Appeal No. VA88/0/081 - 85

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

R & H Hall Plc **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Jetties and Silos, Lot Nos. 19c, 19i, 19b, 19k and 19j, Tideway of River Suir, County Borough of Waterford
Property not properly listed and Quantum

B E F O R E

Paul Butler	**Barrister (Acting Chairman)**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
DELIVERED ON THE 21ST DAY OF JUNE, 1990.

It is proposed to deal with all five of the above appeals in this judgment.

By notices of appeal dated the 16th and 17th August 1988, in relation to appeals Nos. 88/81, 88/82 & 88/83, the appellants appealed against the determination of the Commissioner in fixing rateable valuations of the above described hereditaments, on the following grounds, viz;

1. That the valuation is excessive, inequitable and bad in law.

2. That the said valuation has been made without and/or in excess of jurisdiction.

3. The property was never properly listed or included in the list for Revision of Valuation.

4. The subject is situated in:

V.O. Lot: Tideway of River Suir

E.D./Ward: West Ward Currently Borough of Waterford

outside the boundary of 19 Dock Road, and the Commissioner of Valuation did not have jurisdiction to value or include same in the valuation of V.O. Lot: 19, Dock Road.

In relation to Appeals Nos. 88/84 & 88/85, in addition to the above grounds of appeal, two further grounds of appeal were set out:

5. That the rateable valuation is bad in law, in that rateable valuations have been allotted to, 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.
6. That the Commissioner of Valuation has erred in law in including in the valuation or assigning an annual value or rateable valuation to non rateable plant and machinery.

In the course of his written submission dated the 7th March 1990, Mr Desmond M Killen, F.R.I.C.S. I.R.R.V., who is a Director of Messrs Donal O'Buachalla & Co. Ltd., stated that, following discussions between the parties, quantum is no longer in issue.
The hearing took place in three stages. The initial hearing was on the 14th March, 1990, a resumed hearing on the 20th & 21st March, 1990 and a third and final hearing on the 21st May, 1990. All three hearings took place in Dublin.

Prior to the first hearing, précis of the evidence that would be submitted by Mr J.V. Murphy, B.E., Mr Sean Walshe, M.I.I.E., and Mr T.M. Thomas, B.Agr.Sc., M.Sc. were made available to the Tribunal and these are attached hereto as Appendices A, B and C respectively. The Tribunal

is not, of course, bound by any conclusions of law that might appear in any of the aforesaid précis.

In his written submission dated the 6th March, 1990, Mr William M. Walsh, B.Agr. Sc., F.R.I.C.S., who is a District Valuer in the Valuation Office described each of the hereditaments in question and gave the valuation history of same as follows:-

1987 Revision:	Returned for Revision by local authority.
August 1987:	Subject premises inspected.
1st August 1987:	Valuation lists issued.
17th August 1987:	Messrs Donal O'Buachalla & Co. Ltd as agents for R & H Hall, appealed against the assessment of the Commissioner of Valuation.
April 1988:	Mr Walsh inspected the premises and considered the points put by the appellants' agent, Mr Des Killen of Messrs D. O'Buachalla & Co Ltd. Agreement was reached with regard to quantum. The appellants indicated that they were reserving their position on questions of:- (a) The Commissioner's jurisdiction to value. (b) The rateability of certain of the hereditaments.
26th July 1988:	The Commissioner issued his decision which made no change.
16/17th Aug. 1988:	Appellants lodged appeals to the Valuation Tribunal.

In his written submission Mr Killen describes these premises as Grains/Cereal and Derivatives Handling Plant, owned by the appellants R. & H. Hall plc., and situated at Ferrybank, Waterford. The company, which has branches in Cork, Dublin, Waterford, Belfast and England, was formed

in 1839, incorporated in 1889 and became a public company in 1967. The company's undertaking at Waterford has been in existence since 1889 and its principal activities to day are:

1. Production of Malting Barley for export.
2. Importation and distribution of ingredients for animal foodstuffs.

Oral hearing

Mr Marcus Daly S.C. and Mr Marcus F. Daly B.L. (instructed by Kenny, Stephenson, Chapman, Solicitors) appeared on behalf of the appellant company. Mr Aindrias O'Caoimh, Barrister (instructed by the Chief State Solicitor) appeared on behalf of the respondent.
Opening, Mr Daly said that the properties now listed as lot Nos. 19c, 19i, 19j and 19k were never properly listed for revision by the local authority, and that, if they had been listed, they would have been valued as individual hereditaments within the Tideway, thereby amending the original and parent lot by deleting these "new" lots.

Mr Daly's next submission was that all the silos and bins in the premises were machinery and were unaffected by the amendments introduced by the 1986 Valuation Act. He said that they remained machinery within the meaning of the re-enacted Section 7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860. Alternatively Mr Daly submitted that the bins are non- rateable plant and were excluded by virtue of Section 8, Ref. No. 1 of the Valuation Act, 1986.

Referring to the decision of the Tribunal in the Mitchelstown Creameries appeal VA88/94-99 Mr Daly stated that while the submissions in that case and this appear similar, the evidence here would go further. In the Mitchelstown case the barley which was taken into the plant in September was processed the following Spring. There was no suggestion that there was rapid turnover as is the case here. These bins are not used to store but only to effect change in the barley. As soon as it is ready, the barley is removed for shipping or further processing.

Evidence

The first witness was Mr J.V. Murphy, B.E. of Messrs E.G. Petit & Co., Consulting Engineers and Architects. Mr Murphy visited the subject premises and prepared drawings and photographs which form part of his written submission attached hereto. He explained that the complete concrete silo installation and those five of the Simplex Bins known as Row A are constructed on piled foundation over water at normal high tides. He stated that the high water mark has not changed for many years, and certainly not since 1984.

In reply to questions from Mr O'Caoimh, Mr Murphy explained that the concrete silo and everything built outside the high water mark is not built into the bed of the river. Piles have been driven through the ground and a pile cap structure built up above the high water mark.

Mr Sean Walshe, M.I.I.E., General Manager of R. & H. Hall plc. elaborated on his written submission and stated that the subject premises were involved in two main areas of production, viz; animal foodstuffs which are handled in the concrete silo and malting barley which is handled in the Simplex bins. The silos and bins, together with various stores, dryers, cleaners, loaders, weighers, elevators and conveyors comprise the company's installation at Waterford.

Dealing particularly with the complex of 20 bins known as the Concrete Silo, Mr Walshe stated that these bins are all inter- connected and all have access to the dryers, cleaning plants, outloading points and ship discharging plant and road intake points. Animal feed is received into the silo either from the Siwertell ship discharger through a series of conveyors, elevators and a weigher or from the road by a mechanical hopper and an elevator. There is one permanent mechanical "bridge breaker" in this cluster of bins. This "bridge breaker" is used particularly in the turning and mixing of sticky materials. Another feature of these bins is the "mobile compressor" which is more frequently used. The object of this is to inject air into the material

and thereby create pressure within it and cause it to break away and keep its fluidity. In reply to a question from Mr O'Caoimh, Mr Walshe stated that the animal feedstuff is sold on as quickly as possible and that there is a high turnover of stock each year.

Mr Walshe went on to describe the 14 Simplex bins which are now used exclusively for malting barley. On arrival by road, each load of green barley is sampled, tested and cleaned before being transferred to one of the two dryers where it is dried and heated to begin the process known as Breaking of Dormancy. After drying the grain is then moved to one of the Simplex Bins where it is kept at a controlled temperature for 10-14 days to complete the process of breaking dormancy. Cold air is then blown through the grain for a number of days. The grain is checked against contract specification. If not to specification it is blended with barley from other bins to bring it up to contract specification. Mr Walshe stressed that green barley could not be used directly by maltsters, but must first be processed to achieve its required standards in relation to germinative capacity, germinative energy and protein content.

At the first resumed hearing on the 20th March, 1990, in answer to questioning by Mr O'Caoimh, Mr Walshe said that all of the bins were capable of storage and stated that 90% of the materials which were brought into the concrete silo were in a similar state when taken out.

Mr Thomas M Thomas, B.Agr.Sc., M.Sc. who holds the position of Senior Principal Research Officer, Head of Crops Husbandry Department and Co-ordinator for Cereals Research in Teagasc, explained that malting barley is a type of barley which has been selected through breeding for the conversion of starch into alcohol. In its natural state the regeneration system of a seed or grain enters a state of quiescence or dormancy on reaching maturity at harvest time. This is designed to prevent the grain from sprouting in environments which are adverse to the survival of the germinating grain and the developing young plant. The breaking of dormancy will take place in its own time in nature. The trading and use of malting barley, however, demand

that the breaking of dormancy is achieved as and when required by the maltster. This is achieved by temperature control or chemical treatment. Heating alone will not break dormancy. Correct heat must be maintained for 10-14 days. Cooling is then essential to prevent over-heating and degradation of the barley and to prevent infestation.

In reply to a question from Mr O'Caoimh, Mr Thomas stated that while breaking dormancy was a natural process, the procedure carried out in the Simplex bins complex was unnatural in that it interfered with the natural process and speeded it up.

Mr Desmond M. Killen stated that the original lot 19 was shown bounded by the high water mark on the Valuation Map of 1955. V.O. lot 19bc was the subject of a number of Circuit Court appeals for the revision years 1974, 1981 and 1982, all of which were determined by Sheridan J. who held that all the areas outside the high water mark were never properly listed for revision and that the valuations of same should be struck out.

Mr Killen also pointed out that of the four lots which lie outside the high water mark, viz; lots 19c, 19i, 19j and 19k, three of these were incorrectly described in the lists for the following reasons:-

1. Lot 19c comprises two separate hereditaments. Waterford Corporation are the lessors of one portion, Water Harbour Commissioners are the lessors of the remainder.
2. Lot 19j comprises three separate hereditaments. Waterford Corporation are the lessors of one portion. The Minister of Industry & Commerce is the lessor of a second portion and the remaining portion is part of a separate lease from Waterford Corporation.

3. Lot 19i comprises two separate hereditaments. Waterford Corporation is the lessor of one portion. Waterford Harbour Commissioners are the lessors of the remainder.

Mr Killen stated that if these properties had been listed for revision, all of the new hereditaments would have been separately described. The parent lot would have been clearly described as amended in 1974. The hereditaments described in the Valuation Certificate (attached to Mr Killen's précis as Appendix B) as Tideway of Part of River Suir were never in fact listed for revision.

In reply to Mr O'Caoimh, Mr Killen stated that the entries referred to on Pages No. 1 & 5 of C.B. Waterford Lists (appended to Mr Killen's précis as Appendix C) purported to refer to certain hereditaments but did not actually do so. Again in reply to Mr O'Caoimh, Mr Killen said that while the questions of jurisdiction and correct listing were not specifically referred to at 1st Appeal, it was not possible in the limited time allowed for that appeal, to raise all matters of appeal and that the relevant documents from the Valuation Office would not have been available within that time.

On re-examination by Mr Daly, Mr Killen stated that the question of jurisdiction had been discussed with Mr. Walsh soon after the notice of 1st appeal. The question of "separate titles" was not specifically discussed.

Mr William Walsh referred to his written submission and stated that the new lots, viz; lots 19c, 19j, 19i and 19k were created in 1988 on revision and that this was the only reasonable way to so describe them.

Mr Walsh stated that during discussions with Mr Killen after the notice of 1st appeal, quantum had been agreed and Mr Killen had reserved his position with regard to the question of jurisdiction and the effect of the Valuation Act, 1986, but not with regard to the question of

separate titles. In reply to a question from Mr Daly, Mr Walsh agreed that if he and Mr Killen had been aware of the title map at the time of their negotiations, separate valuations would have been allotted to separate hereditaments.

Again, in reply to Mr Daly, Mr Walsh said that the lots now known as lots 19c, 19j, 19i and 19k were never part of lot 19. They are part of the Tideway of the River Suir.

Mr Walsh said that when he took over this matter after 1st appeal, he found that the premises formerly known as lot 19bc had been revised. The local authority would not have had access to the lists as they were corrected after the order of Sheridan J. in 1988. He said that by requesting the Commissioner to revise silos and bins for R. & H. Hall in Waterford and describing them by reference to the Tideway and by reference to the pre-existing lot 19bc, the local authority had done everything possible when seeking revision.

At the final hearing on the 21st May, 1990 Mr O'Caoimh made the following submissions.

A. Jurisdiction

In the first place it is to be observed that in its notice of appeal to the Commissioner (first appeal) the appellant did not raise any ground relating to jurisdiction and accordingly it is submitted that it is not open to the appellant to raise and it is not open to the Tribunal to entertain fresh grounds of appeal which were not advanced at that stage.

The first appeal came within the provisions of Section 19 of the Valuation Act, 1852 (hereinafter referred to as 'the 1852 Act') which require that:

> "... any Person aggrieved by reason of the Valuation of any Tenement or rateable Hereditament or by reason of any inaccurate Statement of Area or inaccurate Description of any Tenement or rateable Hereditament, contained in [the revision] Lists, or other Cause, whatsoever, shall send by Post or deliver to the [Secretary of the county council] in which such Hereditament or tenement is situate a Notice

> in Writing, duly signed by him the said Person aggrieved,or by his known Agent, setting forth the grounds of such Grievance...."

Section 20 of the 1852 Act requires the Commissioner to inquire into the subject matter of every such notice of appeal and "if necessary, direct a Valuator or Surveyor, as the case may require, who shall not have been previously employed in making the original Valuation contained in the Lists as aforesaid, to view such Hereditament or Tenement, and investigate the Complaint stated in such Notice, and report thereon to the said Commissioner of Valuation..."

It is clear therefore that the Commissioner is essentially confined at first appeal to the grounds raised in the Notice of appeal to him. The jurisdiction of the Commissioner under Section 20 aforesaid is as follows:

> "... The Commissioner of Valuation shall have Power to alter and amend the Valuation or Statement of the Area of the Tenement or rateable Hereditament so appealed against, and also to alter and amend the Valuation or Statement of the Area of any other Tenement or Hereditament against which there shall have been no Appeal, but which may appear to him to have been similarly circumstanced with those respecting which Appeals have been made, in order to render the valuation of every Tenement or Hereditament comprised in such List proportionate and uniform."

The Appeals herein are governed by the provisions of Section 3(5) of the Valuation Act, 1988 which provides as follows:

> "(5) (a) An owner or occupier of property or a rating authority in whose area the property is situated may, by notice in writing send by post or given by or on behalf of the appellant, appeal to the Tribunal against the determination made by the Commissioner under Section 20 of the Act of 1852 within 28 days after the publication of the list of determinations.
>
> (b) The notice shall contain the particulars of the valuation as entered in the Valuation Lists and a statement of the specific grounds for the appeal."

He submitted that the appeal to the Tribunal insofar as it arises from the determination of the Commissioner at first appeal must be confined to the grounds advanced to the Commissioner at first appeal and cannot be used as a method of raising issues that were not advanced to the Commissioner at first appeal. In this regard reference was made to the decision of the Tribunal delivered on the 1st day of May 1989 in Appeal No. 88/165 Ebeltoft Limited v. the Commissioner of Valuation where the Tribunal stated inter alia at page 4 of its judgment:

> "The Tribunal would wish to point out, however, that there is an obligation on appellants to set out clearly in their grounds of appeal what exactly the case is that they wish to make and it must be understood that they cannot make a case to the Tribunal other than what was urged before the Commissioner."

Accordingly, he submitted that insofar as the Appellant in the instant case has sought to introduce at the stage of the appeal to the Tribunal grounds which were not urged before the Commissioner in the statutory notice of appeal pursuant to section 19 of the 1852 Act and insofar as it may have been attempted to introduce grounds at the first appeal stage which were not in fact set out in the statutory notice and advanced within the statutory period of 28 days set out in section 19 of the 1852 Act that these grounds cannot be considered as having been urged before the Commissioner at first appeal stage.

Without prejudice to the foregoing, insofar as the case made by the appellant in relation to jurisdiction is concerned, he said that it turns on the assertions

(1) that the property now listed in lots 19c, 19i, 19j, 19k, (appeals 88/81, 88/82, 88/84 and 88/85 respectively) was not listed for revision by the local authority and

(2) that insofar as they have been valued that the Commissioner has failed to cause each separate hereditament to be separately valued.

He dealt with each of these submissions separately:

(1) that the property now listed in lots 19c, 19i, 19j, 19k, (appeals 88/81, 88/82, 88/84 and 88/85 respectively) was not listed for revision by the local authority.

Evidence has shown that the local authority (Waterford Corporation) issued a list of hereditaments requiring revision pursuant to sections 4 and 5 of the Valuation (Ireland) Amendment Act, 1854 on the 4th March 1987 and it appears that the same was received by the Valuation Office on the 10th March 1987.

This list which is referred to as the Green list or the Blue list is in the form prescribed by order made under the Adaptations of Enactments Order 1899 (Article 37(e) refers). Copies of the relevant portions of the list have been adduced in evidence and they show that as regards column 1 entitled 'Electoral Division or Ward' that a number of entries appear under the title "Ferrybank". All of the hereditaments in dispute in the instant case are within the electoral division or ward of Ferrybank. Thereafter as regards the second column is concerned entitled "No. and Letter of "Reference to Map" in Valuation Lists" - 5 entries appear under "Pt 19bc". While the appellant relies upon the fact that Judge Sheridan apparently made an order deleting these references from the valuation list, the relevant orders were not made until the 18th January, 1988. Therefore, at the relevant time when Waterford Corporation were required to list for revision the properties requiring revision and further to the requirements of the required form under Article 37(e) of the Adaptations of Enactments Order 1899 to specify the "No. and Letter of "Reference to Map" in Valuation Lists" the various silos, the subject matter of these appeals appeared in the Valuation Lists under the "No. and Letter of "Reference to Map" in the Valuation Lists" of pt. 19bc. Accordingly, it is submitted that the listing by the local authority was in order to enable the Commissioner to revise the valuations of the said hereditaments.

The listing by the local authority of "Ferrybank Dock Road Tideway of part of River Suir" with a request to "Revise Silos & Bins for R. & H. Hall Ltd" further emphasised the fact that the local authority required the valuation of the Silos and Bins in the occupation of the appellant and situate in the Electoral Division or Ward of Ferrybank and being part of the Tideway of part of the River Suir to be revised. The clear evidence given at the appeal was that this entry could not have referred to any other silos or bins as the only silos and bins in the Electoral division of Ferrybank and in the Tideway of part of the River Suir were those in fact valued by the Commissioner as none other exist. Mr O'Caoimh stated that the inclusion of "Dock Road" between the words "Ferrybank" and "Tideway of part of River Suir" in the list of properties requiring revision does not in any way invalidate that listing.

In support of the above submission, the respondent referred to the judgment of Blayney J. delivered on the 31st July 1989 in the case between Coal Distributors Limited v. Commissioner of Valuation [1990] ILRM 172 where the High Court allowed the appeal of the Commissioner of Valuation against the decision of Martin J. relating to certain hereditaments in the occupation of the appellant company.

In that case the local authority had entered in the revision list two lots 88a and 88b both at Pigeon House Road, Pembroke East 'A' Ward in the County Borough of Dublin. It was submitted in relation to lot 88a that the valuation thereof should be struck out on the grounds that while the lands therein comprised were held under two different and distinct titles that the Commissioner of Valuation had failed to value each hereditament separately. It was further submitted by the appellant that the listing by the local authority was void insofar as it failed to specify the lands comprised in lot 88a as separate lots. This is referred to by Blayney J. at page 172 of the report where he said as follows:

> "It was submitted on behalf of the appellant that the whole procedure in regard to plot 88a was vitiated ab initio in that the request for revision did not specify separately the two properties in the lot. I cannot accept this submission. There is nothing in s. 4 of the

> 1854 Act, pursuant to which the request for revision is made, which requires the tenements to be listed in the units in which they should be valued by the Commissioner. It is the Commissioner's duty to value each tenement separately, as is provided by s. 11 of the 1852 Act, the opening sentence of which is:
>
> > 'In every valuation hereafter to be made, or to be carried on or completed under the provisions of this Act, the Commissioner of Valuation shall cause every tenement or rateable hereditament herein - after specified to be separately valued.'
>
> In my opinion, once the request for revision has been made, specifying certain tenements, it is the duty of the Commissioner to decide in what units they should be valued so as to comply with the requirement in s. 11, and if he should err in this regard, his error can be corrected on appeal. Under s. 23 of the 1852 Act the Circuit Court judge, on appeal, has power 'to make such order therein as to such court shall seem fit', and it is clear from s. 6 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 that this extends to making alterations in the valuation lists. That section provides inter alia that:
>
> > 'No alteration shall be made in any such list or lists, or in the name of any occupier or lessor named therein, save by the Commissioner of Valuation, or by some person duly authorised by him for that purpose, or by the order of a court of general or quarter sessions upon appeal, or other court of competent jurisdiction.'"

In the Coal Distributors Limited case the High Court remitted the matter back to the Circuit Court to value separately the two properties comprised in lot 88a.

Mr O'Caoimh submitted that the above case is authority for the proposition that the local authority in listing properties requiring revision do not have to observe the same requirements as those of the Commissioner under s. 11 of the 1852 Act and furthermore, if in valuing property the Commissioner makes an error in relation to the valuation list that the same can be corrected on appeal.

He said that it was clear that the properties the subject matter of the appeals herein were (a) listed for revision and (b) were revised. It was against the decision of the Commissioner on revision that the appellant company appealed in the first instance on the grounds that the valuation was "excessive and inequitable" and that the same included valuations on non rateable items of machinery and plant.

The appellant has sought to rely upon certified copies of the Valuation list and on the list as published to show that the Commissioner did not in fact carry out any revision as required of the properties the subject matters of these appeals.

Notwithstanding that the properties comprised in lots 19c, 19i, 19j, 19k (Appeals 88/81, 88/82, 88/84 and 88/85 respectively) may have been properly considered to be in the tideway of part of the River Suir in the Electoral Division of Ferrybank and notwithstanding that the 'cards' or lists in respect of same do not show any specific entry showing that the overall area stated therein has been reduced by the area comprising the said lots 19c, 19i, 19j, 19k, it is submitted that this does not show that the properties comprised in those lots were not valued. At most it indicates that no adjustment was made in the remaining portion of the list entry of tideway of part of the River Suir in the Electoral Division of Ferrybank.

Accordingly, he said that the appellant's appeal must fail on the ground that the properties comprising the said lots were listed and were in fact revised by the Commissioner.

(2) that insofar as they have been valued that the Commissioner has failed to cause each separate hereditament to be separately valued.

With regard to the appellant's claim that the Commissioner has failed to have regard to s. 11 of the 1852 Act and has failed to value each hereditament or tenement separately, while not accepting that there has been such a failure, Mr O'Caoimh stated that if in fact there has been such a failure and if the situation is found to be as represented in the "Title Map" adduced in evidence by the appellant showing that there are errors in the Commissioner's apportionment of

the valuation between lots 19c, 19j, 19k and 19l, that it is proper that the Tribunal apportion the valuation between what are the correct lots.

He said that at no time had the Commissioner sought to disregard the principles of law to be found in the judgments of the Kings Bench Division or the Court of Appeal in the case of Switzer & Co v. Commissioner of Valuation [1902] 2 I.R. 275 and insofar as he may have acted wrongly in attempting to value separately each tenement or hereditament it is proper that the same should be corrected by the Tribunal at this stage and such errors as may exist are not such as to vitiate the valuations placed by the Commissioner on the several hereditaments.

B. Rateability of Silos

There are two distinct areas here, firstly the concrete silo comprising 20 bins used for handling grain imports and comprised in lot 19j and secondly the various simplex bins used to hold malting barley. It is proposed to deal with each of these in turn.

1. Concrete Silo (Lot 19j)

The evidence has disclosed that this silo is used to hold imported grain. It is not used to hold malting barley. These bins are hopper bottomed to allow the grain to be discharged out by gravity. The evidence disclosed that these bins do not have aeration facilities but that there is provision whereby a mobile compressor can be used to blow compressed air to assist the discharge of certain grain (e.g. corn gluten) that may become stuck. Only one bin has a permanent compressor. The air is used to move the grain rather than to change it. These bins are of concrete construction. These bins are not used to induce a change in the substances contained in them. Furthermore it is submitted that notwithstanding the fact that this complex of bins has access to the dryers, cleaning plants and intake and outloading points that the evidence does not show that these bins should be considered as other than plant which is rateable under the provisions of the Valuation Act, 1986. The incidence of blending suggested by the evidence was

minimal and in any event it is submitted did not involve any process of change in the substance contained. The turning of grain is a normal part of storage or containment. Fumigation is not normally required and is achieved by the addition of phostoxins to the grain to kill off mites etc. Essentially these are added to prevent deterioration of the grain and to keep it in condition. It is submitted that grading and weighing are not processes of change in any event.

While it is accepted that the concrete silo is essentially a throughput facility and that the appellant discourages purchasers from leaving grain for any appreciable time in these bins, he said that it is clear that with large quantities of grain being imported (or exported) that some facility is necessary to hold or contain this grain before it is taken away by the purchasers of the animal feed held there (which is the main use of these bins). He submitted that the mere mixing of grain from one bin to another to create a homogenous mix or blend is not such as to involve a process of change in the substance contained and any blending represents in effect a natural process of mixing using the conveyors etc.

In conclusion Mr O'Caoimh stated that the primary function and use of these bins is one of containment of grain and that if any change occurs (whether induced or otherwise) it certainly is not the primary use of these bins.

2. Simplex Bins

A major part of the evidence was devoted to the simplex bins which are used for malting barley. Mr O'Caoimh stated that these should be considered as rateable plant.

He stated that the items in dispute come clearly within the definition of plant in the 1986 Act.

The evidence disclosed that 'green barley' is taken in at harvest time and is sent to one of the dryers where it is heated to a temperature of normally 30 to 35 degrees celsius but in any event not greater than 40 degrees. The evidence suggested that green grain may be held in one or more of the simplex bins for up to two days before being sent to the dryer. The grain is thereafter sent to one of the simplex bins where it is held for a period of at least 10 to 14 days to allow dormancy to break. This use of the bins is an "essential containment to allow dormancy to be broken". The change in this regard has been induced by the elevation of the temperature in the dryers and the process in the bins is a natural change that occurs following the raising of the temperature outside of the bins. The detailed evidence given by Mr Thomas revealed that the breaking of dormancy is part of nature. What is done is to induce the change of nature. This means that after the initial raising of temperature the bins will be used to "allow a natural process to take place" and while this is a process of change it is nevertheless such that the containment is first in importance to allow that change to take place as the time devoted to raising of the temperature is relatively short compared to the necessary period of containment to allow this natural change to occur.

The drying of the green grain proceeds only for a relatively short period up to the end of October or beginning of November.

For the remainder of the year the appellant will take in other malting barley from other plants around the country. Much of this barley will have broken dormancy by the time it is taken in at the appellant's plant. It will be held in the bins and blending or homogenisation may occur prior to the malting barley being shipped out. The evidence suggested that 50% of the malting barley intake was other than green barley and that this will normally have broken dormancy before being taken into the appellant's plant.

Mr O'Caoimh said that the presence of sensors and the dust extraction associated with grain being moved is not such as to be regarded as involving a process of change in the substance being contained in the bins. The evidence was that the dust extraction system was used to keep down the level of dust when moving the grain. Equally the associated sieves and weighing facilities are not such as to involve a process of change in the malting barley being contained in the simplex bins. In fact the sieving will occur prior to the grain being placed in the bins.

After the breaking of dormancy the temperature of the malting barley is reduced in the bins by turning on fans in the bins to reduce the temperature to 20 to 22 degrees celsius.

Thereafter he said that the evidence disclosed that the only use of the bins other than containment was for the purpose of blending or homogenisation of the malting barley to ensure a uniform product being sold and to meet contract specifications. This involved mixing, for example, high protein and low protein malting barley. He stated that that the use of the bins for homogenisation does not in fact constitute a process of change in the substance contained but is in effect a change of substance being contained in a bin or bins. Such blending or homogenisation does not change any grain in itself. It means that the overall consistency of a batch of grain may be altered.

The evidence given by Mr Walshe suggests that there could be a time lag of one month from the point of intake to the point where the malting barley is ready to go out on a ship.

He said that that the only real comparison for this case is the decision of the Tribunal in the case of Mitchelstown Co-operative Agricultural Society Limited v. Commissioner of Valuation in which the Tribunal delivered judgment on the 6th December, 1988 relating to the grain installations at Limerick Road and Clonmel Road. He argued that the appellant's facilities at Dock Road must be seen as the final stage of the process of producing malting barley, that the period prior to reception of malting barley at Dock Road cannot be forgotten. It will be seen that

essentially the plant at Dock Road fulfils the same function as the Limerick Road plant at Mitchelstown.

He stated that accordingly, containment must be seen as first in importance and while a process of change occurs with regard to the breaking of dormancy of the green grain, in particular, that this is achieved essentially by raising the temperature of the grain in the dryer and that thereafter containment is of the essence and is first in importance. He said further that the use of these bins is to allow a natural process to occur which has been induced by the heating of the malting barley.

As in the Mitchelstown case, storage or containment cannot be dispensed with and it must be put first in importance.

What comes in to the appellant's plant is grain and what goes out is grain. The process of inducing a change by way of breaking of dormancy accounts for less than half of the use of these bins and accordingly he stated that despite the time devoted by the appellants to referring to the breaking of dormancy that the use of the plant in this case is not primarily taken up in this process of change.

He said that accordingly, the various simplex bins should be considered as rateable plant.

Mr Daly in reply dealt firstly with the question of jurisdiction. He stated that whether or not this point had been raised at 1st appeal, the appeal valuer knew that this particular ground of grievance had been ongoing for several years. He said that during the 21 day period when the lists were open for public inspection, maps and other relevant material would not have been available. The term "inequitable" as used by Mr Killen at 1st appeal was, he said, sufficient to indicate dissatisfaction with quantum and legal points of difference. The preliminary rulings of

Sheridan J. dated October, 1986 were furnished to the Commissioner of Valuation and he was aware of the contents of same long before January 1988 when the order was made.

Mr Daly stated that, as Judge Sheridan had found, to have a valid listing, the Commissioner must have a valid notice from the local authority. In this case the properties described as lots 19c, 19j, 19i and 19k were never properly listed. He said that if the Commissioner of Valuation had considered the listing to be valid a revision card would have been taken out and given to the revising valuer. What was on revision, he said, was only lot 19bc which was, as found by Judge Sheridan, to be inside the high water mark.

Mr Daly referred the Tribunal to the case of Switzer & Co v. Commissioner of Valuation K.B. Div. 1901 and stated that the facts in this case were similar in that the notice from the local authority did not include the relevant lots. The Commissioner, therefore, he said, had no power to deal with them at 1st appeal.

Dealing next with the rateability of the Simplex bins, Mr Daly submitted that they were non-motive power machinery. Alternatively they were non-rateable plant by virtue of the Schedule to the Act of 1860 as inserted by Section 8 Valuation Act, 1986. He said that while heating and drying takes place outside the bins it is containment at a particular temperature and in particular conditions which brings about the change in the substance contained. The grain is processed through as quickly as the machinery can do it. Mr Daly said that one must look at the entire process.

He said that in the Mitchelstown Creamery case (to which he had already alluded) only one consignment of green barley was dealt with and then sent out. What is taken in here is actively processed and taken out for use elsewhere. The purpose and expedition which came through in

this case should, he submitted, cause it to be distinguished from the Mitchelstown case. These bins were designed for and are used to effect change.

Moving on to the Concrete Silo Mr Daly stated that while the process of change is not as strong here as in the Simplex bins, the purpose of the containment is to induce change.

In any event, Mr Daly said, all the bins should be regarded as non-rateable machinery.

Findings

The Tribunal will deal with the matter in the following way.

A. Jurisdiction and admissibility of same as ground of appeal.

B. Separate hereditaments.

C. Rateability.

A. Jurisdiction and admissibility of same as ground of appeal.

The Tribunal is of course bound to have regard to the statutory requirements of S. 19 of the Valuation Act, 1852. It does seem, however, that the use of the term "inequitable" in notice of 1st appeal is sufficient to indicate legal points of difference such as those which are now in issue. Furthermore, it is evident that the Commissioner of Valuation has been aware that the question of jurisdiction has been ongoing for several years. Mr Walsh, himself has referred to the negotiations between Mr Killen and himself and to the fact that Mr Killen reserved his position on the "question of jurisdiction". It seems clear that the Commissioner has not been at all prejudiced by the introduction of this ground of appeal and accordingly, the Tribunal has decided that it should be entertained.

What is agreed between the parties is that lots 19c, 19j, 19i and 19k all lie outside the high water mark. The boundary of V.O. lot 19 has been the subject of dispute between the parties for a

number of years. The order of Sheridan J. issued in January 1988, wherein it was stated inter alia:

> "that the Jurisdiction of the Commissioner of Valuation in respect of revision depends upon the transmission by the appropriate local authority of a list to him with the opinion that such a revision is necessary"

In this instance the local authority issued a list of hereditaments requiring revision pursuant to section 4 & 5 of the Valuation (Ireland) Amendment Act, 1854 on the 4th March 1987. The hereditaments in dispute were correctly described therein as being within the electoral division or ward of Ferrybank. Under the column entitled "No & letter of "Reference to Map" in Valuation Lists", five entries appear under pt 19bc.

While accepting Mr O'Caoimh's point that at the time Waterford Corporation listed the properties requiring revision they were still so described in the Valuation Lists, as the order of Sheridan J. deleting these from the lists was not finally made until the 18th January, 1988, nevertheless the Tribunal is of the opinion that the hereditaments below the high water mark were never correctly listed. In effect the Commissioner of Valuation was never requested to revise them. Accordingly the Tribunal determines that lots 19c, 19j, 19i and 19k should be deleted from the valuation lists.

B. Separate hereditaments

Since the hereditaments about which there is dispute as to title form part of those which the Tribunal has determined should be deleted, the Tribunal need not decide this matter but would point out that it would of course be bound by the decision of Blayney J. in Coal Distributors Ltd v. Commissioner of Valuation 31st July, 1989 wherein he stated that:-

> "In my opinion once the request for revision has been made, specifying certain tenements, it is then the duty of the Commissioner to decide in what units they should be valued so as to comply with the requirements in S.11 and if he should err in this regard, his error can be corrected on appeal. Under S.23 of the 1852 Act the Circuit Court judge on appeal, has power to 'make such order therein as to such court shall see fit' and it is clear from S.6 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 that this extends to making alterations in the valuation lists. The section provides inter alia that:
>
> > 'No alteration shall be made in any such list or lists, or in the name of any occupier or lessor named therein, save by the Commissioner of Valuation, or by some person duly authorised by him for that purpose, or by the order of a court or general or quarter sessions upon appeal, or other court of competent jurisdiction.'"

In any event there has been evidence that agreement may have been reached between the parties on this point and it is presumed that the matter can, for the future, be rectified by agreement.

C. Rateability

By virtue of the Tribunal's decision in relation to the question of jurisdiction, the rateability of only 9 Simplex silos, part of lot 19b, remains to be resolved.

The Tribunal is in no doubt that the purpose of the amendment brought about by the Valuation Act, 1986 was to provide that certain industrial plant should be deemed rateable while, at the same time, preserving the age old exemption for machinery (save such as shall be erected and used for production of motive power) and it was made clear that the Commissioner should not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container.

In the first instance the Tribunal has decided that it must reject the submission that these bins can be regarded as machinery. The Tribunal has reached a particular conclusion in relation to the effect of the 1986 legislation in earlier cases (cf. Mitchelstown Creameries Appeal Nos 88/94-

99) and (North Kerry Milk Products Ltd Appeal No. 88/205) and has come to a similar conclusion in this case.

It is clear that in each of these bins a process of change takes place in the substance contained therein. Evidence has shown that barley in its green or raw state, after harvesting, is something quite different from malting barley which is sent to the maltsters. As has been so comprehensively described by Mr Thomas, a seed or grain enters a state of dormancy on reaching maturity at harvest time. Before the barley can be used in the malting industry this dormancy must be broken and germination be induced. Left in its natural state dormancy in the grain will eventually break. Dormancy can be overcome by various methods of intervention including chilling, heating and treatment by chemicals.

In the present case the evidence has shown that dormancy is broken by heating, drying and containment at relatively high temperatures. After the grain is heated and dried it is transferred to the Simplex bins where it is held for 10-14 days at a temperature of 25-30 degrees C. until dormancy has been eliminated. There is no doubt that the Simplex bins are used to bring about change in the grain. Containment, however, is an essential part of this process. The primary purpose of these Simplex bins is containment which allows a process, begun in the dryers, to be completed.

Schedule 8(1) of the Valuation Act, 1986 states as follows:-

"SCHEDULE

(1) **Reference**	**(2)** **Categories of Plant**

Number	
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.
2.	All fixed furnaces, boilers, ovens and kilns.
3.	All ponds and reservoirs.

"

The Tribunal is satisfied that these Simplex bins are used primarily for storage or containment, the purpose of which containment is to allow a process of change to take place. The Tribunal accordingly finds these bins to be rateable and affirms the rateable valuation of lot 19b at £550.