

Appeal No. VA96/2/043

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

Autozero Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cold Stores at Map Ref: 2G4J/28, Townland: Cookstown, ED: Tallaght - Springfield, RD:
South Dublin, Co. Dublin
Quantum - Coldstores, Market conditions

B E F O R E

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF JULY, 1997

By Notice of Appeal dated the 22nd April, 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £3,672 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable when rental levels and other factors are taken into consideration".

This is an appeal against the decision of the Commissioner of Valuation who made no change in the rateable valuation of £3,672 at the 1994/4 First Appeal stage.

The appeal proceeded by way of an oral hearing held in Dublin on the 6th day of December, 1996 at which the Appellant was represented by Mr. John McMenamin, S.C. instructed by T.P. Robinson & Company, Solicitors with valuation evidence offered by Mr. Tadhg Donnelly, MIAVI, a valuer with Brian Bagnall & Associates. Mr. Cyril Houlihan, Managing Director of the Appellant Company also gave evidence.

The Commissioner of Valuation was represented by Mr. Aindrias O'Caomh, S.C. instructed by the Chief State Solicitor and Mr. Patrick Berkery, a District Valuer in the Valuation Office gave expert evidence in relation to valuation matters.

The Property:

The property comprises a large purpose built cold store complex occupying a site area of about 5 acres in the Cookstown Industrial Estate which is located on the Belgard Road, Tallaght. The complex was built in stages from 1972 and the last major extension was completed in or about 1985.

In addition to the main cold storage buildings there are a number of ancillary structures containing offices, canteen, plant room, stores, workshop and other miscellaneous uses.

The undeveloped area of the site is concrete paved and used for car parking and circulation space.

Accommodation:

The areas of each building have been agreed and are as follows:-

Cold Store (eaves height 30ft)	-	109,783 sq.ft.
Cold Store (eaves height 45ft)	-	17,127 sq.ft.
Offices	-	5,660 sq.ft.

Canopy	-	26,236 sq.ft.
Store (Old)	-	2,945 sq.ft.
Store	-	11,420 sq.ft.
Workshop	-	3,093 sq.ft.
Workshop/Offices/Cold storage	-	1,057 sq.ft.
Security Hut	-	287 sq.ft.

Ancillary Services:

Tanks 2 x 10,000 gallon water tanks

Tanks 3 x 500 gallon diesel tanks

Horse Power 1742

Valuation History:

These premises were first valued at the 1972 revision when the original assessment of £1,700 was reduced at First Appeal stage to £1,100. A further revision was carried out in 1978 and the valuation increased to £3,775 which was reduced to £3,250 at First Appeal.

In 1984 following the extension of the freezer and ancillary loading area the valuation was revised once again and increased to £4,000 which was later reduced to £3,850 on appeal.

A further revision took place at the occupiers request in 1993 and the Commissioner of Valuation made no change. This decision was ultimately appealed to this Tribunal and the valuation was reduced to £3,672 (VA94/2/008).

The Appellant lodged a further application for a revision which was dealt with at 1994/4 revision when no change was made and following an unsuccessful appeal to the Commissioner of Valuation the matter has once again come before this Tribunal for determination.

Appellant's Contentions:

1. Since the previous appeal to this Tribunal fundamental changes in the European Union intervention policy for beef and butter has resulted in a gross over-supply of cold storage accommodation in this country.
2. Following the reform of the Common Agricultural Policy no beef was bought into intervention between 1993 and April, 1996 until the BSE crisis reduced sales of beef on the open market to unacceptable levels.
3. During the period 1993 to April, 1996 existing stocks of beef and butter held in cold storage were practically eliminated by sales on the World markets. During this period also the export of live cattle increased significantly as did the demand for Irish butter.
4. The net result of all these market forces led to an over-supply of cold store capacity which in turn led to the closure of a number of cold store facilities throughout the Country.
5. Due to the reduction in the demand for cold storage accommodation Autozero closed down a plant in Cabra in 1995 and in order to keep open the subject premises the company has sought other markets such as short term storage of ice cream and chocolate.
6. Profits within the industry have declined to the extent that most companies are now operating at a loss.

Appellant's Evidence:

Mr. Cyril Houlihan, Managing Director of Autozero in his evidence described in some detail the operation of a typical cold store facility which he described as being large warehouse buildings designed and built to ensure that products could be stored at temperatures of minus 20/22 degrees centigrade.

Mr. Houlihan said that up until the change in the Common Agricultural Policy 99% of the available space in the subject hereditament was given over to beef and butter bought into intervention. Arising out of the reform in the policy the market for cold storage space changed dramatically in a very short period of time due to a combination of factors such as:-

- No new purchases into intervention.
- Sale of existing stock held in storage on the World markets.
- Increase in sales of live cattle for export.
- Excess capacity leading to intense competition for product and falling storage rates.
- Sale of butter held in intervention sold to meet the increased demand for Irish Butter.

Autozero, Mr. Houlihan said, sought alternative markets and now offered short term storage facilities for a wide variety of produce such as ice cream, chocolate and chips. However, this type of business by its very nature is seasonal and marginally profitable due to the handling costs involved. In mid 1995 Autozero concluded that the operation of two cold stores in Dublin was no longer feasible and decided to close down the company's other cold store in Cabra. This property was sold in early 1996 and since then the company has concentrated all its Dublin activities at the subject property.

At the time of the sale of the Cabra property the company had come to the conclusion that the market for cold storage facilities had changed fundamentally and that over the next two to three years a number of company's engaged in the business would cease to operate and that only those with sufficient financial strength to sustain losses during this period would survive and even those would only do so by reducing staff levels and curtailing other operating costs.

Autozero by virtue of support from its parent company would survive and could afford to wait for the necessary restructuring of the industry in the longer term.

In April, 1996 the emerging BSE crisis brought about an uplift in demand for cold storage facilities as once again beef was bought into intervention but at levels Mr. Houlihan said substantially below the levels that pertained in the early 1990's. The Department of Agriculture had also decided that the beef being bought into intervention should be distributed in an equitable manner to all operators at a fixed storage rate determined by the

Department. As a result the amount of beef going into storage at the subject property was quite small and occupied only a small percentage of the total available capacity. In any event Mr. Houlihan said the beneficial effects of the BSE crisis on the cold storage industry was only a short to medium term phenomenon and would not have a long term bearing on the further viability of the industry which in his opinion was quite bleak.

In regard to the cold store buildings Mr. Houlihan said that they were purpose built to a special specification with no natural lighting and costly to maintain and operate. The ancillary buildings were typical of those found in any industrial or warehousing complex.

Mr. Donnelly adopted his written submission which had previously been submitted to the Registrar of the Valuation Tribunal and exchanged with the Commissioner of Valuation as being his evidence in chief.

Mr. Donnelly's written submission was in somewhat similar vein to Mr. Houlihan's oral evidence. In arriving at his opinion of net annual value Mr. Donnelly relied upon the price paid by the Appellant Company for the property in November, 1990 as set out below:-

Purchase Price (November, 1990)	=	£1,819,000
Net Annual Value at 12½%	=	£227,375
RV at .63%	=	£1,430

Mr. Donnelly said that he also relied upon the prices paid for other cold stores during 1995 and 1996 such as:-

Premises	Capacity (Cubic Feet)	Price Obtained	Date of Sale
Norish, Cork	1.8m	£1.05m	August, 1995
Norish, Dublin	1.3m	£1.1m	June, 1996

Norish, Kilkenny (60%)	1.5m	£970,000	June, 1996
Norish, Castleblayney	3.2m	£1.65m	September, 1996
Autozero Limited, Cabra	1.4m	£2.012m	April, 1996

In an appendix to his submission, Mr. Donnelly gave details of a number of rating assessments under four main categories, i.e., premises with floor areas in excess of 200,000 sq.ft.; premises where floor areas were between 100,000 and 200,000 sq.ft.; premises where floor areas were between 50,000 and 100,000 sq.ft. and premises where areas were less than 50,000 sq.ft. and finally a list of other cold store assessments.

In the course of his evidence Mr. Donnelly briefly alluded to each property contained in all five categories but in a general sense only and did not invite the Tribunal to draw any particular conclusions from this evidence.

In response to a question from Mr. O'Caoimh, Mr. Donnelly agreed that cold stores had an alternative use as warehouses but that warehouses could not be used as cold stores. However, he did not agree with the proposition put to him that this flexibility in use should be reflected in the valuation of a cold store property.

Respondent's Evidence:

Mr. Patrick Berkery adopted his written submission which had previously been submitted to the Registrar of the Valuation Tribunal and exchanged with the Appellant as being his evidence in chief.

Mr. Berkery in his evidence outlined the valuation history of the hereditament in detail and described the property which he valued as follows:-

Cold Stores (std. hgt)	109,783 ft ²	@	£3.55 psf	=	£389,730
Cold Stores (45' in hgt)	17,127 ft ²	@	£4.00 psf	=	£ 68,508
Offices	5,660 ft ²	@	£3.30 psf	=	£ 18,678
Ancillary Buildings	45,000 ft ²	@	£1.85 psf	=	£ 83,250
Tanks - Water	2 x 10,000 gal + 3 x 500 gal	=	£		500
Horsepower	1,742 HP	@	£0.50 p/hp	=	£ 13,500
Concrete Yard & Car park	42,410 ft ²	@	£0.20 psf	=	<u>£ 8,482</u>
					£582,648
RV:	£582,648	x	0.63%	=	3670.68
					Say £3,672.00

In arriving at his opinion of net annual value Mr. Berkery said that he had had regard to the following:-

- The determination of the Valuation Tribunal in relation to these premises in 1993 (VA94/2/008).
- The specialised use, design and high quality finish of the cold store buildings.
- The fact that general purpose warehouses in the Cookstown Industrial Estate were valued at £2.50 psf. These typical warehouse buildings had an eaves height of 20 feet as against 30 feet and 45 feet found in the subject property.

Mr. Berkery put forward a number of comparable cold store premises all of which were valued at somewhat similar levels to the subject. He also submitted valuations of two other buildings in the Belgard Road area used for general warehousing purposes.

Under cross examination Mr. Berkery said that he had valued the subject property as a cold store complex as this was in fact its present use. Should that use change in the future then the property could possibly be re-valued having regard to the use at that particular time. In response to a further question Mr. Berkery said that he accepted Mr. Houlihan's evidence in relation to the cold store industry but nonetheless he was of the opinion that there was no

reason to depart from the established levels of value attributed to cold stores in the Dublin area and elsewhere.

In his closing submission, Mr. O'Caomh made the following contentions on behalf of the Respondent.

- The subject property must be valued in accordance with the Valuation Acts having regard to the principle of *rebus sic stantibus*.
- The cold store industry was subject to fluctuations in demand and in this regard was no different from other industries.
- In valuing the subject property it is necessary to take one year with another.
- In arriving at his opinion of net annual value Mr. Berkery had taken a balanced view which was that there is still a demand for cold stores albeit at a lower level.
- Whilst the changes in the Common Agricultural Policy reduced the likelihood of intervention storage of beef continuing it was likely that butter would still be bought into intervention for the foreseeable future.
- The BSE crisis in 1996 had changed the scene somewhat and it is difficult to say at this stage what long term effect it will have for the cold store industry.

In any event there will always be a demand for cold storage accommodation and market forces will prevail; that is, the larger and more efficient operators and facilities will survive whilst the weak and inefficient will not.

- The subject premises has been operating as a cold store since 1972 before Ireland joined the EU and there was no reason to suppose that they would not continue to be so used into the future. Hence it followed that it should be valued as a cold store in line with the assessments of other cold stores in Dublin and elsewhere

Mr. McMenamain in his closing remarks said that the market for cold stores had changed fundamentally and in a dramatic manner in a relatively short period of time and that the future for the industry was uncertain. The day of large scale beef intervention in Ireland was

a thing of the past and whilst there was a possibility that some intervention of butter would continue it should be understood that butter storage was a short term business only. In effect a change in the market had taken place and there was now an over-supply of cold store space and this change in circumstances must be reflected in arriving at the net annual value of the subject premises.

Findings:

Having regard to the evidence and arguments adduced at the oral hearing the Tribunal makes the following findings:-

1. The Tribunal accepts Mr. Houlihan's overview of the cold store industry during the period 1993 to 1996 and its effects on the demand for storage space.
2. The reform of the Common Agricultural Policy in 1993 fundamentally changed the demand for cold storage accommodation and the Tribunal also accepts Mr. Houlihan's uncontested evidence that no beef was bought into intervention during 1993 and 1994 and that existing stocks in storage were sold on the world markets.
3. The Tribunal accepts that during the period from late 1994 through to 1996, there was an over supply of cold storage accommodation and during this period weekly storage rates fell to historically low levels.
4. The Tribunal accepts that this over supply of space was mainly due to the changes that had taken place in the Common Agricultural Policy.
5. The Tribunal accepts that as a result of the BSE crisis beef was again purchased into intervention in early 1996.
6. The Tribunal accepts Mr. Houlihan's evidence that the scale of the intervention storage arising out of the BSE crisis was small by comparison with that of previous years and that it is a short to medium term phenomenon due to specific unforeseen circumstances.
7. In the period from late 1994 to early 1996 which is particularly relevant to this appeal a hypothetical tenant in the market would have been aware of the structural changes that had taken place in the cold storage industry due mainly to the changes in the Common Agricultural Policy. In formulating an opinion of rental value for the subject property such a hypothetical tenant would have taken the view that large scale

intervention purchase of beef was a thing of the past. The revival of intervention brought about by the BSE crisis would not have been foreseen at that time and accordingly would not have been a factor in arriving at an opinion of rental value.

8. The Tribunal prefers Mr. Berkery's valuation method and finds little merit in Mr. Donnelly's. However the comparisons relied upon by Mr. Berkery were determined before the changes in the Common Agricultural Policy were introduced and its effects made manifest. Hence these levels of value do not reflect the state and circumstance of the market during the period between late 1994 and early 1996.

Accordingly, the Tribunal has come to the conclusion that some adjustment should have been made to reflect the change in market circumstances that had taken place and its likely impact on rental values at the relevant date and which a prudent and informed hypothetical tenant would have taken into consideration in arriving at his opinion of rental value.

9. The Tribunal accepts in principle that cold stores are by their very nature warehouses specifically designed to store produce at low ambient temperatures. They are therefore first and foremost warehouses and hence it is reasonable to have regard to the assessments of conventional warehouses in the vicinity of the subject. Mr. Berkery gave uncontested evidence to the effect that conventional warehouses in the Cookstown Industrial Estate area are valued at £2.50 psf.

Nonetheless some allowance must be given to reflect the size of this hereditament which by any criteria is extensive and certainly much larger than any of the comparisons of warehouse valuations put forward by Mr. Berkery.

Determination:

Having regard to the above and taking into account all the evidence and arguments adduced at the oral hearing the Tribunal determines the rateable valuation of the subject hereditament to be £2,620 calculated as follows:-

Cold Stores (30ft eaves)	109,783 sq.ft. @	£2.55 =	£279,946
Cold Stores (45ft eaves)	17,127 sq.ft. @	£2.90 =	£ 49,668
Offices	5,660 sq.ft. @	£3.00 =	£ 16,980
Ancillary Buildings	45,000 sq.ft. @	£1.25 =	£ 56,250
HP & Tanks			<u>£ 14,000</u>
Net Annual Value			= £416,844
			Say = £416,000
Rateable Valuation @ 0.63%			= £2,620