Status of Judgment: **Distributed**
Appeal No. VA97/4/001

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Irish Shell Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Oil Depot at Map Reference 8abc, Townland: Limekilnhill, ED: Navan Rural, RD: Navan, Co. Meath
Method of Valuation did not establish NAV

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Barry Smyth - FRICS.FSCS	**Deputy Chairman**
Michael Coghlan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF APRIL, 2000

By Notice of Appeal dated the 16th day of July 1997, the appellant above named appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £140 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice thereof are as follows;

"1. The valuation is excessive and inequitable
2. The valuation is bad in law".

This Appeal proceeded by way of an oral hearing at which Mr. Aindrias O'Caoimh S.C. instructed by Mr. Patrick Declan Fallon, Solicitor, Irish Shell Ltd., appeared on behalf of the appellant company and Mr. Donal O'Donnell, S.C. instructed by the Chief State Solicitor appeared on behalf of the Commissioner of Valuation. Mr. Desmond Killen from GVA Donal O'Buachalla, was the Rating Consultant retained on behalf of the appellant whilst Mr. Desmond Doyle was the Appeal Valuer. Having exchanged their written précis and having submitted same to this Tribunal both Valuers, having taken the oath, adopted their said précis as being and as constituting their evidence in chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process with Mr. Thomas Kavanagh, the Engineering Manager of Irish Shell, also giving evidence. Submissions then followed. From the above, the following essential facts emerged as being both material and relevant to the issue the subject matter of this Appeal:-

The Property

(a) The property the subject matter of this Appeal is an Oil Depot consisting of offices, stores, loading bays, tanks and yard, all situate at Navan, Co. Meath. In fact this hereditament can be described as having three separate elements, firstly buildings, secondly horsepower and thirdly tanks, pipelines and associated works. There are four tanks in all, one with a capacity of 93,000 gallons, with the other three each having an individual capacity of 12,000 gallons. In all 129,000 gallons.

(b) This Depot is owned by Irish Shell Ltd., but pursuant to a Licence Agreement dated the 6th day of April, 1965 it is under the control of and is operated by a company called Leinster Petroleum Company Limited. Nothing of relevance, in this Appeal, turns on the existence or content of this Licence Agreement.

Valuation History:-

(c) (i) In 1972, as the hereditament then was, and as valuation practise then applied, an RV of £125.00 was placed on this property.

(ii) In 1994/4 this RV was reduced to £75.00

(iii) In 1996/3 the property was again listed for revision when the revising Valuer placed an RV of £140.00 thereon. This he did in the knowledge that the only addition to the hereditament, from the 1994 revision, was the erection of a lube store, the rateable valuation of which, all Parties agree, should be £7.00 and no more; in these circumstances,

(iv) The Appellant appealed to the Commissioner of Valuation whose decision at First Appeal Stage issued on the 1st of July 1997. There was no change and

(v) Accordingly the issue of the Notice of Appeal dated the 16th day of July 1997 to this Tribunal.

The Accommodation

(d) The precise nature of the accommodation, the areas thereof, the type kind and quality of the buildings and their location are largely irrelevant for the purposes of the issue at hand in this Appeal. It is unnecessary therefore to further consider these matters.

2. THE ISSUE:-

In Appendix 1 to this Judgment we set out a table headed "*Summary Table of Comparisons"*, which table was also attached to this Tribunal's Judgment in the Oriel Oil case, hereinafter mentioned. As can be seen therefrom all the tanks referred to have been valued by a method, which places a rate of pence per 1,000 gallon capacity as the RV. This practise until the present case has being universally followed not only by the Commissioner of Valuation but also by Rating Consultants and by this Tribunal.

Mr. O'Caoimh S.C., now Mr. Justice O'Caoimh, on behalf of the Appellant submits that since this process fails to ascertain a rent and thus an annual value it is inherently flawed and is incompatible with the relevant statutory provisions and accordingly ought to be rejected. In the instant case it is his further submission that in its place the contractor's method should apply.

3. BACKGROUND

(a) In the context of that, after the 1994 revision was published, it is not clear whether the appellant's Rating Consultant had express information as to how the resulting RV of £75.00 had been calculated. Even without such information however, it seems evident, that by a process of elimination, one could speculate that the rateable valuation on that part of the hereditament comprising of tanks, was significantly lower than the range of valuations previously placed on comparable tanks. As part of his preparation for an Appeal to this Tribunal in the case of ***Irish Shell Limited (Oriel Oil Company) -v- the Commissioner of Valuation – VA95/1/055***, Mr. Killen sought, from the Commissioner, the precise basis upon which this RV of £75.00 was calculated. At least three if not four letters were sent by him. Ultimately on the 7th of June 1995 he received what was described as "a breakdown of the components", which indicated that on the four relevant tanks, in Navan, (total 129,000 gallons) there had been placed an RV of 33p per 1,000 gallons. With this information the Appeal in the Oriel Oil Company case proceeded and Judgment was delivered on the 5th of July 1996. This letter of 7th June 1995 is reproduced in Appendix II.

(b) In this Judgment at p. 13 the Valuation Tribunal, in refusing to accept the Navan hereditament as a comparison, said "*by any account there is an enormous discrepancy between this figure and all of the other figures submitted on behalf of the Commissioner. No evidence was given to explain this variation. …… there is, as can be seen, a good deal of consistency in the Commissioner's comparisons whereas no other or further support was available to sustain the alleged underlying basis of the Navan valuation. Accordingly in our view we must treat the latter valuation with*

a good deal of caution ……". The "*enormous discrepancy"* between the figures, refers to the 33p RV per 1,000 gallons placed on the Navan tanks whereas all of the other comparisons above mentioned had a range of between 80p to 112p, RV, per 1,000 gallons.

(c) In addition to rejecting this comparison the Tribunal, at page 7, also commented upon the difficulties experienced by the Rating Consultant in obtaining a breakdown of the RV of £75.00. It said "*it should immediately be said that this Tribunal would expect that both Parties to an Appeal before it would, subject to the rules of evidence, co-operate fully with each other in the provision of such information and in the supply of such documentation as may reasonably be necessary for the purposes of fully and adequately dealing with any issue that might arise in a pending appeal. This obligation is jointly on the appellant and the Commissioner, but in the discharge thereof the resulting onus is higher on the party who has in his possession the greater information. Generally, though by no means always, this will be the Commissioner. The reason why it is the Commissioner is self-evident and the reason why it should be furnished is that both parties should clearly know the case they have to face and should therefore be in a position to present the best possible evidence before this Tribunal. If that practise had been complied with in this case the unfortunate circumstances which occurred could have been avoided."*

(d) In preparing for the instant Appeal, in circumstances not quite explained, Mr. Killen was sent by the Commissioner on the 10th of November 1997 a further breakdown of the £75.00 RV placed on the Navan property. This breakdown was totally different to that given in the letter of the 7th of June two years earlier. This breakdown was in fact calculated on the contractor's basis and bore no relationship, in terms of methodology, to the earlier information as supplied. The details of this method, insofar as these are relevant to the instant tanks, show that the factors of 20% depreciation and 6.5% decapitalisation were used in this calculation. The result was that in respect of these tanks and pipelines an NAV of £7,941.00 was arrived at which, when the converting factor of .5% was applied resulted in an RV, of say £40.00. This with £32.50 placed

on the buildings and £2.50 placed on the horsepower gave the total of £75.00. It is accepted that this letter which is set out at Appendix III truly sets out how the Revising Valuer in 1994 arrived at his RV.

(e) Armed with this information the Appellant Company essentially driven by its Valuer decided to raise the methodology as an issue of principle in the current Appeal.

4. MISCELLANEOUS POINTS:

Before dealing with this principal submission there are a number of other points which the Tribunal would like to address;-

(a) As above stated, back in 1995 at least three if not more requests were made to the Commissioner, seeking a breakdown of the RV of £75.00 placed on this property in the 1994 revision. Ultimately, in purported compliance with these requests, the letter of the 7th of June issued. The furnishing of this letter, to our knowledge, was not in any way qualified, restricted or otherwise made conditional. On its face it purported to supply the information as sought. In light of the 10th of November 1997 letter it is now quite clear that this was not so and that incorrect information was given to the Rating Consultant in 1995. Indeed, it is now evident that the actual method and its contents, as used by the Revising Valuer in 1994, were denied to Mr. Killen and his client. To date no or no satisfactory explanation has been given to us for this. Without forming a concluded view on this matter could we take this opportunity of reiterating what this Tribunal stated in the Oriel Oil Judgment about the exchange of information, documents and co-operation between the Parties and to point out, that, if without sustainable justification this or a similar repetition should occur in the future, this Tribunal will deal with the situation in a most forthright and unforgiving way.

(b) (i) The second preliminary issue arises from a Submission, perhaps made by implication rather then expressly, this to the effect that once an established practise has the uniform support of a substantial body of Practitioners in that particular area, and if such support has continued over a long period of time, then that practise should be accorded such an elevated status that the same could successfully resist any challenge to its continuing existence.

(ii) In principle there is no doubt but that if a practise has gained such a wide spread acceptance, in terms of generality and approval, then it is accorded an evidential standing of considerable significance. Generally speaking if one can prove that the offending act or omission complained of, was carried out in accordance with such a practise then that constitutes a presumption against negligence. Equally so if the act alleged is contrary to or inconsistent with such a practise, then "ordinarily" that affords compelling evidence on the issue of liability. However, as was pointed out by Mr. Justice Walsh in ***O'Donovan -v- Cork County Council 1967 IR 173*** even where a general and approved practise has been followed one may be found guilty of negligence if, on objective analysis that practise has an inherent defect. See also ***Dunne -v- National Maternity Hospital and Another 1989 IR91*** and ***Kelly -v- Crowley 1985 IR 212***.

(iii) This concept of general and approved practise, rarely arises in a statutory context. Almost invariably case law will show that such a principle is to be found where one is asserting or defending a claim in Tort, principally in common law negligence. In this case the situation is entirely different. What the Commissioner, and on Appeal this Tribunal must ultimately do, is not only to ascertain a rateable valuation but to do so in compliance with the relevant statutory provisions. In this instance, that is Section 11 of the 1852 Act and Section 5 of the 1986 Act. A practise, even if general and approved, could never be a successful defence to what otherwise would be

a non observance of or a failure to comply with a Statutory Provision. The mandatory compliance with such requirements must at all times take precedence over a practise if there should be any conflict between them. Otherwise the decision-maker would be abandoning, to a code of practise set and followed by others its duty and obligation to statutorily perform.

(iv) In addition it is quite clear that the revising valuer in 1994 departed from what was then recognised as the general practise and secondly, it must always be open to a party, either in a litigious position or where he wishes to assert or defend a right, including a property right, to mount any argument and to make all submissions even those which previously had never been suggested. Accordingly we feel that the Appellant is perfectly entitled to make the submission which it has and indeed, this view, in comparable circumstances, would equally apply to the Commissioner.

(c) The third point upon which comment should be made arises in the manner following:-

In the ***North Kerry –v- Commissioner of Valuation case – VA89/0/024***, this Tribunal stated that save in exceptional circumstances, a hereditament without substantial change should not be revised within five years of its last revision. This view, though only a statement of practice, is nonetheless one which is in everybody's interest to adhere to. In this case agreement was reached on the only addition to the hereditament post the 1994 revision. It is therefore difficult to see how the current revision only two years later was in compliance with this statement of practise.

(d) (i) The next submission urged upon us was that in considering whether to accept the contractor's method and reject the Commissioner's approach, we ought to be seriously influenced and mindful of the almost inescapable consequences that would follow. Namely that for this and other similar type of hereditaments the method of valuation heretofore accepted and

advanced by the Commissioner would almost certainly be rejected. Whilst it is always important that a decision-making body should be conscious of the consequences which flow from its decisions, nonetheless save in exceptional circumstances involving, for example considerations of public policy that in itself cannot be a barrier to change and where otherwise it would be the opinion of this Tribunal or indeed any court that a submission to the contary is well founded that submission ought to be accepted.

(ii) A similar type argument was made in the case of ***Ashford Gravel Ltd. –v- Commissioner of Valuation – VA96/2/069*** where judgment was delivered on the 13th March 1997. In that case the hereditament was a sandpit and the method, which for the previous thirty years had been accepted and unchallenged by all parties, was to value such a sandpit on the basis of pence per ton output. In the Tribunal's view, whilst acknowledging that such a practice had so existed for such a period, nonetheless it concluded that other criteria and conditions may also have to be taken into account when that was necessary for the purposes of assessing what was a fair and equitable valuation.

(iii) It also emphasised that the fundamental basis for assessing rateable valuation was to derive that figure from the net annual value or the rent which a hypothetical tenant would offer on the basis of one year with another. Finally, on this aspect of the appeal, this Tribunal in the case of Reid Furniture –v- Commissioner of Valuation (VA99/2/006) also held that it could not safely rely on comparisons where no evidence was offered as to the basis of the valuations.

(iv) In our view there are no overwhelming considerations, in the case which would make it mandatory upon us to retain the existing methodology as a matter of principal. Accordingly we feel that the submission advanced must be considered on its merits.

5. THE FINDINGS:

Section 11 of the Valuation (Ireland) Act 1852, insofar as it is relevant, reads as follows: *"and such valuation in regard to houses and buildings, shall be made upon an estimate of the net annual value thereof: that is to say, the rent for which, one year with another, the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes and public charges, if any (except tithe rentcharge) being paid by the Tenant".*

Section 5 of the 1986 Act reads:

"(i) Notwithstanding Section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made maybe reduced by such amount as is necessary to ensure, insofar as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditament bears to the net annual values of the other tenements and rateable hereditaments.

(ii) Without prejudice to the foregoing, for the purposes of ensuring such a relationship regard shall be had, insofar as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period"

6. As appears from Section 11 of the 1852 Act an express element in the process of valuing a house or building is to estimate the net annual value of the hereditament in question. How and in what manner or by what means this is achieved is an entirely separate question. But it seems from the section that the obtaining of an estimate of NAV is an inescapable requirement of compliance therewith. Indeed, it seems to be a critical step in the process having been identified "*eo nomine*" within the section itself. Without

ascertaining the NAV how can it be argued that any resulting RV has within it this essential prerequisite. In our view unless it can be demonstrated that the requirement to obtain an NAV has been negated or otherwise confined or restricted, this, by way of some statutory provision or relevant case law, then in our opinion it seems, on any interpretation and on any reading of the Section that an identification of annual value must be made.

7. On behalf of the Commissioner it is submitted that the method adopted by him is a legitimate method and having an agreed widespread and long use, ought to be followed in this case. As appears from Appendix 1 to this Judgment there is no doubt but that up to now virtually every similar hereditament, to come before the Commissioner and this Tribunal has been valued on the basis of an RV per 1,000 gallons. There are eight examples in this Appendix. Many more could be given. That this is so has not been challenged by the Appellant. Rather the rate payer makes the point that by an examination of these cases it becomes evident, indeed perfectly evident, that no attempt has been made to identify a rent and thus to ascertain an NAV. In such circumstances, it is claimed that this omission renders the practise fundamentally flawed.

8. It has not been argued on behalf of the Commissioner that the method adopted has as part of it, a process for ascertaining the NAV and from that to derive the RV. Of course by applying an agreed conversion factor and by making a calculation one could mathematically work out what the NAV might be. But this in truth would be a disingenuous submission given the near certainty of practice that like hereditaments have an RV placed thereon without any attempt to identify a rent. So it cannot be denied that factually the submission made on behalf of the Appellant is accurate. That being the situation then, if our interpretation of Section 11 is correct, it must follow that an essential ingredient in the process is absent and that accordingly the approach adopted by the Commissioner with regard to the tanks and pipelines is invalid.

9. This conclusion, in our view, is readily supportable by the highest authority. At p 260, of the Judgment in ***Roadstone Limited -v- the Commissioner of Valuation 1961 IR239***,

there is a passage which is frequently summarised as suggesting that there is no one way to arrive at a rateable valuation and that the best way is the one which produces the required result. This is not quite, indeed not at all, what the passage actually says. It states "*it has been repeatedly decided that in arriving at his estimate of hypothetical rent the Judge is not bound to use any particular method but may arrive at his determination in whatever way is most suitable to produce the required result: …… the ascertainment of the net annual value as directed by the Section is a question of fact and not a question of law …… and common sense and economic considerations must be the guides. To ascertain the hypothetical rent involves postulating a hypothetical tenant or tenants and a hypothetical landlord or landlords. The hypothetical tenant will consider what profits he can make out of the use of the hereditament after paying expenses and outgoings, and will not pay rent so large that it does not allow him a reasonable return: but if the demand for hereditaments of the class under consideration is large and the supply small the rent he will pay may approximate to a rack rent".* In our view it is perfectly clear from this section of the Judgment of Mr. Justice Kingsmill Moore that far from referring to the method by which a rateable valuation may be ascertained, what the learned Supreme Court Judge was referring to was the manner and way in which the NAV is ascertained and not otherwise. His repeated reference to an estimate of hypothetical rent, to the ascertainment of net annual value and to the considerations which a hypothetical tenant would take into account in determining the rent on offer, all firmly support the existence of the underlying requirement of obtaining an NAV. This discussion, and like discussions in several other reported cases, would be entirely meaningless unless these were predicated on the belief that the obtaining of an annual value was inserted.

10. In addition, following the enactment of the 1986 Act, Mr. Justice Barron in the ***Irish Management Institute -v- the Commissioner of Valuation 1990 2IR 409*** had to consider the interaction between Section 5 of the 1986 Act and Section 11 of the 1852 Act. At p 412 he said "*the basic approach to the determination of valuations of rateable hereditaments for the purposes of the valuation code is to be found in Section 11 of the Valuation (Ireland) Act, 1852. It requires a determination as a question of fact of the rent, which a hypothetical tenant would pay for the hereditament taking one year with*

another. There is no one way in which this issue should be resolved see ***Roadstone Limited -v- Commissioner of Valuation 1961 IR 239*** *…… this Section (Section 5) does not alter the fundamental basis upon which valuations are made, that is, what the hypothetical tenant will offer on the basis of taking one year with another".*

Again, it seems evident from these passages that a fundamental requirement is to ascertain the rent that is the NAV. Without that, this requirement remains unsatisfied and the process is thus inherently flawed. See also **Ashford Gravel** case mentioned at paragraph 5 above.

Furthermore as a matter of practice, in virtually every hereditament other than oil tanks, pipelines and such similar circumstanced hereditaments some method is adopted as a result of which a hypothetical rent is ascertained. Whether it be right or wrong inflated or small is immaterial. It is the identification of this figure by whatever means that is crucial.

11. In conclusion therefore, on this aspect of the case, we are quite satisfied that the principal submission made on behalf of the Appellant is correct and that as a result the method adopted by the Commissioner in this case is unsustainable.

12. **THE CONTRACTOR'S BASIS:**

As an alternative to the method advanced on behalf of the Commissioner it has been suggested by the Appellant that the most appropriate way to value that part of the hereditament consisting of tanks and pipelines, is via the contractor's method. In support of this approach Mr. Kavanagh, the Engineering Manager of Irish Shell gave the following evidence about the current cost of installing similar tanks and pipelines, namely:-

			£
1.	93,000 gallon tank		45,000
2.	Bund Wall		3,000
		Total	48,000

3.	3 x 12,000 gallon tanks		18,000
4.	Bund Wall		3,000
		Total	21,000
5.	Pipework		16,500
		Grand Total	£85,500

With these figures Mr. Killen has suggested that the contractor's method could be applied as follows:

Cost £85,500 less 20% depreciation = £68,400 @ 6.5% = £4,446
Add Site 28,500sq. ft. @ £12.5psf = £3,562
(£5,500 per acre) = £8,008
Say £8,000 NAV

If accepted therefore this method would have the result of effectively reinstating on these items an NAV of £8,000 which is virtually identical to the £7,941 placed on the same items by the Revising Valuer using the same method in 1994.

13. In this method, frequently it is said that there are five stages. Firstly an estimate of costs, secondly the adjustment of those costs, thirdly the value of the land, fourthly the decapitalisation factor and fifthly review. See Ryde on Rating E(543). These five stages were referred to and followed by the U.K. Land's Tribunal in **Gilmore (Valuation Officer).v. Baker-Carr (No. 2)(1963) 10RRC205.** See also Hallsbury and the I.R.R.V. edition of its publication in January and February 1997. Though often least preferred this method if it is the most likely one to produce a reliable estimate of N.A.V. can and will be used. The method has been applied to value schools, hospitals, airports, oil refineries, chemical works, steel works, shipbuilding yards, fire stations and others.

14. During the course of the evidence given, the above figures were confirmed by Mr. Kavanagh who in addition informed this Tribunal, which we accept, that the life span of these tanks is somewhere between 50 and 60 years. In cross-examination Mr. O'Donnell, S.C. challenged the quality and accuracy of the evidence so tendered in support of applying the contractor's method. Firstly he pointed out that in the Oriel Oil case evidence was given on behalf of Irish Shell that the cost of constructing a tank of about 230,000 litre capacity, was £50,000 whereas in this case Mr. Kavanagh said that for the larger tank which has a capacity of about 420,000 litres the sum of £45,000 should be used. Secondly he criticised the absence of specific evidence dealing with the actual depreciation policy adopted by Irish Shell and accordingly cast doubt on the application of the 20% depreciation factor as suggested by Mr. Killen. Thirdly he also made a point that no evidence was given of the actual returns or profits which Irish Shell would expect to make from a hereditament like this one and therefore the adoption of the decapitalisation factor of 6.5% was suspect.

15. In our opinion there is no doubt but that evidence of a more refined nature could perhaps have been given in relation to the costs of these tanks so as to explain the discrepancy above identified, as it could have been in relation to the Company's depreciation policy and its view of what return would be acceptable on this hereditament. However Mr. Doyle, the Appeal Valuer, when giving evidence accepted that if the contractor's method was the preferred method to follow, then both the depreciation and decapitalisation factors as suggested were appropriate. Accordingly whilst some uncertainty remains about the quality of the evidence and whilst it would have been more desirable perhaps to have had more expert evidence, nonetheless we are satisfied that the essential ingredients exist which enable the contractor's method to be applied if otherwise we are so minded.

16. As has frequently been said there are several methods of valuation, or, more accurately for the purposes of this case, there are several methods for ascertaining the NAV. In addition, within certain methods there can be a number of variations. In this case there has been no evidence of letting value and accordingly an examination of that practise is

not purposeful. Equally so no suggestion has been made that oil tanks should be valued on a Profits or on an Accounts basis. Given our view as to the necessity for obtaining an NAV, the comparisons of RV as given by the Commissioner are of no assistance. In any event, if purely on figures, one objectively analyses what has been suggested on behalf of the Commissioner the following would result. Disregarding the building and horsepower elements of this hereditament, the RV of £75.00 had £40.00 thereof attributable to these tanks. That gave an NAV of £7,941. This figure, in the revision under appeal has been increased to an RV of £98.00, which gives an NAV of £18,600. Given the estimated cost of replacement at £85,500 which incidentally is the 1997 cost, the resulting NAV is more than 20% of that figure. Accepting the acknowledged life span of those units as being somewhere between 50 and 60 years it is exceedingly difficult to see how any tenant would annually, one year with another, be prepared to pay this sum for the hereditament in question. So even solely on figures the respondent would have had great difficulty in persuading us to accept an NAV of £18,600. See the view expressed by the Tribunal in ***Cavan MacLellan –v- Commissioner of Valuation – VA97/6/004***, decision given on the 12th day of August 1998 an in particular paragraph 8 to 10 thereof. In consequence, the only alternative method suggested to us is the contractor's basis. Though frequently described as a method of last resort nonetheless it is a recognised method which if properly applied may, even where modifications are required, be the only tool by which the statutory provisions can be complied with and an appropriate rateable valuation placed on the hereditament in question. Essentially in our opinion the analysis above described, though perhaps not as complete as the entire procedure would envisage, is nonetheless sufficiently satisfactory for us to adopt it in this case. In the calculation there is an estimated cost of replacement, there is a depreciation factor to cover obsolescence, there is a decapitalisation factor which at 6.5% in the circumstance seems reasonable and there is added in, a site value on which no issue has been taken. Whilst it might be suggested that a more embracing approach might have been appropriate nonetheless its essential components have been built in to the calculation and accordingly in our view it is acceptable.

17. It should be noted that the core point in this case is whether or not the methodology advanced by the Commissioner is acceptable. This case has not at its essence what the correct replacement method might be. Accordingly by accepting the contractor's basis in this instance, the judgement is not to be taken as laying down any precedent or establishing any general rule which might apply in the future to all such similarly circumstanced hereditaments. If in any given case more persuasive evidence should be tendered to this Tribunal then obviously that would be seriously considered.

18. Consequently in our view the position is that given the evidence as tendered, given the submissions as made and applying the law as we find it, we are of the opinion that the method advanced on behalf of the Commissioner is fundamentally flawed and does not permit statutory compliance with Section 11 of the 1852 Act and or with Section 5 of the 1986 Act. Accordingly we reject that approach and refuse to follow it. In its place, in the circumstances of this case we have adopted the contractor's method. In the result the rateable valuation as found by us is as follows;

	£
Buildings (Agreed)	32.50
Additions (Agreed)	7.00
Horsepower (Agreed)	2.50
	£42.00

Tanks N.A.V. £8,000 @ 0.5%
= R.V. £40.00

Total R.V. on all of the elements is £82.00 and that is the determination of this Tribunal.