

Appeal No. VA95/5/020

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

Maura Kopke

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Fish farm at Lot No. 3B, Ballyknockgrumpin, ED: Glynn, RD: Carlow, Co. Carlow
Agricultural exemption - Tanks and buildings used as a fish farm

B E F O R E

Fred Devlin

FRICS.ACI Arb. (Acting Chairman)

Patrick Riney

FSCS.FRICS.MIAVI

Rita Tynan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF FEBRUARY, 1997

1. The valuation of this hereditament was revised at the 1994/2 Revision and appeared in the Valuation List with the rateable valuation of £18 and described as "Fish Farm".
2. Subsequently, an appeal to the Commissioner of Valuation was lodged on the grounds that the buildings and tanks qualified for exempt status as they were farm buildings within the meaning of the Valuation Acts.
3. Following an inspection and report by the appeal valuer the Commissioner of Valuation refused exemption and as a consequence a further appeal was made to this Tribunal.

4. By letter dated the 1st July 1996 the appellant set down the grounds of appeal as follows:-

(a) The operation carried on being a fish hatchery is of necessity exempt further to *Section 14 of the Act of 1986* being of its nature an activity of primary production as Agriculture, Horticulture and Forestry and furthermore that the process therein whereby the product drug subject matter is a living organism suspended in water. Numerous types of similarly exempt activities are carried on in such conditions. There is no basis for any distinction despite invitation no grounds have been advanced by the respondent in that regard.

(b) In the alternative the premises comprises of some 18 large tanks with auxiliary buildings. Having regard to the decision in *Siuicre Eireann v. Commissioner of Valuation 1992, ILRM682*, heavy fuel tanks were held not to be buildings within the meaning of the Valuation Acts and accordingly, the fish tanks herein are similarly exempt.

(c) As the process is one of intensive breeding of a species in confined circumstances the process can be deemed farming pursuant to the decision in *Knockhall Piggeries v. Kerrane 1985, ILTR319*. Also in conjunction with the Hatchery the several buildings on the premises are used in connection with the farming operations and therefore are exempt pursuant to the decision in *Nixon v. Commissioner of Valuation 1980, IR340*.

(d) The fish tanks being open top structures i.e. ponds, are not buildings and are not rateable.

(e) Alternatively, the operation is one of stock husbandry carried on upon land as is typical of modern agriculture and as such is exempt.

5. The appeal to the Tribunal was heard by way of an oral hearing held in the County Council Chamber, Kilkenny on the 10th day of July 1996 where the appellant was represented by Simon Boyle, BL instructed by James Cody & Sons. The respondent was represented by Eamonn Marray, BL instructed by the Chief State Solicitor. Ms. Maura Kopke gave evidence of the activities carried at the hereditament and Mr. Phil Colgan gave evidence on behalf of the respondent.

6. The subject hereditament comprises three single storey buildings, built on the side of the River Barrow together with 20 fish tanks. The buildings have a total rateable valuation of £10, whilst £8 is attributable to the tanks, giving a total rateable valuation of £18.

This figure is not in dispute and during the course of the hearing it would appear that the buildings and tanks are situated on and held with land which has an area of approx. 3 acres.

7. Ms. Kopke in her evidence outlined the nature of activity carried on at the hereditament which may be summarised as follows. Fish eggs are bought into the hatchery and following incubation the smolts are then transferred into the tanks where they may remain for up to 12 months or more before being transferred to a fish farm for finishing.

8. In order to maintain the health of the eggs and smolts it is necessary to introduce oxygen into the water which is drawn from the River Barrow under licence. Fish meal and dry feed is also bought in and the supply of oxygen and feed is continually monitored and controlled in order to produce healthy smolts which are subject to a grading process at the end of the production cycle. Annual throughput of smolts is estimated to be in the order of 350,000.

9. All feed is bought in and is not produced from the adjoining land nor indeed is the land used for the dispersal of waste product from the operation. Indeed no actual use of the land is made in connection with the activity carried on in the hereditament other than the fact that the buildings and tanks are located thereon.

10. The tanks are not located in the river but on the land and Ms. Kopke in her evidence stated that the enterprise could be carried on anywhere subject to the availability of an acceptable and adequate supply of water.

11. According to the appellant the fish farm has been in operation since 1986 and has been a member of the Irish Farming Association for over 2 years and before that it was a member of the Salmon Board Association before that association was absorbed into the IFA.

12. ***The Appellant's Legal Submission***

The appellants submission was prepared by Simon Boyle, BL and is set out in full in Appendix A attached to this judgment.

13. ***The Respondent's Legal Submission***

The respondents legal submission was prepared by Eamonn Marray, BL and is set out in full in Appendix B attached to this judgment.

Determination:

(1) *Section 2 of the Valuation Act 1986* states:-

"For the purposes of the Act of 1852 property, falling within any of the categories of fixed properties specified in the *Schedule to the Act of 1852* (inserted by this Act) shall be deemed to be rateable hereditaments in addition to those specified in Section 12 of that Act".

(2) *Section 3 of the Valuation Act 1986* extended the categories of fixed property by the insertion of a schedule after *Section 48 of the Valuation (Ireland) Act 1852*.

(3) *Section 14 of the 1852 Act* states:-

"No hereditament or tenement shall be liable to be rated in respect of any increase in the value thereof arising from any drainage, reclamation or embankment from the sea of any lake or river or any erection of farm, outhouse or office buildings or any permanent agricultural improvement as specified under made or executed thereon within in seven years next before the making of such valuation or revision."

(4) It is clear from the perusal of the above sections that the subject hereditament is rateable unless it falls within the ambit of *Section 14 of the 1852 Act* i.e. that it is a "farm building".

(5) In the submissions prepared by counsel for both parties reference was made to all the leading cases dealing with exemption under *Section 14 of the 1852 Act* and this Tribunal does not intend to recite the principal findings in these cases in any great detail, other than to mention the following quotation of Henchy J. in *Nixon v. Commissioner of Valuation (1980) IR340*:-

"Farm buildings in *Section 14 of the 1852 Act* should be given their ordinary meaning, namely buildings on a farm which are used in connection with farming operations on the farm."

- (6) It is true to say that when the 1852 Act was introduced many of the operations now carried out on agricultural land were not envisaged such as intensive poultry farming activities and calf and pig fattening units etc. Nonetheless, case law has interpreted Section 14 to include such activities as long as they can satisfy the primary requirement that the buildings in which the activity is carried on are being used in connection with farming operations on the farm.
- (7) From the evidence adduced in this case, it is clear that the buildings on this hereditament are not used in conjunction with farming operations on the land which forms part of the property. All feed is bought in and no waste produce arising out of the enterprise carried on in the buildings and tanks is scattered on the land as fertiliser.
- (8) Mr. Boyle in his submission relied upon the judgment of Mr. Justice Barrington in *Knockhall Piggeries v. Kerrane (1985) 3 ILTR 319*. This is a revenue case arising out of the interpretation of *Section 15(1) of the Finance Act 1974*. Nonetheless, it is interesting to note that in his judgment Barrington J. made the following observation:-

"Under the Valuation Acts one would look at this holding, including both lands and buildings as one unit and in that context it appears to me that the buildings would properly be referred to as farm buildings."

Under the circumstances whilst this appeal may have broken new ground in revenue cases, it is clear from Barrington's J. remarks that as far as rating law is concerned the decision in the Nixon case would have applied.

- (9) In this case the question to be asked is are the buildings on this hereditament used in conjunction with farming operations on the land. If the answer is yes then the buildings are entitled to exemption under Section 14. On the other hand if the answer is no then they are rateable. Having regard to the facts adduced at this hearing the Tribunal finds that the requirements necessary for exemption under *Section 14 of the Valuation Act 1852* have not be met and hence the claim for exemption fails.

(10) In relation to the tanks these are structures that fall to be valued under the schedule inserted into the 1852 Act by *Section 3 of the Valuation Act 1986* and hence fall to be valued unless exempt under Section 14. However, the tanks are used as an integral part of the activities carried on in the buildings and hence it follows that they too fail to meet the necessary requirements for exemption under Section 14.