Appeal No. VA95/4/010

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Janssen Pharmaceutical (Ireland) Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Office, Factory and Grounds at Map Ref: 2 "o", Townland: Wallingstown, ED: Caherlag, RD: Cork Upper, Co. Cork
Quantum - Contractor's basis of valuation

B E F O R E

Liam McKechnie S.C.	**Chairman**
Patrick Riney FRICS.FSCS.MIAVI	**Member**
Barry Smyth FRICS.FSCS	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 1997

(1) The appellant in this case is the owner and occupier of certain premises located at Little Island Industrial Estate in the County of Cork. Therein and therefrom it carries on a pharmaceutical business whereby it manufactures and produces at least 17 different ethical products for human consumption. The facilities available include a multi-storied and expensive production/synthesis block or blocks with an associated hydro-genation block. The separate auction block is supported by a paint farm, a drug store and a workshop/boiler house. The output goes to the finished goods warehouse or effluent treatment plant.

The complex is completed by an administration block with car park and laboratory. This company is one of many pharmaceutical/chemical companies located in Cork and in particular, in and about this area, and it, like the others, uses high class industrial buildings for the purposes of its operation. As the location of the Little Island Industrial Estate and the facilities and infrastructures available thereat and at its surrounding environs, are so well known, it is quite unnecessary for the purposes of this judgement to list, detail or describe same.

(2) In 1981, the property in its then state was first valued at £450 RV. Following additions, extensions and improvements the same were listed for revision in 1988 when this Tribunal fixed a rateable valuation of £920 thereon. That remained the position until 1994 when further additions were added to this property. At revision stage the rateable valuation was increased to £3,320 with no change being made at First Appeal stage. However subsequent to the publication by the Commissioner of his decision the parties have continued in consultation and in discussions with a view to further reducing the differences between them. As appears hereinafter these efforts have proved quite productive and, as the Tribunal stated in the Henkel judgement (VA95/4/011), this approach of continuing to negotiate even up to Tribunal stage is one which should be encouraged and welcomed.

(3) At revision stage the following items were in dispute:-

(1) A new production building called Plant 2
(2) A tank farm
(3) A drum store
(4) Additional Horsepower
(5) Pipe rack and pipes
(6) Hydrogenation building

As a result of the negotiations above mentioned all of these matters have now been agreed save for the production building which is the only outstanding item between the parties and is therefore the only hereditament which falls to be dealt with in this appeal.

(4) The appeal in this case was heard contemporaneous with the appeal in **Henkel Ireland Limited v. Commissioner of Valuation (VA95/4/011)**, above mentioned. Mr. Killen appeared on behalf of the appellant with Mr. Dineen on behalf of the Commissioner. Mr. Power, Production Manager of the appellant company was

present and gave evidence on behalf of his employer. Arising from the evidence of both valuers and of Mr. Power, the following constitutes a brief and general, but essentially an agreed, description of what plant 2 is:-

(1) It is a new, high specification production block which holds four reactors. In addition the drying facility in Plant 1 was transferred to Plant 2.

(2) It produces pharmaceutical goods in bulk powder form.

(3) There are two blocks in the building. Production/reactors are in the 'wet' area and produce a liquid product which is transferred to the 'dry' area for drying.

(4) The wet process has three levels:-

Ground Floor	-	Grinding	-	20 ft. high
First Floor	-	Access	-	45 ft. high
Second Floor	-	Plant	-	20 ft. high

(5) The dry process has four main floors:-

Ground Floor	-	drying	-	20 ft. high
First Floor	-	centrifuge	-	20 ft. high
Second Floor	-	reactor	-	20 ft. high
Third Floor	-	powder charging		20 ft. high

(6) There are two partial or mezzanine floors:-

- electrical switchgear
- heating, ventilating, air conditioning equipment (HVAC)

(7) There are two enclosed external stairways plus an internal stairs, a goods lift and a passenger lift.

(8) There are pressurised and clean room areas in the dry side - these would not be of Intel standard.

(9) The building does not have a general international rating or classification but, it uses Factory Mutual (FM) risk factor for assessing risk and has built the plant accordingly.

(10) It has in general a two hour fire rating, which is the highest category.

(11) The general construction is concrete pillars, beams, floors and roof with insulated steel walls.

(12) The floors have acid resistant tiles.

(13) The wet process does not have humidity control, that is, is not air conditioned, though impurities are extracted from the air before it is allowed into the building.

(14) The agreed floor area is 35,011 sq.ft.

(5) In the table following we set out what the appellant and the Commissioner suggest should be the appropriate rateable valuation in this case.

Production Plant 2

Respondent's Valuation	Appellant's Valuation	Appellant's CBV
£1,852	**£1,260**	**£1,220**

(6) It is accepted by both parties that since the premises in question is in effect a specialised high class industrial complex there is not available any comparable passing rents which could be used as a method for identifying the NAV. Accordingly, an alternative approach must be adopted. On behalf of the appellants Mr. Killen argues that the best method of valuation in this instance is to apply a rate per square foot to the units in question. This, Mr. Dineen on behalf of the Commissioner strongly disputes. He suggests that the only appropriate method is to apply the Contractor's Basis of Valuation (CBV) and accordingly his entire evidence was predicated on this approach. Knowing from the written submissions that this was so Mr. Killen, in a helpful way, responded by preparing a valuation also based on this method but making it clear at the same time that his primary submission still stood, namely that the correct approach was one based on a rate per square foot. In essence this was the major difference between the parties. There were it should be added also differences within the contractor's method with these being primarily directed to three issues namely, whether a specific value should be given to the site, secondly whether the capital value should be adjusted to November, 1988 or 1990 and thirdly as to what was the appropriate decapitalisation rate.

(7) In the case of **VA89/0/042 & VA90/3/015 - Janssen Pharmaceuticals (Ireland) Limited** the Tribunal have by way of a written judgement delivered on the 10th January, 1991 considered what valuation method should apply to certain elements within the appellant's own pharmaceutical plant. The rival contentions in that case, as advanced were, on behalf of the appellant the comparative approach and on behalf of the respondent the contractor's approach. At page 8 of the judgement the Tribunal said "the Tribunal has made no decision and does not find it necessary to do so on the issue of the capital costs method in this appeal. It considers that the

authority of the High Court in the IMI case compels it to take the approach offered by Mr. Killen. The Tribunal does not, in so holding, rule out the validity of taking a capital cost approach based on relevant calculations in certain cases. However, when this latter approach is being taken by either party it may only be pursued by the production of actual construction costs and appropriate vouching data or equivalent professional evidence.

Where the Commissioner of Valuation or his valuers find that the lack of disclosure by an appellant hinders them from meeting the standard of proof required by the Tribunal in relation to the capital cost method, then they are at liberty to apply to the Chairman of the Tribunal for directions pursuant to the 1988 Act for remedies which will ensure disclosure".

(8) It is clear from the extract quoted above that the Tribunal which heard the Janssen case, was not making a decision on principle as to whether the comparative approach was preferable to the capital cost approach in the valuation of pharmaceutical/chemical plants. In that case it preferred the former but in so doing it was also leaving open the issue as to whether in a future case the latter method could be used. Indeed, the Tribunal's reference to the type of evidence required and the method by which that might be obtained is in our view proof positive that the issue of principle was left undetermined and that, if principle be applicable at all, the same would be decided in a future case where the circumstances were more appropriate.

(9) In the its decision of the 15th December, 1994, when dealing with the 1991 revision of certain hereditaments within the appellant's property, **(VA93/3/004 - Henkel Ireland Limited v. Commissioner of Valuation)**, the Tribunal at pages 5, 6 & 7 of its judgment set out and recorded what its findings were. It is unnecessary for the purposes of our decision in the instant case to repeat *in extenso* these findings but it is of importance to refer to paragraph 6 which states "the decisions of the Tribunal in **VA93/3/005 and VA93/3/006 - F.M.C. International Limited** and the earlier **VA89/0/042 and VA90/3/015 - Janssen Pharmaceuticals Limited v. Commissioner of Valuation** represent an evolution of the Tribunal's thinking in relation to the law in this area. In the Janssen Pharmaceuticals Limited appeal the Tribunal said:- "the Tribunal does not..... rule out the validity of taking a capital cost approach based on relevant calculations in certain cases. However when this latter approach is being taken by the party it may only be pursued by the production of actual construction costs and appropriate vouching data or equivalent professional evidence".

The decision goes on to describe the contractors method in that particular case.

(10) There was another point decided in that case which is both important and material in the present case. As will be recalled the three items for valuation were firstly the TAED plant, secondly the extension of the Aldoxine Plant and thirdly Assorted Additions. On behalf of the Commissioner it was suggested that in relation to the

> Aldoxine plant the capitalisation rate should be 4.8% but that in relation to the TAED plant it should be 6%. The Tribunal, in dealing with this, said at paragraph 9 of its findings "the approach of the respondents in relation to the TAED building is basically appropriate but the Tribunal finds no reason why the NAV of same should exceed 4.8% of the capital cost as in the Aldoxine extension and accordingly adjust the NAV of £140,000 based on 6% return to the appropriate figure of £110,400 based on 4.8% return resulting in a valuation based on the 0.5% ratio of £552". It can therefore be seen that the Tribunal, by this decision of December 1994 applied a rate of 4.8% to both of these units and rejected the higher rate suggested on behalf of the Commissioner.

(11) In the present case it will be seen that the first issue for resolution by this Tribunal is whether or not the comparable approach is to be preferred to the method suggested on behalf of the Commissioner. In our view it is not. As indicated above the only item in issue is a new production building which having been erected, constructed and completed is now used as an integral part of the overall undertaking and enterprise carried on by Janssen at its Little Island premises. This building, for valuation purposes can in our view be distinguished from the buildings being the subject matter of the decision in the Henkel Ireland case. True, it might be said that one is a pharmaceutical plant and the other a chemical plant. Equally so it might be said that the buildings are of a different type and nature and are used for different purposes. Furthermore it might be argued that the standard of buildings generally within the Janssen plant are better than those within the Henkel plant. Nevertheless it is our firm view that none of these points can either individually or collectively so distinguish this case from the Henkel appeal which would in any way justify us in applying a different method of valuation to that applied on the Henkel appeal. Accordingly, we have no hesitation in accepting the submission made on behalf of the Commissioner that the correct method is that based on the contractor's approach.

(12) The second issue arises as to whether or not the adjusted costs should be by reference to a date in November, 1988 or some other date, either in 1990 or 1991. We see no reason in principle as to why the adjusted year should not be November, 1988 and accordingly we will reject any attempted adjustment to either a date in 1990 or a date in 1991.

(13) Thirdly in Mr. Killen's approach based on the contractor's method he suggests that the value for the site is already included and that accordingly no specific figure should be inserted in the ultimate calculation therefore. Mr. Dineen on the other hand is of the view that this is not so and that there should be a specific site value inserted into the calculations for the purposes of utilising the contractor's method. We are of the view firstly that the land upon which the hereditament in question is built or constructed must be valued. There is no doubt in our minds but that such a value is an essential component of the contractor's method. Accordingly in principle we agree with the submission made by Mr. Dineen. In practice however the application of that principle may cause great difficulty. Problems can arise in obtaining the open market capital value of the land in question, in carrying out adjustments to reflect any disadvantageous effects which the actual buildings in question or other rateable structures have on the value of the site, in dealing with the availability of services, in distinguishing between existing uses and alternative uses whether actual or potential, in disregarding the development potential above that required from the unit in question or the other rateable units within the property etc. In addition it is very frequently not clear whether on an original valuation or on subsequent revisions the value of the actual site upon which the disputed hereditament is built was or was not taken into account. So whilst there is no difficulty in stating the principle there may well be serious problems in its implementation in any given circumstances. In the instant case we do not believe that the evidence adduced is sufficient to either enable or justify us in concluding that a specific site value has already been taken into account for the actual lands upon which these units are now constructed. Accordingly since the only evidence of site value is that adduced on behalf of the Commissioner we propose to take his figure when making the required calculation.

(14) The fourth item is to determine what rate of decapitalisation should be used. For the reasons set forth at paragraph 11 above we are of the view that in principle there cannot be any difference between this case and the case of Henkel Ireland Limited.

Because of the similarity between both properties and because there is not in our opinion any material change in valuation circumstances or events, we feel that it would be quite inequitable to apply a rate of return different to that applied in the Henkel case. To do so would not advance uniformity between the parties. Accordingly we propose to apply a rate of 4.8% in this case. It is important however to record and repeat in this case the relevant comments of the Tribunal in its decision on the Henkel case.

(15) Dealing with the figures and costs produced during the course of the hearing the adjusted reconstruction costs in our view should be calculated as follows. In Mr. Dineen's original evidence he felt that the construction costs were £7m orthereabouts. However, having heard the respondent's evidence he was satisfied to accept that the correct construction costs were £6m. In order to adjust that to the November 1988 base rate Mr. Dineen suggests that one should take the average of two indices, namely Construction Cost Index as published by the Society of Chartered Surveyors and the Tender Price Index published by Patterson, Kempster and Shortall (PKS). The averages of both these amount £5,077,996. We have added to this a site value of £250,000 giving a total of £5,327,996. At a return of 4.8% gives a figure £255,744. To that the net annual value i.e. a ratio of 0.5% to give a rateable valuation of £1,278 say £1,280. To this must be added agreed figures for two items and also a previous valuation. The total rateable valuation therefore the appellant's rateable hereditament is as follows:-

Plant 2	£1,280
Hydrogenation	£ 70 (Agreed)
Drumstore	£ 80 (Agreed)
Add old valuation	£ 920
	£2,350

And the Tribunal so determines.