

Appeal No: VA15/4/026

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

DEREK McCABE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5006428, Warehouse/Warerooms at 1B, Roebuck, Kilbride, Castlerahan, County Cavan.

B E F O R E

Majella Twomey – BL

Deputy Chairperson

Donal Madigan – MRICS, MSCSI

Member

Fergus Keogh – MSCSI, MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 11TH DAY OF JULY, 2019.

1. THE APPEAL

1.1 By Notice of Appeal received on the 24th day of November, 2015 the Appellant appealed against the determination of the Respondent pursuant to which the rateable valuation ‘(the RV)’ of the above relevant Property was fixed in the sum of €9.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because :

The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

“A. Point of Law

B. No basis in Law for the Valuation determined

C. Subject property constitutes a farm Building within the meaning of Paragraph 5 of schedule 4 Valuation Act 2001.”

“The property comprises of one of two sheds within a farm yard complex, which in turn is comprised within a farm holding. The valuation was assessed on a portion of that one shed. The shed is a simple basic steel structure with no side wall or doors and little or no commercial value.”

“Both sheds were built as farm buildings and are exempted development under the Planning and Development Acts 2001-2012. Farm buildings are defined under the regulations as Agricultural/Forestry/Horticultural.”

“The Valuer made an assessment of valuation on one of two sheds within a farm yard complex. The said sheds are in turn, comprised within a farm holding. In fact the valuation was assessed on a portion of that one shed.”

“This valuation was based on the assumption that within the subject shed, the storage of unprocessed timber constituted a business activity”

“On the 21st September following an invitation form the Revision Manager, I duly submitted a sworn Statutory Declaration which stated that there was a material change, regarding the use/proposed use of the proportion of the shed, that the proposed valuation was been levied on.

Please note that the statutory declaration was made without prejudice to my conviction that the shed was exempt from rates as agricultural buildings in the first instance.”

“It is my belief that in law, the building should not have been entered onto the valuation list on the basis of the sworn statutory declaration, as the sworn declaration is unequivocally clear of the intentions going forward regarding any commercial or perceived commercial use.”

“I also believe that the property is exempt from rates under Paragraph 3 (1) and Paragraph 5 Schedule 4 of the Valuation Act 2001.”

“It should be noted that the subject property is used for the storage of forestry produce from my own lands. These lands surround the subject property and are an integral part of farming/forestry activity on my farm.”

“The subject property falls within the judicial definition of the Supreme Court in the Nixon case as being a building on a farm and used solely in connection with the farming operation.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €-3.

2. VALUATION HISTORY

2.1 On the 21st day of August, 2015 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €9.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 30th day of October, 2015 stating a valuation of €9.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 25th day of November, 2013.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 23rd day of May, 2019. At the hearing the Appellant appeared in person and the Respondent was represented by Ms. Orla Lambe of the Valuation Office and Mr. Robbie O’Neill BL.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The subject property is situated circa 3 km from Mountnugent, off the R154, Mountnugent to Old Castle Road. The property is located up a laneway off the main road within an agricultural setting.

4.3 The subject property has single skin clad walls to eaves, height of 5 metres, complete with single skin clad roof. The property is open fronted.

4.4 The total floor area of the part of the building which is being rated is 108.57 m.sq.

5. ISSUES

5.1 The issue before the Tribunal is whether the subject property should be exempt for rating under section 3 (1)(c) and Paragraph 5 Schedule 4 of the Valuation Act 2001 and/ or whether the drying of wood inside the subject property constitutes processing within the meaning of the Act.

6. RELEVANT STATUTORY PROVISIONS:

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

7. APPELLANT’S CASE

7.1 Mr. McCabe began his evidence by making a submission relating to the fact that he had filed a Statutory Declaration, which had been submitted at the representation stage on the 21st September 2015, prior to the issue of the final certificate on the 31st of October 2015.

7.2 The evidence was that the Statutory declaration stated that the subject property was not being used for the commercial storage of timber on the 21st of September 2015. Mr. McCabe said that although the declaration was submitted prior to the final certificate issuing that the contents of the declaration were not taken into account by The Valuation Office in assessing the final valuation.

7.3 Mr McCabe gave evidence that he has a sizeable farm of 220 acres and that he started planting trees in or around twenty years ago. He said that those trees have to be thinned every year, once they reach the age of twenty. He said that thinning involves the tree being cut and being left at full length and not chopped into firewood at that stage. He said that there is no processing of the wood in the subject property.

7.4 The evidence was that the trees are later cut as firewood and that this is done on-site, in the forest. Timber is not processed in the subject property.

7.5 The Appellant said that the sale of wood is conducted over the phone and that the shed, which is the subject of this appeal is partially used for agricultural purposes. The Appellant said that he has 120 acres of forest. He has no employees and he works in the forest at the weekend. The firewood is delivered to customers from the farm.

7.6 Once the trees are felled, the logs could remain on site for 15-18 months. Since September 2015, no logs for sale are kept in the subject property, which is generally used for machinery and bales.

7.7 The subject property is not connected to the mains. There is no sewage system, toilets or water on the property. The subject property is located 300 metres off the main road and it is accessed by way of a single vehicle roadway. There is no signage on the property. The Appellant said that customers do not go onto the property as he would not be able to get farm insurance to cover this. He said that the property could not be rented to a hypothetical tenant as it is partially used for agriculture.

7.8 Initially, the Appellant did use the shed to store timber and the timber was to remain there for 15-18 months in order for it to dry. This practice ceased in September 2015. The Appellant produced a letter of support, for his case from the Irish Farmers Association.

7.9 The Appellant said that the building itself was constructed under the planning exemption in that it is under 300 m.sq. The Appellant's property is agricultural and he wants it to remain that way.

7.10 The Appellant said that the processing of the timber is done on the farm and not in the subject property.

7.11 The Appellant said that the firewood is now left to dry outside, under a cover, albeit it could also dry without a cover. Mr. McCabe said that drying wood is not processing.

7.12 Mr. McCabe said that the subject property is a shed which is open on three sides. He said the comparators of the VO are not relevant and he said that the subject property is not a property which would be purchased as it is in the middle of a farm and could not be properly secured.

7.13 Mr. McCabe said that, without prejudice to the argument that the subject property should be exempt as it is an agricultural building, that the NAV should be €3 .

7.14 It was put to Mr. McCabe, in cross examination, that he had spent €12,500 on a new shed for drying wood and he said that this was not the case and that the shed was built to dry hay, primarily.

7.15 Mr McCabe said that the custom and practice was to store any commercial wood for sale on the land. He confirmed that there had been no wood stored in the shed since the statutory declaration in September 2015. He said that in order for wood to dry that it does not necessarily have to be covered.

7.16 It was put to Mr. McCabe that, in his submissions to the Tribunal, dated March 2019, he made reference to the fact that wood was being stored in the subject property for the past two years. The Appellant clarified that this paragraph was a copy and paste from a previous document and he directed the Tribunal towards the previous document.

8. RESPONDENT'S CASE

8.1 Ms. Lambe gave evidence on behalf of the Respondent. She said that she inspected the property in July 2015. She met the Appellant, at the property, on that date. The shed, which

she viewed had not been rated previously and were only rated when the VO received a revision request from Cavan County Council.

8.2 Ms. Lambe said that there were two adjoining sheds on the property. One shed stored wood, which has been taken from the land. This wood was to be sold, according to Ms. Lambe. Furthermore, evidence was given that Mr. McCabe had a website for his sales. Ms. Lambe said that as a portion only of the shed was used for storing wood, and that she made an allowance for the agricultural part of the shed. However, she said that she could have valued the property in its entirety.

8.3 Ms Lambe opened a number of tone of the list comparators up to the Tribunal. She said that her first comparator is located within an agricultural setting at Clare, Ballyjamesduff, Co. Cavan. However, this was later withdrawn as it was accepted that it was not within an agricultural setting. The second comparator is located at Curraghkeel, Ballyjamesduff, Cavan and comprises a workshop unit in a yard. There was no evidence that it was situate in an agricultural setting. Comparison 3 is situate in Crossrule, Ballyjamesduff, Co. Cavan. It again is not within an agricultural setting and is a workshop, store and large yard for storing car parts. The fourth comparison is a workshop adjacent to a dwelling in Virginia, Cavan.

8.4 Mr. McCabe put it to Ms Lambe that she had said that he had no comparators but that his case was that there were, in fact, no fair comparators. Ms. Lambe said that Mr. McCabe has sought information from the Valuation Office by making a FOI request.

8.5 Ms Lambe was asked if there was signage at the property and she said that she could not recall signage but that a business could still be carried out in the absence of signage. Mr McCabe asked Ms. Lambe if there was a laneway accessing the property and she said that she could not recall.

8.6 Mr. McCabe put it to Ms. Lambe that she referred to the property as a warehouse but that it was in fact a shed. Ms. Lambe said that a shed could be valued in the same way as a warehouse.

8.7 Mr. McCabe put it to Ms. Lambe that the shed is in an agricultural setting and she agreed with this and she said that this was why she made a reduction. Ms Lambe was asked if there

were toilets, offices and walls in the subject property and she said she did not know but that even if there were none that this would not make it different to other storage warehouses.

8.8 Ms Lambe was asked if she saw firewood being processed in the subject property and she said that she did not but that the storing of timber is a process. Ms Lambe was asked if she saw other timber in the yard on the day of inspection and she said that if the Appellant said there was she would accept there was. Ms. Lambe said that the while the shed is 271m.sq that she allowed 108.5 m.sq as being commercial and, therefore, made an allowance. Mr. McCabe asked Ms. Lambe how she arrived at the figure of 60% as the split between agriculture and commercial and she said that she reviewed the case with her team leader and that they agreed that this would be a generous reduction. She said that The Valuation Office could have valued it as being fully commercial but she did not elaborate further upon this. Ms. Lambe was asked if she measured the areas in the shed and her response was that she spoke to her team leader.

8.9 Mr. McCabe suggested that Ms. Lambe had drawn an imaginary line and she disagreed with this. It was put to Ms. Lambe that her calculations were a shot in the dark and she said that they could have valued it at 100 % commercial. However, Ms. Lambe did not explain why this was the case. Ms Lambe was asked if the team leader ever inspected the property and she said that the team leader had examined the photographs.

8.10 Mr McCabe asked Ms Lambe why she had not taken the statutory declaration into account and she said that she made a decision based on the representations. She said that Mr. McCabe had stated that he was using the property for storage in his representations.

8.11 Mr. McCabe asked Ms. Lambe again why she did not take into account the statutory declaration which states that he had stopped storing wood in the shed in September 2015 and she said that she did but that there was not enough evidence to suggest that this was the case. She said that if photographic evidence had been produced that things might have been different. She said that the onus is on the Appellant to prove his case and that The Valuation Office generally do not go out again to inspect.

8.12 On cross examination, Ms Lambe withdrew her first comparator as there was no farm there and it is solely a commercial property. In relation to her second comparator she accepted that it was a property with offices, toilets and three phase power.

9. SUBMISSIONS

9.1 Mr. McCabe said that at the date of the final certificate in October 2015, he was no longer using the subject property for the commercial storage of timber. He said that he had submitted a statutory declaration to this effect, but The Valuation Office failed to take this into account. He said that if they had taken it into account then the subject property would fall within the definition of ‘agricultural buildings’ as per The Valuation Act 2001 (as amended) and would be exempt from rating.

9.2 He said that none of the comparators supplied by the VO were suitable as his property is an annex to a shed, up a small road and the comparators provide by the Respondent are commercial properties.

9.3 Mr McCabe referred to a previous decision of the Tribunal called Philip Draper and said that his case is different to this as the subject property in the Draper case was used to wash, sort and grade crops and that there was clearly commercial processing taking place in the Draper case. He said that this is not the case for his property. He said that he no longer uses the subject property to dry wood but that even if he did that drying is not a process. He used the analogy of drying hay.

9.4 Mr. McCabe said that even if the Tribunal finds that drying is a process that this is done on the forestry plantation and outside of the subject property.

9.5 Mr. O Neill BL, for the Respondent, said that the onus of proof is on Mr. McCabe. Mr. O’ Neill said that the statutory declaration says that he will still store wood in the subject property. Mr O’ Neill said that the Tribunal should be wary of the evidence regarding the cessation of storage of wood in the subject property as this is in contradiction to the written submission made in March 2019.

9.6 Mr. O Neill posited the question as to whether the activities carried out by the Appellant are exempt? He referred to the Philip Draper case which cites Nangles Nurseries. He referred specifically to paragraph 9.9 of that case where it states that once a crop is taken from the ground, farming stops and processing begins. He submitted that the wood had been taken from the land and therefore, processing begins at that point.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Cavan County Council.

10.2 The Appellant, in this case, raised a preliminary issue. He said that at the time when he put forward representations that he submitted a statutory declaration stating that the property was no longer being used for storing commercial timber. He said that this information is vital and was not taken into account by The Valuation Office in its final assessment. He said that if the Tribunal accepts this point then the property should fall within the definition of agricultural buildings and should be exempt and the issue of whether the timber is being 'processed' is then irrelevant.

10.3 The Appellant submitted a copy of the aforesaid statutory declaration to the Tribunal. This declaration was submitted to The Valuation Office on the 21st of September 2015, as part of his representations.

10.4 At paragraph 2 of the statutory declaration, the Appellant states that that *'I also have a number of farm buildings on my farm, one of which I use to store saw log (unprocessed timber) which I utilise approximately 70% for my own use and sell the surplus(unprocessed) to neighbours.'* It is clear from this paragraph that the Appellant admits to storing timber for commercial use in the subject property at the time of the making of the statutory declaration.

10.5 However, the next paragraph of the declaration, at paragraph 3, states that *'I hereby declare that such log timber within my building will no longer be offered for sale and will be retained solely for my own use.'*

10.6 Paragraph 4 of the statutory declaration states that *'I further declare that all saw log offered by me for sale in the future will be from saw log stacked and under tarpaulin within my woodland'*.

10.7 There seems to be a contradiction between paragraphs 2 and 3 in that paragraph 2 states that the Appellant was at the date of the declaration storing saw log for his own use and for sale to his neighbours. However, the next paragraph clarifies matters in that it states that that

saw wood within the building *'will no longer be offered for sale and will be retained solely for my own use'*. This would suggest that from the date of the declaration forward, that such wood would no longer be offered for sale.

10.8 If the Tribunal were to accept the Appellant's evidence, in this respect, it would mean that the Appellant ceased to use the subject property for storing wood for sale, after the date of the statutory declaration, that being September 21st 2015.

10.9 The evidence from the Respondent was that the declaration was taken into account and the focus seems to have been on paragraph 2, only, without taking into account the following paragraphs, 3 and 4. Ms. Lambe, in her evidence, accepted that if the Appellant had sent in photographic evidence along with his representations that this may have made a difference to her assessment. This suggests to the Tribunal that the factual situation at the date of the representations and before the issuing of the final certificate are relevant. Ms. Lambe, on the one hand, said that the building was split between agricultural purpose and commercial purposes and was rated accordingly. However, she continued to give contradictory and confusing evidence stating that she could have rated the entire building for commercial purposes. This evidence does not make sense in circumstances where Ms. Lambe did, in fact, split the building up for rating purposes. Furthermore, Ms. Lambe did not provide the Tribunal with any clear methodology as to how she came to the 60/40 split in relation to the property, apart from discussing the matter with a supervisor who had not done a site visit.

10.10 That being so, the Tribunal finds that there is a statutory declaration on file, which was submitted on the 21st of September 2015, and which states that log timber within the subject property will no longer be offered for sale. It is not clear how photographs would have assisted Ms Lambe, in this respect, as they may still have shown a shed with wood, albeit such wood may have been for personal use only. However, what is clear from Ms. Lambe's evidence is that there was scope for making adjustments at that point, which adjustments were not made.

10.11 Mr. O Neill, made the point that the information in the statutory declaration was inconsistent with the Appellant's written precis of evidence, which was filed on the 18th March 2019. Mr. McCabe clarified for the Tribunal that this was an error as he had copied and pasted some paragraphs in his precis from his earlier representations. Mr. McCabe was able to point out the error to the Tribunal and the Tribunal accepts that this was the case.

10.12 Having weighed and evaluated all of the evidence before it, the Tribunal accepts that a statutory declaration was submitted by the Appellant to the Respondent on the 21st of September 2015, prior to the final certificate issuing, setting out that the property would no longer be used for storing commercial timber. When the declaration is read as a whole, the Tribunal accepts that the consequence of the filing of such a declaration was that the Appellant gave an oath that the subject property would no longer be partly used for the commercial storage of timber. The Tribunal finds that the Respondent did not take this sworn statement into account as to the factual situation arising at the date of final valuation on the 31st of October 2015. The Tribunal, having heard the evidence of the Appellant, coupled with the statutory declaration finds that the factual situation at the date of final valuation was that the subject property was not being used to store timber for commercial purposes. The Tribunal finds that the Respondent did not put forward any evidence which would contradict the Appellant's sworn statement and oral evidence in this respect. In fact, the Respondent accepted that the factual situation at the date of final valuation was relevant.

10.13 Taking into account the accepted factual situation at the date of the final certificate, the Tribunal finds that the property in question falls within the definition of agricultural buildings and is, therefore, exempt from rating.

10.14 In circumstances where the Tribunal finds that the property is exempt, it is not necessary to assess whether the drying of wood in a shed amounts to processing or not.

DETERMINATION:

Accordingly, for the reasons above, the Tribunal allows the appeal and finds that the relevant property ought to be excluded from the relevant Valuation list.

And so the Tribunal determines.