was sufficient reason. There was no requirement for the trial judge in such a situation to elaborate on the obvious."

28. It appears to the Court that this judgment is of no assistance to the notice party in its attempt to validate the determination of the respondent tribunal in this case. Kenny makes clear that the simpler the issue decided, the less the requirement for extensive reasons to be given. The requirement *in every case* is that the losing party knows the outcome of the case and is clear as to the reasons for that outcome [emphasis added]. The judgment in this case fails even that basic test. While the outcome of the hearing is clear, the reasons for that outcome are not merely opaque – they are non-existent.

29. The Court is further of the view that to compare summary proceedings in the District Court with proceedings before a statutory valuation tribunal is not comparing like with like. A litigant in the District Court has a right to a complete rehearing on appeal. An appellant before the valuation tribunal has no such right. Matters dealt with in the District Court are by and large dealt with summarily and by reason of that fact, are likely to be simpler and less complex than issues arising before a valuation tribunal. There is no statutory requirement that the District Court give written judgments. The valuation tribunal is required by law to give written judgments.

30. Similarly, the Court can find nothing of particular assistance to the notice party in *O'Brien v. Minister for Justice & Equality*, the second case on which he placed reliance. In that case, the applicant prisoner sought an order of *mandamus* directing that adequate reasons be given for the respondent minister's refusal to grant enhanced remission to the prisoner. In that case, the reasons given for refusal of enhanced remission were:-

> *"The Minister, having considered your application for enhanced remission, including material supplied in support of the application and the matters outlined above has decided to refuse your application. Whilst it is acknowledged that you have engaged in some authorised structured activity, the Minister having had regard to the extent to which you have taken steps to address your offending behaviour, the nature and gravity of your offence to which the sentence of imprisonment relates and the potential threat to the safety and security of members of the public, is not satisfied that you are less likely to re-offend and are better able to re-integrate into the community."*

Barrett J., for the reasons stated in his judgment, found that the reasons given were adequate. Once again, an obvious distinction between that case and the instant case is that in *O'Brien*, both the outcome of the application and the reasons for the outcome are clear. In this case, however, while the outcome is clear, no reasons at all have been given to explain the outcome. It is noteworthy that neither in its oral nor written submissions, did the notice party make reference to the statutory obligation on the tribunal to give reasons for its determination.

31. Counsel for the applicant, in his oral and written submissions cited *Deerland Construction Limited v. The Aquaculture Licences Appeals Board & Anor*. [2009] I.R. 673 and the authorities referred to therein, in support of his argument that the determination of the valuation tribunal is invalid because of the absence of reasons for the decision. While the facts in *Deerland* were more complex, the issue at the core of that decision is on all fours with the core issue in this case, namely the duty to give reasons.

32. *Deerland* concerned s. 40(8)(a) of the Fisheries (Amendment) Act 1997 which provides:-

> *"A determination of an appeal under this section … and the notification of that determination shall state the main reasons and considerations on which the determination is based."*

In this case, Rule 4(3) of Schedule 2 of the Valuation Act 2001 provides:-

> *"The Tribunal shall issue a written judgment setting forth the reasons for its determination in each appeal."*

In *Deerland*, Kelly J. held that a *pro forma* recitation of the matters which were contained in the decision did not amount to compliance with the obligation to state the reasons for such decision. In this case, as in *Deerland*, there is a formulaic statement that:-

> *"The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal,*
>
> ***DETERMINES***
>
> *That the net annual value of the subject property be as set out below:*
>
> ***€10,450 (unchanged)."***

This bald statement is merely an assertion by the tribunal that it has done its task properly. It gives no insight into how its conclusion was reached. As stated earlier, it is not sufficient for the tribunal to say that it has done its job properly, it must show by its judgment that it has done so. The decision is therefore not a reasoned decision and accordingly does not discharge the statutory obligation imposed on the tribunal by rule 4(3) of Schedule 2 of the Valuation Act 2001.

33. *Deerland* is also instructive on the issue of *ex post facto* justification of a decision by reference to external materials and affidavit evidence. In *Deerland*, unlike in this case, the appeals board was represented at the judicial review hearing. The appeals board sought to justify its decision by reference to a report of a technical adviser which it averred had been before it at the time of its decision. Kelly J. noted with approval the observation in *R v. Westminster City Council* [1996] 2 All E.R. 302 that "*the court should, at the very least, be circumspect about allowing material gaps to be filled by affidavit evidence*". He went on to hold that the report of the technical adviser was not part of the decision and that no matter how detailed the reasons it contained, it could not be regarded as fulfilling a statutory requirement to give reasons.

34. In this case the valuation tribunal has not sought to stand over its decision. That task has been left to the notice party who, as noted earlier, is the beneficiary of the tribunal's decision and as such cannot be properly described as a *legitimus contradictor*. The notice party has sought to plug the manifest gaps in the tribunal's decision by exhibiting the documentation which was before the tribunal and a transcript of the hearing. The Court, as already stated, has not been able to discern the tribunal's reasoning even with sight of the additional documentation and transcript. However, even if the additional material cast light on the reasons for the tribunal's decision, the Court would still, in line with *Deerland*, hold that that was not sufficient. The legislature has imposed a clear

obligation on the valuation tribunal to give a written judgment setting forth its reasons for its determination. It cannot avoid that obligation by pointing to extraneous materials from which the reasons for its decision may or may not be inferred.

35. The statutory obligation to give reasons is an integral part of the appeals process afforded to the ratepayer by the Valuation Act 2001. The ratepayer's appeal to the valuation tribunal is the penultimate stage of the process. There is one final remedy open to an aggrieved ratepayer. Should the valuation tribunal not uphold the ratepayer's appeal the ratepayer is entitled to ask the Tribunal to state a case on a point of law for the opinion of the High Court pursuant to s. 39 of the Valuation Act 2001. In order to exercise that right it is essential to understand the basis upon which the tribunal reached its decision. In *Grealish v. An Bord Pleanála* [2007] 2 I.R. 536, quoted by Kelly J. in *Deerland* at para. 64, p. 689, O'Neill J. stated at para. 40 of his decision:-

> *"As set out above, the legal obligation resting on the respondent to explain its decisions is a very light one, one could even say almost minimal. It is well settled that it does not have to give a discursive judgment. It does however, as set out in the judgment of Kelly J. in Mullholland v. An Bord Pleanála (No. 2) [2005] IEHC 306, [2006] 1 I.R. 453, have to provide sufficient information to enable somebody in the position of the applicant in this case to consider whether he has a reasonable chance of succeeding in judicially reviewing the decision; can arm himself for such a review; can know if the respondent has directed its mind adequately to the issues it has to consider; and finally give sufficient information to enable the court to review the decision."*

The judgment delivered by the tribunal in this case, fails to meet those minimal requirements so that the formulation of a case stated is impossible.

Decision

36. For the foregoing reasons and endorsing and applying the decision of Kelly J. in *Deerland*, the Court holds that the determination of the respondent tribunal is invalid because the reason given is insufficient to enable the Court to even consider the lawfulness of the decision. Accordingly the determination of the respondent tribunal must be set aside. Having so decided, it appears to the Court to be unnecessary for the Court to consider the application for a declaration that the decision of the respondent is in breach of fair procedures and/or natural and constitutional justice and/or the duty to give reasons.

37. Finally in her application for judicial review, the applicant seeks a declaration that the decision of the respondent tribunal is irrational. It appears to the Court that that claim is premature. To consider whether a decision is irrational, one needs to know the reasons for the decision. At present the reasons are unknown.

38. The Court therefore proposes to quash the decision of the valuation tribunal. The Court will give the parties the opportunity to address it on the consequences which should follow from the Court's decision.