

Appeal No. VA05/2/007

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Independent Biomass Systems Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Electricity Generating Station at Lot No. 15/36AC.38.46.51C(inc 9AB.16D)/2,  
Derrigra, Teadies, Bandon, County Cork

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Patrick Riney - FSCS FRICS FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 11TH DAY OF MAY, 2006**

By Notice of Appeal dated the 12th day of April, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €600.00 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 Appendix 1 to this judgment.

1. This appeal proceeded by way of an oral hearing held in the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7 on the 18<sup>th</sup> day of January, 2006. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Mr. James O’Sullivan of Ronan Daly Jermyn, Solicitors. Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Expert valuation evidence on behalf of the appellant was given by Mr. Desmond Killen, FRICS, FSCS, IRRV, of GVA Donal O Buachalla & Company, Property & Rating Consultants and on behalf of the respondent by Ms. Elizabeth Murphy, a District Valuer in the Valuation Office.

### **Property Concerned**

2. The property which is the subject of this appeal is a combined heat and power (CHP) plant located in the grounds of Grainger Sawmills Ltd. in the village of Enniskean on the main road between Bandon and Bantry. The plant is used in conjunction with the adjoining sawmill and is the only Biomass (CHP) plant in the country. The plant which is wood burning was constructed and funded under a BES scheme to enable Graingers to utilize the raw material available to them as part of their sawmilling business.

3. On the 10<sup>th</sup> June, 2004 a Valuation Certificate pursuant to Section 28 of the Valuation Act, 2001 was issued to the effect that it was proposed to assess the rateable valuation of the property concerned at €1,000. Following representations by the respondent an amended certificate pursuant to Section 29 (3) was issued stating that the rateable valuation was €843. On foot of an appeal to the Commissioner of Valuation the rateable valuation was further reduced to €600 and in due course the appellant lodged an appeal against this decision of the Commissioner of Valuation pursuant to Section 34 of the Valuation Act, 2001.

4. At an oral hearing held on 13<sup>th</sup> June, 2005 another division of this Tribunal, having heard evidence from both parties, dealt with a central issue which had arisen viz. whether or not the property concerned is comparable to any other property “*appearing on the valuation list relating to the same rating authority area.*”

5. On 20<sup>th</sup> July, 2005 the Tribunal issued its judgment on this issue and determined that the subject property “*was capable of being valued by reference to the values of other properties in the same rating area and that it was not necessary for the respondent to utilise the contractor’s basis of valuation*”. In dismissing the appellant’s application that the revision

be set aside, the Tribunal directed that the matter be referred back to the respondent in order to allow the respondent an opportunity of valuing the property concerned in accordance with this determination. The Tribunal, in its judgment, further provided that in the absence of agreement on the valuation then the matter could be re-entered before the Valuation Tribunal to consider the issue of quantum.

6. Whilst both parties accepted the Tribunal's determination on the preliminary issue, no agreement was reached in relation to quantum and hence the matter was again brought forward to this Tribunal for determination.

### **Appellant's Evidence**

7. Mr. Killen, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. At the hearing Mr. Killen amended his valuation and contended for a rateable valuation of €194 calculated as set out below:

Output:	1.83 Mwe
Rateable Valuation	1.83 x €106
Net Annual Value therefore	€38,800 @ 0.5%
RV	€194

8. In support of his opinion of rateable valuation, Mr. Killen introduced 6 comparisons details of which are set out in Appendix 2 attached to this judgment. In addition, Mr. Killen introduced a schedule showing his analysis of his comparisons and also showing the relationship between net annual values/rateable value and Mwe. This relationship, Mr. Killen said, was highly relevant in arriving at the valuation of the property concerned and indeed his figure of €106 per Mwe was the average figure derived from his analysis of the comparisons. Mr. Killen said that when it came to valuing the CHP plant the most important factor was the output and whilst construction cost could not altogether be ignored, it was not particularly relevant when arriving at an opinion of rental value.

9. Under cross examination Mr. Killen said the heat provided by the plant was used by Graingers in the adjoining sawmill factory which was separately valued. Mr. Killen agreed that, in arriving at his opinion of rateable valuation, he had only valued the electricity output

and had not made any allowance for the heat produced. Mr. Killen said all his comparisons were valued on a similar basis and, in the circumstances, he could see no good reason to depart from what was the accepted practice for valuing CHP facilities.

10. When questioned about his comparisons Mr. Killen agreed that some had been originally valued on a “cost” basis and others on an output basis. He also agreed that his comparisons used a variety of fossil fuels and expressed the view that gas was probably the cheapest. Mr. Killen agreed that all his comparisons were subject to agreement for the disposal of surplus power to the ESB and also agreed that the arrangement with the ESB in relation to the subject property was preferential in that the price paid by the ESB was about 25% higher than the norm.

### **The Respondent’s Case**

11. Ms. Elizabeth Murphy, having taken the oath, adopted her written précis and valuation which had previously been received by the Tribunal as being her evidence-in-chief. In her evidence Ms. Murphy contended for a rateable valuation of €600 calculated as set out below:

#### **Valuation**

Cost		€5,601,500.00
Adjusted to 1988		€3,271,244.10
5% of Adjusted Cost		€ 163,562.20
Add for site to 11/1988		€ 2,000.00
Net Annual Value		€ 165,562.20
Rateable Valuation @ 0.5%		€827.81
End allowance applied		
Rateable Valuation	Say	€600.00

In support of her opinion of net annual value Ms. Murphy introduced four comparisons details of which are set out in Appendix 3 attached to this judgment.

12. Ms. Murphy said that in arriving at her opinion of Net Annual Value she had examined the details of the comparisons above referred to, all of which were CHP plants similar in nature to the property concerned. Each of them, she said, had been valued on or derived from a cost basis. Accordingly, she had come to the conclusion that it was proper to value the

subject property on the same basis. Such a course of action, she said, was in accordance with the findings of the earlier Tribunal determination which directed that the subject property be valued on a comparison basis.

13. When asked why she had not valued the property by having regard to its output, Ms. Murphy said that in her opinion such an approach was flawed in that it did not attach any value to the heat produced nor did it reflect the cost of fuel, the cost of construction and other costs incurred on an annual ongoing basis. Ms. Murphy said that the cost of providing the plant was something that could not be ignored and in an effort to be fair and reasonable she had examined the valuation of other similar plants valued on a cost basis and had made an “end allowance” to reflect additional costs associated with the nature of the subject property.

14. Under rigorous cross examination, Ms. Murphy argued that there was a distinct difference between the valuation she had put before the Tribunal at the previous hearing and that which she was now putting forward at this hearing. The former valuation, she said, was prepared in accordance with Section 50 of the Valuation Act, 2001 whilst the latter was prepared having regard to the provisions of Section 49. In arriving at her opinion of net annual value in this instance, Ms. Murphy said, she had regard to the valuations of other similar properties whose valuation had been arrived at, or derived from, a cost basis. Ms. Murphy said that such an approach was consistent with the findings and directions of the Tribunal at the previous hearing.

15. When asked what other method of valuation she might have considered other than a cost basis Ms. Murphy said she did not consider this to be relevant. She had come to the conclusion that the cost basis of valuation was appropriate having regard to the fact that her comparisons had been valued on a similar basis. Nonetheless, Ms. Murphy said, she did recognise the fact that the cost associated with the construction of a Biomass plant was greater than that for a conventional (non-green plant) and accordingly she had made an end allowance of approximately 28% to reflect this.

## **Findings**

The Tribunal has carefully considered all the evidence and argument adduced at the hearing and has also had regard to the findings of this Tribunal in relation to preliminary matters as set down in its determination dated the 20<sup>th</sup> July, 2005 and finds as follows:

1. The only matter for determination is the Net Annual Value of the property concerned at the relevant valuation date in accordance with the provisions of the Valuation Act, 2001.
2. It is common case that the property concerned is the only wood burning biomass CHP plant in the country.
3. The plant which was funded by a BES scheme produces heat and electricity. The electricity provided is sold to the ESB. The arrangement with the ESB guarantees that all power produced is accepted by the Board at a preferential price some 25% higher than that paid for power produced by other “non green” CHP plants. The heat produced is supplied to the adjoining premises occupied by Grainger Sawmills.
4. The Tribunal in its determination dated 20<sup>th</sup> July, 2005 at page 14 determined that the subject property was capable of being valued by reference to the values of other properties in the same rating authority area and that the comparisons introduced by the appellant at that hearing could be regarded as “comparable properties” within the meaning of Section 49(1) of the Valuation Act, 2001. In the circumstances therefore the Tribunal held that it was not necessary for the Commissioner of Valuation to utilise the contractor’s basis of valuation (CBV).
5. Whilst no specific method of valuation is prescribed in the Valuation Act, 2001 there is an accepted hierarchy between the possible methods depending upon the nature of the property concerned, the evidence available and the circumstances under the which the property is being valued.
  - a. If there is rental evidence then the rental method of valuation is to be used. This method would be particularly appropriate in preparing a valuation under Section 19(2) of the Valuation Act, 2001.
  - b. If using direct rental evidence is not appropriate, as is the case in preparing a valuation under Section 28(4) of the Valuation Act, 2001, then the comparable method of valuation is the preferred method and this is expressly provided for in Section 49(1) which says:

*“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”.*

This method is usually referred to as the “tone of the list” and in accordance with Section 49(2) (b) the benchmark date is the 1<sup>st</sup> November 1988.

- c. The receipts and expenditure method of valuation is mainly used when valuing properties which are seldom let on the open market and in circumstances where the nature of the occupation is mainly concerned with the achievement of profit. The use and application of this method is set out in detail in **The Receipts and Expenditure Method of Valuation of Non-domestic Property** a guidance note published by the Joint Professional Institutions Rating Forum.
- d. The contractor’s basis of valuation is used only when valuing properties which are rarely if ever let on the open market and in circumstances where there is likely to be only one occupier. In practice the contractor’s basis of valuation is regarded as being the method of last resort and its use is only to be considered when there is insufficient evidence available for the assessment to be made by a more reliable method of valuation. That said however, it may well be the case that it is the only method when coming to value properties of an unusual nature.

In relation to the above the comments of Kingsmill Mooore J. in the case **Roadstone Ltd. v Commissioner of Valuation (1961) IR 239** at page 260 are apposite *“It has been repeatedly decided that in arriving at his estimate of the hypothetical rent a judge is not bound to use any particular method but may arrive at his determination in whatever way is most suitable to produce the required result.”*

6. Section 50 of the Valuation Act does not provide for the use of the contractor’s basis of valuation in any particular instance - that is the prerogative of the valuer. Section 50 merely provides that *“the aggregate of the replacement cost, depreciated where appropriate, of the property or part and the site value of the property or, as the case may be part,”* shall be decapitalised at the rate of 5% in order to arrive at its net annual value in accordance with Section 48 of the Act. That is the sole purpose of Section 50.
7. At the previous hearing Ms. Murphy put forward a valuation using the contractor’s basis of valuation. On this occasion Ms. Murphy put forward a valuation based on actual costs incurred adjusted to 1988 levels. Not surprisingly, both valuations are almost identical and the end result in both instances is a rateable valuation of €600.00 (net annual value

€12,000.00). Ms. Murphy on this occasion contended that the comparators introduced by her were valued either directly or indirectly on a similar cost basis. In the circumstances, Ms. Murphy said that her valuation methodology was appropriate and on the same basis as that used for valuing similar CHP plants in the same rating authority area.

8. It is common case that the capital costs involved in procuring the subject property were much higher than those for CHP plants using conventional fuels. Indeed Ms. Murphy at the previous hearing *“accepted that the capital cost involved in the instant plant would be as high as three times more than for example a gas powered CHP plant”*.
  
9. At page 7 of the Tribunal’s decision dated the 20th July 2005 the following comments were also attributed to Ms. Murphy *“In her view the property was unique because it was specifically designed to use this type of fuel and also because it had a “green energy” element to it which made it more attractive to prospective tenants. She accepted however that the property could not be valued in conjunction with the property owned by Grainger Saw Mills. She also accepted the fact that the fuel was sourced from another property was irrelevant.”*

*“In her view gas, oil and other fuel-based CHP plants are valued now by megawattage output rather than by construction costs in most cases. However all comparisons prior to the coming into effect of the 2001 Act were in her view valued on a construction basis. After the passing of the 2001 Act a valuer could then use other comparisons. However when a unique property had to be considered it still had to be valued on a contractor’s basis because there was no appropriate comparator”*.

10. When valuers are called upon to value a property for rating purposes using the tone of the list or comparison method of valuation it is customary to analyse or devalue the assessments of comparable properties appearing on the relevant valuation list. This devaluation process will be carried out generally on a zoning, net internal area or gross external area basis as appropriate depending upon the nature of the property concerned. This analysis should reveal consistent levels of value which constitute the “tone of the list” and in use this tone will be expressed in euro per square metre where properties are valued by reference to their area. When it comes to dealing with those properties whose values are usually determined by reference to their trading potential the analysis and tone



will be expressed as a percentage of turnover, euro per litre, euro per ton or some other conventional or industrial norm depending upon the nature of the property concerned.

11. From a tenant's perspective output would be a major factor in arriving at an opinion of rental value of an electricity generating station. Hence when it comes to analysing the assessments of other generating stations the type of analysis carried out by Mr. Killen (as set out in the schedule attached at Appendix 4 to this judgment) is both helpful and appropriate. Indeed the sole common denominator between the comparisons introduced is the output as they vary significantly in terms of size, cost of construction and type of fuel used.
12. Evidence was given that the capital cost of procuring a biomass CHP plant is considerably higher than that for a similar plant burning more conventional fuels. Whilst the landlord will be concerned with the financial return by way of the rent paid the hypothetical tenant as envisaged in rating law will not. The tenant will be primarily concerned with paying a rent which, having regard to all other material factors and economic circumstances, would enable him or her to trade satisfactorily. In this regard evidence was given that under the arrangement with the ESB a premium price of approximately 25% is paid for electricity generated in an "eco-friendly" process. This is a factor which the hypothetical tenant would have regard to in formulating an opinion of rental value.
13. It is clear from the previous determination of this Tribunal that the Tribunal did not favour the use of the capital basis of valuation in this instance by virtue of the fact that there were a number of other electricity generating stations in the same rating authority area and that their assessments established "a tone" by which other new stations could or should be valued. Mr. Killen in arriving at his opinion of net annual value analysed his comparisons in a clear and concise manner as set down in the schedule already referred to. In the Tribunal's opinion the most cogent relationship when it comes to valuing electricity generating stations using the comparative method of valuation is that between net annual value and output. However having carried out his analysis, Mr. Killen should, in the Tribunal's view, have factored into his valuation of the property concerned the preferential price structure for electricity produced by using an eco-friendly process.

14. Despite Ms. Murphy's strong defence of her valuation methodology at this oral hearing the Tribunal cannot identify any discernable difference between it and that adduced at the original hearing other than the fact that one is called the contractor's basis and the other the cost basis. In the contractor's basis the building costs may be the actual cost when valuing a new facility as against the replacement cost appropriately adjusted to reflect age obsolescence be it physical, functional or economic. Whatever method of valuation is used by the valuer, the valuer must at the end of the process decide if the final figure represents the net annual value of the property concerned by reference to the assessments of other similar properties in the same rating area. To be fair to Ms. Murphy it would appear that she did carry out such an exercise by making an end allowance of about 25%. However if she had carried out an analysis of the type similar to that carried out by Mr. Killen she would have seen that her valuation was so out of line with other assessments as to beg the question as to whether or not the cost basis valuation was appropriate in this instance.

### **Determination**

Having regard to the foregoing the Tribunal has come to the conclusion that Mr. Killen's valuation methodology is the one to be preferred in this instance as it is the one most likely to provide an assessment that is fair and reasonable and consistent with the assessments of other properties of a similar nature to the property concerned. That said however the fact that the ESB, under a contractual arrangement, have guaranteed to accept all power generated at the station at a price approximately 25% higher than that paid for supply received from conventionally powered stations is a factor that a hypothetical tenant would take into account when arriving at an opinion for rental value. Accordingly therefore the Tribunal determines the rateable valuation of the property concerned to be as set out below:

Output 1.8 Mwe

Net Annual Value 1.8 Mwe @ €25,000 = €45,000

Rateable Valuation @ 0.5% = €225

And the Tribunal so determines.