

Appeal No. VA95/1/103

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

Wexford Harbour Embankment Company

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Pump house at Map Ref: 10Ba, Townland: North West Slob, E.D. Ardcavan, R.D. Wexford, Co. Wexford

Agricultural exemption - Pump house used to drain farm land

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Patrick Riney

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Brid Mimmagh

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF FEBRUARY, 1996

By Notice of Appeal dated the 25th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £30 on the above described hereditament.

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

"the rateable valuation as determined by the Commissioner of Valuation is excessive, inequitable, unwarranted and bad in law."

The Property:

The property comprises a pump house consisting of a single storey slated building standing on a site of about $\frac{3}{4}$ acre. The greater part of the pump house was built around 1850.

Valuation History:

The entire building valuation was revised in 1913 and a rateable valuation of £30 was fixed on it. In 1967 a modern electrically driven pump was installed in part of the original building. Following reconstruction, upgrading and improvement of the building the rateable valuation was again revised in 1994/3 and the Commissioner made no change to the rateable valuation of £30 at First Appeal.

Written Submissions:

A written submission was received on the 6th day of November 1995 from Mr. Joseph Bardon, ASCS ARICS Dip. Environ. Econ. of Hennigan & Company, Chartered Valuation Surveyors and Rating Consultants, on behalf of the appellant.

In his written submission, Mr. Bardon set out the background to the development of the pumphouse and the surrounding areas. He submitted that by reason of its usage the pumphouse had a direct association with the improvement and drainage of the farmland which it served and that its ownership by a body representing the farmers who farm this land, qualified it as a farm building within the meaning of *Section 14 of the Valuation (Ireland) Act 1852*.

Mr. Bardon further submitted that in the event of the Tribunal not adopting his proposal with regard to exemption that the valuation on the subject premises should be a nominal assessment of £5.

A written submission was received on the 2nd day of November 1995 from Mr. Phil Colgan, District Valuer with 27 years experience in the Valuation Office on behalf of the respondent.

In his written submission, Mr. Colgan described the subject premises and its valuation history. Mr. Colgan argued that the subject premises was not used exclusively for agricultural use but was of benefit to commercial enterprises in the area and for the maintenance of Wexford Harbour. Mr. Colgan set out his rateable valuation on the subject premises as follows:-

Valuation

Pumphouse (a)	1,140 sq.ft
Pumphouse (b)	791 sq.ft.
Pumphouse (c)	43 sq.ft.

Total area 1,974 sq.ft. @ £3 psf = £5,922

NAV say £6,000 x 0.5% = **RV £30.**

In conclusion, Mr. Colgan pointed out that the rateable valuation of £30 dated back to a revision in 1913. Mr. Colgan said that if one was to take the replacement cost of the building at house prices, because that is the quality of construction, then 1,974 sq.ft. @ £50 psf would give a net annual value of £98,700 @ 7% yield.

Oral Hearing:

At the oral hearing which took place in Dublin on the 8th day of November 1995 and was resumed on the 18th day of December 1995, the appellant was represented by Mr. Robert Haughton BL, instructed by Messrs. Huggard Brennan & Murphy, Solicitors with Mr. Joe Bardon and Mr. Pat Hennigan of Hennigan and Company, Rateable Valuation Consultants and Valuers.

The respondent was represented by Mr. Aindrias O'Caoimh SC, instructed by the Chief State Solicitor. Mr. Phil Colgan, District Valuer gave evidence.

In opening, Mr. Haughton explained that the pump station which was built in or around 1850, pumps water out of some 200 to 300 acres of sloblands over the sea wall into the sea every night. He referred to the governing statutes, namely, the *Wexford Harbour Improvement Act 1846* which was subsequently repealed by the *Wexford Harbour Embankment Act 1852*. The latter Act transferred the functions of the initial proprietors to the appellant company, which in turn, once the works were completed, sold off the lands to various individual owners, fifteen of whom comprise the Board of Commissioners established by virtue of *Section 46 of the Landed Property Improvement (Ireland) Act, 1847*. The only remaining portion of the lands vested in the appellant company is that containing the subject property.

Mr. Joe Bardon of Messrs. Hennigan & Company gave evidence that the lands serviced by the pump were almost totally agricultural. He explained that there were in fact three sections in the subject hereditament, two of which were now obsolete since the new electric pump was

installed in 1967. He stated that the old equipment was still in what he described as Section C of the building, since it was considered uneconomic to dismantle it as some of it had sunk into the floor.

At the resumed hearing, Mr. Bardon gave further evidence in relation to the development plan for the area and stressed the fact that no commercial or residential development would be permitted on the subject property. In reply to Mr. O'Caomh in cross-examination, Mr. Bardon stated that if a rateable valuation were to be applied to the subject property, it should be "a mere token" or "a nominal" rateable valuation by reason of the fact that a hypothetical tenant would look to all the circumstances and disadvantages of the present property and hence there would be no demand for a building of this nature in the open letting market. Mr. Michael Furlong, an employee of Leigh Strand Co-op Creamery, one of the largest land owners on the sloblands gave evidence in relation to the operation of the pump and confirmed that the old pump was not being maintained.

Mr. James Nolan, secretary of the Board of Commissioners said that in 1989 the subject property had been in a fairly bad state of repair and that the Commissioners had intended to demolish the entire building through lack of funds. He explained further that in 1989 the Office of Public Works (OPW) paid for the improvement works carried out on the subject and he detailed the building works which were completed.

Mr. Nolan said that the OPW did not advance any monies towards the maintenance or the upkeep of the building and that their only involvement since 1989 was the staging of an art exhibition in one of the vacant sections of the building, for which they had received authorisation from the Board of Commissioners.

Mr. Colgan said in evidence that he had no direct comparisons on which to base his estimate of rateable valuation and for that reason he had based his estimate on the replacement cost.

Replying to questions from Mr. Haughton, Mr. Colgan appeared to concede that contrary to what was contained in his written précis, the subject hereditament did not benefit what could be considered commercial or fishery enterprises. He further accepted that the subject was not in fact directly necessary to the maintenance of Wexford Harbour.

In reply to questions from the Tribunal, Mr. Joe Bardon produced in evidence an unofficial extract from the Valuation Lists relating to the nearby pump house on the South Slobs which indicated that that property described as "engine house, office and land" had a rateable

valuation of £20 in 1954, reduced from the earlier rateable valuation of £25. In reply to further questioning from the Tribunal, Mr. Bardon gave evidence that up to 15 years ago there was a meal factory on the lands drained by the pump in the South Slobs.

Submissions:

Mr. O'Caomh submitted that the present case should be distinguished from *Nixon v. Commissioner of Valuation [1980] IR 340* in that the subject is a separate hereditament and is not part of a farm.

He referred to *Section 14, Valuation (Ireland) Act 1852* and submitted that the subject property has always been valued and that therefore there was no question of exemption.

Mr. O'Caomh opened two Valuation Tribunal decisions which were both the subject of cases stated to the High Court, namely, *Iarnrod Eireann v. Commissioner of Valuation, unreported judgment, Barron J., 27 November 1992* and *International Mushrooms Limited v. Commissioner of Valuation [1994] 2IR Vol.3 part II p.472* and submitted that the subject property in the instant case, as in the latter two, was not part of a farm and could not therefore be described as a farm building. Neither, he said, could the subject property be said to be an improvement to lands since before the subject property was built, the lands which it drained could not be said to have been agricultural.

Mr. Haughton submitted that any property which has a link with agricultural land is of its very nature an agricultural building. He referred the Tribunal to *Halsbury vol.32 pg.48* and to the definition of agricultural buildings in English Law, which, he submitted was much narrower than that in Irish Law. He referred the Tribunal also to the case of *Farmers Machinery Syndicate (11th Hampshire) v. Shaw (Valuation Officer) 1961 All E.R. 285* referred to at p.49 of Halsbury and submitted that "the subject property was directly comparable to the depot for cleaning and drying grain used by a syndicate of farmers".

Determination:

The Tribunal notes that the subject property was initially valued with the reclaimed lands. While accepting Mr. O'Caomh's submission that the lands drained by the pump were not agricultural before being drained, and therefore that the pumphouse could not be strictly described as an improvement to agricultural lands, nonetheless, considers that the pumphouse is an integral part of the agricultural lands as evidenced by the initial entry in the Valuation Lists in 1882. While neither party offered detailed evidence in relation to what would seem

to be the nearest comparable property, namely, the pumphouse in the South Slob, the Tribunal has however noted the evidence of Mr. Bardon in relation to same, particularly that in relation to the meal factory which existed up to fifteen years ago and was therefore in existence at the date of the last revision of the pumphouse on the South Slobs.

The Tribunal accepts Mr. Haughton's argument that even though the ownership of the subject hereditament is separate and distinct from the ownership of the adjoining agricultural properties, the subject property is essential to the agricultural activities carried on on the adjoining lands, and cannot therefore be described as anything other than a "farm building".

Accordingly, therefore, the Tribunal is of the opinion that the subject property should not be liable to be rated by virtue of the provisions of *Section 14 Valuation (Ireland) Act 1852*.