Appeal No. VA96/3/003

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Shannon Resources Limited (Formerly Balimar Limited) **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Warehouse and Yard at Map Ref: On 2A, Townland: Finnoo, ED: Mohernagh, RD: Rathkeale, Co. Limerick
Agricultural exemption - Horticulture

B E F O R E

Liam McKechnie	**S.C. Chairman**
Rita Tynan	**Solicitor**
Patrick Riney	**FSCS.FRICS.MIAVI**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF FEBRUARY, 1997

1. In 1991 the hereditament above identified and generally described as a "warehouse and yard", was first valued with a rateable valuation of £85 fixed thereon. Following a change of ownership the hereditament was again listed for revision in 1994. Such a listing was in response to the appellant's claim seeking "exempt status due to nature of business".

   Being unsuccessful at revision stage the appellant company appealed, by notice dated the 23rd day of August, 1995 to the Commissioner of Valuation wherein it was urged on its behalf that the hereditament in question should be exempt from rates on the grounds that the business therein carried on was in the nature of horticulture/agriculture. The Commissioner of Valuation disagreed and hence the appeal to this Tribunal dated the 11th July, 1996.

2. In the Notice of Appeal last mentioned the ground therein relied upon was "the property owned by the appellant at Ballyhahill, Co. Limerick consists of land and buildings used exclusively by them in connection with their business of growing, sorting, treating, storing and sale of daffodils and potatoes. As the appellant's business falls within the category of horticulture/agriculture, then their property should be regarded as an exempt hereditament".

3. This appeal was heard in Limerick on the 5th day of February, 1997. It proceeded by way of oral evidence. Both solicitor and counsel were retained on behalf of each party. The following are the material facts relevant to this appeal, which facts were not in any way in dispute between the parties:-

(a) by Deed of Transfer dated the 23rd day of December, 1992 the appellant company (by its then name Balimar Limited) acquired All That and Those the lands, premises and hereditaments set forth and comprised in folio 26437F, County Limerick. These land, premises and hereditaments essentially consist of a warehouse and yard, of a concrete surround at least in part, with the residue being open lands. The main building, which is about 1313 sq.m. is of a standard warehouse type structure. About 25 % of its area has been developed as a cold store. It has a concrete roof, a concrete block wall to varying heights of between 1.5 to 3 metres, it has cladding to eaves height of approximately 6 metres and it has a double skin roof on a steel frame.

There are two ancillary structures one an intake building and the second an equipment storage building. Both, which are partly open, are significantly smaller than the main building but are of a similar type construction. The purchase price for this acquisition was £125,000 with the company expending another £60,000 on alterations, renovations, improvements, etc.

(b) This company is in the business of growing daffodils (both flowers and bulbs) and potatoes. To do so it requires land. Between 1992 and 1995 it rented lands, some in west Limerick and some in north Kerry: distances of between 9 and 17 miles from the location of the warehouse.

The area of land rented varied from 51 to 86 acres. Most of the lands were used for the purpose of growing daffodils which demands a three year cycle.

Potatoes however have to be rotated annually because of the risk of disease. The actual area of land acquired and its location are dictated by market availability, needs and finance. Indeed, in 1996 no lands were rented for the purposes of potatoes. The growing thereof was contracted out to farmers. This was found to be more economic. In 1997 it is the company's intention to revert to growing its own potatoes. Its end products are sold both nationally and internationally with the flowers and bulbs accounting for 80 to 90% of the companies turnover.

(c) At the appropriate time flowers and bulbs are moved from their growing location to the warehouse. There, they are washed, bunched, stored in cold storage to reduce temperature, then boxed and sold. The flowers normally remain in the warehouse for three to four days. The bulbs, depending on their moisture content, can remain in storage from 8 to 21 days. The potatoes when picked are also transported to this warehouse. There, as with the flowers and bulbs, such potatoes are cleaned, graded, stored (in the cold storage area), bagged and dispatched. They can remain in storage from early December to late March.

4. In the circumstances outlined above Mr. Delaney B.L., on behalf of the appellant, alleges that the hereditament in question is exempt under and by virtue of the provisions of Section 14 of the Valuation (Ireland) Act 1852. On behalf of the Commissioner of Valuation Mr. O'Neill S.C., denies that the ratepayer is entitled to any relief under Section 14 but on the contrary alleges that the hereditament in question is one which falls to be rated under the provisions of Section 12 of the 1852 Act.

5. Section 12 of the Valuation (Ireland) Act 1852 provides as follows:-

"for the purposes of this Act the following hereditaments shall be deemed to be the rateable hereditaments; viz, all lands, buildings, and opened mines: all commons and rights of common, and all other profits to be had or received or taken out of any lands; [and in the case of land or buildings used exclusively for public, scientific or charitable purposes, as hereinafter specified, half the annual rent derived by the owner or other person interested in the same, so far as the same can or maybe ascertained by the said

Commissioner of Valuation;] and all rights of fishery; all canals, navigations, and rights of navigation; all railways and tram roads; all rights of way and other rights or easements over land, and the tolls levied in respect of such rights and easements, and all other tolls:"

The words in square brackets were repealed by Section 3 and the schedule to the Local Government (Rateability of Rents) (Abolition) Act, 1971.

Section 14 of the 1852 Act reads "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 or any lake or river, or any erection of farm, out house, or office buildings, or any permanent agricultural improvement as specified under ..... made or executed thereon within seven years next before the making of such valuation or revision".

6. It is clear from a reading of the Sections above quoted that unless exemption is to be found within Section 14 then the warehouse and yard in question must come within the nominated hereditaments specified in Section 12 and as a result must be valued. The sole question therefore is whether the hereditament in question is a "farm-building", within Section 14 and therefore entitled to exemption. It is to be noted that no other statutory source of exemption was identified or relied upon and in particular that Section 2 of the Valuation Act, 1986 was not pursued as being a potential source of relief for the appellant company.

7. It is interesting and perhaps rather surprising to note that prior to 1980 the words "farm ....buildings" do not appear to have attracted judicial interest. There is not, to our knowledge, any reported case dealing with the meaning of this phrase within the context of Section 14. English and Scottish decisions, whilst helpful, are limited in that the closest analogous phraseology is "agricultural buildings", as found in Section 2 of the Rating and Valuation (Apportionment) Act, 1928. This situation was however redressed when, in 1980 the Supreme Court gave its decision in ***Nixon v. Commissioner of Valuation [1980] IR 341.*** In that case the appellant was the occupier of a farm consisting of 118 acres at Raconnell, Co. Monaghan. In 1962 he built a poultry house on his property. Two years later he built a second

with a far greater capacity. This attracted a £15 increase in his rateable valuation.

He appealed to the Circuit Court and on a case stated the point ultimately reached the Supreme Court. Mr. Justice Henchy, giving the unanimous judgement of that court, said at page 346 of the report "I consider that the words "farm.... buildings", in Section 14 of the Act of 1852 should be given their ordinary meaning, namely, buildings on a farm which are used in connection with the farming operations on the farm. That is what these poultry houses are. They are used for intense poultry farming as houses in which chickens are reared to be sold as broilers or in which laying hens are kept for egg production. They are not used as a separate self contained activity. They are situated on the farm and are a related part of its activities. It is impossible to treat them as other than an integral part of the farming operations. In each case the litter from the poultry house provides valuable fertiliser for the rest of the farm, thus affecting a substantial saving in the expenditure on agricultural fertiliser. They are thus an important adjunct to the purely agricultural use of these farms. In Mr. Nixons case,water for the birds is supplied from a well on his farm. In Mr. Quinns case grain grown on his farm is scattered on the litter as scratch food for the young fowl. In those circumstances it cannot be held that the poultry houses are not a part of the farming operations on these farms. Intensified production of cattle, pigs and fowl in specialised houses of this kind has become a common feature of modern farming".

The result of course was to confer exemptive status on these poultry houses.

8. In order therefore to come within the meaning of "farm.... buildings", it would appear that the structure in question, to use a neutral phrase, must firstly be a building, secondly a farm building (distinguishing it from a dwelling house on a farm), thirdly be located on a farm and fourthly be used in connection with "the farming operations on the farm". If the structure should fulfil this criteria then the precise nature or intensity of its use would not appear to be highly material or significantly relevant.

Equally so with regard to its location. Whilst of importance in determining compliance or non compliance with the stated criteria, if the structure is a farm building it will so remain whether located in the depths of rural Ireland or on the periphery of an urban area. If on the other hand the structure in question has a separate or self contained activity carried on therein then it may well be incapable of falling within the definition of "farm buildings".

9. A more recent case on this point is that of ***International Mushrooms Limited v.***

Commissioner of Valuation [1994] 2 ILRM page 121. In that case the structure in question was an industrial building located in Beechmount Industrial Estate, Navan. It had a brick faced two storey office section, an area covered by a double skin apex cladded roof on steel and concrete portal frame trusses and had air conditioned cold room storage facilities. Its total area was over 25,000 sq.ft. but only about 18,000 sq.ft. was included in the particular valuation under appeal. It was used in the production of mushroom spawn from which ultimately mushrooms were cultivated. The mushrooms however, were not cultivated on the premises. Mr. Justice Keane in the High Court, had no hesitation whatsoever in holding that these premises where not "farm..... buildings", within the meaning of Section 14 of the 1852 Act. Having referred to the Nixon case he said, at page 125 of the report "I shall consider first the applicability of Section 14 of the Act of 1852. It seems reasonably clear that the intention of the legislature in enacting that section <u>was to ensure that agricultural lands which were improved by the carrying out of the works referred to in the section should not attract an increased valuation as such</u>. If the words of the section are given their ordinary natural meaning, I do not think that the expression "farm.... buildings" would be an appropriate description of a building located in an industrial estate such as the building with which I am concerned. It is not, in my view, a relevant consideration that the spawn produced in the building is ultimately used elsewhere in the cultivation of mushrooms. The relevant question is as to whether the building can properly be considered a farm building within the meaning of Section 14. I am satisfied that it cannot".

And again, at page 126 having quoted the extract above identified from Mr. Justice Henchy's decision in the Nixon case, he continued "the whole tenure of the passage is that buildings should be regarded as "farm.... buildings" where they are buildings on a farm which are used in connection with farming operations on that farm and not otherwise. If they come within that description it is immaterial that activity of a relatively intensive nature is carried on in them. The buildings in this case could not be considered as buildings on a farm which are used in connection with farming operations". Accordingly he held that the appellant company in that case could not avail of Section 14.

10. In this case if we give to the words "farm.....buildings", their ordinary meaning which in accordance with Nixon's case we clearly should, it seems to us that it is highly debatable whether or not the hereditament the subject matter of this appeal could, by that criterion, be described as a "farm.... building". It is over 1,300

sq.m. in area, it has an internal division separating the cold store from the warehouse/work area, it has a shape identical to the vast majority of warehousing in industrial areas, it has been constructed in a like manner and it has access doors and other facilities which are invariably found in such warehousing. Whilst its actual state and condition may not be of premier standard, nevertheless the same is well within what is on a daily basis offered for letting as industrial units. It would in our view be quite exceptional to see or observe a similar type of building on a farm and used solely for farming purposes.

Whilst therefore we have considerable doubts as to whether this building could properly be described as a farm building, we are not prepared however to rest our judgment on this point only.

11. The next requirement previously identified is that the building in question must be "on a farm" and must be used in conjunction with farming operations "on the farm". As set out above the appellant's activities are in effect two-fold. Firstly, they grow and cultivate flowers, bulbs and potatoes and secondly, when the growing/cultivation period is at an end they transport the end products to this warehouse where in effect they are stored and prepared for onward sale. The lands upon which the first part of this enterprise takes place are located as we have said at distances of between 9 and 17 miles from the warehouse. There are two parcels of lands involved, both separated, one from the other by several miles. There are no buildings as such on either parcel of land. The case therefore is that the warehouse on folio 26437F County Limerick is in effect a building on the lands either at West Limerick or in North Kerry or most probably on both. It was not suggested nor on the evidence could it have been, that the lands comprised in the folio above mentioned could in themselves constitute a farm for the purposes of Section 14.

That being so the appellant must satisfy this Tribunal that the said warehouse and the lands in both West Limerick and North Kerry constitute a "farm" within a meaning of the exempted provisions above mentioned.

12. We do not believe that in order to constitute a farm within the meaning of Section 14 that the lands in question must necessarily be confined to one parcel of land or if more than one must necessarily be contiguous to each other or immediately adjoin each other or necessarily about each other. Nor do we believe that such parcels of land must be held under the same title. If that was the true meaning of Section 14, then any separation, no matter how small, insignificant or narrow could be used to deny the overall holding, its

rightful description as a farm within the relevant provisions. To so construe Nixon or the International Mushroom Case would in our view be contrary to common sense and most certainly would not be giving to the words "farm ... buildings" their ordinary and natural meaning. On the other hand it is clear that in certain circumstances land may be separated from other lands in such a way that it would be quite impossible to refer to both as "a farm". Individually of course they may well be two farms even though a particular farmer may choose to describe his overall holding as a single farm. But for the purposes of these provisions it seems to us that a parcel of land separated by a significant distance from another parcel could not afford to both the single and collective term farm. So in our view where there is more than one parcel of land included, it is always a question of degree as to whether in the end result there is one or more than one farm. As circumstances may be infinite, not only as to location but also as to use, it would not be helpful if we attempted to establish any fixed or rigid criteria by which this question of degree could be resolved. We would however express the view that where several pieces of land owned and or occupied by the same person are so near or close to each other and/or are so situated that possession and control of each gives an enhanced value to all then it could properly be said that the several pieces constitute "a farm" for the purposes of Section 14.

13. Applying the above to the facts of this case it is our opinion that it could not be said that this warehouse forms part of the holding in West Limerick or the holding in North Kerry, or that both of these holdings together with the warehouse could, collectively, be said to be "a farm" within the said provisions. The activities carried on in West Limerick are quite independent from the activities carried on in North Kerry. The only common linkage is the identity of the owner. Instead of West Limerick or North Kerry the appellant's activities could be carried on in any other lands which met the usual and standard requirements of growing bulbs, flowers and potatoes. The location of these lands is entirely immaterial to the location of the warehouse or the activities carried on therein. Indeed the warehouse has within it an activity which truly could be described as separate and self-contained. Such activity is not dependent on lands in West Limerick or North Kerry or indeed any particular lands in any particular locality.

It can perform the same function with any bulbs, flowers or potatoes irrespective as to where they are grown or cultivated.

14. This view is we believe both supported and confirmed by what Mr. Justice Keane said in the extract from the International Mushrooms case quoted and underlined at paragraph 9 above. It will be recalled that in dealing with the legislative intention behind Section 14 he said ".....that section was to ensure that agricultural lands which were improved by the carrying out of the works referred to in this Section should not attract an increased valuation as a result". The "agricultural lands" in this case are those in West Limerick and North Kerry. How could it be said that these lands were improved by the warehouse and yard. In our view it could not be so said.

Accordingly, we are satisfied that the appellant company is not entitled to exemption under Section 14 of the 1852 Act.

15. Finally, we should say that we have also considered the decision of this Tribunal given on the 21st June 1996 in the case of ***Lynch Culligan Farms v. Commissioner of Valuation (VA95/6/014)***. In that case the appellant's were the owners of 1,500 acres and had purchased a grain storage facility in the town of Ardee: this to be used as part of their farming enterprises. They sought exemption under Section 14. The Commissioner disagreed and matter came for hearing before the Tribunal. The Tribunal, having heard the evidence and submissions of both parties accepted the validity of the appellant's argument and accordingly declared this facility to be exempt.

During the course of the judgment the Tribunal referred to but found it possible to distinguish the instant case from that of the International Mushrooms case. It also found that even though the appellant's holding consisted of several parcels of land the closest being some two to three miles from the subject property and the furthest being some 40 to 50 miles away nevertheless all such parcels constituted a farm within a meaning of Section 14. Having considered this decision, it is our view that the same should be regarded as being a decision confined to the particular facts of that case and that it did not and did not intend to lay down any rule which would have general or widespread application governing circumstances wholly dissimilar to those pertaining in the Lynch Culligan case. Accordingly, we do not believe that this last mentioned decision can be relied upon as a precedent by the appellant in the instant case.

16. The result therefore, is that the claim for exemption fails.