Appeal No. VA05/1/008

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Nangles Nurseries **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Garden Centre at Lot No. 15B, Carrigrohane, Ballincollig, Cork Lower, County Cork

B E F O R E

Fred Devlin - FSCS.FRICS	**Deputy Chairperson**
Joseph Murray - B.L.	**Member**
Maurice Ahern - Valuer	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 29TH DAY OF JULY, 2005

By Notice of Appeal dated the 14th day of January, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €120.00 on the above described relevant property.

The Grounds of Appeal are set out in a letter accompanying the Notice of Appeal a copy of which letter is contained in the Appendix to this judgment.

1. This appeal proceeded by way of an oral hearing held on the 1st March, 2005 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing Mr. Ronan Nangle, a director of the appellant company, appeared on behalf of the appellant. Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent. Mr. Terence Dineen, B. Agr. Sc., a district valuer in the Valuation Office gave valuation evidence on behalf of the Commissioner of Valuation.

The Property Concerned

2. The property concerned is a nursery/garden centre occupying a three acre site on the outer fringes of Cork at the junction of Carrigrohane and Model Farm Roads. The property has been occupied by the appellant company for over 50 years and is currently held under a 10-year lease from 1996 at a rent of €50,000 per annum. The various buildings and structures on the site have been built at the expense of the appellant.

Rating History

3. On the 15th of June 2004 the Revision Officer issued a valuation certificate to the effect that the rateable valuation of the property concerned had been assessed at €120. No change was made at first appeal stage. It is against this decision by the Commissioner of Valuation that the appeal to this Tribunal now lies.

The Appellant's Evidence

4. Mr. Ronan Nangle in his evidence outlined the history of his company's occupation of the property over the past 50 years or so. Initially, Mr. Nangle said, the property was used for traditional nursery purposes i.e. the growing of roses and bushes. Over more recent years, however, the use of the property changed and whilst its primary activity is still that of a nursery there is an element of retailing activity. Mr. Nangle said all the trees, bushes and plants are bought in and either potted or planted in the ground or for display purposes pending sale. During the period between initial delivery and disposal- which could be several years- the various plants and trees are continually tended to ensure that they continue to grow and flourish. From time to time the plants and shrubs are re-potted as necessary and are held either in healing-in frames or in holding bays. Plants in the

holding bays remain in pots whilst those in the healing-in frames are embedded in the soil and remain there until sold. Bamboo plants, he said, are held in a plastic covered tunnel or in holding frames as appropriate to their size and nature. A series of gravel based pathways provides the necessary access through and around the display area. There is also a customer car park and various other buildings used for the sale of garden necessities.

5. Mr. Nangle said the major portion of the business carried on at the subject property is of a wholesale nature to architects, landscapers, contractors or other professionals engaged in landscape gardening. Prospective purchasers (including members of the general public) can view the plants on display and select those that they wish to purchase. Mr. Nangle said that all the plants be they in holding bays or healing-in frames continue to grow and this was in line with modern nursery practice.

6. Mr. Nangle said that the various buildings on the land were erected by and at the cost of his company. They are, he said, of basic construction and of little commercial value. Mr. Nangle agreed that the shop and other ancillary buildings – with the exception of a store used solely for storing machinery and implements in connection with nursery activities – are used for the sale of garden products, ornaments, potting plants and pots. Some of the merchandise of this nature is kept in an open display area beside the shop and customer car park.

7. Mr. Nangle said that as far as he was concerned the property was used for traditional nursery purposes and accordingly therefore should not be rateable in its entirety.

Respondent's Evidence

8. Mr. Dineen in his evidence contended that the predominant activity at the property concerned is selling and whether or not that is wholesale or retail is not material. In his opinion the property concerned is developed and used for the sale of horticultural produce and is not land developed for horticulture within the meaning of the Valuation

Act, 2001. Mr. Dineen further contended that in those situations where there are competing activities the paramount activity is decisive in deciding whether or not the property is rateable. In this instance it is clear that primary use is selling and that various shrubs etc. are on display for sale purposes only. Any growing of the plants is purely incidental to the selling process and is not an end in itself.

9. Mr. Dineen said that a nursery as defined in Cassell's Dictionary 4th edition "is a place or garden for rearing plants" and the use of the subject property does not accord with that definition. Mr. Dineen referred to other lands in Aherla also occupied by the appellant which were considered not rateable by the Valuation Office but said that the use of these lands met the test of "lands developed for horticulture" as defined in the Valuation Act, 2001.

10. Under cross-examination Mr. Dineen agreed that the user clause of the lease under which the premises are occupied states that the premises are to be used for horticultural purposes. Mr. Dineen said that whilst that may be so it was the actual use of the property that had to be taken into account in order to determine whether or not the property is rateable. As far as he was concerned the property is used for the sale of horticultural produce and hence is rateable. The fact that the various plants continue to grow during the sales period does not alter the fact the premises are used primarily for sales purposes. That being the case there was no alternative but to deem the premises rateable.

Legal Submissions

11. Mr. Devlin on behalf of the respondent submitted that the Valuation Act, 2001 had reversed the findings in the **VA95/1/064 – Con Ryan, Ryan's Nurseries** (the **Con Ryan** case) by expressly excluding land or buildings or parts of buildings used for the sale of horticultural produce from the exemption given to land developed for horticulture.

12. Mr. Devlin submitted that the 2001 Act does not permit of any distinction between wholesale and retail selling. The question is whether the premises is used for the sale of horticultural produce. The fact that the plants are still alive and growing when offered for

sale in the subject premises does not alter the fact that they are offered for sale. Further the fact that items such as barbeques or other lifestyle products are not offered for sale does not mean that the land/buildings are not used for the sale of horticultural produce.

13. Mr. Devlin said that the starting point for any examination of the facts in this appeal was Paragraph 2 of Schedule 4 of the 2001 Act. " Land developed for horticulture," Mr. Devlin said, was in fact land used for horticultural purposes and specifically excluded land or buildings used for the sale of horticultural produce. In short, if retail activity takes place on the property concerned then it is rateable. Having regard to the evidence adduced by Mr. Nangle and Mr. Dineen it was clear that the predominant use of the subject property was the selling of plants, shrubs, trees and other garden necessities. It followed therefore that the property was rateable in accordance with the provisions of the Valuation Act, 2001.

Matters in Issue

14. It is clear from the evidence tendered and the legal submissions that there are a number of issues to be addressed by the Tribunal:-

- Is the property concerned "land developed for horticulture" within the meaning of the Valuation Act, 2001? In other words is it a "nursery" and therefore exempt from liability for rates?
- Are the shop and other ancillary buildings thereto "buildings used for the sale or processing horticulture produce" and hence rateable?
- Is the container store used for the storage of machinery and implements used for nursery purposes liable for rates?

Interpretation

15. The Tribunal resorts to the Common Law literal approach to interpreting the Valuation Act, 2001 and its provisions as distinct from the teleological or purposive approach. The leading case on this is **Howard v Commissioners of Public Works IR 1994 (1) 101**. It states that statutes should be construed according to the *intention* expressed in the legislation. The words used in Act best declare the intention of the

legislator. Reference was made to **In re MacManaway [1951] AC** with regard to certain words used in the House of Commons (Clergy Disqualification) Act 1881 which states that "The meaning which these words ought to be understood to bear is not to be ascertained by any process akin to speculation. The primary duty of a court of law is to find the natural meaning of the words used in the *context* in which they occur, that *context* including any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute." [emphasis added].

Relevant Property Not Rateable.

16. According to Schedule 4 paragraph 2 of the Valuation Act 2001 *land developed for horticulture* is relevant property not rateable.

Section 3 Definition (page 10)

17. "Land developed for horticulture" is defined in section 3 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." [emphasis added]. The key words in this definition are *used for nurseries* so the emphasis is put on the use or user.

18. The previous legislation, being the Valuation Act 1986 and the Schedule of the Valuation Ireland Act 1852, (both of which are repealed save for section 28 of the latter by the 2001 Act) does not define the term "*land developed for horticulture"*. On the other hand, the Valuation Act, 2001 does define what is meant by this term and distinguishes two kinds of uses:

- Land used for market gardening, *nurseries,* allotments,or orchards [emphasis added].

- Land or buildings or parts of buildings used for the sale or processing of horticultural produce. Land used for this purpose is not land "developed for

horticulture" within the meaning of section 3 of the 2001 Act. This could include a shop or a building for processing as indicated below.

Nurseries

19. Unfortunately *nurseries* are not defined in Blacks Law Dictionary 5th edition. The respondent refers to Cassell's Dictionary 4th edition which states that a nursery *is a place or garden for rearing plants.* The Tribunal refers to Chambers Dictionary (1998 edition published by Chambers Harrap Publishers Ltd) which defines a nursery as a "*place where plants are reared for sale or transplanting".* This definition is broader than the one submitted by the respondent as per Cassell's dictionary as it includes the commercial element of sale. In fact the two elements of cultivating plants on one hand with a view to selling them on the other are inseparable. However, the primary or dominant element in this definition is that of rearing or cultivating plants. It follows that selling is the secondary element.

20. The term "nursery" is not defined in the Valuation Act, 2001. However, from the literal interpretation of the definition of land developed for horticulture we have to bear in mind words used in the *context* in which they occur. The context in which they occur in this case does throw light on the intention of the legislator. The juxtaposing of "market gardening" with "nurseries" indicates an intention of a common commercial element. A market is a place where goods are either bought or sold or both. From the words used in section 3 it appears that the legislator intended that some commercial element be involved with regard to nurseries while the primary element is that of cultivating and rearing of plants. It would make little sense to operate a nursery if this was not the case. In other words a nursery must provide a facility for inspection by would-be purchasers. This thinking is in line with the principle set out below in the **Con Ryan** case**.**

Land or Buildings not Exempt from Liability for Rates.

21. Section 3 states *other than land or buildings* used for the *sale or processing* of horticultural produce. The words in italics taken in the context in juxtaposition indicate an intention of a different type of user from that of a nursery. This could involve a shop or building where horticultural goods are sold or processed such as, for example, cleaning, sorting, weighting or packaging of apples. In this case the function is either selling or processing. There is no primary or secondary function which applies to nurseries. Land or buildings used for either of these activities is not "land developed for horticulture" within the meaning of section 3.

22. In the **Con Ryan** case held under the Valuation Act 1986 the issue of rateability of a display yard with rectangular beds arose. In this case plants were potted and placed on the beds and separated from the subsoil by gravel and polythene covering. This ensured that the roots would not penetrate to the ground. In this case the display yard was held not to be rateable and while the beds provided a convenient location for retailers and wholesalers to inspect the produce, their dominant purpose was that of a nursery to cultivate, and further the cultivation of, shrubs. In that case the display yard was not rateable.

Findings

23. Having interpreted the Valuation Act 2001 and having considered the case law and submissions, the Tribunal finds as follows:

The 2.5 acres of land

- In the subject property the 2.5 acre site is "land developed for horticulture" within the meaning of section 3 of the Valuation Act 2001 and consequently is relevant property not rateable within the meaning of Schedule 4 Paragraph 2 of the Act.

- The Valuation Act 2001 section 3 does not change the law but in fact clarifies it as to the different types of user or function.

- The subject property is a nursery within the meaning of the Valuation Act 2001 and that given in Chambers Dictionary above.

- It makes no difference if the plants are in the soil or in pots on the land. The time factor as to how long they are in situ is not material.

- The dominant use of the subject land is that of a nursery. Its main activity involves the propagation and /or cultivation of plants.

- Prospective purchasers, be they wholesalers or retailers, can inspect the produce with a view to purchasing goods for consideration. This does not take away from its dominant use as a nursery.

- In fact while the plants could be inspected on the land the actual contract of sale could take place in the shop or office.

- The principle set down in the **Con Ryan** case that the display yard where retailers or wholesalers could inspect the produce is not rateable also applies in this case. This principle still applies notwithstanding the Valuation Act, 2001.

The Container Store

- The container store if classified as a "farm building" within the meaning of Schedule 4 paragraph 5 is also relevant property not rateable under the 2001 Act. Section 3 (1)(c) on page 9 of the 2001 Act defines farm buildings as *" 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"*. The container store is used for holding fertiliser or compost not for sale but for

horticultural activities or for holding horticultural implements used on the land, and as such is not liable for rates. The Tribunal accepts this to be the case.

The Office, Shop and Store

- The remainder of the subject property, namely the office, shop and shop store are not deemed to be "land developed for horticulture" within the meaning of the Act and consequently are relevant property rateable within Schedule 3 as they are concerned with the administration of, and sales from, the nursery business. This is their only function. The Tribunal finds the respondent's valuation of these parts of the subject property to be fair and reasonable and therefore affirms it as set out below.

Office	55.56 sq. metres	@ €41.00/m^2	= €2,277.96
Shop	167.14 sq. metres	@ €54.67/m^2	= €9,137.54
Store	152.36 sq. metres	@ €13.66/m^2	= €2,081.23
		Total Net Annual Value	= €13,496.73
		Say €13,600	
		RV @ 0.5%	= €68

And the Tribunal so determines.