

Appeal No. VA94/1/017

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

**Ballygowan Spring Water**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Factory & Land at Map Ref: 1CDF, Townland: Castle Demesne (Part of), E.D. Newcastle Urban, R.D. Newcastle, Co. Limerick  
Quantum - Location

**B E F O R E**  
**Henry Abbott**

**S.C. Chairman**

**Paddy Farry**

**Solicitor**

**Patrick Riney**

**F.R.I.C.S. M.I.A.V.I.**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30TH DAY OF AUGUST, 1995**

By Notice of Appeal dated the 4th day of May, 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £545.00 on the above described hereditament.

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

- "(1) the valuation is excessive and inequitable.
- (2) the valuation is bad in law."

**The Property:**

The property is a modern purpose built bottling plant located in a park land setting beside the town of Newcastle West. There are two access points, one directly from the town square and another access off Church Street. The offices have a brick finish on the exterior. There are 17 marked car spaces. There are 4,033 square feet of offices, 20,328 square feet of production cum storage area with 6 metre eaves, a service block of 1,660 square feet and the new bottle store with a 10 metre clearance to eaves. There are concrete butt walls and insulated cladding on the remainder walls and roof. The construction is steel frame with no internal pillars.

**Valuation History:**

The plant was valued in 1987 for the first time. The R.V. was set by the Commissioner of Valuation at £300.00 and on First Appeal no change was made to the valuation. The devaluation was as follows:-

Office	4,033sq.ft.	@	£3.35 p.s.f.	
Production/Storage	20,328sq.ft.	@	£2.00 p.s.f.	6m eaves
Service Block	1,660sq.ft.	@	£1.85 p.s.f.	
Gas Tank			2 tonnes }	
CO <sup>2</sup> Tank			4,750 gals }	NAV = £1,200

Following a revision request in 1992 by Limerick County Council the new high stack store was valued and the R.V. increased from £300.00 to £545.00. This was appealed but no change was made at First Appeal. It is against this determination of the Commissioner of Valuation that an appeal lies to the Tribunal.

**Written Submissions:**

A written submission was received on the 25th November, 1994 from Mr. Alan McMillan, A.R.I.C.S. an Associate of the Society of Chartered Surveyors and a Director of Donal O'Buachalla & Company Limited on behalf of the appellant. In his written submission, Mr.

Mc Millan described the property as comprising a factory, offices and warehouse with accommodation as follows:-

			<b>Sq.ft</b>	<b>(Sq.m)</b>
<b>(a)</b>	Factory	136' 9" X 150' 0"	= 20,512	(1,906)
	Workshops etc. excl. ESB s/stat		1,750	( 163)
<b>(b)</b>	Offices (1st Floor) Incl. Recept. area		3,081	( 286)
<b>(c)</b>	Warehouse	168' 0" X 150' 0"	= <u>25,200</u>	<u>(2,342)</u>
	<b>Total Floor Area</b>		<b>50,543</b>	<b>(4,697)"</b>

Mr. Mc Millan said that the only issue in contention in this appeal was the net annual value on the subject premises. He set out his estimate as follows:-

"	Offices	3,081 sq.ft.	@	£2.50 psf	£ 7,702
	Factory (incl. plant rooms)	22,262 sq.ft.	@	£1.70 psf	£37,845
	Warehouse	<u>25,200 sq.ft.</u>	@	<u>£1.70 psf</u>	<u>£37,800</u>
	or, Overall	50,543 sq.ft.	@	£1.65 psf	£83,347

NAV £83,347 @ 0.5% = £417

Say, £420"

He said that an analysis of the respondents valuation of £545.00 devalued at £2.16 per square foot overall or almost equivalent to top Dublin values which he felt was unsustainable. To support his valuation on the subject premises Mr. Mc Millan offered eight comparisons of industrial premises within the Limerick and Tralee area as summarised below:-

**(1) Factory at Ballysimon Road, Limerick.**

Formerly Atari Computers. Devalued as follows:-

Offices	14,630 sq.ft.	@	£1.75
Factory/Wareho.	<u>26,489</u> sq.ft.	@	<u>£1.22</u>
Or Overall	41,114 sq.ft.	@	£1.41 psf

**(2) Industrial Unit at Marina Complex, Cork City.**

Beamish & Crawford. Premises recently and completely refurbished factory being part of former Ford/Dunlop Complex. Devalues as follows:-

Production Area	£1.55 psf
<u>Offices/Canteen</u>	<u>£2.50 psf</u>
Overall	£1.66 psf

**(3) Factory at Courtstown Industrial Estate, Little Island, Cork.**

Analysis:-

Offices/Canteen	1,385 sq.ft.	@	£3.00 psf
Production	16,886 sq.ft.	@	£1.70 psf
Yard	<u>14,000</u> sq.ft.	@	<u>£1.86</u> psf
Or, Overall (Buildings Only)	18,271 sq.ft.	@	£1.86 psf

**(4) Warehouse at Ballysimon Road, Limerick.**

ESB Regional Distribution Industrial Headquarters. R.V. £550.00.

Analysis of NAV:-

Warehouse	37,700 sq.ft.	@	£2.25
Offices etc.	3,134 sq.ft.	@	£3.00

**(5) Warehouse at Clash East, Tralee, Co. Kerry.**

Lot 3A.3A.4A.5A 7/2 Clash East. R.V. £265.00.

31,143 sq.ft. @ £1.68 psf (NAV)

**(6) Warehouse at Clash East, Tralee, Co. Kerry.**

Combines Fruit Distributors. Lot 4M Clash East (pt. of). R.V. £100.00.

Analysis:-

Overall (with offs.)	9,619 sq.ft.	@	£2.00 psf
(yard say, R.V. £15)			

**(7) Warehouse at Cabra, Thurles, Co. Tipperary.**

Liam Carroll Transport Limited.

Devaluation:-

Offices	£2.50 psf
Warehouse	£1.75 psf
<u>Garage/Stores</u>	<u>£1.50 psf</u>
<hr/> Overall	£1.78 psf NAV

**(8) Industrial Unit at Lisburnny, Nenagh, Co. Tipperary.**

SFADCo Factory - formerly Esmere Limited.

Devalues:-

Production (incl. Canteen and Strong Room)	20,000 sq.ft.	@	£1.69
Offices (2 floors)	<u>2,256 sq.ft.</u>	@	<u>£2.00 psf</u>
Or, Overall	22,256 sq.ft.	@	£1.72 psf

A written submission was received on the 2nd November, 1994 from Mr. Brian O'Flynn a District Valuer with 19 years experience in the Valuation Office on behalf of the respondent. In his written submission, Mr. O'Flynn described the subject and its valuation history and grounds of appeal. He set out his calculation of the Net Annual Value and rateable valuation on the subject premises as follows:-

				<u>N.A.V.</u>
Office	4,033 sq.ft.	@	£3.35 psf	= £ 13,510
Production/Storage	20,328 sq.ft.	@	£2.00 psf	= £ 40,656
Service Block	1,660 sq.ft.	@	£1.85 psf	= £ 3,071
Gas Tank			2 tonnes }	
CO <sup>2</sup> Tank			4,750 gals }	= £ 1,200
New Store - 10m eaves	24,540 sq.ft.	@	£2.25 psf	= <u>£ 55,219</u>
				<u>£113,656</u>
N.A.V.	£113,656	@	0.5%	= £568.28
Add Motive Power	430 h.p.	@	0.5p/hp	= <u>£ 21.50</u>
				£589.78
				Say = £590.00"

Mr. O'Flynn gave details of four comparisons within the area and these are summarised below:-

- (1) **Kostal (Ireland) Limited, Lot 37Bab, Abbeyfeale West, Abbeyfeale, RD:  
Newcastlewest.**  
Offices at £3.35psf and production at £2psf.  
R.V. £890.

**(2) Castlemahon Food Products Limited.**

1990 First Appeal. Buildings total area 81,195 sq.ft. at £1.77psf average.

RV = £825.

**(3) Pallas Foods, Lot 8c, Gortboy, Newcastle Urban, RD: Newcastlewest.**

Offices at £2.25psf and production at £2psf.

RV = £170.

**(4) Lot On 9a Castlematrix, Rathkeale Urban.**

1993 Revision. Warehouse at £2psf. RV = £55.

**Oral Hearing:**

The oral hearing took place at City Hall, Limerick on the 7th day of December 1994 and resumed at the appellant's premises on 13th day of April 1995. Mr. Alan McMillan appeared on behalf of the appellant and Mr. Brian O'Flynn appeared on behalf of the respondent.

In advancing his case for a rateable valuation on the subject of £420, Mr. McMillan made the following points:

- (1) demand for large industrial buildings is notoriously poor in the area
- (2) Newcastlewest is 26 miles from Limerick
- (3) he felt that the spring well was being valued in relation to the property.

Mr. McMillan indicated that the original factory building already rated was essentially a warehouse. Evidence was given that the premises was the warehouse area for Ballygowan Spring Water and that the source in the site of the premises had to meet stringent EC regulations. It was conceded that Ballygowan was a very strong trade name and that the name Ballygowan was now registered as linked to the site of the wells. Mr. McMillan submitted however, that the premises was being valued and not the trademark.

By reason of the appeals pending in certain of the respondent's comparisons, same could not be taken into consideration. Mr. O'Flynn had argued that a certain Tone of the List had been established in relation to the letting values of industrial premises in and around the Newcastlewest area. As this tone seemed to differ from that suggested by the comparisons offered by Mr. McMillan, which were generally somewhat further afield (apart from the appellant's adjacent factory space) the Tribunal decided to adjourn the hearing for inspection.

The subject, together with the originally valued premises of the appellant (which perhaps, unfortunately for comparison purposes was valued on the old square metre basis) and Pallas Foods and Castlematrix premises, were inspected by the members of the Tribunal on 13th day of April 1995. The hearing resumed for a short time in the subject premises. The inspection revealed a warehouse premises of high eaves height of standard construction in a state of very high maintenance and decoration. Office space was relatively cramped but well appointed and varied sufficiently to serve the needs of customers and staff. Of the two other premises inspected Pallas Foods offered the best comparison on the basis that it was still in the occupation of the owner who occupied same when rated and on the basis that it was reasonably within the vicinity. The Tribunal was of the view that the Pallas Food's premises offered a more intense set of possibilities in terms of manufacturing and had to comply with strict food manufacture and handling requirements. The Pallas Foods premises was also much smaller. Mr. O'Flynn referred to *Ryde on Rating 14th Edition Section E[154]* in relation to who may be the hypothetical tenant. This chapter refers to the judgment of Lord Esher MR in *R v. London School Board 17 QBD 738, CA*:

"The real question is how the value is to be ascertained. The enquiry is not as to what rent is paid by the actual occupier. The mode of finding out the value is laid down in the Act, and it is to ascertain the rent which a tenant (not *the* tenant), taking one year with another, might reasonably be expected to pay; it is also implied that where the owner occupies he is to be considered as if he were a tenant. The directions given by the Act are equivalent to saying that one must look at all possible tenants, and the phraseology does not exclude an owner who himself occupies the premises.... It is said that the School Board ought to be excluded because it can never obtain any beneficial interest from its tenancy; but it can be a tenant; it



has a duty to perform which may induce or force it to be a tenant. It follows therefore, that it would be wrong to exclude the School Board from the list of possible hypothetical tenants, whether it is in the position of owner or in that of occupier."

The Tribunal considers that this is a fair expression of the law and is consistent with the approach of the Tribunal to the valuation of outlying industrial premises in provincial locations. The Tribunal appears to have had this approach in mind when it analysed many of the comparisons available through passing rents and sales in rural areas as arising from obsolescence rather than any real market process in its decision in *VA94/3/014 - NEC v. Commissioner of Valuation*. The Tribunal therefore considers that the occupants of the subject premises should be taken into consideration in analysing the range of hypothetical tenants available to take the subject premises on a rental basis. However, the Tribunal must be careful to avoid valuing the undoubted value added arising from market promotion of Ballygowan mineral water. Restraint is also indicated by the fact that many other mineral waters have sprung up in Ireland seeking to emulate the market success of Ballygowan in recent years and that obviously similar supplies may be obtained elsewhere in the country to satisfy strict EC criteria regarding quality. Similarly, no evidence was led so as to indicate the absolute uniqueness of the quality of the water. Indeed, quite the contrary evidence was given by the Operations Manager of the occupier, Mr. Reid in that he asserted that the major portion of value added attributable to Ballygowan is due to its tremendous marketing success. The Tribunal has considered the influence which Mr. McMillan's far ranging comparisons might have on its decision and has also attempted through inspection to bring to influence the NAV of comparable premises within the area so as to reflect any local 'Tone of the list'. The Tribunal considers that Pallas Foods is probably the most and only relevant local comparison available to the Tribunal apart from the initially constructed building of the occupiers adjacent to the subject. The Pallas Foods factory is a registered food factory complying with strict EC standards and also is not as extensive as the subject property. The Tribunal would, therefore expect a reduction for quantum and quality could be obtained for the subject premises below the factory warehouse rental of £2 per square foot for the Pallas Foods premises. The Tribunal notes Mr. McMillan's agreement with the respondent's figures for area.

Having regard to the foregoing and all the comparisons and evidence offered the Tribunal fixes the valuation of the subject at £500 and so determines.