

Appeal No. VA06/3/047

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

Shillelagh Quarries Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Quarry at Lot No. 8Aa, Aghfarrell, Ballinascorney, Tallaght West, County Dublin.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Joseph Murray - B.L.

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 30TH DAY OF JANUARY, 2007

By Notice of Appeal dated the 4th day of August, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,100.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"Rateable valuation is incorrect & inequitable when quarry output, royalty rates & other factors are taken into consideration (refer to certified figures attached). The property description is stated as a "quarry/ sandpit". The property is a quarry not a sandpit. It is clear that the Valuation Office did not follow guidance set out in its "Guidance Note : Pits & Quarries" Ref no. 2 instructions to valuers (November 2000)".

1. 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 13th day of December, 2006. The Appellant was represented by Mr. Tim Paul, M.R.I.C.S, C.ENG, M.I.E.I, M.I.C.E, M.I.Q of John Barnett & Associates, Dundrum Business Park, Dublin 14 The Respondent was represented by Mr. Terence Dineen, B.Agr.Sc., a District Valuer in the Valuation Office.

The Property Concerned

2. The property concerned is a quarry located in the townland of Aghfarrell southwest of Brittas village in County Dublin. It is located on a minor county road at an elevation of some 300 meters above sea level. There are weight restrictions on the adjoining R114 regional road to the east of the quarry and existing quarry traffic cannot use this direct route to Tallaght and the M50 Motorway. In the immediate vicinity there are two other quarry operations - Kilsaran's at Ballinascorney and Roadstone's DeSelby quarry. Both of these quarries were valued at the same time as the property concerned and are subject to appeals currently before the Valuation Tribunal.

3. The subject quarry has been in operation for over thirty years and on the 18th April, 2005 the appellant lodged an application for registration under section 201 of the Planning and Development (Amendment) Act, 2002 with South Dublin County Council. The Council have requested that the appellant submit a planning application and environmental impact study for the quarry. This application is currently under preparation.

4. The property was first valued on revision and a Certificate of Valuation issued on the 6th December, 2005 to the effect that the rateable valuation of the property had been assessed at €1,100.00. No change was made on foot of an appeal to the Commissioner of Valuation and it is against this decision that the appeal to this Tribunal lies.

The Appellant's Evidence

5. Prior to the oral hearing Mr. Paul submitted a précis of evidence and valuation to the Tribunal which was formally received into evidence at the oral hearing.

6. In his précis Mr. Paul contended for a rateable valuation of €323.19 which was amended at the hearing to €320.00 calculated as set out below.

- i. Average ex-quarry price of €4.50 per tonne (based on prices for 2003, 2004 and 2005 and audited accounts).
- ii. Royalty rate of 5% of the ex-quarry price, indexed to 1988 $((4.50 \times 0.05) \times (132/258.20)) = €0.115$.
- iii. Quarry output of 450,000 tonnes per annum.
- iv. Disability allowance of 5% for excess weather rock, presence of dolerite dykes and three tonne limit on the R114 regional road.
- v. Reducing percentage of 0.63% for County Dublin.

Valuation is as follows:

450,000 tonnes @ royalty of €0.115 per tonne	= €1,732.00
Net Annual Value	= €1,750.00
Net Annual value @ 0.63%	= €26.00
Less disability allowance of 5%	= €309.70
Add rateable valuation for buildings as agreed	= €1.34
Rateable Valuation say	€20.00

7. Mr. Paul said that in arriving at his opinion of net annual value he had relied on a document issued by the Valuation Office entitled "Instructions to Valuers" dated September 1999 which states:

"Royalties for aggregates are a function of ex-pit price and production cost. Average royalties for Pits are 5% to 15% and for Quarries are 2 ½ % to 7 ½ % of product unit price."

Having regard to the quality of the stone produced at the property concerned Mr. Paul said he considered a mean royalty figure of 5% to be appropriate. Mr. Paul introduced no comparisons to support his opinion of net annual value.

8. Mr. Paul said that the stone produced at the quarry was low grade material suitable for use in general site development works. The stone products (2 and 4 inch down materials) were not suitable for aggregates used in the production of concrete or tarmacadam. In addition, he said, there were a number of difficulties related to the operation of the quarry and these he summarised as follows:

- i. Extent and volume of weather rock that is unsuitable for processing into crushed stone products. This unsuitable material (up to 72,000 tonnes annually) has to be transported and stored within the quarry and surrounding lands.
- ii. Presence of dolerite dykes in the quarry results in increased drilling, blasting and processing costs.
- iii. The three tonne limit on the R114 regional road results in longer journey times to the Dublin market.

9. Under cross-examination Mr. Paul agreed that since 2005 “Clause 804” material was produced at the quarry to the extent of about 60,000 tonnes per annum. This material, Mr. Paul said, in his opinion still fell within the general classification of being low grade material and attracted a premium of about 50 cent per tonne and not €1.00 per tonne as suggested by Mr. Dineen. When asked to explain how he arrived at the conclusion that the stone produced at the quarry was suitable only for the production of low grade material Mr. Paul said his conclusions were based on geological tests carried out at the quarry, inspections carried out by him onsite and his expert knowledge and experience in the valuation of quarries.

10. When asked about transport costs Mr. Paul agreed that these could be significant relative to the value of the product and that as a consequence proximity to a large conurbation where there existed a strong demand for construction material were important factors from a trading point of view.

11. Part of the documentation included in Mr. Paul’s précis were copies of the financial statements prepared for the years ending 31st December, 2003, 2004 and 2005 by Messrs Denis Maguire & Associates, auditors to the appellant company. Neither party made any reference to these financial statements during the course of the oral hearing. Mr. Paul’s précis also contained a letter from the auditors, Maguire & Associates, dated 2nd August, 2006 which stated:

Output in Tonnes

2005	431,860
2004	401,060
2003	384,020

Cost per Tonne (Ex-Quarry)

2005	€4.50
2004	€4.15
2003	€4.00

The Respondent's Evidence

12. Mr. Dineen having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief.

13. In his evidence Mr. Dineen contended for a rateable valuation of €1,100.00 calculated as set out below:

Buildings Net Annual Value as agreed	€1,800
Output 560,000 tonnes @ 30.9 cent per tonne	€73,040
Net Annual Value	€74,840
Rateable Valuation @ 0.63% say	€1,100

Mr. Dineen said his opinion of Net Annual Value was determined in accordance with the Tribunal's recent judgment **VA06/2/045 – Orange Tree** (Dundrum Town Centre) “*by reference to the net annual value of properties...on 1st November, 1988*” there being no comparable properties in the South Dublin Rating Authority area which would enable him to value the property concerned in accordance with section 49(1) of Valuation Act, 2001.

14. In support of his opinion of net annual value Mr. Dineen introduced four comparisons, details of which are set out in Appen1dix 1 attached to this judgment. In addition Mr. Dineen also introduced a schedule produced by the surveyor acting for the appellant in the **VA06/3/041 - Kilsaran Concrete** appeal. This schedule contained details of nine other assessments of quarries throughout the country and it also is included in Appendix 2 attached to this judgment.

15. Mr. Dineen said that in arriving at his valuation he had relied upon information provided to him by a director of the appellant company to the effect that output at the quarry was 500,000 tonnes per annum exclusive of 60,000 tonnes of “Clause 804” material. Furthermore, he said, Mr. Paul in his submission at appeal stage put forward a valuation based on an output

of 500,000 tonnes at an ex-pit price of €5 per tonne. Mr. Dineen said the appellant in its application for registration under section 261 of the Planning and Development (Amendment) Act, 2002 dated the 18th April, 2005 stated the output of the quarry to be 500,000 tonnes per annum. In the circumstances Mr. Dineen said it was reasonable to accept that the output of the quarry for valuation purposes was 560,000 tonnes per annum.

16. Mr. Dineen in his evidence said that he was well experienced in the valuation of quarries for rating purposes. In his opinion proximity to a large conurbation was an important factor to be borne in mind due to the high cost of transport which could be as high as €60 to €70 per 20 tonne load. In his experience the generally quoted prices for delivery of stone in the Dublin area were €9.50 per tonne and €10.50 per tonne for “Clause 804” material.

17. Mr. Dineen in his direct evidence said that the 5% disability allowance made by Mr. Paul for the cost of removing topsoil, over burden and other matters referred to was not justified as this was a one off cost and not a recurring cost. In the circumstances no such allowance should be made.

18. Under cross-examination Mr. Dineen confirmed that the Valuation Office had issued the guidance note on the valuation of pits and quarries referred to by Mr. Paul. However, this guidance note, Mr. Dineen said, was no longer used by the Valuation Office and ought not therefore to be relied upon for valuation purposes.

19. When asked if there were any geological differences between the subject quarry and the nearby Kilsaran and Roadstone quarries, Mr. Dineen said he was not aware of what those differences might be. From his inspection the three quarries generally appeared to be somewhat similar and he was not in a position to refute Mr. Paul’s assertion that the Ballinascorney quarry was predominately dolomite whilst the subject was predominately shale.

20. When asked about the three comparisons in the Cork area introduced by him as comparisons Mr. Dineen agreed that they were all limestone quarries and produced a higher value product than that produced at the subject.

21. In response to a question from the Tribunal Mr. Dineen agreed that the other schedule of comparisons introduced by him and which included details of nine quarries was, from an evidential point of view, equally as relevant as the three comparisons introduced by him.

Findings:

The Tribunal has carefully considered all the evidence and arguments submitted by the parties and finds as follows:

1. The Valuation Act, 2001 which came into effect on the 2nd May, 2002 is the sole statute dealing with the valuation of property for rating purposes. Section 49 of the Act is particularly relevant to this appeal and states as follows:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) 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.

(2) For the purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority as it is situated in then –

(a) in case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property’s net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property’s value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,

(b) in case an existing valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1) and by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988, but the amount estimated by those means to be the property’s net annual value shall, in so far as it is reasonably

practicable, be adjusted so that the amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made immediately before the commencement of this Act."

2. It is common case that there are no relevant comparable quarries in the South Dublin County Council area, other than those which were valued at the same time as the property concerned. In the circumstances neither valuer was in a position to value the subject quarry in accordance with section 49(1) and hence section 49(2) came into play.

3. Mr. Paul in arriving at his opinion of net annual value relied upon that part of the guidance note on the valuation of pits and quarries prepared by the Valuation Office dated September 1999 which indicated that the appropriate royalty/rateable value of a quarry averages between 2.5% and 7.5% of product unit price. Elsewhere in this document there is a paragraph entitled "output table" which it is suggested be used "*where no royalty information exists*". Mr. Paul agreed with the Tribunal that the application of this table to a throughput of 450,000 tonnes per annum gave a figure of €86 for quarries providing good quality stone.

4. A copy of the guidance note was made available to the Tribunal and in principle the Tribunal accepts it for what it is: a statement of good practice which aims to promote a common approach to the valuation of pits and quarries on a nationwide basis. Nonetheless, it must be said that no matter how laudable such a document as this is, it does not have any statutory force or effect. Moreover the Tribunal notes Mr. Dineen's evidence to the effect that it is not now practice in the Valuation Office to have regard to these guidelines. In the case **VA96/2/044 - Dan Morrissey Ltd.** the Tribunal referred to what appears to have been an earlier version of this guidance note and made reference to the intrinsic weaknesses of such a document.

5. Mr. Dineen, on the other hand, prepared his valuation using the comparative method of valuation and relied primarily on the assessments of three quarries in Cork, all of which were valued at a uniform level of 32 cents per tonne. Mr. Dineen did not dispute Mr. Paul's assertion that each of these three quarries produced limestone, which is a higher value material than that produced at the property concerned.

6. As part of his evidence Mr. Dineen produced a schedule showing details of assessments of nine other quarries which had been introduced in evidence by the appellant in another appeal. These quarries were drawn from a wide geographical area and include quarries producing different materials and, with one exception, throughputs of about 200,000 tonnes or less. These quarries were valued at different rates per tonne varying from a low of 16.5 cents per tonne to a high of 27.95 cents per tonne giving an overall average of 21.6 cents per tonne. This lack of consistency of assessment is reinforced by the fact that in several instances those quarries producing low grade material have been valued at higher royalty rates than those producing better quality stone.

7. On balance the Tribunal prefers Mr. Dineen's valuation method, that is the comparative method, to that used by Mr. Paul for the reasons stated earlier. In valuing quarries on the comparative basis there are two variables which are critical to the assessment – the output and the appropriate royalty rate per tonne. In the circumstances of this appeal the Tribunal accepts the throughput figure supplied by the auditors as the basis for the valuation of the property concerned, that is 450,000 tonnes per annum. When it comes to determining the appropriate royalty rate, the position is far from clear having regard to all the comparisons put forward to the Tribunal by Mr. Dineen, ie. the three in the Cork area and the nine other assessments contained in the schedule also introduced by Mr. Dineen at the oral hearing. These comparisons indicate a lack of consistency which of itself is not unduly surprising in that there are a number of factors which could have a bearing on the royalty payment such as the other sources of supply in the area, the nature of stone produced, the demand for material in the area, ease of working and access and the ex-pit price paid for the stone. In this instance the Tribunal accepts Mr. Paul's evidence that the output of this quarry is low grade material and that this is borne out by the ex-pit price of €4.50 per tonne. Whilst there are some restrictions on the use of part of the local road network this is more than offset by the presence of a strong market for material within a 15km to 20km range of the quarry.

8. The Tribunal accepts Mr. Paul's evidence that a disability allowance is warranted due to the difficulties related to the operation of the quarry and the extent and volume of weather rock that is unsuitable for processing into crushed stone products. This unsuitable material has to be transported and stored elsewhere in the quarry and surrounding lands. Secondly the presence of dolerite dykes in the quarry results in increased drilling, blasting and processing costs. The Tribunal considers a 3% allowance to be appropriate.

The Tribunal has carefully considered all the evidence submitted in relation to the other quarries and has come to the conclusion that the appropriate royalty rate in this instance, having regard to the quality of stone, the output, location and ex-pit prices, is 25 cents per tonne.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be €699 calculated as set out below:

Output 450,000 tonnes per annum	
Royalty rate 25 cents per tonnes	
Makes an estimated net annual value 450,000 tonnes at 25 cents per tonne	= €12,500
Less disability allowance of 3% say	= €109,125
Add net annual value of buildings agreed	= <u>€ 1,800</u>
Net annual value Say	€10,925
Rateable valuation @ 0.63%	= €699

And the Tribunal so determines.