

Appeal No. VA97/6/004

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

**Cavan MacLellan Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Factory at Map Reference 5a & 13a, Townland: Drumman, E.D. Cootehill Rural, R.D. Cavan. Co. Cavan

Quantum - Correct method of valuation for boilers

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Finian Brannigan - Solicitor**

**Member**

**Barry Smyth - FRICS.FSCS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 12TH DAY OF AUGUST, 1999**

By Notice of Appeal dated the 30th September 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £650 on the above described hereditament.

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

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

1. The appeal before this Tribunal was heard in the Courthouse, Cavan on the 13<sup>th</sup> day of March 1998. Mr. Alan McMillan appeared on behalf of Cavan MacLellan Limited with Mr. Raymond Sweeney, a District Valuer with 28 years experience in the Valuation Office, appearing on behalf of the Commissioner. Mr. McMillan was accompanied by Mr. Sean Donnelly and Mr. Aidan O'Connor, who, at the relevant time, were respectively the Technical Manager and Managing Director of the aforesaid appellant company. In the events, which happened, neither of these gentlemen gave evidence. Having exchanged their written précis and having submitted the 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 cross-examination. Submissions then followed. From the above the following, essential facts, emerged as being both material and relevant to the issues the subject matter of this appeal.
  
2.
  - (a) The hereditament above described, can in general be identified as comprising a factory with an office content as well as including a boiler and water tanks. The said factory was built in or about 1976 and at that time would have been considered a state of the art purpose built typical IDA advanced factory. Because of the configuration of the site however, the factory is long and narrow having a ratio of 6 to 1. The construction is of low part brick faced concrete block walls topped with perimeter aluminium framed single glazed windows and therefrom metal cladding to the eaves. Floors are of concrete and a flat felted metal decked roof is supported on horizontal lattice steel beams. Eaves height is about 20 feet but the effective headroom is some five feet less. The office part of the building is situated at the front as are the car parking spaces which are sufficient to accommodate the existing use. In 1979 an extension was added. This newer section is of similar construction to the original building but is finished with an insulated asbestos-sheeted roof. The factory part of this hereditament is used for the manufacture of industrial rubber hosing.
  
  - (b) The property is located in the townland of Drumman, on the outskirts of Cootehill. It is on the main Cootehill to Cavan Road. Cootehill is a small

market town with a population of about 1,500 people. It lies in the north of the County close to the Monaghan boarder and is approximately 15 miles from Cavan town and 70 miles from Dublin.

(c) The agreed floor areas are as follows:-

	<i>Sq.ft.</i>
(a) Office	4,656
(b) Factory	40,000
(c) Factory (1979 extension)	27,672
(d) Plant rooms (2)	1,052
(e) Ancillary Buildings	2,960

Therefore the office space and the total factory area plus ancillary buildings comes to 76,340 sq.ft.

(d) The first occupier of this hereditament was a company known as Alpha Rubber Company Ltd. This company went into liquidation in or about 1987/1988. In 1991 Cavan Hose Limited was in occupation. That company suffered a fate similar to the first occupier and ceased to trade in 1993. In October of that year, the appellant company in this appeal, re-opened the premises and to date has continued trading therein. As of the statutory valuation date it had a work force of only fourteen employees building up to about 25 at the date of hearing. It uses part only of both the factory and office sections of the building. Its business activities require no more.

(e) In 1976, as a newly erected building, the Commissioner placed a figure of £550 R.V. thereon. In 1991/4 that was increased to £650 following the construction of the extension above referred to. An appeal was lodged. Discussions followed. No change resulted and no appeal to this Tribunal was pursued. The reason therefore, according to the evidence of Mr. McMillan, which we accept, was that the occupier, at the appropriate time, was under such financial constraints that the cost of an appeal could not be provided for. In October 1994, under the new and current occupier, this property was listed

for revision by Messrs. Donal O’Buachalla & Co. At neither revision or at first appeal stage was any change made to the R.V. of £650. Hence the appeal to this Tribunal.

3. On behalf of the Commissioner Mr. Sweeney suggests that the following N.A.V. and thus R.V. should be placed on and is appropriate to the various elements constituting the rateable hereditament in question. His figures are as follows:

(a) Office 4,656 sq.ft. @ £2.50 p.s.f.

(b) Factory/ancillary buildings 71,684 sq.ft. @ £1.50 p.s.f.

Applying the agreed ratio of 0.5% that gives an R.V. of £595.83, Say £596.

(c) Boilers – 10,560 lbs per hour @ £3.00 per 1,000 lbs results in a £30 R.V., and finally

(d) Tanks – 160,000 gallons @ £0.15 - £24.00 R.V.

This gives a total figure of £650, which is the impugned amount in this appeal.

4. On behalf of the appellant company, Mr. McMillan suggests a figure of £0.60 p.s.f. on the 76,340 sq.ft., making no distinction between office and factory content. He places an N.A.V. of £250 on the horsepower element and £455 on the boiler. The latter, he approaches on the basis of applying 6.5% to its suggested value of £7,000. Overall his total N.A.V. comes to £46,509 which gives an R.V. of £230.

5. The appeal valuer in all referred to seven comparisons which either in whole or in part it is claimed, support and underpin his suggested R.V. These comparisons are set forth in Appendix I to this judgment. Mr. McMillan likewise referred to a number of comparisons in his case a total of 10. Again these are set forth and attached as Appendix II to this decision.

6. On behalf of his client the rating consultant made a number of submissions to this Tribunal. Firstly he claimed that a rateable valuation on £650 had as its equivalent an N.A.V. of £130,000. He felt, and strongly argued that as of November 1988 this property could not under any circumstances command a rental value of that level. Secondly in support of this viewpoint he referred to the economic conditions and

business stagnation which was still prevalent at the end of the 1980's. Thirdly, though remote in terms of distance and location, he was of the view and so urged upon us, that though geographically separate, hereditaments in locations as far away as Cork and Dublin could be comparable if otherwise they were similar. Fourthly, he felt that the absence of and/or the limited rental evidence available in rural areas, at the material time, was directly indicative of the paucity of demand and thus a direct indicator of values at that time.

In overall terms he was thus quite satisfied that the Commissioner's figure on this hereditament was excessive.

7. The appeal valuer adopted and pursued a rather more straightforward case. He felt that since the original building, had an R.V. of £550 being there since 1975 it was quite absurd now to suggest that this building, with the 1979 extension, should, on a 1994 revision, have an R.V. only of £230. Secondly he was of the opinion that the first numbered comparison in his list was highly relevant and fully supported the figure under appeal. Thirdly he pointed out that the respondent's comparisons, numbers 2 to 7 inclusive, had been agreed by different appeal valuers with up to perhaps six different rating consultants and thus the resulting figures could be considered highly reliable and highly reflective of accepted R.V.'s. These he strongly urged were fully supportive of the stance taken by the Commissioner of Valuation. Finally he informed us that in his view comparisons considerably distant from the location of the subject property, were rarely if ever of much value and that, even with adjustments, those could not usefully form the basis of establishing R.V. in any case, and in particular, in this case.
8. Before considering these matters we propose to deal with the boilers and the tanks which were separately valued by the Commissioner. The tanks were not valued by the appellant company or else were only included inferentially in the overall valuation of the building and premises itself. In the case of the boilers, we were informed by Mr. Sweeney that an established practise exists whereby such items are valued on the basis of so many pounds per hour. Normally the rate is £3.00 and that figure is used by him. The existence of this practise in this case was under challenge. Its general application without a capacity for variation was shown to create a potential injustice.

From the evidence given we are satisfied that the capital value of the boiler in question is about £7,000 and that the R.V. of £30 gives an N.A.V. of £6,000. We are also satisfied that the practise herein mentioned has no means within it whereby the age, condition, usefulness etc. of the boiler can be taken into account and the formula adjusted accordingly. The absence of this flexibility produces a situation, as here, where the N.A.V. is within 15% of the capital value. It is indeed very difficult to see how any informed tenant would pay such a rent in such circumstances. Having said this however, practioneers in the past, have been willing to abide by its application as for every perceived poor result, their clients, in the case of new and very valuable boilers, have been the recipients of quite favourable results. So it is productive in one case and counter-productive in another. However, if as here, the system is challenged, then so be it.

9. The difficulty facing us however is that no acceptable alternative basis, of general application, was suggested. No evidence was tendered as to how, if this formula was inappropriate, either per se or with modifications, such items are to be valued. An acceptable method, if possible ought to be found. That method *inter alia* must be capable of dealing with each individual item in its own right. It must produce a result, in each case, no matter how infinite or variable the circumstances might be, which complies with the statutory formula. No such alternative vehicle of valuing was given to us. True, 6.5% of capital value was suggested. But this on its own for the type of boiler involved, is not sufficient to dislodge the approach heretofore followed. Therefore in this case we are not in a position, to reject the established practice and in its place to substitute some alternative means, the foundation for which no acceptable evidence has been laid before us. In this particular case therefore we do not propose any change.
10. Notwithstanding this conclusion it is quite clear that this issue is one of some importance and of some general application. We know from our knowledge that in other cases the identical issue has been raised and substantially debated. Judgments are awaited. Depending on the results thereof we would hope, and herein express a view that, if the items in question are otherwise indistinguishable and if the application of such judgments should result in a variation of the R.V. attaching to this item, then the appellat company should, we feel, be entitled to such a benefit. But in

this particular appeal, for the reasons stated, we feel that we are not in a position to alter that item of valuation.

- 11.** With regard to the water tank some confusion arose as to whether or not the tank in question was a concrete structure or was used in association with the sprinkler system attaching to the property. Clarification ultimately emerged. The tank, which was valued, was indeed that associated with the sprinkler system. In our opinion one could not say that the Commissioner was wrong, as a matter of law, in adding on this item to the building structure itself. Whilst we appreciate that Mr. McMillan held a contrary view nonetheless, and as stated, one could not say that the method followed by the appeal valuer was inherently flawed. That being the situation no further contest arose as to the method of valuing this item, which has an R.V. of £24, placed thereon.
- 12.** In approaching the valuation of any legally recognised rateable hereditament the role of and the limitations on this Tribunal are well defined. The governing principles are contained in several Valuation Acts going back at least as far as 1838. In this case the most central provisions are those contained in Section 11 of the 1852 Act as amended and/or enlarged by Section 5 of the 1986 Act. In addition to these statutory rules there is available a multitude of case law, from not only this Tribunal but also from the Superior Courts in this jurisdiction. Such cases are too numerous to mention and indeed cover such a wide and diverse area that their recital, in this case, would be entirely irrelevant. It is sufficient to say that this body of ours, must as adequately as it can act in accordance with the acceptable evidence tendered before it, must adhere to its rules and procedures and must follow and apply the relevant principles emerging from all sources of direct authority. It has no function however and has no input directly into the poundage, which the rating authority applies, to its administration area. The rate in the pound is a matter exclusively for such authorities and is a figure over which we have neither control nor influence.
- 13.** In our Valuation Law there is a concept known as the rating area. In the context of the present appeal this becomes relevant in the following way. One of the best recognised and most widely used methods of supporting a suggested rateable valuation, is to produce evidence of a similar property, which by analogy is, or with

adjustments can be made, comparable to the subject property. In that way credence can be given to the suggested figure. It is more probable that such a comparison can be found within the same rating area as the subject property. Therefore, for comparable purposes one must firstly seek such evidence within the same area as the property and only travel beyond if due and diligent enquiries are unsuccessful. There is no doubt but that for certain hereditaments it will be absolutely necessary to go outside this rating area. Examples might be in the cases of pharmaceutical plants, or sports arenas, which are perhaps, few in number in this jurisdiction and are located in quite distinct and separate places. There are many other similar examples. With the case of a hereditament which is common in number and frequently seen it will rarely be necessary to travel beyond the immediate rating area to find comparable evidence of true value in support or indeed in rejection of a suggested R.V.

- 14.** As previously mentioned Mr. Sweeney stated that his best comparison is Flair International Ltd. - VA92/2/008 being number one in his attached schedule of comparisons. Comparison number two is the property of the Carton Brothers located at the edge of Shercock. In cross-examination it became quite clear that this premises is entirely different to the subject property. Being a factory for the production of chickens, its state and condition must comply with the appropriate regulations including EU requirements. In so complying it has a waterproof floor which is easy to clean and disinfect. It is rodent proof. It is laid out in such a manner so as to facilitate the effective drainage of water with gratings and traps fitted where appropriate. It has durable permeable walls with light colour washable coatings. Its ventilation and extraction system are of quality. Overall in terms of size, layout and finish it is significantly superior to the subject.
- 15.** The rest of the Commissioner's comparisons are in terms of location, size, standard, condition, age and use also somewhat different from the appellant's premises. The property of Gem Oils for example is located only 2½ miles from Cavan town, has a mixed content of new and old buildings with offices (3,200 sq.ft.) in quite poor condition. Wellman International is exceptionally large with a production area of almost 300,000 sq.ft. The property of Grove Turkeys being used for poultry production must also be of a standard to comply with statutory regulations and other rules. Comparisons number six and seven, Kingspan GSP and Gernord PLC.,



respectively are each located near Carrickmacross with Gernord having a substantial higher section to the front.

- 16.** So having reviewed those comparisons we are satisfied to accept that number one is the most appropriate. For an overall area of 65,000 sq.ft. which includes 7,250 sq.ft. as offices, this property attracts a rate of 1.40 p.s.f. The fact that this property is under appeal does not detract from its validity as what is in dispute is a small extension with a maximum R.V. of £30. The remainder of the property is unaffected.
- 17.** The rest of the Commissioner of Valuation's comparisons are as stated above. The Comparison submitted on behalf of the appellant company varied in location from Newbridge, Edenderry and on to Collooney. Comparisons number 9 & 10 are located in Tuam and Kilcullen respectively and are included in the context of N.A.V./capital values. In addition however we have referred to four local comparisons numbers 5, 6, 7 & 8. In view of this evidence last mentioned, we do not believe it necessary to place any significant reliance on the first set of comparisons above identified. We are satisfied that the comparisons within the rating area are sufficient to concentrate on.
- 18.** There is in addition however another piece of material evidence. In November 1991 the property was on offer for £320,000. Its acquisition at that time had not been finalised. It has since been acquired for £150,000. This seems strange given the interval of time involved and given the undoubted uplift in property/market/economic conditions. Taking the figure first mentioned, this means that a purchaser could have acquired this property for £320,000 in 1991 and yet the Commissioner's R.V. suggests a rental value of £138,000 in 1990. There is something fundamentally inconsistent with these figures.
- 19.** Mr. McMillan in an argument of substance makes this very point. He says that we must concentrate on the rental evidence whatever that may be. We may also look at capital values. If we do either – then we can only conclude that £650 is excessive. We appreciate the force of this argument, particularly where with old buildings like the subject, and in its location, there is very little market demand for the rental of such property. Real markets or not, we must find a rateable valuation which comes within the statutory provisions and which must have some degree of uniformity with that

placed on comparable similar properties. As has been frequently said, there is no one method by which this task has to be carried out. Approaches are several in number and that which arrives at the best available result in any given case is the one which must be adopted.

- 20.** If we were to follow the submissions made by Mr. McMillan it would have the effect that we would be disregarding not only the first comparison given to us by Mr. McSweeney but also comparisons 2 to 7.
- 21.** We have evidence which is not disputed and which we accept that the comparisons last mentioned were agreed at various stages, mostly at first appeal, by different appeal valuers in the Valuation Office but of more significance by several different rating consultants on behalf of the individual clients. We would have to reject this evidence in its entirety if we were to follow as we say the suggested approach urged upon us on behalf of Mr. McMillan. We feel we can not do this. Whilst we appreciate that, there is a conflict and can be a conflict, between what the true market situation might be in relation to a property of this nature and in its location, nonetheless given the evidence of what the R.V. is in relation to other comparable properties, such comparable properties including those numbered 2 to 7, we feel that we cannot on balance disregard it.
- 22.** Accordingly we propose to accept that the first comparison Flair International Ltd. is the best comparison offered on behalf of the Commissioner. We also are mindful of the local comparisons given to us in evidence by Mr. McMillan. In particular we note comparison number 7, which is the same property of Flair International Ltd., we note this for an area of 65,500 sq.ft., has an N.A.V. of £1.40. We feel however that we can further adjust these figures in relation to the subject property. This because it was constructed in 1975. Its only extension is now 20 years old and undoubtedly it suffers from some infirmities in terms of layout and irregularity. In these circumstances we propose to place a figure of £1.30 p.s.f. on certain parts of this hereditament. We are of the view that given the location and nature of this property it is more appropriate to put a rate p.s.f. on the offices/factory and ancillary buildings without necessarily distinguishing the office element of it. Accordingly, we determine the R.V. as follows;

Offices	4,656 sq.ft.
Factory/ancillary	<u>71,684 sq.ft.</u>
Total	76,340 sq.ft. @ £1.30 = £99,242
@ 0.5%	= R.V. £496
Add :	Boilers @ £30
	Tanks @ <u>£24</u>
Total R.V.	£550

We believe that this is a fair and accurate R.V. for the subject property and is in no way inconsistent with that figure which was placed on this property at first revision in 1975. The latter being under the old system and not current system as adopted post 1988. Accordingly the determination of this Tribunal is that the R.V. of the subject property is £550 and we so determine.