

Appeal No. VA95/4/012 &
VA95/4/023

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

Cork Communications Limited
Telecom Eireann

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Relay station and land at Map Ref: 11C and 11B, Townland: Carker North, ED:
Skahanagh, RD: Mallow, Co. Cork
Quantum - Contractor's basis of valuation

B E F O R E

Fred Devlin

FRICS.ACI Arb. (Acting Chairman)

Brid Mimmagh

Solicitor

Marie Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 14TH DAY OF JUNE, 1996

By Notices of Appeal dated the 28th day of September 1995 and 4th day of October 1995 respectively, the appellants appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £40 in respect of VA95/4/012 and £150 in respect of VA95/4/023, the above described hereditaments.

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

- "1) the valuation is bad in law.
- 2) the valuation is excessive and inequitable."

These two appeals are in respect of the assessments placed on two relay station facilities located on the top of Ballyhoura Mountain approximately 10 miles from Mallow. With the consent of the parties it was agreed that both appeals be heard simultaneously as the facts and grounds of appeal were virtually identical in each instance.

The oral hearing took place in Cork on the 29th day of May 1996. The appellants were represented by Mr. Desmond Killen FRICS FSCS of Donal O'Buachalla & Company Limited and the respondent was represented by Mr. Frank O'Connor ARICS, a Valuer with 16 years experience in the Valuation Office. Also present were Mr. Tom Murtagh, the Planning and Development Manager for the Radio Link Network and Antenna Systems Group of Telecom Eireann and Mr. John Moran, Co-ordinator of Cork Communications Limited.

At the commencement of the hearing, Mr. O'Connor said that some information which he had sought in relation to the Telecom Eireann installation had only come to hand in recent days. Having considered this information he now wished to amend the valuations contained in both his written submissions. At the suggestion of the Tribunal a short adjournment was granted in order to afford the valuers an opportunity to re-assess the situation in the light of Mr. O'Connor's amended valuations. Following this adjournment the valuers indicated that they wished the oral hearing to proceed.

Prior to the hearing, Mr. Killen and Mr. O'Connor forwarded written submissions and valuations to the Registrar in respect of each hereditament. By mutual consent Mr. Killen and Mr. O'Connor requested that these written submissions and valuations be admitted in evidence. In Mr. O'Connor's case the valuations submitted being subject to amendment as requested at the commencement of the hearing.

Set out below is a summary of the valuations submitted by the valuers in respect of each hereditament which comprise as follows.

- a) A relay facility occupying a site area of approximately $\frac{1}{4}$ acre under a lease

arrangement from 1992 at an annual rent of £5,000 per annum with provision for rent reviews at 5 yearly intervals.

Occupier: **Cork Communications Limited**

Appellants valuation.

(i) On a Comparison Basis

NAV of buildings	£ 642
NAV of site	<u>£2,500</u>
Total NAV	<u>£3,142</u>

Rateable valuation at 0.5%	£16.00
Add for generator and mast	£ 2.00
	<u>£ 8.00</u>
Total rateable valuation	<u>£26.00</u>

(ii) On a Contractor's Basis

Construction costs (1993)	£44,618
Adjusted to 1988 levels - say	£37,290
NAV at 5%	£ 1,865

Rateable valuation at 0.5%	£ 9.50
Add for site	<u>£12.50</u>
Total rateable valuation	<u>£22.00</u>

Respondent's valuation:-

(i) Contractor's Basis

Construction costs	£44,600
Adjusted to 1988 levels - say	£38,120
NAV at 6.5%	£ 2,478
Add site rental - rent 1993	£ 5,000

Adjust to 1988 levels	<u>£ 4,351</u>
Total net annual value	<u>£ 6,829</u>
Say	£ 6,800

Rateable valuation at 0.5% £34.00

Valuation as amended at oral hearing.

- b) A relay facility occupying a site area of 1.6 acres purchased in or about 1982 for £100.

Occupier: **Telecom Eireann**

Appellant's valuation.

(i) On a Comparison Basis

NAV of buildings	£4,405
Rateable valuation at 0.5%	£22.00
Add for mast	£20.00
Add for site	<u>£12.50</u>
Total rateable valuation	<u>£54.50</u>
Say	£55.00

(ii) On a Contractor's Basis

Estimated Costs (1995)	£170,000
Adjust for age and 1988 tone	£127,500
NAV at 5%	£ 6,375
Rateable valuation at 0.5%	£32.00
Add for site	<u>£12.50</u>
Total rateable valuation	<u>£44.50</u>

Respondent's valuation:-

Construction Costs 1993	£120,000
Adjust to 1988 levels	£175,000

Add cost of generator (1988) levels	£ 15,000
Total 1988 costs	£190,000
NAV at 6.5%	£ 12,350
Add for site rent	<u>£ 12,000</u>
Total NAV	<u>£ 24,350</u>
Say	£ 24,000
Rateable valuation at 0.5%	£120.00

Valuation as adjusted at oral hearing.

Mr. Killen in arriving at his opinions of value, relied upon three comparisons of similar type installations located in Cork and Wexford. Mr. O'Connor did not submit any comparisons but said that other relay stations in Co. Cork recently dealt with were valued on a similar basis.

At the oral hearing both valuers made further oral submissions and availed of the opportunity to comment on each other's valuation. The various points made by the valuers may be summarised as follows:-

The appellants' contention

- 1) Facts in relation to each facility not in dispute
- 2) The rent payable in respect of the site occupied by Cork Communications included a right of way outside the curtilage of the hereditament.
- 3) The site rent payable by Cork Communications i.e. £5,000 is excessive and should be disregarded.
- 4) Relay facilities do not need a large site area and hence the rent payable should not be determined on a rate per acre basis.
- 5) An estimate of net annual value calculated on the contractor's basis of valuation must have regard to age and obsolescence.

- 6) The decapitalisation rate of 6.5% applied by the respondent is excessive and a figure of 5% is more appropriate for this type of facility. In support of this contention, Mr. Killen referred to previous decisions handed down by the Valuation Tribunal and the fact that 5% was used in global valuations prepared in accordance with Section 4 of the Valuation Act 1988.

The respondent's contention

- 1) Facts in relation to each hereditament not in dispute.
- 2) Rent payable by Cork Communications not in dispute and represents market evidence.
- 3) The rent being paid reflects the right of way and indeed the site without the necessary right of way would be unlettable.
- 4) Rental value attributable to the Telecom site must have regard to the area and the works carried out thereon.
- 5) The decapitalisation rate of 6.5% is fair and reasonable and the same as that used by the Valuation Office in respect of other similar installations throughout the Cork region.

Under cross examination, Mr. Killen said that on only one occasion had he agreed a decapitalisation rate of 6.5%. However, this was before the determination handed down by the Valuation Tribunal in **VA93/3/004 - Henkel (Ireland) Limited v. Commissioner of Valuation**. Mr. O'Connor in response to questions from Mr. Killen was not able to produce direct evidence of any similar installations valued at a decapitalisation rate of 6.5%. Indeed, he indicated that it was possible that some installations were valued at a lower rate.

Determination:

The Tribunal has carefully considered all the evidence and arguments adduced and makes the following preliminary findings:-

- 1) The rent payable by Cork Communications Limited is *prima facie* evidence of rental value and Mr. O'Connor's downward adjustment to reflect 1988 levels is fair and reasonable.
- 2) Mr. O'Connor is correct in his contention that the rent paid reflects the benefit of the necessary right of way and it is proper that this be taken into account in arriving at the appropriate net annual value of the hereditament.
- 3) Mr. Killen's contention that rental value is not sensitive to area is not well founded nor indeed is Mr. O'Connor's contention that rental value will increase with area on a pro rata basis.
- 4) Mr. Killen's decapitalisation rate of 5% is more appropriate having regard to the nature of the facilities.

Section 11 of the Valuation Act 1852 as amended by Section 5 of the Valuation Act 1986 sets down the basis for determining net annual value. Section 11 does not set down the method for determining net annual value and over the years a number of accepted valuation methods have evolved. Case law indicates that whilst all methods of valuation may be admitted the method to be preferred is that which gives rise to the smallest margin for error (*Garton v. Hunter (VO) [1969] R.A. p.179*). In regard to these two appeals this Tribunal considers the contractors basis of valuation to be the preferred method and determines the net annual value of each hereditament as set out below.

- 1) Lot No. 11C - Townland: Carker North
Occupier: **Cork Communications Limited**

Construction Costs (1993)		£44,618
Adjust to 1988 levels	Say	£38,000
Net annual value at 5%		£ 1,900
Add for site	Say	<u>£ 4,350</u>
Total net annual value		<u>£ 6,250</u>
	Say	£ 6,200

Rateable valuation at 0.5% £31.00

2) Lot No. 11B - Townland: Carker North

Occupier: **Telecom Eireann**

Estimated Construction Cost (1995) £170,000

Less 25% for age and tone of list £127,500

Net annual value at 5% £ 6,375

Add for site £ 8,600

Total net annual value £ 14,975

Say £ 15,000

Rateable valuation at 0.5% £75.00