Appeal No. VA95/4/011

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Henkel Ireland Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Factory and Grounds at Map Ref: 3, Townland: Inchera, 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) Henkel Ireland Limited is the owner, user and occupier of a large chemical plant and works situated at the Little Island Industrial Estate in the County of Cork. This plant produces two main product types namely:-

(a) Tetra Acetyl Ethylene Diamine (TAED) - Used essentially in the copper mining industry, and

(b) Chemical Reagents (Aldoxine) - An intermediate product used in the manufacture of detergents.

The property in its then state was first valued in 1976 and thereafter as additions, alterations and improvements took place the same were subject to frequent revision and appeals. The revision immediately prior to that now before this Tribunal was also the subject matter of a Tribunal decision given on the 15th day of December, 1994. That decision reduced the rateable valuation from £2,782 to £2,311 and established that valuation as at November, 1991. The current appeal is in respect of a revision initiated in November, 1994.

(2) The November, 1991 revision was in respect of three developments which in the Tribunal's judgment were described as follows:-

"(1) **Erection of TAED plant:**

The plant was completed in October, 1990 and in full production in May, 1991.

Output is 7,000 tons per annum with production by continuous batch process.

The plant is operated to ISO standard.

(2) **Extension of Aldoxine plant:**

The changes doubled plant capacity from 2,000 to 4,000 tons per annum. The original plant was constructed in 1974 and has been subjected only to ongoing maintenance.

(3) **Assorted Additions, including two storey workshop offices**"

It is only in respect of the changes which have taken place since 1991 that this appeal is concerned. These changes are twelve in number and are as follows:-

(1) TAED Extension

(2) Acetic Acid Recovery (AAR) Plant

(3) New Boiler

(4) New Canteen and Conference Centre

(5) New Boiler House

(6) Silo in TAED Extension
(7) Additional Horsepower
(8) New Residue Tank
(9) AAR Cooling Tower
(10) Five New Tanks
(11) Huts
(12) New Pipes and Pipe Ridges

(4) Though no reduction was achieved at First Appeal stage the parties, subsequent to the publication of that decision, continued in discussion and in consultation with a view to agreeing all or at least some of the items above listed. Their efforts have been successful and the only two items now before this Tribunal are those numbered 1 & 2, namely the TAED extension and the AAR plant. The Tribunal would like to place on record their appreciation of the parties continuing efforts even after First Appeal stage and would like to say that, in its opinion, there should be no reason in principle why, even up to Tribunal stage, the parties should not explore every possibility of amicably resolving issues which still remain outstanding. It must be more preferable for agreement to be reached rather than a solution to be imposed.

(5) This appeal and the appeal in **Janssen Pharmaceuticals (Ireland) Limited v. Commissioner of Valuation (VA95/4/010)** were effectively heard together by this Tribunal in Cork on the 24th July, 1996. Mr. Killen appeared on behalf of the appellant and Mr. Dineen appeared on behalf of the Commissioner. Both, having taken the oath, adopted as their evidence in chief their respective written submissions which, in accordance with practice, had previously been exchanged between them and submitted to this Tribunal. Arising from the evidence so given the following is a general and brief description of both the TAED extension and the AAR plant.

TAED Extension:-

This extension is at the north east corner of the relevant production block. It includes a 60 m^3 stainless steel silo (separately valued) from which the product is bagged off.

The building is 20 feet high with concrete block walls to eaves. It is about 1,044 sq.ft. in area and in terms of quality is similar to the original TAED building.

Acetic Acid Recovery (AAR) Plant:-

This steel framed building is located north of TAED 7,000 and is in effect an extension to the waste treatment facility. It is an open sided decked structure with concrete base and three metal decking floors which are similar to the open sided floors in the TAED building. The recovery area is 4 storeys high each of about 4 metres with the motor control centre at 6 metres high and the valve room at 2.5 metres high. The total area is just over 2,900 sq.ft.

(6) In the table which follows there is set out what each party suggests should be the correct rateable valuation on these two units:-

TAED Extension			**AAR Plant**		
Respondent's Valuation	Appellant's Valuation	Appellant's CBV	Respondent's Valuation	Appellant's Valuation	Appellant's CBV
£65	**£36**	**£44**	**£250**	**£50**	**£195**

(7) 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.

(8) In the case of **Janssen Pharmaceuticals (Ireland) Limited v. Commissioner of Valuation (VA89/042 and VA90/3/015)** this Tribunal, by way of a written judgement delivered on the 10th, January, 1991 considered what valuation method should apply to elements in a pharmaceutical plant which, for all practical purposes, was sited in exactly the same location as the chemical plant owned and occupied by Henkel. 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".

(9) 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.

(10) 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 Tribunal then went on to apply the contractor's method in that particular appeal.

(11) 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.

(12) In the present case it will be evident from the aforegoing that the first item in dispute in this appeal is the extension to the TAED building (being the subject matter of the decision last mentioned) and that the second item is the AAR plant. Both of these now of course form an integral part of the undertaking being carried on by Henkel at its premises at Little Island. Both were constructed to a standard similar to the original TAED building, and although not identical, are in terms of nature and size, similar to the other individual and integrated components of this chemical plant.

That being the case it seems to us that it would be quite wrong to disregard the approach adopted by the Tribunal in the 1993 appeals and instead to substitute an alternative method of valuation. If one where to so do, how could it be said that this Tribunal would be acting fairly or uniformly or justly. For example if the Tribunal, in the 1993 appeal, had favoured the comparable approach it would appear to us that for the purposes of the present appeal we should likewise have to adopt such an approach.

The fact that its the Commissioner's view which prevails is entirely irrelevant.

Accordingly, we are satisfied that in the circumstances of this appeal the contractor's approach should be adopted and applied. We are equally satisfied however that this decision, as with the Janssen appeals of 1989 and 1990 should not be taken as a decision in principle about the correct method of valuing chemical plants but rather as a decision consequent on and following the 1993 appeals. In so saying it must be borne in mind that perhaps it is not possible to establish a fixed or rigid principle which for all plants and for all times will be applicable. It may well be that in due course and with the passage of time an alternative approach might be the most appropriate way for the Commissioner to establish what the NAV is and accordingly what the rateable valuation should be. As we have said this decision is in effect an extension of the December 1994 decision and must be viewed accordingly.

(13) During the course of the hearing we received evidence dealing with what figures and costs would be appropriate if the contractor's method of valuation was preferred. In our view the following should apply. The adjusted construction costs in relation to the extension should according to the Commissioner of Valuation be £180,000 whereas Mr. Killen is some £3,600 in excess of that. In relation to the AAR plant the respective figures are £780,000 and £810,000. The difference is partly explained by the fact that in the Commissioner's view the base date should be November 1988 whereas Mr. Killen suggests that it should be 1990. We feel that the Commissioner is correct in his approach and cannot see how in fact for the purposes of using the fraction the base year should be 1990. In both cases therefore we propose to take the Commissioner's figures. To these figures we intend to apply a rate of return of 4.8% being the same as that applied by the Tribunal in the Henkel decision above mentioned. We could not we feel apply a different rate. This is essentially because of the earlier decision but also because there is not in our view any material or significant change in circumstances between the 1993 and the present appeals which would justify a reconsideration of the appropriateness of this rate of return. At this decision, it should be clearly said, is not to the effect, that in certain circumstances a higher rate may be more appropriate (see **Intel (Ireland) Limited v. Commissioner of Valuation - VA94/3/025**).

Accordingly, the NAV in respect of the extension shall be 4.8% of £180,000 with a resulting RV of £44 and in the case of the AAR plant 4.8% of £780,000 with the resulting RV of £190.

(14) The Tribunal therefore determines the rateable valuation on the hereditament under appeal as follows:-

Total RV after Tribunal decision VA93/3/004	= £2,311
Add agreed items	= £ 603
Add for AAR	= £ 190
Add for TAED extension	= £ 44
Total	= £3,148

And the Tribunal so determines.