[2020] IEHC 661

THE HIGH COURT

[Record No. 2020/952 SS.]

BETWEEN

DAYHOFF LIMITED

APPELLANT /
RESPONDENT TO HIGH COURT APPEAL

AND

COMMISSIONER OF VALUATION

RESPONDENT /
APPELLANT TO HIGH COURT APPEAL

JUDGMENT of Mr. Justice Barr delivered electronically on the 16th day of December, 2020

Introduction

1. This is an appeal by way of case stated by the Chairperson of the Valuation Tribunal pursuant to s.39 of the Valuation Act 2001. The appeal arises in relation to a revision of valuation for a public house premises known as 23/24 John Street Upper, Kilkenny.

2. On 16th November, 2018, the Valuation Tribunal preferred the evidence of the appellant insofar as the comparisons adduced before it were concerned and, in particular, it accepted the three comparators put forward on behalf of the appellant and one of the comparators put forward on behalf of the respondent. Those comparators were analysed to give a rate per square metre on the principal ground floor trading area of the pub at an average rate of €167.50, which was deemed appropriate to apply as the rate for the ground floor of the property. It was common case that a rate of one third thereof should be applied to the first floor of the pub. This resulted in a valuation of the licensed premises at €257.00.

3. In reaching its decision, the Tribunal had held that it was not appropriate for it to have regard to the valuations that had been applied to the ground floor of the pub premises and the first floor thereof, when they had been used and valued separately as separate premises, being a pub on the ground floor and a restaurant on the first floor, prior to amalgamation into a single premises, the subject of the revision valuation.

4. The respondent, being unhappy with that approach, requested the Tribunal to state a case by way of appeal for the opinion of this Court as to whether it had been correct in excluding the valuations of the two properties prior to the amalgamation thereof into the property the subject of the valuation, when coming to its determination as to the true valuation thereof.

5. At its most basic level, the case stated boils down to a consideration of whether the two previous properties can be regarded as being "*other properties comparable to that property*"; as required for comparison purposes pursuant to s.49(1) of the 2001 Act.

6. The description of the parties under the terms "appellant" and "respondent" can be confusing, because they have effectively changed roles between the hearing before the Tribunal and the hearing before this Court. Dayhoff Limited, who had been the appellant before the Tribunal, became the respondent to this appeal; while the Commissioner of

Valuation was the respondent before the Tribunal, but was the appellant before this Court. In an effort to avoid confusion, the court will refer to the parties simply as "*the Commissioner*" and "*Dayhoff*".

Background

7. The public house premises which was the subject of the valuation, had previously been used as two separate properties. The ground floor of the property was used as a pub. It had a previous valuation under reference number 79381. The first floor of the property had been used as a restaurant. It had a valuation under reference number 2199717.

8. The two properties had been entirely separate in all respects. They were owned by separate entities; they had separate entrances; they had separate telephone numbers and booking systems, and they were not physically interconnected by means of a stairs or lift.

9. The revision of valuation came about when the two properties were amalgamated and came under the ownership of a single entity. Works were carried out to the premises whereby a mezzanine floor was inserted into a portion of the ground floor and a stairwell was created to connect the ground floor to the first floor and the entire area was to be used as a single licensed premises.

10. Section 28 of the 2001 Act provides that a revision of valuation can occur if a revision manager is of the opinion that a material change of circumstances has occurred. The relevant definition of material change of circumstances (hereinafter "*MCC*") is contained in s.3 of the Act which, *inter alia*, provides:-

> *"[…] 'material change of circumstances' means a change of circumstances which consists of –*
>
> *[…] (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property".*

11. The relevant provisions in relation to a revision of valuation are set out in s.49(1) of the 2001 Act:-

> *"If the value of a relevant property (in subsection (2) referred to as the 'first-mentioned property') falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property."*

12. Where a property is being valued under a revision, the valuation is governed by s.49(1) by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property. This is often referred to as the "*tone of the list*" meaning that a property is valued by reference to the prevailing values of comparable properties appearing on the

list in the same rating authority area. The logic underpinning this approach being that the values appearing on the list are correct assessments of the rent those properties would command under the statutory conditions.

13. It is also of relevance to note that s.63 of the Act provides that the statement of the value of a property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of the Act.

14. As previously noted, in this case, the Tribunal reached its decision on the appropriate valuation for the premises by reference to three comparators that had been put forward by the valuer on behalf of Dayhoff and by reference to one comparator that had been put forward on behalf of the Commissioner. By reference to the rates per square metre that had been applied to the comparator premises, the Tribunal reached a decision as to the appropriate rate to be applied to the ground floor of the new public house premises. By agreement of the parties the Tribunal adopted the approach that the rate for the first floor area would be measured at one third of the rate applicable to the ground floor area per square metre.

15. In reaching its determination, the Tribunal ruled that it was not appropriate for it to have regard to the valuations applying to the two properties prior to the amalgamation thereof, being the ground floor pub and the first floor restaurant, when reaching its decision of the correct valuation to apply to the new premises. The Commissioner was dissatisfied that the Tribunal had adopted such an exclusionary rule in relation to those valuations and requested that a case be stated for the High Court. Pursuant to s.39 of the Act, the Tribunal stated the following question of law for the determination of this Court:-

> *"Whether the Valuation Tribunal was correct in law in holding that the property or the two relevant properties (i.e. property no. 79381) (ground floor pub) and property no. 2199717 (first floor restaurant) do not constitute other comparable properties for the purpose of s.49(1) and having no regard to their valuations in determining the appeal."*

Submissions on Behalf of the Commissioner

16. Mr. Dodd BL on behalf of the Commissioner, submitted that the provisions of s.49 of the Act were mandatory. The section required that in carrying out the revision of valuation, the revisions officer and the Tribunal on appeal, were obliged to have regard to the values appearing on the valuation list in the same rating authority area of other properties comparable to the property undergoing the revision of valuation. That had to be read in conjunction with s.63 of the Act, which provided that the values existing on the list at any given time were deemed to be correct unless altered pursuant to the provisions of the Act.

17. Counsel stated that s.49 was often referred to as utilising the "*tone of the list*" which refer to the relative values of classes of property, both within that class, and as against other classes of property on the list. The tone of the list meant not only the value of the property, but the order in which a particular property was in its class of property, but also

that class of property in relation to other classes. In this regard he referred to the decision of the Tribunal in the *Mia Taverns* case (VA 10/4/002) where the Tribunal stated:-

> *"The value of the properties on the valuation list reflect not just the values of those properties, but their relative values in relation to other relevant properties of a similar use and other properties in different use categories at the relevant valuation date."*

18. In the present case, the subject property was a new single relevant property in rating terms and in terms of the Act. The values on the list, prior to revision related to properties numbers 79381 and 2199717, were "*other properties*" within the meaning of the Act. Those properties were two distinct properties; distinct from each other and distinct from the subject property.

19. It was submitted that the words "*other properties comparable to that property*" in s.49(1) were to be given their ordinary and plain meaning. The word "*other*" meant a thing that was different from one already mentioned or known about. The words "*that property*" referred to the subject property, which was the property being valued following the MCC i.e. the amalgamated property. The word "*comparable*" meant able to be likened to another; similar; or of equivalent quality; worthy of comparison. It was submitted that on the ordinary and natural meaning of the section, there was no impediment when valuing the subject property to having regard to the valuations of the pub and the restaurant which appeared on the list.

20. Counsel submitted that previous practice of valuers before the tribunal and the practice adopted by the Tribunal itself, had supported that interpretation of the section. It had never been doubted that regard should be had to the value of the property prior to the occurrence of an MCC. The Tribunal and valuers had frequently determined appeals and values having regard to the pre-MCC property: see tribunal decisions in *Centocor Biologics (Ireland) Limited* (VA 09/3/005); *Carlow Warehousing Limited* (VA 10/3/007); *Errancourt Traders Limited* (VA 11/4/009); *Ballingly Joinery 2000 Limited* (VA 11/4/024); *Wappinger Food Corporation Limited* (VA 12/1/007); *Pfizer Pharmaceuticals Ireland* (VA 05/3/054); *O'Toole Composting* (VA 11/3/022), and *Zrko* (VA 12/1/015).

21. Counsel submitted that while such evidence of pre-MCC values had been held admissible; it was a matter for valuation expertise on the part of the Tribunal what weight, if any, should be given to such evidence. In some cases, the pre-MCC values could be quite relevant, whereas as in other cases given the degree of change in circumstances, they may be of little or no relevance at all.

22. Counsel submitted that there was a compelling reason why the Tribunal ought to have regard to pre-MCC values, because it was often the case that one could not get a more comparable property than the property pre-MCC. Many of the most relevant valuation factors typically remain constant: they are in the same location; they typically are used for the same purpose; they typically have all the same potentialities and/or lack thereof.

It was submitted that it was both reasonable and in accordance with the true interpretation of s.49 that regard be had to such values, while always observing that the weight to be attached to such evidence would vary from case to case.

23. It was submitted that the court was entitled to have regard to the purpose of s.49, which was to determine values by reference to comparable properties. In this regard it was submitted that pre-MCC properties were the most comparable properties to the subject property.

24. Counsel submitted that the strict exclusionary rule as proposed and applied by the Tribunal in this case, not only ran counter to the practice of the Tribunal in previous cases, but would also lead to a consequence whereby relevant evidence would be excluded from the consideration of the Tribunal. It was submitted that there was no such requirement evident in the wording of s.49. Instead, on the ordinary and natural meaning of the words in the section, it was permissible to have regard to the pre-MCC value of the properties, while at the same time having due regard to such comparator properties as may be put forward in evidence by the valuers on behalf of each of the parties.

25. It was submitted that the Tribunal was best placed to determine what weight, if any, should attach to the pre-MCC values and in the event that it held that some weight should be given to that evidence, to then go on and weigh that in the balance against the other comparator evidence that may be placed before it; some of which may be highly relevant, while other evidence may be less so and having considered and weighed all of the evidence before it, come to a determination as to the correct valuation to apply to the new property. It was submitted that that practice, which had been adopted over many years by the Tribunal, was consistent with the wording of the Act; was logical; and had produced fair results in previous determinations of the Tribunal. It was submitted that in these circumstances the question posed in the case stated should be answered in the negative.

Submissions on Behalf of Dayhoff

26. In response, Mr. Ó Maolchalain BL on behalf of Dayhoff, submitted that the court should be slow to interfere with a decision of the Valuation Tribunal, as they were an expert body established under statute, to whom curial deference should be shown. He referred to the decision of Kelly J. in *Premier Periclase Limited v. Commissioner of Valuation* [1999] IEHC 8, where the learned judge referred to the principle of curial deference as set out in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 and in *Henry Denny & Sons (Ireland) Limited v. Minister for Social Welfare* [1998] 1 I.R. 34, where both courts had held that curial deference should be shown to expert administrative tribunals. In particular counsel referred to the following passage from the judgment of Kelly J. at p.26:-

> *"In the course of his judgment in that case Keane J. said that the findings of fact made by the Appeals Officer could not be disturbed unless they were incapable of being supported by the facts or based on erroneous views of the law.*

There is no doubt but that the Valuation Tribunal is the type of body which Hamilton C.J. had in mind when expressing the views which I have just quoted from his judgment in the Denny case. In the instant appeal, the Tribunal consists of its chairman, who is a senior counsel, and two deputy chairmen. One is a barrister and the other is a Fellow of the Royal Institute of Chartered Surveyors. This Court should be slow to interfere with its decisions. It should only do so on the basis of an identifiable error of law or an unsustainable finding of fact."

27. Counsel also referred to the decision in *Nangles Nurseries Limited v. Commissioner of Valuation* [2008] IEHC 73, where McMenamin J. applied the principle of curial deference as set down in the *Premier Periclase* case.

28. It was submitted that in this case, the Commissioner had proposed that the Tribunal should adopt a "*bolt on*" approach to the question of valuation, whereby it was suggested that the valuation should be approached on the basis of the previous valuation for the ground floor pub, together with an appropriate allowance for the first floor, which was effectively bolted on to it. It was submitted that it was contrary to s.49 of the Act for the Tribunal to use what was described as the "*bolt on*" approach and therefore it was impermissible to value the property by reference to the previous values of the ground floor and the first floor properties.

29. Dayhoff had submitted to the Tribunal that the property, or previous iterations of that property, such as the subdivision thereof, could not by definition fall within the category of other comparable properties for the purposes of s.49(1). The Tribunal had accepted the submissions made on behalf of Dayhoff in that regard at paras. 8.12 – 8.19 of its determination. It was submitted that the Tribunal had not erred in law in reaching the determination that when looking at other comparable properties, as it was required to do under s.49, it had been correct to disregard the previous valuations of the ground floor and first floor of the premises.

30. Counsel stated that the approach of the Tribunal in the present case was supported by the Tribunal decision in *MMEM Public House Limited v. Commissioner of Valuation* (VA 14/4/023) where the Tribunal criticised the approach taken by the revision officer, who had applied the bolt on approach, without going through any of the other valuation steps mandated by the s.49 procedure. The Tribunal had stated as follows in that decision:-

"It occurs to the Tribunal at the outset that this, if true, represents a radical state of affairs. It suggests a movement on the part of the Tribunal and of its own motion to structure and apply time and again an approach to determination of valuation which (a) is radically different to the approach enacted by the Oireachtas and provided for under the Act; this radical alternative in cases where the bolt on approach is deemed to apply, obviates the requirement to consider the valuation list and to anchor the revised valuation by reference to comparable properties; (b) amounts in effect to a sub-stratum approach to determination of value applicable in certain defined incidences; (c) amounts in effect to a movement on the part of the Tribunal and of its own motion and in defined instances to bypass and/or

circumvent approach to valuation on revision as expressly provided for under Statute; by proceeding to determine valuation more or less exclusively by reference to the bolt on approach and without reference to the express requirement under s.49 to determine valuation by reference to 'the values as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property'".

31. Counsel noted that no appeal had been brought by the Commissioner against the determination of the Tribunal in the *MMEM* case. He submitted that the approach that the Tribunal had adopted to the "*bolt on*" approach, represented a correct statement of the law.

32. Counsel submitted that when considering the correct approach to valuation, the court had to bear in mind that the revision officer and the Tribunal were carrying out a specific procedure that was mandated by the statute. The entries in an existing valuation list would not, in fact be an obvious place for a valuer to start, if he or she was attempting to estimate a commercial rent on a property. However, because of the statutory requirements under s.49, the revision process was based on the use of comparisons, rather than the market data that would otherwise be used.

33. Counsel submitted that the error that lay at the heart of the Commissioner's submission was contained in their submission that s.49 meant that the revision officer not only can, but must have regard to the valuations of the previous properties on the list being 79381 and 2199717, as those properties appeared on the list when she carried out her valuation and on that basis, it was submitted that nobody could doubt that they were comparable to the subject property. Counsel stated that that assertion lay at the heart of the issue in this case.

34. It was submitted that the properties formerly contained in property reference numbers 79381 and 2199717 were not "*comparable*" to the subject property; they were the property itself. Equally, it could not be said that those properties constituted "*other properties*" in any realistic sense. Accordingly, it was submitted that the Commissioner was wrong to urge that their valuations should be taken into account and the Tribunal had been correct to exclude such valuations from the revision exercise carried out by them pursuant to s.49.

35. It was submitted that the Commissioner was further in error when submitting that having regard to the provisions of s.63, the valuations on the previous iterations of the subject property were deemed to be correct and therefore had to be taken into account when valuing the subject property after the MCC. It was accepted that s.63 may have relevance in so far as the values of properties, which were not the subject of the revision at issue, and not otherwise subject to appeal, were concerned. However, the Commissioner had contended for a valuation based on the valuation of other comparable properties and these were deemed to be correct under s.63. However, it was submitted that s.63 of the Act could not be held to mean that the value of the property under appeal

(or elements of that property) was deemed to be correct, for if so, the very revision and appeal process created by the Act would be rendered futile.

36. It was submitted that in essence, the Commissioner was attempting to use s.63 and the valuations in relation to previous iterations of the subject property, as a means of placing a straight-jacket on the revision officer and the Tribunal when considering what valuation to place on the subject property. It was submitted that the inconsistencies and anomalies which resulted from the use of previous valuations of a property under revision, when combined with the Commissioner's stated position regarding s.63, would result in an outcome no less inequitable and unjust than the anomalies described by the Supreme Court in *Brennan v. Attorney General* [1984] I.L.R.M. 355, where it was held that the valuation system constituted an unjust attack on the property rights of persons, such as the plaintiffs in that action, who found themselves with poor land paying more than their neighbours with better land.

37. It was submitted that it was well settled at law that where there were two possible constructions of an Act, the court should adopt that construction which would render the provision in the Act constitutionally valid: *East Donegal Co-Op v. Attorney General* [1970] I.R. 317.

38. It was submitted that in this case, the plain and unambiguous meaning of s.49(1) of the Act, as found by the Tribunal in this case and in the *MMEM* case, presented no such constitutional difficulties. Accordingly, it was submitted that the determination of the Tribunal had not been based on any identifiable error of law or unsustainable finding of fact and in the circumstances, the case stated should be answered in the affirmative.

Conclusions

39. Having considered the papers in this case, together with the helpful oral and written submissions of counsel, I have come to the conclusion that the Tribunal was wrong to hold as a matter of law that in valuing a property that was an amalgamation of two properties, it could never have regard to the valuations of the two separate properties prior to the MCC. I do not think that a correct interpretation of s.49 calls for such a rigid exclusionary rule.

40. The purpose of the exercise mandated under s.49 of the 2001 Act, is to ensure that a fair valuation is carried out on the revision. That is done by reference to other comparable properties on the list in the relevant area. Adopting such a comparative approach, ensures that there is a symmetry between the valuation placed on the subject property and the valuations placed on other properties of a similar kind in the relevant area. To that end, the revision officer is allowed to look at valuations of other comparable properties. Basically, this is to ensure that the subject property is valued on the same basis as other similar properties in the rating area.

41. The fact that the revision officer can have regard to the valuations on the pre-MCC properties, prior to the amalgamation, does not mean that he/she must give any particular weight to that evidence. The weight that may be given to those valuations, or

to the basis of the calculation of those valuations, for example if calculated on a particular monitory amount per square metre, will depend entirely on the nature and use of the two properties prior to the amalgamation and the nature and use of the subject property post amalgamation, or post MCC.

42. The circumstances can vary considerably from one amalgamation to another. The amalgamation may arise where an existing property is simply being expanded, e.g. by the addition of another warehouse, or by the addition of an extra floor of bedrooms in a hotel, or offices in an office block; to circumstances where two separate properties are converted into a single property, which may have a radically different use to that of the two pre-MCC properties, e.g. where two buildings, housing offices and a shop, are amalgamated into a single building, which may be used as a gym.

43. In the former type of situation, use of the so called "*bolt on*" method of valuation, along with comparisons with other comparable properties, may be an appropriate method to adopt on the revision. One could look at the valuation of the original property and see what valuation will be obtained by simply increasing the rateable valuation of the subject property by the rate per square metre, which had been used in the original valuation, as applied to the additional section. However, it would also be necessary to have regard to the resultant value of the subject property, when compared to other properties of comparable size and use in the area and having considered all of that evidence, the revision officer would end up at a fair valuation which was in accordance with the tone of the list.

44. Counsel for Dayhoff placed great emphasis on the Tribunal decision in the MMEM case. However, it seems to me that on a close reading of that decision, the Tribunal was not stating that one could never have regard to the valuations of the properties pre-MCC, nor indeed were they going so far as to state that it was always impermissible to use the "*bolt on*" approach, but they found that it was in breach of s.49 for the revision officer to simply adopt the bolt on approach alone, without reference to other comparable properties in the relevant area. In other words, it was not permissible to simply adopt the bolt on approach alone, without going through the procedure mandated by s.49 which involved reference to other comparable properties in the area.

45. I do not think that the *MMEM* case supports the proposition that the Tribunal was entitled to adopt a strict exclusionary rule, as contended for in the present case. It does not support the proposition that the bolt on method can never be used as part of the revision process; still less does it provide support for the proposition that one can never have regard to valuations of the two properties pre-MCC when valuing the new entity post-MCC.

46. Furthermore, I think that the submission made by counsel on behalf of Dayhoff, to the effect that the Commissioner was arguing for the adoption of a bolt on approach, was an inaccurate characterisation of the submission being made on behalf of the Commissioner. The Commissioner was not arguing that the Tribunal should only have had regard to the pre-MCC valuations of the two properties and simply added one to the other, with an

appropriate allowance for the fact that one was on the first floor. What the Commissioner submitted was that the Tribunal was wrong to have adopted a strict exclusionary approach, whereby it did not have any regard to the pre-MCC valuations in the course of carrying out its revision pursuant to s.49 of the Act.

47. The Commissioner was not arguing that the Tribunal should only have regard to the pre-MCC valuations, to the exclusion of other relevant comparators, when carrying out its revision; but merely that it should have regard to all of the relevant evidence, which would include the pre-MCC valuations of the separate properties prior to the amalgamation.

48. The court is satisfied that this submission on behalf of the Commissioner is correct. There is ample evidence in the decisions that were cited on behalf of the Commissioner in argument, that the Tribunal has in the past had regard to the pre-MCC valuations, along with evidence concerning other comparable properties. In many cases, the evidence of the pre-MCC valuation, particularly if done on a rate per square metre basis, will be of considerable weight in circumstances where there is merely an addition to an existing property, which is of the same type as the existing property e.g. by the addition of an additional warehouse.

49. An example of that approach is seen in the *Carlow Warehousing Limited* case (VA 10/3/007) where the MCC involved the demolition of an office block and canteen and the construction of an additional warehouse thereon. In reaching its determination in that case, the Tribunal took as its starting point the rateable valuation of the property as determined at the 2006 revision and bolted on to that figure the valuation of the additional block, as assessed by one of the valuers and agreed by the other valuer. The Tribunal then made an appropriate allowance for the demolition of the office block and the canteen in order to facilitate the construction of the new warehouse. The Tribunal also made an allowance to reflect the drawbacks involved in the construction of the new warehouse, which was going to adversely affect access to the site and exacerbate the restricted circulation space on the property, which in turn would adversely affect the efficient use of the space for warehousing/logistics purposes. It seems to me that that is a classic example of the true "*bolt on*" approach and may have been reasonable to adopt in that case, particularly as the valuers were largely agreed in relation to the methodology to be adopted on the revision.

50. However, the *MMEM* case makes it clear that the Tribunal cannot simply adopt the bolt on approach, without going through the procedure for revision provided for in s.49. That was recognised in the *Centocor* case (VA 09/3/005) where the Tribunal cited the following portion of the Tribunal judgment in the *Pfizer Ireland Pharmaceuticals* case (VA 05/3/054) where the Tribunal noted that the bolt on method of valuation was a practice that was well established and had been used on many occasions before the Tribunal. However, the Tribunal, went on to make the following relevant comments:-

> *"(d) Mr. Dineen's approach in looking at prevailing levels established in the area and not just within the plant itself is consistent with s.49. That said, however, it does not*

mean that the existing levels applicable to the buildings CB1 and CB2 can or must be disregarded. All evidence of value is relevant but most weight must be given to that comparison or comparisons which most closely resemble the property to be valued in terms of location, nature of construction, design, configuration and use."

51. The court is satisfied that that approach by the Tribunal, represents the correct approach to adopt in a revision pursuant to s.49 of the Act. The Tribunal was correct to say that all evidence of value was relevant. That would include the pre-MCC values of the properties, together with the evidence in relation to other comparators in the area. In essence, the Tribunal was correct in stating that it should not shut its eyes to relevant evidence, being the pre-MCC values of the properties, albeit that that evidence will vary in weight depending upon what existed pre-MCC and what is the nature of the property post-MCC.

52. In the second type of example postulated above, where the property post-MCC is totally different to the two properties pre-MCC, there may be little weight, if any, to be attached to the previous valuations of the two properties pre-MCC.

53. The revision officers and the Tribunal, are people very experienced in this area. They will be able to determine when, and to what extent, it is appropriate in the context of a particular revision to give weight to the valuations of the two properties pre-MCC, while at the same time always having regard to the valuations of other comparable properties in the relevant area.

54. The strict exclusionary rule adopted by the Tribunal in this case and contended for by Dayhoff, both in that appeal and before this Court, would have the effect of denying curial deference to the Tribunal, by denying the ability of the Tribunal in future cases to correctly decide what weight, if any, to apply to the previous valuations of the two properties pre-MCC. It seems to me that the submission made on behalf of the Commissioner, to the effect that the pre-MCC valuations provide a possible starting point for the comparison of relevant valuations that must be carried out under s.49, which of course would include having regard to other comparable properties, constitutes a logical interpretation of s.49.

55. The court also accepts the argument put forward on behalf of the Commissioner that the two pre-MCC properties in this case were certainly "*other properties*" due to the fact that they were totally separate in their operation; they had separate owners; they had separate entrances; they had separate telephone numbers and booking systems and there was no physical interconnection between the two properties. The court is satisfied that they constituted "*other properties*" and their valuations were relevant because, given the nature of the use of the premises and the businesses carried on in the pre-MCC properties and in the post MCC property, they were certainly comparable to the subject property.

56. That was not to say that the revision officer or the Tribunal were bound by such valuations and indeed, in the present case the Tribunal, while ignoring those valuations, did go on to look at other comparators, in particular, the three comparators put forward

on behalf of Dayhoff and one comparator put forward on behalf of the Commissioner and reached their valuation by taking an average of the valuation placed on those properties on a square metre basis and applying it to the floor area of the ground floor of the subject property and then, by agreement, adopting a rate for the first floor area at one third of the rate for the ground floor area.

57. The argument put forward on behalf of Dayhoff that its rights to fair treatment under the Constitution and under the European Convention on Human Rights would be breached by the methodology proposed by the Commissioner, is based on a misunderstanding of the Commissioner's submission. The Commissioner was not arguing that the Tribunal should only have regard to the pre-MCC valuations, but was submitting that the Tribunal should have regard to such evidence, along with the evidence of other comparator valuations, when carrying out the revision pursuant to s.49. As such, the Commissioner was merely submitting that there should be no exclusionary rule preventing the Tribunal having regard to the pre-MCC valuations. In these circumstances, no question arises of the Tribunal adopting a methodology that is not consistent with the provisions of s.49, nor is there any question of a breach of Dayhoff's rights under the Constitution or under the ECHR.

58. The court is satisfied that the correct approach, which does not exclude reference to the pre-MCC valuations of the properties, where appropriate, is consistent with the correct interpretation of s.49 of the Act.

59. At the end of the day, the court finds that the Tribunal were correct in the methodology that they used when carrying out the revision of the valuation of the subject property, but erred in law in holding that they had to exclude from their consideration the valuations attaching to the two pre-MCC properties. To have been correct in their methodology, they should have had regard to the valuations of the two properties pre-MCC and given them such weight, if any, as they felt appropriate in the circumstances and should also have had regard to the comparators deemed sufficiently comparable as to be of assistance, in order to enable them to come to a valuation for the subject property that was in accordance with the tone of the list.

60. It is not possible for the court to say whether the Tribunal arrived at a fair and proper valuation in this case. It seems to me that they may well have done so, having regard to the comparators before them and to the basis on which the valuations were reached in those cases and having regard to the evidence of the valuers for the respective parties. However, it is not necessary for this Court to make any determination on the correctness of the revision valuation ultimately arrived at by the Tribunal in this case. The court is asked to answer one question only: Whether the Tribunal was correct to exclude any consideration of the valuations of the two properties pre-MCC; for the reasons set out above, the court holds that the Tribunal was wrong as a matter of law to exclude any consideration of the prior valuations of the two properties pre-MCC. Such an exclusionary rule is not warranted on a correct interpretation of s.49 of the 2001 Act.

61. For the reasons set out herein, the court answers the question posed in the case stated as follows: No.

62. The parties may furnish written submissions within four weeks in respect of the final order and on costs and on any other matter that may arise.