

Appeal No. VA99/3/006

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

Martin McAndrew Ltd.,

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Quarry/Sandpit, Workshop & Land at Map Reference 2E. 3. 4AB. 6-8., 10 TO 13. 27. 28.
Bunnafinglas, RD: Attymass West, Ballina, Co. Mayo.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Tim Cotter - Valuer

Member

Marie Connellan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF SEPTEMBER, 2000

By Notice of Appeal dated the 14th day of July 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £490.25 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "we act on behalf of the above named occupier and wish to appeal against the rateable valuation on the grounds that the valuation is excessive, inequitable and bad in law, when rental levels and other factors are taken into consideration. I enclose cheque in the sum of £200 payable to the Valuation Tribunal being the appeal fee".

The relevant valuation history is that in January 1998, a revising valuer, Mr. Noel Rooney inspected the premises and submitted a report to the Valuation Office. In February 1998 the revised valuation lists were published by the Commissioner of Valuation. The subject property was assessed as follows:

R.V. Buildings	£ 45	(unchanged)
R.V. Absolute	£350	(new assessment)
R.V. Land	<u>£5.25</u>	(amalgamated lots)
	£400.25	

On the 18th February 1998, an appeal was lodged with Mayo County Council by Brian Bagnall & Associates acting on behalf of Martin McAndrew Ltd. On the 12th March 1999, Mr. Keogh of the Valuation Office having being appointed Appeal Valuer by the Commissioner of Valuation inspected the subject premises and on the 6th July 1999, the Commissioner of Valuation issued a formal determination of the appeal as follows;

R.V. Buildings	£ 45	(unchanged)
R.V. Absolute	£440	(increased from £350)
R.V. Land	<u>£5.25</u>	(unchanged)
R.V. Total	£490.25	(increased from £400.25)

At the hearing of this appeal the valuation of the buildings at £45 and the valuation of the land at £5.25 is not an issue and had been agreed by the parties. A written submission was sent to the Tribunal by Mr. Tadhg Donnelly MIAVI on behalf of the appellant. Mr. Donnelly stated that he had engaged the services of an expert Chartered Mineral Surveyor Mr. John Sheils ASCS ARICS to prepare a report. The written submission contained this report and Mr. Bagnall's letter and was received by the Tribunal on the 3rd April 2000. A written submission prepared for the Valuation Office by Mr. Michael F.Keogh, a District Valuer with 29 years experience was received by the Tribunal on the 23rd March 2000.

In his written submission Mr. Keogh set out the rateable valuation in contention as follows:

Output:	Average Annual Output	=	200,000 tonnes
Average Ex-Pit Price:		=	£3.75 per tonne
Ex-Pit Price adjusted to 1988 (C.S.O. Index):		=	£3.115 per tonne
Nov 1988	132.0		
Feb 1988	158.9		
Royalty Fee:	15% of 1988 adjusted ex-pit price	=	£0.467 per tonne
Net Annual Value:			
	200,000 Tonnes @ £0.467	=	£93,400
	Rateable Valuation @ 0.5%	=	£467.25
	Say	=	£465.00

Mr. Keogh's written submission stated that he was relying on *Kilsaran Concrete – VA98/3/039* by way of precedent.

Mr. Shiel's written submission set out the valuation of the sand and gravel pit as follows:

Potential Rents or N.A.V.	
200,000 tonnes per annum @ royalty of £0.37p per tonne	£74,000 p.a.
Adjust for rental income @ 1988 value (x 0.79)	£58,460 p.a.
Rateable Value 0.5%	£292

Mr. Shiel's written submission relied on two precedents, *McGrath Limestone Works Ltd. – VA99/0/015* and *Kilsaran Concrete – VA98/3/039*.

The appeal proceeded by way of an oral hearing which took place in the County Council Chamber, Mayo County Council, Castlebar on the 12th April 2000.

Mr. John Sheils gave sworn testimony on behalf of the appellant. He adopted his written submission as his evidence to the Tribunal.

Mr. Sheils said he was a Chartered Mineral Surveyor being as Associate of the Society of Chartered Surveyors and the Royal Institute of Chartered Surveyors. He said he had a degree in mining engineering and a professional qualification in quarry management.

Mr. Sheils said he had twelve years experience in mining and quarrying both in the United Kingdom and Ireland.

Mr. Sheils then gave evidence about the pit at the subject property. There was a shallow overburden on top of the deposit. The material extracted had to be washed and processed. The processed product was then taken across the road for use by a Ready mix plant and a concrete pipe making facility.

Mr. Sheils said production over the last few years was at a rate of 200,000 tonnes per annum. This rate had been agreed with the Valuation Office. The ex-pit price per tonne had also been agreed with the Valuation Office, being £3.75.

In continuing testimony Mr. Sheils said he had used 10% of the ex-pit price per tonne in assessing the royalty payment. This gave a rounded figure of £0.37 per tonne.

Mr. Sheils said that the 10% rate used by him was based on a rule of thumb. This rule was based on his and his firm's experience. This experience included sale prices of land, which he related back to royalties. Also his experience included valuing land for owners and for operators

seeking loan approval from banks. Mr. Sheils said he had completed ten such valuations in the last year.

In further testimony Mr. Sheils said that other factors to be taken into account, in arriving at the 10% figure were (a) location of the pit, (b) market conditions, (c) quality of the product, and (d) an appreciation of royalties passing and deals that have been in this sector of business.

Mr. Sheils said the respondent used a royalty figure of 15% for the subject derived from the Kilsaran case – VA98/3/039.

Mr. Sheils said the most appropriate comparison was the McGrath case – VA99/2/015. This latter pit was located in the West of Ireland like the subject.

On the other hand the Kilsaran pit was located near Dublin and a larger market. There was a scarcity of materials near Dublin and this increased the competition for resources. In contrast such competition for resources did not exist in the West of Ireland.

Finally in his testimony Mr. Sheils said he rated the subject pit in the fair to good category. The deposit required washing but the silt was not excessive. He had not made any allowance for disability in arriving at his valuation.

Under cross-examination by Mr. Keogh, Mr. Sheils confirmed that the subject property was a sand and gravel pit and not a quarry.

Mr. Keogh put it to Mr. Sheils that the McGrath case was not relevant here as it dealt with a quarry. In reply Mr. Sheils said that the McGrath case was relevant for its locational arguments.

Under further cross-examination, Mr. Sheils said royalties are higher for the output from sand and gravel pits than the royalties for the output from quarries.

In further replies Mr. Sheils said that 15% of the output of the pit was oversized material. This was being stock piled, as there was no ready market for it at the present time.

Mr. Keogh put it to Mr. Sheils that his firm had used a 10% royalty figure in the Kilsaran case similar to the percentage the appellant was applying in this appeal. Again, Mr. Keogh put it to Mr. Sheils that the ex-pit price per tonne at the subject pit adjusted back to November 1988 by the C.S.O. sand and gravel wholesale price index was £3.11 while the same exercise produced an ex-pit price of £2.90 at the Kilsaran pit.

In a final reply Mr. Sheils said he accepted the back dating of the ex-pit price at the subject as contained in Mr. Keogh's written submission.

In his sworn testimony Mr. Keogh adopted his written submission as his evidence to the Tribunal.

Mr. Keogh said the yearly output from the subject pit for the past five years had been agreed at 200,000 tonnes. Again the ex-pit price per metric tonne had been agreed at £3.75.

In further testimony Mr. Keogh said that he had based his figure for a royalty of 15% of the adjusted ex-pit price per tonne on the methodology used in the Kilsaran case.

In that case the Tribunal found that the yearly output of the pit was 245,000. The appellant in the Kilsaran case stated that the ex-pit price per tonne in November 1997 was £3.50. The adjusted ex-pit price was £2.90. This was not disputed by the parties before the Tribunal.

Again in the Kilsaran case the appellant sought a 5% disability allowance due to the fact that the pit had a remaining life of eighteen months. The Tribunal awarded a 10% disability allowance to cover the limited life of the pit and also the distance that the output of the pit had to be transported in order to be processed. The distance for the transport of the output was fourteen miles.

In further testimony Mr. Keogh contrasted the subject pit with the Kilsaran pit. In the subject there were healthy ex-pit sales and there was a processing plant adjacent to the site. Again the ex-pit price per tonne was higher in the subject than in Kilsaran. Mr. Keogh also said that a vibrant local economy created a demand for the pits product. He gave as an example of this the existence of a major construction project in Ballina.

Mr. Keogh said that the Tribunal had applied a 15% royalty figure in the Kilsaran case. He considered a 15% royalty figure appropriate in the present case.

Finally Mr. Keogh said that the R.V. of £440 for the subject pit was moderate. The R.V. should be £465.

Under cross-examination by Mr. Donnelly for the appellant Mr. Keogh said he considered the subject pit to be an excellent property. Mr. Keogh said his expertise in this matter was based on his B.Ag.Sc. degree which included soil science and geology as part of its curriculum.

Mr. Donnelly put it to Mr. Keogh that documents obtained by the appellant from the Valuation Office, under the Freedom of Information Act, showed that guidance notes for valuers recommended that average royalties for pits should range between 5% and 15%. Mr. Donnelly wanted to know why the 15% figure had been adopted by the respondent.

In reply Mr. Keogh said that the ex-pit price and the quality of output were the primary factors in fixing a percentage figure for royalties. Additionally Mr. Keogh said the guidance notes on royalty rates were being amended by the Valuation Office as a consequence of some Tribunal decisions.

In reply to a question from the Tribunal Mr. Keogh said that capital costs are higher in quarries than in sand and gravel pits. It was easier to get involved in the sand and gravel business.

Mr. Donnelly said he did not wish to make submissions.

In his closing submissions Mr. Keogh said there was no good reason for the Tribunal to depart from the 15% royalty rate put forward by the Respondent.

The subject pit had a good deposit. No disability allowance had been sought by the appellant. The pit was easy to run and had low production costs. The healthy ex-pit price per tonne, which was higher than the ex-pit price per tonne at Kilsaran, indicated the strength of the local market.

In reply Mr. Donnelly said the appellant's witness Mr. Sheils was an expert in the field. His evidence as to the appropriate percentage for royalties should be taken into account by the Tribunal.

The Tribunal has considered the written submissions, the evidence, and the oral submissions offered by both the appellant and the respondent.

The Tribunal finds that the comparison relied on by the appellant, namely *McGrath Limestone Works Ltd. – VA99/2/015* is inappropriate in arriving at a determination in this matter. The property in that case comprises a quarry unlike the subject, which is a sand and gravel pit.

The Tribunal therefore finds that *Kilsaran Concrete – VA98/3/039* is the most appropriate comparison for arriving at the percentage royalty figure to be applied to the output of the subject pit.

Accordingly, the Tribunal finds that a percentage rate of 15% for royalties should be applied to the subject.

This finding as to the percentage for royalties is based on the evidence, which established the ease of working of the subject and its lack of disability. Additionally the evidence established that the ex-pit price per tonne in the subject was higher than the ex-pit price at the Kilsaran.

The Tribunal therefore determines the rateable valuation of the subject hereditament as follows:

Buildings	£ 45 (Agreed)
Sand & Gravel pit	£440
Land	<u>£5.25</u> (Agreed)
TOTAL	£490.25

Therefore the Tribunal affirms the decision of the Commissioner of Valuation and fixes a total rateable valuation on the subject hereditament of **£490.25**.