

Appeal No. VA96/4/007

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

Bord Gais Eireann

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Tank at Map Ref: 17J2, Alexandra Road, Ward: North Dock B, County Borough of Dublin

Rateability of disused tanks - beneficial occupation

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Marie Connellan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 2ND DAY OF OCTOBER, 1997

By Notice of Appeal dated 6th August, 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £200 on the above described hereditament. The grounds of appeal as set out in the Notice of Appeal were that;

1. The Valuation is excessive and inequitable.
2. The Valuation is bad in law in that the hereditament is incapable of beneficial occupation and therefore the valuation should be struck out.

The appeal proceeded by oral hearing which took place on the 13th June 1997 at the offices of The Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant was represented by Owen Hickey B.L. with Mr. John Boylan B.E. an engineer with E.S.B. International seconded to Bord Gais and Sheelagh O'Buachalla A.R.I.C.S. A.S.C.S. Valuer of Donal O'Buachalla & Company Limited. The respondent was represented by Mr. Eamonn Marry B.L. and David Walsh, District Valuer of the Valuation Office.

The Appellant's Case

Mr Boylan was sworn in and confirmed that he was an engineer with E.S.B. International on secondment to Bord Gais. He stated that the tanks had been used for the storage of naphtha oil for the production of gas but that the tanks had become redundant in 1985/1986 when natural gas became available. Both the filler pipe system and the outlet pipe system had been removed. The two kilometre route under the River Liffey from these tanks to tanks at Sir John Rogerson's Quay had not been maintained and the pipe system to auxiliary tanks at a Ringsend site had been removed. The general condition of the tanks was that they had not been maintained and that as they were empty since 1986 the floating roof was down and there was much corrosion. To put the tanks into use would require a new roof and a reduction in height. Connection to the common oil tank requires permission and a licence for the storage of oil is also required under the dangerous substances licence provisions. Permission would also be required from the Port and Docks Board. He estimated that the necessary repairs for connection to the common oil pipe would be in the order of £150,000 and the necessary repairs to the three tanks including roofs and double floors was in the order of £500,000. In his opinion the facility was obsolete and not lettable in their present state. Under cross-examination Mr.Boylan stated that the use had ceased in 1985/1986 and the pipe system to connect to the common pipe line had been removed on safety grounds. He thought that the inlet pipe was removed very shortly after the tanks ceased use in 1985. All of the pipe work, fire-fighting equipments etc. had been removed in November/December 1995. There was a three year gap between The Dublin Gas Receivership and Bord Gais taking over and the tanks had not been used in the interim and had never been used by Bord Gais. He stated that it was possible to reinstate the pipe system and also possible to restore the tanks although at a reduced capacity. There was no outlet and as a consequence whilst the tanks could be filled

they could not be emptied. He confirmed that the tanks had been on the market at an asking price of £400,000 in May 1993 but that no offers had been received and that they had now been surrendered back to Esso. A domestic oil distributor had expressed interest but would have had to move one tank to accommodate a gantry. However engineers had advised that the tanks would be reduced in terms of capacity to a level to be nonviable.

Sheelagh O'Buachalla A.S.C.S. was sworn in and adopted as her evidence in chief her précis of evidence which previously had been exchanged with the Respondent's Valuer and submitted to the Tribunal. Ms. O'Buachalla stated that the subject comprises three vertical oil storage tanks on a site of approximately of 1.1. acres. Each tank has a diameter of 80 ft. (24.4 metres) and a height of 60 ft. (18 metres) and a capacity of 7,500 tonnes (1.7 million gallons) per tank. She stated that the tanks are not connected to the common pipe line and there was a substantial fee for reconnection and also an insurance payment. The receiving tanks are no longer used and their rateable valuation struck out. She provided comparisons of a number of cases where the valuation had been struck out including two relating to oil tanks. Under cross examination Ms. O'Buachalla confirmed that an offer of £40,000 had been received for the Bord Gais interest in the premises and tanks. She stated that the tanks put forward in the comparisons were never offered for sale because these tanks were derelict and the Valuation Office had accepted that they were incapable of beneficial use. Ms. O'Buachalla stated that the valuation should be struck out as the tanks were incapable of beneficial use and therefore had no letting value.

The Respondent's Case

Mr. David Walsh was sworn in and adopted as his evidence in chief his précis which had previously been exchanged with the appellant's valuer and submitted to the Tribunal. There was no material difference in his estimate of the capacity of the tanks with that of Ms. O'Buachalla. At the time of his inspection he had looked into the tanks and had noticed some rust scaling. In relation to an alleged over supply of tanks he stated that tanks belonging to Texaco shown on the plan attached to his précis are scheduled for demolition. These tanks now have holes cut in them but until the holes were cut they were capable of beneficial use. In his opinion the subject tanks were unlikely to be used in their present condition but

nonetheless they were capable of being restored to beneficial occupation. He put forward comparisons of rateable valuations of oil tanks at 20 pence per thousand gallons, and making an allowance for the refurbishment costs to bring the subject tanks back into use, provided an opinion of value of 4 pence per thousand gallons giving a rateable valuation of £200 which reflects the present condition of the tanks. Under cross examination he agreed that he had not provided a net annual value because he had no information on the letting value of tanks and had therefore provided a price or rate per thousand gallons. He stated that he understood the connection fee to the common oil pipe to be £15,000. He also accepted that the tanks at Sir. John Rogerson's Quay are no longer in use and therefore that the underground pipe from the subject premises now goes nowhere. He stated that he had not based his rateable valuation on the availability of the receiving tanks but on the shell of the subject tanks. He also confirmed that his comparisons were all pre the modern statute in relation to NAV and were on the basis of a rate per thousand gallons. He stated that the presence of a neighbour having use for the premises would have an impact on the NAV but stated that if no neighbour was seeking the premises his estimate of NAV as suggested by the Chairman at around £30,000 derived from the RV of £200 would not be significantly different. He accepted that premises can have a capital value but be incapable of beneficial use.

Mr. Hickey in summing up made reference to various acts and cases including Section 124 of the 1838 Act, and the *Harpers Stores case of 1968*. He stated that the property was struck with sterility in any and everybody's hands. He also referred to *Section 11 of the 1852 Act* and an estimate of NAV at nil. He referred to the *New Ross Tanning case* (Deale 1959) and the fact that capital value does not necessarily imply a demand for renting. He also referred to the *Perinvale Case VA93/3/047*. He made the point that regulatory tests would be required before the tanks could be occupied and the tanks would not pass such tests. The tanks have not been occupied and there was no prospect of the original user being resumed.

Mr. Eamon Marry stated that Section 23 of the Local Government Act 1946 dealt with Mr. Hickey's preliminary point. He stated that the occupiers had actively decommissioned the

hereditament and if this was to allow the Tribunal to strike out the rateable valuation it would give a dangerous precedent in rating law and practice. He offered the view that the physical state was to a large extent unchanged from the time it was constructed and that no decommissioning by the occupant should inhibit the Commissioner of Valuation from fixing a rateable valuation on the premises. He claimed that the shells of the tanks were in good condition and that there is no evidence that the change of the roof would involve a fundamental change in circumstance. As Esso had accepted a surrender of the tanks and the tanks are the same as those on the Esso site it could be assumed that they have a use for them. Disuse is not the same as and is to be distinguished from being incapable of beneficial use. There is no evidence that the tanks will be demolished. It would be dangerous of the Tribunal to accept that the tanks would never be used again in the future. They retain a value for the party who has occupation of them. There is a prospect of the original use resuming. There is no evidence that An Bord Gais could not have obtained a further lease. The obligation is on the appellant to show that the premises is incapable of beneficial use and this obligation has not been discharged.

Mr. Hickey noted that there was no evidence that the tanks were actively decommissioned but some safety measures had been carried out because of the dangerous substances regulations. There is no reference in the surrender document to beneficial occupation.

Determination

In the light of the evidence adduced by the Appellant the Tribunal accepts as a matter of fact that the subject tanks in their present state and circumstances are not capable of beneficial use without considerable expenditure. The level of expenditure necessary however is such that a hypothetical tenant as envisaged in accordance with Section 11 of the Valuation (Ireland) Act 1852, would not pay a rent for the premises and hence it follows that they have a nil NAV. Accordingly therefore the Tribunal determines that the rateable valuation is nil.

