Appeal No. VA95/1/055

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Irish Shell Limited (Oriel Oil Company) **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Oil depot tanks at Map Ref: 15E, Townland: Drummond Otra, ED: Carrickmacross Rural, RD: Carrickmacross, Co. Monaghan
Quantum - Use of comparisons under appeal

B E F O R E

Liam McKechnie	**S.C. Chairman**
Fred Devlin	**FRICS.ACI Arb.**
Marie Connellan	**Solicitor**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF JULY, 1996

By Notice of Appeal dated the 20th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £185 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 oil distribution depot with office, store, workshop, loading gantry, yard, forecourt, truckwash and storage tanks in an enclosed compound. The agreed areas and capacities are as follows:-

Office	923 sq.ft.
Store	1,452 sq.ft.
Workshop	1,343 sq.ft.
Loading gantry	550 sq.ft.
Tanks (8) capacity	148,358 gals.

Recent Valuation History:

1969 Appeal: Oil depot valued at rateable valuation £150.

1992/3 Revision: Following erection of new stores, offices and workshop the rateable valuation was again revised. Rateable valuation £185 was set, this was appealed and no change was made to the determination at First Appeal.

Written Submissions:

A written submission was received on the 16th day of January 1996 from Mr. Desmond M. Killen FRICS FSCS IRRV, a Fellow of the Society of Chartered Surveyors in the Republic of Ireland and a Director of Donal O'Buachalla & Company Limited on behalf of the appellant.

In his written submission, Mr. Killen said that the dispute between the parties concerned the correctness of the rateable valuation of £185. The property, he said was an oil depot located on the outskirts of Carrickmacross on the Dundalk Road. He said that the construction costs were:-

Offices	£36,000
Store	£37,000

Garage	£21,000
Bund wall & 4,600 litre diesel tank	£ 1,100.

The other tanks and the outloading gantry remained unchanged.

Mr. Killen said that the component parts of the valuation surveyed by both parties are:-

		sq.m	***sq.ft***	
(a)	Offices (new)	85.84	924	£36,000
(b)	Store	134.94	1,452	£37,000
(c)	Bund wall	19.52	210	
	Tank	4,600 litres	1,000g	£ 1,100
(d)	Platform	112.50	1,211	
(e)	Workshop/Garage	125.44	1,350	£21,000
(f)	Gantry	58.80	633	

Tanks	1 & 2	Autodiesel	50,000 litres each	100,000 litres
	3 & 4		34,000 litres each	68,000 litres
	5 & 6	Kerosene	25,000 litres each	50,000 litres
	7 & 8	Marked Gas Oil	230,000 litres each	460,000 litres
			Total	678,000 litres
			=	149,000 gallons.

Mr. Killen said that in arriving at the correct net annual value and rateable valuation he had had regard to *Section 11 of the Valuation (Ireland) Act 1852* and *Section 5 of the Valuation Act 1986*. He said that the ratio of 0.5% was firmly established. In calculating rateable valuation, Mr. Killen said that he had used the comparison basis as there was no direct rental evidence in which to base a rental valuation or depreciating cost factor or decapitalisation factor for use in the contractor's basis of valuation. Mr. Killen referred to one comparison, namely Irish Shell Depot, Navan, the subject of revision in 1994 when the previous valuation of £125 was reduced to £75 rateable valuation.

Based on this comparison, Mr. Killen proposed the following valuation:-

Buildings:

Offices	85.84 sq.m.	924 sq.ft. @ £3.00 psf	=	£2,772
Store	134.94 sq.m.	1,452 sq.ft. @ £1.50 psf	=	£2,178
Workshop/Garage	125.44 sq.m.	1,350 sq.ft. @ £1.50 psf	=	£2,025
Gantry	58.80 sq.m.	633 sq.ft. @ £1.00 psf	=	£ 633
				£7,608 NAV
		@ 0.5%	=	£38 RV
		Tanks 149,000 gallons at 33p/1,000	=	£49 RV
		Total	**=**	**£87 RV**

A written submission was received on the 18th day of January 1996 from Mr. Patrick McMorrow, B.Ag.Sc.(Econ), G.Dip, P&D Economics, a Valuer in the Valuation Office on behalf of the respondent.

In his written submission, Mr. McMorrow described the premises and its recent valuation history as set out above. He said that the office, store and workshop of the subject premises were recently constructed to good industrial standard while the loading gantry is a simple single skinned corrugated iron structure, yards were mainly concrete with hard-core forecourt.

Mr. McMorrow said that to derive net annual value he had concentrated on the comparative method due to the absence of rental evidence or in relation to the investment appraisal and profits valuations, open market evidence to determine rates or return on investment or accounts to determine potential as well as actual profits. Mr. McMorrow said that he was relying on local comparisons in particular Cooltrim Oil and Supreme Oil. He said this was because of the unique character of the area with its proximity to the relatively "open" border with Northern Ireland. He said that this led to market peculiarities and distortions in oil and fuel sales where price differences were quite significant. He said that while there is substantial regional variation in valuation levels his other comparisons from other parts of the country

represented mean levels and it would be possible to pick higher and lower rates. Overall, he said the comparisons in his Table 1 which is appended to this judgment as Appendix 1 indicates that the subject depot is treated fairly, relative to the other similar hereditaments and in particular its immediate competitors. Based on comparison, Mr. McMorrow assessed the rateable valuation as follows:-

Buildings:

Office	923 sq.ft. @ £3.50 psf	
Store	1,452 sq.ft. @ £2.50 psf	
Workshop	1,343 sq.ft. @ £2.50 psf	
Loading Gantry	550 sq.ft. @ £1.25 psf	
Forecourt say	£800	
Buildings NAV	£11,680 @ 0.5% =	£58.40
Tanks (8) 148,358 gals. RV £0.85/1,000 gals. =		£126.14
		£184.55
	RV =	**£185.00**

Findings and Decision:

At the hearing of this appeal and having taken the oath both Mr. Killen and Mr. McMorrow adopted as their evidence in chief the précis above referred to and which previously, in accordance with practice had been exchanged between them. As can be seen from a consideration of their evidence there was substantial agreement on virtually all of the factual matters which were relevant to this appeal. These included, the description of the property and its location, the varying and unpredictable influences which the border with Northern Ireland had on the trade being carried on therein, the areas and measurements of the relevant component parts, the number and capacity of the various tanks and the construction/purchase costs of the offices, stores, garage, bund wall and the 4,600 litre diesel tank. In addition, both Valuers considered a number of different methods by which the net annual value could be determined. The profit approach was one such method. Apart altogether from whether or not the subject property would be an appropriate hereditament to value on this basis, there was no

evidence available as to the gross receipts dealing with the business, or as to the working expenses, the depreciation of stock, interest on capital and tenants profits all of which would have to be deducted from such receipts before any foundation could possibly exist for applying this method. Equally so, with regard to the contractor's theory. Again both Valuers were of the view that sufficient rental evidence was not available to justify an assessment of the net annual value on this basis. Subsequent however, to the conclusion of the oral hearing this Tribunal was furnished with a copy of an agreement dated the 4th March 1976 made between the appellant of the one part, and Irish Shell Limited of the other. This set out the terms of the arrangements which existed between these parties for the distribution of the latter's oil products in a certain geographical area by Oriel Oil Company Limited. The Tribunal however, is of the view that without a further hearing, which was not requested by either party, it would be inappropriate to place any reliance on this document, particularly as where, in the present case, both Mr. Killen and Mr. McMorrow have approached the hearing on the basis that the most appropriate way of determining the net annual value is by the comparable method. Accepting therefore this agreed approach the Tribunal has not further considered the said agreement.

As can be seen from Mr. Killen's evidence the appellant relies effectively on one comparison only, namely, the Irish Shell Depot at Navan whereas the Commissioner has produced seven properties which he alleges are comparable, though he relies most strongly on the premises of Cooltrim Oil Limited, Supreme Oil Company Limited and Shanroe Oil Company Limited. Before dealing with these properties however it is necessary to refer in some greater detail to the oil depot at Navan.

On the 31st day of March 1995, Mr. Killen sought details from the Commissioner as to the breakdown of the rateable valuation placed on the Navan property. Further correspondence followed on 8th May, 15th May and 7th June. Ultimately, that breakdown was given and is as follows:-

Offices	1,247 sq.ft. @ £3.00 psf
Stores/Sheds	1,451 sq.ft. @ £1.15 psf

Loading Bay	1,086 sq.ft. @ £1.15 psf		
		NAV	£6,658
		RV	£ 33
Tanks etc	129,000 gallons 33p/1,000 g	RV	£42
	Total	**RV**	**£75.**

Immediately prior to the hearing however, it was indicated by the Commissioner that this property was the subject matter of an appeal. It was unclear as to whether it had simply been listed for revision, or whether it was at first appeal stage or even indeed whether an appeal was pending before this Tribunal. An issue thus arose as to whether or not details of the net annual value of this property and hence, the rateable valuation should be received into evidence and made use of in this appeal. That issue we now wish to address.

It should immediately be said that this Tribunal would expect that both parties to an appeal before it would, subject to the rules of evidence, co-operate fully with each other in the provision of such information and in the supply of such documentation as may reasonably be necessary for the purposes of fully and adequately dealing with any issue that might arise in a pending appeal. This obligation is jointly on the appellant and the Commissioner, but in the discharge thereof the resulting onus is higher on the party who has in his possession the greater information. Generally, though by no means always, this will be the Commissioner. The reason why it is the Commissioner is self-evident and the reason why it should be furnished is that both parties should clearly know the case they have to face and should therefore be in a position to present the best possible evidence before this Tribunal. If that practice had been complied with in this case the unfortunate circumstances which occurred could have been avoided.

It is common case that the Navan property was listed for revision on the 30th January 1995. Clearly therefore this information must have been available to the Commissioner on and by the date of the correspondence above mentioned. And yet the same was not supplied until immediately before the commencement of this hearing. Accepting as we do the entire *bona*

fides of Mr. McMorrow in this matter, it nevertheless seems to us that this regrettable situation, with no great difficulty and with very considerable ease, could have been entirely avoided. Secondly, it must surely be possible to have greater certainty about the quality of evidence which, in any given case, it is proposed to adduce on appeal. It is, we wish to say clearly, quite unacceptable that we could not have been informed as to where precisely in the valuation process the Navan property stood at the date of hearing.

Disregarding all other considerations for a moment, if a similar uncertainty was to occur in the future, we will be forced to disregard the same in its entirety as from an evidential view point it would be quite worthless. If that was to apply say in this case, the consequences would be that Mr. Killen could refer to the Navan comparison without the Commissioner's objection even being entertained let alone being debated and ruled upon. A result which surely would be quite unsatisfactory. Again we feel that this is something which can and indeed must be avoided in the future.

Notwithstanding a good deal of reluctance on our part, we have agreed however that in the exceptional circumstances prevailing where a point of general importance has been raised we should both entertain the objection and decide upon it. Our decision is as follows:-

Under the *Valuation Act 1988* an Owner/Occupier, a Rating Authority and/or an officer of the Commissioner of Valuation may apply at any time for a revision of property: Under *Sections 19 and 31 of the Valuation (Ireland) Act 1852* there is provision for a first appeal to the Commissioner. A further appeal lies under *Sec. 3(5)(a) of the 1988 Act* to this Tribunal. Consequently, within the valuation process the status of a unit of property may vary considerably from time to time. For example, its status may be **(a)** inclusion in the Valuation List, per se. **(b)** listed for revision but before the Commissioner's decision is published, **(c)** following revision but whilst the appeal period is running, **(d)** following an appeal but pending the Commissioner's decision at first appeal stage, **(e)** following a first appeal decision but pending the appeal period to this Tribunal, **(f)** following this Tribunal's decision but, after an expression of dissatisfaction, pending the 21 day period and **(g)** following this

Tribunal's decision - with no Case Stated being requested - with a Case Stated being requested - and so on. These are but examples and are not exhaustive.

As can therefore be seen the standing of a rateable valuation at any given time can be quite different and quite distinct. The question then arises as to whether in all of the circumstances above mentioned, save where there is no revision and no appeal, can the net annual value and/or the rateable value of the property in question, be referred to for comparison purposes, in a different appeal before this Tribunal. Or whether as a matter of law this Tribunal should refuse to accept such evidence?

When the Supreme Court hears an appeal from the High Court it will not look at or consider any judgment of that court in a different case, which is then on appeal to the Supreme Court. The reasons would appear to be that, in general, the parties to the appeal pending are not the same as the parties to the appeal being argued before it and secondly, if it took into account and considered the former judgment it would in effect be deciding, or at least making a pronouncement, on an appeal, without giving the parties thereto an opportunity of arguing their case or making their submissions. Consequently, as a matter of practice it will refuse to consider such a judgment. This, notwithstanding the fact that a High Court decision, even under appeal, currently represents the law and in the absence of a stay, where appropriate must be followed and implemented. If that practice was applicable to this Tribunal then needless to say we should not receive evidence of the rental or rateable value of a property which is the subject matter of an appeal, certainly an appeal pending before us. But the real question is whether or not such a practice is either appropriate or applicable to this Tribunal. The question of the receipt of "comparable evidence" in valuation cases was the subject matter of an extensive judgment by the then President of the High Court, Mr. Justice Davitt in ***Davey v. Commissioner of Valuation [1956] IR 295***. In that case the Circuit Court Judge in question was dealing with an appeal by the owner of a licensed premises against a particular valuation on that premises. During the course of the hearing he received and relied upon a Certificate of Rateable Valuation of four other licensed premises within the locality. Whether or not he was so entitled to receive and make use of that evidence was, with a number of other questions, the subject matter of a Case Stated to the High Court. On p. 302 of the report

the learned President quoted with approval the following extract from Pointers case ***[1922]2KB***:-

"The reason why it has been discouraged is not because it is inadmissible, but because there are so many circumstances to be taken into consideration that comparisons of that kind are practically valueless ..... When the assessment committee are considering the rent which the hypothetical tenant would give for the appellant's premises, any evidence which is relevant to that question is in law admissible and it must depend on the circumstances of the case whether evidence of the rateable value of premises which are said to be in approximately the same position as the appellant's premises is worth admitting or not .... No doubt it is of rare occurrence for two sets of premises to resemble one another so closely in every particular as to make the evidence of much value, but it is quite another matter to say that it is not admissible in point of law."

Emphasis added: See also the further extracts from a number of other decisions quoted with approval by the said President at p. 303 etseq. of the report.

As can therefore be seen the President's view was that any evidence which was relevant to ascertaining the net annual value could be given, but, and this is a crucial qualification, the weight to be attached to that evidence must be considered in the light of all the circumstances touching and surrounding the comparable in question. Circumstances may render that evidence worthless: in other cases of little value: in other cases of great value indeed in some cases perhaps of decisive value. But, on the point of principle, his view was in essence that once the evidence is relevant it is admissible but on the receipt thereof it must be weighted according to circumstances. See also ***Roadstone Limited v. Commissioner of Valuation [1961] IR 239***.

Whilst there is no doubt but that Davey's case was not dealing with a situation where either the comparison offered was listed for revision and/or was still part of the appeal process, nevertheless in our view it is still relevant and applies with equal force to the instant situation. Provided therefore, the evidence is relevant it is admissible but on receipt thereof the

Tribunal must give very careful consideration to what, if any weight should be attached to that evidence. The resulting decision will be heavily influenced, by not only the distinguishing features of that comparison but also by the identity of the person who listed the comparison for revision and by its current status in the appeal process.

There are, we feel, other reasons why such evidence in principle should be admitted. Quite unlike the vast majority of cases which are appealed to the Supreme Court the Commissioner of Valuation is always a necessary party to an appeal before this Tribunal and also has a particular statutory function, at all stages of the process, once a property is listed for revision. His function is not that of a party to a private dispute. Much less is it to support one side or the other. He is a *persona designata* under the Valuation Code with specific powers, duties and functions to be carried out by him quite independently of say a Rating Authority on the one hand and a ratepayer on the other. Secondly, it is against his decision at revision that a first appeal lies and it is against his decision at first appeal stage that an aggrieved ratepayer has an appeal to this Tribunal. Thirdly, in almost all cases which appear before this body, the Commissioner offers evidence in support of the figure determined at first appeal stage though in a limited number of cases he may advance a somewhat lower figure. Never to our knowledge however, has he argued for a higher figure. In these circumstances, therefore, why should the Commissioner's view as to the rateable value of a comparable, though under appeal, not be admissible against him? We feel it should.

Lets look at the following hypothetical example. There are two identical shops in the High Street, one with a valuation of £50 and the second with a valuation of £60. Both appealed to the Commissioner and/or thereafter to this Tribunal. Shop B with the valuation of £60 is first heard by the Tribunal. Surely at the hearing thereof it could be put to the Commissioner's witness that shop A is identical and has a valuation of £50 and that therefore the Commissioner cannot argue for a higher valuation on shop B? Surely it could be alleged that his view of shop B was an acknowledgement or an admission against him in the case under appeal? We believe that in such circumstances a cross-examination along these lines would be perfectly permissible. It may, during the course of the hearing, emerge that the Commissioner has an answer to this line of questioning. It may be that the valuation of £50

was erroneous because of a wrong measurement or the like. It may be that there were other circumstances which could explain fully what appears on its face to be an arbitrary discrepancy. That however is but a detail. What is important in our view is that such evidence is admissible in principle. This view which we hold, accords in our opinion with common sense and with justice and applies with equal force no matter at what stage the comparable being offered in evidence happens to be in the appeal process.

In the example above quoted it should be stated of course that the appellant would be perfectly entitled to argue for a rateable valuation lower than the £50 then attaching to shop A. The benefit, from the ratepayers point of view, in being able to refer to this comparison is to offer in evidence as against the Commissioner the latter's own view of a lower valuation in an identical property.

Having so received the evidence this Tribunal must of course be extremely careful in dealing with it. It must consider whether the comparison offered is or is capable of being truly comparable to the subject property. If after making reasonable adjustments and variations it is not possible to have a dependable body of evidence then the same should be disregarded. On the other hand it may be that without variations or adjustments the evidence is highly decisive. And of course in between is an infinite variety of different possibilities. All of this however, is a matter of weight and not a matter of admissibility. It is therefore ultimately a question for this Tribunal in its overall consideration of the case before it.

This view is supported by the decision of ***Thomas Scott & Son (Bakers) v. Davis (Valuation Office) [1969] RA 444***. This was an appeal before the UK Lands Tribunal in respect of a supermarket owned by the appellants. The first issue decided upon and the only issue of relevance to this case was whether or not evidence of rental value of a comparable supermarket, namely Woolworths, should be rejected as the rateable valuation thereof was under appeal. At page 6 of the report the Tribunal said:-

"Mr. Edmondson (Counsel) submits that on these facts, it surely cannot be right for the Tribunal to be precluded from looking at Woolworths as a comparable. Because if that were

so a valuation officer would be in a position to sabotage any appeal to the Tribunal simply by making an appropriate proposal in respect of each and every comparable on which the appellant ratepayer was proposing to rely.

Although there is some substance in (Counsel for the appellants) submission, I cannot accept his suggested alternative, namely, that the Tribunal should treat the assessment of Woolworths as correct until it be found incorrect by the local valuation court or by the Tribunal on appeal. The present circumstances are certainly unusual. Not infrequently when a ratepayer feels aggrieved by a decision by a local valuation court, he will pray in aid the assessments of certain of his neighbouring properties which in his opinion show that his is over assessed by comparison. In being thus alerted, the Valuation Office, in self defence and in duty bound, thereupon makes a detailed inspection of the cited comparables and these inspections occasionally reveal errors, possibly on a miscalculated floor area or of an omitted amenity. In these circumstances some valuation officers lodge proposals forthwith to correct detected errors: Those proposals are sometimes disposed of before the initial ratepayers appeal is heard by the Tribunal, but if they are still outstanding then it is customary for the assessments which remain under challenge to be excluded from consideration. Other valuation officers in the same circumstances defer lodging proposals to correct detected errors until after the initial ratepayers appeal has been heard by the Tribunal and decided but, they annotate their documents to indicate any known anomalies, for example, 'assessment based on incorrect flooring' or 'assessment does not include central heating'.

Whichever course of action be adopted by the Valuation Office the result is apt to leave both the aggrieved ratepayer and his neighbours disgruntled: the objective of the ratepayer after all had been to achieve a reduction in his own assessment, not an increase in others. Nevertheless, no criticism rests on the valuation officer for adopting either course .....

The customary exclusion from consideration, of assessments still under challenge at the date of the Tribunal hearing to which I have already referred, is I apprehend on the grounds that such assessments are considered unlikely to provide reliable evidence of value, rather than because they are required to be rejected as sub judice: the exclusion from consideration goes

to weight rather than to admissibility. Whilst therefore I cannot accept the ratepayers contention here that the Woolworths assessment should be relied upon as correct, neither can I accept the valuation officers contention that this comparable be rejected because it is sub judice. The question to my mind is whether the assessment of ..... provides dependable evidence of rental value on the statutory hypothesis."

Though the reasoning of the Lands Tribunal is somewhat different from that above indicated nevertheless the resulting conclusion is similar, namely, that such evidence should be considered as a matter of weight rather than as a matter of admissibility. See also *p. 505 of Ryde on Rating* and *para. 119 of Halsbury 4th Ed. Vol. 39.*

It follows therefore, on principle that the oil depot at Navan can be referred to for the purposes of this appeal.

The Commissioner's first three comparisons being those principally relied upon are all situated in the Carrickmacross, Castleblaney and Clones area. All were the subject matter of a recent revision within the meaning of *Section 5(2) of the Valuation Act 1986.* Indeed Cooltrim Oil was the subject matter of a Tribunal decision in 1992. According to the unchallenged evidence of Mr. McMorrow the value placed on the tanks at these depots varied between 85p per 1,000 gallons to £1.05p per 1,000 gallons. The other comparisons contained in Appendix 1, namely Marlinstown, Clonakilty, Mullingar and Sligo devalue at between 82p and £1.12p per 1,000 gallons. In contrast Navan devalues at 33p per 1,000 gallons. By any account there is an enormous discrepancy between this figure and all of the other figures submitted on behalf of the Commissioner. No evidence was given to explain this variation. It is true to say that in terms of capacity the nearest comparison to Navan is that at Marlinstown which has 123,000 gallons. Capacity alone could not in our opinion explain the enormous divergence in value. There is, as can be seen, a good deal of consistency in the Commissioner's comparisons, whereas no other or further support was available to sustain the alleged underlying basis of the Navan valuation. Accordingly, in our view we must treat the latter valuation with a good deal of caution and even more so given the uncertainty of the evidence as to why the property was again listed for revision (having previously been revised

in 1994) and as to where it presently is in the appeal process. Accordingly, in our opinion comparisons A, B and C, if appropriate must take precedence over the Navan comparison.

In our opinion all three comparisons are, subject to variation, comparable with the subject property and offer a sustainable evidential basis for the category of valuation argued by the Commissioner. However, the capacity of the tanks in question are significantly less than that of the subject property and accordingly, we feel there must be a reduction on this basis. We do not accept the contrary argument advanced by Mr. McMorrow. In our view therefore, the figure of 75p per 1,000 gallons is the correct valuation of the tanks in question. This figure is also in general terms supported by the other comparisons offered on behalf of the Commissioner.

With regard to the buildings the principal components thereof are the office, store, workshop and gantry. The agreed areas and the suggested valuations made respectively by the parties are set out elsewhere in this judgment. Taking the Commissioner's basis we are of the view that the store and workshop areas should have a rental value of £2 psf and that the forecourt should be reduced to £600. The rest of his breakdown remains as is.
The end result therefore is as follows:-

(a) the NAV in respect of the buildings is £10,108 which @ 0.5% = £50.54 as a rateable valuation. Say £51.

(b) the tanks, of 148,358 gallons at 75p per 1,000 gallons gives a rateable valuation of £111.268.

Both together result in a figure of £161.80. Say £162 and the Tribunal so determines.