

Appeal No. VA88/0/137 &
VA88/0/136

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

R & H Hall Plc

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Appeal No: 88/137 and 89/60

Grain Silo, Weighbridge and Yard at Lot No: 1H1, City Park Cork No. 5 Ward,

Appeal No: 88/136 and 89/61:

Grain Silo, Conveyor, Offices and Yard at Lot No. 9, Alexandra Road, North Dock B Ward,
County Borough of Cork & County Borough of Dublin

Quantum - Method of Valuation

B E F O R E

Henry Abbott

Barrister Chairman

Padraig Connellan

Solicitor

Joe Carey

P.C. M.I.A.V.I.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF MAY, 1992

By Notices of appeal dated 22nd day of August, 1988 and 4th August, 1989 the appellants
appealed against the determination of the Commissioner of Valuation in fixing rateable
valuations as follows on the above described hereditaments:

VA88/137 and VA89/60 - Buildings £ 200

Absolute £ 650

Total £ 850

VA88/136 and VA89/61 - Buildings £ 965

Absolute £1,770

Total £2,735

The grounds of appeal as set out in the Notices of Appeal are that:

Appeal No. 88/137, 89/60:

- (1) The R.V. £850 is excessive and inequitable.
- (2) 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.
- (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 plant and machinery.
- (4) That in arriving at his determination of the Rateable Valuation, the Respondent acted on wrong principles, in as much as that he failed to pay any regard to the radically changed circumstances whereby, in the interim since it (Subject) was last revised - when it was in the ownership and occupation of National Grain Silo Ltd. - the business carried on in it had ceased to be economic, in consequence of which it was placed on the open market for sale and purchased, as a going concern, by the present Appellants for the sum of £625,000.

Appeal No. 88/136, 89/61

- (1) That the R.V. £2,735 is excessive and inequitable.
- (2) 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, to wit Silos.

- (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 plant and machinery, and in particular to Silos.
- (4) That in arriving at his determination of the Rateable Valuation, the Respondent acted on wrong principles, inasmuch as that he failed to pay any regard to the radically changed circumstances whereby, in the interim since it (Subject) was last revised (1984/85) - when it was in the ownership and occupation of Merchant Warehousing Co. Ltd. (1985 Circuit Court Appeal refers) - the business carried on in it had ceased to be economic, in consequence of which it was placed on the open market for sale and purchased, as a going concern, by the present Appellants for the sum of £350,000.

The Property

VA88/137, VA/89/60

The property in this appeal (Lot 1Hi) consists of:-

- (i) Grain drying facilities housed in a ten storey (steel platforms) building with a lift serving all levels.
- (ii) Grain intake, weighing and elevator facilities housed in a ten storey building with a lift serving all levels.
- (iii) Grain storage silo known as a "Miag" silo, consisting of 48 individual bins with a total storage capacity of 13,150 tons (wheat).

- (iv) Ancillary buildings consisting of boiler house, furnace house, conveyor housings and canteen.

Valuation History

The premises was first valued in 1953 and a rateable valuation of £1,250 was fixed on it. There were some minor changes and in 1982 the occupiers appealed to the Circuit Court claiming that the rateable valuation figure of £1,030 was "excessive and inequitable and should be reduced by the amount attributable to items of plant and machinery to wit grain silos". The appellants were successful in their claim and the Circuit Court judge fixed a rateable valuation on items which were agreed to be rateable at £200. The hereditament was again listed for revision in 1987, following the introduction of the 1986 Valuation Act and the property was revised at a rateable valuation of £1,030. This was appealed and on appeal the Commissioner reduced the valuation to £850.

The Property

VA/88/136, VA/89/61

The property consists of warehouse, stores, conveyor systems, offices, workshops and high rise silos.

Valuation History

A rateable valuation of £1,500 was placed on the main silo in 1922. There were various increases over the years as developments took place, until 1987 when a revision took place to take the Valuation Act, 1986 into account. At this stage a rateable valuation indicating no change on the previous valuation of £2,800 was fixed. This was appealed to the Commissioner of Valuation and having considered the report of the revising valuer he fixed a valuation at a total of £2,735 (buildings £965, absolute £1,770) to take into account the dismantled part of the conveyor system. It is against this determination the appeal now lies with the Tribunal.

Written Submissions

A written submission in respect of appeals no. VA88/137 and VA/89/60 was received from Donal O'Buachalla & Company Limited on the 19th December, 1990 on behalf of the appellant. This outlined the valuation history of the premises and said that the relevant dates for the purposes of these appeals are the 1st November, 1987 and the 1st November, 1988 respectively and went on to give details of the financial position concerning the National Grain Silo Limited and details of the developments at the lot. It said since Ireland joined the European Community this particular industry has been materially changed, in that hard grains (wheat, barley and maize) have been largely displaced by various oil based alternatives. The containment of such diverse commodities has been effected by reversion to more or less traditional flat stores, albeit fitted with "state of the art" equipment. The last port side silo in this country was built in 1974/75 and he referred to the well publicised case of Messrs Ranks Flour and Provender Milling Complex at Limerick wherein, because of adverse trading conditions, he said, the company ceased trading and placed the entity in the hands of the liquidator and submitted that the release sought was a reduction from £850 rateable valuation to £205. Mr. O'Buachalla & Company said that the issue before the Tribunal was one of quantum as he said it is now settled law that grain silos are rateable plant. A similar written submission was received in respect of appeals No. 88/136 and 89/61 in which a similar case was made for a reduction in Rateable Valuation from £2,735 to £180.

A written submission was received on behalf of the respondent from Mr. Shay Aylward B.Comm, a valuer with 15 years experience in the Valuation Office and a graduate of the Chartered Association of Certified Accountants in respect of Appeals 88/137 and 89/60. In this Mr. Aylward outlined a description of the premises and the valuation history. Mr. Aylward also gave details of the process involved in the use of the grain silo. He attached comparison of Lot No. 1AC Marina Mills occupier R & H Hall which he said was agreed with Donal O'Buachalla

& Company Limited at 1987 first appeal with a rateable valuation of £1,480. He said that since the silos in this comparison property are of re-enforced concrete construction, are loaded/unloaded by conveyors and have air forced through the contents. A further written submission was received from Mr. Aylward on the 18th December, 1990.

A written submission was received from Mr. Frank Gregg B.Comm, a District Valuer in the Valuation Office, on behalf of the Respondent in respect of Appeals No. 88/136 and 89/61 and further Supplementary Evidence was submitted by Mr. Gregg on 18th December, 1990.

A written submission was received on the 15th May, 1991 which contained the precis of evidence to be given by Mr. Michael Hall on behalf of the appellant.

Oral Hearing

The oral hearing of all the appeals in respect of both the Dublin and the Cork premises took place at Dublin on the 16th May, 1991 and on the 10th, 25th and 26th July, 1991 and concluded on the 8th August, 1991. Mr. Fintan Hurley, Barrister at Law, instructed by William Fry, Solicitors appeared for the Appellants and Mr. Aindrias O'Caomh, Barrister at Law instructed by the Chief State Solicitor appeared for the Respondent.

As prior to the oral hearing an application had been made for discovery of documents on behalf of the Respondent and as a further application had been made on behalf of the Appellant for the attendance of Mr. David McCrossan to attend the hearing and in addition an application for the attendance of witness Mr. Joseph Dunne, the oral hearing dealt with many matters not set out in the precis. The discovery and enquiries made by the Respondent resulted in the availability to the Tribunal of many reports, correspondence and accounts dealing with the trading of the

Appellants and their predecessors to properties and the manner in which the properties were valued for various purposes and accounting and acquisition activities.

The Tribunal dealt with a number of issues which were common to both properties. The most major of these was the change in the pattern of Irish grain importing over the last few years and the emergence of exotics as hard grain alternatives on the import side. From evidence which was given by Mr. Kearney, an agricultural consultant with expertise in grain production and Mr. Michael Hall, (among other witnesses) it emerged that the silo structures in both the subject premises were to varying extents becoming more obsolete as the predominance of the exotics became more established. The main factor which tended to accelerate this obsolescence and perhaps prohibiting the adaptation of the silo structures to the less free flowing exotics was the wide spread construction with the aid of E.E.C. funding of flat stores throughout the country which facilitated the handling of the less free flowing exotics by front loader.

While the Appellants during the course of their evidence suggested a low valuation by reason of the absence of significant profits being made out of the premises, the thrust of the Appellants case was that both premises ought to be valued on the basis of the valuations to be gleaned from the acquisition costs of the 50% shareholding in the Cork premises and the acquisition cost of the Dublin premises. In relation to the Dublin premises at 9 Alexander Road, Mr. O'Buachalla argued that the valuation ought to be based on the purchase price of same by the Appellants in 1987 of £350,000 which after deduction of non-rateable elements amounted to a purchase price of £280,000. He relied on his calculations in the precis to produce a Rateable Valuation of £118 for the premises. Mr. O'Buachalla took the same approach in relation to the Cork premises arguing that the adjusted consideration from the purchase of shares in the holding company for the 50% share holding therein at £1,020,000.00 reduced to 40% of the total valuation gave a valuation of £230.

The oral hearing proceeded on the basis of a probing by the respondent of these two propositions. The following criticisms emerged:

- 1) Could the proposals for the reduction of hard grain prices in the E.E.C., which were mooted in 1986 in relation to reform of C.A.P. have had an influence on other purchasers, having regard to the possibility that hard grains might again become a predominant part of Irish imports?
- 2) Whether the various professional reports available in relation to the valuation of the premises ought to have been a more appropriate basis for valuation, than the actual sums passing for acquisition.
- 3) Whether potential redundancy costs should be added to the consideration in any event.
- 4) Whether the entrenched interests of the Appellants in both premises through joint use, and direct or indirect ownership on a shared basis, placed the Appellants in a favoured position in relation to securing a favourable acquisition cost for the premises. The Respondents suggested that while they could not assert that these were not arms-length transactions, they were anxious to test them thoroughly through their examination in the Tribunal, and it was for that purpose that much of the discovery and production of documentation in the case was directed.
- 5) In calculating a proper rate of return on a depreciating assets a rate over 10% suggested by the Appellants ought to be adopted.

On hearing the evidence of Mr. Kearney and Mr. Hall the Tribunal is satisfied that the proposed changes in the E.E.C. grain policy which the most informed experts might have been in a position to predict in 1986, would not eliminate the comparative cost advantage of the exotics, and agrees with the view that the exotics as commodities, would always trail in price behind the hard grains.

While the acquisition of the Alexander Road premises involved the transfer of 13 and perhaps 16 workers the Tribunal is satisfied that, notwithstanding the fact that same were required to work the facility, any purchaser would have to have regard to the costs of redundancy arising from the continuity of rights to same on the transfer of such an undertaking under Domestic and European Law. Having regard to the cost of making 3 men redundant, together with the costs of sale and the cost for circular regarding sale (which itself cost £15,000) amounting to £130,000, there is no gain saying that the potential redundancy costs of the remaining workers taken on with the Dublin premises would be quite substantial.

During the course of evidence many reports of reputable valuers were proffered in relation to the reinstatement cost of the silos in Dublin and Cork. Considerable examination of the accounts treatment of the silos was pressed by the Respondents all of which indicated that the valuations advanced by the Appellants were considerably short of the book values being used on a widespread basis. The Tribunal while accepting that the book values exhibited in expert reports and accountancy treatment of the premises in the two locations greatly exceeded the figures advanced by the Appellants, concludes that it ought properly treat the premises in the two locations as having by reason of their advancing obsolescence a value considerably less than any replacement cost. However, both premises have a residual use value, and, on occasions may have a strategic value in providing for storage capacity (albeit unsatisfactory) to enable the Appellants to protect their not inconsiderable market share from competitors.

In relation to the potential criticism that the transactions were not at arms-length, the Tribunal is of the view that while the Appellants dealt with the acquisitions in both cases in accordance with the Rules and Conventions, which are designed to ensure that a conflict of interest does not operate to reduce the acquisition cost in such cases, the market reality arising from the dominance of the Appellants in the commodities side of the grain market in Ireland cannot be ignored. The particular tie-ups of a legal nature arising from a part ownership either directly or

indirectly of the Appellants of the properties even before their outright acquisition, meant that potential purchasers acting in competition with the Appellants, would not have acted with any great enthusiasm to push the Appellants out from potential sales, which in the view of the Tribunal were effected at prices which though not impugnable from the point of view of Stock Market type regulations were at the bottom of the range. Hence, the Tribunal is disposed to consider that some notional increase in the capital value of the premises might be added to the actual adjusted passing acquisition cost.

After exhaustive discussion of the numerous issues arising from foregoing considerations, the comparisons advanced by Mr. Gregg and Mr. Aylward were offered from the point of view of ascertainment of a valuation on a tonnage basis. Mr. Des Killen of Donal O'Buachalla & Company gave evidence that the comparison offered on the Marina property in Cork was not based on a quantum appeal, but was based on an appeal which was brought in relation to rateability and that the quantum aspect therein was not canvassed. The Tribunal is mindful in reaching its decision that there is a necessity to establish a reasonable comparison between the actual burden of rates on the subject properties and those which are used to handle grain elsewhere in their vicinities. The Tribunal accepts that the cost of repairs and the cost of insurance for the subject premises are much higher than flat stores.

While there was much debate about the ratio of R.V. to N.A.V. the Tribunal does not in this case make any specific findings in relation to the ratio applicable but is guided by the ranges put forward by both parties to the appeal. Having regard to the foregoing considerations and all the evidence and arguments advanced the Tribunal determines that the appropriate valuation for the national grain silo in Valuation Appeals VA/88/137 & VA/89/60 is £400; as to buildings £150 and absolute £250. In view of the considerations set out above the Tribunal finds that the Valuation of the premises at 9 Alexander Road, North Dock Ward VA/88/136 & VA/89/61 be valued at £600; as to buildings £300 and absolute £300.

