Appeal No. VA96/2/044

## AN BINSE LUACHÁLA

## VALUATION TRIBUNAL

## AN tACHT LUACHÁLA, 1988

## VALUATION ACT, 1988


**Dan Morrissey Limited** <u>**APPELLANT**</u>

**and**

**Commissioner of Valuation** <u>**RESPONDENT**</u>

RE: Quarry and Offices at  Map Ref: On 3A, Townland: Clonmelsh, ED: Nurney, RD: Carlow, Co. Carlow
   Quantum - Quarry, royalty method of valuation

B E F O R E
**Fred Devlin - FRICS.ACI Arb.**  **Deputy Chairman**

**Brid Mimnagh - Solicitor**  **Member**

**Marie Connellan - Solicitor**  **Member**


## <u>JUDGMENT OF THE VALUATION TRIBUNAL</u><br><u>ISSUED ON THE 10TH DAY OF APRIL, 1997</u>

By Notice of Appeal dated the 22nd April, 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £570 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable when rental levels and other factors are taken into consideration".

**The Property:**

The subject premises comprises a quarry, screening and concrete mixing plant, block making plant, tarmacadam plant, offices and weighbridge located 3 to 4 miles outside Carlow town just off the main Carlow/Kilkenny road. The property is held in fee. ESB, water and sanitation services are provided by the owners.

**Written Submissions:**

A written submission was received on the 13th day of November 1996 from Mr. Brian Bagnall which included the expert evidence of Mr. John Barnett, Managing Director of John Barnett & Associates Limited, Chartered Mineral Surveyors.

In the written submission, Mr. Barnett described the quarry which is the subject of this appeal. He said that the quarry had been operational for a number of years and had expanded over an area of about 20 acres to a depth of about 30 metres. He said that the limestone was well bedded but highly fractured. There was a major geological fault running through the centre of the quarry trending North-South. The fault had a considerable displacement and is shown on the geological maps for the area. He said that the limestone tended to be cavernous and prone to clay intrusion into the beds via frost wedging. The net result is that drilling and blasting is sometimes difficult because of the clay and the voids in the rock. He said that the limestone itself is dolomitic and had a high proportion of silica varying from 5% to 10%. He said that the silica had a hard wearing factor especially on drill bits. He said that the rock was overlain by boulder clay and this material has to be removed to expose the rock for the quarry working sequences. He said that the overburden is quite thick within the quarry area and amounts to about 20 feet of clay and material that has to be stripped and stacked on site. He also said that controlling water has been a high cost factor as the quarry is situated within the valley of the River Barrow and the quarry benches lie beneath the water table. He said that the quantity of water being pumped out is 3,600 gallons per minute through a 150 HP pump. This was done on a 24 hour basis during the winter months and 12 hours per day in the summer months.

Mr. Barnett said that the rateable valuation assessed on the quarry was based on a formula applied by the Valuation Office for the extractive industry. He said the formula did not take into account any differential between sand and gravel pits and quarries. Nor did it take into account any differentials on the ground with particular reference to say, the ease or difficulty in working the deposits.

Mr. Barnett put forward the following assessment for Clonmelsh Quarry.

**1.** A royalty of 5% of the average ex-pit price of £2.50 per tonne.

**2.** A disability allowance of 5% for excess overburden, excess water, excess clay in fractures and fault zones.

**3.** A production level as at 1995 of 200,000 tons per annum.

The rental calculation was then:-

| | |
|---|---|
| 200,000 @ 12.5p per tonne | £25,000 |
| Disability allowance of 5% | £ 1,250 |
| Rent/NAV | £23,750 |
| RV @ 0.5% | £118.75 |
| Say | £120. |

By way of comparisons in his written submission Mr. Barnett adduced evidence of royalties paid in North West England and in North Wales. Of nine quarry royalties he had looked at the average royalty for 1995 was 12.3p per tonne. He said that the average ex-pit sales price percentage was 6.25% ranging from 1.5% to 8% ex-pit price. He said that in Ireland there was little evidence of quarries being leased on a royalty basis as quarry operators tended to own the land. He said however that sand and gravel royalties involved compare favourably with those encountered in North West England and North Wales. He said that in South Wales a royalty of 15p per tonne was recognised as being the "Tone of the List" for limestone quarries.

A written submission was received on the 19th day of November 1996 from Mr. Phil Colgan, a Valuer with 28 years experience in the Valuation Office.
Mr. Colgan assessed his rateable valuation based on the accepted method arrived at in 1979 and following the Supreme Court decision in the Roadstone case in 1955. The assessment was as follows:-

| | | |
|---|---|---|
| First | 50,000 tonnes output @ £0.0028p per tonne = | £120 |
| Second | 50,000 tonnes output @ £0.0024p per tonne = | £100 |
| Balance | 96,000 tonnes output @ £0.0011p per tonne = | £105 |
| | Total RV = | £325 |

He also introduced a second valuation based on the retail cost of finished state including drilling, explosives, washing and processing of not less than £3 per tonne plus 70p per tonne to cover profit, a sinking fund for the owner to cover unforeseen outlays and finally to cover rental. The assessment of rateable valuation on this basis being as follows:-

Total Sale Price             196,000 tonnes @ £3.70 per tonne = £725,200

Less Cost of Production     196,000 tonnes @ £3.00 per tonne = £588,200

Gross Profit                                      £137,000

Available for Rent 50% = £68,500

Net Annual Value = £68,500

Rateable Valuation @ 0.5% = £342.50 But Say = £320.

Mr. Colgan offered four comparisons summarised below.

1.      **Mid Cork Stone Quarries Limited**
   Ardcavan, Dunmanway, Co. Cork.
   RV £130. A stone quarry with an output of 43,750 tonnes.

2.      **Mid Cork Stone Quarries Limited**
   Kildanure, Dunmanway, Co. Cork.
   RV £55. A stone quarry with an output 20,000 tonnes.

3.      **Office and Sandpit at Donagh More, Baltinglass, Cork.**
   RV £320.

4.      **Lot 4AaBC Richmond, Glenamaddy, Co. Galway.**
   An output of 26,000 tonnes. RV £75.

**Oral Hearing:**

The oral hearing took place in Dublin on the 25th day of November, 1996. Mr. Tadhg Donnelly, MIAVI of Brian Bagnall & Associates appeared for the Appellant Dan Morrissey Limited accompanied by Mr. John Barnett, Mineral Surveyor and Managing Director of John Barnett & Associates, Chartered Mineral Surveyors.

Mr. Barnett adopted his submitted précis as his evidence in chief given under oath. He outlined his qualifications as a Chartered Mining Surveyor in Ireland since 1970 with previous experience in Manchester and Birmingham.

Mr. Barnett in further oral evidence made the following additional comments.

1. The prices obtainable for sand and gravel are considerably higher than for stone.
2. Stone has a lower price as it is often used as filling material for roadworks although there is a higher price paid for premium stone.
3. Sand and gravel are natural aggregates and easy to work whereas stone needs to be drilled, blasted, collected and crushed.
4. In the subject quarry the stone is particularly expensive to produce due to the high level of clay intrusion and the geological fault running through the quarry. As a result the level of waste product is somewhere in the region of 15% to 20%.
5. Generally speaking royalty charges vary with location, with higher charges being paid close to the major conurbations. As a rough guide the royalty for stone could be as low as 25% of that paid for sand and gravel.

Under examination, Mr. Barnett conceded that he had no market evidence to support his valuation due to the fact that in Ireland most quarries and sand pits tend to be owner occupied. Nonetheless he was aware of two recent transactions in Co. Meath - one was a shale quarry near Summerhill where the royalty was 20p per tonne and the other a sand and gravel pit near Enfield where the royalty charge was 55p per tonne. The quarry near Summerhill was much easier to work than the subject as it did not require blasting.

Mr. Colgan asked Mr. Barnett why in the absence of comparisons he had not prepared his valuation on the basis of the "Tone of the List" established by the formula used by the Valuation Office following the findings in the Supreme Court decision of **Roadstone Limited v. Commissioner of Valuation**. In response Mr. Barnett said that in his opinion the formula appeared right for sand and gravel pits (subject to the proviso that each case must be examined in its own merits) but much too high for stone. In his opinion as a Mineral Surveyor who carried out several valuations each year the royalty charge applied to stone by the Valuation Office formula was much too high. As a general rule he valued quarries and gravel pits by capitalising royalties and in arriving at his opinion of value he usually applied the following range of charges.

Stone            -        18p to 20p per tonne
Sand & Gravel-       60p to 70p per tonne
Best Sand        -        75p per tonne.

When asked to comment on Mr. Colgan's comparisons, Mr. Barnett said that in his opinion the assessments for the two quarries i.e. comparisons 1 and 2 were too high and that there should be a lower royalty rate used for stone than for sand and gravel. In relation to the subject property he pointed out that the average price for stone ex-works was £2.50 per tonne whereas Mr. Colgan had used a figure of £3.70 per tonne.

Mr. Colgan adopted his written submission as being his evidence in chief given under oath. When cross examined by Mr. Barnett Mr. Colgan said that whilst he was aware of the differential in prices that existed between sand and stone he nonetheless felt that the use of the valuation formula introduced following the Roadstone case was fair and reasonable in order to maintain uniformity. He agreed that the formula made no distinction between sand and gravel and stone. When asked whether his second valuation method based on a price of £3.70 per tonne against an actual average price of £2.50 per tonne was reliable, Mr. Colgan responded that he was principally relying on the valuation prepared on the formula basis. His primary aim was to produce a valuation that was fair and consistent with the valuation of other quarries having regard to the findings in the Roadstone case.

## Determination:

Having carefully considered all the evidence and arguments adduced at this appeal the Tribunal makes the following findings.

1.  The average price obtained for stone ex-works at this quarry is £2.50 per tonne and not £3.70 per tonne as put forward by Mr. Colgan.
2.  Due to the geological fault running through the quarry the level of overburden and other factors the extraction costs in this quarry are higher than the norm and this would have a bearing on the royalty charge.
3.  The costs associated with extracting sand and gravel compared to stone are much lower and the price of stone ex-works is considerably less than for sand and gravel. As a consequence it is logical to assume that the royalty charge for each commodity will reflect the price and extraction costs differentials.
4.  Whilst it would appear that the formula used by the Valuation Office following the Roadstone case has been largely uncontested for 30 years, this is not in itself a valid argument for its continued use without critical examination.
5.  Mr. Barnett is a Mining Surveyor of wide experience and he gave uncontested evidence that the royalty charge for sand and gravel is much higher than for stone.
6.  The Tribunal accepts this evidence and since the Valuation Office formula makes no

such differential it must be considered unreliable and flawed to that extent.

**7.** The Tribunal recognises the necessity for uniformity and equity among properties which are comparable of similar function and recently revised. However, in arriving at its decision the Tribunal must principally ensure that net annual value is determined strictly in accordance with *Section 11 of the Valuation (Ireland) Act 1852* as amended by *Section 5 of the Valuation Act 1986* i.e. what rent would a hypothetical tenant reasonably expect for the subject hereditament in its actual state at the valuation date. In this instance the hypothetical tenant would in formulating his opinion of appropriate rental value take into account the price obtainable for the finished stone and the costs associated with extraction and preparation for sale.

**8.** The Tribunal prefers Mr. Barnett's valuation approach but considers that the royalty charge of 12.5p per tonne is low having regard to his evidence in relation to valuing quarries generally where he said he used a level of 18p per tonne to 20p per tonne. Having regard to the above the Tribunal determines the net annual value to be £34,000 as set out below.

> 200,000 tonnes @ 0.18p per tonne = £36,000
> Disability allowance of 5% = £1,800
> Net Annual Value £34,200
> Rateable Valuation @ 0.5% = £170
> Add for agreed Rateable Valuation on building = £250
> Total Rateable Valuation = £420.

The Tribunal therefore determines the rateable valuation on the subject hereditament to be £420.