Appeal No. VA02/1/009

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Atlantic Mushrooms Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Store at **Map** Reference: 102a.103, Tallagh, Belmullet, **County** Mayo

B E F O R E

Tim Cotter - Valuer	**Deputy Chairperson**
John Kerr - FIAVI	**Member**
Brian Larkin - Barrister	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF APRIL, 2003

By Notice of Appeal dated 7th January 2002, the appellant appealed against the Determination of the Commissioner of Valuation in fixing a rateable valuation of €126.97 on the relevant property described above. The Grounds of Appeal as set out in the said Notice of Appeal are that:
(1) The Valuation is excessive and inequitable. (2) The Valuation is bad in law. (3) Premises should be exempt from rates under section 3(1) Valuation Act, 1986 as Land Developed for Agriculture / Horticulture.

The appeal proceeded by way of an oral hearing that took place in the Council Chamber, Galway City Council, City Hall, College Road, Galway on Wednesday 11th December 2002. Counsel was retained on behalf of each party. The Appellant was represented by Mr. Owen Hickey B.L instructed by Michael Bourke Solicitors, Ballina, Co. Mayo and the respondent by Ms Sean Quinn B.L instructed by the Chief State Solicitor. In addition Mr. Anthony Blowick Director/Operator of the Appellant Company and Ms Sheelagh O Buachalla B.A. of GVA Donal O Buachalla gave evidence on behalf of the appellant. Mr. Paschal Conboy, District Valuer gave evidence on behalf of the respondent. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing, exchanged their précis and having taken the oath adopted them as being their evidence in chief. Submissions were also made.
From the evidence so tendered the following emerged as being the facts relevant and material to the appeal.

The Property

The property is a large mushroom growing facility located on a 67-acre site 2.4 miles north of the town of Belmullet and purchased from Údarás na Gaeltachta in 1998/99. The buildings on site include a canteen/plant building which is of basic concrete construction, a basic industrial store building, containing a cold store and a portacabin used as offices. The floor areas were agreed as follows:

Canteen	268.5 sq.metres
Store	623.36 sq.metres
Portacabin offices	43.56 sq.metres

Valuation History

A Valuation of £100 (€ 126.97) was assessed on the property at the 2001/3 Revision. At First Appeal the RV remained unchanged and the property was deemed rateable.

Tenure

The property is held freehold.

Appellant's Case

The substantive issue in this appeal is that the subject property should be exempt as land developed for agriculture/horticulture. Prior to the hearing the parties agreed that the quantum element of the valuation was not in dispute and the only matter in dispute was the rateability of the premises.

The Appeal was deemed to be an appeal under the 2001 Act by virtue of section 57 of the said Act although the Appellant's Notice of Appeal referred to the Valuation Act 1988. The Appellants case was that the premises should be exempt under section 3(1) of the Valuation Act, 1986 as "land developed for horticulture" and/or Section 14 of the Valuation (Ireland) Act, 1852 as "farm buildings". The Valuation Act, 2001 repealed both of those Acts but maintained the exemption for land developed for horticulture and for farm buildings.

The proceedings proper commenced with evidence being given to the Tribunal by Mr. Anthony Blowick, Director of Atlantic Mushrooms Ltd. Mr. Blowick outlined the operation and functions of the subject mushroom facility. He described how compost was delivered to the facility and allocated to mushroom growing rooms, that teams of pickers were deployed and the product was removed to a refrigerated store, graded and palletised for delivery to stores in Britain via refrigerated container transport. Mr. Blowick also gave evidence that mushroom cultivation was carried out in approximately 19 acres of the 67-acre farm.

Under cross examination by Ms Quinn B.L, Mr. Blowick stated that U.K. Regulations required a canteen on site and that those regulations were adopted by An Bord Glas. Mr. Blowick gave ancillary support evidence that the Portacabin/offices were all part of the operation. Best practice, he suggested, required him to keep records and facilities on site for payment of workers and for signing in and out of "picker's knives", Mr. Blowick also indicated that regular inspection on behalf of Atlantic Mushrooms UK customers was carried out by Monaghan Mushrooms Ltd. who carried out quality control tests. Mr. Blowick concluded, in response to

questions, that the offices and cold stores might be located off site to the same effect, by stating that such a suggestion made no sense from an administrative or refrigeration point of view. Mr Blowick also stated that his other mushroom farm at Belcarra Co. Mayo was not rateable.

Respondent's Case

The Respondent's case was that while the mushroom growing tunnels and a further tunnel used as a packaging/dry goods store, in addition to the covered walkway between the tunnels, were exempt, the Canteen, Store and Portacabin offices were rateable.

Mr. Conboy witness, in his oral evidence stated, in response to questions put by Ms Quinn B.L, that he had looked at the office and canteen facilities in the subject property and was satisfied that if they were situated in a commercial location they would be rateable. Mr. Conboy also gave evidence that in analogous situations such as Golf Clubs and G.A.A. clubs the course/pitch would be exempt while the Club Houses, Bar and catering facilities would be rateable.

Under cross examination by Mr. Owen Hickey, B.L for the Appellant as to whether it would have made a difference if the buildings he referred to were accepting mushrooms, Mr. Conboy stated that such was a grey area and he declined to comment thereon. Mr. Hickey put it to Mr. Conboy that the entire Atlantic Mushrooms Ltd facility was agricultural and thus exempt. Mr. Conboy stated that different approaches had been adopted for mushroom growing facilities – some were rateable while others were not, including the buildings at the Belcarra facility also owned by the Appellant,
which were considered to be not rateable on the grounds that they qualified as "agricultural". Mr. Hickey referred the witness to S. 14 of the Valuation Act 1852 which he said provided an exemption for the subject buildings. The basic question he said was whether the property in question was a "farm building" and thus entitled to exemption.
The remainder of the Hearing revolved around legal argument between Counsel as to what constituted "farm buildings". The High Court decision in International Mushrooms Ltd v The Commissioner of Valuation, 1994 2 ILRM and the Supreme Court decision in Nixon v The Commissioner of Valuation [1980] IR 340, were cited in support of their respective positions.

The Legal Position

S.12 of the Valuation Act, 1852 provides as follows: -

"for the purposes of this Act the following hereditaments should be deemed to be rateable hereditaments: viz, all lands, buildings, and opened mines: all commons and rights of common, and all other profits to be had or received or taken out of any land: [and in the case of land or buildings used exclusively for public, scientific or charitable purposes, as hereinafter specified, half the annual rent derived by the owner or other person interested in the same, so far as the same can or may be ascertained by the said Commissioner of Valuation;] and all rights of fishery; all canals, navigations and rights of navigation; all railway and tram roads; all rights of way and other rights or easements over land, and the tolls levied in respect of such rights and easements and all other tolls".

The words in square brackets were repealed by S.3 and the Schedule to the Local Government (Rateability of Rents) (Abolition) Act, 1971.

Section 2 of the Valuation Act, 1986 provides that property falling within any of the categories of fixed property specified in the schedule to the 1852 Act, as inserted by S.3 of the 1986 Act, shall be deemed to be rateable hereditaments in addition to S.12 of the 1852 Act. Reference No 1 of the schedule refers to all "constructions affixed to lands or tenements.".

S.14 of the 1852 Act reads "no hereditament or tenement shall be liable to be rated in respect of any increase in the value thereof arising from any drainage, reclamation or embankment from the sea or any lake or river, or any erection of farm, out house or office buildings, or any permanent agricultural improvement as specified under …made or executed thereon within seven years next before the making of such valuation or revision".

It is clear from a reading of the Sections above quoted, that unless exemption is to be found within S.14 then the Canteen, Store and Portacabin offices must come within the nominated property specified in S.12 and as a result must be rateable. The basic question therefore is whether the property in question is a "farm building" within the meaning of S.14 and therefore entitled to exemption. But what is a "farm building"?

The situation was addressed in 1980 when the Supreme Court gave its decision in Nixon v Commissioner of Valuation [1980] IR 341. In that case the appellant was the occupier of a farm consisting of 118 acres at Raconnell, Co. Monaghan. In 1962 he built a poultry house on his

property. Two years later he built a second, with far greater capacity. This attracted an increase of £15 in his rateable valuation. He appealed to the Circuit Court and on a case stated the point ultimately reached the Supreme Court. Mr. Justice Henchy, giving the unanimous judgment of the Court said at Page 346 of the Report "*I consider the words "farm….buildings" in S.14 of the Act of 1852 should be given their ordinary meaning namely, buildings on a farm which are used in connection with the farming operation on the farm. That is what these poultry houses are. They are used for intense poultry farming as houses in which chickens are reared to be sold as broilers or in which laying hens are kept for egg production. They are not used as a separate self-contained activity. They are situated on the farm and are part of its activities. It is impossible to treat them as other than an integral part of the farming operations. In each case the litter from the poultry houses provides valuable fertiliser for the rest of the farm, thus effecting a substantial saving in the expenditure on agricultural fertiliser. They are thus an important adjunct to the purely agricultural use of these farms. In Mr. Nixon's case water for the birds is supplied from a well on his farm. In Mr. Quinn's case grain grown on his farm is scattered on the litter as scratch food for the young fowl. In those circumstances it cannot be held that the poultry houses are not a part of the farming operation on these farms. Intensified production of cattle, pigs and fowl in specialised houses of this kind has become a common feature of modern farming*".
The result of course was to confer exemption on these poultry houses.

In order therefore to come within the meaning of "farm… buildings", it would appear that the structure in question must firstly be a building, secondly a farm building (distinguishing it from buildings not immediately describable as such), thirdly be located on a farm and fourthly be used in connection with "the farming operation on the farm". If on the other hand the structure in question has a separate or self contained activity carried on therein then it may well be incapable of falling within the definition of "farm… buildings".

The case of International Mushrooms Ltd v Commissioner of Valuation [1994] 2 ILRM page 121 is also of significance. In that case the structure in question was an industrial building located in Beechmount Industrial Estate, Navan. It had a brick faced two storey office section, an area covered by a double skin apex cladded roof on steel and concrete portal frame trusses

and had air conditioned storage facilities. It was used in the production of mushroom spawn from which ultimately mushrooms were cultivated. The mushrooms however were not cultivated on the premises. Mr. Justice Keane had no hesitation whatever in holding that these premises were not "farm buildings" within the meaning of S.14 of the 1852 Act. Having referred to the Nixon case he said, at page 125 of the report "*I shall consider first the applicability of S.14 of the Act of 1852. It seems reasonably clear that the intention of the legislature in enacting that section was to ensure that agricultural lands which were improved by the carrying out of the works referred to in the section, should not attract an increased valuation as such. If the words of the section are given their ordinary natural meaning, I do not think that the expression "farm …buildings" would be an appropriate description of a building located in an industrial estate such as the building with which I am concerned. It is not, in my view a relevant consideration that the spawn produced in the building is ultimately used elsewhere in the cultivation of mushrooms. The relevant question is as to whether the building can properly* be *considered a farm building within the meaning of S.14. I am satisfied that it cannot*".

And again, at page 126 having quoted the extract above identified from Mr. Justice Henchy's decision in the Nixon case, he continued "*the whole tenure of the passage is that buildings should be regarded as "farm buildings" where they are buildings on a farm which are used in connection with a farming operation on that farm and not otherwise. If they come within that description it is immaterial that activity of a relatively intensive nature is carried on in them. The buildings in this case could not be considered as buildings on a farm which are used in connection with farming operations"*. Accordingly he held in that case that the appellant company could not avail of S.14.

A more recent case on the point was that of Shannon Resources Ltd v The Commissioner of Valuation, Tribunal Judgment delivered on the 14 February 1997.
In that case it was urged on behalf of the appellant that the hereditaments in question viz "a warehouse and yard" used exclusively by them in connection with their business of growing, sorting, treating, storing and sale of daffodils and potatoes should be exempt from rates on the grounds that the business therein carried on was in the nature of horticulture /agriculture.
The facts were -:

(1) The company rented lands, some in West Limerick and some in North Kerry at distances of between 9 and 17 miles from the location of the warehouse. The area of land varied from 51 to 86 acres. Most of the lands were used for the purpose of growing daffodils, which demands a three-year cycle. Potatoes however have to be rotated annually because of the risk of disease. The actual area of land acquired and its location are dictated by market availability, needs and finance. In 1996 no lands were rented for the purpose of potatoes. The growing thereof was contracted to farmers. This was found to be more economic. In 1997 it was the company's intention to revert to growing its own potatoes. Its end products were sold both nationally and internationally with the flowers and bulbs accounting for 80 to 90% of the company's turnover.

(2) At the appropriate time flowers and bulbs were moved from their growing location to the warehouse. There they were washed, bunched, stored in cold storage to reduce temperature, then boxed and sold. The flowers normally remained in the warehouse for three to four days. The bulbs, depending on their moisture content, could remain in storage from eight to twenty one days. The potatoes when picked are also transported to this warehouse. Thereat with the flowers and bulbs, such potatoes were cleaned, graded, stored (in the cold storage area) bagged and dispatched. They could remain in storage from early December to late March.

The Tribunal disallowed the Appeal for exemption under S.14 of the 1852 Act and its judgment was based on the following.

(1) If the words "farm …..buildings" were given their ordinary meaning which in accordance with Nixon's case they clearly should, it seemed to the Tribunal that it was highly debatable whether or not the hereditament the subject matter of the appeal could by that criterion be described as a "farm …building". It was over 1,300 sq.m. in area, it had an internal division separating the cold store from the warehouse /work area, it had a shape identical to the vast majority of warehousing in industrial areas, it had been constructed in like manner and it had access doors and other facilities, which were invariably found in such warehousing. Whilst its actual state and condition may not have been of premier standard, nevertheless the same was well within what was on a daily basis offered for

letting as industrial units. In the Tribunal's view it would have been quite exceptional to see or observe a similar type of building on a farm and used solely for farming purposes, while the Tribunal, thus, had considerable doubts as to whether the building in question could properly be described as a farm building, it did not rest its judgment on that point only.

(2) The Tribunal also addressed the following-:

Was the building in question "on a farm" and was it used in conjunction with farming operations on the farm?

The Appellant's activities were deemed to be two-fold. Firstly they grew and cultivated flowers, bulbs and potatoes and secondly when the growing/cultivation period was at an end they transported the end products to the warehouse where in effect they were stored and prepared for onward sale.

The Tribunal held that the warehouse did not form part of the holdings in West Limerick or North Kerry or that both of those holdings together with the warehouse could collectively be said to be a "farm" within the provisions of S. 14 but crucially found that the warehouse had within it an activity which could truly be described as separate and self contained. Such activity was not dependent on lands in West Limerick or North Kerry or indeed any particular lands in any particular locality.

The Tribunal in its Judgment, believed its view was both supported and confirmed by what Mr. Justice Keane said in the extract from the International Mushrooms case referred to above in dealing with the legislative intentions behind S.14 viz "that section was to ensure that **agricultural lands** which **were improved** by the carrying out of the works referred to in this Section should not attract an increased valuation as a result."

The Tribunal considered that in no circumstances could the said lands be deemed to be improved by the warehouse and yard.

Findings and Determination of the Tribunal

Although the area under mushroom cultivation was significantly less than the entire subject lands, this was not an issue. The principal issue was whether the premises under Appeal were "farm buildings".

The Tribunal considered the applicable law as outlined above. The Tribunal also took cognisance of the following definitions in the 2001 Valuation Act:-

"agricultural land" – land used as tillage, meadow or pasture ground or which is suitable only for such use".

"Farm buildings"- buildings, parts of buildings or other structures occupied together with land developed for horticulture or forestry and used solely in connection with the carrying on of horticultural or forestry activities as the case may be on that land.

"Land developed for Horticulture" – land used for market gardening, nurseries, allotments or orchards other than land or buildings or parts of buildings used for the sale or processing of horticultural produce.

Applying the foregoing to the facts of this case it is our opinion that it could not be said that the activities carried on in the canteen, store and Portacabin offices could either individually or collectively with the lands used for the cultivation of mushrooms be " a farm" within the said provision. The activities carried out in the said properties are singularly independent from the activities carried on in the "farm". The only common denominator is the identity of the owner.

The use of the buildings cannot be stretched so far as to fall within the parameters of the Nixon judgment. The buildings are used in a self-contained capacity; they are not an important adjunct to the purely agricultural use of the farm. They, we submit clearly, are not analogous to the poultry houses in the Nixon case which were an integral part of the farming operations.

The whole tenure of the passage in the Nixon judgment was that buildings should be regarded as "farm buildings" where they are buildings on a farm which are used in

connection with farming operations on that farm and not otherwise. In this case if we give to the words "farm building" their ordinary meaning which in accordance with Nixon we clearly should, it would be exceptional to conclude that the property in question i.e. the canteen, store and offices were used solely for farming purposes.

In reaching our decision we have also looked closely at the underlying considerations underpinning the Tribunal judgment in the Shannon Resources Ltd appeal decision delivered on the 14th February, 1997 and while distinguishing it from that case on the grounds that the subject properties are on site and not separated geographically, we nevertheless are satisfied that they do not qualify as "farm buildings" as defined in Nixon and International Mushrooms Ltd.

The Canteen, storage and office facilities are engaged in activities which are mutually exclusive, separate and self contained and could equally be carried out in an alternative "non-farming" location. They are not dependent on "lands" in Mayo or anywhere else and consequently do not fall within the exemption provided by S.14 of the 1852 Act as carried through into Schedule 4 paragraph 4 of the Valuation Act 2001.

We also considered the point canvassed on behalf of the Appellant that U.K. regulations (now adopted by an Bord Glas), required that mushroom producers/exporters have on site canteen facilities to avoid risk of contamination of its product. But, while acknowledging its importance, are the recommendations of An Bord Glas to carry such weight as to create an exception to the normal criteria as laid down by the court and followed by the Tribunal that canteen facilities and or cold storage and office facilities were self contained activities on the subject property which could be located off site just as easily?

The difficulty we are faced with is that no parallel case has been the subject of a High Court or Tribunal Appeal to date. Our decision must be based on the interpretation by the courts of the Valuation Acts to date. It is based on the law as it now stands.

On this basis the claim for exemption fails.