

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

Gypsum Industries Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: (1) Mine, Waste of Pit & Waste of Mine at Lot No. 17ABC,
Townland of Derrynaglagh, E.D. Enagh, District of Carrickmacross,
(2) Mine & Land, Waste of Pit at Lot No. 1.2.3a.4, Townland of
Derrynascobe, E.D. Enagh, District of Carrickmacross,
(3) Mine, Workshop, Land and Waste of Pit at Lot No. 7C, 8ABE, 9
11, 12A&B, Townland of Drummond, E.D. Enagh, District of
Carrickmacross, Co. Monaghan
Seven Year Exemption for new mines

B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Joe Carey

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

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF JULY, 1993

By Notice of Appeal dated the 7th day of July, 1992, Mr. Frank Devlin of Battersby & Company appealed on behalf of the appellants against the determination of the Commissioner of Valuation in fixing rateable valuations on the above described hereditaments as follows:- (1) £300, (2) £300 and (3) £250

The grounds of appeal as set out in the Notices of Appeal are that "the second proviso to Section 12 of the Valuation (Ireland) Act, 1852 applies". The grounds of appeal were expanded on in a letter and memorandum attached to the Notice of Appeal. See Appendix 1.

The Property

The property consists of the Knocknacran mine at which mining began on the 10th January, 1990 following abandonment of the Drumgoosat mine on the 27th October, 1989. An investment of £10.5 million in the acquisition of new plant, building machinery and site preparation works together with an investment of £1.7 million in respect of the purchase of land necessary for carrying out the mining operations at Knocknacran has been made.

The mine is a large open cast Gypsum mine situated to the right of the Kingscourt to Carrickmacross Road. It is the only one of its kind in Ireland. Formerly Gypsum was mined by underground methods but this became uneconomical as the seam came closer to ground level. It is a modern gypsum mine in a rural location the output of which is said to be in the region of 300,000 tons per annum. There is a homogenising plant as well as garage and workshop, offices etc. The product is transported by lorry to the parent plant south of Kingscourt for processing into plasterboard etc.

Valuation History

The property was listed for 1990 revision by Monaghan County Council to value opencast mine and ancillary buildings for Gypsum Industries Limited. Following revision the total valuation was fixed at £2,768.80. This figure was appealed by appellants agents in February, 1990 to the Commissioner of Valuation. The R.V. was reduced at first appeal to £1,408.20. The appellants agent disputed the rateability of the mine under Section 12 of the Valuation (Ireland) Act, 1852 at first appeal stage.

Written Submissions

A written submission was received on the 16th November, 1992 on behalf of the appellants from Gerrard, Scallan & O'Brien, Solicitors. The written submission consisted of a summary of evidence and history of the mine to which were attached three appendices setting out technical data as follows :

Appendix 1. - The geological setting of the Permian gypsum and anhydride deposits in the Kingscourt district , counties Cavan, Meath and Monaghan.

Piers R.R. Gardiner and Peadar McArdle.

Appendix 2. - Copies of correspondence relating to the application for planning permission sought for the opencast mine.

Appendix 3. - Reports and Maps

The summary of evidence drew attention to the evidence contained in the appendices and in particular to the history of the mining in Kingscourt and the necessity to replace the underground mining with opencast mining.

A written submission was received from Mr. Michael Slattery, District Valuer in the Valuation Office at the time of the hearing. In the written submission Mr Slattery said that the issue of quantum was agreed. In relation to the issue of rateability Mr Slattery maintained that the Mine the subject of this appeal was not a new mine as contended by the appellants but an extension of an existing mine where only the method of extraction differed. In this context he referred to the letter from Gypsum Industries Ltd to the secretary Monaghan County Council in which it was stated that the planning permission was sought for "the development of an extension to the existing Drumgoosat Mine to extract and process Gypsum Rock by open cast mining". Mr Slattery stated that at inspection the workings/tunnels of the underground mine were clearly visible at the open cast mine. He referred to the case of **Irish Base Metals Ltd -V- Commissioner of Valuation** (1981) in which Judge Esmonde found in favour of the Valuation Office. The written submissions are attached to the judgment as Appendix 2 and 3

Oral Hearing

The oral hearing took place in Cavan on the 18th November, 1992 and continued in Dublin on the 6th January, 1993. The appellants were represented by Mr. Richard Cooke, S.C., instructed by Messrs. Gerrard, Scallan & O'Brien, Solicitors, and the respondent was represented by Mr. Aindrias O'Caoimh, B.L., instructed by the Chief State Solicitor. Mr. Patrick Hanratty, B.L. represented Monaghan County Council instructed by Wells & O'Carroll, Solicitors.

Mr. Cooke said in opening that the question to be decided is whether or not the mine under appeal is a new mine or an extension of an existing mine. If the Tribunal decides that it is the former, which he would prove to be the case in the course of the hearing, then the appellants shall be exempt from liability to be rated for a period of seven years as provided by Section 12 of the Valuation Act of 1852.

Mr. Cooke went on to read the precis of evidence submitted by the appellants. He said that the mine in Cormey was abandoned in 1959; Drumnagill was exhausted in 1989 and Drumgoosat

was also exhausted towards the end of 1989. He said that the gypsum in all of those areas, was extracted by means of sinking a shaft and tunnelling beneath the ground leaving gypsum pillars to support the roof or overburden. He referred to and read the planning application of the appellants which was accompanied by a letter dated December 1983 from Mr. C.M. O'Neill, Production Manager for the appellants. He referred to:

(a) **Comyn -V- Commissioner of Valuation 1946 I.L.T.R. 130 and 295** and

(b) **Irish Base Metals Limited -V- Commissioner of Valuation** stating that they were the only two cases relevant to the issues in the instant appeal.

He went on to say that it was necessary to obtain planning permission for any new development and the open cast mining proposed at the time of the planning application was a new development. He submitted that the test is whether the ore can be extracted by the same means as used in the existing process or if a new shaft must be driven to get the ore. If the latter, then it is a new mine. In the instant case it was unsafe to continue mining underground because gypsum columns would not support the overburden. It was not, therefore, possible to work in the old way and it was found that the only way mining could be achieved was to go to a new area, remove the overburden and expose the gypsum. The old shaft method was abandoned and a new mine at a new location by a different extraction method constitutes a new mine. He referred to Figure 7.1. of the appellant's precis to illustrate the reason for the change of mining methods. He said that the effective life of the mine was finished and that a new opening of a mine by open cast method, rather than sinking a new shaft, was necessary as this was the only way the gypsum could be reached. He stressed that the test of whether the seven year exemption applied is not whether the deposit is a new one but whether it could be extracted by the means previously used.

Mr. C.M O'Neill, who is a mechanical and electrical engineer and employed as Production Manger by the appellant company, explained, by reference to a coloured 6" map, the various mining leases held by his employers. He explained by reference to Appendix 3 of the appellant's precis the location of the Knocknacran mine relative to Drumgoosat and Drumnagill. He said that Cormey mine was abandoned in 1959 and Drumgoosat in 1989 when Knocknacran was opened in the latter part of 1989 after completing development and commissioning. He explained the "room and pillar" method of mining used at the closed mines and the method of open cast mining by terracing, i.e., the removal of the overburden, removal of the mineral in horizons and back filling the removed overburden into the void left when the gypsum has been removed. He said that the mining by open cast method at Knocknacran facilitated the mining of the gypsum remaining in the pillars, roof and floor left in the previous mines. He explained fully Figure 7.1 of the appellants submission concerning the composition of the overburden, stressing

that underground of the peat bog would be unsafe for underground mining. He explained Figure 7.2 of the appellants submission which shows the catacombed "room and pillar" pattern in the underground mine. The drawing also shows the brick pit location. Mr. O'Neill explained Figure 5.1 of the appellants submission which shows the rock processing and homogenising plant. Under cross-examination by Mr. Hanratty he agreed in referring to Figure 7.2 of the said submission, that the honeycombed underground area shows the last of the underground mine and that because of the existence of bog overlay a different method of extraction had to be found.

Mr. Hanratty referred *inter alia* to the Mines and Quarries Act of 1965, Section 3(1) (2) in which mines are defined and referred to Part 3, Section 32 for general requirements for mines as to the safety, health and welfare which does not apply to quarries. Mr. O'Neill agreed that the Drumgoosat mine did not have a shaft but a slope down into it. Mr. Hanratty also referred to Part 4 of the Mines and Quarries Act of 1965 which deals with safety, health and welfare of workers in quarries, and referred to Part 3 of the 1965 Act relating to the safety, health and welfare of workers in relation to mines. He said that the rules set out in Part 3 and 4 are for quarries and mines as envisaged by the Act. He submitted that quarrying is the extraction of a substance on the surface and mining is underground. Mr. O'Neill disagreed and said that mining is for minerals. Mr. Hanratty submitted that there were separate requirements for quarries and mines under the regulations and Mr. O'Neill said that a mining license was required for the open cast mining at Knocknacran. He explained that in his letter of December 1983, in applying for planning permission in which he used the words "extension to the existing Drumgoosat mine" he intended to convey that there was an existing mine. He said that the opening of Knocknacran meant a new operation, on a new site, and with new equipment, to everyone at the appellant's office. He said that the applicants had mining rights prior to 1983 and bought the land to enable them to mine by the open cast method. He agreed that his company was mining from the same geological deposit but argued that the method of extraction has changed making it a whole new operation. Mr. O'Neill agreed that the first time the word "new" was used was in relation to the appeal against Rateable Valuation and that they were not aware of the "seven year exemption" at the time of the planning application.

In reply to Mr. O'Caoimh, Mr. O'Neill said that he is now Production Manager and has worked for the company since 1966 and that he is a mechanical and electrical engineer. Mr. O'Caoimh referred to the introduction to the geological report, Appendix 1 of the appellant's written submission at page 3, where the word "quarry" is used in reference to Ballynacloe and at page 4 where the word "quarry" is also used in relation to initial production and the word "mine" is used in reference to Lisnabo and the words "open pit" are used with reference to what was later the

Drumgoosat mine. Mr. O'Neill said with reference to Figure 7.2 of the precis that the area outlined in brown is open cast and that which is outlined in green is exposed gypsum. He agreed that the geological descriptions were not disputed.

Mr. Kevin Cullen M.Sc, a geologist with 20 years experience, in reply to Mr. Hanratty, said that a quarry is a pit in which the overburden is stripped and that a mine is underground and that the test is the substance taken out of the ground. He said that the instant open cast mine is part of the same geological deposit as the closed underground mine, removing the same deposit by a different method from a different access. He said that if the same townland was used for open cast mining as tunnel mining, there would not be any issue and that the new access is more convenient but does not create a new mine. Mr. Cooke suggested to him that a coal mine is referred to as a "pit" which can be open or underground and that a mine gets its name from its entrance. He suggested that the subject mine was opened to extract gypsum, when the mine known as Drumgoosat was closed because gypsum was not winnable from the Drumgoosat mine and Mr. Cullen accepted the proposition.

In reply to Mr. O'Caoimh, Mr. Cullen said that he understood a quarry and an open cast mine blend together and that the latter is a quarry. He said that dolomite which is a mineral, needs a license and it is quarried. Limestone which is not a mineral does not need a license and it is quarried. He further said that unwinnable gypsum from the Drumgoosat entrance, winnable from another entrance or a different direction does not create a new mine. Mr. Cooke put it to Mr. Cullen that the subject mine is a new one because it gets into a deposit which cannot be got at from the old mine entrance and Mr. Cullen replied that if the same material is being removed then it is the same mine.

Mr. Michael Slattery, M.A., B.Comm. a Valuer with the Valuation Office, at that time, said that the subject hereditaments were listed for 1990 Revision by Monaghan County Council and following inspection he was satisfied that the subject mine was an extension of an existing mine. He referred to Mr. O'Neill's letter to the planning authority already referred to.

Mr. Hanratty submitted that the subject property is a quarry and that the distinction is not a semantic one but one made by the Act and the difference between mine and quarry is as understood by the man on the street i.e. if the work is on the surface it is a quarry and if it is underground then it is a mine. He said that Gypsum Industries were operating for many years and it became expedient to operate by the over ground method and applied for planning permission on the basis of an extension to an existing mine. He said that they had changed to

calling it a new mine when the appeal was processed. He said that if it is a quarry it does not qualify under Section 12 and he referred to **Irish Base Metals Limited -V- Commissioner of Valuation** Judgment given by Judge Esmonde on the 19th September, 1977 contending that the decision supported his submission that exemption did not apply because of the finding of fact that the underground and open cast mines were the same operation. He referred to the Mines and Quarries Act, 1965 Section 3(1) (2); to **Rex -V- Inhabitants of Sedgley** 2B and AD. 65 at pages 73 and 74; **Rex -V- Brettell** 3B and AD 424 at pages 426 and 427 and to **Darvill -V- Roper** which cases are referred to in the judgment of Judge O'Briain in **Comyn -V- Commissioner of Valuation** 1946 I.L.T.R... Mr. Hanratty submitted that if the Tribunal should find that the instant property is not a quarry but a mine, it is his submission that it is a continuation of an old mine extracting the same deposit by a different method. He referred to the planning application previously referred to, and dated December 1983. Mr. Hanratty said that Section 12 of the Act of 1852 does not use the words "new mine" but provides that no mines which have not been opened seven years before the passing of this Act shall be rateable until a term of seven years from the time of opening thereof shall have expired. He submitted that it has not been shown that the mine was open for seven years from any particular operative date. He said that the appellants must show that the mine was open for seven years and they have not done so and therefore are not entitled to the exemption. He further said that no case of abandonment has been made and that no case has been made that a mine has been reopened.

Mr. O'Caoimh in his submission said that quantum was agreed and that under Section 12 of the Act of 1852 the only issue is "is this a mine not opened for seven years?" He said that abandonment has not been claimed and that it is quite clear that the mine is not a new one but part of an existing one and that the Appellant essentially relies on Section 12 of the Act of 1852. He said that the leases refer to minerals "in or under the lands" and "in, on or under the lands" and that the Shirley lease of 1937 at page 1 permits digging, mining and quarrying. Mr. O'Caoimh said that he was adopting Mr. Hanratty's submission and the cases cited by him to support his case and that whether or not the operation carried on is mining or quarrying is a question of fact and not one of law. He further submitted that mining has gone on for over seven years and that the open cast activity is a continuation of previous mining activity. He referred to the planning application and said that some weight must be attached to it as it indicates the mind of the Appellant at the time the application was made.

Mr. Cooke, in his submission, said that there were two issues; is it a mine or a quarry? He is satisfied that it is a mine and relies on the decision of Judge O'Briain in the case of **Comyn -V- The Commissioner of Valuation** already referred to. He said clearly that the fact that the

method of mining used is open cast mining does not alter the matter and referred to the **Irish Base Metals -V- The Commissioner of Valuation** case. He said that he relied on the seven year period contained in Section 12 of the Act of 1852 which deals with the opening of a mine, and he is satisfied that it is the opening of a mine which took place a short time ago. He argued on the question as to whether or not the old mine and the open cast mine are one mine, saying that when one sinks the shaft and extends that shaft latterly to pursue minerals, and it becomes no longer possible to operate or becomes worked out and no further minerals are removable therefrom, then it ceases to be a mine because of exhaustion or because it cannot be carried on due to physical problems. If it becomes in such a case necessary to sink a new shaft then it is not a new mine but a new opening and it is immaterial whether this is done by shaft or open cast method. He said that the Commissioner has described it as an open cast mine and it is a new mine because for the first time it has been excavated by a new opening. The method of extraction is irrelevant. He said that the previous honeycombed method could not be worked further because of the nature of the overburden and therefore the new method of open cast mining was used as the mineral could not be extracted by any other method. He submitted that by reason of these facts the new opening constitutes a new mine and therefore the appellants are entitled to exemption under Section 12 of the Act of 1852. Mr. Cooke referred to the letter applying for planning permission of December, 1983 and said that if what was done was an extension of the mine no planning permission was necessary but this was an entirely new operation and needed planning permission and cited the planning permission which referred to the continuation of mining. He said that the granting of planning permission does not sustain the submission that some estoppel applied as in Monaghan County Council's submission. He suggested that Judge Esmonde's decision in the **Irish Base Metal** case already referred to, deals with all the case law and is in favour of the appellant. He said that in that case the tunnel to the underground workings from the open cast operations was an extension downwards from the open cast mine. And, that in this case the existing mine is incapable of further development and the new opening was made. On the question of whether or not it is a quarry or a mine, he said that he relied on the **Comyn** case already referred to, to sustain his argument that it is a mine and not a quarry.

Findings

The grounds of appeal are that the second proviso to Section 12 of the Valuation (Ireland) Act, 1852 applies. The relevant proviso reads as follows:-

"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".

The Appellants do not make the case that a mine has been abandoned but that the mine at Knocknacran is a new mine and that it is accordingly entitled to what has been referred to at the hearing as the "seven year exemption".

Monaghan County Council contend (a) that the operation is a quarry and therefore not entitled to the said seven year exemption or (b) if the Tribunal finds that it is not a quarry but a mine, then it contends that it is a continuation of the old mine by a different method of extraction at a different site entrance.

The Respondent similarly contends that it is either a quarry or a continuation of the old mine.

The first question therefore to be decided is, "Whether the subject hereditament is a mine or a quarry?" and the Tribunal has been referred to *inter alia* the Mines and Quarries Act, 1965; **The Comyn** case 1946 I.L.T.R. page 130 and 295. In the present case the Appellant, rather than sink a shaft to gain access to the gypsum underground which was not possible because of the terrain over ground, removed the overburden and commenced work in the open air. Previously, the gypsum was mined underground but covered over or roofed in from the open air. Following the reasoning laid down in the **Comyn** case and the cases referred to therein the Tribunal is satisfied that the Appellant's mine is operated by the employment of persons below ground albeit in the open air by means of open cast mining and therefore finds that it is a mine for the purposes of Section 12 of the 1852 Act.

The next question to be decided is whether or not the mine is eligible to enjoy the seven year exemption period provided in Section 12 of the 1852 Act. The recent history of the Appellant's mining operations appears to be that the Cormey mine was closed in 1959; Drumnagill was exhausted in 1989 and Drumgoosat closed in November, 1989. The Appellants realised that they could not continue mining underground by the "room and pillar" method because the physical features of the overlaying ground or overburden rendered it unsafe to do so. In recognition of this fact they applied to Monaghan County Council in 1983 to mine the gypsum deposits at Knocknacran by means of the opencast method by removing the overburden and extracting the gypsum in what has been called, horizons. Mr. Cooke argued that the test to be applied to ascertain entitlement to the "seven year exemption" is not whether the mine is a new one but whether the mineral can be reached and extracted by the means used previously and that if it is no longer possible to extract the mineral through the same shaft, all lateral mining having been

exhausted, that the mine is then finished or worked out. If a new shaft opening becomes necessary or as in the instant case, the overburden is removed, to give access to the mineral, then he contends that it is a new mine and as in this case the Appellant is entitled to the "seven year exemption".

The Tribunal has also been referred to the judgment of Judge Esmonde in the **Irish Base Metal** case in which, inter alia, the English case of **Elias -V- Snowdon State Quarries Company** is cited, where at page 466 Lord Selbourne states, "when a mine or quarry is once open, so that the owner of an estate impeachable for waste may work it, I do not consider that the sinking of a new pit on the same vein or breaking ground in a new place on the same rock is necessarily the opening of a new mine or a new quarry". In **Re: Chaytor 1900 Ch** the issue was whether the proposed working of a third seam could be regarded as the same mine and it was held that it could not, although held under the same title as the two previously worked seams. This was also despite the fact that it was proposed to work it in conjunction with, and as an extension of one of the two previously worked seams.

In the subject hereditament the minerals are not in a separate vein but rather are a further extension of the original mine, reached now by means of opencast mining methods, and the Tribunal so finds as a fact. Once it became difficult or indeed impossible to mine the seam by bore mining methods it was decided to extract the minerals by opencast mining. It is clear, at the time of the planning application in 1983, that Mr. C. M. O'Neill, who was then Works Manager for the Appellant company, in his letter dated December, 1983, which accompanied the application, referred to "the extension of the Drumgoosat mine", that it was in the minds of the applicants that they were applying to extend an existing mine by a different extraction method. Also in the planning memorandum of Mr. Geoffrey Walton, Consulting Mining and Engineering Geologist, at page 5 he states that "the proposed opencast mining of the eastern sub-area of the Knocknacran deposit will enable recovery of the gypsum remaining in the structural pillars, roof and floor of the previous underground workings. The site may therefore be seen as a form of extension to the existing Drumgoosat operations". It is clear that the intention was to continue extracting gypsum from the closed Drumgoosat mine by removing the pillars, roof and floors of gypsum remaining and proceeding by opencast mining.

The Tribunal having considered all of the evidence both oral and written finds that the mining of gypsum at Drumgoosat by pillar and room method is part of the same operation continued by opencast mining at Knocknacran and that they constitute one mine within the meaning of Section

12 of the Valuation (Ireland) Act, 1852 and therefore, holds that the Appellant company is not entitled to the exemption claimed under Section 12 of the Valuation (Ireland) Act, 1852.