

Appeal No. VA94/2/006

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

Wyeth Medica Ireland (For Polaroid Ireland Limited)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory (unfinished) and Land at Map Ref: 4B, Townland: Littleconnell, E.D. Oldconnell,
R.D. Naas I, Co. Kildare
Beneficial occupation

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF FEBRUARY, 1995

By Notice of Appeal dated the 15th day of July, 1994 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £2,200.00 on the above described hereditament.

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

- "(1) the rateable valuation of the property is excessive, inequitable and bad in law.
- (2) the property was incapable of beneficial occupation on the relevant date."

The Property:

The property is situated in the Townland of Littleconnell on the north-eastern outskirts of Newbridge town about three-quarters of a mile from the town centre. The property fronts on to the Newbridge/Naas Road which until the opening of the Newbridge By-pass comprised the main Dublin Road although site access is off an adjoining secondary road which leads to Athgarvan and Kilcullen.

The property at first appeal inspection comprised a modern pharmaceutical factory with ancillary offices, warehouses and service buildings on a site of about 40 acres, 28 acres of which were put to waste of buildings and surrounds. It was laid out in four separate but interconnecting rectangular shaped blocks, three of which were single storey the remainder extending to three storeys. There were also two small single storey detached service buildings. The three storey building consisted of a new tableting factory constructed since the "relevant date" and does not form part of the valuation. Built in the period May, 1992 to May, 1993 the property replaced a single storey structure demolished as part of the redevelopment work on the site. The three single storey blocks and the service blocks were all part of the original factory premises and constructed from 1980 onwards, although the latter blocks had been extended. These were built by the then owners, Polaroid Ireland Limited, as an ultramodern camera and film factory but the project was abandoned shortly after start-up and the factory closed before coming to full production. The original administrative office building has been retained by Wyeth Medica, the camera factory converted to a packaging plant, the warehouse block retained as such and as outlined above the film factory demolished and replaced by a larger multi-storey tableting factory.

Construction is mainly of concrete block walls with concrete brick outer leaf under flat roofs and concrete floors. Doors and windows are mainly glazed aluminium. Office areas have false ceilings and central heating installed. Externally the circulation and car parking areas are finished with tarmacadam.

The accommodation is as follows:-

"Administrative Offices	5,109m ²	54,995 sq.ft.
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Packaging Bldg. (former Camera Factory)	7,128m ²	76,728 sq.ft.
Warehousing	8,186m ²	88,118 sq.ft.
(Demolished Film Factory)	4,612m ²	49,649 sq.ft.
Service Buildings	812m ²	8,741 sq.ft.
Link Buildings	230m ²	2,475 sq.ft.
Water Tanks		Total 600,000 gals
Oil Tanks		Total 25,000 gals
Boilers	2 No. B + E Boiler Ltd. 1979, 2,000 K.W.	
	1 No. Hartley + Sugden BO-8102, 1992, 2,050 K.W.	
Motive Power		8 X 25 K.W.
		4 X 25 K.W.
		2 X 7.3 K.W.
Car-Park (incl. Security Hut)		394 spaces"

Valuation History:

The property was first valued as a new factory for Polaroid Ireland Limited in 1980 at a valuation of £4,400. This figure was reduced to a rateable valuation of £665.00 at 1980 First Appeal. The reduction was due to part of the factory building being unfinished at 1st December, 1980.

The property was relisted and at 1981 revision the valuation was increased to R.V. £2,400 to take account of the completed film factory block. This figure was appealed and at 1981 First Appeal the Commissioner of Valuation fixed the valuation at £2,200. This valuation was appealed to the Circuit Court but dismissed by Judge Frank Roe with no order as to costs.

The property was again listed for revision in 1983 but no change was made to the valuation. The property was listed for 1992 revision with a request to "revalue the property, the valuation considered excessive and inequitable by the company". No change was made to the valuation at revision or at First Appeal. It is against this determination of the Commissioner of Valuation of £2,200 that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 3rd November, 1994 from Mr. Frank O'Donnell, a Principal of Frank O'Donnell & Company, Valuation, Rating and Property Consultants. In his written submission, Mr. O'Donnell described the premises and its valuation history. He said that in December, 1991 a contract was signed for the sale of the property to Wyeth Medica Ireland. The sale closed on the 16th March, 1992. He said that in choosing the Newbridge complex, Wyeth took a number of factors into consideration, one of which was the location of the property on the main road between Dublin on the east coast, Limerick/Shannon in the midwest and Cork in the south. He said that the site is also within easy reach of Dublin city, which means it was possible to attract skilled and professional employees from the city if necessary.

The background to the decision by Wyeth Medica Ireland to choose the Newbridge site and a more detailed insight into the company's activities were documented in a statement by Brian Coughlan, Financial Controller Wyeth Medica Ireland which was supplied to the Tribunal. Mr. O'Donnell said that having closed the sale in March, 1992, Wyeth immediately commenced a radical reconstruction programme before they could consider occupying the complex. This reconstruction was necessary in order to render the property suitable for the purposes for which it was bought, that is the production, packaging and distribution of pharmaceuticals. He said that each of the five main buildings underwent major reconstruction. In fact, he said that on the relevant date of August, 1992 the complex could only be likened to a construction site, sealed off as such, with approximately 500 workmen on site. He said the complex was effectively handed over to the building contractors to the extent that theoretically they were the ones in occupation from the 18th March, 1992 to 1st May, 1993. During that period access to the site was controlled by the contractors and any person seeking access had to have prior consent of the contractors. He said that he carried out a joint inspection with Mr. Malachy Oakes, from the Valuation Office on the 12th May, 1992. He set out in detail the condition of the buildings as they appeared on that date and as set out below:-

Block 1 - Administration

While the external image of this building remained largely unchanged, the interior was completely gutted in order to pave the way for major refurbishment, commenced in March, 1992 and finally completed in December, 1992.

Block 2 - Packaging (Former Camera Block)

This block housed the Camera Factory when originally occupied by Polaroid. As it was never fully completed by Polaroid, the building was never valued and the position as it applied at 1981 Appeal still prevailed in 1992 when the property was purchased by Wyeth. As a camera factory, the building was totally unsuited to its proposed use. Therefore this building also underwent complete refurbishment which commenced in March, 1992. This block was completed in January, 1993.

Block 3 - Tableting (Former Film Block)

Originally this building comprised a single storey Film Block. Again work commenced here in March, 1992. The existing building was totally demolished and replaced by a new three storey Tableting Block. This building was not completed and ready for occupation until 1st May, 1993.

Block 4 - Warehouse

During the occupation of Polaroid this building was also in use as a Warehouse. Re-construction commenced in March, 1992 and was preceded by the demolition of a portion of the building. The building was not completed until May, 1993.

Block 5 - Utilities

This block houses the compressors and boilers and various pipe networks which service the complex. Work on this block commenced in March, 1992 and was completed in May, 1993.

In relation to the appropriate rateable valuation on the subject premises, Mr. O'Donnell said that in his view the rateable valuation of £2,200 should be struck out as it was impossible for the premises to be occupied at the revision date. He said that properties by long established practice in the Valuation Office and other professional companies were valued "*rebus sic stantibus*" or "in its actual state" as quoted in Section 11 of the Valuation (Ireland) Act, 1852. He said that in view of the fact that all of the buildings at the above complex were undergoing major reconstruction on the relevant date they were as a consequence totally unsuitable for occupation of any description. He said that it was not possible by any stretch of the imagination for Wyeth to trade from said premises as at 12th August, 1992 nor indeed at any stage from the 18th March, 1992 to 1st May, 1993. He said Wyeth was not deriving any benefit from the property during said period.

A written submission was received on the 4th November, 1994 from Mr. Denis Maher, a District Valuer with 19 years experience in the Valuation Office on behalf of the respondent. In his written submission, Mr. Maher described the property and set out its accommodation in detail. Mr. Maher set out the valuation history on the subject premises as set out above. In relation to the valuation of £2,200 on the subject premises, Mr. Maher had the following comments to make:-

- (1) He said that as redevelopment work was in progress at the time of issue of revision the valuation of £2,200 as determined at 1981 Circuit Court appeal was left intact for that year as it was felt that the precedent set by the *Harper Stores Limited -v- Commissioner of Valuation* findings applied to the property.
- (2) He said that the valuation on the building should reflect an appropriate amount by way of an interim valuation relevant to the purchase price paid.

To this end he said, while recognising that some buildings were demolished, there were also buildings in existence here which had not previously been valued and as the value of these were contained in the purchase price paid they should likewise be contained in the overall

valuation. He said that taking into account the total floor area of 280,700 square feet which considering the old valuation of £2,200 and adopting a fraction of 0.5% reflected a net annual value of £440,000, or a devaluation of about £1.55 per square foot to include an amount for boilers, horse power, tanks and car parks. This was not excessive. Mr. Maher said that in relation to the subject premises, the work was completed in varying stages between December, 1992 and May, 1993. He said that in letting the old valuation stand pending redevelopment, the Commissioner of Valuation had followed the trend set in the 1985 revision of the Black & Decker Factory in Kildare and the 1980 revision of the Ferenka Factory in Limerick. He said that both large industrial units had been vacant for a number of years and were subsequently redeveloped into smaller units. He said that the OV on these premises had stood until the new valuations on the smaller units came into place.

Oral Hearing:

At the oral hearing which took place in Dublin on 14th day of November, 1994. Donal O'Donnell, Barrister-at-Law instructed by Messrs. Coughlan & Co., Solicitors appeared on behalf of the appellant. The respondent was represented by Aindrias O'Caomh, S.C. instructed by the Chief State Solicitor. Also present were Mr. Frank O'Donnell of Messrs. Frank O'Donnell & Company, Mr. Brian Coughlan Financial Controller Wyeth Medica Ireland, Mr. Michael Walshe, a Mechanical Engineer with Project Management Limited, Mr. Denis Maher and Mr. Malachy Oakes both of the Valuation Office.

Mr. Brian Coughlan, in referring to his written submission, stressed the very stringent requirements necessary before a pharmaceutical company could acquire an N.D.A.B. licence. He explained that such a licence allowed a drug company to market pharmaceuticals on the home market and in non-E.U. countries. Mr. Coughlan stated emphatically that the works carried out by Wyeth on first acquiring the property were essential. Among the reasons for Wyeth's choice of this property in the first place were its location, the fact that it was a developed industrial site with the usual ancillary facilities and that there were some buildings "in situ". Mr. Coughlan explained, however, that production could not begin until the property had been appropriately reconstructed.

Mr. Michael Walshe elaborated on his written submission and in reply to Mr. O'Caoimh's cross examination said that apart from the building formerly known as Block 3 which had been demolished, most of the works had been on the interior of the buildings with some extensions and additions.

Mr. Frank O'Donnell stated that parts of the hereditament, viz. those formerly known as Block 2 and part of Block 4 had not been previously valued although included in a request for valuation in 1983. Block 3 was not included in the instant valuation as it had been demolished at the relevant date.

Mr. O'Donnell gave evidence that at the time of inspection the subject property was not capable of occupation. He further stated that in his many years as a valuer, he had no experience of such a property being valued. He referred the Tribunal to the comparisons set out in his written submission, where a nil valuation had been applied.

Mr. O'Donnell said that the Black & Decker property put forward as a comparison by Mr. Maher was not valid. That property he said had been divided into fifty units and most of the tenants had moved in when the property was listed in December, 1984 for the 1985 revision.

Mr. Malachy Oakes in the course of examination in chief by Mr. Donal O'Donnell, confirmed that he had inspected the premises at revision stage on the 28th May, 1992, that only construction works were being carried on at that date and that he had formed the view that the valuation should be reduced.

Mr. Denis Maher gave evidence that when as Appeal Valuer, he had inspected the premises in July, 1993 the building works were complete. In reply to Mr. Donal O'Donnell, Mr. Maher said that he did not attempt to re-value the property as he had not seen it in its reconstruction stage. He did concede however that with the benefit of Mr. Oakes records he would have found it difficult to diverge from Mr. Oakes's opinion as to valuation.

Submissions:

Mr. Donal O'Donnell submitted that the decision in the case of *Harper Stores Limited -v- Commissioner of Valuation (1968)I.R. 166* was one based on its own facts. The instant case could be distinguished from Harpers where there was merely a temporary break in continuous occupation, whereas the appellants had never been in occupation before the reconstruction and building works began. The length of time in which the property in the Harper's case was vacated was very much less than that in this case.

Mr. O'Donnell referred to the judgement of Mr. Justice Henchy in the Harper's case p.p. 170 *et seq.*, and submitted that unlike the Harper's property which was reconstructed to make it "more suitable" for trading purposes, the subject property was reconstructed so as to enable trading to begin.

On a sliding scale from a building in the course of construction to a temporary cessation of business for building works, Mr. O'Donnell contended that this case was close to a new building being constructed. It was obviously not "a mere variation of the mode of use" as referred to in page 173 of Mr. Justice Henchy's judgement in the Harper's case.

Mr. O'Donnell opened to the Tribunal the case of *Arbuckle Smith & Company -v- Greenock Corporation (1960) I All E.R.* and submitted that this case was comparable as the works carried out by the appellants were for the sole object of putting the premises into a state fit for occupancy by the appellants and one which would allow them to obtain their essential trading licence.

Mr. O'Donnell cited "**Ryde on Rating**" paragraph 8, (97 and paragraphs 98 to 108) and submitted that the works carried out in the subject premises were with the sole object of making the premises fit for the only use contemplated by the appellants in purchasing the property.

He referred also to Kay and Jacobson in "**Rating and Valuation in Northern Ireland**" and submitted that no cessation of use temporary or otherwise could be said to have occurred if no use at all had ever been made of the subject premises.

Mr. O'Donnell concluded that as the premises were not capable of beneficial occupation at the relevant date, a nil valuation should be placed on them.

Mr. O'Caomh submitted that in view of the fact that the rating law in Ireland differs from that in England, most of Mr. O'Donnell's authorities should be disregarded.

In support of this argument, Mr. O'Caomh referred the Tribunal to Mr. Justice Keane's "**Law of Local Government in the Republic of Ireland**" wherein it was stated that actual occupation is not necessary in Irish rating law. Mr. O'Caomh referred to the provisions of Section 124 of the Poor Relief (Ireland) Act, 1838 and submitted that in Ireland legal occupation is sufficiently definitive of "immediate use and occupation".

Mr. O'Caomh, while accepting that there were factual differences between the Harper case and the subject, submitted that before the appellants took possession of the hereditament there were in place buildings capable of occupation and in the Valuation Lists. These buildings were being used in the course of reconstruction to "enhance the appellants' trading prospects". The difficulties in assessing letting values during reconstruction were taken into account by Mr. Justice Henchy in the Harpers case and Mr. O'Caomh submitted that in attempting to achieve a reasonable valuation of the subject premises, the respondent's valuer could look to the past and obviously the present, whatever about the future.

Mr. O'Caomh pointed out by reference to page 175 of Mr. Justice Henchy's judgement in the Harper case, that while the valuation date was August, 1992 the rating year to be considered was 1993.

He submitted in conclusion that the distinction between Irish and English law was vital. The appellants while not in actual and personal occupation were in legal occupation and use.

In his concluding submissions, Mr. O'Donnell pointed out the seeming anomaly in Mr. O'Caoimhs acceptance of the Harper case as an authority but only in parts viz. those parts that advanced the respondent's arguments.

Mr. O'Donnell submitted that far from evidence being given by the respondent in support of his valuation, the evidence and opinion of the respondents witness Mr. Denis Maher would seem to have been set aside in an attempt to draw some new conclusion from the evidence of the appellants.

Determination:

The Poor Relief (Ireland) Act, 1838, provides for the making and levying of rates on every occupier of a rateable hereditament.

Sufficient evidence has been put forward to show that the appellants were without doubt owners and occupiers of the premises in their actual state in August, 1992. What must be decided is the question of whether that occupation was rateable.

The property at the relevant date was undoubtedly a hereditament i.e. one capable of inheritance. For the hereditament to be rateable it must also be capable of beneficial occupation.

The appellants, through their agents the building company, were in the "immediate use" of the property within the meaning of Section 124 of the Poor Relief (Ireland) Act, 1838. Further the Tribunal feels that even applying the criterion of Lord Justice Farwell in **Rex -v- Melladew (1907) 1 KB 192**, and approved in **London County Council -v- Hackney Borough Council (1928) 2 KB 588** and in **Arbuckle Smith & Company Limited -v- Greenock Corporation (1980) 1 All ER 568** the parties to be rated did have such use of the tenement as is reasonable to infer was within their contemplation in taking it. In other words it can be reasonably assumed that when the appellants purchased the property in 1992, it was for the express purpose of carrying on their particular business and inherent in that intention was their undertaking of works necessary for that end.

Noting Mr. O'Caomh's submission that Irish Law differs from English Law in relation to the question of actual occupation, the Tribunal is satisfied that the occupation of the appellants satisfied the three remaining criteria of rateable occupation in Irish law, c.f. "**Law of Local Government in the Republic of Ireland**", Keane J. p.283, viz:-

- (a) The occupation was obviously exclusive
- (b) The occupation was of value or benefit. The property had the benefit of a planning permission. It could not in any way be described as a wasting asset. Even as reconstruction works were ongoing the hereditament was of value and indeed could be reasonably expected to be of appreciating value.
- (c) The occupation was not transient.

An unfinished new building cannot be said to be in beneficial occupation. While the Tribunal accepts that the reconstruction works carried out by the appellants were essential for their particular needs, that reconstruction, no matter how seemingly radical, did not negate the essence of rateable occupation.

The facts in this case can be distinguished from those in *VA93/3/041 - Perrinvale Properties Limited*. The property far from being in an advanced stage of dereliction, was in an active stage of reconstruction, with the benefit of appropriate planning permission.

Having decided that the appellants were in rateable occupation of the premises, what remains to be determined is the state of the hereditament at the relevant valuation date. Was it in such a state of reconstruction that it would be impossible to let it on a tenancy from year to year? Mr. O'Caomh has conceded the difficulties for a valuer in looking to the future to arrive at an assessment of valuation. Accepting then that the valuer in assessing the premises "rebus sic stantibus", might well have looked to the past and obviously to the present, it is difficult to see how the premises, as inspected and valued in August 1992, in their inchoate state, might have the same rateable valuation as the premises when previously valued in 1983, even allowing for the possible inclusion of certain parts of the hereditament which do not seem to have ever been valued. It is all the more difficult to accept the respondent's valuation since it

has been confirmed that the building now known as the "Tableting Factory" and built on the site of an earlier single storey structure which was demolished in or around March, 1992 does not form part of the valuation.

In all the circumstances and in light of all of the evidence adduced the Tribunal is of the opinion that the correct rateable valuation of the subject hereditament as of August, 1992, is £400.00 and so determines.