Appeal No. VA88/0/138

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Turf Club Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Licensed Stand , Offices, refreshment rooms, enclosures, totalizator buildings, worksman's house and land Co. Kildare

B E F O R E

Hugh J O'Flaherty	**S.C. Chairman**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 1988

By notice of appeal dated 22nd day of August, 1988, the appellants appealed against the respondents determination of the rateable valuation of the above described hereditaments at £1,083.75.

Mr Donal O'Buachalla of Donal O'Buachalla & Co Ltd, 86 Merrion Square South, Dublin 2, made a written submission dated the 24th November, 1988.

In the course of that submission it was stated that the subject hereditament was the principal venue for horse racing in the country and was operated by the appellants.

Apart from the members room being used once each year to accommodate a stewards seminar in respect of which no charge was made, the user was strictly confined to actual race days, of which there were 14 in 1987, 15 this year and 17 intended for next year.

The user, it was submitted, was to be distinguished from that of numerous other sporting organisations whose facilities are available, effectively, all the year round.

Apart from the foregoing minor exception which would, it was submitted, be deemed to be irrelevant in the rating hypothesis, no use whatsoever was made of the premises on 351 days in 1987 and on the same number of days this year and with the premises intended to be similarly circumstanced for 349 days next year.

The principal accommodation was described as follows:-

Two covered stands with balconies ('Grand' and Reserved stands)
One open stand
Parade ring
Saddling stalls
Jockey accommodation (weighroom and changing rooms)
Bars and restaurants, and kitchens and toilets
Tote halls and concourses
Hospitality suites
Stewards' room
Members' rooms
First aid station
Turnstiles
Limited car parking.

It was submitted on behalf of the appellants that the subject hereditament was exclusively used for the purposes of sport and that the lands contained in it are developed for sport and that all of the installations within it or constructions affixed to it pertain to the development of the sport of horse racing in consequence of which it comes within the statutory provisions and is, therefore, entitled to be excluded from valuation.

In the course of his written submission on the 16th November, 1988, Mr. D. Feehan, who is a district valuer with 27 years experience in the Valuation Office, set forth the recent valuation history of the hereditaments as follows:-

1987 - Listed by Kildare County Council, to value private viewing boxes

and extension to stands. Occupiers had also requested revision, on the grounds that the property should be exempt from rating.

Revising valuer reported that new viewing boxes had been erected, and alterations made to the stands. The valuation was increased from £950 to £1,100. The occupiers appealed against the valuation of £1,100 on the grounds:-

(1) That the valuation was bad in law, in as much as that no regard had been had to the fact that the entity was exclusively used and occupied for purposes of sport, and were thus entitled to be distinguished in the Valuation Lists as exempt from rating, in accordance with the provisions of the Valuation Act 1986, section 3(1) schedule: Categories of fixed property, ref. no. 2.

(2) That the R.V. was excessive in amount.

Mr Feehan was deputed by the Commissioner to inspect the premises and report on it and he set forth that it was the respondent's contention that the premises should be rateable and not exempt.

Quantum is not in issue in this appeal.

The oral hearing took place on the 25th November, 1988, when Mr John O. Sweetman S.C. (instructed by Mr Brian Price) appeared for the appellants. Mr Jim Marsh MRCVS, the race course manager at the Curragh, gave evidence about the use of the hereditaments and gave a full description of the various installations and structures.

Mr Aindrais o Caoimh, Barrister (instructed by the Chief State Solicitor) appeared for the respondent.

The submissions made and evidence given were recorded, at the direction of the Tribunal, by Mr Padraig O Fearail. At the hearing it was agreed that the parade ring and limited car parking had been excluded. The question is whether the hereditaments in question are exempt by reason of an addition inserted into the valuation code by the Valuation Act, 1986. Section 12 of the Valuation (Ireland) Act 1852 is as follows:-

What Hereditaments are rateable.

XII. For the Purposes of this Act the following Hereditaments shall be deemed to be the rateable Hereditaments; viz; all Lands, Buildings, and opened Mines; all Commons and Rights of Common, and all other Profits to be had or received or taken out of any Land; [and in the Case of Land or Buildings used exclusively for public, scientific, or charitable Purposes, as herein-after specified, Half the annual Rent derived by the Owner or other Person interested in the same, so far as the same can or may be ascertained by the said Commissioner of Valuation;] and all Rights of Fishery; all Canals, Navigations, and Rights of Navigation; all Railways and Tramroads; all Rights of Way and other Rights or Easements over Land, and the Tolls levied in respect of such Rights and Easements; and all other Tolls. Provided always, that no Turf Bog or Turf Bank used for the exclusive Purpose of cutting or saving Turf, of for making Turf Mould therefrom, for Fuel or Manure, shall be deemed rateable under this Act, unless a Rent or other valuable Consideration shall be payable for the same: And provided also, that no Mines which have not been opened Seven Years before the passing of this Act shall be deemed rateable until the Term of Seven Years from the Time of opening thereof shall have expired; and no Mines hereafter to be opened shall be deemed rateable until Seven Years after the same shall have been opened; and Mines *bona fide* re-opened after the same shall have been *bona fide* abandoned shall be deemed an opening of Mines within the Meaning of this Act.

*[square brackets] repealed by s. 3 and schedule to Local Government (Rateability of Rents) (Abolition) Act, 1971.

Section 2 of the Valuation Act 1986, provided that for the purposes of the Act of 1852, property falling within any of the categories of fixed property specified in the schedule to the Act of 1852 (inserted by the Act) shall be deemed to be rateable hereditaments in addition to those specified in section 12 of that Act.

The schedule is in the following terms -

SCHEDULE

(1) Reference Number	(2) Categories of Fixed Property
1.	All constructions affixed to lands or tenements, other than buildings referred to in section 14 of this Act.
2.	All lands developed for any purpose other than agriculture, horticulture, forestry or sport, irrespective of whether or not such land is surfaced, and including any constructions affixed thereto which pertain to the development.
3.	All cables, pipelines and conduits (whether underground, on the surface or overhead), and including all pylons, supports and other constructions which pertain to them.
4.	All fixed moorings, piers and docks.
5.	Plant falling within any of the categories of plant specified in the Schedule to the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 (inserted by the *Valuation Act, 1986*)

In the course of his judgment in Roadstone Ltd. v Commissioner of Valuation 1961 (I.R. 238) Mr Justice Kingsmill Moore analysed section 12 of the 1852 Act and drew a distinction between the situation where land is used for a business purpose, for example, and land which was valued on a static basis.

At page 254 of the report he said:-

> It seems to me that where land is used for business, manufacturing or commercial purposes (as for instance a cemetery or a quarry) there is nothing to prevent it also from being described as property "the annual value of which is subject to frequent alteration." The intention of the section appears to be to put any property coming within this description into a class of its own, and one which must always be valued on the basis of the hypothetical rent. If it were to be valued on the basis laid down for land by s. 11 there would be no object in providing for annual valuation since the valuation would be on a static basis and

could not be altered to correspond with changes in value.

And at page 255 the judge summed up the position as follows:-

> On an examination of the statutes, without reference to any authorities, I arrive therefore at the conclusion that the only way to give a rational interpretation to this code, the deficient drafting of which has more than once been the subject of judicial comment, is to regard any land, which by reason of its use is liable to frequent alterations in annual value, as not being included in the expression, "the land," in s. 11 of the Act of 1852 or "the lands" in s. 5 of the 1854 Act.

Buildings are always categorised separately as being rateable and it is significant that at reference No. 1 to the Schedule now attached to the 1852 Act by virtue of the 1986 Act there is a reference to "buildings".

The first question for determination by the Tribunal, therefore, is whether any or all of these structures, the subject of this appeal, are "buildings" or not.

In the course of his judgment in the case of Cement Ltd. v. Commissioner of Valuation (1960) I.R. 283, Davitt P. said (at p. 301 of the report) - It would be obviously unwise to attempt a definition of the word, "building". He said that it was probably impossible to evolve a satisfactory one.
He went on to say:-

> It is at any rate, beyond my competence. It does seem to me, however, that in construing the word as used in s. 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 its 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.

In the case of Cork Grain Company v. Commissioner of Valuation (1978) I.R. 35, Mr Justice Walsh, delivering the judgment of the Supreme Court said (at p. 40 of the report) that he agreed with the observation of Davitt P. in the Cement Case that unless there is some good reason for doing otherwise, the word "building" should be construed in its popular sense as including what an ordinary lay person would understand by the word.

Applying the test as suggested by these cases, the Tribunal has come to the conclusion that all the structures under appeal are "buildings" under section 12 of the 1852 Act and that, therefore, the correct way to regard them is as "buildings" rather than as "constructions". If it were accepted that they were "constructions" rather than buildings then the Tribunal would have to deal with Mr O Caoimh's contention that the reference to "constructions affixed thereto which pertain to the development" refers back to the first six words of reference No. 2 and should read: "All lands developed for any purpose ... including constructions affixed thereto which pertain to the development ... other than (lands developed for) agriculture, horticulture, forestry or sport."

Mr Sweetman has countered this argument by saying "that all constructions affixed to lands or tenements" is already referred to at reference No. 1 to the schedule and that, therefore, the reference to "any constructions affixed thereto" if it had the meaning contended for by Mr O Caoimh would be simply repeating what was already contained in reference No. 1. The Tribunal thinks, on balance, that Mr Sweetman's submission is correct in regard to this. If land is developed for sport there are bound to be some constructions affixed to it which would be part of the "development". And since land has to be given a specific meaning, its development for sport would not include any constructions at all.

The Tribunal, however, believes that the constructions which pertain to the development means pertaining to its development for sport rather than anything ancillary to the particular sport. While, undoubtedly, the attraction of spectators is part and parcel of many sporting occasions, nonetheless, the Tribunal believes that if the legislation wished to exempt developments which are ancillary to the actual sporting arena it would have said so in clear words. The Tribunal takes the same view in relation to acommodation both for spectators and participants in the sports.

In the circumstances the Tribunal has come to the conclusion that the respondent's decision must be upheld.