

Appeal No. VA11/1/029

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

Meade Potato Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2205913, Office(s), Warehouse/Warerooms at Lot No. 4Aa, Braystown, Killary, Ardee 2, County Meath.

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Fiona Gallagher - BL

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF SEPTEMBER, 2011

By Notice of Appeal dated the 25th day of March, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €390 on the above described relevant property.

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

1. 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 30th day of May, 2011. At the hearing, the appellant was represented by Mr. James McGowan, BL, instructed by Robert Kieran, Solicitor of John C Kieran & Son, Solicitors. Mr. Stephen Gunne, MIPAV, ACI Arb, of Property Partners Laurence Gunne gave expert evidence on behalf of the appellant. Mr. Stephen Ward, planning consultant and Mr. Philip Meade, owner of Meade Potato Company Ltd. also attended. Ms. Gráinne O'Neill, BL, instructed by the Chief State Solicitor's Office, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. John O'Connor, BA (Hons), a Valuer in the Valuation Office gave expert evidence on behalf of the respondent.

Preliminary Matters

2. It was noted that the gross external area of the warehouse had now been agreed at 3,629.65 sq. metres; the gross external area of the offices had likewise been agreed in the amount of 267.16 sq. metres.
3. Counsel for the appellant also indicated that while the appellant had provided comparator properties, his primary position was that the subject property was not capable of being properly compared with any other comparators, whether those supplied by the respondent or otherwise, and in the circumstances the appropriate steps for the Tribunal to take was to utilise Section 49(2)(b) of the Valuation Act, 2001 by considering its pre-existing valuation.
4. Counsel for the appellant also confirmed that the appellant was not now contending that the warehouse buildings in question were "*farm buildings*" within the meaning of the Valuation Act, 2001. However, he was contending that the land should be valued as agricultural land since it was land that was previously valued and was not subject to fluctuation in value.
5. Counsel for the respondent objected to the appeal proceeding on the grounds of quantum, contending that neither the earlier report submitted on behalf of the appellant at the first appeal stage, nor the Notice of Appeal itself, put quantum in issue. We were referred to the decisions in **VA88/0/165 - Ebeltoft Limited t/a "Hunters" Licensed Premises** and

VA95/5/015 – John Pettitt & Son Limited. Both Determinations emphasise the obligation on the appellant to set out clearly in the grounds of appeal what exactly the appellant wishes to make. It is also clear that where a ground of appeal has not been advanced before the Commissioner, it is not normally possible to raise such a ground before the Tribunal unless exceptional circumstances make it clear that the interests of justice requires the Tribunal to depart from this course.

6. In response to questions from the Tribunal, Counsel for the respondent noted that the Valuer on behalf of the respondent was in a position to deal with the issue of quantum now for the purposes of this hearing. On behalf of the appellant our attention was drawn to paragraph 6(a)(i) of the Notice of Appeal which contends that the valuation is incorrect and suggests (*inter alia*) that the District Valuer did not fully consider comparables that were available, and refers to comparables suggested by the appellant's consultant, which it was contended would be expanded on at the hearing before the Tribunal. Counsel for the appellant contended that if quantum was not being put in issue this part of the Notice of Appeal would have been otiose.

7. After a short recess to consider the matter, the Tribunal resumed and ruled that the appellant's appeal on grounds of quantum could proceed. Noting that the Notice of Appeal was of less than optimal clarity in this regard, the Tribunal nonetheless concluded that the Notice of Appeal did expressly refer to the use of comparables, both by the appellant and the respondent, and confirmed that comparables would be relied on by the appellant at the appeal hearing to challenge the rateable value arrived at by the respondent. The Notice thus implicitly, if not explicitly, raised the issue of quantum and the respondent could not be (and as it transpired was not) taken by surprise or prejudiced by the inclusion of the issue of quantum as part of the matters to be decided by this Tribunal at the appeal hearing.

The Issue

8. The first issue for the Tribunal to decide was whether or not it was feasible to utilise Section 49(1) of the Act in order to arrive at a rateable valuation of the property by comparing it to other properties comparable to that property in the same rating area, the value having been determined following a revision in accordance with Section 28.

9. In the alternative, if no properties comparable to the subject property were situated in the same rating authority area, the Tribunal would have to consider the applicability of Section 49(2)(a) and (b). However, if the Tribunal were of the view that it was possible to determine the value of the subject property in accordance with Section 49(1) the second issue did not arise.

The Evidence

The Appellant's Evidence

10. On behalf of the appellant, Stephen Gunne, Valuer, gave evidence and adopted his précis as evidence-in-chief. He confirmed the subject property was 15km from Ardee, 16km from Drogheda and 22km from Navan. The property was in an extremely isolated rural location, serviced only by minor roads and in his view must be regarded as being somewhat inaccessible. Until recently the only vehicular access to the property was via an extremely narrow country road where two cars could not even pass. However, the appellant has at his own expense constructed a new access roadway to the property. In addition the appellant paid a considerable sum of money in order to obtain ESB access to the site. The appellant has its own water wells on site and also has its own on-site waste disposal.
11. The company was founded in 1982 though it appears that the first building was built as far back as 1980. The first building was built as a workshop/potato store. Various stores were added after 1980 on a piecemeal basis. The warehouse section of the property has a hygiene “*skin*” inside it which is a requirement insisted upon by retail multiples in respect of the storage of goods by their suppliers. Otherwise, however, in his view the warehouses were ordinary in nature. They were not particularly high-spec.
12. Dealing with the offices, Mr. Gunne said the offices were in effect porta-cabins joined together, although there was some internal office use made in certain areas of the warehouses also. In his view four-fifths of the warehouses were used for potato storage with the other one fifth used for the storage of other vegetables.
13. Mr. Gunne emphasised the remote nature of the property. In his view it was user-specific; it could not easily be used by other prospective tenants. From 1980 onwards it has grown so that the premises were really too big to move off-site somewhere else. In his view if

the appellant was not working from the subject property the buildings would be obsolete and their only value would be as salvage. In his view because of the remoteness of the location and the very ordinary nature of the warehouses in question (which were after all no more than steel framed buildings) it was hard to think that somebody would move their industry to these premises, were they vacant.

14. Mr. Gunne also expressed the view that there was a lot of storage space available in the north east of Ireland and indicated that there was a massive oversupply of such properties. In his view, the nearest comparable area was Grangegeeth which was 6-7 miles from the subject property. Grangegeeth was less than 2km from the N2 and so was in a far more central location. He referred to a number of comparators in an industrial park in Grangegeeth. However, a number of the units in the industrial park in Grangegeeth were empty. In his view, while such units were looking for rental of €2 per sq. foot it was likely that they would accept €1 per sq. foot, or even 90c in certain circumstances. By comparison, the subject property is 8-9 kms from the N2. He also indicated that the subject property in question is not zoned.
15. Mr. Gunne also commented on the comparators put forward by the respondent. In respect of the Clarke Rewinds premises he expressed the view that this unit was in a far more accessible area (Drumconrath). In addition there were extra facilities available nearby to Clarkes Rewinds unit which would not have been available nearby to the subject property. Because the property was situated in a village employees did not have to travel, which made it a more attractive unit than the subject property.
16. In relation to the Fastway Couriers property he expressed the view that the unit in question could be located anywhere and it was not site-specific. On the other hand, however, the subject property is site-specific since the unit was developed to house the produce of the farms of the family to whom the company belongs. Mr. Gunne noted that both Clarke Rewinds and Fastway Couriers were properties which were zoned “*industrial*” and so would have commanded a significantly higher price at a time when the market was good than the subject property.
17. In his view there was no market for the subject property because of the backward nature of the location. He described it as a property which was “*hard to find*”. Any rent which

the landlord would seek to charge in respect of such a property would have to be extremely small. Mr. Gunne also confirmed that he understood the property in question was previously rated as a farm. He understood that the Meade family had been on the location in question since the 17th Century.

18. In cross-examination he accepted the subject property was a standard industrial building as were the comparators put forward by the respondent. The subject property had a large chilled area, although he contended the chilling facility was not suitable for vegetables, beef or cold storage. It was not a fridge facility. However, he accepted the subject property had facilities which were additional to what one might expect to find in a standard industrial building. He denied the building was open-plan and contended the units were interconnected, though he accepted that they could be reconfigured easily (as, he contended, could any building).
19. Mr. Gunne accepted that the inaccessibility of the location had been improved by road improvement. However, he pointed out that two trucks could not pass until relatively recently because of the narrow nature of the road. It was only since the installation of the new road by the appellant that large vehicles could now pass at all. He accepted the business had eighty employees and sometimes more on a seasonable basis. He contended that the subject property was site specific to the business because the family grew potatoes in this area since way back. It was, in his view, a central location for the storage of the harvested potatoes.
20. In his view, other tenants would be very hesitant to locate to the subject property. He accepted the subject property could have its uses for prospective tenants, but only if rent was set at a sufficiently low level.
21. Mr. Gunne expressed the view that the NAV set forward by the respondent was unfair. In his view, the warehouse and the office should both be valued at €10.75 per sq. metre, giving an RV of €209.44 (as opposed to the RV put forward by the Commissioner of Valuation of €390). He contended that the warehouse and the office should be valued the same Euro per sq. foot of rate because the offices were aged porta-cabins which were not joined to the warehouse in question.

The Respondent's Evidence

22. On behalf of the respondent Mr. John O'Connor, Valuer, gave evidence. He adopted his précis as his evidence-in-chief. In his view the appropriate rental values were €20.50 per sq. metre in respect of the warehouse and €13.67 per sq. metre in respect of the offices, giving a total NAV of €390.03 (say €390).
23. He indicated that he had found two comparators, being Clarke Rewinds and Fastway Couriers.
24. He indicated that because of the location €20.50 per sq. metre was a fair valuation for the warehouse on the subject property. In this regard he said the subject property warehouse was a distribution warehouse like Fastway. He noted also that one of the comparators in the Grangegeeth Industrial Estate referred to by Mr. Gunne on behalf of the appellant was seeking a rent of €2 per sq. foot, whereas the respondent's comparator rent was a rent of in or about €1 per sq foot.
25. In cross-examination he admitted that while he had examined the subject property internally and externally he had not examined the comparators. He explained that he used the Commissioner of Valuation's database and valuation list to find suitable comparators. He indicated that he was not familiar with the village of Drumconrath.
26. He agreed that the subject property was difficult to find and indicated that he had had difficulty in locating it. However, he believed that he had reflected this in the lower value given by him to the offices of the subject property. He felt the "*chill*" store within the warehouse should enhance the value of the warehouse. He agreed that the subject areas were 3,629.65 sq. metres and 267.16 sq. metres in respect of the offices. He believed that the valuation given by him in respect of the warehouse of €20.50 per sq. metre compared favourably to the warehouse valuation in the Fastway unit of €22.86 per sq. metre. He indicated that in coming to his valuation he had taken account of the large number (60 plus) of car park spaces as well as the chill store.
27. In his view, both the location of the subject property and the location of at least one of his comparators, being the Fastway Couriers property, were "*rural*". He accepted that Fastway might have a slightly better location, but believed that the presence of the chill

unit in the subject property brought up the value. He indicated he did not know of the quality of the comparator units because he had not inspected them but he believed that the subject property was superior in quality to the comparator properties. He indicated, however, that he didn't know what "*plant*" was present on the comparator properties.

28. Mr. O'Connor indicated there would be a property report in respect of every rateable property within the respondent's database. This would set out the rateable valuation per sq. metre in respect of such rateable properties. All revision properties were in his view based on a 1988 basis. He agreed that the premises was more remote and less accessible from national routes than comparator premises but believed that the chill section balances out the remoteness of the location of the subject premises as well as the presence of the substantial car park and substantial yard. However, he agreed that he could not say how many car park spaces were available in the comparator buildings. He believed, because the chilled section of the warehouse was more valuable than an ordinary warehouse, it would not be appropriate to reduce the rateable valuation because of the somewhat inferior location.

29. He expressed the view that the zoning status of the subject property was of no significance. The property was suitable for use as a warehouse. Even if someone wanted to change its use the zoning was of no relevance to him.

30. He noted that the appellant contended that 12% of the warehouse could be regarded as chilled (approximately 435.56 sq. metres). This was not disputed. He noted that one area of warehouse in a comparator property was described as "*open*" and this meant that it was a canopied area which could not be closed.

Submissions

31. Both sides made legal submissions in writing as well as orally which were of considerable assistance to the Tribunal.

The Appellant's Submissions

32. The appellant referred us to the decisions of Supreme Court in **Roadstone Limited –v- The Commissioner of Valuation [1961] IR 239** and also to the decision of the High

Court in **Rosses Point Hotel Company Limited –v- The Commissioner of Valuation**
[1987] IR 143.

33. The decision in **Rosses Point** is authority for the proposition that one can use whatever method of valuation is most suitable to produce the required result. In the view of Barron J, as expressed at page 145 of that Judgment, the appropriate test was “*What would a tenant be likely to give by way of rent?*” The profit made from the property at present was immaterial. This methodology of valuation must be based on the opinions of prospective tenants. In the submission of the appellant, the fact that the appellant can (or cannot) trade profitably from the subject premises is irrelevant; what matters is what a hypothetical tenant could or would be able to do.
34. Counsel on behalf of the appellant noted that Mr. Gunne, the Valuer called on behalf of the appellant, did not seem to believe there was a hypothetical tenant in existence. In this regard he referred to the **Roadstone** decision. In this case at page 260 Kingsmill Moore J made it clear that he “*equated land which, by virtue of s. 11 of the Act of 1852, is to be valued on the fixed prices basis, with land used for agricultural or pastoral purposes; and land which, “being a hereditament the annual value of which is liable to frequent alteration” is valued on the hypothetical rent basis I have equated with land used for business, commercial, or manufacturing purposes.*”
35. Mr. McGowan suggested that by utilising Section 49(2)(b) the Tribunal should look at the net annual value of properties on the list as of the 1st November 1988. In his submission, therefore, it was appropriate for the Tribunal to look at properties which were on the list as of the 1st November 1988, though it is permissible also to look at properties on the valuation list.

The Respondent’s Submissions

36. On behalf of the respondent, Ms. O’Neill BL, submitted that it was possible to arrive at an appropriate valuation of the premises by looking at properties within the same rating authority area in accordance with Section 49(1). She also pointed out that even if the Tribunal were to decide to use the comparators put forward by the appellant, one of those comparators suggests a rent for the warehouse of €20.52 per sq. metre which compares favourably to the rent per sq. metre of €20.50 fixed by the respondent in respect of the

subject warehouse. She emphasised once more that the unit was a large unit with a significant chilled area within it and a large car parking yard. In her view the valuation contended for by the respondent was appropriate in all the circumstances.

The Law

37. It is appropriate for us to consider the provisions of Section 49(1) and Section 49(2).

These read as follows:

“49.—(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 area 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.”

38. Having heard the evidence of both valuers and in particular the evidence in relation to the various comparator properties suggested by both sides, the Tribunal is of the view that there are other properties comparable to the subject property in the same rating authority

area as that in which the subject property is situate. In these circumstances it seems to us that the Tribunal is entitled and indeed obliged to adjudicate on the value of the subject property in accordance with the provisions of Section 49(1) by referring to and having regard to the values on the valuation list of other comparable properties within the same rating authority area.

39. The issue therefore is the extent to which the comparator properties within the same rating authority area are sufficiently similar to the subject property to entitle the Tribunal to calculate the RV at the same rate, particularly in regard to both the warehouses and the office.
40. In the experience of the Tribunal it is unusual that warehouse space would be valued at precisely the same value per sq. metre as adjacent office space. The Tribunal does not say that this could never be justified, but queries the justification for this approach by the appellant in the instant case. In the view of the Tribunal the value ascribed of €13.67 per sq. metre to the office spaces by the respondent valuer seems appropriate.
41. The Tribunal notes the emphasis placed by the respondent on the chill store element of the warehouse in question. This represents approximately 12% of the warehouse premises. The Tribunal notes that no attempt was made to value this element of the warehouse differently to the remainder of the warehouse. However, the Tribunal has concluded that the valuation of €20.50 per sq. metre is appropriate insofar as it relates to the 12% of the warehouse occupied by the chill unit.
42. It does seem to the Tribunal, however, that the remainder of the warehouse premises should be valued at a slightly lower value than the chill unit. The Tribunal notes the difficulty which both the appellant's valuer and the respondent's valuer had in locating the subject property. The Tribunal accepts the contention that the subject property is remote and isolated, and could not be said in any way to be semi-urban or urban, as might be said of some of the comparator properties. It does seem to the Tribunal that some discount should be applied to the valuation of the balance of the warehouse premises in the circumstances.

43. The Tribunal notes also that the comparators proffered by the respondent have not been examined by the respondent's valuer, so it is not possible to say with any degree of certainty whether the quality of the warehouses is equal to, superior to or inferior to that of the appellant.

44. Accordingly, the Tribunal is of the view that the value in respect of the remainder of the warehouse premises should be reduced to account for these matters from €20.50 per sq. metre to €18 per sq. metre.

Accordingly, this produces the following valuation:

Offices:	267.16 sq. metres	@ €13.67 per sq. metre =	3,652.07
Chilled Warehouse Section:	435.56 sq. metres	@ €20.50 per sq. metre =	8,928.98
Ordinary Warehouse:	3194.09 sq. metres	@ €18 per sq. metre =	<u>57,493.62</u>
Total NAV:			€70,074.67
Rateable Valuation = Total NAV @ 0.5% = €350.37 (say €350)			
Total Rateable Valuation = €350			

This varies the figure previously determined by the respondent to read instead €350.

And the Tribunal so determines.