Appeal No. VA04/3/034

**AN BINSE LUACHÁLA**

**VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 2001**

**VALUATION ACT, 2001**

**Stone Developments Ltd.** **APPELLANT**

**and**

**Commissioner of Valuation** **RESPONDENT**

RE: Quarry/Sandpit at Lot No. 1B.2C.5B.7B.7C, Brackernagh (Clancarty), Ballinasloe, County Galway.

B E F O R E

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| **Fred Devlin - FSCS.FRICS** | **Deputy Chairperson** |
| **Maurice Ahern - Valuer** | **Member** |
| **Mairéad Hughes - Hotelier** | **Member** |

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 7TH DAY OF JUNE, 2005**

By Notice of Appeal dated the 3rd day of August, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €262.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:
"Valuation is excessive."

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 16th of November, 2004. At the hearing the appellant was represented by Mr. Owen Hickey, BL instructed by James Coady & Sons, Solicitors and the respondent by Mr. James Devlin, BL, instructed by the Chief State Solicitor. Expert valuation evidence was given by Ms. Sheelagh O Buachalla, B.A., ASCS, a Director of GVA Donal O Buachalla, Property & Rating Consultants and Mr. David Walsh, B.Agr.Sc., a District Valuer in the Valuation Office, on behalf of the appellant and respondent respectively. Mr. Brendan Costello, the production director of the appellant company, gave evidence of fact in relation to the operation of the property concerned.

**The Property**

2. The property concerned is a limestone quarry located at a hillside location on the outskirts of Ballinasloe about one mile from the town centre. Access to the quarry is off the main Galway-Dublin road.

**Valuation & History**

3. A valuation certificate pursuant to section 28(6) of the Valuation Act, 2001 was issued on the 30th of December 2003 by the Commissioner of Valuation to the effect that the rateable valuation of the property concerned had been assessed at €262 of which €250 was attributed to the quarry output. The balance of €12 was attributed to the canteen and other rateable items. No change was made at first appeal stage and it is against this decision by the Commissioner of Valuation that the appeal to this Tribunal lies.
4. At the hearing it was agreed that the only issue before the Tribunal was the value to be attributed to the quarry, the valuation of the buildings and other rateable items having been agreed.

**The Appellant's Evidence**

5. Mr. Brendan Costello, the production director of the appellant company, said the property concerned was a dimensional quarry, as distinct from an aggregate quarry which provides stone principally for road construction purposes. The subject property, Mr. Costello said,

provided limestone of a high quality for use as a decorative structural material or for ornamental sculptural purposes.

6. Mr. Costello outlined how the limestone is extracted from the rock face by the use of diamond-tipped cutting machinery. No blasting occurs. The stone is produced in block sizes varying in weight from 5 to 20 tonnes. The stone thus produced is not processed further on-site but is dispatched to other facilities owned and operated by the appellant. Preparing the stone for onward sale or use, Mr. Costello said, gives rise to a waste of about 30%. Mr. Costello said the limestone, which sells for €148 per tonne, has an extraction cost of just over €70 per tonne. Mr. Costello said just over 4,300 tonnes of stone was extracted from the subject quarry on an annual basis.
7. Mr. Costello said that limestone was a high value/high cost product and as such was different from conventional aggregate material which was of low value and involved a low cost of production.
8. Ms. O Buachalla, having taken the oath, adopted her written précis and valuation which had previously been received by the Tribunal as being her evidence-in-chief. In her evidence Ms. O Buachalla valued the quarry element of the property concerned at a rateable valuation of €16 calculated as set out below:

   Quarry output 4310 tonnes @ 0.71c per tonne = €3,060

   Rateable Valuation @ 0.5% = €16
9. In arriving at her opinion of net annual value, Ms. O Buachalla said that she was relying upon her comparisons Nos. 2 and 3 (details of which are set out in Appendix 1 attached to this judgment). Ms. O Buachalla pointed out that her two comparisons were limestone quarries, each of which had been valued on an output basis at a royalty rate of 71c per tonne.
10. Ms. O Buachalla said the valuation of comparison No. 2 had been agreed at the 2001 Tribunal appeal stage and the basis of the agreement was comparison No. 3 which itself had been agreed at the 1999 first appeal stage. At the time comparison No. 2 was agreed she had been advised that the limestone was being sold at €190 per tonne, as against £3 per tonne for aggregate used for road construction purpose.

11. Ms. O Buachalla said Mr. Walsh's valuation method in this appeal was unusual in that it was a departure from the established practice of the Valuation Office whereby quarries were valued on a royalty basis.
12. Under cross-examination Ms. O Buachalla said that, in arriving at her opinion of net annual value in this instance, she considered 71c to be the appropriate royalty figure as this was the same figure used in her comparisons No. 2 and 3, both of which were limestone quarries with higher outputs than the subject. By so doing, she said, she was comparing like with like and maintaining a uniform valuation approach. In her opinion her valuation method was appropriate under section 49(2)(b) of the Valuation Act, 2001.

**The Respondent's Evidence**

13. Mr. David Walsh, having taken the oath, adopted his written précis and valuation which had previously been received by the Tribunal as being his evidence-in-chief. In his evidence, Mr. Walsh contended that a rateable valuation of €250 should be attributed to the quarry element of the property concerned, calculated as set out below:

| | |
|---|---|
| Output | = 4,310 tonnes |
| Price per tonne | = €400 |
| Adjust to 88 levels as per the CSO Sand/Gravel Index | = €236 |
| Value of Output | = €1,017,160 |
| N.A.V. @ 5% | = €50,858 |
| Rateable Valuation @ 0.5% | = €250 |

Mr. Walsh said that before arriving at his opinion of net annual value he had examined other Valuation Office files in relation to the valuation of quarries. As a result of his research he came to the conclusion that it was right and proper to have regard to the price achieved for the stone and this was borne out by his comparisons, details of which are set out in Appendix 2 attached to this judgment.

14. When it was pointed out to Mr. Walsh that the price per tonne derived from the CSO Sand & Gravel Index was based upon his estimated price of €400 per tonne which was considerably higher than the actual price achieved at €148 per tonne, Mr. Walsh agreed that it would be appropriate to amend his valuation as set out below:

| | | |
|---|---|---|
| Price per tonne | | = €148 |
| Adjust to 88 levels as per CSO Sand & Gravel Index | | = €87.32 |
| Adjusted turnover | (say) | = €375,000 |
| Net Annual Value at 5% | | =€18,750 |
| Rateable Valuation at 0.5% | | =€93 |

15. Under examination Mr. Walsh agreed that there was a distinct difference between quarries such as the property concerned and what is known as aggregate quarries. He also agreed that in principle it would be good valuation practice to value a dimensional quarry by comparison with other dimensional quarries but pointed out that there were no other such quarries in the same rating area as the property concerned and that under the provisions of the Valuation Act, 2001 he was precluded from relying upon comparisons drawn from other rating areas. He further agreed that all his comparisons were aggregate quarries and indeed that a number of them were located in other rating areas.
16. When questioned about section 49(2)(b) of the Valuation Act, 2001 Mr. Walsh opined that it seemed to mean that properties at revision stage should be valued as if the provisions of the Valuation Act, 1986 were still in force. He further agreed that on this premise Ms. O Buachalla was entitled to have regard to how other quarries of a similar nature were valued. Nonetheless, Mr. Walsh said that he did not necessarily agree with the valuation methodology used in her two comparisons and was of the opinion that it was proper to look at the sale price of the end product. This, he said, was the method of valuation used in all of the comparisons he had put forward and which had been introduced merely to support his opinion that this was an acceptable and proper method of valuation. Mr. Walsh said his valuation methodology was fully in compliance with an internal Valuation Office document dated April 1998 dealing with the valuation of quarries and pits.
17. When asked by Mr. Hickey if the effect of section 63 of the 2001 Act meant that he could not impugn a valuation appearing in the valuation list, Mr. Walsh said that this was not necessarily the case and that in his opinion he could in circumstances where he felt it right so to do.

**Legal Submissions**

18. Following receipt of all the valuation evidence it was agreed that a number of issues of some legal importance had arisen during the hearing, which the parties wished to address by way of written submission.

**The Appellant's Submission**

19. Mr. Hickey in his submission addressed two main issues:
    a) The meaning of section 49(2)(b) of the Valuation Act, 2001.
    b) Whether a valuation officer may impugn values appearing in the valuation list and disregard otherwise reliable comparative evidence on the grounds that he disagrees with it.
20. In relation to the first matter, Mr. Hickey submitted that 49(2) provides for where there are no comparable properties in the same rating area as the property concerned. Section 49(2)(b) provides that in those circumstances where an existing valuation list is in force- as in the instance case- then the determination of value should be made as follows:
    *a) by the means specified in* section 48(1).
    *b) by reference to the net annual values of properties (as determined under the repealed enactments) on 1 November 1988.*
    c) *the amount [*net annual value*] estimated by those means …..shall …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.*
21. Mr. Hickey further submitted that where there are no comparisons in the same rating authority area -which is common case in this matter - section 49(2)(b) becomes operational. Following a detailed examination of sections 48 and 49, Mr. Hickey contended that the only meaningful interpretation of the provisions of section 49(2)(b) is that the net annual value of a property must be taken to mean its net annual value at November 1988 determined by reference to the net annual value of comparable properties as of the 1st of November 1988. The net annual value so determined is to be adjusted by the application of an agreed percentage figure in order to arrive at the property's rateable valuation in compliance with the repealed enactments-more particularly section 11 of the

Valuation (Ireland) Act, 1852 as amended by section 5 of the Valuation Act, 1986. Under the repealed enactments it was not a requirement that comparisons cited be limited to those drawn from same rating area in which the subject property is located. Accordingly therefore it was open to the appellant's valuer to introduce and rely upon comparisons drawn from other rating areas.

22. In his submission Mr. Hickey made reference to section 63(1) of the Valuation Act, 2001 and contended that the operation of this Act precluded the Commissioner of Valuation from attempting to impugn an existing valuation appearing in the valuation list.

**23.** In support of his submissions Mr. Hickey cited the following cases:

**Irish Management Institute v Commissioner of Valuation [1990] 2 I.R. 419,**

**Roadstone Ltd. v Commissioner of Valuation [1961] I.R. 239 and VA02/2/091 - Shoezone Ltd. v Commissioner of Valuation.** (This latter case is currently under appeal to the High Court)

**The Respondent's Submission**

24. Mr. James Devlin dealt with:

    a) The interpretation of section 49(2)(b) of the Valuation Act, 2001 generally and in particular whether regard must be had to comparisons, by virtue of the phrase "*and by reference to the NAV of properties (as determined under the repealed enactments) on 1 November 1988*" and

    b) Whether a valuation officer (as opposed to the Tribunal itself or a ratepayer) may depart from an "established practice" applied hitherto by the Valuation Office, in this case the application of a price per tonne for limestone.

25. Mr. Devlin in his submission said that section 49 must in the first instance be looked at as a whole. Where the valuation of a relevant property falls to be determined for the purpose of section 28(4), Mr. Devlin said, then 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*." Section 49(2) only comes into play when there are no comparable properties in the rating authority area.

26. Mr. Devlin said the respondent did not challenge the findings of the Valuation Tribunal in the **Shoezone** case referred to by Mr. Hickey. However, Mr. Devlin said Mr. Hickey's contention that regard must be had to comparisons was somewhat at odds with the findings in the **Shoezone** case as borne out by the following extract,

> "*In order to ensure equity between ratepayers all available relevant evidence may be considered, including evidence of actual rents (if available). It <u>may also be appropriate</u> to consider the position of comparable properties that are in the same state and circumstance as the property to be valued*."

27. The valuation of limestone quarries in Carlow and Kilkenny were agreed at first appeal stage and therefore do not carry the same weight as a Tribunal judgment. Mr. Devlin said that the findings of the Tribunal in **Kilsaran Concrete v Commissioner of Valuation (VA98/3/039)** dated the 26th of July 1999 was relevant to this appeal and in particular the following extract,

> "*It seems inappropriate to this Tribunal that fixed rates per tonne should apply irrespective of the location of the pit, the quality of its deposit or the costs involved in its deduction…We have therefore decided that the valuation method common to both parties namely a royalty that has a percentage of the ex-pit price is appropriate in this case*."

28. Mr. Devlin said that the fact that the Carlow and Kilkenny valuations were post the Kilsaran Concrete case did not detract from his contention that the application of a fixed rate per tonne was inappropriate in itself and more so where the rate per tonne bears no resemblance to the value of the relevant material as reflected in its ex-pit price. To exclude consideration of the ex-pit price would represent a departure from the **Shoezone** stipulation that regard must be had to "*all available relevant evidence*".

29. Mr. Devlin submitted that a valuation officer could not depart from established Valuation Office practice and policy as outlined in official instructions issued to valuers. In the circumstances of this appeal Mr. Walsh was acting within the Valuation Office practice as per the document entitled 'Instruction to Valuers April 1998 on the Valuation of Pits and Quarries'. This instruction, Mr. Devlin said, allowed for the use of the royalty method as well as the price per tonne method. Mr. Walsh in fact applied the same methodology as was adopted by the Tribunal in the **Kilsaran** case.

30. In his submission Mr. Devlin cited the following cases:

**Kilsaran Concrete v Commissioner of Valuation (VA98/3/039) July 99,**
**Dan Morrisey Ltd. v Commissioner of Valuation (VA96/2/044) April 97,**
**Champion Sports Ltd. v Commissioner of Valuation (VA95/1/104) Jan 96** and **Shoezone Ltd. v Commissioner of Valuation (VA02/2/091) May 03.**

**Findings**

The Tribunal has carefully considered all the evidence and legal submissions adduced by the parties and the various cases cited by both parties and makes the following findings.

**The Law**

1. The relevant valuation date in relation to this appeal is the 30th of December 2003 and hence the valuation of the property concerned is to be determined in accordance with the provisions of the Valuation Act, 2001.
2. The Valuation Act, 2001 which came into effect on the 2nd of May, 2002 is a codifying Act and under its provisions all the then existing statutory enactments (with some minor exceptions) dealing with the valuation of property for rating purposes were repealed. The Act makes provision for the revaluation of all relevant properties in the local rating authority areas on a regular periodic basis and also sets down new revision procedures.
3. Under section 43 of the Act the now existing valuation lists shall remain in force until such times as valuation lists prepared in accordance with the relevant valuation orders made by the Commissioner of Valuation pursuant to section 19(1) of the Act come into effect. Section 44 enables the revision of valuations appearing in an existing valuation list to be carried out in accordance with the new revision and appeal procedures as set down in parts 6 and 7 of the Act.
4. Part 11 of the Valuation Act comprising of sections 48-55 sets down the basis of valuation of relevant property for rating purposes. In regard to this appeal, section 49 is particularly relevant. Subsection 1 of this section states that the valuation of a relevant property at revision stage "*shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as the property is situate in, of other properties comparable to that property*." Subsection 2(a) of section 49 states that

"*if there are no properties comparable… situated in the same rating area*" then the value of the property concerned "*shall be made by the means specified in section 48(1)*" (i.e. an estimate of its net annual value) and that the amount so estimated shall "*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"*. The effect of this section is that valuations made at revision shall be determined by reference to what is known in rating parlance as "the tone-of-the-list". In the Tribunal's opinion it is clear that 49(2)(a) does not apply to the revision of a property appearing in an existing valuation list. In those instances, as is in the present appeal, where an existing valuation list is in force and where there are no comparable properties in the same rating area section 49(2)(b) comes into play. Subsection 49(2) states as follows:

> "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.*"

In effect therefore the valuation of the property concerned in this case is to be determined as if section 11 of the Valuation (Ireland) Act, 1852 as amended by section 5 of the Valuation Act, 1986 was still in force.

5. Section 5(2) of the 1986 Act differs in one significant point to section 49(1) of the 2001 Act. Section 5(2) refers to the Valuation of "*rateable hereditaments are comparable and of similar function and valuations have been made or revised within a recent period*" whereas section 49(1) stipulates that comparisons must be in the same rating authority area as the property concerned. However, in the circumstances of this appeal it is a moot point insofar as it is common case that section 49(2)(b) applies in this instance.
6. In appeals to this Tribunal under the repealed enactments comparables drawn from without the rating area were not considered inadmissible but obviously the weight attached to such evidence depended upon the availability and quality of comparables from the same rating area. If there were no comparables in the same rating authority area then in fairness such evidence would have been considered relevant and taken into account when arriving at the appropriate valuation of the property concerned. That being the case the Tribunal in the circumstances of this appeal has no difficulty in admitting the evidence of other properties of "similar function" drawn from other rating authority areas. The Tribunal notes in passing that both expert witnesses introduced comparisons from outside the rating authority area in which the property concerned in this appeal is situated.
7. Section 63(1) states:

> **"63.**—*(1) The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.*
>
> *(2) The omission from a valuation list of any matter or particular required by this Act to be entered therein or the presence of any inaccuracy in such a list shall not, of itself, deprive of its effect for the purposes of this Act, or any other enactment, any other matter or particular entered in that list.*

*(3) The fact that a valuation certificate or new valuation certificate, or a draft of such a certificate proposed to be issued to the person concerned—*

*(a) has not been issued, as required by this Act, to the person concerned, or*

*(b) has been issued in accordance with this Act to that person but has not been received by him or her,*

*shall not deprive of its effect for the purposes of this Act, or any other enactment, any matter or particular entered in the relevant valuation list.*"

In the circumstances therefore it would appear that it is not open to the Commissioner of Valuation to impugn his own valuation list. This matter was dealt with in some detail by this Tribunal in the case **Dunnes Stores Ltd. v The Commissioner of Valuation (VA95/1/108)** although at the time there was no provision similar in intent to Section 63 in force.

8. During the course of the hearing Mr. Walsh referred to an internal document issued by the Valuation Office in April 1998 dealing with the valuation of pits and quarries. A copy of this document has been made available to the Tribunal and in principle the Tribunal accepts it for what it is: a statement of good practice which aims to ensure a uniform approach to the valuation of properties of a particular mode or class be adopted by valuers in the Valuation Office. However, no matter how laudable such a document as this is it does not have any statutory force or effect.

9. In summary, having regard to the foregoing and in accordance with Section 49(2)(b), the Tribunal finds that in circumstances where there are no properties comparable to the property being valued situated in the same rating authority area, comparables from other rating authority areas are admissible in evidence and it is then up to the Tribunal to attach such weight to this evidence as is considered appropriate in the light of all the circumstances surrounding the comparable(s) in question. Obviously this may not be the case when the now existing valuation lists cease to be operative.

**The Valuation**

10. It is common case that the property concerned is a limestone quarry with an annual output for valuation purposes of 4,310 tonnes.

11. The valuation of other rateable items at the quarry has been agreed so that the only issue to be determined is the valuation to be attributed to the annual output of stone.

12. The Tribunal accepts Mr. Costello's evidence that the method of extraction used at the subject quarry is significantly different and considerably more expensive than that used in aggregate quarries. The Tribunal also accepts that the cost of the limestone is a multiple of the cost of stone from aggregate quarries or sandpits.

13. In applying section 49(2)(b) the Tribunal must have regard to the net annual values as determined under the repealed enactments. In this regard the Tribunal has found that in the circumstances of this appeal, comparables drawn from rating authority areas other than that in which the property concerned is situated are admissible.

14. Ms. O Buachalla in her evidence introduced two comparisons, both of which are limestone quarries located in other rating authority areas. Both of these quarries have considerably higher outputs than the subject and evidence was given that the ex-quarry price of the limestone at the Stone Development Facility at Carlow was €190 per tonne at the time the valuation of this quarry was agreed at the 2001 appeal stage. In each instance Ms. O Buachalla's comparisons were valued at a consistent royalty rate of 71c per tonne.

15. Mr. Walsh in his evidence introduced five comparisons all of which were aggregate quarries producing low value stone used mainly for road construction purposes. Only one of Mr. Walsh's comparisons is situated in the same rating authority area as the subject. In all of Mr. Walsh's comparisons the quarry output is valued at a royalty rate calculated as a percentage of the ex-quarry price of the produce. The royalty figures so determined range from 10c to 46c per tonne. In principle the Tribunal has no great difficulty with Mr. Walsh's valuation approach in this case but the end result i.e. a royalty rate of €4.35 per tonne is so out of line with that applied to other limestone quarries as to render it unhelpful from the point of view of maintaining equity between ratepayers.

16. Having regard to the Tribunal findings in relation to section 49(2)(b) the Tribunal prefers Ms. O Buachalla's evidence in as much as her comparisons are limestone quarries

identical in operation to the subject property and whose valuations were determined having regard to the provisions of Section 11 of the Valuation (Ireland) Act 1852 as amended by Section 5 of the Valuation Act, 1986 i.e. the repealed enactments as referred to in Section 49(2)(b). The said valuation was also determined post the decision of this Tribunal in **VA98/3/039 - Kilsaran Concrete**.

**Determination**

Having regard to the foregoing the Tribunal determines the rateable valuation of the subject property as set out below:

Output 4310 at 71c per tonne = €3,060

Other rateable items as agreed = €2,400

Net Annual Value say =€5,600

Rateable Valuation at 0.5% = €28

And the Tribunal so determines.