

Appeal No: VA19/3/0011

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Cleary Compost and Shredding Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 5015637, Industrial Uses at Larch Hill, Monasterevin, County Kildare.

B E F O R E

Barry Smyth - FRICS, FSCSI, MCI Arb

Deputy Chairperson

Michael Brennan - BL, MSCSI

Member

Annamaria Gallivan - FRICS, FSCSI, MPhil SEE

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27th DAY OF OCTOBER, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 27th day of September, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of **€17,000**.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The Relevant Property is Agricultural Land and Farm Buildings in accordance with Schedule 4 of the 2001 Act"*

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

2. VALUATION HISTORY

2.1 On the 19th day of March, 2019 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 €15,210.

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 of the Property was increased to €17,000.

2.3 A Final Valuation Certificate issued on the 4th day of September, 2019 stating a valuation of €17,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2019.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 15th day of September, 2022. At the hearing the Appellant Mr Donal Patrick Cleary appeared on behalf of the Appellant and the Respondent was represented by Ms Ita McNally of the Valuation Office and Mr Niall Nolan BL, instructed by the Chief State Solicitors Office.

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

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The Appellant occupies various buildings on part of the lands known Larch Hill Farm, Larch Hill, Monasterevin, Co. Kildare (hereinafter the “subject property”).

4.2 The subject property comprises as follows:

Description	Size (Sq m)
Compost Store	380
Green Waste Store	361
Yard Area 1 (Windrows)	1,200
Yard Area 2 (Windrows)	400
Portacabin Office	9
Weighbridge	N/A

4.3 The subject property has a Waste Facility Permit bearing the reference number WFP-KE-10-0064-01 and is licensed under the Waste Management Act 1996 and Waste Management (Facility Permit and Registration) Regulations 2007, as amended.

4.4 Approximately 100 tonnes of horticultural green waste is delivered to the subject property on a monthly basis. The horticultural green waste is ultimately converted to compost after a certain maturation period and following various processing methods which are undertaken on the subject property by the Appellant.

4.5 A gate fee is charged by the Appellant in respect of the horticultural green waste that is delivered to the subject property.

4.6 The compost that is derived from the horticultural green waste on the subject property is subsequently applied to tillage lands that are farmed by the Cleary family.

4.7 Additional buildings and yards not included as part of the subject property are deemed to be exempted farm buildings.

4.8 The subject property is held freehold.

5. ISSUES

5.1 This appeal concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemption of “agricultural land” contained in paragraph 1 and exemption of “farm buildings” contained in paragraph 5 thereof, and the extent to which same applies to the Appellant. It also inherently concerns the interpretation, and application of section 3 of the Act which provides for the definition of “agricultural land” and “farm buildings”.

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 Cleary stated that he was a fifth generation family member to farm the lands at Larch Hill Farm and that he was the founder of Cleary Composting and Shredding which was established in 2006.

7.2 Mr Cleary stated that the removal of sugar beet from the cropping rotation on their farm on the back of the abolition of the EU sugar beet quotas caused a depletion in the organic matter of the soils on the lands that they farmed. He stated that the introduction of compost to the lands improved the organic matter, health and fertility of the soils on their farmed lands.

7.3 He stated that the establishment of the Appellant company was a necessary requirement to obtain the waste facility permit. He also stated that it was not “side business” or an alternative enterprise but was done for the soil benefits of his land. Mr Cleary said that the composting business is not profit making. He stated that it was cost neutral and the charge imposed on the delivered horticultural waste to the subject property covers the costs of processing. He confirmed that approximately 100 tonnes per month is delivered to the subject property and is charged at €17.50 plus Vat per tonne.

7.4 Mr Cleary also stated that planning permission was obtained in 2006 for the construction of a large grain store, office and weighbridge. He said that the weighbridge, office and

computer =which forms part of the subject property is also used for the family tillage enterprise which encompasses 600 acres in total. He said that the weighbridge is used to weigh grain and fertiliser inputs and outputs.

7.5 Mr Cleary confirmed that the Appellant obtained their first Waste Facility Permit for the subject property from Kildare County Council in 2006. He also stated that at this time, he obtained a declaration that the composting operation was exempt from planning permission under section 5 of the Planning and Development Act, 2000, as amended (hereinafter “section 5 declaration”). He also stated that five subsequent section 5 declarations were received from Kildare County Council and generally coincided with waste permit renewals.

7.6 Mr Cleary confirmed that notwithstanding the various section 5 declarations that were obtained from Kildare County Council, two third party appeals to An Bord Pleanála resulted in in two decisions from them that decided that the composting operation at the subject property was not exempted development under section 5 of the Planning and Development Act, 2000, as amended. He also confirmed that section 160 enforcement proceedings were issued by Kildare County Council pursuant to the An Bord Pleanála decisions and this litigation is pending before the Circuit Court. He stated that prior to the An Bord Pleanála decisions, no planning issues had arisen with Kildare County Council. Mr Cleary has confirmed that the subject property continues to be inspected on a bi-monthly basis by Kildare County Council under waste management legislation.

Cross-examination

7.7 Under cross-examination by Mr Nolan, it was put to Mr Cleary that the Appellant introduced planning matters in his representations and stated that the Respondent has placed no reliance on planning in relation to the valuation of the property. Mr Cleary claimed that it served to give clarification on the planning history and that it was relevant in relation to development contributions and rateable valuation.

7.8 Mr Nolan put it to Mr Cleary that the rateability of the subject property concerned the definition of farm buildings and had nothing to do with planning matters. Mr Cleary in his response stated that the production of compost from horticultural waste was no different than acquiring grain, fertiliser or chemical sprays for use on the land. He disputed that it was imported and was of the view that it was a horticultural product that is spread, windrowed and screened and that the end product was fertiliser. Mr Cleary stated that the horticultural waste currently on the subject property was stored in windrows, when asked if was currently stored in sheds.

7.9 In the continued cross-examination, Mr Cleary confirmed that the horticultural waste was stored in sheds at the time of inspection but sometimes it is not stored there. He confirmed that the Appellant continues to take approximately 100 tonnes of horticultural waster per month and charges €17.50 plus vat per tonne on this. He agreed that green waste and compost is generally placed in the sheds and that the compost is stored in the yards but also stated that straw and machinery are also stored in sheds on the farm. Mr Nolan put it to him that the machinery is placed in the newest shed which is not rated and Mr Cleary agreed. Mr Cleary referred to this as the “grain shed”.

7.10 In relation to the comparisons submitted by Mr Cleary, he confirmed that they were not examined by him in respect of the rates exemption when asked by Mr Nolan. Mr Nolan referred

Mr Cleary to an extract of the Appellant’s website which was submitted by the Respondent and included a list of commercial clients, information on the services provided and a third party testimonial regarding the product. Mr Cleary stated that the website had not been updated in a long term and that this information was not relevant to the current circumstances. He further stated that the Appellant did some contract shredding initially and that denied that compost was provided to third parties. He also stated that the Appellant did not collect green waste. He stated that 5,000 tonnes per annum was the maximum amount of horticultural waste that was taken in at the subject property although their licence allows for 10,000 tonnes per annum.

7.11 Mr Cleary answered a number of questions put to him by the Tribunal. He stated that the weighbridge was constructed around 2005 / 2006 which was before the waste licence was obtained for the subject property. He stated that only a few big loads of horticultural waste are delivered to the subject property and that deliveries comprise mainly of smaller loads. He stated that the farm does not store harvested grain and it is delivered immediately to the grain merchant at the time of harvest. When asked about the use of the weighbridge for the farm, he stated that the weighbridge is a priority for the farm rather than the composting business although they also have to retain relevant weight records to adhere to the waste licensing requirements. He stated that it is used mostly for bulk fertiliser deliveries and for weighing straw which is sold by the tonne. He also confirmed that fertiliser and chemicals purchased for use on the farm are stored on the farm yard. He stated that all the compost that is processed is used entirely on the lands farmed by the family. He stated that green waste is first stored the shed when it is delivered to the subject property.

7.12 In summarising his evidence, Mr Cleary stated that the use of the farmyard is seasonal but that the agricultural use therein is significant. He stated that one of the sheds contained within the subject property is currently storing straw. He stated that many of the buildings were constructed in the 1970s and that the subject property conforms to a farmyard. He stated that the Appellant’s business is not sustainable or viable if rated.

8. RESPONDENT’S CASE

8.1 Ms McNally for the Respondent contended for a valuation of €17,000 as follows:

Description	Size (Sq m)	Rate per Sq m	NAV
Compost Store	380	€16.00	€6,080
Green Waste Store	361	€16.00	€5,776
Yard Area 1 (Windrows)	1,200	€2.00	€2,400
Yard Area 2 (Windrows)	400	€2.00	€800
Portacabin Office	9	€16.00	€144
Weighbridge	N/A		€1,800
TOTAL			€17,000

8.2 Ms McNally submitted a detailed plan of the farmyard which clearly delineated the various elements of the subject property. This plan also clearly identified buildings and yards which were not subject to valuation as they were assessed as exempted farm buildings and comprised of a machinery store, wood store and ancillary yard areas.

8.3 Ms McNally stated that the sheds forming part of the subject property were relatively old and in poor condition.

8.4 Ms McNally confirmed that the property was listed for revision on 17th April 2018 and that she inspected the property on 5th March 2019. She stated that the subject property was located approximately 2.5km south of Monasterevin and was situated on a farm.

8.5 Ms McNally described the subject property as a composting hub for green waste. She stated that the Appellant takes in organic waste which is shredded and converted into fertiliser compost using an open windrow system. She stated that the subject property is a licensed waste facility.

8.6 Ms McNally stated that it was her opinion that the subject property does not benefit from the farm building exemption, having regard to the definition of farm buildings under section 3 of the Act. She emphasised that under this definition, the following farm buildings were not exempt from rates as follows:

“(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,”

8.7 She stated that the subject property is used for the storage of compost not produced on the land attached to such buildings and therefore did not meet the requirements of an exempted farm building.

8.8 Ms McNally stated that planning issues associated with the subject property were disregarded and planning information was only included in her précis of evidence in response to planning issues raised by the Appellant in his representations. She stated that she relied on three NAV Comparisons which are valued at equivalent levels to the subject property and are set out in Appendix (N/A to public) hereto.

8.9 Under cross-examination by Mr Cleary, Ms McNally confirmed that the subject property was located in a farmyard when the question was put to her. She also confirmed that the subject property was surrounded by agricultural land. She stated that she did not pay any particular attention to farm machinery or synthetic fertiliser at the time of inspection.

8.10 Ms McNally was asked by the Tribunal if any allowance was made pertaining to the use of the weighbridge by the farm operation, and she said that it was valued on the basis it is being used by the compost business. She was also asked if any allowance was made in respect of dual use of the sheds by the farming business and she also confirmed that there was no allowance for dual use as at the time of inspection it was being used by the Appellant for composting. Ms McNally confirmed that different valuation levels exist for converted farm buildings and purpose built industrial buildings and the subject property has been valued in line with the NAV of converted farm buildings as they appear on the list.

9. SUBMISSIONS

9.1 Counsel for the Appellant, Mr Nolan stated that the legal issue is whether the subject property which has been rated is exempt by virtue of it constituting “farm buildings” as defined by section 3 of the Act and as exempted by paragraph 5 of Schedule 4 of the Act.

9.2 It was his view that Mr Cleary’s contention that the subject property comprises of “farm buildings” does not satisfy the statutory definition of section 3 of the Act which includes an exception to the farm building exemption for “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” (emphasis of Mr Nolan underlined). Mr Nolan also stated that any evidence of buildings being partly used for storing green waste or compost was sufficient to be included within the statutory exception to the farm building exemption.

9.3 Mr Nolan stated that the evidence of both parties clearly demonstrates that compost is produced from large amounts of green waste brought on to the subject property. It is his view that having regard to the ordinary meaning of relevant terms in section 3 of the Act, the appeal must be disallowed, as follows:

“farm buildings” means—

(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

other than—

(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 (Mr Nolan’s emphasis underlined)

(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)

9.4 In relation to planning matters, Mr Nolan relies on the case of *Tearfund v Commissioner of Valuation (2021)*¹ and the Valuation Tribunal decision in *Dublin Business Innovation Centre v Commission of Valuation* in that planning issues raised by the Appellant in support of his appeal are to be disregarded in the rating hypothesis.

9.5 Mr Nolan also stated that Mr Cleary’s evidence is equivocal relating to the storage of green waste at the property, is not corroborated by any supporting evidence and is contrary to evidence at the time of inspection by the Respondent.

10. FINDINGS AND CONCLUSIONS

¹ [2021] IEHC 534

10.1 The Tribunal in this case must decide whether the subject property should be excluded from the valuation list because it falls within Schedule 4 paragraph 5 of the Valuation Act, 2001, as amended by the Valuation (Amendment Act) 2015, in that the Appellant occupies “farm buildings”, the definition of which is contained in section 3 of the Act as follows:

“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;

10.2 Whilst the Appellant in his Notice of Appeal stated *"The Relevant Property is Agricultural Land and Farm Buildings in accordance with Schedule 4 of the 2001 Act"*, it did not advance any argument that the subject property comprised of agricultural land pursuant to paragraph 1 of Schedule 4 of the Act at hearing. It was the unambiguous and uncontradicted evidence that subject property comprised of sheds, portacabin offices, a weighbridge and yards only. In addition, there was no dispute as to whether the subject property comprised of “buildings” as

defined by the Act and there was no secondary grounds of appeal relating to the NAV applied to the subject property.

10.3 In considering this case, the Tribunal has had regard to the principles applicable to the interpretation of the provisions of the Valuation Act 2001, which were summarised by MacMenamin J. in *Nangle Nurseries v. Commissioner of Valuation [2008] IEHC 73* as follows:

- (1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable.
- (2) the Act is to be strictly interpreted.
- (3) impositions are to be construed strictly in favour of the rate payer.
- (4) exemptions or relieving provisions are to be interpreted strictly against the rate payer.
- (5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer.
- (6) if, however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language.
- (7) in the case of ambiguity, the Court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.

10.4 Based on the dicta outlined above, the Tribunal finds that paragraph 5 of Schedule 4 and section 3 of the Act, are provisions that fall to be interpreted strictly against the ratepayer and ambiguities, if found, are to be interpreted against the ratepayer.

10.5 The Appellant's claim for exemption is advanced pursuant to paragraph 5 of Schedule 4. However under section 3 of the Act, the definition of "farm, buildings" contains two exceptions that are relevant to the operation taking place at the subject property. In order to avail of this exemption, the Appellant is bound to establish that the exemption applies clearly and without doubt and in express terms.

10.6 Having assessed the evidence, provided by the parties, the Tribunal finds that part (ii) and (iii) of the exceptions of the "farm building" exemption as provided for in section 3 of the Act apply to the subject property. The Tribunal finds that the horticultural waste acquired by the Appellant is not produced on the lands attached to the buildings or parts of the buildings or

structures comprised in the subject property and clearly falls within the exception. In addition, the Tribunal finds that the buildings or parts of the buildings or structures comprised in the subject property are used for processing horticultural waste to compost which is capable of being used as an agricultural and horticultural good and likewise falls within the exception. Furthermore, even if the Appellant had sufficiently advanced the argument that there is overlap of use of the subject property by the Appellant and the farm business, this would not still not exempt the subject property, as the exception unequivocally includes parts of buildings.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.