Appeal No. VA04/2/071

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Michael Moloney **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Garden Centre at Lot No. 1B, Ballymount Road Lower, Corkagh , Clondalkin Village, Clondalkin, Co. Dublin.

B E F O R E

Frank Malone	**Deputy Chairperson**
Michael McWey - Valuer	**Member**
Frank O'Donnell - B.Agr.Sc. FIAVI.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF APRIL, 2006

By Notice of Appeal dated the 21st June, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €33.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto. A copy of each of these documents is at Appendix 1 to this Judgment.

1. The appeal proceeded by way of an oral hearing in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 21st day of September, 2004. At the hearing the appellant, Mr. Michael Moloney, represented himself. Mr. Patrick Gleeson, Nursery Stock Specialist with Teagasc, gave evidence on behalf of the appellant. The respondent was represented by Mr. Denis Maher, M.R.I.C.S., a Valuer Grade 1 in the Valuation Office.

2. In accordance with the Rules of the Tribunal, the parties had exchanged their précis of evidence prior to the commencement of the hearing and submitted same to the Tribunal. At the oral hearing both parties, having taken the oath, adopted their précis as being their evidence-in-chief. In Mr. Maher's case he later amended his précis at page 4 thereof to correct the area of the Open store to read 27.60 square metres instead of 11.50 square metres. This evidence was supplemented by additional evidence given either directly or via cross-examination.

3. **LOCATION AND DESCRIPTION OF PROPERTY**

The subject relevant property is located in the Naas Road Horticultural Park on the north side of the Naas Road approximately 1 mile from Newlands Cross and close to Clondalkin and the greater Dublin city area. The property comprises a rectangular shaped, walled-in site of just under 1 acre with a small amount of buildings which are mainly timber framed, moveable structures.

4. **VALUATION HISTORY**

The property was revised on 8th December 2003 when a rateable valuation of €33.00 was assessed. An appeal to the Commissioner of Valuation in May 2004 resulted in no change being made to this assessment. It is against this decision of the Commissioner that the appeal to this Tribunal lies.

5. **EVIDENCE OF MR. MICHAEL MOLONEY, APPELLANT**

Mr. Michael Moloney, having taken the oath and adopted his précis of evidence, gave evidence as follows. He confirmed that he was seeking exemption from rates on the grounds that the subject property was land developed for horticulture. He disagreed with the description of the property as a garden centre in the Valuation Certificate. In a garden centre plant sales might make up only 25% of sales, the remainder being made up of jams, sweets,

gardening sundries like tools, tables and chairs and even clothes. Such centres would typically have massive shops, huge car parks and perhaps restaurants attached. A nursery, on the other hand, was basically a place where plants were produced. Plants would make up approximately 80% - 85% of sales and there would be very few dry goods for sale.

He classed his property as a nursery because he was producing more and more of his own stock each year. He had poly tunnels for the growing of stock and he personally did most of the propagating. This involved taking cuttings from the bigger plants, putting them in trays of a special mix and putting them in a poly tunnel covered in plastic where they rooted in up to four or five weeks. At that stage those so-called baby plants were transferred into liner pots measuring 9cm. x 9cm. until their roots had spread to reach the walls of the pot at which stage they were transferred to two-litre pots. From then they would be continually fed, pruned, sprayed and kept free of any disease. They were then available for a landscaper to take. His business was the production of plants and his customers were mainly landscapers. His location was very much off the main road. The entrance to the property was very poor and parking was limited to 4 or 5 small cars or small vans. He could see no reason for his being described as a garden centre and he did not have sufficient space to be a garden centre.

There were 3 small garden sheds on the property and these were not used for anything to do with display. One was a sort of office for dealing with enquiries, taking in post, answering the phone or receiving faxes. A second shed was for the basic tools used in connection with the nursery business. The third was used by staff for their tea breaks.

There were a number of growing beds which he would not describe as display beds as the plants in them had not finished growing. The property comprised 0.9 of an acre and for the convenience of his landscaper customers a cross sample of all his stock was contained in the growing beds rather than asking customers to go here and there in the 0.9 acres selecting what they wanted.

He also had 2 poly tunnels one of which was used mainly for propagation and also to protect tender plants from frost. The other was used mainly for bedding plants a lot of which he grew from seed and the rest from bought-in seedlings. A lot of transplanting was done in that tunnel with the plants placed in trays and benefiting from the extra heat generated by the tunnel.

The final part of the property was a potting area. It could best be described as a lean-to having only one wall. It was where all the potting was done and this activity continued from January through to August. The potted plants were then put in the beds and tended by pruning or whatever attention was necessary.

Cross-examination of Mr. Moloney

Mr. Denis Maher asked Mr. Moloney if his differentiation of a nursery from a garden centre was determined by what was sold. Mr. Moloney replied that there was a further definition in that garden centres were basically retail whereas his sales were wholesale to contractors. Because his margins were so low he had to sell in volume. A garden centre's margins were very high. He agreed there was nothing to stop a nursery owner from selling other items but said that the likelihood of surviving as a garden centre in his location was minimal because he would not be getting the required volume of customers. As a nursery one could survive on perhaps 6 customers per day buying plants in large volume. A retail customer in a garden centre would buy perhaps a total of 2 plants so the margins would be much higher.

He disagreed with Mr. Maher that a garden centre did not have to be in a prime location saying that to survive in an area that was not well populated a garden centre must have reasons for people to travel to it such as "a huge set-up" with a restaurant and a very wide range of goods for sale.

He agreed that he was selling from the site as well as producing on it but emphasised that he was selling to landscapers, that he was a wholesaler and a grower. He maintained that there was a difference between retailing and wholesaling and that most of the Dublin and Kildare nurseries were not rated. Asked if he did not think a wholesale warehouse, for example, should be rated he said a nursery was different as its wholesaling was part and parcel of the land being developed for horticulture.

Mr. Maher, referring to Mr. Moloney's written evidence that the nursery method of growing plants had changed over the past 20 years, asked if it was now the case that all plants in the subject property were grown in pots rather than in the soil and Mr. Moloney agreed that this was so. The modern concept, he said, was to have plants in pots so that they would be available for sale all year round rather than from November to March as previously. If Irish nurseries did not do it this way the Dutch would do it for them and take over their markets.

All his plants were propagated and placed in small pots and as they grew they were put in suitably larger pots to accommodate the expansion of the root system.

Mr. Moloney would not agree that he was engaged in processing. He was growing plants and while they were growing he made sure they were disease-free, protected from attack by a range of fungal diseases, top-dressed with more fertiliser and pruned. Until a plant left the nursery he was still growing that plant. Garden centres were not growing plants in the same sense. They did not tend plants. If a plant was not growing they would return it to the nursery they had bought it from.

Mr. Maher referred to the definition in the Valuation Act 2001 of *"land developed for horticulture"* as *"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"* and asked Mr. Moloney if that definition would not give him the impression that the land itself had to be used for nurseries etc.. Mr. Moloney said that his nursery met today's definition of horticulture: he took a site; levelled it up; put down ground sheets; put on sand and put in an irrigation system. That compared with the situation 25 – 30 years ago where horticulture involved digging the ground and putting down plants. A nursery could not exist with that method today because the Dutch would flood the country with their produce. But he was still producing goods although in a different fashion from what was done 30 years ago. The case of orchards where trees were grown in the soil itself was also horticulture.

Tribunal's questions to Mr. Moloney

In reply to questions from the Tribunal Mr. Moloney stated the following. It was not correct of the respondent to say the property was mainly used for the sale and display of plants and shrubs and he repeated his earlier direct evidence with regard to the growing beds and their purpose.

With regard to the actual selling he said that he had previously been on another site for many years and had built up a regular clientele of 20 – 25 landscape gardeners who came to the property regularly. They might phone in advance and he would prepare their order. Or they might come to the property undecided as to what they wanted and he would assist them in their choice. These were all people he knew. His plants were not labelled and did not need to be labelled for these customers who had mainly been trained in the Botanic Gardens and were

knowledgeable about all aspects of plants. Again this was totally different from the situation in a garden centre. His customers would usually take their purchases away in a trailer or a van. Some of his customers were on monthly accounts and some paid by cheque or cash on the spot. Payments might be made anywhere on the property.

He confirmed that he was seeking exemption from rates rather than a reduction in the rateable valuation of €33 assessed on the property.

The Tribunal referred Mr. Moloney to his précis where he had stated *"It is also important to note that the plants are still growing in these beds."* and asked if it was not the case that all the plants were potted. He replied that they were all potted but they grew in a box and a slow-release fertiliser was used. No plants were grown in the ground. He repeated his statement that other nurseries in Dublin and Kildare were not rated.

He confirmed that the units set out in Mr. Maher's précis, namely Office, Store, Canteen, Potting Shed and Open Store were all there and that the areas set out for them were correct. He then described the various units and areas by reference to a series of 17 photographs (see copies at Appendix 2 hereto) which he had supplied and which were labelled and titled as follows and which he commented on as shown:

Exhibits 1, 4 6, 8, - Growing Area - showed the outlying area where all the plants were placed in the beds when potted. These went to show the large amount of space allocated to growing and to give an idea as to why he sold by volume rather than by small amounts

Exhibit 2 - Nursery Entrance – showed that the entrance was restricted.

Exhibit 3 - Entrance Driveway – showed the long driveway which extended for $1^1/_2$ miles and narrowed as it went. It was, he said, very restricted and showed that it was not suited to a garden centre.

Exhibit 5 - Propagating Area – showed the area where he took cuttings in early-mid summer and covered them with white plastic to prevent the sun from burning the foliage. The plastic would be removed around September.

Exhibit 7 - Office – Tool Shed – Canteen – as described in earlier direct evidence.

Exhibit 9 - Potting Up Plants - as described in earlier direct evidence.

Exhibit 10 - Plants on Raised Beds – showed the tables containing a variety of plants for customers to choose from as per his earlier direct evidence.

Exhibit 11 - Poly Tunnel for Growing Plants, Exhibit 12 - Nursery Production Tunnel & Exhibit 13 - Bedding Plant Production Tunnel – showed the plastic tunnels where bedding was done. Plants were transplanted in packs of 6 or 12 and placed in the tunnels to grow.

Exhibit 14 - Young Plants Recently Propagated & Exhibit 16 - Young Plant Material - showed where the white plastic covering the cuttings was removed. This was done every week, each module was checked to see if it was watered, dead leaves were removed and if there was any sign of disease spraying was initiated immediately.

Exhibit 15 - Nursery Access

Exhibit 17 – Young Plants under Production – showed the big poly tunnel where potted plants were put for 6 – 8 weeks. A slow-release fertiliser was used which needed a certain temperature to be released. This was applied in the Spring to Autumn period and with the heat generated by the tunnel promoted plant growth. The tunnel also protected tender plants such as fuchsias which would not survive the elements.

He was selling from the property but to a different type of client than that of a garden centre. In any case he was producing the plants and he had to sell them and although he was selling the whole venture was a horticulture venture. He was a grower and did not process anything. The various stages of transferring plants to larger pots was not processing. It was growing. He had heard the word “process” being used in relation to manufacturing companies and activities such as canning but had never heard it used in horticulture.

The surface of the property in the outlying areas of the site was rough paths with rough stone on them with weeds growing through. The only paved area was at the front where people

came in and this was done because when he first started there the landscapers said they could not get in otherwise.

Some growers placed the potted plants directly onto the soil to take up moisture underneath. He used a product called Mypex under the pots to keep weeds from coming up. When the bedding plants were big enough he stripped off the grass and put the pots directly on the soil. This allowed the roots to go into the soil which kept them healthy and moist and they took some nutrients from the soil. It was a better system than putting them on sand. But unless one filled all the spaces with pots weeds would grow and it was possible to get weeds which spread disease very fast and the plants could become infested. Contact with the soil was one of the best systems for growing provided the soil was not too dirty or weedy.

The seed he used came from two sources. For shrubs he took his own cuttings from a mother stock of some 50 plants kept for that purpose. For bedding plants he bought seeds from a seed merchant.

If he were to leave the site he could take the sheds away on a truck. They were not on concrete bases but were resting on timber so that air could circulate and prevent them from rotting. Both the sheds and the poly tunnels were moveable.

The types of shrubs he grew were mainly hardy nursery stock shrubs which he further defined as colourful ornamental shrubs or woody plants with branches, leaves and flowers.

6. EVIDENCE OF MR. PATRICK GLEESON

Mr. Gleeson, having taken the oath, gave his title as Nursery Stock Specialist with Teagasc. He had responsibility for the nursery stock industry over the 26 counties. He confirmed, in response to a query from Mr. Maher to the Tribunal, that his evidence would be based mainly on what he had heard at the hearing so far and on the Valuation Act 2001 and not on the document in Mr. Moloney's précis of evidence on Teagasc headed paper and dated 17th June 2004 (see copy at the Appendix 1 hereto). He had written that document but had not measured the actual area and was not 100 per cent certain of the actual information in relation to selling that was given to him by Mr. Moloney. In later evidence he revised this position.

He wanted to argue why Mr. Moloney's property was a nursery. There were approximately 250 nurseries in the 26 counties and no two were the same. There was a great variety of product from very soft tender plants to extremely strong woody hardy plants and from plants in 9cm. pots to those in 100-litre pots. Mr. Moloney was growing plants and he was a nurseryman because he was growing and propagating plants. He would estimate that in the 250 nurseries 80% of product was container grown. All Mr. Moloney's plants were growing in containers and container growing was not a process. Many years ago the nursery industry had looked for a derogation so that it could be classed as processing but the only sector in horticulture that was allowed to be so classed was the mushroom industry. He said that 2,400 square metres of Mr. Moloney's property was nothing but a propagating and growing area and therefore a nursery under the Act. A garden centre was retailing and merchandising and that involved signage and presentation. A garden centre had to sell a product fast. Plants would have to be given some care and attention in a garden centre but the main care and attention a plant got was in a production nursery. In Mr. Moloney's nursery there was no signage and no bed labels. The plants were "pot thick", i.e. on top of each other. In a garden centre plants had to be labelled and spaced out so that people could read the label. Under Teagasc criteria the subject property was classified as a nursery. Access was another factor and in this case it was down a long narrow lane which was not typical of any garden centre he knew.

Mr. Moloney's trading activity on the property was part and parcel of the nursery business. He had to sell his product. Every other wholesale nursery around the country was doing likewise and they were not rated. Mr. Moloney was a client of Teagasc and if he were not a production nursery he would not meet Teagasc criteria under the 2002-2006 scheme for grant aiding nurseries. In fact under Teagasc and Department of Agriculture criteria in the grant-aided scheme he was classified as a farmer.

Mr. Gleeson said a similar appeal had occurred some years earlier in relation to Con Ryan [**VA95/1/064 - Con Ryan, Ryans Nurseries**] who was then a client of his. He was growing trees, 80% of which were grown in the field and 2% in container beds. On appeal he was classified as a nursery and was not rated.

Cross-examination of Mr. Gleeson

Mr. Gleeson, in reply to questions from Mr. Maher, stated the following. The criteria under which the property was classified as a nursery were Department of Agriculture criteria which defined a nursery as a place that grows plants in the ground and in containers whether tender plants or semi-hardwood plants. There was no distinction. No other criteria were used. These criteria were for taxation purposes. He agreed that if Mr. Moloney were paying rates he could still be a client of Teagasc. He and Mr. Maher then had an inconclusive discussion of the **Con Ryan** case. Mr. Gleeson said he knew of no nursery paying rates. He had discussed that issue with a nurseryman who said that if he were ever asked to pay rates he would be asking the farmer across the road to do likewise and that he would shut down his business.

Mr. Maher referred Mr. Gleeson to an exception to the definition of *"farm buildings"* in the 2001 Act in respect of *"buildings… used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not)"*. Mr. Gleeson said that Mr. Moloney's sheds were part of the nursery and that every nursery had to have a building. Mr. Moloney was not engaged in processing. He had to sell his product and he had to have some covered area in which to store pots, compost, fertiliser and chemicals as he could not leave them in the open. The sheds were part and parcel of the business.

Tribunal's questions to Mr. Gleeson

Mr. Gleeson replied as follows to questions from the Tribunal. He confirmed that he had written the document on Teagasc headed paper and dated 17th June 2004 contained in Mr. Moloney's précis of evidence (see Appendix 1 hereto). He would swear to all of its contents except: (i) the area of the site which, in the document, he had said contained 0.4 hectares; (ii) that Mr. Moloney did not sell any product other than nursery product. He had never seen him do so and was not aware of his doing so but it was possible that he could do so; (iii) Mr. Moloney's client base.

With regard to sales from Mr. Moloney's property he repeated his earlier statement that such sales were part of the activity of every nursery and the product had to be sold. Mr. Moloney's activity was production. He went on to say that a nursery did not sell to the final customer but sold the product via a landscape contractor or a garden centre. He believed that the word "sale" in the Act could be interpreted as selling to the public only. He defined

horticultural produce variously but largely agreed with Mr. Moloney's earlier definition of "colourful ornamental shrubs or woody plants with branches, leaves and flowers".

7. EVIDENCE OF MR. DENIS MAHER

Mr. Maher, having taken the oath, adopted his précis of evidence as his evidence-in-chief. He confirmed to the Tribunal that he was relying on Paragraph 1(b) of Schedule 3 of the Valuation Act 2001, i.e. that the subject property was *"lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development."*

Mr. Maher then gave evidence as follows. The exemption claimed was on the grounds that the subject property was land developed for horticulture. The new Act was very restrictive in that definition. What was relevant was not what distinguished a nursery from a garden centre but whether the property was used for the sale or processing of horticultural produce. Whether sales were retail or wholesale was irrelevant. The area of 2,800 square metres which he had described as a display area was not the entire of the property but only the front section of 70 metres depth from the entrance and 40 metres width and which contained the display area and the office, store, canteen, potting shed and open store. The latter was used, as far as he recalled, for the storage of stakes and bags of moss peat which were being sold there.

The fact that other nurseries were, according to earlier evidence, not rated, was irrelevant. There was a new Act and nurseries and their modern growing system might come within the parameters of that Act. Under the old Act nurseries were seen as land where plants and shrubs were actually growing on that land. The definition of horticulture in the Act conveyed to him the impression that the land itself had to be used for horticulture and that such land would not be rated except in the case where the land or buildings, or parts of buildings on it were used for the sale or processing of horticultural produce.

The appellant and his witness had given evidence that all the plants were grown in containers. Some of the plants were grown from seeds and some 40% were bought in from outside. Whether the transferring of plants from pot to pot as they grew was "processing" had to be decided. The definition of "sale" was, he said, quite simple. A sale was the provision of goods and services for payment. This was the basis of his submission. Quantum was not an issue in the appeal to the Tribunal.

Cross-examination of Mr. Maher

Mr. Gleeson, on behalf of Mr. Moloney, cross-examined Mr. Maher. Mr. Gleeson described the growing method now used in glasshouse culture, namely growing on poly bags and not in the ground, and said that these were classified as land developed for horticulture. He then asked Mr. Maher if he would agree that this was very similar to the method now used in nurseries. Mr. Maher replied that he would need to know by whom glasshouses were classified as land developed for horticulture and that the issue was whether they could be so classified under the Valuation Act.

Mr. Gleeson said that the land for the subject nursery was developed for that purpose by being prepared and levelled for irrigation and other purposes. Mr. Maher replied that if one built a house, warehouse or factory one would develop the land in a way similar to that described by Mr. Gleeson.

Asked how he would describe Mr. Moloney's business if not as a nursery Mr. Maher said it was not a question of what he called it but a question of what was rateable under the Act. The Teagasc or Department of Agriculture definition of nurseries was irrelevant under the Act. They might have their own definition and terminology for other reasons.

With regard to processing Mr. Gleeson asked Mr. Maher how he could so define growing, fertilising, watering, feeding, spraying and all the cultural practices involved in the nursery. Mr. Maher replied that it was a question that had to be addressed under the Act, i.e. whether the production of plants from seedlings and cuttings and transferring them from pot to pot could be described as processing and that was a question for the Tribunal.

Mr. Maher confirmed that the area described by him as a display area was the area in front of the building approximately 70 metres in from the entrance and 40 metres wide and not the whole of the property but the entire of the area which had plants growing in containers with walkways through them. Mr. Gleeson said the plants in that area were "pot thick" and had no picture labels or price tags on them so that it could not be called a display area. The plants were growing there. Mr. Maher accepted that the plants were growing there but said they could have been growing in containers anywhere, on a yard, in a building, on a road, as they had no connection with the ground on which they were sitting.

With regard to sales Mr. Maher took the example of a farmer who, as a farmer, was exempt from rates, but who would be rateable in respect of a building in which he was wholesaling or retailing farm produce sourced from lands other than his own. This was clear, he said, from the definition of farm buildings and its exceptions in the Act.

Tribunal's questions to Mr. Maher

In response to questions from the Tribunal Mr. Maher stated the following. The difference between the old and new legislation with regard to nurseries was that under the old legislation nurseries were exempt as land developed for horticulture. But the old definition of such land did not contain a reference to sales or processing. Asked if it could be said that the property was used partly for horticulture and partly for selling and the selling part was rateable and the horticulture part was not, Mr. Maher said he did not see any part that was distinguished as being the selling part of the site. A landscaper could choose plants for purchase on any part of the site even away from the so-called display area. Whether or not the plants had names on them might be irrelevant. He did not think the evidence about the respective percentages for the activities on the subject property was relevant. In his view none of the land was actually growing plants. All the plants were for sale and none were grown in the soil.

In relation to Mr. Moloney's evidence that most of the nurseries in Dublin and Kildare were not rated Mr. Maher said that he did not know if a request to have them rated had ever been made to the Commissioner. He confirmed that he had never come across a place like Mr. Moloney's that was rated but said that he had not had a request to value such an operation. There was a new Act and perhaps requests to value such operations would come in from now on.

The property was described as a "garden centre" in the Valuation Certificate because the Valuation Office had that description in their schedule of descriptions which schedule did not contain the description "nursery". With regard to Mr. Moloney's and Mr. Gleeson's description of the difference between a nursery and a garden centre Mr. Maher said he did not see where the difference was. He could not define a property by what it sold or the amount of goods it sold. Mr. Moloney had said in evidence that there was no legal restriction on his selling anything that was on sale in a garden centre. There was earlier evidence about the Teagasc definition of a nursery but only what was in the Act was relevant. He might call the subject property a specialist garden centre specialising in the production and sale of plants

and shrubs for a specific segment of the market. He could not say whether the glasshouses referred to by Mr. Gleeson were rateable. He would have to look at them under the new Act. Being a nurseryman might indicate a specialised form of producing plants but did not automatically imply exemption from rates. He accepted that Mr. Moloney would have had to prepare the site to make it suitable for selling, and his evidence was that he had put down stone for walkways and slabs for display areas but he did not prepare the soil to make it suitable for the production of plants.

Asked if buildings had to be considered as fixtures in order to be rateable Mr. Maher said that he had, on many occasions, assessed 40-foot steel containers as buildings. The Valuation Office had valued pre-fabricated structures. Many industrial areas now had pre-fabricated offices sitting on concrete blocks and these were valued. In the subject the value attributable to the buildings would be about €5 or €6 out of a total valuation of €33 and this took account of their standard.

Mr. Gleeson's further questions to Mr. Maher

In reply to Mr. Gleeson's further questions Mr. Maher stated the following. He could not say whether every nursery in the country was a garden centre. He would have to assess on inspection every individual case on its own merits. In the case of anything he considered not exempt under Schedule 4 of the Act he would have no option but to call it a garden centre. He could not comment on Mr. Gleeson's assertion that most of the EU Member countries had distinct definitions for garden centres and production units nor did he think it was relevant in the context of the Act.

8. FURTHER EVIDENCE OF MR. MOLONEY

The Tribunal recalled Mr. Moloney, reminding him that he was still under oath. In reply to their questions he stated the following. After some consideration and a description of varying customer patterns and frequency, he said he would estimate the percentage of his time devoted to growing at 80% with the remaining 20% of the time being spent on selling.

The Tribunal referred Mr. Moloney to page 4 of Mr. Maher's précis which set out the components of the property as:

Office	10.80 sq. metres.
Store	7.50 sq. metres
Canteen	7.20 sq. metres
Potting Shed	13.11 sq. metres
Open store	27.60 sq. metres (as amended)
Display area	2,800 sq. metres

and asked Mr. Moloney whether, in each case, the use was growing or selling. The Office, Mr. Moloney said, was mainly for administration. The Store contained a few old spades and shovels and cat food for his own cat. The Canteen was used for tea breaks. The Potting shed was used for growing only. The Open store was a lean-to as shown in the photograph labelled Exhibit 9 and was also used for growing.

There were three separate operations in his production – the plants were potted/re-potted three times and the first two times did not involve sales as it was only at the third stage that the plants would be established and that could take four or five months. Over a period of a year 100% of the plants were for sale but in any given month as little as 20% might be available for sale. The rest would not be ready for sale and would not be sold as he would not want customers returning them as not potted for long enough.

The display area available to the customer was not 2,800 sq metres. The plants available for sale were on old benches on crates. Apart from that all the other plants were on the ground and were still young, growing plants.

Mr. Maher's further questions to Mr. Moloney

Mr. Moloney, in reply to questions from Mr. Maher, stated the following. There were no physical barriers on the ground such as trellis fencing that might distinguish the growing and display areas. He had only been $1^{1}/_{2}$ years in this location and he had not yet fenced off the different parts.

Mr. Maher then asked whether, if a landscaper went to the back of the property and wanted to buy plants from that area, Mr. Moloney would sell them to him. Mr. Moloney replied that the plants in that area would not be ready for sale. If plants were not ready for sale, if they were not potted long enough, he would not sell them even if a customer wanted to buy them. He

would not agree with Mr. Maher's suggestion that there was nothing to prevent him from selling such plants. Mr. Maher then asked about mature plants at the back of the property and asked if there was anything to prevent Mr. Moloney from selling those. Mr. Moloney said that generally all mature plants were at the front of the site. Any mature plants at the back of the property would be plants that were never sold or were going to be shredded. All the "good stuff", he said, was at the front of the site.

9. FURTHER EVIDENCE OF MR. MAHER

Mr. Maher, in reply to a question from the Tribunal, said that the total area of the property was 0.9 acres of which he had assessed 2,800 square metres which was just under ¾ of an acre. He had not assessed the back end of the site because there was nothing on it. There were some trees growing there which were not associated with the business. He could not say if that 2,800 square metres included the three stages of production because he had not previously been aware of any stages of production. The 2,800 square metres included all the area as there were no physical barriers separating any part of the site. At no stage was the actual land being used for any stage of production.

10. CLOSING STATEMENTS

Mr. Gleeson repeated his earlier statements about the definition and classification of nurseries versus garden centres, about the fact that in his view no processing took place in the subject property and about the nature of the selling conducted there.

Mr. Moloney said he had a sign at the entrance to the property which said "Customers, please check with staff what your requirements are as not all plants are available." which proved, he said, that he was not selling plants that were still growing. He had put the sign up to stop people walking in and selecting such plants.

Mr. Maher repeated his earlier statements about his obligations under the new Act. Nursery definitions for agricultural purposes were irrelevant. So also were the respective descriptions of "nursery" and "garden centre", the product sold and the type of selling. What was at issue was whether the land was used for growing and the evidence showed that it was not since everything was container-grown.

The Tribunal then asked the parties if they could agree on a breakdown of the 2,800 square metres between display and growing areas. Mr. Maher said the only grounds of appeal were whether the property was rateable or not. There were no grounds that only part was rateable.

Mr. Moloney and Mr. Gleeson, in consultation, gave a figure of about 304 square metres as representing the display area which was made up of wooden benches containing a sample of what was in stock for selection by customers. There were three such benches measuring respectively 8ft x 24ft, 8ft x 6 ft and 4ft x 16ft. The remainder of the site was used for growing. Mr. Moloney said he might also go around the site with the customer and pick areas where plants were ready.

Mr. Maher again said that, on inspection, he had seen no differentiation between display area and other areas. Perhaps some areas might have more flagstones as opposed to gravel. He remarked that Mr. Moloney had just said he might go around all the site with a client to pick what they wanted.

Mr. Gleeson said that on any nursery a lot of the product at any one stage was totally unsaleable because of the growing cycle of plants and the different times at which different plants are potted. Mr. Maher replied that that might happen in any undertaking. In a factory, for example, 90% of goods might be in an unfinished state at any one time and there might be only 10% shown where the product was on display but that did not mean that only 10% of the building was rateable. He confirmed his view that the whole purpose in such cases was to make a sale and therefore the properties were rateable adding that in the subject case the question was whether the land was used for horticultural purposes.

11. **FINDINGS AND DETERMINATION**

The Tribunal has considered all of the submissions and the evidence presented by the witnesses and finds and determines as follows:

1. Section 3 (1) of the Valuation Act, 2001 inter alia provides :-

   “ “land developed for horticulture” means 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;”.

On or about the Valuation Date the subject relevant property was land used for nurseries, other than land or buildings, or parts of buildings, used for the sale or processing of horticultural produce and accordingly on or about the Valuation Date the subject relevant property was “Land developed for horticulture” as specified at Paragraph 2 of Schedule 4 of the Valuation Act, 2001 and as defined in Section 3(1) of the Valuation Act, 2001.

2. The subject relevant property is accordingly not rateable having regard to the provisions of Section 15 of the Valuation Act, 2001 and Paragraph 2 of Schedule 4 of the Valuation Act, 2001.

3. Accordingly, this appeal is allowed.