Appeal No. VA88/0/025,
VA93/2/015 & VA93/2/017

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Irish Malt Products Ltd. & Minch Norton Malt Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: (1) VA88/0/025 Maltings, Kiln, Storage Bins and Yard at Map Reference 17D, (2)VA93/2/015 Maltings (pt of) at Map Reference 15d and (3)VA93/2/017 Maltings (pt. of) at Map Reference 17Da at:
Woodstock South, E.D. Athy West Urban, U.D. Athy, Co. Kildare

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Barry Smyth - FRICS.FSCS	**Deputy Chairman**
Michael Coghlan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF SEPTEMBER, 2000

1. By Notices of Appeal dated 22nd August 1988 and the 19th May 1993, the appellant Companies appealed against determinations of the Commissioner of Valuation placing rateable valuations of (1) £1,770, (2) £840 and (3) £1,021 on the above described hereditaments respectively.

The Grounds of Appeal as set out in the said Notices thereof are as follows:- namely appeal no: **VA88/0/025 -**

"1. That the revised R.V. of £1,770 is excessive and inequitable.

(2) That the said rateable valuation is bad in law in that rateable valuations have been allotted or attributed to items which are not rateable hereditaments, or alternatively, in arriving at the net annual value, the Commissioner of Valuation has erred in law in including therein the value or values of items which are not rateable hereditaments.

(3) That the Commissioner of Valuation erred in law in valuing or including in the rateable valuation or assigning an annual value or a rateable valuation to non-rateable machinery, to wit: Kilns, Malting Boxes, Air Conditioning and Air Heaters, Elevator Tower, Steeps, Conveyors, underground and overground Ductings, Silos/Bins, Tanks and Weighbridges which, in accordance with the Statutes, are entitled to be excluded from the valuation.

(4) That the Commissioner of Valuation has erred in law in valuing or assigning value or rateable value to lands which are not buildings and which are commercially developed land and entering same in the Buildings column of the Valuation Lists.

(5) That the Commissioner of Valuation has erred in law in not entering the rateable valuation assigned to commercially developed lands (other than buildings, ancillary roads and services) in the miscellaneous column of the Valuation Lists".

Appeal No: VA93/2/015 –

"(1) That the valuation is excessive and inequitable.

(2) That the Commissioner of Valuation erred in law in valuing or including in the Rateable Valuation or assigning an Annual Value or a Rateable Valuation to Barley Bins (R.V. £150) and Seeger Germinating Vessel (R.V. £170) which it is submitted are to be excluded pursuant to Section 7 of the 1860 Act as amended by Sections 7 & 8 of the 1986 Act" and finally

Appeal No: VA93/2/017 –

"(1) That the valuation is excessive and inequitable.

(2) That the Commissioner of Valuation erred in law in valuing or including in the Rateable Valuation or assigning an Annual Value or a Rateable Valuation to the

Nordon Boxes (R.V. £450) which it is submitted are to be excluded pursuant to Section 7 of the 1860 Act as amended by Sections 7 & 8 of the 1986 Act".

2. These appeals heard simultaneously, proceeded by way of an oral hearing, lasting over two days, at which the appellant companies were represented by Mr. Marcus Daly S.C. instructed by Messrs. Matheson Ormsby & Prentice. Mr. Aindrias O'Caoimh, S.C. as he then was, now Mr. Justice O'Caoimh, appeared on behalf of the Commissioner of Valuation instructed by the Chief State Solicitor. The rating consultant was Mr. Des Killen whilst the appeal valuer was Mr. Bernard Stewart. Both of these valuers gave evidence as did Mr. H.G. Roche the Engineering Director of the appellant companies. The parties, prior to the hearing, as is the practice, had exchanged all relevant documentation between them and had submitted the same to this Tribunal. Having taken the oath each witness gave his evidence in chief broadly in accordance with his respective precis of evidence. All were cross-examined. Submissions were made and judgement reserved.

3. As stated above, there are in all, three appeals before this Tribunal. The first, which arises out of a 1986 revision, has Lot No 17D attached to it and has Tribunal Reference VA88/0/025. A further appeal which emerged from a 1990 revision, has Lot No. 17Da attached to it and has reference No: VA93/2/017. Both are concerned with the same identical hereditament namely that which is known as the "Nordon Boxes". As the rated occupier namely Irish Malt Products Ltd., is agreed as is the rateable valuation of £450, the sole remaining live issue arising from both of these appeals is the rateability or non-rateability, as the case may be of these boxes.
The third appeal also arises out of a 1990 revision and has a Lot Number of 15d. Its appeal reference is VA93/2/015 with the remaining live issue being a germinating vessel constructed over what is known as the Seeger Kiln. The rated occupier is agreed as being Minch Norton Malt Ltd. as is also the rateable valuation of £170. Like the other two appeals therefore the single issue is one of rateability.

4. In valuation terms there is a long, complicated and significant history between the appellant companies on the one part and the Commissioner of Valuation on the other. This history includes references before this Tribunal as well as a hearing in the Circuit Court and a resulting judgement from Mr. Justice Moriarty, as he now is, delivered on

the 1st of November 1991. This judgement dealt with several issues including the rateability issue of the Nordon Boxes. Though long and complex, it is quite unnecessary in our view and indeed would be wholly inappropriate in this judgement to delve into or recite at any length the essence of what is now historical fact. Accordingly, it is only if essential for the purposes of understanding the issues before us or for evidential or legal reasons that we would propose in any way to refer to the historical matters.

5. In general the overall property at Athy in Co Kildare is in a variety of ways used in and for the production of Malt. The basic principles of malting consist of the intake of freshly cut green barley obtained from farmers at harvest time. This is dried and kept in warm conditions until dormancy breaks and the barley-germinative energy is raised to about 97%. The Malting barley is then cooled, retained, analyzed and if necessary blended. It is then, via the mechanized automated plant, taken to the steeps. There it is soaked and drained on a number of occasions perhaps two to three. It is then moved to the germinating vessels, where under specific conditions, artificially provided and maintained, the barley germinates. At the end of a five or six week period it is then known as green malt. This malt is conveyed to the Kiln for drying and removal of moisture. Thereafter it matures for about three weeks. It is then ready for out-shipment to the brewery.

6. The core object of this malting process is to start and thereafter continue in a controlled way the germination process. The raw material, barley grain, is basically a storage unit, known as the endosperm, with the growing part known as the germ, taking up only a fraction of the overall volume of the grain. The endosperm part is made up of cells, which contain starch. When the seed is planted the germ uses the starch to feed itself until the roots become established. Inside a grain, enzymes are produced by the germ. These migrate into the endosperm and start breaking down the cell walls. As the germination process continues, other enzymes are produced which start converting the now accessible starch into sugar. At the point where the cell walls are fully broken down, the process is stopped by removing the moisture. If the relationship of temperature and moisture is controlled, this does not destroy the enzymes. Without moisture, however, almost all biochemical activity ceases. At that stage the product is malt.

7. In somewhat more detail the production process is and involves the following:-

Green barley fresh from harvest is delivered from farmers to the plant. It is dried from 20% moisture down to about 12% moisture. It is retained so that it will be suitable for the process at the appropriate time. The green barley, in this state and condition, is not ready for germination. The dormancy period has to be completed so that the barley will germinate in the malting process. Barley therefore has to be conveyed by elevators and conveyors to barley bins where, in controlled warm conditions, it is held for a period of time which can vary from six weeks to six months. The controlled environment is strictly monitored during this period. The barely is held there until germinative energy is raised to at least 97%. Having so reached this level, the dried barley goes through a screening phase where via a cleaner or a grading machine, the required and correct sized grains are identified and separated from the rest. Analysis takes place, as may blending. This then completes the preparation phase with the barley being now ready for steeping.

8. Steeping is primarily the first stage in the malting process itself. The dried screened barley which is now capable of germinating is by elevators and conveyors moved to the steeping vessels. The purpose of steeping is to increase the moisture content from 12% to about 44% so that actual germination can take place. Typically steeping lasts for about two days. The barley is soaked and drained about three times during this period with water being pumped on to the barley and then some hours later, drained off. At all times compressed air is injected into and by fans is circulated within the steeping tanks so that a sufficient quantity of oxygen can be supplied as well as causing the removal of the produced carbon dioxide. After this two day period the moisture content, as we have said is now about 44% and the barley is ready for movement onwards to the germinating vessels.

9. Again by elevators and conveyors, the steeped grain is now moved onto the vessels in which the second stage of the process, namely germination, takes place. This lasts for five days depending on the quality of the raw material. Normally the barley in the germinating vessels is usually between 1.5 and 2 metres in depth. It is placed on a perforated floor so that air, forced by fans, can permeate upwards into and through the

grain, which air, which is also humidified, helps to prevent the grain from drying out. It is temperature controlled *inter alia* by a mixture of used and fresh air. This supplies the required amount of oxygen as well as removing some heat produced by the germinating grain itself and also of course the carbon dioxide. The barley is constantly turned or agitated by electrical motors. This is essential, as otherwise the forming rootlets would mat thereby creating one huge mass, which would have two adverse consequences. Firstly, by making it impossible to remove it from the vessel and secondly of course by preventing the freeflow of circulating air. During this growth process the enzymes in the grain are activated and by breaking down the starch in the endosperm these form sugars on which the plant lives. The production of sugar, and not just starch, is critical for the breweries as if one adds yeast to sugar, one gets alcohol.

10. After this five-day period the barley which is now known as green malt, has completed the germination process and is now ready for the third stage, namely, kilning. Virtually all growth has ceased with this being achieved by the removal of moisture, which as previously stated is necessary at a certain level to sustain that growth. This removal is accomplished in a kiln where the green malt is spread evenly on a perforated floor and a current of dry heated air is forced through it to remove the moisture. The rate of removal and the heating temperatures are strictly controlled by pre-set control equipment. In this process the moisture is reduced from 44% down to 3%. This process lasts about 2 days.

11. After the green malt has been dried in the manner as aforesaid, the malt is then held for about three weeks during which time the enzymes stabilise and the moisture within the grain evens out. During this period analysis takes place as well as comprehensive sampling. Blending, if need be, also occurs. Finally it is then transferred, again by conveyor/elevator to a screening and cleaning plant which removes dust and dead rootlets, from where it is assigned to the out-loading silos awaiting dispatch.

12. As can be seen from the above the essential core elements in this process include steeping, germination and kilning. All of these steps are now carried out in a fully automated malting operation, which is entirely dependent for its success on several

pieces of equipment powered by electric motors. This however was not always the case. Whilst the essential elements of this process namely steeping, germination and kilning, have always taken place, in historical times these stages were very much dependent on manpower. The process in the old malt houses, (floor maltings) was highly labour intensive. These houses usually consisted of a number of floors with the upper ones essentially being barley lofts and the lower ones being the malting floors. Sacks were emptied manually with the raw barley being steeped. It was turned regularly with shovels and manually loaded onto the drying floor. Below this floor was a coal fire and above it was a steeped pitched roof, which aided the convection current and hence improved the drying performance. When dried it was taken by the employees to a second barley loft known as the cooling loft. Again it was regularly turned until it lost its heat and when it did it was then dropped to the lowest loft for holding until required in the process.

13. The steeping of barley took place in flat bottomed tanks with it being shovelled into and out of the tanks manually. This barley was heaped onto to the malt floor in order to generate some heat and as the germination continued the growing malt was spread thinly on this floor. Air temperature was controlled by windows. The germination period was about 14 days. During each day the malt was manually turned about four times. The resulting green malt was then dried during a three to five day period. The finished product, which previously had been sieved, was then sacked to await onward transportation to the brewery.

14. With advances in technology and with the cost of labour increasing, those involved in this business began identifying alternative methods by which the process could more readily, speedily, efficiently and economically be achieved. This resulted in the first mechanical or pneumatic plant in Ireland being erected in Athy in the early 1960's. This was known as the Wanderhaufen Plant. It was housed within the top floor of number three malt house, which was reconstructed to incorporate two germinating compartments side by side. The batch size of this plant was 40 tonnes and though a great improvement on the old heavily concentrated manual system, nonetheless by the end of that decade it had effectively been superceded by the next generation of plant. In 1969 thus we saw the construction entirely of steel, of the Boby Plant. The steeps and the germination vessels of this plant are housed in a building but the Kiln is

freestanding. Batch size is 95 tonnes. In 1974 the Nordon Plant, being of concrete construction, was erected in Athy. This plant has a steep capacity of about 225,000 tonnes per batch and contains of course the "Nordon Boxes" which are at issue in the first two appeals above referred to. The Seeger Kiln was built in 1984 and is of concrete construction. In 1988 a steel germination vessel was constructed on top of the Seeger Kiln. This vessel which is the subject matter of the third appeal is similar to those used in the Boby Plant.

15. The Wanderhaufen Plant apparently, was always rateable it being held or agreed that it was an integral part of a building and thus fell to be valued under section 12 of the 1852 Act. The Boby Plant however was never rated. In the early 1970's the appellants were successful in the Circuit Court in having these vessels declared non-rateable machinery under the original section 7 of the 1860 Act. In March 1990 it was conceded by the Commissioner that under the 1986 Act, these vessels were also entitled to exemption. That situation has continued to the present day. Given the argument that the germination vessels within the Boby Plant essentially are designed and used for the same purpose as the Nordon Boxes and as the Seeger Germination Vessel, it is necessary at least to set out briefly the features of such vessels so that this other important contention can be analysed.

16. In the Boby Plant *inter alia* there are four steeps, two germinating vessels and the Kiln. It is the germinating vessels only that are of interest to us. These vessels, are circular structures approximately forty feet in diameter. The steeped barley reaches these vessels by way of conveyors or elevators. Each vessel has a perforated floor suspended about 2 metres above the floor of the vessel. Above that floor there is a loading and unloading machine which rotates around the track on the wall and spreads the grain out across this perforated floor. There are five vertical shafts, known as a turner, sticking down into the malt and by these, in an orderly and pre-set manner, the grain is constantly rotated. There is a humidification chamber where the air is moistened before being blown into the vessel. There is a fan driven by electrical power which forces air into the vessel through the barley. The air is then exhausted. The operation of the fan and control of the temperature is carried out automatically. The unit is sealed and contains an entry cabin with double doors, one has to go

through before entry. After approximately five days the germinated malt is unloaded by the unloading machine.

17. In 1974 the Nordon Plant embodying the latest technology then available was constructed on a green field site immediately to the west of the Boby Plant and to the South West of the Wanderhaufen Plant. This new structure was radically different in appearance from the Boby Plant. It was made of concrete except for its perforated floor, which was made of steel. Like the Boby Plant, it contained *inter alia* facilities for steeping, germination and kilning with the steeping being separate though the other two processes were carried out within the vessel. In any event once more we are concerned only with the germinating vessels.

18. In the Nordon Plant therefore, there are two germination vessels, which are sometimes referred to as boxes. Each box has an upper and a lower part, which are separated by a perforated floor. Above that floor there is approximately 6 metres and below it approximately 2 metres. It has within it a loading and unloading conveyor, which is used initially to bring in the steeped barley and at the end of the process to move it on to the Kiln. Once arrived the barley is spread on this perforated floor to a depth of about 2 metres. Air is forced through the barley by a fan mounted below the floor. This air is passed over water sprays in order to humidify it and then blown down a corridor under the floor. As the circulating air must be fully saturated with water this area under the floor in always wet and wind-blown. The temperature of the green malt is controlled by blending fresh air with used air. As part of the germinative process unwanted air is produced and is exhausted though a vent at the top of the box. Both areas above and below the bed of malt are pressurised by a fan. The pressure is such that it is not possible to open the doors below the bed and above the bed there is an air lock for entry to the box. Each vessel has a machine known as a turner which travels up and down the box on rails, which are fitted, to the wall. The vertical shafts, which hang down from this machine, constantly rotate the bed of grain taking approximately three hours to travel the length of the box. This function is essential to prevent the mass formation of rootlets, and thus avoiding the difficulties outlined above. After the required number of days of germinating, the malt is unloaded by the unloading machine, which is within the box. This machine is attached to the turner and lifts the green malt on to a conveyor situated at the top of the box. It takes

approximately three and half hours so to unload. There were two changes made to these vessels as originally constructed in 1974. The first was in 1982 and the second in 1984. None of these changes have any material affect on the above description or on those parts of the plant within which the germinative process occurs.

19. In 1988 above the Seeger Kiln there was constructed the Seeger Germination Vessel. This is the vessel, the subject matter of the third appeal. This box is made of steel and has a stainless steel lining with an external weatherproof cladding. It is essentially the same as the germination vessels above mentioned and so described. It is divided into an upper and lower area with a perforated floor, the malt is transferred from the Nordon Boxes to it through a chute with a loading and unloading machine which spreads the grain across the floor, it has a fan which circulates air, it has humidifying equipment and the temperature of the barley is controlled by the blending of fresh air with used air. Unwanted heat is exhausted through vents and both areas above and below the bed of malt are pressurised. An airlock entry within the vessel exists as with the other vessels above mentioned. The only perhaps significant difference is that, as this vessel is used for the fifth day of the process only, and as by that time the rootlet growth is dying off, no turner is fitted to the structure. Save as to this exception its operation including its equipment is similar to those within the other plants as described.

20. On behalf of the appellant companies, Mr. Daly, S.C. made two submissions. Firstly, he alleged that the items in dispute were and constituted "non-motive power" machinery under the new Section 7 of the 1860 Act as inserted by the 1986 Act and accordingly were entitled to exemption. Secondly, when arguing for a like or similar result he claimed that these items were plant within the meaning of the proviso as contained within Ref. No. 1 of the Schedule to the 1860 Act as inserted by Section 8 of the 1986 Act. Having so submitted however and whilst emphasising his desire to keep both arguments open, he nonetheless agreed that his principal submission was the one last mentioned.

21. Mr. Andrias O'Caoimh S.C., on behalf of the respondent made the following submissions. In his view, these items were a "building" within the meaning of Section 12 of the 1852 Act and accordingly should be so valued. His second point

was that if such items were plant then these were not designed or used primarily to induce a process of change in the substance contained therein and accordingly as constructions within Ref. No. 1 of the aforesaid First Schedule were rateable. His third submission was that in any event these items were "kilns", within Ref. No. 2, and on that, quite separate and distinct basis, should also be rateable.

22. There is no doubt but that if these vessels were a building within Section 12 of the 1852 Act then they would be *prima facie* rateable with the reservation only intended to keep open, for a future definitive view the precise interplay and relationship between Section 12 and the relevant provisions of the new Act. In any event, the word "buildings" within the valuation code has been judicially described by Davitt P. in Cement Ltd. –v- Commissioner of Valuation 1960 IR 283 where at page 301 he said *"it would be obviously unwise to attempt a definition of the word "building". It is probably impossible to evolve a satisfactory one. It is, at any rate, beyond my competence. It does seem to me, however that in construing the word as used in Section 12 of the Act of 1852 much regard should be had to the development of the valuation statutes in respect of what hereditaments had to be valued and to the primary meaning of the word as understood in its popular sense. In that sense I understand it to mean a structure which is large when compared with an adult human being: which is intended to last a long time: which is intended to remain permanently where it is erected: and which, whatever material, use, or purpose, is something in the nature of a house with walls and a roof. Though this primary meaning may have to be extended, it should not, in my opinion, be enlarged to include structures of every kind*".

23. In view of this pronouncement and in light of the description of these vessels as given above, it is not possible in our opinion to ascribe to any of the disputed items, the word "buildings". We cannot believe that any lay person objectively or reasonably could conclude that such structures have characteristics of a like or similar nature to those above described. Even if untouched by precedent that would be our conclusion. However there is the decision of Moriarty J. above referred to. Accordingly we reject this first submission made on behalf of the respondent.

24. The third submission made on behalf of the Commissioner was that the vessels are Kilns and so should be valued under Ref. No. 2. The evidence adduced before us in this context showed that in the germinating vessels of both the Boby Plant and the Nordon Plant, drying of harvest barley takes place for a number of weeks per annum, in all about three. For the rest of the year these vessels are used in the manner and way and for the purposes as outlined above. Kilns on the other hand do not normally share their function with another purpose or another activity. Given the very limited amount of time in which these vessels are used in the drying process and bearing in mind certain observations of Davitt P. again given in the judgment of the Cement Ltd., case, we are not satisfied that they could be properly described as kilns under Ref. No. 2 and accordingly this argument of behalf of the Commissioner also fails. That leaves as the core point the interpretation and the subsequent application of Ref. No. 1.

25. The schedule to the 1860 Act, as inserted by Section 8 of the 1986 Act, reads as follows;-

Ref. No.1

"*All constructions affixed to the premises comprising a mill, manufactory or building (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted*".

26. All relevant case law on both the pre and post 1986 situation has been opened to us with several relevant passages cited. See the many cases referred to at page 13 of Mr. Justice Moriarty's judgment. Since then there have been several other cases both from the Superior Courts and from this Tribunal with the latter in the recent past commenting upon and analysing many of these decisions. See Carbery Milk Products VA95/4/026, judgment delivered on 14th March 1997, Premier Periclase VA96/2/015, judgement delivered on 13th October, 1997 and more recently see the judgment of Showerings Ltd. VA96/6/008, which was given on the 20th September 2000. It is

therefore unnecessary in our view to recite at any length the relevant principles of law applicable to the issues in the subject appeals. It is sufficient in our opinion to record and to refer to the following;-

(a) The aforesaid decision of Mr. Justice Moriarty,

(b) The decision of this Tribunal in Mitchelstown Creamery VA86/0/094–099, VA88/0/287-297, judgment delivered on 6th of December 1988 where it declared that the words "to induce" meant "to bring about or to cause a process of change."

(c) The principle that the issue before us is a mixed question of fact and law.

(d) The judgment of this Tribunal in Midland Malting VA90/2/050 delivered on the 13th May 1990 and in particular its treatment of what was therein described as a "Redlar Vessel".

(e) The words of Blayney J. in Caribmolasses Company Ltd. –v- Commissioner of Valuation, [1994] 3IR 189 and finally,

(f) The judgment of this Tribunal in the aforesaid Showerings case which as we have said was delivered on the 20th September 2000.

27. In our respectful opinion all of these vessels being the subject of these appeals are plant within the meaning of Section 1(2) of the 1986 Act and accordingly by virtue of Section 7(2), of the same Act are *prima facie* rateable there being no specific point taken on how otherwise this section should be read with the new section and the schedule to the 1986 Act. In our view there is no doubt but that a process of change takes place. There is in all probability no dispute about this. What is at issue is whether or not such a process is a natural one and is facilitated within the vessel designed or used primarily for containment or perhaps more accurately whether that process is "induced" in the vessels referred to. For this purpose we see no distinction between the vessels. The facts (a) that the area above the perforated floor is different, (b) that the conveyor is in the Nordon Boxes but above the Boby Plant or (c) that the air is blown down in the latter but has upward movement in the Boxes are irrelevant

in our view. Furthermore the fact that the Seeger Germinating Vessel has not within it a turner, whilst relevant to note, is not such in its own right as to require a distinction being made for the purposes of the issue before us. Accordingly, we consider all three in the same category.

28. Germination is a natural process. It can and very frequently takes place in a natural environment. In the soil, moisture is available, sufficient heat occurs in the springtime, the top layer has within it oxygen and the unwanted carbon dioxide can be dissipated naturally. So undoubtedly in this way and as described herein the process is a natural one.

29. This does not however in our view sufficiently answer the question posed. What these plants are involved in is not a natural process. It is unquestionably an artificial one. Indeed one, which has at its very centre the necessity of providing equipment and appliances and the creation of a specific environment, which in many crucial activities must be present and must be specifically and scientifically, controlled. The change, which takes place, is a conversion of grain into malt. This involves the enzymes in the grain, working and migrating, attacking and breaking down the cell walls, making starch and sugar available etc. The process involves not simply the start of germination but the maintenance of it. This conversion in our view is achieved not because the grain is "contained in the vessel" and no more. If containment was the pivotal role in the process or indeed even the primary purpose then the mechanical, electrical and scientific conditions which are crucial would not exist and would not be required. The loading and unloading conveyor is necessary, a perforated floor is required, a turning machine is essential, as is agitation, humidifiers must be available, fans are necessary, ducts are required and of course the interplay between humidity and temperature is essential and must be maintained in a specific and pre-determined way.

30. The process which goes on is significantly different from for example a process designed or used to maintain a particular product in a certain condition, or to heat a product to increase its viscosity, or to agitate for that reason or indeed for any other reason. What takes place in these vessels is in our view induced by such vessels without which, in their specific design which includes the equipment above described

and used, the conversion of barley to malt could not take place. As Mr. Roche said, of the process, if you put the grain into the ground it will grow; it is a natural process being carried out in a most unnatural way; grain is being forced to grow in air whereas the grain naturally will grow in the soil. It is being forced to grow in fresh air and therefore induced to change its state in air rather than in the ground.

31. In our respectful opinion, this is a view which we would share. Accordingly we declare that each of these vessels come within the proviso as contained within Ref. No. 1 and should therefore be exempt from rating.

32. This conclusion is well supported by the decision of Mr. Justice Moriarty above referred to and in addition it is also the inescapable result of how the respondent has treated these germination vessels in the Boby Plant since the 1986 Act. Accordingly, as stated we declare that these disputed items are exempt from rating.