Appeal No. VA12/2/012

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Topaz Energy Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2210189, Oil/Fuel Depot, Terminal/Control Centre at Lot No. Unit 12, Harbour Enterprise Park, Renmore, Lough Atalia, East, County Borough of Galway.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb	**Deputy Chairperson**
Patrick Riney - FSCSI, FRICS, ACI Arb	**Member**
James Browne - BL	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF NOVEMBER, 2012

By Notice of Appeal received on the 15th day of May, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €3,564 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"1. The Net Annual Value is excessive, inequitable and bad in law.
2. The methodology relied on by the Commissioner is flawed and not consistent with Section 50, and by association with Section 48 of the Valuation Act 2001.
3. The Commissioner has erroneously disregarded the Appellants' land value comparisons.
4. The 'Comparisons' proffered by the Revision Officer, and upon which the Commissioner has relied, are unreliable evidence.
5. That in arriving at a fair valuation the Commissioner appears to have disregarded the then prevailing economic circumstances."

The appeal proceeded by way of an oral hearing, which took place in the Hearings Chamber of the Valuation Tribunal, located on the third floor of Holbrook House, Holles Street, Dublin 2, on the 19th July, 2012. The Appellant was represented by Mr. John C. Elliott, FSCSI., FRICS., FIAVIA., MCI Arb., a Partner of Elliott & FitzGerald, Chartered Valuation Surveyors, Property & Rating Consultants. The Respondent was represented by Dr. Viorel Gogu, PhD., Msc., Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence in chief. This evidence was supplemented by additional evidence given either directly at the hearing or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue
Quantum.

The Property
The subject relevant property is a modern purpose built oil terminal on a site of c. 2.58 hectares (c. 6.384 acres). Accommodation includes:-

- 9 fuel storage tanks and 5 additive tanks with a total capacity of 11,207,909 gallons and a large fire water tank.
- 6 loading gantry bays (4 operational and 2 for future expansion).
- Buildings; including an Administration Office measuring c. 276.80 m², a Plant Room of c. 84.15 m² and Pump House of c. 117.60 m².
- 3 x 10 ins. pipes which run from the quayside measuring c. 1100 metres and which supply the terminal.
- A stand-by generator 50 kva – 56 HP.

Car parking is located outside the main compound. The foregoing details were not in dispute.

Location
The subject property is located beside the harbour in the Harbour Enterprise Park on the south side of Dun Aengus Dock, Galway city. A service road adjacent to the harbour occupies a portion of a

reclaimed section of the harbour. Other occupiers of the Enterprise Park include a marine engineering company, fish processing, Cold Chon (Galway) Ltd., and Bitumen Membrane Company. The remainder land is currently undeveloped.

Services

The subject relevant property is served with mains power, water, telephone, storm and foul sewer.

Tenure

The property is understood to be held on a leasehold basis by Topaz Energy Ltd., for a term of 20 years commencing April 2009, with 5 yearly Rent Reviews. The commercial terms thereof were discussed in confidence at the hearing.

Valuation History

June 2011:	A Valuation Certificate (proposed) was issued with an RV of €2,965.
July 2011:	Representations were received and considered.
September 2011:	A Final Valuation Certificate was issued with an RV of €2,965.
October 2011:	An Appeal was lodged to the Valuation Tribunal by the Appellant's Agent.
April 2012:	A Final Valuation Certificate was issued. The Appeal Officer increased the RV from €2,965 to €3,564. The increase in the valuation arose as a result of a correction made by the Commissioner of Valuation to the valuation methodology.
May 2012:	An Appeal on the RV of €3,564 was lodged to the Valuation Tribunal by the Appellant's Agent on 15th May, 2012.

Appellant's Case

Mr. John Elliott took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission, making the following points:-

- The Revision Date agreed at hearing between the parties was September 2011, for the purpose of the exercise and appeal.

- He provided details as to the location, characteristics and description of the property.

- He outlined further details in his précis, including the valuation history, the valuation basis, and the comparable evidence he was relying upon to support the land value.

- He provided supporting commentary on the principles employed and relied upon by him in calculating what he considered to be a fair and reasonable valuation on the subject property and set out his calculations, as outlined below.

- He confirmed that the parties agreed on the location and identification of the subject property, the land area and improvements constructed thereon, as well as the functions of those various tanks, loading bays, buildings etc.

- He also confirmed that the parties had no dispute as to the services to the site and that the details of the Valuation History as outlined herein, were also agreed.

- Mr. Elliott then outlined his views on the manner in which the Contractor's Basis might be applied to determine the Net Annual Value of the subject property. He quoted from Section 50 of the Valuation Act 2001 and contended that the correct basis to determine the NAV, in accordance with Section 50 is to:-

    1. Assess the replacement cost of the property at date of **Revision ?**, making an appropriate allowance to reflect uncertainties facing the hypothetical tenant.
    2. Having established that replacement cost to then and only then apply the reducing value by reference to indexation, to November 1988.
    3. Having arrived at the estimated replacement cost as at November 1988, to then apply the reducing factor of 5% as prescribed.
    4. Add the site value.
    5. Apply the valuation fraction of 0.63%.

Appellant's Comparison Properties

<u>Comparison No. 1</u>

3.5 acres at Galway Enterprise Park, Lough Atalia Road, Galway.

These lands were first demised by the Galway Harbour Commissioners to BP Ireland Ltd., and Conoco Ireland Ltd., and subsequently to Statoil when the leasehold interest in the lands was reflected in a new lease commencing in 1997.

Mr. Elliot advised the Tribunal that his review of an undated copy of the initial 21 year Lease of the subject land provided for a five year rent review pattern from 30th June, 1981, subject to the initial rent of £10,500 (€13,332.25) p.a. In summary, he noted that that lease provided for:-

Initial 1981 rent at:	£3,000 / €3,809.21 per acre.
1986 Rent Review at:	£4,560 / €5,790 per acre.
1991 Rent Review at:	£4,923 / €6,253.28 per acre.

A copy of the new Lease provided to the Tribunal, which was dated 15th August 1997 between Galway Harbour Company and Statoil Ireland Ltd., was executed for a term of 25 years from 1st July, 1997 incorporating 5 year rent reviews and an initial rent of £13,455 (€17,084.32) p.a.

The initial 1997 rent equated to: £3,844.29 / €4,881.24 per acre.

<u>Comparison No. 2</u>

2.0 acre at Galway Enterprise Park, Lough Atalia Road, Galway.

Mr. Elliott advised that a lease on this land dated 10th October 1997 between Galway Harbour Company and Red Sail Frozen Foods Ltd., was for a term of 25 years from 1st December, 1996, subject to an initial rent of £16,000 but abated to £8,000 (€10,157.90) p.a.

Initial terms:

Initial rent excluding rent abatement equated to:	£8,000 / €10,157.90 per acre.
Initial rent with benefit of abatement equated to:	£4,000 / €5,078.95

Valuation by the Appellant

Based on the foregoing and adopting the Contractor's Basis of Valuation, Mr. Elliott concluded that the valuation of the subject should now be determined as follows:-

Tender / Construction Cost:	€22,050,000
Adjust price by reference to SCSI Tender Cost Index	
Jan 2007 – June 2011 = $\frac{151}{102}$ = 0.675 or 48% decline	x 0.675
Adjusted Tender Cost to Valuation Date (June 2011)	€14,883,750
Reducing Value to Nov '88 from June 2011 by reference to the CSO Building & Construction Cost Index of $\frac{112.8}{259.8}$ (i.e. reduction of 130.3%)	x 0.434
Total Estimated Replacement Cost	€6,459,547.50
Decapitalised @ 5%	x 5%
	€ 322,977.37
Add Site Value 6.384 acres @ €6,000 per acre	€ 38,304.00
	€ 361,281.37
Net Annual Value Fraction	x 0.63%
RV =	€ 2,276.07

Say RV = €2,270.00

Cross-examination of the Appellant

In response to questions put by Dr. Gogu and the Tribunal, Mr. Elliott agreed that:-

i. Section 48 of the Valuation Act 2001, contrary to item 15 of page 6 of his précis of evidence, does not specifically refer to the date of construction within the Act.

ii. The declared rent payable by the tenant to the landlord for the entire Complex upon the lands of the subject property may be calculated by reference to a percentage return on investment but he acknowledged that the rental agreement in the instant case is not an arms length lease between two unrelated parties.

iii. His view is that a rent of c. €6,000 / acre on the land only element of the subject property, as at November 1988, was supported by his evidence.

iv. He acknowledged that item 18 of page 7, first sentence of paragraph 1 of his précis was not correct and requested that same should be ignored and removed from the record.

v. He confirmed that his evidence was also relying upon a Jones Lang LaSalle index cited in Appendix D of his précis of evidence, being a copy extract article from the Irish Independent o 19th October, 2011, which claimed a reduction in Irish Commercial property values from the peak of market conditions in 2007 to October 2011 of 64.2%.

vi. He stated that he did not rely upon the rental figure passing on the land at review in 2006, as he did not consider it to be representative of open market rental values and was possibly computed by reference to a target yield value agreed by the parties to the subject lease.

Respondent's Case

Dr. Viorel Gogu then took the oath and formally adopted his précis as his evidence-in-chief. The location, description and accommodation details provided by the Respondent together with the basis of valuation employed by the respondent were common case to those provided above by the Appellant.

Dr. Gogu opened his case by confirming that his attendance at the Tribunal was to represent the Respondent, but in terms of evidence he drew attention to the contents of his précis and in particular the calculation of the Net Annual Value therein of €3,440. Dr. Gogu noted that his estimate of Rateable Valuation was at variance with that Rateable Value figure in the Valuation List and the certified extract from same appended to his précis of evidence, which indicated a value of €3,564. Dr. Gogu explained that he was appointed as Revision Officer on the subject relevant property during the course of the Revision task upon the retirement of a former colleague in the Valuation Office. He explained that his calculations and précis reflected his views and he was proffering same, not as an advocate but as an expert witness under oath to the Valuation Tribunal.

The Respondent then confirmed that he concurred with the Appellant, having considered other means, that the Contractor's Method of Valuation for Rating Purposes was the most appropriate on the subject relevant property. He proceeded to review the contents of his précis of evidence, explaining that he estimated the Net Annual Value of the subject property, based on a schedule of costs provided by the Appellant, which he reduced back to November 1988 levels employing the Capital / Building and Construction Price Index provided by the CSO and applying 5% to that value and added his estimate of site rental value, also reduced back to November 1988 levels, availing of the Jones Lang LaSalle Property Index – Industrial ERV.

Respondent's Comparison Properties

An analysis of the following comparable properties was provided for in Appendix 5 in the Respondent's précis.

<u>Comparison No. 1</u>

Bus Éireann Bus Depot, Harbour Enterprise Park, Galway.

RV: €930

Site Rent: €200,000

Multiplier: 0.409

Site Area: 20,234.13 sq. metres

€4.039 per sq. metre

<u>Comparison No. 2</u>

Cold Chon (Galway) Ltd., Harbour Enterprise Park, Galway.

RV: €755 (Valued on Contractor's Method in 2000 and 2003)

Site Rent: €59,995.12

Multiplier: 0.5154

Site Area: 9,500 sq. metres

€3.255 per sq. metre

Comparison No. 3

EZ Living, Harbour Enterprise Park, Galway.

RV: €520

Site Rent: €60,000

Multiplier: 0.395

Site Area: 5,823.38 sq. metres

€4.073 per sq. metre

Based on the foregoing comparables, the Respondent analysed the 100 year term lease on the subject land taken by Topaz Energy Ltd., from a commencement date of 1st February, 1999, paying a site rental sum of €200,000 p.a., adjusted the rent passing from December 2006 back to November 1988 by applying the JLS reduction multiplier of 0.3818 and determined that the resultant November 1988 rental value would equate to €2.956 per sq. metre. Dr. Gogu noted that this rental figure was less than each of the three comparable properties cited above.

Valuation by the Respondent

Based on the foregoing, Dr. Gogu concluded that the valuation of the subject should now be determined as follows:-

Contractors Method

	Total development cost	**Index**	**Index**	**Multiplier**	**Value**
	Cost (€)	Nov-88	Apr-09		**€**
1. E.R.C.	22,050,000	112.8	264	0.4273	9,421,363.64
2. Adjusted replacement cost				0	9,421,363.64
4. Decapitalisation				0.05	471,068.18
3. Site Rental Value	Site Rent (€)	Nov-88	Dec-06		
	200,000	302	791	0.3818	76,359.04
					547,427.22
				0.0063	3,448.79

Say: €3,440.00

Dr. Gogu added that his efforts to obtain certified total costs of the project to the Valuation Date of 16th September, 2011, from the Appellant were unsuccessful. In this context he drew attention to his e-mail dated 13th June, 2012 addressed to Mr. Elliott with copies to Ms. Costello and Mr. White of

Topaz, contained in Appendix 6 of his précis. The Revision valuer based his calculations on the earlier cited tender / contract award figure, determined as at April 2009, for the purpose of establishing the estimated replacement cost, devalued back to November 1988, all as outlined above.

Cross-examination of the Respondent

In reply to various questions asked by the Tribunal and the Appellant, Dr. Gogu responded that:-

1) The second sentence of Section 3 (3.1 Basis of Valuation) on page 4 of his précis was incorrect and should be deleted from the record.

2) He acknowledged that the pertinent date of the notional cost of constructing or providing the property in accordance with Section 50, Valuation Act, 2001 was agreed by the parties to be 16th September 2011.

3) He had been provided with accounts from the Appellant confirming that the costs of development on the subject lands, as at April 2009 amounted to a sum of €22,050,000.

4) He accepted that his land Comparison property No. 2, namely Cold Chon (Galway) Ltd., and the Appellant's land Comparison property No. 2 known as Red Sail and another parcel known as Leeside, (part lease details of the latter two holdings were provided during the course of the hearing by the Appellant), may not be very helpful to the Tribunal in so far as their lease commencement dates preceded November 1988. Dr. Gogu added that his analysis and application of the Contractors Basis of Valuation for Rating Purposes followed The Rating Forum Guidance Note on such dated November 1995.

5) He also stated that he was not relying upon the foregoing land rental details as he had the benefit of the actual rent passing in 2006 on the subject property, details of which were provided to him by the Appellant, which he concluded supported a rental value of €200,000 p.a., which he calculated devalued to €76,359 as at November 1988.

6) He added that the comparable properties cited by him in his précis are within the same land use zoning district within the subject Rating Authority area and on long lease terms.

Summations

Both the Appellant and the Respondent availed of the opportunity to provide summation statements which were a synopsis of the foregoing arguments and positions employed by them in both their précis of evidence and adduced at hearing.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at hearing.

The Tribunal finds that:-

1. The parties agreed that the pertinent basis of valuation was that as set out in Section 50, Valuation Act, 2001 and the date to establish the notional cost of constructing or providing the property in accordance with such provision was 16th September, 2011.

2. Section 50 of the Valuation Act, 2001 states: *"If, in determining the net annual value of property or any part of it in accordance with section 48, a method of valuation relying on the notional cost of constructing or providing the property or part is used, then, notwithstanding subsection (3) of that section, the net annual value of the property or part, for the purposes of that section, shall be an amount equal to 5 per cent of the aggregate of the replacement cost, depreciated where appropriate, of the property or part and the site value of the property or, as the case may be, part."*

3. Section 48(3) of the Act states: *"Subject to section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant."*

4. The Tribunal finds that it is clear from the foregoing sections that where the value of a property is being determined pursuant to Section 48 of the Act and the method of valuation

being employed is the *"notional cost of constructing or providing the property"* as permitted under Section 50 of the Act, then Section 50 is determinative of the issue and not Section 48 (3) which is displaced by Section 50 in such circumstances.

5. The evidence adduced by Dr. Gogu indicated a lower Rateable Valuation calculation than that provided for on the Valuation List.

6. The Appeal was on the Rateable Valuation published on the Valuation List, ie, €3,564.

7. The Tribunal notes the Respondent's argument and concerns with the potential risks of employing two indices, one to seek to devalue and reduce initial construction costs from April 2009 to September 2011 and then an alternative index on the resultant figure to devalue to November 1988. The Tribunal does not share the aforementioned concerns of the Respondent.

8. However, the Appellant did not submit any evidence to establish that the SCSI Tender Price Index as outlined in Appendix "A" to his précis referred to projects of a nature such as the subject. Indeed the SCSI copy document submitted and cited by the Appellant carries a footnote for the reader's benefit noting the broad data base on which the information was compiled and urges caution when considering any specific project as "[…] *the pricing of individual projects will vary depending on such factors as their complexity, location, timescale, etc."*

9. Having regard to the photographic images provided together with the description of the relevant property, i.e. an Oil Terminal primarily featuring an agglomeration of large tanks, pipes, ancillary steel cranes and service/support buildings, this Tribunal was not provided with evidence to support the argument that the subject is of a project nature substantially compatible with those included in the data base used to compile the above SCSI Tender Price Index.

10. The Tribunal was not furnished with evidence that the notional cost of constructing or providing the property as at September 2009 was materially or in anyway different from the tender price and costs adduced during the course hearing, as at April 2009.

11. The Tribunal was not provided with evidence to support the claim that the rental value applying to the subject land during 2006 as reported at hearing was not representative of market rent.

12. The aforementioned Rating Forum Contractor's Basis of Valuation for Rating Purposes - Guidance Note recommends an approach which comprises five components, the fifth of which instructs the valuer to stand back, look at the estimated replacement cost of the improvements on the land, adjusted to reflect any deficiencies in the buildings etc, if considered appropriate. The Guidance Note also acknowledges the possibility of adding a sixth component to reflect the outcome of any negotiations or "haggling" which might be deemed to take place between the hypothetical landlord and tenant.

13. In the context of 12 above, the Tribunal is minded to make an adjustment to reflect what may be a reduction in the notional cost of the project as at September 2011 when compared with actual costs reported and agreed by the parties as of April 2009. There is little doubt that deflationary pressures prevailed in the construction sector during that period, and though it appears that a great deal of the project spend may have been on steel materials and fabrication, the Tribunal is satisfied that some overall cost reductions were available due in large part to decreases in demand for a great number of elements of industrial constructions continuing through 2009 to 2011.

Determination

Mindful of all of the above then, the Tribunal considers that a fair and reasonable rateable valuation on the subject relevant property should be calculated as follows:-

<u>Contractors Method</u>

	Total development cost	**Index**	**Index**	**Multiplier**	**Value €**
	Cost (€)	Nov-88	Apr-09		
1. Est. Replacement Cost.	22,050,000	112.8	264	0.4273	9,421,363.64
2. Adjusted replacement cost (less 5% to reflect conditions as at Sept 2011)					8,950,295.45
3. Decapitalisation				0.05	447,514.77

3. Site Rental Value	Site Rent (€)	Nov-88	Dec-06		
	200,000	302	791	0.3818	76,359.04
Net Annual Value					€523,873.81
Rateable Valuation			@	0.63%	€3,300.40

RV Say €3,300

And the Tribunal so determines.