Appeal No: VA17/5/350

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

PHILIP DRAPER **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 2206358, Industrial Uses at Local No/Map Ref: 13/1, Coolnagrower, Birr, County Offaly.

B E F O R E

Majella Twomey - BL	**Deputy Chairperson**
Claire Hogan – BL	**Member**
Barra McCabe – BL, MRICS, MSCSI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF OCTOBER, 2018

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th day of October, 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property ("the Subject Property") was fixed in the sum of €7,080.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Subject Property is not a determination that accords with that required to be achieved by section 19 (5) of the Valuation Act 2001 ("the Act") because:

"1. Details in the relevant Valuation List are incorrect.

- The valuation certificate incorrectly describes the property as 'Industrial Use'. The property is used for agricultural and horticultural purposes.

- The property is incorrectly listed as 'Workshop'.

"2. The property ought to be excluded from the Valuation List and deemed 'Relevant property not Rateable' per Schedule 4, paras, 1, 2 and 5 Valuation Act 2001 as amended.

- The land and associated buildings on the property are used for the growing and storage of crops; the washing and grading of the said produce prior to collection by a distribution company for processing and / or sale elsewhere; the storage and upkeep of machinery used on the land.

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of €0.

2. REVALUATION HISTORY

2.1 On the 3rd day of March, 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Act in relation to the Subject Property was sent to the Appellant indicating a valuation of €7,080.

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 it not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September, 2017 stating a valuation of €7,080.

2.4 The date by reference to which the value of the Subject Property was determined is the 30th day of October, 2015.

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 26th day of September, 2018. At the hearing the Appellant was represented by Mr Eamonn Halpin BSc (Surveying), MRICS, MSCSI and the Respondent was represented by Mr David O'Brien MSCSI, MRICS of the Valuation Office with counsel from Mr Anthony McBride 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. The Apellant himself gave evidence regarding the use of the Subject Property.

4. FACTS

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

4.2 The Subject Property is located at Coolnagrower, Co Offaly, approximately 4 kilometres from Birr. The Subject Property is located on the Appellant's farm, which is 260 acres in size, 46 acres of which directly adjoin the property.

4.3 The Subject Property is a workshop used for washing, sorting and grading of agricultural crops, mainly carrots, which are grown on the farm. The Subject Property is not used for the packaging or bagging of crops; that happens elsewhere. Nor is the Subject Property used for the growing of any crops.

4.4 The Subject Property is 472.6 m squared.

4.5 The local authority in which the Subject Property is situate has in the past taken the decision to not levy the rates payable on the Subject Property.

5. ISSUES

5.1 The single issue to be decided is whether the Subject Property falls into the category of properties which are not rateable, or whether it fails to meet the statutory definitions of same, and is thus rateable.

5.2 A sub-issue and ultimately decisive one is the definition of the terms "farm buildings" and "processing" under the Act.

5.3 There was no dispute about the level of the valuation, the Appellant not challenging this.

6. RELEVANT STATUTORY PROVISIONS:

6.1 Schedule 4 of the Act is headed Relevant Property Not Rateable and lists such property, including "Agricultural land", "Land developed for horticulture" and "Farm buildings".

6.2 In the definitions section at part 3(1) of the Act, "farm buildings" means—

> *(a) buildings, parts of buildings, or other structures, occupied together with agricultural land and used solely in connection with the carrying on of agricultural activities on that land,*
>
> *(b) buildings, parts of buildings, or other structures, used solely for the production of livestock, poultry or eggs or for the breeding of bloodstock or other animals,*
>
> *(c) buildings, parts of buildings, or other structures, occupied together with land developed for horticulture or forestry and used solely in connection with the carrying on of horticultural or forestry activities, as the case may be, on that land,*
>
> *(d) buildings, parts of buildings, other structures or cages or tanks, used for the production or rearing of fish,*
>
> *other than—*
>
> *(i) buildings, parts of buildings, or other structures, used for the production of furs or used for the training of bloodstock or other animals, or*
>
> *(ii) buildings, parts of buildings, or other structures, used for the storage of agricultural, horticultural or forestry goods not produced on the land attached to such buildings or structures, or*
>
> *(iii) buildings, parts of buildings, or other structures, used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not) or used for sawmills or the carrying on of activities necessarily related to the activities of sawmills, or*

(iv) buildings, parts of buildings, or other structures, used for the storage, processing or sale of fish, or

(v) buildings, parts of buildings, or other structures, used for the production of tropical fish or exotic birds or butterflies or other similar species;

7. APPELLANT'S CASE

7.1 The Appellant gave evidence that the workshop is used for the washing, sorting and grading of crops (carrots) grown on the adjacent farm. He also said that Offaly County Council had not charged rates for several years.

7.2 Under cross-examination he disagreed with the characterisation of the activity in the Subject Property, which since the 1990s, involves machines, as a "more industrial operation". He also accepted that the Subject Property was rated in the past, and that it was a discretionary decision taken by the local authority not to impose the rates. On re-examination it was clarified that the bagging of crops does not take place in the Subject Property.

8. RESPONDENT'S CASE

8.1 Mr O'Brien said that the Subject Property had been inspected during April/May 2017, during the representations period. There was no difference in his description of the use of the Subject Property as compared to the description of Mr Draper (the Appellant). Mr O'Brien stated that the Valuation Office has no function as regards the actual collection of rates payments.

8.2 Under cross-examination, Mr Halpin asked Mr O'Brien whether he accepted that the Subject Property was on the Appellant's farm and that the activity therein was integral to the farm. Mr O'Brien refused to agree with that proposition. He stated that the activity or process occurring in the Subject Property was independent of the farm and did not support it. Mr Halpin referred Mr O'Brien to the planning permission for an agricultural machinery store nearby to the Subject Property, which is agricultural in nature. The Tribunal was not shown the planning papers for the Subject Property. Mr O'Brien stated that planning permissions and property valuations are two entirely separate areas of work.

9. SUBMISSIONS

9.1 Mr Halpin, for the Appellant, focussed his submissions on the definition of "farm buildings". He argued that the Subject Property fell into the definition of "farm buildings" in section 3(1) of the Act, at part (a), namely:

> *buildings, parts of buildings, or other structures, occupied together with agricultural land and used solely in connection with the carrying on of agricultural activities on that land*

9.2 Mr Halpin refuted the suggestion that this definition was in any way qualified by the exception at (d)(iii) (*buildings, parts of buildings, or other structures, used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not) ....*). He stated that no processing is occurring. He emphasised that the same raw agricultural product goes into the machine, and the same product comes out the other end.

9.3 Mr Halpin relied on the decision of the Supreme Court in *Nixon v Commissioner of Valuation* [1980] 1 IR 340 ("the *Nixon* decision"). That case involved poultry houses. Henchy J stated (at p 346):

> *I consider that the words "farm . . . buildings" in s. 14 of the Act of 1852 should be given their ordinary meaning, namely, buildings on a farm which are used in connection with the farming operations on the farm. That is what these poultry houses are.*

9.4 Mr Halpin urged upon the Tribunal the proposition that the Subject Property is a building on the farm, used in connection with the farming operations on the farm. He stated that it is an integral part of the farm. He said the Appellant does not do work by hand and that he relies on the machine; the Subject Property merely houses the machine.

9.5 The Appellant also relied on the decision of this Tribunal in VA95/6/014 *Lynch Culligan Farms* which concerned farm buildings attached to Lynch Culligan Farms but not physically adjoining them.

9.6 Finally, the Appellant also provided a dictionary definion of processing from the Cambridge English Dictionary 2018 as follows: "the series of actions that are taken to change raw materials during the production of goods". He stated that the crops were not altered in any way in the washing and grading process.

9.7 The Respondent stated that the Tribunal had to look at the clear terms of the Act. He said that reliance on the *Nixon* decision and on *Lynch Culligan Farms* was misplaced, as these cases interpreted the Valuation Act 1852, which had no definition of "farm buildings".

9.8 Instead, the Respondent relied on the decision of the High Court in *Nangle Nurseries* v *Commissioner of Valuation* [2008] IEHC 73 ("the *Nangle Nurseries* decision). That case concerned the definition of land developed for horticulture. Section 3(1) of the Act provides the following definition: "land used for market gardening, nurseries, allotments or orchards, other than land or buildings, or parts of buildings, used for the sale or processing of horticultural produce".

9.9 The phrase "other than" in the above definition was held by the High Court to constitute an exception to the exemption from rates. The key passages of MacMenamin J's judgment are set out hereunder ([61]-[62]):

> *On this interpretation, as a matter of logic there is an exception to the exemption created by the words "other than" which are followed by a description of a form of distinct activity, that is the use of lands or buildings or parts of buildings where the business engaged in is the sale or processing of horticultural produce. So viewed in a common sense way, this may be seen as meaning, for example, a shop or a processing plant. In this context I consider that it is not the word 'sale' but the word 'produce' which is of particular importance. It relates to what is done with plants or fruit after horticultural activity has ended. Such plants or fruit become "goods" or "produce". They are no longer being reared or propagated. They are to be sold in a shop. They no longer grow in an orchard or nursery. The plant has been removed from the surrounding earth and been either potted or cut. Viewing the term 'processing', what occurs is that (for example) fruit has been removed from a tree and processed. The 'horticultural' activity has therefore ceased and*

what was formerly a fruit being reared or propagated in a nursery or market garden has become a product or a good that has been processed.

Although, of course, there may be circumstances in which there may be an overlap in the activities on either side of the term 'other than', the test is ultimately a common sense one which is as to whether the horticultural activity has ceased or not. When a plant is removed to a shop, even though it may still be potted, horticultural activity in the sense of propagation and cultivation has ceased. It is placed in the shop simply for sale. Similarly, when a plant or fruit has been processed such horticultural activity as was previously taking place has ceased and a new "process" of the what is now a horticultural product has begun.

9.10 Although Counsel for the Respondent acknowledged that the case concerned the development of horticultural land, he examined the similar wording in the defintion of "farm buildings (set out above under Section 6) which provides at (d) that such definition is "other than",

(iii) buildings, parts of buildings, or other structures, used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not) or used for sawmills or the carrying on of activities necessarily related to the activities of sawmills, or

9.11 Relying on the interpretation in the *Nangle Nurseries* decision of the terms "other than" and also "processing", Counsel for the Respondent argued that once the crop is taken from the ground, the Appellant stops farming and starts processing. He argued that the Oireachtas clearly stipulates in the Act that rates are to apply, for good policy reasons, as someone else could carry out the washing and the sorting; it is not integral to farming. Counsel argued that what was happening in the Subject Property was undoubtedly a "process" and that there was no need for the carrots to be transformed into something else, eg into mashed carrots. Carrots were cleaned and graded and sorted. He stated that the activity involving the machines was a process different to growing and cultivating, and the fact that it happens on the farm is irrelevant; it cannot be farming.

9.12 Finally, the Respondent provided an alternative dictionary definition of "process", from the Oxford English Dictionary which stressed regularity and repetition as opposed to transformation.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine whether the Subject Property is rateable or not rateable for the purposes of the Act.

10.2 It is clear that the propery is not agricultural ground. The definition in section 3(1) of the Act; "land which is used as tillage, meadow or pasture ground or which is suitable only for such use", cannot be met as nothing is grown in the Subject Property. In any event, this point was not pursued by the Appellant.

10.3 It is equally clear that the property is not "land developed for horticulture" as this essentially involves plants. Again, this point was not pursued by the Appellant.

10.4 Instead, the case hinged on the definition of "farm buildings". The Appellant's argument that the Tribunal can rely on the *Nixon* decision's interpretation of this term is not well founded in circumstances where the legislation which was enacted several years after that decision contained a new and detailed definition for the term where none had existed previously in the Act of 1852.

10.5 The Subject Property falls into the exception to a rates exemption which is otherwise available for "farm buildings". That exception is at (d)(iii) of the definition of "farm buildings", which provides that the exemption is available for farm buildings "other than":

> *buildings, parts of buildings, or other structures, used for the processing or sale of agricultural, horticultural or forestry goods (whether produced on the land attached to such buildings or structures or not……..*

10.6 The Tribunal is bound by the *Nangle Nurseries* decision, which provided an interpretation of the word "processing" for the purposes of the definition of "land developed for horticulture" in section 3(1) of the Act. The definition of "farm buildings" also contains the term "processing".

10.7 The Tribunal is persuaded that the when a crop is removed from the soil, agricultural activity in the sense of farming and growing of crops has ceased. In the Subject Property "processing" of agricultural goods is occurring, thus rendering it rateable.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms that the property is rateable, with a valuation of €7,080.

And the Tribunal so determines.