

Appeal No. VA93/3/005

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

F.M.C. International Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory at Map Reference: 2L, Townland: Wallingstown, Ward: Caherlag, R.D.: Cork
Upper, Co. Cork

Quantum - Contractor's basis of valuation

B E F O R E

Henry Abbott

S.C. Chairman

Veronica Gates

Barrister

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 1994

By Notice of Appeal dated the 26th day of July, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,430 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are:-

- "(i) The valuation is bad in law
- (ii) The valuation is excessive and inequitable".

The Property:

The property consists of a chemical factory in the Little Island Industrial Estate, Co. Cork engaged in the manufacture of a micro crystalline cellulose, Avicel, from the raw material wood pulp. Avicel is the inert binder/excipient which holds together the active ingredients in tablets - both vitamins and pharmaceuticals. F.M.C. has 70% of the world market. Production is 7,500 to 9,000 tonnes per annum; the new extension increased capacity by 1,500 tonnes per annum.

Valuation History:

The property was the subject of an appeal to the Tribunal, VA88/249, where the Tribunal determined the rateable valuation at £1,100. Some further items were also appealed to the Tribunal, VA89/88, increasing the valuation to £1,185. This appeal was withdrawn.

At 1991 Revision the following changes were valued:-

- 3 storey extension to Avicel production block
- plant room beside
- debugging room
- additional yard areas
- additional horse power.

Written Submissions:

A written submission was received from Mr. Desmond Killen, F.R.I.C.S., I.R.R.V., of Donal O'Buachalla & Company, on behalf of the appellant on the 11th January, 1994.

In the written submission Mr. Killen set out the matters which were in dispute, described the subject premises, its valuation history and set out his calculation of the rateable valuation on the subject premises on:

- (a) the comparable basis
- (b) N.A.V./R.V. basis

These are set out as Appendix 1 to this judgment.

A written submission was received from Mr. Terence Dineen, District Valuer, with 19 years experience in the Valuation Office, on behalf of the respondent on the 13th January, 1994.

Mr. Dineen, in the written submission, described the property, valuation history and set out his calculation of the rateable valuation as follows:-

Buildings: AVICEL Production

Ground Floor:	3.5 metre clearance	1,905 sq.ft. @ £5.00 = £ 9,525
First Floor:	2.5 metre clearance	1,905 sq.ft. @ £4.00 = £ 7,620
Second Floor:	6.0 metre clearance	1,905 sq.ft. @ £5.00 = £ 9,525
One Storey Stairs:	12 metre height	140 sq.ft. @ £6.00 = £ 700
Plant Room:	6 metre height	409 sq.ft. @ £2.50 = £ 1,022
Debagging Room:	7 metre height	454 sq.ft. @ £2.50 = <u>£ 1,135</u>
		£29,527

£29,527 x 0.63% = £ 186.00 R.V.

Add old valuation = £ 995.00

£1,181.00

Say, £1,180.00 R.V.

Absolute:

Concrete Area }		
Chipped Area }		
Steel legs }	Agreed Valuation =	£ 8.00
Concrete }		
Additional horse power	1088 @ 0.5p	= <u>£ 54.40</u>
	Total	= £ 62.40
	Add O.V.	= <u>£190.00</u>
		£252.40

Say = £250

Following adjournment of the appeal to the 25th and 26th May, 1994, Mr. Dineen supplied two additional submissions to the Tribunal.

In the first additional submission dated 12th May, 1994, Mr. Dineen set out further details of why the comparable basis, that is a price per square metre method, should be rejected by the Tribunal. He suggested that the fixing of R.V.'s was a two-stage process both of which involved comparisons. He said that this led to a lot of confusion regarding the word comparison as in the I.M.I. case. He said the comparisons can be considered in two stages; stage one to fix a rent/N.A.V. on the subject, stage two to produce a conversion factor or percentage from N.A.V. to R.V..

Mr. Dineen said that when Section 5 of the 1986 Act is considered, stage one and stage two comparisons can both relate to properties which are comparable and of similar function. However, for stage one comparisons, properties whose valuations have been made or revised within a recent period are not required or necessary, i.e. it is irrelevant regarding those comparisons when the valuations were struck.

In relation to the second stage of the comparisons (ratio applicable) Mr. Dineen argued that as this point was not being argued in these cases, stage two comparisons were irrelevant and therefore, valuations made or revised within a recent period were irrelevant. He said that this was why attempts to relate new N.A.V.'s and R.V.'s to valuations in the lists, not themselves based on N.A.V. evidence, was flawed.

Mr. Dineen then argued as to why the Contractor's Basis should apply.

This additional submission also gave details of the Contractor's Basis of valuation and of the comparison, Cara Partners, Factory at Wallingstown, Cork Upper, which had been adduced by Mr. Dineen in evidence.

Mr. Dineen's second additional submission dated the 13th May, 1994 contained extracts from publications relating to the Contractor's Basis of valuation.

Oral Hearing:

The oral hearing took place in City Hall, Cork on the 19th day of January, 1994 and on the 25th and 26th days of May, 1994 and included an inspection of the premises together with similar premises. VA93/3/006 - F.M.C. International Limited and VA93/3/004 - Henkel Ireland Limited where heard more or less contemporaneously and the inspection of premises and discussion of methods of valuation referable to Capital Cost assisted the determination of the appeals in all cases.

Mr. Des Killen F.R.I.C.S. F.S.C.S, I.R.R.V. a Fellow of the Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited with 32 years experience as a Valuer appeared for the appellant and Mr. Terence Dineen, District Valuer with 19 years experience in the Valuation Office appeared for the respondent. Evidence was given along the lines of the précis and the Tribunal had the benefit of inspecting the premises and seeing at first hand the outline of the processes carried on there. The Tribunal also heard

evidence from Mr. Hegarty, the Engineer of the appellant in relation to horse power and Mr. Hegarty assisted in relation to the cost of the extension to be valued.

Mr. Dineen's view that the cost was substantial was reflected in Mr. Hegarty's evidence and also the inspection confirms that the premises is constructed as a heavy duty chemical plant the housing, specifications and quantities of which would greatly exceed the standard factory space data.

As a result of Mr. Hegarty's confirmation it was possible for Mr. Killen and Mr. Dineen to agree the absolute figure at £250.00.

This left the valuation of the buildings, the only outstanding issue, together with the subordinate issue of whether the ratio of R.V. to N.A.V. was to be 0.5% or 0.63%.

Mr. Dineen opined that in the light of expenditure revealed by the 26th May, 1994 that the valuation of the buildings ought to be £265.00. Mr. Killen reminded Mr. Dineen of his own proposal of £186.00 in his précis and took issue in relation to the valuation of the stairs in the building.

Mr. Killen's argument was that the premises occupied by Cara Partners had been recently valued and that if the respondents were arguing that a Capital Cost method be applied to determine the valuation in relation to the subject then they should do so with reference to the standards applicable to Cara Partners. The Cara Partners Capital Cost was £4.5m and the derivation of the relevant Capital Cost indicated a figure close to that sum. Mr. Killen argued that the rateable valuation estimate of £650.00 equated to a capital value of approximately £1m. Mr. Dineen argued that Cara Partners had been incorrectly valued and said that the respondent was influenced by older valuation methodologies when fixing this valuation. Both valuers agreed that there was no rental market which indicated the rents which might pass for structures of the type of the subject. Both parties agreed that there was a standard of £2.25 or so for standard warehouse space which was reflected in market prices. The hearing included argument which was raised in relation to other cases regarding the applicable ratio, whether the applicable ratio of R.V. to N.A.V. should be 0.63% or 0.5%. The valuation of the Showerlux premises was considered and there was considerable debate about the Capital Cost method of valuation.

Findings:

- (1) The Tribunal consistent with its findings in the **VA92/4/029 -M.F. Kent & Company -v- Commissioner of Valuation** finds that the appropriate percentage ratio of R.V. to N.A.V. is 0.5%.
- (2) The Tribunal finds that the approach of the Valuers in relation to value has been correct, reflecting market values which are realistic having regard to the Capital Value of the premises.
- (3) The premises involve a standard of construction as regard the strength of the structure that far exceeds the requirements of normal factory space, and have a role in maintaining the stability of chemical plants which are assembled in the vertical direction as well as in the horizontal, and the strength of the building cannot in valuation terms be "apportioned" over to the plant itself so as to reduce rateable valuation.
- (4) The Tribunal finds that the indication of a standard of £2.25 for standard factory space indicates that the factory space in the Cork area produces a reasonable rate of return on capital to ensure a continued supply of same.
- (5) In the circumstances, it is appropriate that similar rates of return on capital would be applied to the subject premises and the approach of the respondent in relation to same is basically correct.
- (6) The decisions of the Tribunal in **VA93/3/004 - Henkel Ireland Limited** and **VA93/3/006 - F.M.C. International Limited** and the earlier **VA89/0/042 & VA90/3/015 - Janssen Pharmaceuticals Limited** represent an evolution of the Tribunal 's thinking in relation to the law in this area. In the Janssen Pharmaceuticals Limited appeal the Tribunal held:-
 "The Tribunal does not ... rule out the validity of taking a capital cost approach based on relevant calculations in certain cases. However, when this latter approach is being taken by the party it may only be pursued by the production of actual construction costs and appropriate vouching data or equivalent professional evidence."
- (7) The valuation of Mr. Dineen originally proffered is the more preferable especially as further argument could be made for an increase based on cost on the assumption of

a reasonable rate of return for capital evidenced in the treatment of Henkel and the other F.M.C. International case.

- (8) The N.A.V. as calculated by Mr. Dineen ought to be adjusted by 0.5% to have a rateable valuation of £147.00.
- (9) The total valuation of the buildings is therefore £1,142 and the absolute valuation on an agreed basis £250.00.