

Appeal No. VA98/3/040

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

**Carroll Quarries Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Quarry/Sandpit at Map Reference 2, 6CD, Townland:Knockacoller, E.D. Castletown, R.D. Abbeyleix, Co. Laois

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Ann Hargaden - FRICS.FSCS**

**Member**

**Michael Coghlan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 29TH DAY OF MAY, 2000**

By Notice of Appeal dated the 4th day of August 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £350 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the valuation is excessive, inequitable and bad in law when rental levels and other factors are taken into consideration.

The hearing was held in the Valuation Tribunal offices on the 19<sup>th</sup> day of January 2000, the appellant was represented by Mr. Brian Bagnall, Brian Bagnall & Associates with Mr. John Sheils, John Barnett & Associates Limited, Mineral Surveying Consultants. The Respondent was represented by Mr. Denis Maher, District Valuer with the Valuation Office.

The material facts which emerged were as follows;

### **PROPERTY DETAILS**

The property is situated in the townland of Knockacoller in the electoral district of Castletown in Co. Laois. It is located approximately half a mile to the north side of the main N7 Dublin / Limerick road and about one mile west of the village of Castletown and circa 12 miles south west of Portlaoise. The approach to the property is via a cul-de-sac public road way.

The property comprises a limestone based quarry with ancilliary buildings and plant housing and incorporating a tarmacadam production plant, the entire of which is situated on a site extending to approximately 15 acres. Bulk stone is extracted from a quarry face and transported to the grinding machines, where it is ground to uniform aggregate sizes ranging from 6 inches to 4 inches, 3 inches, 2 inches and to chippings and dust. The working quarry is operated in a series of three benches; ranging in depth from circa. 8 metres and 18 metres giving a total face depth of 45 metres to the quarry floor. The agreed output excluding 200,000 tons for the Portlaoise by-pass for the following years were as follows;

### **OUTPUT / TONS**

1989 – 20,970

1990 – 72,210

1991 – 104,400

1992 – 124,840

1993 – 140,170

1994 – 159,980

1995 – 191,010

1996 – 192,020

1997 – 223,000

The valuation on the buildings and rateable plant was agreed between the parties at £50.

### **THE APPELLANT'S CASE**

Mr. John Sheils took the oath and adopted his précis of evidence. He stated that the material being quarried at Knockacoller is a grey crystallised limestone. Very well bedded. It dips in the hillside at the rate of 11° in a south easterly direction. Some three metres of over burden is needed to be removed to expose rock head. The underlying rock was observed to be weathered down to about 8 metres below the top of the quarry. Clay lenses are also apparent at the top of the quarry face. The rock becomes progressively less weathered and more competent with depth.

He then stated that the operator has to chop and change bench heights to go after the better materials in the face and that he has allowed a 5% allowance for clay contamination and quarry redesign i.e. the disabilities with the site. He stated that he had taken an average of 150,000 tons of output over the last 9 years of production and that this was quite normal as it is difficult to predict the future and a potential operator would take this average rather than base it on one year.

He referred to the Morrissey Quarry which was the subject of a Tribunal judgement in *Dan Morrissey Limited –v- The Commissioner of Valuation – VA96/2/004* – delivered on the 10<sup>th</sup> day of April 1997. He reviewed this case and said that there were similarities in that they were in similar locations, one is near Carlow and the other is near Portlaoise. The markets and outputs were very similar in both quarries but Dan Morrissey produces a greater range of products whereas Carroll's quarry relies on one product, but the price of stone from each quarry would be similar in price from year to year. Both the subject quarry and the Morrissey quarry would have similar disabilities and the 5% allowance reflects this fact. He stated that the 1997 price at £3.76 per ton seemed very high and that the average price per ton in 1999 is £3.15. The high rate might reflect the product going into added value. In his view the £2.50 per ton in the Morrissey case is a 1988 figure and this would equate to £3.00 per ton in present day value and that as stated the average 1999 price per tonne is c. £3.15. He submitted that the Knockacoller quarry should be valued on an average annual output at 150,000 tonnes per annum (based on output for the last 9 years) with an average ex-quarry sales price of £3.76 and royalty at 5% being 19p per tonne as follows;

Annual Rental income for 150,000 tonnes per annum at 19p per tonne	£28,500.00 p.a.
Adjust for Rental income @ 1988 value (X . 83)	£23,655.00 p.a.
Rateable value @ 0.5%	£118.27
Disability allowance for clay contamination / quarry redesign @ 5%	£5.91
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Rateable value	£112.36

Say £112 + £50 for Fixed Plant and Building = Total £162 R.V.

Mr. Maher cross examined Mr. Sheils and asked whether the problems in Knockacoller were normal in quarries, Mr. Sheils responded that it varied from each quarry and each had to be taken on its own merits. He stated that 18 metres is quite high for a bench, the typical is 15 metres to 20 metres and that in 1997 the over burden was 3 metres to 8 metres. Difficulties were experienced working at a top bench of 18 metres a middle bench of 3 metres and a lower bench of 18 metres. He stated that in the Dan Morrissey case the overburden was 20 metres so it was double. There was also a problem in Morrissey's with flooding, Carroll's were dewatering but not to the same extent and he did not consider this the same disability as in the Morrissey Quarry. He stated that there was a major geological fault in the Morrissey Quarry but it was localised and confined to one part of the quarry. He had taken an average of 9 nine years production as this was what was available to him, he would normally consider 20 –30 years in valuing quarries. When asked why he did not value on the basis of the current year output, he stated this would not be appropriate, that the rate would have to be an average rate as there was no guarantee of the product which would be available again in any one year. One would have to take a more reasonable view and apply an average on the information available for 9 years on the production figures.

## THE RESPONDENT'S CASE

Mr. Denis Maher then took the oath and adopted his précis of evidence. He stated that he followed the Dan Morrissey case and made minor alterations and that in this case one year of output was taken which produced a rental of £0.18 pence per tonne and an average price of £2.50. His reading of this case was that the price was of that year. He submitted that the quarry should be taken at £0.27 per ton based on £3.76 per ton and that Disability allowances should be given at 3% rather than a greater percentage because in the Dan Morrissey case great emphasis was placed on the water table and flood control and the fact that the overburden was double.

For rating purposes he stated that one cannot value the reserves of the quarry and that an annual assessment could be completed. He also stated that he followed the same ratio as the Dan Morrissey case in assessing value and submitted that the premises should be valued on the following basis;

### **Buildings**

Pre-fab office (at entrance)	195 ft <sup>2</sup>	@ £1.50 per ft <sup>2</sup>	£293.00
Stores	475 ft <sup>2</sup>	@ £1.00 per ft <sup>2</sup>	£475.00
	1094 ft <sup>2</sup>	@ £0.50 per ft <sup>2</sup>	£547.00
Prefabs on stores	195 ft	@ £1.00 per ft <sup>2</sup>	£195.00
adj. Stores	315 ft	@ £1.00 per ft <sup>2</sup>	£315.00
Workshop	1130 ft <sup>2</sup>	@ £1.00 per ft <sup>2</sup>	£1130.00
Lean-to office	538 ft <sup>2</sup>	@ £0.75 per ft <sup>2</sup>	£404.00
Store under	538 ft <sup>2</sup>	@ £0.50 per ft <sup>2</sup>	£269.00
Hoppes Housing	775 ft <sup>2</sup>	@ £0.90 per ft <sup>2</sup>	£698.00
Switch Housing	258 ft <sup>2</sup>	@ £0.75 per ft <sup>2</sup>	
Tarmac control office	40 ft <sup>2</sup>	@ £0.75 per ft <sup>2</sup>	£224.00

**Plant**

3 x 5000 gals. Bitumen Storage Tanks		£2,000.00
Tarmac Silos	190 tons	£2,000.00
Weighbridge Pit		£1,000.00
Horse Power	Estimated	<u>£4,000.00</u>
		£11,550.00

**At 0.5% = £57 say £50 Agreed**

**Absolute**

Output est. 223,000 tons and 7,000 tons to tarmac plant.

Total 230,000 tons @ 27p per ton	£62,100.00
Disability Allowance 3%	<u>£1,863.00</u>
	£60,237.00

At 0.5% = £300.00

Mr. Brian Bagnall then cross examined Mr. Maher. Mr. Maher responded by indicating that he agreed that the Morrissey and Carroll's locations were similar, that the stone quality was similar and that extraction costs might be higher in the Dan Morrissey Quarry. He agreed that there has been an exceptional growth in output ten fold in 9 years. He was then asked if he was advising a purchaser of a quarry looking at the growth whether he thought it would be prudent to look back at variance in output levels over a number of years. He responded by stating that if he was advising on capital value he would have to look at the reserves. He did feel that the £2.50 referred to in 1988 would have an impact on value. When asked whether the yield he had placed was at the very highest of percentages as the normal would be 5% in accordance with the guidelines issued by the Valuation Office, Mr. Maher did not know but accepted that the guidance notes were from the Valuation Office where it states that 2.5% - 7.5% is the norm. Mr. Maher then accepted that 5% is nearer the norm.

Mr. Bagnall then asked whether Mr. Maher agreed that both valuation methods were now disproved, in that he was trying to add 50% more in rental value over and above the average and had taken the higher end of the percentages in assessing the rate. Mr. Maher stated that in rating terms he must take the year in question in accordance with the Morrissey case and that a hypothetical tenant cannot look forward from a rating point of view.

## **SUBMISSIONS**

Both parties then made the following submissions;

Mr. Brian Bagnall stated that there were three issues of concern. One was the rate per ton, the second was output and the third was the disability allowance. He stated that the respondent was looking for a 50% higher rent to that of the Morrissey case whereas he as Appellant was looking for two pence less than that of Morrissey's.

In relation to output in another case, the McGrath case, a 7 year average was taken. Any prudent tenant would look at the average mean in that it would be unduly harsh to expect someone to pay rent based on the highest output ever achieved.

Mr. Denis Maher then stated that the disabilities taken into account had not been distinguished between the two quarries, that the property is valued as land which is not developed until output is extracted and the Roadstone case is the headline case on this issue. He stated he had followed the Morrissey case and accepted it. He submitted for rating purposes you have to follow a certain line and asked the Tribunal to accept his rateable valuation.

## **TRIBUNAL DECISION**

Mr. Maher relied on the Roadstone case – Ref [1961] IR to support his approach in taking the output for the year of revision only. This case appears only to support the fact that the output is relevant in the calculation of NAV. The Case Stated in the Roadstone Case raised a number of questions which included as follows;

“That portion of the quarry hereditament which is being used as a quarry must be valued as a separate hereditament on the basis laid down by Section 64 of the 1838 Act.” The court held in response to this question that: “Yes, but only in as much in the amount of stone expected to be extracted might be an element which would influence a tenant and a landlord in arriving at a rent and as such should be considered in conjunction with all the other elements which would affect the final bargain as to the rent to be paid.

The evidence of the price or rent for which similar stone can be obtained is not conclusive as to the rent which a tenant would be expected to pay but is an element in arriving at a conclusion as to what such rent would be likely to be.”

At the conclusion of the Roadstone judgement Mr. Justice Kingsmill Moore stated “Finally it must be remembered that the Valuation directed by the Act of 1852 was to be a uniform valuation. In so far therefore as there is evidence of the existing valuations of similar hereditaments made on a proper basis, the valuation put on a quarry must bear a relation to other such valuations”.

It would appear therefore that the output is a factor in the assessment but there is no basis in the Roadstone case for excluding an average figure calculated over a number of years.

The £3.76 per tonne submitted by the Respondent does not appear to reflect 1988 levels in the light of the Morrissey case.

The disability allowance is towards the lower end of the range and the Tribunal accepts the middle end of the range at 5%. The Tribunal therefore accepts the valuation as set out by the appellant and determines the R.V. as follows;

Annual Rental income for 150,000 tonnes per annum at 19p per tonne	£28,500.00 p.a.
Adjust for Rental income @ 1988 value (X . 83)	£23,655.00 p.a.



Rateable value @ 0.5%	£118.27
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