

Appeal No. VA97/6/044

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

Telecom Eireann

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: T.V. / Radio Masts at Map Reference 3Ba, Townland: Cullenagh, ED: Castlehyde, RD:
Fermoy, Co. Cork
Rateability of mast antenna

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

George McDonnell - F.C.A.

Member

Anita Geraghty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF JUNE, 1999

By Notice of Appeal dated the 17th day of October 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £32.00 on the above described hereditament.

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

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

The relevant valuation history is that the property was first valued in 1997 at £15.00. The result of the first appeal is that the rateable valuation was increased to £32.

A written submission on behalf of the appellant prepared by Mr. Desmond Killen FRICS, FSCS, IRRV, a fellow of the Society of Chartered Surveyors and a Director of Donal O’Buachalla & Company Limited, was received by the Tribunal on the 11th day of May 1998.

A letter dated 14th day of May 1998 from Mr. Killen to Mr. Frank Twomey of the Valuation Office was received by the Tribunal on the 14th day of May 1998.

The effect of this letter was to amend page 1 and page 5 of the written submission as follows:

<u>Page 1</u>	Expenditure	
1 (a)	Purchase of site	£15,000
(b)	Cost of Road	£ 6,735
2	Mast	£18,000
3	Portacabin	£ 7,000
4	Foundations/Site Works	£10,450
5	Fencing	£ 7,450
6	Electrical Connection	£ 2,500
	Total	£67,085

<u>Page 5</u>	Valuation	
	Construction costs 1994	£52,085
	Adjust to 1988 levels 122:153.1 (Society of Chartered Surveyors Building cost index)	£41,504
	@ 5%	£ 2,075 N.A.V.
	Site Cost 1994	£15,000
	Adjusted to 1988	£12,000
	@ 8%	£ 960 N.A.V.
	Total	£ 3,035 N.A.V.
	@ 0.5%	£ 15 R.V.

Mr. Killen's letter of the 14th day of May 1998 referred to some copy documents, which related to expenditure on the subject hereditament and these copy documents were also received by the Tribunal on 14th day of May 1998.

A written submission on behalf of the respondent prepared by Mr. Francis Twomey, a District Valuer in the Valuation Office was received by the Tribunal on 13th day of May 1998. Mr. Twomey's written submission contained a schedule of four comparisons.

The oral hearing took place at the Tribunal's offices in Dublin on 25th day of May 1998. Mr. Killen appeared on behalf of the appellant and Mr. Twomey appeared on behalf of the respondent.

In his sworn testimony Mr. Killen adopted his written submissions as his evidence to the Tribunal. Mr. Killen referred to Appendix B attached to his initial written submission. This appendix was a location map of the subject hereditament. The property is located adjacent to a secondary road and a private access road had been constructed to the subject. Mr. Killen said that the cost of the private road had to be included in the expenditure on the subject because it was of benefit to the landlord.

Mr. Killen referred to *Cork Communications Limited and Telecom Eireann –v- Commissioner of Valuation VA95/4/012 - VA95/4/023*. He said this was a precedent, which used a contractor's basis of valuation.

In further evidence Mr. Killen said that the right of way to the subject should be valued. In the Cork Communications case the right of way which ran through a forest for a mile was valued.

Mr. Killen said all the items of expenditure in connection with the subject were arms length transactions.

Mr. Killen referred to the respondent's first comparison. This was a site at Fermoy with a rent of £8,000 per annum. This yearly payment covered more than the rent of the site. It included the right to operate antennae. This operation of antennae is not a rateable item within the meaning of Section 12 of the Valuation (Ireland) Act 1852. Operating antennae

involved sending a signal through the air, which did not come within the provisions of Section 12. Mr. Killen said the rent of £8,000 covered rateable and non-rateable items.

Under cross-examination by Mr. Twomey Mr. Killen agreed that the contractor's method of valuation for the subject had not been agreed.

Mr. Twomey asked Mr. Killen whether he knew the details of the following costs in connection with the subject namely: agents fees in the development process and acquisition of the site, any contribution by the purchaser to the vendor's legal costs, stamp duty, drawings and specifications costs in connection with the planning process, legal fees, planning charges, any contribution which may have to be made to the local authority, any costs incurred by the appellant in connection with the planning appeal, professional fees incurred in the supervision of the site; insurance while development was being carried out, finance costs incurred in the construction phase, and any transport costs.

Mr. Killen's answer to all these questions was in the negative.

Mr. Twomey put it to Mr. Killen that receipts had been provided for only some items of expenditure on the subject.

Mr. Twomey asked Mr. Killen why he had not used rental evidence in arriving at a rateable valuation. Mr. Killen said there was ample evidence to use the capital value method in connection with the subject.

In further replies Mr. Killen said he did not know how to apportion the rent between the erection and operation of the antennae described in the Valuation Office's first comparison.

Finally Mr. Killen put in evidence two photographs of the subject, one photograph showing the mast and the other photograph showing the portacabin.

In his sworn testimony Mr. Twomey adopted his written submission as his evidence to the Tribunal. He said there was no difference between the appellant and the respondent as to the description of the subject hereditament and its location.

Mr. Twomey said he did not use the contractor's method in arriving at a valuation because the costs submitted were incomplete. He said he based his valuation on the limited rental evidence available.

He referred to his first comparison. The facility here was located on a secondary road at an elevation of 300 feet. The mast was 36 metres high. This comparison and the subject were located adjacent to Fermoy but the subject had an elevation of 600 feet.

The rental of £8,000 per annum fixed in December 1996 was an arms length transaction. In using the C.P.I. to get a rent of £6,400 per annum in November 1988 Mr. Twomey said he had followed the precedent in Cork Communication Limited which had been quoted by Mr. Killen. This property had not yet been valued.

Mr. Twomey said his second comparison had been determined by the Tribunal, *Cork Communications Limited –v- Commissioner of Valuation - VA95/4/012*. The rent of the site in 1992 was £5,000 per annum. The N.A.V. of the site was determined at £4,350 in November 1988 using the C.P.I.

Mr. Twomey's third comparison was a site and mast at Rathcooney, near Cork City. This site was leased to Esat Telecom on a ten-year lease from 1996 at a rent of £5,000 per annum. The rateable valuation here is under appeal.

In further testimony Mr. Twomey said that rental evidence is limited for facilities like the subject. However, more rental evidence is becoming available due to a number of factors, including the growth in mobile phone usage and the advent of competition in the provision of the service.

Again landowners were now more aware of the value of sites so he considered that rents in 1997 would be higher than rents in 1994. Also, concerns about health hazards make existing sites with planning permission more valuable.

Finally Mr. Twomey referred to Mr. Killen's distinction between the rateability and non-rateability of items in the Valuation Offices first comparison. Mr. Twomey said that if the antennae cannot be operated then the facility is useless.

Under cross-examination by Mr. Killen Mr. Twomey said it may not be possible to break down the value of length of right of way in rental terms. He said all properties require access and the renting of a site implies an access. Mr. Twomey said that the distance to travel cannot be measured in price per mile.

Under further cross-examination Mr. Twomey said he did not break down a value for the mast and a value for the site in the subject property. He had valued the property as an entity. Mr. Twomey said his rateable valuation for the subject was on the basis that it would rent for £8,000 per annum on analogy with his first comparison. Therefore using C.P.I. gives an N.A.V. of £6,400 in November 1988. Applying agreed 0.5% this gives an R.V. of £32.

In further replies Mr. Twomey said that in the Cork Communications Limited case there was no reduction in valuation for the right to operate a signal.

Finally Mr. Twomey said the reason the R.V. had increased by more than 100% between revision and first appeal was that the rent given in his first comparison had become available to him during the discussions preceding his decision at first appeal stage.

In his closing submission Mr. Twomey said his cross-examination of Mr. Killen showed that the many omissions in the costing of the subject made the contractor's method inappropriate for arriving at a rateable valuation. For the appropriate application of the contractor's method all costs should be included. Mr. Twomey estimated that generally professional fees could amount to 10% of the contract price. Rental evidence, though limited, is a better approach to establishing N.A.V. Rental evidence in Mr. Twomey's submission gives a far less margin of error.

In his closing submission Mr. Killen said the transaction with respect to the subject described in his written submissions took place in 1994. That transaction included an open market purchase and construction of the subject.

Mr. Killen said that the rent in the Valuation Office's comparison number one contained elements which were not rateable. Also this comparison is at the roadside and does not require the cost of constructing an access road.

As to comparison number two of the Valuation Office the Tribunal determined a rent for this property which included a substantial right of way amounting to 1½ miles. Constructing a right of way would dilute the rental figure of £5,000 per annum for a site of a ¼ acre.

Mr. Killen said that in applying the contractor's method he was following the Tribunal's decision in VA95/4/012 and VA95/4/023. In this case the information about costs was correct and the method he had used to arrive at a rateable valuation was correct also.

The Tribunal has considered the written submissions of the appellant and the written submission of the respondent. The Tribunal has also considered the evidence offered by the appellant and the evidence offered by the respondent.

The Tribunal finds that the contractor's method employed by the appellant in arriving at a rateable valuation is an inappropriate method. This finding is based on the evidence that certain costs had not been included in the construction costs. One item excluded, namely professional fees was estimated generally to be in the region of 10% of the contract price.

The Tribunal further finds that the respondent's method of arriving at a rateable valuation namely the rental method, is the appropriate approach in this case. This finding is reinforced by the consideration that a passing rent is *prima facie* the best evidence of N.A.V. Again the dictum of Scott L.J. in *Robinson Bros. (Brewers) Ltd. -v- Houghton and Chester-Le-Street Assessment Committee* (1937 KB at 481; on appeal (1938) AC 321, (1938) 2 All E.R. 79, HL to the effect that "where better evidence is in the circumstances of a particular hereditament impossible, resort may be had to either capital value or cost of construction..." provides a legal rationale for the non-use of the contractor's method in this case.

The finding as to the appropriateness of the rental method in this case for arriving at a rateable valuation is based on the evidence that the respondent's comparison number one showed an arms length transaction as to the rent. Furthermore this property was comparable to the subject in terms of location near Fermoy and the height of the masts were comparable.

The Tribunal therefore affirms the decision of the respondent in fixing a rateable valuation of £32 on the subject hereditament and the Tribunal determines the rateable valuation of the subject property to be £32.