

Appeal No: VA19/5/0568

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Green Biofuels (IRL) Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2008904, Fuel/Depot at 11C Marshmeadows (PT.OF) New Ross, County Wexford.

B E F O R E

Hugh Markey - FRICS FSCSI,

Deputy Chairperson

Barra McCabe - BL, MRICS MSCSI

Member

TJ Kearns - B.Sc. (Surv) MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 20TH DAY OF AUGUST, 2024

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 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 €224,000.

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

1. *"The subject property's tanks have been degassed and decommissioned, awaiting demolition. They are incapable of beneficial occupation and of no value to the hypothetical tenant.*

2. *The property is currently on the market to let with the tanks in situ [sic], of no benefit, as it was at the time of representations. The fact that the Commissioner did not change the valuation is fundamentally contrary to the facts of the site. By contrast the Commissioner fundamentally altered the valuation of PN:2008901- where the tanks had been decommissioned."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €25,000.

2. REVALUATION HISTORY

2.1 On the 29th 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 €224,000.

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 10th day of September, 2019 stating a valuation of €224,000.

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, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 22nd day of November, 2022. At the hearing, the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Aoife Beirne BL and Mr John Doorly MSCSI, M.Sc., BSc (Hons) of the Valuation 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 made an affirmation, 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 a former oil terminal at Marshmeadows, New Ross, County Wexford, and is located in an industrial area off the R 733 in County Wexford. Both a jetty at Marshmeadows and New Ross Town Quay are located relatively close by.

4.3 A section of the yard is used by Campus Oil for fuel sales to the public, and the remaining accommodation comprises offices, workshop / store, canopy, yard and six large bunded storage tanks of various sizes.

4.4 Both parties agree on the Respondent's valuation of the offices, workshop/store, canopy and yard. Prior to the appeal hearing, the Appellant disputed the Respondent's valuation of the throughput of fuel, but this valuation was conceded as correct at the hearing of the appeal.

4.5 The Appellant has not challenged the Respondent's method of calculation for the valuation of the onsite tanks.

4.6 While the subject property was owned and occupied by Campus Oil on the Statutory Valuation Date, it was subsequently sold to Green Biofuels (IRL) Limited, the substituted Appellant herein, in August 2021.

4.7 No planning application has been submitted for the demolition of the onsite tanks at the subject property.

4.8 The property is held freehold.

5. ISSUES

5.1 The sole issue in this appeal is whether or not the onsite tanks are capable of beneficial occupation.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1 In his oral submission, Mr Halpin informed the Tribunal that with reference to page 25 of the Appellant’s précis, the Respondent’s estimate of the throughput was accepted and a proposed NAV of €25,000 was proposed. In addition, the Tribunal was requested to ignore the identification of the onsite tanks as illustrated at page 7 of the Appellant’s précis, but instead to rely on the Respondent’s identification of the onsite tanks at paragraph 4.6, on page 17 of the Respondent’s précis.

7.2 Mr Halpin said the company that decommissioned the onsite tanks was an associated company of Campus Oil. He said he was the only one to view and inspect the subject property in April 2019 and he drew the Tribunal’s attention to the photographs he had taken at the that inspection, which were included at pages 8 to 23 of the Appellant’s précis. In particular, he said that page 14 onwards contained pictures of the onsite tanks and the image on page 15 clearly showed that this particular tank was rusting.

7.3 It was submitted by the Appellant that the onsite tanks had been degassed and decommissioned, with no value to the hypothetical tenant. On two inspections in April 2019 and May 2022 the tanks were found to be in a disconnected, degassed and decommissioned state with all six tanks left open, all pipework removed and there was no licence in place for the storage of fuel. In addition, all pumps and associated instruments were removed, being unserviceable; there was no electricity supply to the onsite tanks and the bund that was constructed in the 1980s was no longer fit for purpose, being damaged in several places. The subject property had been available to let by the previous owner before being sold to the substituted Appellants in 2021. Mr Halpin estimated that in a 'best case scenario,' the cost of restoration of the tanks was €5 million. He argued that give the Commissioner's estimate of rent of €199,603, no hypothetical tenant or landlord would restore the tanks in order to the pay or receive that level of rent.

7.4 Under cross examination and with reference to the photograph of one of the onsite tanks at page 18 of the Appellant's précis, Mr Halpin said the external staircase would have to be sheared off and replaced, but acknowledged that no structural work was required to the tank. With reference to damage to the bund, he said the bund wall would have to be rebuilt as there was obvious damage to the concrete, the bund would have to be deblocked and possibly the bund wall would have to be built higher or an additional layer added depending on the proposed user. Mr Halpin reconfirmed that no repairs were required to the structure of the tanks. He acknowledged that while no cost of repairs had been provided by the Appellant, he had discussed the Appellant's estimated budget of €5 million with his client. When it was put to him that the substituted Appellant were repurposing the on site tanks, Mr Halpin said that after testing the onsite tanks, the Appellant had found two storage tanks were salvageable with expenditure required to repurpose the tanks. With reference to paragraph 4 of page 24 of the Appellant's précis and whether the schedule of works listed therein comprised alterations or structural works to the onsite tanks, Mr Halpin referenced the schedule of works listed. He said that the Appellants decommissioned the tanks themselves and that just because tanks are in situ does not mean that they have not been decommissioned. It was agreed however, that there had been no formal decommissioning of the tanks.

7.5 In response to a question from the Tribunal on the quoting rent for the subject property, Mr Halpin said he was advised over the phone that €3,000 per month was the quoting rent.

7.6 In summary Mr Halpin said that the Appellant had no licence to store oil. He said that if no tenant emerged it was a fairly good indicator that a hypothetical tenant would not pay an annual rent of €199,000. Finally, he reiterated that the onsite tanks were not capable of beneficial occupation.

8. RESPONDENT'S CASE

8.1 Mr Doorly informed the Tribunal that the level of throughput for the subject property has been agreed between the parties. He said that when he had inspected the onsite tanks on August 4th 2022, he observed that some of the tanks had been recommissioned for the substituted Appellant's use.

8.2 In respect of Property Number 2008901, located adjacent to the subject property and on which the Appellant relied as evidence of a similar type property where the Respondent had "*fundamentally altered the valuation*", Mr Doorly directed the Tribunal to pages 80 and 81 of the Respondent's précis, and pointed out that in February 2018 the onsite tanks in question had not been demolished / removed. However, page 81 of the Respondent's précis clearly shows that by February 2019 the onsite tanks had been demolished / removed, after planning permission had been granted by Wexford County Council. It was on the sole basis that the tanks had been removed from this property that the Commissioner reduced the value of the property on the basis of a Material Change of Circumstances. He continued that there was no evidence that the Appellant had sought planning permission to remove the onsite tanks and it appeared there were no plans to do so. A planning application was made and granted for the erection of a LPG tank and footing on part of the subject site in July 2018, but this was a number of months after the Statutory Valuation Date of 15th September 2017 and did not include an application to remove the existing on site tanks.

8.3 Mr Doorly contended that the schedule of works to the onsite tanks cited by the Appellant all related to minor repair works and are not structural issues. Therefore, none of the repair works could be cited as rendering the onsite tanks at the subject property "*sterile*". He also submitted that the Appellant never undertook hydrating to evaluate if there were holes in any of the tanks. With reference to a document on 'Fuel Decommissioning Methods' from the United Kingdom, appended to the Respondent's précis, Mr Doorly stated that none of these methods were observed being used at the subject property on the date of their onsite inspection.

He also found it strange that the Appellant had included the canopies in their valuation, but were opposing the inclusion of the tanks.

8.4 The Tribunal's attention was directed to the images at pages 44 and 45 of the Respondent's précis, where the installation of new pipework for biofuels, to and in the existing onsite tanks, is clearly evident at the subject property.

8.5 Under cross examination, Mr Doorly did not agree with Mr Halpin that the auto fuel trader's licence relied upon by the Respondent was site specific and did not include the subject property. He confirmed that he did look at the Register when checking the licences. Mr Doorly rejected Mr Halpin's assertion that a nil value contended for by the Appellant was a value, because the appeal was brought on the basis that the onsite tanks are incapable of beneficial occupation under the Act.

8.6 When challenged by the Appellant to provide rental evidence that proves the Respondent's valuation of the subject property is equitable and uniform pursuant to section 48(1) and (3) and section 19(5) of the Valuation (Amendment) Act 2015, Mr Doorly responded that the rental evidence comprised the fuel throughput, which was agreed by the Appellant. He said that there had been no issues raised previously by the Appellant in respect of the value applied by the Respondent under section 3 and 4 of the Act. No rental evidence had been submitted by the Appellant to challenge the Respondent's valuation. While the level of rent was now being questioned by the Appellant, none such had been submitted by them to date.

8.7 In respect of the condition of the onsite tanks, Mr Doorly responded that it was the Respondent's assessment that none of the works identified by the Appellant were structural and therefore it was their view that these were minor repairs. He said that while there was a letting brochure dated 07 May 2019 for the subject property, it has subsequently been sold in August 2021. He said that no hydrostat testing to assess the structural integrity of the onsite tanks had ever been identified by the Appellant. In addition the planning application and permission for an LPG tank was relevant because it mentioned and illustrated the current onsite tanks as being in situ. The map associated with this planning permission also showed the onsite tanks as remaining in situ, which went to the intent of the occupier. When put to him, Mr Doorly assumed that the cost of tank demolition was relatively expensive. He also responded that with reference to the site across the road which the Appellant had relied on as evidence of

a valuation being reduced when tanks were decommissioned, it was a matter of an open and shut case of evidence, the property across the road from the subject property sought and gained planning permission and actually removed the tanks. Mr Doorly said that the subject property was inspected on 04 August 2022, but not between Representations and final confirmation of the valuation, but that no decommissioning or structural reports were provided by the Appellant in that time.

8.8 Ms Beirne for the Respondent redirected the Tribunal's attention to the history of the site at pages 78 to 85 of the Respondent's précis, to illustrate that the onsite tanks have been in situ all the time.

8.9 In summary Mr Doorly stated that the issue of beneficial occupation must be considered on a case by case basis, but that it was his expert view that that the onsite tanks were capable of beneficial occupation.

9. SUBMISSIONS

9.1 Mr Halpin in citing the Tribunal's decision in *Bord Gáis Eireann v Commissioner of Valuation* Appeal No VA96/4/007 referenced the fact that while beneficial occupation was not established, nevertheless the Tribunal determined that the rateable valuation was nil.

9.2 Aoife Beirne BL for the Respondent directed the Tribunal to the 'Outline Legal Submissions on behalf of the Respondent' dated 30 August 2022 ("**Outline Submissions**"), and the various legal authorities therein. Ms. Beirne said the Appellant had not satisfied the question that onsite tanks were incapable of beneficial occupation. With reference to paragraph 20 of her Outline Submissions, she submitted that a hypothetical tenant does not have to manifest themselves and that it was exceptional that a commercial property is not capable of beneficial occupation because there is normally some level of usefulness of a property to the occupier. Furthermore, the word "storage" used in the letting brochure was for marketing purposes, the Tribunal can take into account the use of the word in the context of the letting brochure and that Mr. Halpin was over stating the significance of the use of this word in the letting brochure.

9.3 In citing Henchy J's clarification of the term "*actual state*" in *Harper Stores v Commissioner of Valuation* [1968] IR 166, Ms Beirne pointed out that the onsite tanks had

been repurposed and salvaged for another purpose without any structural alterations. She also highlighted the planning permission granted to Flogas for the development of LPG storage on a different part of the subject property as evidence that there was the intention of demolishing the existing tanks. The same planning application included at page 69 of the Respondent's précis made reference to 'multiple storage tanks on the site', part of the basis for claiming that the LPG tank "*would be entirely in keeping with its immediate context*".

9.4 Ms Beirne also submitted, in citing Bowen LJ in *West Bromwich School Board v Overseers of West Bromwich* (1884) 13 Q.B.D. 929, that the onsite tanks at the subject property were not "*struck with sterility*". She continued that the onsite tanks did have a value, which was evidenced by the repurposing of the tanks by the current owners of the subject property. It was in this context that the Tribunal must also consider Hyland J.s' decision in *Fibonacci v Commissioner of Valuation* [2020] IEHC 31 wherein the Court said there was an obligation to "treat Schedule 3 paragraph 2(a) as requiring the Tribunal to look "*at not only whether a property is capable of being the subject of rateable occupation by the owner but also alternatively by hypothetical tenants.*" She said that in *Bord Gais Eireann*, the Tribunal found determinative that the tanks in that appeal were not capable of beneficial use "*without considerable expenditure*". However, in that case an Engineer on secondment went through figures of the cost of the works to make the property suitable for use, but no such exercise was undertaken by the Appellant in the current appeal, which distinguishes these two cases.

9.5 With reference to page 34 of the Respondent's précis, which contains a response to the schedule of works provided by the Appellant, Ms Beirne submitted that the works proposed did not include any structural work to the onsite tanks and the Respondent was of the view that these were only minor works.

9.6 In response to Mr Halpin's submission on *Bord Gáis Eireann*, Ms Beirne said that this decision distilled down to the fact that a property was not capable of beneficial occupation without substantial expenditure, something of which the Appellant had provided no evidence.

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 Wexford County Council.

10.2 The Tribunal finds the evidence provided by the Respondent compelling. In particular, the fact that the some of the tanks are presently being repurposed for the storage of biofuels indicates that there is and was a benefit to the occupier notwithstanding that they had stopped using tanks for fuel storage purposes and had attempted to rent out the property.

10.3 The Appellant relied almost entirely on the factual matrix of an adjacent fuel storage site as a basis for the Tribunal to find that the onsite tanks on the subject property were not capable of beneficial occupation. In fact, planning permission had been granted to the adjacent landowner to remove the storage fuel tanks, which they had done prior to a reduction in the NAV following a decision that a Material Change of Circumstances had taken place. No such MCC had taken place and it appeared that the contrary was the case at the subject property, insofar as the original Appellant had used the multiple tanks as a part of the marketing effort to let the property. In addition, the onsite tanks has been included in the planning application in order to increase the likelihood of approval for a LPG storage unit, which was subsequently granted.

10.4 The legal authorities and submissions made by the Respondent in respect of the burden of proof to be reached by the Appellant to prove that a property is not capable of beneficial occupation, is persuasive. The Tribunal accepts that no structural works are required to the onsite tanks and that any works proposed by the Appellant need to be properly quantified. However, even if quantified, it could still be difficult to find for the Appellant in circumstances where both parties acknowledge that no structural works are required to the onsite tanks.

DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court. This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.