

Appeal No. VA89/0/017

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Unifish Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Factory and Land at Rossaveel, Lot No. 14GH, 15CDE, E.D. Kilcummin, Co. Galway  
Quantum - Fraction to be applied to agreed NAV

**B E F O R E**

**Henry Abbott**

**Barrister Chairman**

**Brian O'Farrell**

**Valuer**

**Veronica Gates**

**Barrister**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**DELIVERED ON THE 10TH DAY OF MAY, 1990**

By notice of appeal dated the 1st day of August, 1989, the appellants appealed against the valuation of the above described hereditaments in the sum of £500.

Mr. Patrick J Nerney, Rateable Valuation Consultant, Valuer & Auctioneer, 13 Mountdown Road, Dublin 12 presented a written submission on the 3rd of May, 1990 and Mr. John Colfer, B.Sc (Surveying) a valuer in the Valuation Office with 9 years experience presented his written submission on the 4th of May, 1990.

The written submissions indicate and the parties to the appeal agree that the property comprises a modern purpose built fish processing factory with reinforced self-draining floors. There is a two-storey block to the front which accommodates offices, a canteen, kitchen, changing facilities and w.c.s. Other buildings adjacent to the main factory include cold storage facilities, machine housing and storage tanks. The main factory buildings were erected in 1972 and were upgraded and extended in 1986.

The parties are agreed on the valuation history of the subject premises which is as follows:-

The property was first valued as a new building under the 1972 annual revision at £110. It was again revised in 1978 at which time the valuation increased to £165. Following an appeal to the Commissioner this valuation was reduced to £150. In 1985 the valuation was revised to £245.

In 1987 Galway County Council listed lot 15C Rossaveal for revision and the valuation increased to £470. This valuation was appealed and Mr. Colfer was appointed by the Commissioner to investigate the grounds of appeal. Following an inspection on behalf of the Commissioner it was determined that a portion of the buildings valued under the 1987 revision was standing on lots other than lot 15C Rossaveal. While the Commissioner affirmed the overall valuation of £470, the portion of the valuation which applied to buildings standing on lots other than the listed lot (15C Rossaveal) was struck out, leaving a valuation of £270. This valuation of £270 was affirmed by the Tribunal in appeal No. VA88/67.

In 1988 Galway County Council listed all of the lots for valuation and requested that the offices, which were under construction at the previous revision be valued. The valuation was then fixed at £530. The appellant was aggrieved by this revision and appealed to the Commissioner. The Commissioner reduced the valuation on appeal to £500. Mr. Colfer in his written submission stated that the buildings in the subject premises are designed and constructed to facilitate the

intake, processing and freezing of fish and as such are built to a higher standard than general factory units. He stated that since the last Tribunal hearing the offices had been completed and are now occupied. He stated that the factory is close to Rossaveal pier which he claimed is one of the major fishing ports in Ireland. He stated that current developments to improve the harbour include the extension of pier facilities and work is soon to commence on deepening and widening the entrance channel.

In relation to the valuation of the subject premises Mr. Colfer in his written submission of evidence stated that section 11 of the 1852 Valuation Act as amended by section 5 of the 1986 Act requires that when determining the rateable valuation of a property regard must be had to its net annual value (N.A.V.). In estimating the N.A.V. of the subject property he stated that he had regard to the general level of rentals for industrial units in the Galway area as at November 1988 and in particular to the fact that the industrial letting market in the Gaeltacht Areas in the West of Ireland is dominated by Udaras na Gaeltachta who at the relevant time were letting standard industrial units at £8.60 per sq. m. (80p per sq. ft.). He claims that these rents are heavily subsidised and as such do not represent full rental value for industrial units. As a result the ratio of net annual value to rateable value for such units is not to be the same as those in existence outside Udaras areas. From analysis of available information a ratio of 1:100 between rateable valuation and net annual value appeared proper to Mr. Colfer. As appears from this judgment later, this assertion in relation to the ratio of 1:100 was a serious issue in dispute between the parties. Under the current £500 rateable valuation assessment Mr. Colfer adopted a rental level of £8.60 per sq. m. (80p per sq. ft.) for the major part of the factory complex and a ratio of 1:100 between rateable value and net annual value. He claimed that these levels were in line with those adopted by the Tribunal in its determination under appeal no. VA88/67 and recent first appeal agreements as outlined in the schedule of comparables attached as appendix 3 to Mr. Colfer's report and attached as appendix 2 to this judgment. Mr. Colfer set out on appendix 2 of his report the schedule of building accommodation and this schedule is set out as appendix 1 of this judgment. Mr. Colfer concluded his report by a table setting out his calculation of net annual value and conversion to rateable value as follows:

Net Annual Value:

5363 sq m @ £8.60 per sq m = 46121  
 300 sq m @ £1.00 per sq m = 300  
 46421

Estimated Net Annual Value Say £47,000

Ratio 1:100 RV to NAV Rateable Value	470.00
Add: tanks 24,400 gals @ 10p per 1,000 gals	24.00
Horse power	<u>15.00</u>
	509.00
Less: *Building beyond high water mark	<u>26.00</u>
	£483.00
	Say £500.00

\* 312 sq m @ £8.60 = £2683

@ 1:100 RV = £28.83

Say £26.00

The written submission of evidence of Mr. Nerney described the premises along the same lines as Mr. Colfer's report and similarly set out the valuation history thereof. On page 2 of his submission Mr. Nerney set out the result of the first appeal which he stated specifically (with reference to the issues which arose on the appeal) was lodged against the rateable valuation of £530 on 15C. He submitted that the Commissioner acted in excess of his powers on hearing the first appeal by dealing with any lot other than 15C which was the only item in the list against which notice of first appeal was lodged.

Mr. Nerney expressed the view in his written submission that the Commissioner appeared to have done so as a result of taking the view that lots 14GH 15CDE were "similarly circumstanced" to 15C in accordance with section 20 of the 1852 Act. He referred to the Switzer Case heard in the Kings Bench Division and the Court of Appeal and furnished with his written submission a copy of the judgment in the two courts as reported in the Irish Reports. He further submitted that while, in the normal way, he would not raise a query on a valuation which had

recently been determined by the Tribunal that notwithstanding the short interval since the valuation which was previously dealt with by the Valuation Tribunal on appeal the case merited reconsideration in the light of changes in the interim in the Commissioner's method of dealing with valuations. In this context he pointed to the fact that at the hearing of the previous appeal by the Valuation Tribunal evidence was given on the Commissioner's behalf that the net annual value was £43,000 and that the RV/NAV relationship applied was 0.1% (this 0.1% was subsequently corrected at oral hearing to read 1%). Corresponding figures on the appellant's behalf were £25,000 and 0.5%. He stated that he understood that the Commissioner did not commence implementing the provisions of section 5 of the 1986 Act until late 1989 which was almost a year after the hearing and delivery of judgment by the Valuation Tribunal in the previous appeal on the subject premises. He stated that towards the end of 1989 the Commissioner adopted a RV/NAV relationship of 0.63% to determine valuations in Dublin and that a corresponding relationship of 0.5% was subsequently widely applied in determining valuations outside Dublin. He stressed the need for equity and uniformity in applying 0.5% ratio to the subject premises and claimed that having regard to the Tribunal affirming the previous valuation as determined by the Commissioner, he assumed the Tribunal accepted the Commissioner's estimate of £43,000 net annual value and on this account he accepted the correctness of the N.A.V. of £43,000 for the premises in their actual state at VA88/67. He added that the first floor of the building comprised an open area for offices which was unfinished internally at the time of VA88/67 and that this area had been finished in the interim and is now devoted to office and ancillary uses. Mr. Nerney set out the basis for his calculation of rateable valuation at £220 as follows: -

NAV of entire tenement as determined on VA88/67 =	£43,000
Deduct for the portions of premises conceded by the Commissioner as being outside the jurisdiction and confirmed by the Tribunal (RV £30.00) £300 divide by 0.1%	= <u>£ 3,000</u>
	£40,000

Add for first floor offices unfinished at  
time of VA88/67 but now completed.

5,188 sq. ft. @ 80p say	=	£ <u>4,000</u>
		£44,000
Fair valuation based on RV/NAV relativity		
not exceeding 0.5%	=	£ 220

Mr. Nerney continued to submit that should the Tribunal hold in the appellant's favour in relation to his submissions in regard to the Commissioner's treatment of the various lots on first appeal which the Tribunal find was the Commissioner's inclusion of other lots in the valuation along with lot 15C, that Mr. Nerney submitted that the valuation of £220 should be reduced to £115. While Mr. Nerney's report did not rely on comparisons in view of the recent decision of the Valuation Tribunal he did set out the comparison of Wellman (Int) Ltd which was a factory premises leased 68,000 sq ft of the former Castleguard Textiles factory in Ardee, Co Louth towards the end of 1989 at an inclusive rent of £52,700 which was less than 80p per sq. ft. gross equating to about 50p per sq ft nett to show the difficulty in achieving other than relatively modest rents for large premises in secondary locations. He estimated that the net annual value of the larger Wellman premises is not more than £34,000.

The oral hearing took place in Galway on the 9th May, 1990 and the appellant was represented by Ms Suzanne Nerney, Barrister at law and the respondent was represented by the said Mr. John Colfer.

The oral hearing was conducted by the parties and the Tribunal on the basis of an investigation in relation to the propriety of dealing with all the lots in the subject premises other than lot 15C together with lot 15C in the appeal before the Tribunal and in the 1st appeal before the Commissioner notwithstanding that only lot 15C was formally appealed in the case. Ms Nerney argued that the Commissioner on appeal had included other lots apart from lot 15C in determining the valuation of the subject premises on the basis that he took the view that the other lots were "similarly circumstanced" within the meaning of the said section 20. She argued that "similarly circumstanced" was a principle and not a procedure and was not appropriate in the present case and further that the Commissioner should have apportioned the valuation to lot 15C only and should not have dealt with other lots. Ms Nerney referred to the judgment of Palles

Chief Barron in the Switzer Case. Mr. Colfer replied that the Commissioner did not rely on the similarly circumstanced principle but rather relied on his power to correct an error in the entry made under revision of the valuation list in the Valuation Office. He stated that as the other lots were held under a common title by the one owner with lot 15C that it was appropriate that they should be valued as one entity and that this procedure should have been taken in setting out the entry in the valuation list on a revision. It was open to the Commissioner to correct the error at first appeal stage without having to rely on "similarly circumstanced" considerations. Ms Nerney argued and Mr. Patrick Nerney gave evidence that an appellant seeking to correct an error in an appeal would not be similarly allowed to correct same by the Commissioner of Valuation.

The Tribunal has considered the arguments of both parties in relation to the inclusion of the other lots with lot 15C in the context of the Switzer Case and having regard to the other reasons offered. The Tribunal is of the view that the inclusion of the other lots apart from 15C by the Commissioner of Valuation on hearing the first appeal cannot be regarded in the same light as the inclusion of the other plots of land and buildings with the Clarendon St buildings in the Switzer case. The Switzer case can be distinguished on the following grounds. Firstly, the buildings in the Switzer case were held on different leases from different landlords. Secondly, the Switzer buildings were not all included and were not intended to be included in the revision list. In this case the property is held on a freehold title by the one owner and the appropriate valuation procedure would be to value and list all the lots in their entirety as a whole.

Accordingly, the Tribunal finds that the approach of the Commissioner of Valuation on appeal was the correct one, notwithstanding that an appeal has been brought in respect of lot 15C only. The Commissioner acted correctly in rectifying an administrative error which would have led to an in-appropriate valuation procedure which if left unamended would have been compounded by the first appeal.

In relation to quantum both valuers accept the basic NAV of £43,000 upon which the Tribunal acted in the appeal VA88/67. However, during the hearing a question arose as to whether the tanks and horse power had been included in the determination of the rateable valuation of the part of the premises to which VA88/67 applied which was lot 15C which was valued at £270.

Ms Nerney and the appellants witness Mr. Patrick Nerney argued that as the tanks and horse power had been included at all times in lot 15C only that the balance of the premises which would be included in the event of the rejection of the "similarly circumstanced" argument put forward by them should not be valued on the same rateable basis as the premises the subject matter of VA88/67. The Tribunal allowed the parties a short adjournment to clarify the situation of the tanks and horsepower and by agreement between the parties it was subsequently confirmed to the Tribunal that the tanks and horsepower were indeed situated in lot 15C the subject matter of the previous appeal to the Tribunal VA88/67. The Tribunal is of the view that some discount ought to be given to the appellants in relation to the overall valuation of the premises, the subject matter of this appeal when all the lots are aggregated in relation to their rateable valuation and have taken this into consideration having regard to all the circumstances relevant to the decision of the Tribunal and in no way should this factor be taken as indicating a contrary view to that taken by the Tribunal in the said appeal decision VA88/67.

Given that the parties had practical agreement that the NAV criteria established by the earlier appeal to the Tribunal governed the present case, the final issue between the parties turned on the question as to what the appropriate NAV/RV fraction was to determine the rateable valuation from NAV. The parties maintained the positions which they had outlined in their written submissions the appellant arguing for 0.5% and the respondent arguing for 1%. The respondent based his argument on the fact that the rent in the present case and rents throughout the area were heavily subsidised by Udaras na Gaeltachta and thus did not represent real market rents and that the fraction should be increased from 0.5% to 1% to allow for this. The appellant argued that the fact of the subsidy indicated that tenants would not take leases in the area unless special incentives were available through a lower rent. The Tribunal is of the view that the expressed or implied subsidy from Udaras na Gaeltachta should be taken as a factor determining demand for these premises and hence should in some way be notionally added to the actual rent being paid by the tenant in determining the appropriate fraction. An alternative to this approach would be to increase the NAV initially by this notional amount having regard to the subsidy and then apply the normal outside Dublin fraction of 0.5%.



While the Tribunal has stated many times that it does not consider itself bound by NAV or econometric fractions as the sole criteria upon which rateable valuation is fixed, nevertheless in the circumstances of this case and having regard to the very recent consideration of the Tribunal of the valuation of a substantial part of the subject premises the Tribunal considers that a fraction of 1% is appropriate.

Accordingly, having regard to the foregoing and having regard to the discount already envisaged herein the Tribunal decide and determine that the rateable valuation of the subject premises should be £470.