

Appeal No. VA95/6/014

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

Lynch Culligan Farms

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Store and yard at Map Ref: 116A, Townland: Townparks, ED: Ardee Urban, RD: Ardee No. 1, Co. Louth

Agricultural exemption - Grain storage facility situated in Ardee

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Brid Mimmagh

Solicitor

Marie Connellan

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF JUNE, 1996

By Notice of Appeal dated the 6th day of November 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £20 on the above described hereditament.

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

"On a legal point only. The farming partnership of Nicholas Culligan and Bernard Lynch, farm together 1,500 statute acres. They purchased this grain storage area as part of their farming enterprise. It should be de-rated. They are the sole occupiers. No others use this yard. It is similar to any other farmyard."

The Property:

The property comprises stores situated in the town of Ardee on a confined site with right of access from Moorehall. The stores are of reinforced concrete walls to 16' with corrugated iron 'haybarn' type roofs over. Floors are of concrete with air ducting incorporated. There is an intake drier and simplex storage bin (50 ton) and grain movement is via conveyors and elevators.

The property is old and in fair condition only.

Valuation History:

The stores were first valued in 1970 revision at £30 and on 1970 first appeal were reduced to £20. In 1994 revision the property was listed for revision to:-

- a) Subdivide property between new occupiers.
- b) Consider occupiers request for de-rating.
- c) To value offices.

No change was made on 1994 revision and it is against this £20 valuation that an appeal lies to the Tribunal.

Written Submissions:

A written submission was received on the 16th day of May 1996 from Mr. Frank Flynn of Robert B. Daly, Property & Land Specialists, Auctioneers, Valuers, Estate Agents and Insurance Agents on behalf of the appellant.

In his written submission, Mr. Flynn said that the appeal lay against the rateability of the subject premises and that there was no dispute with regard to quantum.

He submitted that the farming partnership of Nicholas Culligan and Bernard Lynch, who together owned 1,500 statute acres had purchased this grain storage to use as part of their farming enterprise and that it should be de-rated on this basis. In support of his appeal

against the rateability of the subject premises Mr. Flynn proposed two comparisons as follows:-

1) Martin Lynch, Currabeg, Ardee

Mr. Flynn said that he had appealed the rateable valuation on this premises for Martin Lynch and that the rateable valuation had been reduced from £100 to nil. He said that

this was an agricultural trading stores for Wogan's Agri Limited, purchased by Martin

Lynch to use as a farmyard in very similar circumstances to Lynch Culligan.

2) Lynchs of Ardee (Potatoes) Limited

Mr. Flynn said that the Circuit Court had quashed the rateable valuation of £200 applied to this premises. He said that the Commissioner of Valuation had appealed the valuation to the High Court but no judgment had been formally given. He said that

the Valuation Office following this appeal had revised the rateable valuation from £200 to nil.

A written submission was received on the 20th day of May 1996 from Mr. Malachy Oakes, District Valuer on behalf of the Commissioner of Valuation.

In his written submission, Mr. Oakes described the subject premises and set out the grounds of appeal at first appeal and Tribunal stages. Commenting on these grounds of appeal, Mr. Oakes said that the buildings are not situated on a farm rather are in an urban area and that the buildings were not erected originally as farm buildings rather as fertiliser stores.

Mr. Oakes further added that the Commissioner of Valuation would contend that grain drying and storage is a separate and self-contained activity and had been carried out from the subject by a previous occupier.

He said that the buildings were not on a farm and that they were not related to part of the activities of a farm. The production for sale of grain would appear to be the farming activity, its storage, conditioning and sale can be carried out away from the farm in an urban area and by a merchant.

Oral Hearing:

The oral hearing took place in Dublin on the 27th day of May 1996. The appellants were represented by Mr. Richard McDonnell of Messrs. Richard H. McDonnell & Son, Solicitors. Ms. Margaret Nerney, Barrister at Law, instructed by the Chief State Solicitor appeared for the respondent. Also present were Mr. Frank Flynn of Robert B. Daly, Auctioneer and Valuer, Mr. Malachy Oakes of the Valuation Office and Mr. Nicholas Culligan of Lynch Culligan Farms.

Referring to his written submission which he confirmed to be part of his sworn evidence, Mr. Oakes said that he would describe the location of the subject property as an industrial site. With reference to the two comparisons adduced by Mr. Flynn for the appellants, Mr. Oakes said that comparison No. 1 was on a 3 acre site and that comparison No. 2 was on a 12 acre farm.

Replying to questions from Mr. McDonnell, Mr. Oakes confirmed that he would not treat the subject property as an agricultural building because it was not at all times an agricultural building and he seemed to suggest that storage could not be considered part of the appellants' farming activities as this type of storage was previously carried out by merchants.

Mr. Flynn's written précis was agreed and accepted as part of his sworn evidence.

Replying to questions from Ms. Nerney in relation to the location of the subject property, Mr. Flynn stated that there was a cattle yard in the middle of the town of Ardee to which a farmer brought his cows everyday for milking and that it could not be said to be anything other than a farm building, even though it was some distance from the rest of the farm land.

Mr. Culligan gave evidence that most of his farming neighbours and all of those with farms of more than 100 acres had facilities like his, to store and dry grain.

Submissions:

Ms. Nerney referred the Tribunal to the judgment of Mr. Justice Keane in **VA92/6/047 - International Mushrooms Limited v. Commissioner of Valuation** and submitted that the subject hereditament was clearly not on a farm and that what happened within the building was clearly a separate and self-contained activity.

Ms. Nerney cited the decision of the Supreme Court in *Nixon v. Commissioner of Valuation [1980] IR 340* and further submitted that the subject did not come within the judicial definition of farm buildings namely, "buildings on a farm which are used in connection with the farming operations on the farm" as it was not on or adjacent to a farm.

Ms. Nerney referred to the decision of His Honour Judge Kevin O'Higgins in *Anthony O'Doherty & Son Ltd v. Commissioner of Valuation, heard in Roscommon, 10th January 1989*, and submitted that since the subject was clearly not erected as a farm building it could not benefit from the exemption afforded by Section 14 of the Act of 1852.

Ms. Nerney submitted that the activity carried on in the subject property was akin to commercial usage rather than farming and could fall within the ambit of the Factories Acts.

Referring to the appellant's comparisons, Ms. Nerney submitted that these were not strictly speaking authorities but rather decisions taken by the Commissioner of Valuation.

Appellant's Submissions:

Mr. McDonnell submitted that the storage facility afforded by the subject property was an integral part of farming activity.

He further submitted that unlike a merchant who buys other people's grain, the appellants simply store the grain they themselves produce in a building on land which forms part of their entire farm.

Mr. McDonnell referred to comparison No. 1 adduced by Mr. Flynn and emphasised its location next door to an industrial estate and further away from the remainder of the owners lands than the subject property is from the remainder of the appellants' lands.

Mr. McDonnell submitted that Ms. Nerney's comparison of the subject to a factory or workshop was inappropriate as in his opinion this interpretation of the Factories Acts could encompass all farm buildings if applied literally.

Finally, Mr. McDonnell submitted that the fact that the building was originally an industrial building, did not confine it to that use forever.

Determination:

The Tribunal is satisfied that the subject appeal can be distinguished from the decision of Mr. Justice Keane in **VA92/6/047 - International Mushrooms Limited v. Commissioner of Valuation.**

In the latter case the company used the property to create a mushroom spawn which was then sold to mushroom farmers. The company employed a considerable number of people, including six qualified scientists and the property was located in an industrial estate.

The subject property is a storage facility, the acquisition of which by the appellants was made necessary by reason of the scale of their farm, the drawbacks and disadvantages of their existing stores and by the ever increasing standards required of modern farmers.

Every farm is commercial in so much as cattle fattened, suckler calves brought on, milk produced or crops grown are sold for profit. The size of the farm owned is not and should not be a diminution in any way of the essential nature of a farm.

The Tribunal notes Ms. Nerney's contention that the nature of the activity carried on in the building is close to that of a factory or workshop. The Tribunal does not accept that the activity carried on is anything other than farming.

The Tribunal has noted Ms. Nerney's argument that the property is not located on a farm and notes too Mr. Oakes' evidence that a site of $\frac{3}{4}$ acre cannot be considered to be agricultural lands while suggesting that a larger site e.g. 3 acres may be so considered.

Mr. Culligan gave evidence that his farm consisted as indeed do many farms, of several parcels of land, the closest of these being 2 to 3 miles from the subject property, the furthest being some 40 to 50 miles away.

The Tribunal does not consider that the location of the building within the urban area of Ardee excludes it from agricultural exemption. Neither does it consider that the area of the site excludes it from exemption. A farm may consist of very many parcels of land, ranging from the very small to the very large, and spread over a wide area.

Ms. Nerney has contended that the building was not originally constructed as a farm building and has alluded to its previous use by Magees of Ardee, a commercial grain and seed merchant's business. The Tribunal has however, considered the subject property, "*rebus sic stantibus*" and finds that it falls within Section 14 of the Valuation (Ireland) Act 1852 as "farm, outhouse or office buildings" and further finds that it falls within the judicial definition of the Supreme Court in the Nixon case as being a building on a farm and used solely in connection with the farming operation.

