

Appeal No. VA08/3/020

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

**Irish Bitumen Storage Limited.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 757132, Tank(s), Yard at Lot No. 17HI, Alexandra Road, North Dock B, North Dock, County Borough of Dublin

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Fiona Gallagher - BL**

**Member**

**James Browne - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 26TH DAY OF JANUARY, 2009**

By Notice of Appeal received on the 28th day of July, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,670.00 on the above-described relevant property.

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

"On the basis that the RV as assessed is excessive, inequitable and bad in law. That the process tanks and equipment should be excluded from the RV in line with the earlier decision of the Tribunal on this property VA88/0/247."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 17<sup>th</sup> day of November, 2008. At the hearing the appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, and Mr. Pronsias Ó Maolchaláin, BL, instructed by Eugene F. Collins Solicitors. The respondent was represented by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor's Office. Mr. Patrick McMorrow, ASCS, MIAVI, a Valuer in the Valuation Office, gave evidence on behalf of the respondent.

### **Location**

The subject property is located on Alexandra Road in the Dublin Port area at the junction of Breakwater Road South and adjacent to jetty road and berthing facilities.

### **The Property Concerned**

The property concerned is comprised of a fully automated state of the art bitumen manufacturing facility which manufactures a range of bitumen products. The site comprises a large depot containing administration offices, works offices, a canteen, stores, plant rooms, boilers, a yard, a loading gantry, pipelines and tanks. Additionally there are a number of obsolete and unused former oil storage tanks.

The site was formerly part of a larger site occupied by Irish Shell which was previously the subject of an appeal to the Valuation Tribunal (**VA88/0/247 – Irish Shell Ltd.**). Following a fire in 2004 there were significant changes involving the decommissioning of many large oil storage tanks and the removal of a number of bitumen tanks. The site was subsequently subdivided between Topaz Energy and the appellant.

### **The Issue**

Quantum was agreed between the parties as follows:

Buildings, Yards etc.	RV	€673
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Tanks – Total Capacity 2,959,976 gallons	RV	€938
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Comprising Tanks:

1A Oil, 2 Bitumen, 3 Oil, 4 Bitumen, 5 Thermal Oil, 19 Water, 20 Dumps, 31 Bitumen, 32 Bitumen.

Pipelines/Racking etc.	RV	<u>€59</u>
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Total RV		€1,670
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**At Issue**

The only issue was whether certain plant, namely tanks and pipelines/racking came within the exclusion within Schedule 5 of the Valuation Act, 2001 on the basis that they were primarily used to induce a process of change and were therefore not rateable.

**Rating History**

On the 17<sup>th</sup> May, 2007 the appellant made an application for a reduction in the valuation of the subject property as the oil storage depot on the site was incapable of beneficial occupation. A draft certificate was issued by the Valuation Office on 18<sup>th</sup> October, 2007 valuing the property at an RV of €3,758. After representation stage a final certificate was issued on 13<sup>th</sup> November, 2007 with a reduced valuation of €1,670. The appellant being dissatisfied with that decision appealed to the Commissioner of Valuation, who on 1<sup>st</sup> July, 2008 re-affirmed the RV of €1,670. By notice of appeal of 28<sup>th</sup> July, 2008 the appellant appealed to the Valuation Tribunal.

**The Appellant's Evidence**

Mr. Eamonn Halpin, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal and the respondent, as being his evidence-in-chief. In his evidence Mr. Halpin stated that when he inspected the subject premises he found that the original hereditament taken over from Irish Shell comprised of an old storage depot which was largely incapable of occupation as it was obsolete, and a number of petrol and oil storage tanks which were incapable of storage. Furthermore, part of the plant which had been included in the valuation was occupied separately by Topaz. The appellant therefore sought a revision of the valuation on this basis. The case was listed for revision by the Commissioner, and it was agreed to delete the old petrol and oil storage tanks from the valuation and to rate that portion of the premises occupied by Topaz separately.

Mr. Halpin stated that the issue in this case was the rateable valuation of bitumen tanks, piping and associated racking situate on the subject property. Mr. Halpin stated that the primary bitumen tanks on the subject property are Tanks 31A, 32A and 2A. Tank 4A is also rated, but is much smaller than the other tanks and its plant and manufacturing system is out of action, requiring substantial investment to be made usable. A further tank, Tank 23A, is also out of action and incapable of use but is not included in the valuation.

Under cross-examination Mr. Halpin accepted that the mechanical part of the blending apparatus was not part of the appeal, as this was not rated. He stated however that it was his understanding that the piping associated with the blending system had been included in the overall figure for the piping, as had the piping involved in the heat exchanger system, which itself was not part of the appeal.

Mr. Enda Macken, Consultant Engineer with Energy Industry Engineering, also gave evidence on behalf of the appellant. Mr. Macken was formerly employed by Irish Shell prior to setting up his own company. He stated that he was familiar with the subject premises as presently operating and gave evidence as to the process which takes place thereon. Mr. Macken stated that the bitumen is shipped in to the premises mainly from the United Kingdom. There are different grades with different viscosities – 40/60 and 160/200 PEN. The bitumen arrives by ship at a heated temperature, usually between 130° and 150° C, and is offloaded into the bitumen tanks. The pipework between the ships and the tanks is lagged in order to ensure a proper flow of product. Mr. Macken stated that there is a continuous process, with each bitumen tank linked via pipework to a pump and the bitumen being pumped through a heat exchanger and then back into the tanks if there are no customers or else transmitted to the gantry for delivery if there are customers. The purpose of the heat exchanger is to increase the temperature and thereby reduce the viscosity of the bitumen. Mr. Macken further said that when the bitumen is pumped back into the tank from the heat exchanger its temperature has increased to approximately 160° to 170°C, which is roughly a 10° increase in temperature.

Mr. Macken further gave evidence that there is a series of heating coils in the tanks which are fed from the terminal oil boilers, which ensure that constant heat is applied to the tanks. These boilers are on a continuous loop to heat the terminal oil, which is sent through various pipework down into the shell of the tank and dispersed through an element in the base of the tank, to increase and stabilise the temperature of the product. The pipework is lagged and also contains trace heating. The purpose behind this heating system is to ensure the product is maintained and heated to a higher temperature than that at which it arrives on site in order to change its viscosity, so that the customer receives the product at a temperature he can transport to its final destination. In his evidence Mr. Macken explained that once a customer arrives on site he weighs his truck at the weighbridge, swipes a card and decides what blend of product he requires. The driver then goes to the gantry and swipes his card again. The

system recognises the load and sets up the type of blend required and by means of a three way valve the product is circulated and transmitted to the tanker. The type of product delivered varies from customer to customer. A wet fix additive can be added in the gantry, depending on whether or not the customer requires it.

Mr. Macken stated that the plant was re-designed after a fire in 2003/2004 and due to safety concerns the day tanks, which were smaller, vertical storage tanks, were removed. Under the old system, the customer phoned in their order beforehand and the bitumen was pumped from the bitumen tanks into the day tanks and blended within the tanks, with heat applied to change the temperature. Mr. Macken stated that the new design of the plant allows flexibility of product and permits any variable or batch to be made up on site. In his view, the process is now more instantaneous, with greater flexibility for the customer.

Under cross-examination Mr. Macken agreed that it is essentially bitumen which is transmitted to the trucks at the gantry, but stated that the bitumen which leaves the premises is a changed product from that which arrives into the tanks from the ships. The bitumen is at a different temperature, it has been blended and it could also have a wet fix additive added. Mr. Macken further agreed that the entirety of the blending takes place in the gantry and not in the tanks. He also admitted that the purpose of the heating mechanism is to reduce the viscosity of the product, to make it more liquid than it might otherwise be and to ensure that the bitumen is not solid when it arrives at the customer's destination. In response to a question by the Tribunal, Mr. Macken admitted that the bitumen which comes in from the ships is the same as that which leaves the tanks and is transmitted to the blender, except that it is slightly less viscous and has been heated.

Mr. Richard Walsh, General Manager of the appellant company, was the final witness on behalf of the appellant. Mr. Walsh gave evidence that the temperature the bitumen arrives at varies considerably from ship to ship, from less than 130° to 160°/165°. The product is in constant movement and is pumped around the system. It passes through heat exchangers which boost the temperature and the coils within the base of the tanks, which are fed by the terminal oil, also boost its temperature, reducing the viscosity and making minor changes to the product. The purpose of the heat applied is to ensure that the product is ready for the customer and that it will remain at a significant heat for the duration of the customer's journey so that it can be offloaded at its destination. Mr. Walsh stated that two tanks on the

subject property contain 160/200 PEN and one contains 40/60 PEN bitumen. At the gantry the customer keys in whatever mix they require, but Mr. Walsh stated that there are four main grades - 40/60, 70/100, 100/150 and 160/200 PEN. He admitted however, that it can happen that the product is made up of only one of the bitumen grades, but the majority of products are a blend of grades.

Mr. Walsh went on to state that the only additive in use at the moment is a wet fix additive which is used in quarries. However he said that if a customer wanted a particular additive it could be imported for addition at the gantry. Mr. Walsh pointed out that the company only stores on average between one to two week's supply of bitumen on the premises. He admitted that what arrives and what leaves is all bitumen, but as it is refined it becomes a different product, so that each customer is bringing out a different product. He stated that it is vital that customers get the particular penetration grade of bitumen they request and that if they are not supplied with the correct grade, a road can fail. Mr. Walsh pointed out that bitumen's natural state when unheated is solid, making it un-pumpable and therefore unusable. To facilitate the blending of the bitumen, it needs to be kept at a high temperature and the appellant company prefers to deliver it to the gantry at a temperature of approximately 170°.

Under cross-examination Mr. Walsh admitted that although the end product is still essentially bitumen, it has different penetration rates and different uses. He also accepted that certain customers may only require a 40/60 PEN or 160/200 PEN blend of bitumen and that in these circumstances the bitumen is pumped straight from the tanks and not blended at the gantry. Mr. Walsh stated that he is aware from talking to people within the plant that heating bitumen changes its inherent characteristics, such as its density and viscosity, but he is not qualified to give evidence as to any change in characteristics. Mr. Walsh agreed that when heated the product is still essentially bitumen, but stated that in order to be a practical product, it needs to be heated. In response to a question from the Tribunal, Mr. Walsh admitted that there are no agitators in the tanks, although there is a pump, which pumps the bitumen from the tanks around the heat exchangers and back again.

### **The Respondent's Evidence**

Mr. Patrick McMorrow, having taken the oath, adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant, as being his evidence-

in-chief. However, the breakdown of the valuation was amended at the hearing, as set out at Page 2 herein.

Mr. McMorrow's evidence as set out in his précis was that in all the major tanks, what goes into the tank is bitumen and what comes out of the tank is bitumen. Different types of bitumen product are stored in the tanks, pumped through pipelines to the loading gantry, which allows the product to be blended immediately prior to being loaded onto tankers. It is Mr. McMorrow's understanding that the blending physically takes place in a fairly confined area within the loading gantry and the blending apparatus has not been rated. In Mr. McMorrow's view all the major tanks on the site are designed or used primarily for storage or containment and no change is induced in the product within these tanks.

Mr. McMorrow gave oral evidence that the appeal consisted of the three main tanks, the subsidiary tank and the associated piping only. He stated that the approximate length of the piping and racking which was rated was given to him by Mr. Halpin and that he understood it included piping from the loading area to the tanks and from the tanks around the site to the loading gantry, but not the piping at the gantry.

Under cross-examination Mr. McMorrow admitted that the new process is more modern than the old one and that there have been very significant, material changes at the site. Following his inspection of the subject premises, he concluded that what he had inspected was rateable. Mr. McMorrow agreed that there is a process taking place involving a change in the temperature of the bitumen. He further agreed that the bitumen was continuously heated and that delivery would not be possible without the application of heat. He also accepted that there was only a limited amount of storage capacity in the amount of one to two week's supply at the premises.

Under re-examination Mr. McMorrow stated that when he inspected the premises, it was his view that the tanks were storage tanks until the product was moved to the gantry for loading into the tankers and that there was no process of change to the bitumen in the tanks, nor was there any process of change carried out in the pipes, which transmitted the substance from the tanks to the loading gantry and from the ships to the tanks. It was Mr. McMorrow's view that the process whereby the bitumen was constantly pumped and heated was a requirement of storage of the product, which would otherwise be unmanageable.

## Legal Submissions

Mr. Pronsias Ó Maolchaláin made submissions on behalf of the appellant. Mr. Ó Maolchaláin submitted that the key issue was whether the tanks were primarily used to induce a process of change in the bitumen. He referred to the decision of the Tribunal in **Irish Shell Ltd.** which related to the subject premises. The Tribunal held in that case (based on the Supreme Court decision in **Beamish and Crawford v Commissioner of Valuation** [1980] ILRM 149) that the bitumen tanks should be taken as one integrated operation and that this operation consisted of inducing a process of change. Counsel submitted that that determination still held good and that, since then, the degree of integration of the entire process had significantly increased. The day tanks were removed and the amount of stock which can now be stored on the premises is effectively one to two week's supply. Counsel submitted that the primary purpose for which the plant was designed and used was to induce a process of change and that in terms of primary function the tanks are not storage tanks. It was further argued that the bitumen product which leaves the premises is different to the product which arrives. Mr. Ó Maolchaláin argued that this was in effect accepted by the respondent in not valuing the gantry.

Counsel submitted that the principles applicable to the interpretation of the Valuation Act 2001 are those set out in **Nangles Nurseries v Commissioner of Valuation** (Unreported, High Court, McMenamin J., 14<sup>th</sup> March 2008). In that case the court held that,

*“ ... (6) if however there is a new imposition of liability, looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language; ... ”*

Counsel for the appellant also referred to **VA95/4/026 - Carbery Milk Products** which quoted a previous decision of the Tribunal in **VA88/0/094-099 Mitchelstown Creameries** where it was stated that, *“to “induce” a process of change means to bring about or cause a process of change”*. In that case, which post-dated **Irish Shell**, it was accepted that although there was an element of storage, ultimately the apparatus was being used to induce a process of change. Counsel submitted that the installations in the present case are designed or primarily used to induce a process of change. If the bitumen was required only to be stored, it would only be heated to the temperature at which it arrived at the premises, but it was heated to a higher temperature to reduce the viscosity to bring about a process of change, so that it could be brought to the gantry.



It was further argued by Counsel that a crucial factor in determining rateability in these circumstances is whether or not what goes into the item of plant in question is precisely the same as what comes out and if not, that item is deemed to be non-rateable plant. Counsel argued that the bitumen product which is delivered to the tankers at the gantry is a different product to the raw product which arrives by ship, as it is an essential part of the production that the product is heated and customers often require a blend of the different bitumen products.

Counsel for the appellant also directed the Tribunal's attention to the High Court decision of Gannon J. in **Caribmolasses Company Ltd v Commissioner of Valuation** [1991] ILRM 379 (which was appealed to the Supreme Court). Gannon J. stated in that case at p. 387, "*It seems to me if the containment assists in or is an integral part of the process of change, even though merely as ancillary to some other catalytic agency, it comes within the ambit of being used to induce a process of change. In such circumstances the construction is not a rateable category of plant.*" Counsel also distinguished the decision of the Supreme Court in that case, which reversed the High Court decision and held that the different types of molasses were mixed so as to form a homogenous whole and that even if there was a process of change induced in the molasses, it was not induced by the tanks. The case was distinguished on the basis that there were steam heating coils on the floors of the tanks in **Caribmolasses**, but that these were not being used, that molasses was taken out of the tanks by force of gravity and steam was applied to the molasses outside the tank to enable it to flow to the lorries to receive same. It was argued that in the present case there was an entirely different set of circumstances, which amounted to an integrated process. The tanks in this case were specifically designed to apply heat to the bitumen and to maintain that heat and there was also a constant pumping and circulation of the bitumen. The Supreme Court decision in **Caribmolasses** was that whatever change took place was not induced in the tanks, but in the present case heat is applied in the tanks and such heat is necessary so that the bitumen can travel down the pipes in a convenient manner to the gantry.

The recent decision of the Supreme Court in **Bulmers Limited (Formerly Showerings (Ireland) Ltd.) v Commissioner of Valuation** [2008] IESC 50, (Unreported, Supreme Court, 30<sup>th</sup> July, 2008) was also referred to by counsel for the appellant. Finnegan J., giving the decision of the court, stated that the Tribunal had rightly concentrated on the question of whether or not the vats were primarily used for containment for the purpose of allowing the

natural process of fermentation to take place or were used primarily to induce a process of change in the substance contained. The court held in that case that:

*“‘Allow’ means to permit and it connotes passivity or the occurring of a process without active intervention. ‘Induce’ connotes active intervention.”*

The court held that what occurred, fermentation, was primarily a natural process. Mr. Ó Maolchaláin submitted that in the instant case the change in the bitumen is not a natural process, but one induced by active intervention using the pump to circulate the bitumen and the heat exchangers to increase its temperature and reduce viscosity and accordingly distinguished this case. He further stated that the plant is used primarily to induce a process of change in the bitumen and not just for storage. One final point of distinction was that in **Bulmers** it was the policy of the company to have a two-year stock of cider stored on the premises, but in the instant case the appellant only has one to two week’s of stock on site.

### **The Respondent’s Submissions**

Mr. Brendan Conway made submissions on behalf of the respondent. Counsel submitted that no process of change takes place in the bitumen substance and that it was accepted by the appellant’s witnesses that bitumen is received in the tanks and bitumen is what is taken away by the customer. He stated that it is irrelevant for the purpose of the appeal whether or not the individual blends can be described as different products.

Counsel distinguished **Irish Shell Ltd.**, in which the Tribunal held that fuel oil tanks and bitumen tanks were used for the purpose of inducing a change in a substance contained or transmitted and that the element of containment was an integral part of the entire process of change. Counsel distinguished that case on the basis that in the instant case it was clear on the evidence that bitumen of certain grades could be drawn directly from the tanks for customer usage and there is therefore no process of change, no blending of the different types of bitumen occurs in the tanks, what goes into the tanks comes out unchanged and the tanks are used solely for containment. Counsel argued that the level of supply which the tanks could hold was not relevant, as the tanks are in use all of the time to contain the material within them. **Irish Shell** was further distinguished by counsel for the respondent who stated that it was the direct evidence in this case that product as stored in the tanks could be taken off directly by the customer and used if so required. There was no question of further manufacture, only straightforward storage. Counsel submitted that one could not take the

tanks and the piping together as an integrated operation, as nothing happens in the tanks that could be described as an operation, let alone an integrated operation.

Counsel for the respondent also referred to **Bulmers Ltd.**, where Finnegan J. stated at p. 22 that the issues to be determined could be reduced to two questions:

*“1. Are the vats used primarily for storage or containment whether or not the purpose of such containment is to allow a natural or a chemical process to take place?*

*2. Do the vats fall within the exclusion ... they will be within the exclusion if they are used primarily to induce a process of change within the substance contained?”*

Counsel submitted that if the Tribunal asked itself the same two questions in this case, the answer to question 1 would be in the affirmative and one could not possibly answer the second question affirmatively, as no process of any kind, let alone a process of change was taking place. The heated bitumen which arrived at the site was simply maintained, stored or contained in the tanks at a higher temperature and in a viscous state.

Counsel also quoted the passage from the judgment (as quoted by counsel for the appellant above), which referred to the term *“induce”* connoting active intervention and submitted that there is no active intervention in the tanks or piping which brings about a demonstrable change in the bitumen. Counsel also referred to another passage from that case, where Finnegan J. stated that, *“... the primary use remains that of containment for the purpose of allowing a natural process to take place the interventions merely resulting in the product resulting from fermentation being more suitable for the appellant’s purposes.”* It was submitted that there was a more complex set of interventions in the **Bulmers** case than in the present one, where the only intervention is the addition of an additive and thus it could not be held that a process of change is taking place in the bitumen.

Counsel also referred to the Supreme Court judgment in **Caribmolasses v Commissioner of Valuation** [1994] 3 IR 189, about which it was stated in the **Bulmers** case that the court had held that:

*“ ... the process within the tanks whereby molasses of varying viscosity was blended to form a uniform mix is not a process of change: even if it could be said to be a process of change it is not induced by the tanks which are simply used to contain the molasses while blending is effected.”*

Counsel submitted that that case is of direct, immediate and crucial importance and relevance in this case. It was argued that the facts of **Caribmolasses** are broadly comparable to the facts of the instant case. In that case the primary change took place at the pumps by the injection of hot water after the molasses had left the tanks, which was broadly similar to the current case where the blending takes place at the gantry, outside the tanks.

Counsel further quoted from the **Caribmolasses** case, where it was stated at p. 197 that,  
*“ ... it is clear from the nature of the blending, and the manner in which it is effected, that the tanks are not being used primarily to induce a process of change in the molasses. Firstly, no process of change is induced. The molasses remain molasses. ... Secondly, even if there were a process of change induced in the molasses, it is not induced by the tanks.”*

It was argued by counsel that the decision of the Tribunal in **Irish Shell** had been superseded by **Caribmolasses v Commissioner of Valuation**, which was referred to by the Supreme Court in **Bulmers Ltd. v Commissioner of Valuation**. Counsel submitted that in reliance on **Caribmolasses** there was no inducement of a process of change in the subject property and even if the Tribunal distinguished **Caribmolasses** on the facts, any inducement of a process of change which could be said to take place took place at the gantry, where the bitumen was blended and the gantry was not the subject of this appeal.

## **Findings**

1. The relevant legislation in this case is section 51 of the Valuation Act 2001, which provides that, any plant in or on the property, being plant specified in Schedule 5 shall be valued and taken into account. Schedule 5 states:  
*“1. All constructions affixed to a relevant property (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.”*
2. The onus of showing that the valuation of the property concerned, appearing in the valuation list is incorrect is on the appellant.

3. Based on the evidence of the appellant's witnesses, the process which takes place at the subject premises involves bitumen being unloaded from ships into bitumen tanks on the premises. When it arrives on site the bitumen is at a temperature of approximately 130° to 150° C. Two different grades of bitumen, 40/60 PEN and 160/200 PEN, with different viscosities are delivered to the subject premises. There are three main bitumen tanks on the premises – Tanks 31A, 32A and 2A and a subsidiary tank, Tank 4A, which is not integrated with the others. Each of the three main tanks is linked to a heat exchanger, through which the bitumen is pumped to increase the temperature to approximately 160° to 170°C and reduce the viscosity. Within the tanks there are also a series of heating coils, fed from the terminal oil boilers, which disperse heat through an element in the base of the tank to increase the temperature of the bitumen. The purpose of this heating system is to ensure that the bitumen remains viscous, so that when a customer requires it, it can be conveyed from the tanks to the gantry and from there into the tankers to be transported to its destination. In its natural, unheated state, bitumen is a solid substance. Pipework also runs from the ships to the tanks and around the site from the tanks to the gantry, where the bitumen is blended and this pipework is lagged.

Customers require different blends of bitumen and, as a result of a modernisation of the plant following a fire in 2003/2004, all the blending now takes place outside the tanks, in the gantry area. Therefore, once a customer arrives on site he weighs his truck at the weighbridge, swipes a card and determines the blend of product required. He then proceeds to the gantry, where he once again swipes his card. The system recognises the order and sets up the type of blend required, which is transmitted to the truck by means of a three way valve. The only addition made to the blended product is a wet fix additive, if so required by the customer, and this is added in the gantry after the blending has taken place.

Mr. Richard Walsh, General Manager of the appellant company, gave evidence that there are four main blends of bitumen requested by customers - 40/60 PEN, 70/100, 100/150 and 160/200 PEN, but admitted that if a customer only required either 40/60 PEN or 160/200 PEN that no blending would take place and the bitumen would be drawn straight from the tank.

4. In determining whether the bitumen tanks and associated piping and racking in this case are rateable, or should be exempt in accordance with Schedule 5 of the Act of 2001, the Tribunal relies on the case of **Bulmers Ltd. (Formerly Showerings (Ireland) Ltd.) v Commissioner of Valuation**, (Unreported, Supreme Court, 30<sup>th</sup> July, 2008), wherein Finnegan J. giving judgment for the court stated at p. 22 that the issues to be determined could be reduced to two questions:

*“1. Are the vats used primarily for storage or containment whether or not the purpose of such containment is to allow a natural or a chemical process to take place?”*

*2. Do the vats fall within the exclusion ... they will be within the exclusion if they are used primarily to induce a process of change within the substance contained?”*

Later on in that judgment Finnegan J. stated that:

*“‘Allow’ means to permit and it connotes passivity or the occurring of a process without active intervention. ‘Induce’ connotes active intervention.”*

5. The Tribunal finds in this case that firstly the tanks, piping and associated racking on the subject premises are used primarily for storage or containment of bitumen and secondly that they are not used primarily to induce a process of change in the bitumen. The primary purpose of the tanks is that of containment of the bitumen, prior to transmission to the gantry for blending. No process of change occurs in the bitumen while being kept in the tanks and circulated around the piping to the heat exchangers. The only change which occurs is that the bitumen is heated to a higher temperature than it originally arrived at, thereby making it less viscous, so that it is easier to blend. This cannot be said to constitute “active intervention”. The blending of the product occurs outside of the tanks at the gantry, which is not the subject of this appeal.
6. In reaching this conclusion, the Tribunal also relies on the decision of the Supreme Court in **Carrimolasses v Commissioner of Valuation** where it was held that the process whereby molasses of varying viscosities was blended to form a uniform mix was not a process of change and further no changes were induced by the tanks in that case, which were just used for containment, while the blending was effected.

The Tribunal notes in particular the reference by the court in that case at p. 197 in the following terms:

*“ ... it is clear from the nature of the blending, and the manner in which it is effected, that the tanks are not being used primarily to induce a process of change in the molasses. Firstly, no process of change is induced. The molasses remain molasses. ...Secondly, even if there were a process of change induced in the molasses, it is not induced by the tanks.”*

When considering the present appeal it is also clear that no process of change is induced in the bitumen, which at all times remains bitumen. It was accepted by the appellant's witnesses that the bitumen remained bitumen, although they did attempt to qualify that proposition. Furthermore, even if there was a process of change induced in the bitumen, it was not induced by the tanks, but rather occurs at the gantry, where the bitumen is blended and this area was not rated by the respondent.

7. The previous decision of the Tribunal in **VA88/0/247 - Irish Shell Ltd.** related to the subject property, which at that time was being run by Irish Shell. In that case it was held that the bitumen tanks should be taken as one integrated operation and that this operation consisted of inducing a process of change. However, it is clear that since that decision there have been substantial and material changes to the subject property and indeed it was those changes which prompted the appellant to seek a revision of the valuation in relation to the subject property.

The process in relation to the manner in which the bitumen is blended has altered significantly since that decision. From the evidence, it appears that under the old process the bitumen was blended in what were known as day tanks, which were small, vertical storage tanks. However under the current process, all the blending occurs outside of the tanks at the gantry. In those circumstances, the decision in **Irish Shell** can be distinguished

### **Determination**

Having regard to all the evidence adduced and to the foregoing findings, the Tribunal determines that the property concerned is rateable relevant property in accordance with Schedule 3 of the Valuation Act 2001. And the Tribunal so determines.