Appeal No. VA06/3/041

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Kilsaran Concrete **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Quarry/Sandpit at Lot No. 13, Aghfarrell, Ballinascorney, Tallaght West, County Dublin

B E F O R E

Michael P.M. Connellan - Solicitor **Deputy Chairperson**

Brian Larkin - Barrister **Member**

Frank O'Donnell - B.Agr.Sc. FIAVI **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF FEBRUARY, 2007

By Notice of Appeal dated the 3rd day of August, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,370.00 on the above described relevant property.

The Grounds of Appeal are as set out in the Notice of Appeal a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 1st and 14th days of December, 2006 and the 11th day of January 2007. The Appellant was represented by Mr. Owen Hickey, BL, instructed by Mr. Donal O'Hagan, Solicitor, Messrs Donal O'Hagan & Co., Solicitors with Mr. Tadhg Donnelly, MIAVI, a valuer and associate with Messrs Brian Bagnall & Associates, Surveyors & Valuers. Mr. Fergus Gallagher, ASCS, MRICS, Chartered Minerals Surveyor with Kilsaran Concrete, also gave evidence on behalf of the appellant. The respondent was represented by Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor with Mr. Terence Dineen, B.Agr.Sc., a District Valuer in the Valuation Office.

The Property

A large stone quarry known as Ballinascorney circa ten miles south of Dublin city centre. It is approximately three miles from Tallaght and close to the Wicklow border.

The Appellant bought the property from Tracy Enterprises (Ballinascorney) Limited in December, 2004.

Valuation History

The Valuation Certificate at €1,370 was issued on 8th November, 2005. There was no change at Representation Stage. A first appeal was lodged on 12th January, 2006. No change was made at this stage and the Commissioner's decision issued on 10th July, 2006.

Hearing

At the outset there was considerable argument concerning whether the appeal was on quantum only, or on legal grounds disclosed in the Notice of Appeal.

The Commissioner of Valuation through his Counsel argued that the legal grounds raised in the Notice of Appeal were abandoned and were not being pursued. He referred to a telephone conversation between Mr. Tom Sweeney, Solicitor for the Commissioner, and Mr. Tadhg Donnelly, valuer for the Appellant, on 29th November, 2006 wherein such agreement was made.

The Tribunal decided at this stage to call Mr. Sweeney and Mr. Donnelly to give evidence as they were present.
Mr. Sweeney gave evidence under oath of the telephone conversation with Mr. Donnelly on 29th November, 2006. He said it was agreed that the Appellant was withdrawing the legal submissions and not proceeding with them and that the issue before the Tribunal was one of quantum only. Mr. Donnelly, under oath, agreed that this was so.

The Tribunal, having heard this evidence, directed that the Appeal proceed on the issue of quantum only, the legal grounds set out in the Notice of Appeal being withdrawn.

Appellant's Case

Mr. Fergus Gallagher, ASCS, MRICS, under oath said that he was a Chartered Minerals Surveyor of ten years' experience. The Appellant purchased the quarry from Tracy Enterprises (Ballinascorney) Ltd. and started operations in December, 2004.

The rock in the quarry is about 70% to 80% a dolerite dyke swarm. The remainder is greywacke with some shale and mudstone. It is a basalt type rock, very massive, very heavy and is hard to break.

The quarry itself is about 1,000 feet above sea level, is in the Dublin mountains and is adversely affected by extreme weather. This in turn makes it difficult to extract and process stone but, more significantly, makes it more difficult to haul stone down to market.

Good blasting practices are essential to promote efficient and safe blasting with particular attention to the site of each blast. This entails higher blasting costs than average.

The quarried rock is suitable for road surfacing due to its resistance to wear. This makes it more difficult and expensive to extract and process, leading to heavy wear and tear to loaders, hoppers, crushers and all steel parts. More energy is needed to crush this stone than limestone so that electricity costs are higher.

There was an existing asphalt plant on-site when purchased but a new replacement plant was in an advanced stage of being commissioned on the date of the visit of the Revision Officer.

Mr. Gallagher said that Tracy's had given 350,000 tonnes as the annual output for the previous two years in their sale documents. This, he said, had to be taken at face value. He was of the opinion that 350,000 tonnes was a fair average. Between the date of purchase (December, 2004) and November, 2005 the Appellant produced just under 350,000 tonnes. They produced the same amount the following year.

The quarry was purchased at arm's length on the basis of the figures supplied by Tracy's.

He referred to the plan of the new asphalt plant attached to Mr. Donnelly's précis and said that it was a line of production.

About 80% of this plant consisted of moving parts and not 35% as stated by Mr. Dineen in his précis. He then proceeded to explain in detail the working of the plant.

The whole essence of the plant was, he said, the moving parts.

The figure of €1.7 million for installation as suggested by Mr. Dineen was not correct. The total cost was €1.55 million and that included everything. At this stage Counsel for the Commissioner accepted this figure as correct.

Cross examined by Mr. MacEochaidh he said that he was a Chartered Minerals Surveyor and that the giving of evidence of the asphalt plant was within his area of expertise. He then went through Mr. Dineen's photographs and explained them in detail in relation to the moving parts.

He further said that he thought he gave the figure of 80% moving parts to Mr. Donnelly about a month before the hearing, but he was not sure.

He did not meet Mr. Dineen on the site at any time.

Their product was going to the greater Dublin area. In relation to transport by lorry they were getting 5.6 miles per gallon of diesel.

Mr. Tadhg Donnelly, having taken the oath, adopted his précis as his evidence-in-chief. In his précis Mr. Donnelly outlined the 2 methods of valuation with a commentary on each as set out below:

"Valuation 1. Quarry
Method (a)

Total Output			*350,000 tonnes*
Ex pit price			*€4.50 per tonne*
Indexed to Nov 2005 to Nov 1988	*=*	*245/132*	*€2.42 per tonne*
Indexation Factor .538			
Output 350,000 tonnes @ €2.42 per tonne	*=*		*€847,000*
Royalty Rate 5% of ex pit price	*=*		*NAV €42,350*
			@ 63% RV €266.80

Method (b)

Total output 350,000 tonnes

@ 20 cent per tonne		*€70,000 NAV*
@ 63%	*=*	*RV €441*

Valuation 2. Plant

(a) Asphalt plant only

Filler Silos (2 x 80 tonnes) = 160 tonne @ 6 cent per tonne	*=*	*€9.60 RV*
Bitumen Tanks (2 x 80 tonnes) = 160 tonne @ 6 cent per tonne	*=*	*€9.60 RV*
Mixed Material Storage Containers		
Tarmac & Asphalt 320 tonnes @ 6 cent per tonne	*=*	*€19.20 RV*
Cold Feed Bins		
Total capacity 105 cubic metres 230 tonnes @ 6 cent per tonne	*=*	*€6.90 RV*
(b) Diesel Tank		
10,000 gallons @ 13 cent per 1,000 gallons	*=*	*€1.30 RV*
(c) Horsepower		
See attached schedule 853 HP @ 6.3 cent	*=*	*€54.00 RV*
Total		*€100.60 RV*

3. Buildings

See revision officers report

NAV €27,275.40 @ .63% = €171.83 RV

Total		***Method (a)***	***Method (b)***
1	*Quarry*	*RV €266.80*	*€441*
2	*Plant*	*RV €100.60*	*€100.60*
3	*Buildings*	*RV €171.83*	*€171.83*
		RV €539.23	*€713.43*

Comment

Method (a) is in strict accordance with the Valuation Office instructions to Valuers and the maximum royalty rate of 5% has been adopted to take account of disabilities.

> *Method (b) is in accordance with the levels established in Valuation Tribunal decisions and consequently agreements with the Valuation Office.*
>
> *I recognise that there is a difference in the valuations as a result of using different valuation methods. Experience has taught me that the tone of the list approach is highly regarded by all parties and as such the calculation as outlined in method (b) could be the preferred method to be used.*
>
> *My opinion of value would be to rely on the valuation as outlined in method (a) as it is in accordance with the "Instructions to Valuers" and is based on a scientific approach which reflects normal practice in the industry."*

Mr. Donnelly said that he was an expert in valuing quarries. His firm, over the past decade, had been instrumental in establishing a new standard by which quarries should be valued. He valued in compliance with the Valuation Office in-house *Instructions to Valuers* dated September, 1999. He further said that the Section headed "Guidance Notes - Pits and Quarries (April 1998)" was a guide to assist valuers in valuation of all elements of pits and quarries.

The Valuation Office had moved away from the traditionally accepted methods as applied in all his comparisons which are set out in Appendix 2 hereto.

Royalties are a function of ex-pit price and production cost. Average royalties for pits are between 5% and 15% and for quarries 2 ½% to 7 ½ % of production unit cost.

He then referred to his Valuation 1. Method (a). He said the total output was 350,000 tonnes and that the ex-pit price was €4.50 per tonne. This figure of €4.50 was agreed by Mr. Dineen. He then indexed November, 2005 back to November, 1988 and got a figure of €2.42 per tonne. Taking the output at 350,000 tonnes (which he maintained was the correct figure for output) at €2.42 gave a figure of €847,000 and applying a royalty rate of 5% of the ex-pit price it gave an NAV of €42,350 and this at 0.63% gave a Rateable Valuation of €266.80.

He said that after consultation with Mr. Gallagher he felt that a royalty rate of 5% was appropriate.

Mr. Donnelly pointed out that Mr. Dineen differed with him here. He applied 15%. Mr. Donnelly did not know why he did this. His calculation was up on the output and royalty rate.

He said that his Method (b) had not been used since **VA96/2/044 - Dan Morrissey Ltd.** Mr. Dineen, he said, used a price of 36.3 cents per tonne. This was an alternative method and not the standard approach.

In the last page of the Guidelines it was stated that the rateable plant, such as Horse Power, Tanks, Silos etc. should be assessed on the basis of: Motive Power x RV Rate/HP (5p/HP). This was his approach to the plant valuation. Mr. Dineen did not use this method. He used the Contractor's Method. Mr. Donnelly did not know why he used this, as it was a last resort method.

He said he was involved in the valuation of a quarry in Co. Offaly – a Kilsaran plant, in relation to plant and this was agreed with the Valuation Office and in accordance with the Guidelines already referred to. Ms. Spain was the valuer in that case. He also said that he was aware of another valuation on the same basis as Ms. Spain's valuation. The plant was John A. Woods in Co. Cork. That report was, he said, signed by Mr. Dineen.

He went on to say that he did not think that Mr. Dineen's comparisons in Cork were relevant.

Forecasting the output for 2005, 2006 and 2007 was not correct. The rule of *rebus sic stantibus* must be applied. We do not know what will happen in the future. The relevant dates are 2002, 2003, 2004 and up to the valuation date in November, 2005. He maintained that you take the average for the past three years and that this was 350,000 tonnes. The output for 2006 was also 350,000 tonnes. He set out in his comparisons (Appendix 2 hereto) some quarries that supply the greater Dublin area. Mr. Donnelly did an alternative method of calculation (Method (b) cited heretofore). There are instances where straightforward levels per tonne are applied. This is the reason why he mentioned this method. There are no comparisons in the greater Dublin area of 36.3 cents per tonne. There were some in the area of 20 cent per tonne.

There was a scarcity of limestone in Cork, hence a higher rate was charged for it and it was because of this that he considered the Cork comparisons of Mr. Dineen to be irrelevant.

Cross examined by Mr. MacEochaidh

He said that in response to Mr. Dineen’s letter of 9th November, 2006 he included his reply in his précis which was filed with the Tribunal and exchanged with Mr. Dineen on 17th November, 2006. The cost of the plant was given to Mr. Dineen by letter of 2nd December, 2005. The monthly output was not included in his précis.

Both he and Mr. Dineen used comparisons. Mr. Donnelly’s are at Appendix 2 hereto, Mr. Dineen’s at Appendix 3 hereto. Mr. Donnelly repeated that he did not think Mr. Dineen’s comparisons in Cork were relevant. They were too far from Dublin. Mr. Donnelly said he had used limestone quarries in his comparisons but they were not in Dublin.

There was, he repeated, a demand for limestone in Cork as limestone quarries were not plentiful in that area. The ex-pit price per tonne for limestone in Cork was therefore greater than the average. A price of €5 or €6 per tonne for limestone in Cork would not be out of line.

He said he had a meeting with Mr. Dineen on 19th May 2006 and gave him all relevant information. He gave him his précis of evidence on 17th November, 2006.

He did not give a monthly output report to the Commissioner.

He used comparisons in Cork and Mayo. None of his comparisons were in Dublin. Some were in the greater Dublin area including Louth and Meath. There were no comparisons in the Dublin area.

Respondent’s Case

Mr. Terence Dineen, having taken the oath, adopted his précis as his evidence-in-chief. In his précis he contended for a rateable valuation €1,370 as follows:

“Buildings	*agreed NAV*	*=*	*27,276*
Output	*400,000 tonnes @ 36.3 cent per tonne*	*=*	*145,468*
Tarmac Plant	*installed cost*		*€1.75 million*
	Transportable capital index to 1988		*150 to 112*
	Adjusted Cost		*€1,306,000*
	Allow 33% movable		*(430,980)*
	Rateable element		*€876,020*
	NAV @ 5%		*€43,801*
			RV €186

Two Diesel Tanks		*1,000*
	Total	*217,545*
	RV @ 0.63%	***1,370”***

In his later evidence – see Page 12 herein - Mr. Dineen amended his estimate of valuation of the tarmac plant.

He went through his précis in detail and made the necessary explanations thereon.

The market for the subject quarry was to the city and the quarry was close to city. He pointed out that the appellant had refused to give him the purchase price of the quarry. He further pointed out that there were only three elements of significance in a quarry:

No. 1. The grading plant and conveyors

No. 2. The concrete batching plant and

No. 3 (in some quarries) the tarmacadam plant.

When the appellant bought the plant the property and building thereon were old – the place was run down. Within months of purchase the appellant had started work on a new tarmacadam plant. The appellant mentioned in his précis an output of 650 tonnes per day. This was a rough and ready calculation. Mr. Dineen had done his own calculations. He was not happy with the figures given by the appellant. The grading plant was not valued as it was not installed in the quarry. He referred to the potential capacity of the plant to produce stone. He believed that it was up around 1 million tonnes per annum. Within a year of purchase the appellant would have removed the old plant and replaced the old grading and tarmacadam plant.

Mr. Dineen thought that the appellant bought the quarry on potential. Mr. Dineen had been misinformed about the type of rock in the quarry and had this wrong in his précis.

This quarry had all the permissions necessary to operate it – all obstacles had been removed before purchase. In relation to output volume he used the information available to him on the day of inspection. Mr. Donnelly told him the output was 250,000 tonnes per annum. At the first appeal stage it was not possible to get details of the previous 3 years as the previous owners' records were not readily available – the records which were available were not accurate.

Mr. Dineen's basis for 1 million tonnes a year was calculated on an output of 360-400 tonnes per hour, 10 hours a day for 50 weeks a year.

At this stage Mr. Dineen tried to introduce documents from the planning authority concerning the registration of the quarry. These documents had not been made available prior to the hearing, were not put to Mr. Gallagher or Mr. Donnelly in cross-examination and consequently were not allowed by the Tribunal.

Mr. Dineen stated that his calculations of 450,000 tonnes a year were correct.

The new grading plant was not in place in October, 2005. He looked for a printout of production per day but he did not get this. He also asked for a printout of monthly figures to date since the opening of the quarry and did not get same; neither did he get the total cost of the tarmacadam plant.

Mr. Dineen again complained about Mr. Donnelly's failure to reply to his letter of 9th November, 2006. The Chairperson pointed out that the time period set out for reply in this letter (17th November, 2006) was very short.

Mr. Hickey intervened at this stage and pointed out that the valuation date was 8th November, 2005 and that the property must be valued as at that date.

When the Chairperson pointed out to Mr. Dineen that the relevant date was 8th November, 2005 and asked him in what sense the 2006 figures were relevant, Mr. Dineen replied that the new plant came into operation or production after November, 2005 and that this should be considered in working out the net annual value.

He carried out his inspection in October, 2005 and the grading plant was not in production or operation on that date. He felt that it was within 4-8 weeks of operation. The tarmac plant was finished and in operation on the inspection date.

He maintained that when he was doing a quarry valuation he considered, and requested to know, what the output for the quarry was going to be next year, not this year or last year or the year before.

He pointed out that there was a difference between his price per tonne of 36.3 cents and Mr. Donnelly's price of 20 cents per tonne, amounting to 16.3 cents.

He said the ex-pit price was net of transport cost. The transport cost must be included in the price and this varied with the distance to be travelled.

He said that Mr. Donnelly's comparison quarries 1, 2, 3 and 4 have problems – these have lower valuations than quarries easily worked.

His own comparisons were in Cork and he was familiar with them. The closer they were to Cork the cheaper the price and transport costs were less.

In Mr. Donnelly's comparisons the royalty per tonne is €0.24 at the highest and €0.19 at the lowest. Mr. Dineen's royalties took in transport costs.

Mr. Dineen valued John A Wood's quarry in Cork – his Comparison No. 1. This quarry was close to Cork - closer than his other two comparisons. They were all valued at €0.32 per tonne. The quarry in Kanturk – his Comparison No. 3 was 30 miles from the city. There was no reason for €0.32 per tonne in that case.

None of his comparisons were appealed to the Valuation Tribunal.

He pointed out that the tarmacadam plant was valued by him. He considered all to be rateable under Schedule 3(1)(b) of the 2001 Act. It corresponded with the items considered rateable in **Pfizer v Commissioner of Valuation H.C. case 726SS/91.**

Mr. Dineen continued by saying that there were four elements incorporated in his valuation.

- The first was the building. This was agreed and not in contention.
- The second was in contention. He set out a tonnage of 400,000 at 36.3 c/t.
- The third was in relation to the tarmacadam plant. He said that he used the contractor's method in respect of that.
- The fourth was the 2 diesel tanks which were not in contention.

He further stated that he accepted €1.55 million as the total cost of the installation of the tarmacadam plant. This would, he said, change his NAV. The adjusted cost would accordingly be changed to €1.15 million giving a rateable element of €770,500 and leaving the NAV at €38,525. The respondent’s RV on the tarmacadam plant becomes therefore €242 instead of €275 and the respondent’s total RV becomes €1,337 instead of €1370.

He said that he did not think that the moveable parts should be excluded as this was not plant. The quarry was not a mill or factory and did not get the benefit of exemption.

Cross examined by Mr. Hickey

He said that in the John A. Wood quarry in Ballygarvan, Co. Cork he used the same methodology as used by Mr. Donnelly in his valuation of the subject quarry. There was nothing wrong with this in that case as there was no tarmacadam plant in that quarry. He did not use the contractor’s method in that case nor did he believe that the contractor’s method was a method of last resort.

He went on to say that he did not use the method adopted by Mr. Donnelly in relation to more modern plants. He could not remember using Mr. Donnelly’s method in valuing any quarry in the past 10 years.

He agreed that the items of plant valued in the John A. Woods quarry were not fixed to a mill or factory.

He said that he had heard Mr. Gallagher’s evidence that the output for the subject quarry for 2006 was 350,000 tonnes. He did not accept this figure. He did not think it credible. He believed that the output for the future is one million tonnes per annum. The plant has a capacity for 1 million tonnes per annum. He said he valued the quarry on its capacity and not on its output. He said that what must be considered is what a reasonable person would pay as rent for the quarry for one year, namely 2006 in this case. He maintained this was so as the rates are payable in the year following revision.

There then ensued considerable argument in relation to Mr. Dineen’s contentions.

Mr. Dineen accepted that the rock in the quarry was 80% dolerite with the remainder greywacke and not 99% greywacke and 1% dolerite as given by him in his précis. He said he had been misinformed.

He maintained however that this made no difference to his valuation even though dolerite is a hard rock, more difficult to work and harder on plant and machinery.

Mr. Hickey than referred to Mr. Dineen’s revision report. He pointed out that the methodology used by Mr. Dineen in this report was the same as that used by Mr. Donnelly in his submissions, namely the royalty method.

Mr. Dineen replied that he applied the maximum percentage of 15 and did not consider the royalty method in his valuation. The *Instructions to Valuers* already referred to were not binding, he said. He considered the quarry’s closeness to Dublin as the reason for his valuation. “This quarry is unique in its closeness to Dublin,” he said.

He said that he changed his methodology after the revision stage to the gross method as this was the standard used by the Valuation Office.

He went on to say that he did not agree that there was a shortage of limestone in the Cork area. He was cross examined on this at length and at one stage given an extract from the geology map of Ireland which is published by the Ordnance Survey of Ireland, showing the limestone deposits in Cork and marked 16 thereon He would not accept that this map showed a small area of limestone in Cork.

Findings

1. The Tribunal accepts Mr. Gallagher’s evidence that the quarry contains 80% dolerite dyke swarm with the remainder being greywacke with some shale and mudstone and not the 99% greywacke and 1% dolerite as set out by Mr. Dineen in his précis.

2. The Tribunal also accepts the evidence as given by Mr. Gallagher wherein he stated that the previous owners had given 350,000 tonnes as the annual output for the two years prior

to purchase in December 2004 and also that the output for 2005 and 2006 was 350,000 tonnes and not as per the calculations made by Mr. Dineen.

3. The Tribunal is of the view that the principle of *rebus sic stantibus* applies to valuations and that net annual values should be assessed as at the date of valuation.

4. The shortage of limestone in Cork is reflected in the higher price for that material in Cork than in Dublin.

5. The *Instructions to Valuers* issued by the Commissioner of Valuation in September 1999 has no statutory standing. It was issued for guidance only. It is not binding on anyone. Mr. Dineen stated in his evidence that these instructions were no longer in use in the Valuation Office by its Valuers.

6. In Mr. Donnelly's précis he included 9 comparisons with royalties of between 16.5 cents per tonne and 24 cents per tonne. These comparisons are from Cavan, Cork, Carlow, Laois, Tipperary etc. – they cover a wide area of the country. They are all stone quarries and produce different products.

7. There are huge variations between the comparisons introduced by both Mr. Dineen and Mr. Donnelly.

8. The Tribunal prefers Mr. Dineen's methodology to that of Mr. Donnelly.

9. The Tribunal finds that the tarmac plant was in operation on the valuation date of 8th November 2005 and should therefore be included in the valuation. The Tribunal accepts the evidence of the expert witness, Mr. Fergus Gallagher, Chartered Minerals Surveyor, that 80% of the tarmac plant comprises moving parts and values the plant accordingly. The Tribunal notes the submission made by Counsel for the Respondent that no issue was raised by the Appellant at 1st Appeal with regard to the percentage of moving parts and that it should not now be allowed in by the Tribunal. The Tribunal is satisfied that the determination in **VA95/5/015 - John Pettitt & Son Limited** is authority for its decision to allow this matter to be raised at Tribunal appeal stage. In any case the Tribunal is of the

view that the percentage of moving parts is a matter of fact rather than a matter of law or a ground of appeal.

10. The Tribunal after consideration of the evidence given herein has opted for a royalty rate of 25 cents per tonne as being fair and equitable.

Determination

Having regard to the foregoing findings the Tribunal determines the rateable valuation of the property concerned as follows:

		NAV
Output - 350,000 tonnes per annum @ a royalty rate of 25 cents per tonne		= €87,500
Net Annual Value of Buildings – agreed		= €27,276
Two diesel tanks		= € 1,000
Tarmac Plant		
Installed cost	€1.55 million	
Transportable capital index to 1988	150 to 112	
Adjusted Cost	€1,157,333	
Allow 80% movable	(€925,866)	
Rateable element	€231,467	
NAV @ 5%		= €11,573
Total NAV		**= €127,349**
RV @ 0.63%		**= €802**

And the Tribunal so determines.