

Appeal No. VA93/3/041 - 43

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

**Bantry Terminals Limited**

**APPELLANT**

and

**Commissioner of Valuation**

**RESPONDENT**

RE: VA93/4/041 (R.V. £1,085) - Oil Terminal (part of) and Grounds at Map Reference: 2,  
Townland: Close, E.D.: Whiddy, R.D.: Bantry, Co. Cork

VA93/4/042 (R.V. £1,085) - Oil Terminal (part of) and Grounds at Map Reference: 1B,  
2B, 3E, Townland: Kilmore, E.D.: Whiddy, R.D.: Bantry, Co. Cork

VA93/4/043 (R.V. £1,330) - Oil Terminal (part of) and Grounds at Map Reference:  
1 ABC 2.4CD, Townland: Reenaknock, E.D.: Whiddy, R.D.: Bantry, Co. Cork  
Quantum - Agreements at previous revisions

**B E F O R E**

**Paul Butler**

**S.C. (Acting Chairman)**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 17TH DAY OF MAY, 1994**

By Notices of Appeal dated the 11th day of August, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of £1,085 (VA93/3/041), £1,085 (VA93/3/042) and £1,330 (VA93/3/043) in respect of the above described hereditaments.

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

"the valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also".

**The Property:**

The property comprises the Whiddy Oil Terminal developed by Gulf Oil Corporation in the mid to late 1960's. It comprises tank storage facilities as follows:-

- 12 x 600,000 barrel crude oil tanks
- 2 x 500,000 barrel ballast water tanks
- 2 x 100,000 barrel fuel tanks
- 1 x 50,000 barrel diesel fuel tanks

At present 200,000 tons of crude oil are held in storage as part of the national strategic reserve at Whiddy. The total capacity of the crude oil tanks at Whiddy is in excess of 1 million tons.

The tanks are connected by pipe lines to the deep water jetty destroyed by an explosion in 1979. The buildings are unchanged from 1968 and comprise control building, workshops, stores, pump houses, etc..

**Valuation History:**

**1969:** The Oil Terminal was first valued. The rateable valuation was agreed at £20,000 apportioned over the three townlands:

Close:	£ 3,600
Kilmore:	£ 2,400
Reenaknock:	£14,000

The deep water jetty, being outside the townland boundaries, was not valued.

**1978:** Following representations by Lisney & Son, agents for Gulf Oil, the rateable valuation was reduced by agreement to £15,000. The 25% reduction took account of changing economic circumstances and a substantial decline in throughput. The new valuations were:

Close:	£ 2,700
Kilmore:	£ 1,800
Reenaknock	£10,500

**1979:** Following the disaster the valuation was reduced by agreement to £5,000:

Close:	£ 900
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Kilmore: £ 600  
 Reenaknock: £3,500

**1982:** The valuation in the townland of Reenaknock was reduced from £3,500 to £2,500, leaving a total rateable valuation of £4,000:

Close: £ 900  
 Kilmore: £ 600  
 Reenaknock: £2,500

**1986:** The valuation was further reduced by agreement to £3,500:

Close: £ 600  
 Kilmore: £ 600  
 Reenaknock: £ 800  
 £1,500

In the case of the first 3 valuations, the occupier column in the Valuation Lists was amended to 'Vacant'. The Irish National Petroleum Corporation was entered as the occupier in the case of the £1,500 valuation in the townland of Reenaknock.

**1987:** The agreed valuation following on the 1987 First Appeal was £3,500:

Close: £ 600  
 Kilmore: £ 600  
 Reenaknock: £1,500  
 £ 800

In the case of the first 3 valuations, the occupier column in the Valuation Lists was entered as 'Vacant' and the valuations were entered in the half-rents column in the Valuation Lists. The £800 valuation was entered as £250 buildings and £550 half-rents with Irish National Petroleum Corporation as the occupier. All tanks were empty at this stage with the exception of the diesel oil tanks which contained c. 1,400 tons of oil.

Appeals by Cork County Council to the Valuation Tribunal on the grounds: *"Failure to revise increase and update to current levels the valuation of the holding and to take account of the 1986 Act"*, were later withdrawn.

Reference VA88/329 - 331.

**1990:** 3 tanks were in use for the storage of crude oil with 1 tank in use for storage of diesel.

<u>Tank No.</u>	<u>Quantity/gals</u>	<u>Max. capacity/gals</u>
204	18,356,443	21,738,400
211	17,457,063	21,738,400
402	18,746,188	20,180,000
407	441,214	1,692,500

No change was made to the total rateable valuation of £3,500. The valuation was apportioned:

Close:	£1,085
Kilmore:	£1,085
Reenaknock:	£1,330

At First Appeal no change was made to the total rateable valuation of £3,500.

However, the valuation in Reenaknock was adjusted as follows:

	<u>Bldgs</u>	<u>Half-Rents</u>	<u>Total</u>
At Revision	£550	£ 780	£1,330
At First Appeal	£180	£1,150	£1,330

**Written Submissions:**

A written submission was received on the 15th April, 1994 from Mr. Roy Donovan of Lisney on behalf of the appellant.

Mr. Donovan gave details of the historical development of Whiddy Oil Terminal to date. He said that it had initially been developed as a facility for super tankers. He said that this business dramatically reduced between 1975 and 1978 and that the commercial viability of the terminal had been called into question. He said that the disastrous explosion and fire in 1979 had destroyed the jetty and left the terminal inoperable for commercial purposes.

Mr. Donovan said that the subject premises had been left unoccupied until June 1986 when the State took over the entire facility from Chevron and set up Bantry Terminals Limited as a subsidiary company of Irish National Petroleum Corporation for the purposes of managing the abandoned facility. This company, he said, embarked on a vigorous world wide marketing campaign to secure a tenant for the facility who, of course, would also be required to bring the jetty back to the standards required by the various statutory bodies.

These efforts proved unsuccessful and in 1990 the Government decided to store the national "emergency strategic reserve" of crude oil at Whiddy as the Iraq/Kuwait crisis intensified. For this purpose a programme was put in place to bring a sufficient tankage into commission to store 200,000 tons of crude. This is an ongoing programme, he said, which on completion will have the necessary five tanks available to satisfy the requirements of the Government. On the 10th November, 1990, he said, the full reserve of 200,000 tons was in storage here.

Mr. Donovan said that a special existing licence to allow the use of the damaged jetty has expired after its 6-month life and the existing planning permission to develop the jetty will expire in 1994.

Mr. Donovan said that because of State ownership there was no formal lease reserving a rent which would be *prima facie* evidence of value as no other potential tenant came forward in spite of intensive world wide marketing. He said that, therefore, he was using rates for similar long term bulk storage in the U.K. as a comparison. He cited Rotterdam where bulk storage was available at £9 per tonne per annum. He also gave an example in Tilbury Dockland Area in London where big bulk storage was available at £6 per tonne including loading and unloading costs. He said that loading, unloading and waste usually accounted for £1 per tonne leaving a net cost of £5 per tonne per annum for storage.

He said that taking into account the now disadvantaged circumstances of the Whiddy facility a rent at the rate of £5 per tonne would seem reasonable. He said that on the basis of the national emergency strategic reserve amounts of 200,000 tonnes at £5 per tonne would yield a gross rent of £1 million per annum.

Mr. Donovan then deducted for operating costs, as set out in the accounts which were attached to his submission, of £777,000 per annum. This yielded a net annual value of £223,000 per annum which after the deduction of £27,000 for rates produced a net profit of

£196,000 which he said he had used as the basis as being the net annual income. He set out his calculation of the rateable valuation as follows:

Tenants' Share

Taking Tenants' share of surplus @ 20% = £39,000

Leaves £157,000 available for rent.

N.A.V. say £150,000

R.V. £750

Rateable Valuation

The factor being applied to the net annual value in this area is 0.5% and applying this for estimate of net annual value say £150,000 gives a rateable valuation of £750 apportioned over the townland as follows:

Close	£300 absolute
Kilmore	£ 50 absolute
Reenaknock	£300 absolute
	£100 building
<b>Total</b>	<b>£750</b>

A written submission was received on the 19th April, 1994 from Mr. Liam Cahill, an Appeal Valuer, on behalf of the Commissioner of Valuation.

In his written submission, Mr. Cahill described the property and gave a detailed valuation history of the subject premises from its development in 1969 to date.

Commenting on the appellant's grounds of appeal, Mr. Cahill said that the level of usage at Whiddy had increased substantially since 1987. He said that following the invasion of Kuwait in 1990 the storage facilities were upgraded to allow the holding of part of the national strategic reserve. He said he understood the total expenditure was in the region of £2 million. He said that the appellant company was now seeking a substantial reduction in rateable valuation over the agreed 1986 and 1987 levels.

Mr. Cahill said that significant expenditure by the Irish National Petroleum Corporation on the upgrading of Whiddy had added to the letting value of the terminal. He said that, indeed, it could be argued that the rateable valuation should have been increased over the 1986 and 1987 levels to take account of these improvements.

He set out his calculation of the net annual value on the subject premises as follows:

Capacity Tank No.'s 204, 211, 402 & 407		
65 million gals @ 5p/1,000 gals:	=	£3,250
Add for service + personnel jetties:	=	£ 70
Buildings:	=	<u>£ 180</u>
Total:	=	£3,500

Apportioned over the 3 townlands:

	<u>Buildings</u>	<u>Absolute</u>
Close		£1,085
Kilmore		£1,085
Reenaknock	£180	£1,150

The valuation of £3,500 is unchanged from 1987 First Appeal when the Terminal was almost totally unused. It is submitted that the valuations are fair and reasonable.

Mr. Cahill said that when arriving at his estimate of valuation he had had regard to the Judgement of the Valuation Tribunal in the case of *VA88/11 and VA88/263 - Irish Oil Refining Plc V Commissioner of Valuation* and on the Judgement of Mr. Justice Kingsmill-Moore in *Roadstone Limited V Commissioner of Valuation [1961] I.R. 239* and of Mr. Justice Barron in *Rosses Point Hotel V Commissioner of Valuation [1987] I.R.*

**Oral Hearing:**

At the oral hearing which took place in Cork on the 27th April, 1994 Hugh O'Neill S.C., instructed by Messrs. Arthur Cox & Company, Solicitors appeared on behalf of the appellant.

The Respondent was represented by Aindrias O'Caomh, Barrister-at-Law, instructed by the Chief State Solicitor.

Also present were Mr. Roy Donovan of Messrs. Lisney & Company, Mr. Kevin Heapes, Mr. Rory O'Shea and Ms. Mary Spollen, all of the appellant company and Mr. Liam Cahill of the Valuation Office.

In his opening submissions, Mr. O'Neill explained that the Whiddy Island Terminal had been established for the purpose of trans-shipment of oil into the European market. To counteract its poorish location, the company used 'super tankers', a trend which was followed and eventually surpassed by its rivals, resulting in the virtual isolation of Whiddy Island from 1975 onwards.

Mr. O'Neill said that an explosion in 1979 effectively destroyed the jetty and meant that the facility remained idle until 1986 when it was taken over by the State and the appellant company was formed as a subsidiary of the Irish National Petroleum Corporation.

From 1986 onwards, repeated and fruitless efforts were made to find a tenant for the facility.

Mr. O'Neill explained that in 1990, as a result of the war in Kuwait, the State decided that it should have its own oil reserve, and, using a special licence, necessary under the Dangerous Substances Act because of the damaged jetty, three tanks on the terminal were filled with crude oil.

Mr. O'Neill submitted that without this special license it would have been impossible to unload oil and that the facility was not commercially viable and was therefore not comparable to the facility at Whitegate.

He further submitted that the previous agreements made between the parties had been made when the situation seemed much more optimistic.

Mr. O'Donovan estimated the rent of storing oil in Whiddy at £5.00 per tonne, which equated to that of the Tilbury facility and explained that while the latter was in a much superior location, the fact that Whiddy had to be used for the National Reserve accounted for a rent slightly over the odds.

Mr. O'Donovan said that the failure of the market situation accounted for his change of estimate of the value of the subject hereditament *viz a viz* earlier agreements.

He stated that Whiddy Island was unique in that it was the only facility with no commercial access and that the State could be its only occupier.



Mr. O'Caomh submitted that the valuation placed on the hereditament down through the years referred to it in its actual state, taking into account its particular problems and disadvantages.

He further submitted that the valuation of £3,500 stood in 1988 and in 1989 and that it was not the appellant but Cork County Council who had listed the property for revision in 1990, when there was an actual change in the use of the property.

Mr. O'Caomh adverted to the fact that while the oil reserve is being stored in the three best tanks on the facility, there is in progress a five tank improvement plan.

He submitted that the subject was and is a storage facility, not a refinery or manufacturing concern, and that it was now and had been previously valued as such.

**Findings:**

In spite of the fact that both parties, in arriving at their respective assessments of R.V. of the subject, appear to have taken into account only portion or portions of the whole, the Tribunal must view the hereditament in its entirety and attempt to assess firstly N.A.V. on the basis of what a hypothetical tenant would pay in rent.

It is common case that between 1986 when the appellant company was formed by the State as a subsidiary of Irish National Petroleum Corporation and 1990, despite strenuous efforts to secure a tenant for the facility, none could be found.

The under utilisation of the facility and its particular problems due to the almost complete loss of the jetty in 1979, would seem to have been considered by the respondent in the instant appeal and in the earlier revisions between 1979 and 1990.

The Tribunal has heard evidence of the upgrading of five tanks, apparently as a result of the Government's decision in 1990 to store part of the National Strategic Reserve of crude oil at Whiddy. While it fully accepts the evidence in relation to the special requirements as to licences in order to use the damaged jetty, it seems to the Tribunal that the situation of the subject, while certainly not buoyant, is not any worse than that pertaining in 1986 and 1987 and may be even slightly improved.

The Tribunal is conscious of the fact that assessment of N.A.V. of the subject hereditament is unusually difficult. It does seem, however, that common sense was applied when the R.V. of £3,500 was arrived at by agreement, in 1986 and again in 1987.

In the absence of comparable letting values, the Tribunal has had regard to the agreements of 1986 and 1987 and does not see any compelling reason to go behind these.

In all the circumstances therefore the Tribunal affirms the decision of the respondent herein.

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