

Appeal No. VA88/0/205

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

North Kerry Milk Products Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory, offices, stores & land situate in the townland of Islandmacloughry, Listowel, Co. Kerry

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF JANUARY, 1989

By notice of appeal dated the 22nd day of August 1988, the appellants appealed against the respondent's decision fixing the rateable valuation of the above entitled hereditaments at the sum of £4,440.

Hennigan & Co., Rateable Valuation Consultants and Valuers, of 23 Upper Mount Street, Dublin 2, presented a written submission dated 7th January 1989.

In the course of that submission it was set out that the subject hereditament is comprised of a large milk processing plant which is situated near the town of Listowel. It fronts on to the main Listowel-Tralee Road. The River Feale flows alongside part of the site boundary. The plant which was constructed in the early 1970s is occupied by North Kerry Milk Products Ltd. and the manufactures powdered milk, casein, butter, butter oil and whey products. A large quantity of waste has to be treated to a high degree of purification prior to discharge into the River Feale.

The valuation history of the premises was that it was initially assessed for rates purposes on the 1973 annual revision of valuation at the R.V. of £450 (subsequently reduced on appeal to £325). The hereditament has been the subject of various revisions since at the behest of Listowel Urban District Council.

A Circuit Court appeal was lodged by Messrs Pierse and Fitzgibbon, Solicitors for the appellants against a R.V. £4,380 assessed by way of the 1986 annual revision of valuation and on the grounds, inter alia, that tanks/vessels included therein are not rateable as per the provisions of the Valuation Act 1986. The appeal in question has not been heard by the court as yet.

The R.V. £4,380 was increased to R.V. £4,440 subsequent on the 1987 annual revision of valuation. A notice of first appeal was lodged during the statutory period in November 1987. The Commissioner of Valuation issued his official decision on that appeal on the 27th July, 1988, making no change in the R.V. £4,440.

It is stated that the appeal relates solely to the rateability or otherwise of tanks within the factory complex in Listowel which have been assessed by the respondent by way of the various annual revisions since 1973.

It is stated that quantum is not in dispute.

Messrs Hennigan & Co produced a schedule of tankage which lists the 64 tanks which are the subject of the appeal and they also provided coloured photographs of the main tanks. They state the tanks are divided into two categories as follows:-

1. Effluent treatment tanks
2. Other tanks.

This schedule is set out in Appendix A to this judgment.

Messrs Hennigan & Co go on to describe the processes involved in relation to these tanks but since much was conceded prior to the actual hearing and since, in any event, the processes were described in detail in the course of the oral hearing and in respect of which there was no conflict of evidence, the Tribunal thinks that the most coherent way to deal with the matter would be to set out its understanding of the concessions that have been made; what is involved in the remaining processes (or otherwise) in dispute and make its findings thereon.

Mr Brian O'Flynn, who is a valuer with 13 years experience in the Valuation Office, presented his written submission on the 5th January, 1988. He set out the description of the property and the valuation history which it is unnecessary to repeat.

The Oral Hearing

The oral hearing took place on the 10th January, 1989, in Tralee.

Mr Richard Cooke S.C. (instructed by Messrs Piers & Fitzgibbon, Solicitors) appeared on behalf of the appellants. Mr Aindrias O'Caomh (instructed by the Chief State Solicitor) appeared on behalf of the respondent.

As has been stated, quantum was not at issue in this matter.

The Tribunal will now proceed to deal with the various tanks that were the subject of the appeal. The description of the tanks is set out in Appendix A to this judgment. The plan is Appendix B to this judgment and the album of photographs is Appendix C to this judgment.

The Tribunal thinks that it can deal with the matter best by dividing the tanks into three, viz:-

- (i) those which it is now conceded are exempt;
- (ii) those that appear prima facie, at least, to be used for containment or storage and
- (iii) those which, though admittedly part of the effluent treatment plant, are said, on behalf of the respondent, not to be exempt.

Those which are now conceded are as follows:-

29 to 49 and 64 to 71 (in relation to the milk processing activities);
10, 11, 12, 23, 24, 25, 26 and 28.

Those coming within the second category above comprise 1 to 7, inclusive; 21 and 22, 75 to 87 inclusive.

That leaves the third category, all belonging to the effluent treatment plant, numbers 17, 18 with which number 27 is grouped, 19 and 88.

Mr Richard Cooke S.C. made an opening statement on behalf of the appellants. Mr Pat O'Neill, Bachelor of Agricultural Engineering, who is chief engineer with the Kerry Group Plc, and Mr Patrick Barton, who holds a diploma in Dairy Science, and who is the service manager with the appellants, gave evidence.

At the outset, the Tribunal wishes to express its grateful thanks to all who were involved in the oral hearing, counsel, solicitors, valuers and the witnesses; the Tribunal was helped immensely by the conciseness and clarity with which submissions and evidence were presented and given. The Tribunal has no difficulty in accepting the evidence that was so ably and so fairly given on behalf of the appellants.

The Tribunal will deal with the third category first.

As regards the effluent treatment process, as its name implies, waste cannot obviously be dumped into the River Feale or there would be consternation, to say the least; similarly, the Listowel Urban District Council cannot take it into its sewerage works. It has to be treated. The Tribunal was told that the volume of waste effluent from the plant is comparable to that of a city of 250,000 people. The treatment plant, in the design of which Mr Pat O'Neill had a significant say, is a sophisticated one and has an operating cost of £1,000,000 a year. The effluent must be treated to a predetermined level of purity as stipulated by the local authority and the State prior to its discharge into the River Feale. Constant monitoring of the effluent is necessary at all times to comply with the strict conditions laid down by Law.

The stream of effluent from the factory flows into tanks (Nos. 23 to 26) where Ph equalisation or neutralisation takes place. This process is done by adding lime as a slurry mixed with the

effluent and also passing the effluent through lime chips. This treatment is necessary before bacterial development is encouraged in the effluent by means of oxygenisation and aeration.

Within the activated sludge process tanks (Nos. 10, 11 and 12), air is forced out through a herringbone layout of piping at the bottom of the tanks. While the air (oxygen) is travelling up through the effluent, a central large agitator churns up the liquid which is full of air bubbles and this facilitates the extraction of oxygen from the air.

The effluent settlement tanks (Nos 17, 18 and 27) allow the effluent from the activated sludge process to settle. Solids fall to the bottom of these tanks which are hoppers to force the solids to slide down to an outlet where they are sucked out. The thin clear liquid rises to the surface and decants over a weir into a channel on the side of the tank and is directed away.

The acidification - balancing tank (No. 19) produces bacteria to reduce the Ph as necessary to prepare the waste for the digester process. The tank in question is very large and has a capacity of one million gallons. It has three high powered agitators which churn the effluent continuously. These act to make the effluent in the tank one homogeneous mass, the Ph level in this tank is corrected by the addition of caustic soda. Nutrients are also added to help the production of bacteria.

With regard to the Flocor biotower (No. 88), this is a very large construction 78' wide by 36' long by 21' high. This is a rectangular construction made of corrugated plastic materials. Inside it are small components of plastic which are constructed like a honey-comb. Bacteria cling onto the plastic in this "honeycomb" construction. At the top of the tower are catwalks with hand rails. Effluent is sprayed into the tower and it splashes off 400 circular dishes and then flows by gravity to the bottom of the tower. It can be recycled by pipes on the outside of the tower back

to the top of the tower to repeat its journey within the tower. In the tower the bacteria acts to consume the food in the effluent.

Mr Cooke's essential submission in relation to these five tanks was that they were an integral part of the continuous process which was required to treat the waste. That one was not entitled to isolate a particular fixture and say that while others in the process might be exempt a particular fixture should not.

Mr O Caoimh's essential submission was that what happened in each of these tanks was something that was allowed to take place rather than "induced"; that it was a purely natural matter and that there was a case to be made under the valuation code for dealing with each "construction" one by one. In particular, he argued that Nos 17, 18 and 27 were merely settlement tanks where the process is one of gravity enabling the solids to float to the bottom of the tanks and that what was involved was a natural process of gravity.

The Law

What are rateable hereditaments are described in section 12 of the Valuation (Ireland) Act, 1852, as extended by section 2 of the Valuation Act, 1986 and, therefore, the categories of rateable hereditaments are those therein contained.

Prior to the enactment of the 1986 Act there were a number of cases which set out to define what was meant by "machinery". The Tribunal has found of particular assistance the judgment of Finlay P (as he then was) in the Beamish & Crawford Case (8th May, 1978 and approved by the Supreme Court on the 23rd July, 1980 (unreported)). In particular the learned Judge held that it was inappropriate in considering, to use a neutral term, any piece of equipment used in a manufactory to consider its component parts piecemeal for the purpose of designating some parts as machinery and some as not.

Now, without any doubt, the purpose of the amendment brought about 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.

The 1986 Act provides that 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 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 are rateable.

The Tribunal finds that there is no reality in attempting to isolate any particular "construction" that is part of the effluent treatment plant and that since the essential purpose of the treatment plant (as its name implies) is to bring about a change in the substance anything which is an integral part of the treatment plant must be exempt. In a sense the Tribunal is applying the same reasoning that was applied by the High Court and Supreme Court in the Beamish & Crawford Case as regards "machinery". However, if the Tribunal is wrong in this approach and is required to take each individual "construction" on its own (as contended for by Mr O Caoimh) then the Tribunal reaches the conclusion that while these tanks, without any doubt, have a passive rather than an active role in the process that takes place, nonetheless, the Tribunal believes that inducing a process of change means to cause or to bring about (whether actively or passively) a change. The only question for resolution is: does any particular construction play an essential

part in bringing about a process of change? If the answer to that is yes then it is entitled to exemption. In this regard, the Tribunal would accept that prima facie all constructions used for containment of a substance or for transmission of a substance are rateable and that the dichotomy between storage and inducing a process of change takes place at the next stage in attempting to resolve whether the construction is exempt or not but, applying that test the Tribunal is left in no doubt that these constructions are entitled to exemption.

Now to deal with those in the second category.

As regards some of these, for example, No 1 a method is in place to preserve the temperature of the fuel oil and it was faintly argued in relation to the water tanks that water was "treated" in them. But the Tribunal finds that no change was "induced" in the water. That deals with Nos. 1 to 7 inclusive. Nos. 21 and 22 are clearly whey storage containers.

The evidence established that Nos 75 to 84, inclusive, were all holding, recovery or dilution tanks and, once again, there was no question of "inducing a process of change" being involved in any of these. With regard to 85 and 86 these were clearly storage bins. No. 87 was an ash silo which had an element of machinery in it but it was conceded that the machinery was not rateable and the actual storage element of it is clearly rateable.

Mr Cooke did, however, submit that since all these were an integral part of the manufacturing process that went on in the complex and since no part can be removed or by-passed without disrupting the daily operation of the plant and bringing it to a standstill that they should be considered on that basis.

The Tribunal considers that this would be carrying the doctrine of "integration" too far and that each of these tanks falls to be assessed on its own and is rateable.

