

Appeal No. VA90/2/050

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

Midland Malting Company Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Malthouse Kilns, stores, grain silos and manager's house at Lot No.
15AaBa, Townland Garrycastle, ED Banagher, RD Birr,
Co. Offaly.
B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Mary Devins

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JUNE, 1991

By notice of appeal dated the 24th day of July, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,400 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that the valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and in particular the silos, bins and malting equipment are machinery and are not rateable within the meaning of these Acts.

By letter dated the 14th February, 1991 Mr Des M. Killen FRICS, IRRV, Director of Donal O'Buachalla & Co. Ltd., on behalf of the appellants said that the only matter at issue between the parties is the rateability of the Redlar Plant. He said that the Tribunal heard this case last year

and the evidence now being offered was the same as the evidence offered in the hearing of that appeal with the one exception in that the Redlar Plant is no longer used for "Kilning". Mr Killen said that the Tribunal had already ruled that the Redlar Plant is an item of plant as per the 1986 Act, and thus, it is agreed between the parties that the only matter in dispute is whether or not it is exempt from rating.

By letter dated the 7th March, 1991, Mr Peter F. Conlon, Staff Valuer, Valuation Office, on behalf of the respondent pointed out that the hereditament in question was the subject of appeal No. VA/89/178 on which the Tribunal delivered judgment on the 30th May, 1990 confirming the buildings valuation at £1,400. He said that it is agreed by the valuers on both sides that the buildings are physically unchanged between the operative dates of the two appeals. Mr Conlon said that he was informed by the appellant's agents that the appeal is limited to the rateability of the Redlar Malting Plant and that they would be adducing evidence that it is no longer being used for kiln drying grain.

Both parties indicated that they would be relying on the precis of evidence submitted in relation to the previous appeal heard by the Tribunal, Ref. Appeal No. 89/178, judgment delivered on the 30th May, 1990. A detailed summary of these precis was contained in that judgment from pages 2 to 19. A copy of that judgment is attached as Appendix "A" to this judgment. An additional precis was submitted to the Tribunal by Mr Patrick Finn, B.Sc. (Biochemistry), Quality Control Chemist, Midland Malting Co. Ltd., on behalf of the appellants on the 8th May, 1991. In this submission Mr Finn said that the business of the appellant is the production of malt for home use and export, from Irish barley grown on contract in the greater Midlands area. Mr Finn outlined the general process and described the Boby Plant, the germinating vessels, the Boby kiln, and the Redler/Seeger Plant. He also provided details of the malt production features at Midland Malting Co. Ltd. as follows; steeping, germination, kilning. Mr Finn said that a complete range of malt is produced - (1) Stout malt for home and overseas breweries; (2) Lager malt; (3) Distillers malt (peated and unpeated); (4) Pale ale malt. He said that the final moisture content of the malt at the end of kilning is in the range of 3-4%. After kilning the malt is removed to the malt maturation bins where it matures for approximately three weeks before despatch. In summary Mr Finn said that the malting process begins at the harvest when the green barley is selected for malting. This is followed by the drying, heating and incubation processes which eliminate dormancy and maximise germinative energy as fast as possible to produce malting barley. The malting barley is then processed in batches through all stages of malting. After the finished malt has been matured, it is blended and screened before being despatched to the customer. From green barley to finished malt, there is continuous careful monitoring of all

parameters by sophisticated computer controlled equipment and by managerial and operator supervision. Frequent sampling is carried out at all stages of the process, followed by testing in the quality control laboratory, to ensure that the highest quality malt is produced.

Mr Finn said that the entire complex at Midland Malting Co. Ltd. is one continuous integrated mechanical system of processing which has been designed and is used specifically to process green barley into finished malt. A copy of this submission is attached as Appendix "B" to this judgment.

Oral Hearing

At the oral hearing, which took place on the 10th May, 1991, Ms Margaret Nerney BL, instructed by Hoey & Denning, Solicitors, represented the appellants. Mr Donal O'Donnell BL, instructed by the Chief State Solicitor, represented the respondent. Also in attendance were Mr Patrick Finn B.Sc., Biochemistry, Quality Control Chemist, Midland Malting Co. Ltd., Mr Desmond Killen FRICS, IRRV, on behalf of the appellant and Mr Frank Gregg, District Valuer of the Valuation Office on behalf of the respondent.

Evidence was given by Mr Patrick Finn B.Sc., who is a Quality Control Chemist employed by the appellant at the Plant, the subject of the appeal, in Banagher, Co Offaly, and has been employed by the appellants since 1983. Mr Finn outlined the function of the Redlar Plant stating that it contained two "steeps" and two "germinating" vessels and a kiln. He said that the Redlar Plant ceased to operate as a kiln as and from August 1989 when a new Seeger kiln was installed for the purpose of increasing capacity and improving efficiency. He said that the heat plant which included the boiler and radiator in the Redlar Plant was connected to the new Seeger Plant but that the fan and furnace were not removed because they were out of date and it would be expensive to do so. He also said that the malt was taken from the Redlar vessels to the Seeger kiln by conveyors and that the Seeger unit was located beside the Redlar Plant. Mr Finn stated that the Redlar Plant was designed as a steep, germinating plant and kiln in 1974 and used as such up until August of 1989. No physical changes in the Plant were made when it ceased to function as a kiln. The boiler was disconnected from the hot air radiator and connected to the new Seeger kiln simply by disconnecting and reconnecting the pipework, thus leaving the old hot oil radiator in situ. The heat recovery unit was disconnected and partly removed leaving no such unit on the Redlar Plant which has no use for such a unit because it no longer functions as a kiln.

Mr Desmond M. Killen FRICS, IRRV, said that the steeps and germinating vessels in the Boby Plant at the appellant's premises and the steeps in the Redlar Plant are exempt as machinery

under section 7 of the 1986 Act or as plant under section 8 of the 1986 Act. He said that the Redlar Plant performs the same function now as the Boby Plant which is exempt and so also should the Redlar Germinating Plant be exempt. He submitted that the Redlar Plant was held not to be a building by the Tribunal in appeal No. 89/178; that it is not a kiln as in reference to section 8(1) of the 1986 Act and that it is plant used primarily to induce a process of change. He stressed that it was not used as a kiln since August 1989 and that the Seeger kiln, which is rated, replaced it. He said that the plant in the furnace area is inoperative and that the area in which the furnace is contained may detract from or may not affect the N.A.V. and has not been removed because of cost.

Mr Killen submitted and forcibly argued that the Rebus Sic Stantibus Rule applied to rateability as well as to valuation.

Counsel for the appellants referred to pages 45 and 46 of Appeal No. VA89/178 in which the Tribunal found that the Redlar Plant was not a building and should be exempted under reference 1 of the Schedule of section 8 of the Valuation Act, 1986 as plant used to induce a process of change. Ms Nerney in quoting the Mitcheltown Creamery v. Commissioner of Valuation case, Appeal No VA88/94-99 said that the primary purpose of the germinating vessels is to induce a process of change. She further submitted that the Seeger kiln took over the kilning function of the Redlar Plant which now has no kiln capacity and, accordingly, does not come within reference 2 of the Schedule to section 8 of the 1986 Act. She further argued that a tenant would not pay any more for the Redlar Plant because of the existence of a furnace and a boiler.

Mr O'Donnell submitted:-

1. that the plant has neither lost its identity, character or function as a kiln and that the question of its primary function being to induce a process of change does not arise.
2. that if it is a building or a kiln that it is rateable under the legislation.

He submitted that the Tribunal's judgment in VA89/178 took no decision as to whether a kiln could ever cease to be one. He defined a kiln as a chamber where a substance is dried or cooled and not a furnace from which the operation of drying or cooling is effected. The Redlar Plant was designed and built as a kiln therefore is still one as far as the chamber or germinating vessels in issue are concerned and the fact that such vessels are not now used for kilning purposes does not remove its function, its identity or its ability to be used as a kiln. He submitted, on the question on whether the Redlar Plant is a building within the meaning of section 12 of the 1852 Act is one of fact and law referring to the Cork Grain Company v. Commissioner of Valuation

and Cement 1960 v. Commissioner of Valuation I.R. 283. He further submitted that the Rebus Sic Stantibus Rule applies to matters of valuation rather than rateability and referred to volume 32 of the third edition of Halsbury.

Findings

Taking into consideration the submissions of the parties, judicial decisions and decision of the Tribunal referred to the Tribunal finds:-

1. That the Redlar Plant, designed from the outside construction to the inside installations and machinery, to be an integrated unit, is not a building for the purpose of the rating legislation.
2. That the Redlar Plant, although designed and used until August 1989 as a tri functional plant ceased to be used as a kiln after August 1989, after which time its function as a kiln was replaced by a new and separate plant, is not now a kiln for the purpose of category 2 of the schedule to section 8(1) of the Act of 1986.
3. That the interpretation, put forward by the appellants, of the applicability of the Rebus Sic Stantibus Rule to rateability is rejected and the Tribunal finds that the rule only applies to valuations.