

Appeal No. VA95/4/014 to
VA95/4/022

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

Adambridge Manufacturing Limited (VA95/4/014 - Unit 1)
Munster Joinery (VA95/4/015 - Unit 2)
Solidar Limited (VA95/4/016 - Unit 3)
Jasari Limited (VA95/4/017 - Unit 4)
Limchae Limited (VA95/4/018 - Unit 5)
Morearda Limited (VA95/4/019 - Unit 6)
Field Church Limited (VA95/4/020 - Unit 7)
Cairnsville Limited (VA95/4/021 - Unit 8)
Galandine Limited (VA95/4/022 - Unit 9)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory at Map Ref: 4BGHI5CDE/1, 2, 3, 4, 5, 6, 7, 8 and 9 Townland: Knocknagree, ED.:
Knocknagree, RD.: Millstreet, Co. Cork

Quantum - Value each unit separately or the entire as one and apportion

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Marie Connellan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JULY, 1997

By Notices of Appeal dated the 3rd October, 1995 the Appellant's appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations on the above described hereditaments as follows:-

(1)	VA95/4/014	-	RV £600,	(2)	VA95/4/015	-	RV £400,
(3)	VA95/4/016	-	RV £55,	(4)	VA95/4/017	-	RV £75,
(5)	VA95/4/018	-	RV £210,	(6)	VA95/4/019	-	RV £300,
(7)	VA95/4/020	-	RV £190,	(8)	VA95/4/021	-	RV £80,
(9)	VA95/4/022	-	RV £80.				

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 appeals were held contemporaneously by agreement by way of an oral hearing held at the District Courthouse, Anglesea Street, Cork on the 19th day of June, 1996.

At the hearing the Appellant was represented by Aindrias O'Caoimh, Senior Counsel and the Respondent by Eamonn Marray, Barrister-at-Law. Valuation evidence was given on behalf of the Appellant by Mr. Alan McMillan, ARICS, MIAVI, a Director of Donal O'Buachalla & Company Limited and by Mr. Frank O'Connor, ARICS, B.Sc (Surv), a Valuer in the Valuation Office. David Holland, Barrister-at-Law appeared on behalf of Cork County Council and Ms. Phil Nic Suibhne, a Senior Staff Officer in Cork County Council also gave evidence.

The Property

The subject property comprises an extensive industrial complex containing a number of buildings of fairly basic construction in a rural location close to the Cork/Kerry border and about 4 miles south of the village of Ballydesmond and 3 miles north of the village of Knocknagree. The buildings are occupied by a number of inter-related companies which effectively trade as Munster Joinery which is engaged in the manufacture of doors and windows.

Following the 1994/4 revision the following entries appeared in the Valuation List:-

Lot	:	4BcGhI5CDE/1 (VA95/4/014)
Townland	:	Lackanastooka
Occupier	:	Adambridge Manufacturing Limited
Description	:	Factory

RV. : £600

Lot : 4BcGHI5CDE/2 (VA95/4/015)
 Townland : Lackanastooka
 Occupier : Munster Joinery Limited
 Description : Factory
 RV. : £400

Lot : 4BcGHI5CDE/3 (VA95/4/016)
 Townland : Lackanastooka
 Occupier : Solidar Limited
 Description : Factory
 RV. : £55

Lot : 4BcGHI5CDE/4 (VA95/4/017)
 Townland : Lackanastooka
 Occupier : Jasari Limited
 Description : Factory
 RV. : £75

Lot : 4BcGHI5CDE/5 (VA95/4/018)
 Townland : Lackanastooka
 Occupier : Limchae Limited
 Description : Factory
 RV. : £210

Lot : 4BcGHI5CDE/6 (VA95/4/019)
 Townland : Lackanastooka
 Occupier : Morearda Limited
 Description : Factory
 RV. : £300

Lot : 4BcGHI5CDE/7 (VA95/4/020)
 Townland : Lackanastooka
 Occupier : Field Church Limited
 Description : Factory
 RV. : £190

Lot : 4BcGHI5CDE/8 (VA95/4/021)
 Townland : Lackanastooka
 Occupier : Cairnsville Limited
 Description : Factory

RV.	:	£80
Lot	:	4BcGHI5CDE/9 (VA95/4/022)
Townland	:	Lackanastooka
Occupier	:	Galandine Limited
Description	:	Factory
RV.	:	£80

An appeal against each of the above assessments was lodged with the Commissioner of Valuation which resulted in no change and on foot of these decision these appeals to the Tribunal now lie.

Oral Hearing

At the commencement of the oral hearing a preliminary issue arose regarding the notification procedure required under *Section 3(4)(a) of the Valuation Act, 1986*.

Mr. O'Caoimh contended on behalf of the Appellants that the blue list submitted to the Commissioner of Valuation did not include Lot No's. 4F and 5B. He also contended that the notification procedure required under the provisions of *Section 3(4)(a) of the Valuation Act, 1986* was not adhered to and accordingly the valuation attaching to these lot numbers should be struck out.

Mr. Marray on behalf of the Commissioner of Valuation conceded that the lot numbers referred to were not listed nor indeed did it appear that the County Council fully complied with the procedures required under the 1986 Act. Nonetheless in accordance with the decision of ***R. & H. Hall v. Commissioner of Valuation*** the Commissioner was entitled to enter into the property and carry out the revision of valuations as had been completed. The essence of the matter was that the occupier was identified and notified and whilst there may not have been complete compliance the short coming in the administration procedure was not fatal to the revision.

Ms. Nic Suibhne, a Staff Officer in the County Council gave evidence to the fact that she had prepared the documents to be sent out to the named occupiers. Each notification was separately prepared and made ready for posting but she could not vouch that each notice was in fact posted.

Mr. Holland on behalf of the County Council said that the Local Authority in preparing the notices relied to a large degree upon the information contained in the Valuation List. If the occupier or owner had changed it was not a fatal flaw as long as the information relied upon by the County Council was sufficient so as not to prejudice the Ratepayer. As far as the County Council was concerned it had an obligation as far as possible to notify the occupiers of the upcoming revision whilst the matter of lot numbering was the responsibility of the Commissioner of Valuation. He contended that the County Council had to the best of its ability listed all the relevant lots and as for the Commissioner of Valuation he had no way of knowing about the contents of the notices sent out.

Mr. O'Caoimh submitted that the carrying out of a valuation for revision purposes is a judicial function insofar as it affects peoples rights. Where Ratepayers are not properly notified about the upcoming revision they are not aware in advance of what is happening.

Following a short adjournment during which the Tribunal considered the submissions made by the Appellant the Tribunal ruled as follows:-

Cork County Council substantially complied with the requirements of *Section 3(4)(a) of the Valuation Act, 1986* and did in fact serve notices on the occupiers . The Tribunal also noted that this is not the first time that an issue regarding the notification procedure had arisen and accordingly the Tribunal would like to see the Local Authority put in place some more satisfactory procedures regarding the issuing of such notices, such as the use of carbon copy documentation and post book which could be adduced in evidence.

In any event the Tribunal does not consider the rights of the Ratepayer in this instance to be prejudiced in any way and does not accept that the deficiency in the administration procedure on this occasion goes to the root of the appeal. Given the particular circumstances that pertain in relation to this property where a number of inter-related companies are trading collectively as Munster Joinery and occupying a single site, it is not surprising that errors could be made in preparing the documentation for the revision procedure. Mr. O'Caoimh expressed dissatisfaction at the Tribunal ruling at the oral hearing.

Appellant's Valuation Evidence

Mr. McMillan adopted his written submission as his evidence in chief given under oath and stressed what he considered to be the major short comings of the complex. In his opinion the site area was over developed and as a result circulation space and hard standing storage areas

were inadequate for an operation of the type carried on at the premises. The buildings he said were of very basic construction except for the most recent additions but even these were of a standard far short of what would be found in a modern industrial estate.

Mr. McMillan pointed out that the premises are located in a rural location far from the source of raw materials, support services and customer base. The road net work in the surrounding area is inadequate and not suited to heavy vehicular traffic. Having regard to the inherent drawbacks it was his contention that these should be reflected in the valuation attributable to the various buildings within the complex.

Mr. McMillan said that the Commissioner of Valuation had purported to value 12,783 sq.ft. and 8,585 sq.ft. in units No. 6 and 7 respectively and in so doing was incorrect as these buildings were still under construction and not capable of beneficial occupation at the relevant date.

Having regard to the above Mr. McMillan put forward one valuation for the entire complex excluding the areas which he contended were incomplete at the valuation date as follows:-

Offices	7,717 sq.ft. @	£1.75 =	£ 13,505
Factory/Stores, etc.	251,412 sq.ft. @	£0.60 =	£150,847
Mezzanine Areas	22,063 sq.ft. @	£0.25 =	<u>£ 5,516</u>
		NAV =	£169,868
		Say =	£170,000
	RV @	0.5% =	£850

Mr. McMillan then proceeded to apportion the RV between the various occupiers as set out below. In carrying out his apportionment he attributed the main office to Munster Joinery Limited and the mezzanine areas to Adambridge Manufacturing Limited and Limchae Limited.

<u>Unit No.</u>	<u>Occupier</u>	<u>Valuation</u>
1.	Adambridge Manufacturing Limited	RV £285
2.	Munster Joinery Limited	RV £200
3.	Solidar Limited	RV £22
4.	Jasari Limited	RV £30
5.	Limchae Limited	RV £90
6.	Morearda Limited	RV £100

7.	Field Church Limited	RV £60
8.	Cairnsville Limited	RV £32
9.	Galandine Limited	RV £32

In regard to his opinion of value he had relied upon the comparisons as set down in Appendix 1 attached to this judgement.

Under cross-examination Mr. McMillan said that due to the somewhat unusual situation as exists on the ground the only practical way to value the entire complex was as a single unit and then to apportion the resultant figure between the nine units of occupation. In essence he said the operation was one enterprise carried on by nine separate but nonetheless independent companies. The individual buildings or parts thereof he said were indicated to him by a representative of the Appellant Company as there was no physical boundaries between the various units of occupation.

Mr. McMillan agreed that the buildings within the complex varied from good to poor but nonetheless even the good buildings were basic in construction and inexpensive to build. He also stressed the fact that location was always a major factor in arriving at an opinion of rental value which would also have to take into account the inherent infrastructural drawbacks.

Respondent's Valuation Evidence

Mr. O'Connor adopted his written submission as being his evidence in chief given under oath. In relation to the physical attributes of the buildings and their location his evidence was somewhat similar to that of Mr. McMillan. However in his opinion it was proper to value each unit of occupation individually as each occupier was a separate legal entity. In relation to Mr. McMillan's contention that two buildings were not completed at the relevant date he could not give an opinion one way or the other as he had not inspected the property until June, 1995 at which time all the buildings were completed and in use. In relation to Mr. McMillan's valuation approach, i.e. to value the complex as one entity, this was something which had not been raised by him during the discussions which had taken place at First Appeal stage.

Mr. O'Connor said that in his opinion the correct valuation approach was to accept that there were nine separate hereditaments to be valued on an individual basis. Having so decided he valued each unit of occupation as set out below:-

1. Lot 4BGHI5CDE/1

Block (1.3.4.5A) Workshop/

Canteen/Stores:	32,914 sq.ft.	@	£1.00/sq.ft.	=	£ 32,914
(2) Main Factory:	47,884 sq.ft.	@	£1.15/sq.ft.	=	£ 55,067
(2A.5B) 1st Fl. Stores:	15,822 sq.ft.	@	£0.50/sq.ft.	=	£ 7,911
(6 & 7) Kilns:	7,046 sq.ft.	@	£3.00/sq.ft.	=	£ 21,138
(8) Concrete Storage Yard:	25,833 sq.ft.	@	£0.10/sq.ft.	=	<u>£ 2,583</u>
			NAV	=	£119,613
					<u>@ 0.5%</u>
			RV	=	£600.00

2. Lot 4BGHI5CDE/2

Block (9) 2. storey Offices:	7,717 sq.ft.	@	£2.50/sq.ft.	=	£19,293
(10.11.12.13.14) Factory/ Stores:	44,363 sq.ft.	@	£1.25/sq.ft.	=	£55,454
(15.16A) Storage Yard:	48,471 sq.ft.	@	£0.10/sq.ft.	=	<u>£ 4,847</u>
			NAV	=	£79,594
					<u>@ 0.5%</u>
			RV	=	£400.00

3. Lot 4BGHI5CDE/3

Block (17) Factory:	7,445 sq.ft.	@	£1.50/sq.ft.	=	£11,167
			NAV	=	<u>@ 0.5%</u>
			RV	=	£55.00

4. Lot 4BGHI5CDE/4

Block (18) Factory:	9,928 sq.ft.	@	£1.50/sq.ft.	=	£14,892
			NAV	=	<u>@ 0.5%</u>
			RV	=	£75.00

5. Lot 4BGHI5CDE/5

Block (19.20) Factory:	21,563 sq.ft.	@	£1.50/sq.ft.	=	£32,344
(21) Gr. Fl. Store:	6,241 sq.ft.	@	£1.00/sq.ft.	=	£ 6,241
(21) 1st. Fl. Store:	6,421 sq.ft.	@	£0.50/sq.ft.	=	<u>£ 3,121</u>
			NAV	=	£41,706
					<u>@ 0.5%</u>
			RV	=	£210.00

6. Lot 4BGHI5CDE/6

Block (22.23A.24.25) Factory/

Stores:	44,863 sq.ft.	@	£1.30/sq.ft.	=	£58,322
(23B) 1st. Fl. Office:	792 sq.ft.	@	£2.00/sq.ft.	=	<u>£ 1,584</u>
			NAV	=	£59,906
					<u>@ 0.5%</u>
			RV	=	£300.00

7. **Lot 4BGHI5CDE/7**

Block (26.27.28.AB)

Factory:	28,151 sq.ft.	@	£1.35/sq.ft.	=	£38,004
			NAV		<u>@ 0.5%</u>
			RV		£190.00

8. **Lot 4BGHI5CDE/8**

Block (29) Factory:	10,795 sq.ft.	@	£1.50/sq.ft.	=	£16,193
			NAV		<u>@ 0.5%</u>
			RV	=	£80.00

9. **Lot 4BGHI5CDE/9**

Block (30) Factory:	10,795 sq.ft.	@	£1.50/sq.ft.	=	£16,193
			NAV		<u>@ 0.5%</u>
			RV	=	£80.00

Under cross-examination Mr. O'Connor agreed that whilst there were a number of separate companies all of them operated as one integrated enterprise. However, the nub of the matter was that each company was a separate legal entity and was in beneficial occupation of a section of the property. Accordingly, therefore it was correct that there should be nine separate valuations each of them to be individually assessed.

Mr. Marray in his closing remarks submitted that the Appellant could not seek to value the complex as a single entity and then apportion the valuation so determined among the nine separate units of occupation as this issue was not raised at First Appeal stage. In relation to Mr. McMillan's contention that two of the buildings were incomplete at the revision date, there was no evidence of this fact in the revising valuer's report. Hence he submitted that these buildings should be included in the valuation.

Mr. O'Caoimh in his closing submission said that the RV must be determined having regard to the rule of *rebus sic stantibus*. It followed therefore that the valuer must have regard to the reality of the situation and value the premises as one single unit as Mr. McMillan had done.

Once having arrived at an overall figure he could then apportion the valuation over the nine individual lots. Mr. O'Connor's approach in the particular circumstances that pertained was incorrect and indeed it could be argued that in some instances the value of some of the separate units could be nil. Mr. O'Caoimh submitted that Mr. McMillan's valuation was well founded and supported by his comparisons which were more relevant than those of Mr. O'Connor.

Determination

1. This complex of buildings is occupied by nine separate but inter-related companies which trade collectively as Munster Joinery.
2. For reasons of its own each company has its own designated area within the complex and it appeared that there were no physical boundaries separating each individual unit of occupation other than the physical boundary of the building they occupy. It would appear that they share common services, common administration offices and common yard and circulation space. By any criteria this is a somewhat unusual situation and in normal circumstances the unit of occupation would be taken as being the entire. It is common case that each company is the rated occupier of the space it occupies and it is not for this Tribunal to cast doubts as to whether or not such a course of action is appropriate.
3. The agreement to accord a separate valuation to each unit of occupation poses valuation problems. The Appellant's valuer takes the view that the most appropriate valuation approach is to value the entire as a single unit and having calculated the NAV on this basis to apportion the figure so determined on a pro-rata basis. On the other hand the Respondent's valuer considered the appropriate method of valuation was to determine the NAV of each unit of occupation separately.
4. Having considered the various arguments the Tribunal prefers the Appellant's valuer's approach as it more accurately reflects the actual situation pertaining on the ground. In arriving at its decision the Tribunal considers the existing arrangement unusual to say the least given the fact that all the companies are engaged upon the same enterprise and collectively trade as Munster Joinery. The situation that exists is totally artificial and to attempt to value each separate unit of occupation on an individual basis could give rise to an anomalous situation.

5. In regard to the difference of opinion as to whether or not the two buildings located in lot numbers 4F and 5B were completed and capable of beneficial occupation at the valuation date the Tribunal finds in favour of the Appellant for the simple reason that Mr. O'Connor only visited the property after the relevant date and hence could not say one way or another what the situation was. Mr. McMillan on the other hand gave evidence to the fact that the buildings were in an incomplete stage at the valuation dates and the Tribunal has no alternative but to accept his sworn testimony in this regard.

6. The Tribunal has carefully considered all the comparative evidence submitted by both valuer's and cannot anywhere find a comparison that appears to be in any way similar to the subject. Nonetheless the evidence in relation to the Curragh Tintawn factory containing 140,000 sq.ft. is considered relevant by virtue of the fact that it is, an open market letting, together with a revision of valuation carried out after the implementation of the Valuation Act, 1986. The Atlantic Mills premises in Longford is also considered relevant. Most of Mr. O'Connor's evidence is in relation to much smaller premises which is not surprising given his approach to the valuation.

Nonetheless the sq.ft. ratio in relation to factory space varied from a low of £1.25 psf to a high of £1.88 psf whilst the rates applied to office accommodation varied from a low of £2 psf to a high of £3 psf.

7. An examination of the photographs handed in at the hearing indicate that Mr. McMillan's description of the factory buildings does not stand up to scrutiny. Whilst the buildings appear to be of somewhat basic construction they do nonetheless provide good functional industrial accommodation, whilst the two storey office block is an attractive looking building. Accordingly, therefore the Tribunal considers Mr. McMillan's valuation may be cast at too low a level even taking into account the extent and location of the property. Making the best judgement it can on the evidence available to it the Tribunal propose to value the industrial space at £1 psf overall and the office accommodation at £2 psf. The first floor and mezzanine is to be valued at 35p psf.

8. Having regard to the foregoing the Tribunal proposes to value the entire complex in the first instance and then apportion the figure determined in accordance with Mr. O'Connor's schedule of the areas in order to provide an RV for each entry in the Valuation List. For the sake of clarification the Tribunal accepts as a matter of fact that

there are nine separate hereditaments and that the proposal to initially value the property as one entity is purely valuation methodology in order to arrive at a fair and proper valuation of each unit having regard to the somewhat unusual circumstances that exists.

9. Having regard to the fact that the uncovered areas of the property are in common use it is not proposed to attribute any separate valuation to the yard space which in any event the Tribunal considers to be an inherent part of the buildings.
10. The Tribunal have carefully examined the areas submitted and finds that there are some minor differences and accordingly for the basis of arriving at the NAV on a global basis it is proposed to use the areas as set out below and to apportion the resultant valuation on an individual basis in line with Mr. O'Connor's schedule of accommodation.

Global Valuation:

Offices	7,717 sq.ft.	@	£2.00 psf	=	£ 15,434
Factory/Stores, etc.	251,000 sq.ft.	@	£1.00 psf	=	£251,000
Mezzanine Space	22,000 sq.ft.	@	£0.35p psf	=	<u>£ 7,700</u>
			NAV		£274,134
			Say		£274,000
					<u>@ 0.5%</u>
			RV	=	£1,370

The above valuation is apportioned as follows:-

1. Adamsbridge Manufacturing Limited RV £480
2. Munster Joinery Limited RV £300
3. Solidar Limited RV £40
4. Jasari Limited RV £50
5. Limchae Limited RV £130
6. Morearda Limited RV £160
7. Field Church Limited RV £100
8. Cairnsville Limited RV £55
9. Galandine Limited RV £55

