

Appeal No. VA95/1/004

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

Tegral Building Products Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory and grounds at Map Ref: 2a.6, Townland: Bleach, Ward: Athy West Urban, UD:
Athy, Co. Kildare

Quantum - Relevant comparisons

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Veronica Gates

Barrister

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JANUARY, 1996

By Notice of Appeal dated the 5th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,760 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 comprises an extensive industrial complex dating back to 1937 with recent additions and extensions, set back from the public roadway on a canalside site with adjacent rail spur. For valuation purposes the premises is divided into four main lots:-

Lot 2a.6 Bleach
Lot 8Aa Bleach
Lot 8Ab Bleach
Lot 3G Bleach.

Recent Valuation History:

In 1990/4 Revision the valuation was increased to rateable valuation £1,900. At First Appeal the valuation was reduced to £1,760 and 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 2nd day of January 1996 from Mr. Alan McMillan, a Director of Donal O'Buachalla & Company Limited and an Associate of the Society of Chartered Surveyors on behalf of the appellants.

In his written submission, Mr. McMillan described the background to the subject appeal, its valuation history and said that the matters in dispute were the appropriate NAV and rateable valuation of the buildings. He described the subject as located on the outskirts of Athy with access from the Castlecomer/Kilkenny road. Access from the public road is shared with Tegral Metal Forming Company.

Mr. McMillan described the property as comprising the following categories:-

a) Original factory

Built in 1937. Headroom is approximately 12 feet to 13 feet to the underside of the lattice steel trusses. The asbestos cladding and roof material is generally lined though not insulated. Floor area: 125,418 sq.ft.

b) Stocksheds and stores

Comprises a variety of steel framed - mostly portal framed - industrial buildings with low concrete or concrete block walls. Headroom range is 13 feet to 15 feet. Floor area: 61,245 sq.ft.

c) Remainder

- (i) A series of many inferior workshops, stores, plant rooms etc, mostly of considerable age and poor quality. Floor area: 26,894 sq.ft.
 - (ii) Sundry first floor and mezzanine accommodation: 5,891 sq.ft.
- Total: 219,448 sq.ft.

Mr. McMillan said in valuing the subject premises regard was had to the site which was long and narrow and without road frontage. He said that the site was substantially overdeveloped and highly congested. Access was shared. In relation to the buildings Mr. McMillan described in 1937 factory as obsolete in terms of modern industrial and manufacturing needs with low headroom and poor floor clearance. He described the stocksheds and stores as providing accommodation which was generally serviceable but of modest quality and finish. In relation to the remainder he commented that these buildings are generally older and of limited quality and utility and that demand for complexes as large, concentrated and old as the subject was extremely limited.

Mr. McMillan attached a schedule of comparisons to his written submission and supplied details of all these comparisons. The schedule supplied is attached to this judgment as Appendix 1. He set out the basis of his estimate of rateable valuation as follows:-

a)	Factory	: 125,418 sq.ft. @ .50p = £ 62,709
b)	Stocksheds	: 61,245 sq.ft. @ .80p = £ 48,996
c)	Sundries	: 26,894 sq.ft. @ .50p = £ 13,447
	[Equivalent to 60p psf overall]	NAV = £125,125
	RV @ 0.5%	= £ 625 plus Misc. (agreed) : £300
	Total RV	= £925.

A written submission was received on the 2nd day of January 1996 from Mr. Des Feehan, a District Valuer with 33 years experience in the Valuation Office on behalf of the respondent.

In his written submission Mr. Feehan said that the valuation in dispute was the £1,460 attributed to the buildings. He said that £300 in relation to miscellaneous items was agreed. He said that the location of the subject factory had a number of advantages:-

- a) It is served by a rail line, on which cement is transported from Irish Cement, straight to silos at the factory.
- b) The river Barrow runs to the rear of the factory. Water is used in the manufacturing process. The water borne waste then goes to an effluent treatment plant before discharging into the river.

He said that Tegral have been located at Athy since 1936, employing 250 people, mainly in the manufacture of fibre, cement slates, cladding and fire protection products. Mr. Feehan said that the buildings at Tegral were functional buildings, housing the various stages of production from concrete/fibre based raw materials to mixing, moulding, drying, to finished products. He set out his calculation of rateable valuation as follows:-

Valuation

Block 1	
Block 2	32,129 sq.ft. @ £2.25 = £ 72,290
Block 29	5,251 sq.ft. @ £2.25 =£ 11,815
Block 52	4,594 sq.ft. @ £1.50 = £ 6,891
Blocks 20-28	125,418 sq.ft. @ £1.25 = £156,772
Blocks 32, 33 & 46	28,471 sq.ft. @ £1.00 = £ 28,471
Balance	*17,694 sq.ft. @ £0.70 = <u>£ 12,385</u>
	<u>£288,624</u>

NAV £288,624 x 0.5% = RV £1,443

Add general amount for miscellaneous items = RV £300 (agreed) = £1,743.

*Amended at hearing.

Mr. Feehan gave details of three comparisons which are summarised below:-

1) The adjoining valuation lot, Lot 8Aa.

Valuation agreed 1993:

Block a	27,060 sq.ft. @ £1.50 = £40,590
Block b	11,768 sq.ft. @ £1.25 = £14,710
Yard	<u>£ 2,000</u>

NAV = £57,300 x 0.5% = RV 285.

2) **TJ Farrington Limited, Rathcoffy, Co. Kildare.**

1990 First Appeal. RV £930.

This is a grain storage and fertiliser compounding depot in a rural village location.

Valuation was agreed on 1990 appeal. Part of the valuation refers to basic buildings used for the mixing of fertiliser.

Fertiliser mixing store 40,070 sq.ft. @ £1.20 = NAV £48,084.

3) **Sugar Factory, Carlow.**

Part of the valuation was:

Block 35	Raw sugar store:	14,150 sq.ft. @ £2.00 = NAV	£28,300
Blocks 83, 122	Old stores:	27,771 sq.ft. @ £1.50 = NAV	£41,656
Blocks 101,102	Old stores:	15,306 sq.ft. @ £1.25 = NAV	£19,132

Oral Hearing:

The oral hearing took place in Dublin on the 8th day of January 1996 and was resumed on the 22nd day of January 1996. Marcus Daly, SC instructed by Messrs. Whitney Moore Keller appeared on behalf of the appellant. Aindrias O'Caomh, SC instructed by the Chief State Solicitor appeared on behalf of the respondent. Also present were Mr. Alan McMillan of Messrs. Donal O'Buachalla & Company Limited, Valuers and Mr. Desmond Feehan of the Valuation Office. Mr. Denis Mullins, Plant Manager, Athy, also gave evidence.

Mr. Alan McMillan gave evidence that the property which was first valued in 1938 comprised buildings on a long, narrow and restricted site. He explained that because of these restrictions new items of plant often had to be disassembled before they could be brought into the buildings and then had to be reassembled before installation.

He submitted that the subject property would be of very limited interest to a potential tenant. He said that since the 1986 Valuation Act the criterion of valuation now is what a tenant would pay in 1988, which, in his opinion, marked the end of the period of recession. He further said that the market in rural areas was among the last to appear on the upward graph and that, even in today's market there was no significant indication that the value argued for by the respondent could be obtained.

Mr. McMillan submitted that the buildings were of fairly basic construction standard and he pointed out that asbestos cladding and sheeting was at best watertight and did not provide insulation.

He explained that cement was delivered from Irish Cement by rail directly to the subject premises but that finished products were no longer removed by rail and only by truck. Referring to the respondent's comparisons described as blocks a and b, respectively, Mr. McMillan while accepting that these valuations, Lot 8Aa, blocks a and b, had been agreed by his office in 1995, stated that he understood that these adjoining lots would not be used as comparisons in this appeal which was ongoing at the time of the said agreement. In any case he pointed out that the agreed valuations represented a considerable reduction of the rateable valuations arrived at on revision.

Referring to the other two comparisons adduced by the respondent, namely TJ Farrington Limited, Rathcoffy, Co. Kildare and the Sugar Factory, Carlow Mr. McMillan submitted that the latter were parts of larger hereditaments and may have been used by the respondent solely because of their age. Mr. McMillan further submitted that the latter two comparisons were not comparable in function or in construction to the subject property.

In the course of cross examination by Mr. O'Caoimh, Mr. McMillan agreed that while the access to the property was shared it was shared with a related company.

He said that in his opinion the property was largely obsolescent in terms of headroom, floor clearance and multiplicity of roof valleys and that no modern factory would be built to these specifications.

Replying to further questions from Mr. O'Caoimh, Mr. McMillan said that the letting market was not discerning in terms of differing types of floor areas and that the property if let would be probably taken by a tenant on an overall letting basis.

While accepting that the majority of his comparisons were factories which had closed down Mr. McMillan insisted that they were relevant in that they indicated that once properties of this nature go on the market they are sold and rarely let as a single entity to a sole tenant.

In reply to a question from the Tribunal, Mr. McMillan confirmed that the agreement reached in relation to the valuation of adjoining lot 8Aa was based on 1988 letting values.

Mr. Denis Mullins who has been Plant Manager of the appellant company since 1982 gave evidence that the site is very restricted, bound as it is by the river and canal on one side and by elevated ground on the other. He explained that there is only one access road and one exit for the entire property, not just for the subject hereditament.

Mr. Mullins explained that the elevated floor area of the factory portion was originally built to accommodate the railway and now necessitated ramping which eliminated considerable and valuable workspace in the factory. He said that in the manufacturing section in particular the restrictions were considerable with forklifts using the same areas as personnel.

Mr. Mullins further stated that the process by its very nature requires constant maintenance of machinery and equipment and that this maintenance in the restricted space available can take up to one hour. He said that in addition the cost of installation of machinery is increased by approximately 10% because of the restrictions.

In reply to cross examination by Mr. O'Caomh, Mr. Mullins confirmed that a source of water is essential to the process and that the water used is drawn from the adjoining canal and river Barrow.

Mr. Mullins gave evidence that most of the £10m spent by the appellant company over the past five years was spent on items of plant and machinery and the provision of an effluent treatment plant to meet statutory requirements. He said that only £100,000 had been spent on extra buildings.

In reply to further questions by Mr. O'Caomh, Mr. Mullins accepted that the effluent treatment plant was an integral part of the entire operation.

Mr. Mullins explained that in order to protect valuable items of machinery and to eliminate cold, dust and heat, buildings had to be erected within buildings. The old factory is not watertight and there is often flooding and overflow into the factory building.

Mr. Desmond Feehan said that his chief comparison was the adjoining lot 8Aa which had been agreed in 1995 by Messrs. Donal O'Buachalla & Company Limited.

He did not disagree with Mr. McMillan's slightly different method of breakdown of this agreed valuation.

Mr. Feehan gave evidence and produced to the Tribunal a letter confirming, that the said settlement was unconditional. He said that the adjoining lot was in the same occupation as the subject, had a similar function and was recently revised. Referring to his other two comparisons, Mr. Feehan said that T.J. Farrington Limited was in a remote, rural village and he seemed to concede that the Sugar Factory in Carlow may not be entirely appropriate as it could be considered unsatisfactory to deal with individual blocks of an entire hereditament in isolation.

In relation to Mr. McMillan's comparisons, Mr. Feehan said that he would have thought that in such a wide area of the country some factories which were still open might have been found. He pointed out that former factories which were now being used as warehouses needed far fewer facilities than operating factories and hence were not suitable comparisons.

Referring particularly to Cill Dara Mills and Tegral Pipe, Drogheda, Mr. Feehan gave evidence that merely nominal valuations had been put on both of these properties by agreement between the respective valuers. He explained that nominal valuations had no mathematical basis and further pointed out that Mr. McMillan had made no reference in his précis to the fact that these were merely nominal valuations.

In the course of cross examination by Mr. Daly, Mr. Feehan confirmed that adjoining lot 8Aa was at ground level with no question of ramping.

In reply to further questions from Mr. Daly, Mr. Feehan did not accept that the low sale price achieved for Cill Dara Mills in 1988 was an indicator of a poor market, but said rather that it was occasioned by the presence of asbestos lining which had to be subsequently removed at a cost of £100,000.

Replying further to Mr. Daly, Mr. Feehan seemed to accept that Irish Ropes was a valid comparison but did not accept that Curragh Tintawn was the best evidence of letting values since, in his opinion, there may have been some doubt as to whether or not that letting was an arms length transaction.

Replying to Mr. Daly's final question as to whether an area of some 220,000 sq.ft. would attract the same letting value as an area of 38,000 sq.ft. i.e. the area of adjoining lot 8Aa, Mr.

Feehan said that if both areas were part of the same complex, they would attract similar values.

Submissions:

Mr. Aindrias O'Caoimh, SC submitted that since the ratio of rateable valuation to net annual value has been agreed by the parties, leaving only the issue of net annual value to be decided, the judgment of Mr. Justice Barron in the IMI case is not relevant since the latter relates only to the relationship between net annual value and rateable valuation.

In his submission, Mr. O'Caoimh said that one must look to comparisons and in this case the best comparison was the adjoining lot. Referring to Mr. McMillan's assessment of NAV at page 6 of his written précis, Mr. O'Caoimh said that a collection of miscellaneous buildings could not have the same value as a well maintained production area.

Mr. O'Caoimh stressed that lot 52 could not logically be valued differently from lot 8Aa since they formed one building, albeit in different lot numbers.

Mr. O'Caoimh submitted that it was not appropriate to consider the market history of textile or light industry factories in identifying the hypothetical tenant. The subject, he said, should be looked at as a heavy industrial factory, one of a kind, in the occupation of the appellant company for a long number of years, and one which could not be accommodated in most of the sites where Mr. McMillan's comparisons are located.

In relation to the alleged restriction of access, Mr. O'Caoimh submitted that there was no indication that the 25 ft access was any narrower than the adjoining public roadway.

Mr. Marcus Daly, SC in opening outlined the history of the subject property, part of which had been originally built in 1937 on a platform to allow direct rail access, which access, he said, had been discontinued many years ago. As a result of this platform it was very difficult to adapt the old factory to modern usage.

Mr. Daly submitted that by virtue of Section 5 of the 1986 Valuation Act and the judgment of Mr. Justice Barron in the IMI decision, regard must be had only to recent valuations of comparable properties and for that reason, he said, only those properties which had been revised at or before the last quarter of 1990 are relevant.

Mr. Daly further submitted that valuations listed in 1993 could not relate to valuations in 1990. He referred the Tribunal to its own decision in *VA88/0/081-085 - R & H Hall* and the decision of the High Court on appeal where, he said, evidence relating to years after the relevant valuation date was disallowed.

Mr. Daly submitted that the reason Mr. McMillan adduced comparative evidence relating to properties over a very wide area was that the subject property was the only one of its kind in the country and a wide area had to be researched in order to find the nearest suitable comparisons.

Referring to the closure of so many of Mr. McMillan's comparisons, Mr. Daly submitted that these closures only served to show the poor state of the market for properties of this nature.

Mr. Daly further submitted that Mr. O'Caomh seemed to be attempting to value the property on the basis of the identity of the actual occupier whereas it should be properly valued on the basis of vacant possession for a hypothetical tenant.

Determination:

At the outset the Tribunal must deal with Mr. Daly's submissions in relation to the validity of comparative evidence relating to properties which have been revised after the relevant valuation date in the instant case i.e. the last quarter of 1990. The respondent's main comparison relates to adjoining lot 8Aa, the valuation of which was agreed on 1993/4 First Appeal by Messrs. Donal O'Buachalla & Company Limited. Several of the comparisons referred to in Mr. McMillan's written précis are also properties which have been revised since 1990 but the Tribunal has heard and noted Mr. Daly's submissions that these too should be discounted, save where they seek to show capital values.

The relevant law is contained in Section 11 of the Valuation (Ireland) Act 1852:-

".... And such valuation in regard to houses and buildings shall be made upon an estimate of the net annual value thereof; that is to say, the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes, and public charges, if any, (except tithe rentcharge,) being paid by the tenant."

Section 5 of the Valuation Act 1986:-

"(1)... in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made may be reduced by such amount as is necessary to ensure, in so far as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditaments bears to the net annual values of the other tenements and rateable hereditaments.

(2) Without prejudice to the foregoing, for the purpose of ensuring such a relationship regard shall be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period."

and in the judgment of Mr. Justice Barron in *Irish Management Institute v. Commissioner of Valuation*:-

".... The section does not alter the fundamental basis upon which valuations are made, i.e. what the hypothetical tenant will offer on the basis of taking one year with another.

What it does is to recognise inflation and to seek to keep a proportion between valuations and annual values after taking inflation into account. Subsection (1) provides that as between any two rateable hereditaments, 'as far as is reasonably practicable', there should be the same proportion between what the hypothetical tenant will offer for each and their respective valuations. The subsection is seeking to establish an overall ratio between annual letting values and valuation. This overall ratio will alter with inflation since annual letting values will alter with inflation while valuations remain the same. It was the gap caused by failure to provide the satisfactory mechanism for these circumstances in earlier legislation which Section 5 is intended to fill. Notwithstanding this general intention, subsection (2) recognises that the overall ratio may differ as between rateable hereditaments of different function for example as between offices on the one hand and say shops on the other.

Subsection (2) is not a provision standing on its own. What is being sought is an overall proportion between hypothetical rents and valuations. This must be borne in

mind when applying its provisions. What must be considered are valuations which:

- (a) are comparable;
- (b) relate to tenements and hereditaments of similar function; and
- (c) have been made or revised within a recent period.

Where there is evidence under each of these headings sufficient to obtain the relevant proportions then the valuations can be determined by reference to the subsection alone.

Where the evidence is insufficient, then the overall proportions predicated by subsection (1) must be adopted. In each case, the sufficiency of the evidence is a matter for the Tribunal."

The only issue to be decided in this case is the net annual value of the subject property. In the agreed absence of comparative letting values and in this connection it has been clearly put in evidence that the subject is, in any event, unique, regard must be had to the NAV's of comparable properties.

Since the ratio between NAV and RV has been agreed, it is sufficient to look only to these NAV's.

Similarly the provisions of Section 5 (2) Valuation Act 1986 do not apply as the issue here is not to establish an overall ratio between annual letting values and rateable valuations but simply to assess the correct NAV of the subject property.

Mr. Daly has submitted that evidence relating to properties revised since 1990 might be considered insofar as they might indicate a pattern in relation to capital values. It seems to the Tribunal that the evidence before it in relation to adjoining lot 8Aa is to be so considered since all valuations since 1986 have been reached on the basis of net annual value.

The Tribunal also notes Mr. McMillan's evidence that the agreement in relation to the valuation of lot 8Aa was based on 1988 letting values as is the valuation to be placed on the subject property.

The Tribunal has therefore considered and taken into account the evidence of both parties relating to properties which have been revised since 1990.

Because of the particular nature of the business of the appellant company and the proximity of the site to the essential water supply and the undoubted advantage of a railway spur running directly into the site, the hypothetical tenant to be considered would primarily be expected to be one who would continue the same or a similar type of business.

The Tribunal while accepting that one end of a building might not logically be valued differently from the other end, nonetheless has noted the evidence in relation to the age, quality and size of that building, vis-à-vis the other buildings which comprise the total subject hereditament.

The Tribunal accepts Mr. Daly's contention that because these are the only premises of their kind in the country, Mr. McMillan had to carry out a wide search of the country in an attempt to come up with relevant comparisons. It has had regard to these comparisons as well as to those put forward by Mr. Feehan. The Tribunal has noted *inter alia* the evidence relating to Irish Ropes which, while allowing for a considerable quantum difference, is similar to the subject in that it has a high density of buildings on a restricted site, has an abundance of pillars throughout the interior, has a leaking roof and is part of an old Northlight factory premises.

The Tribunal also accepts the evidence relating to the disadvantages of the older portions of the subject hereditament and the inherent restrictions imposed thereby. The actual site restrictions do not seem overly onerous particularly when weighed up against the proximity of a constant water supply and the convenience of a railway line.

Taking into account all of the evidence adduced and all of the comparisons put forward the Tribunal has decided and determines that the correct rateable valuation of the disputed portion of the property is £1,060 giving rateable valuation of £1,360 on the total subject hereditament.