

Appeal No. VA12/1/016

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001**

Cork County Council

APPELLANT

and

Commissioner of Valuation

RESPONDENT

and

PSE Kinsale Energy Limited

NOTICE PARTY

RE: Property No. 980563, Gasworks at Lot No. 2D, Inch, Inch, Midleton, County Cork

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

Veronica Gates - Barrister-at-Law

Member

James Browne - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 24TH DAY OF AUGUST, 2012

By Notice of Appeal received on the 28th day of February, 2012 the appellant appealed against the determination of the Commissioner of Valuation that no material change of circumstances had occurred in relation to the above described relevant property.

The grounds of appeal are set out in the Notice of Appeal and accompanying schedule, copies of which are attached at Appendix 1 of this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Holbrook House, Holles Street, Dublin 2, on the 16th and on the 31st of May, 2012. The appellant was represented by Mr. Stephen Dodd B.L., instructed by the Cork County Solicitor, and the respondent was represented by Mr. Byron Wade B.L., instructed by the Chief State Solicitor. Mr Brian Murray, S.C., instructed by McCann Fitzgerald Solicitors, represented PSE Kinsale Energy Limited, a notice party to this appeal. Mr. Val Cotter, an Administrative Officer at Cork County Council, gave evidence on behalf of the appellant, Mr. Mark Adamson, a valuer at the Valuation Office, gave evidence on behalf of the respondent, and Mr. Thomas O’Shea, Head of Operations at PSE Kinsale Energy Limited, gave evidence on behalf of the notice party. Messrs. Cotter, Adamson and O’Shea adopted their respective précis as their evidence-in-chief and were cross-examined by each of the other parties to the appeal.

The Evidence adduced on behalf of the Parties

The evidence adduced on behalf of the parties shall be referred to in the course of the Tribunal’s judgment. The Tribunal notes that there were no conflicts of fact between the parties and that it was common case that the gas extraction platforms, which formed part of the property, were located outside the territorial waters of the State but within the exclusive economic zone and on the continental shelf.

The Issue Arising

The issue arising in this case is whether certain gas extraction platforms and associated pipelines and structures are rateable as a result of the enactment of section 227 of the Local Government Act 2001.

The Property

The property consists of gas extraction and storage facilities which comprise onshore and offshore elements. The onshore terminal and the onshore section of the connecting pipeline were valued in 1978 and again in 1985. This appeal concerns elements which are not currently rated, (hereafter “the subject property”), namely the gas extraction platforms and associated pipelines and structures on the seabed below the high water mark and at a distance of up to 50km from the shoreline.

There are three gas fields and gas is brought to the surface through two production platforms, Alpha and Bravo. The two production platforms are of fixed steel construction and are built on steel legs which are anchored directly onto the seabed, supporting a deck with space for drilling rigs, production/extraction facilities and crew quarters. The platforms are of substantial and permanent construction and are designed for long term use. The operation element of the platforms is above the high water mark. All the fields are linked to the platforms by pipelines, control cables or umbilicals. Gas from the fields is combined and piped to Inch terminal near Middleton in Cork.

The Proceedings Prior to the Appeal Hearing

The respondent received a revision request from the appellant on the basis, *inter alia*, that the subject property met the criteria in section 227 of the Local Government Act, 2001.

In April 2011 a Revision Officer was assigned to the revision request and he determined that no material change of circumstances had occurred. A copy of the Revision Officer's report was issued on the 23rd of June, 2011. On the 22nd of July, 2011, an appeal was lodged against the decision of the Revision Officer and on the 27th of January, 2012, the Appeal Officer decided to disallow the appeal. A Notice of Appeal was submitted to the Valuation Tribunal on the 24th of February, 2012.

The Provisions of Section 227 of the Local Government Act, 2001

Section 227 of the Local Government Act, 2001 provides:

- (1) The maritime boundary of a county, city or town shall on the establishment day by virtue of this subsection be deemed to coincide with the ordinary high water mark for the time being, except where in accordance with section 10 (4), such boundary already extends beyond that high water mark.*

- (2) (a) For the avoidance of doubt and without prejudice to subsection (1) it is hereby declared that all land which is above the ordinary high water mark for the time*

being and which is formed by reclamation or other construction works or by natural accretion or otherwise shall, notwithstanding the provisions of any other enactment, for all purposes, including all functions conferred on a local authority by this or any other enactment, be included in and form part of the county or city to which it is contiguous or connected or where it adjoins or is connected to more than one such county or city in proportion to the extent of the common boundary and the boundary of that county or city shall stand altered accordingly.

(b) Where land referred to in paragraph (a) forms part of a county or city it shall by virtue of this paragraph also for all purposes be included in and form part of any town or any other administrative, electoral or geographical district which it adjoins and which is situated within such county or city or where it adjoins more than one such district in proportions to the extent of the common boundary of such districts.

(c) In this section and for purposes of illustration only and without restriction of the definition of land in section 2 as including a structure, land shall be read as including piers, wharves, jetties, breakwaters, walkways, bridges, pylons, tanks or other installations, equipment or apparatus.

(3) Where a local authority becomes aware that land referred to in subsection (2) (a) has by virtue of this section become part of its administrative area, the authority shall notify the Chief Boundary Surveyor of that fact.

The Position of the Appellant

The appellant contended that the enactment of section 227 of the Local Government Act, 2001, extended the functional area of local authorities for all purposes (and thus came within paragraph (c) of the definition of material change of circumstances as set out in the Valuation Act 2001) with the consequence that the subject property (or, in the alternative, that part thereof which is above the high water mark) ought now to be subject to valuation.

The appellant argued that this conclusion followed from the application of section 227 (2) (a), which provided that all land which was above the ordinary high water mark for the time being and which was formed by reclamation or other construction works or by natural accretion or otherwise should, notwithstanding the provisions of any other enactment, for all purposes, including all functions conferred on a local authority by this or any other enactment, be included in and form part of the county or city to which it was contiguous or connected.

The appellant noted that the subject property was contiguous or connected to other parts of County Cork in that it was connected by means of pipelines to the terminal in Inch. The appellant relied on the *Spillers v. Cardiff (Borough) Assessment Committee* [1931] K.B. 22 as authority for the proposition that the word contiguous in the context of section 227 meant neighbouring, situated in close proximity, though not in contact. The appellant relied, in particular on the following dicta of Lord Hewitt C.J, who stated, at page 43:

“No person of education or intelligence would understand, or suspect, that a writer or speaker was using the word “contiguous” in its loose sense of “neighbouring,” unless there was something in the context that compelled that conclusion. If a man spoke or wrote of “contiguous islands” he must necessarily mean “neighbouring,” because one island must be separated by water from another. But if he spoke of “contiguous houses” it would be difficult to suppose that he meant anything but houses touching each other.”

The appellant went on to argue that even if the subject property was not deemed to be contiguous within the meaning of section 227 it was clearly connected in that a gas pipeline ran from the subject property to the terminal at Inch.

The appellant noted that the platforms, which were fixed and not merely temporary structures, were above the high water mark. The appellant asserted that the platforms constituted the main functional area of the offshore gas facility and that whilst some

elements were along the seabed and therefore below the high water mark, nonetheless such elements were ancillary and formed part of the subject property.

The appellant argued that insofar as there were elements of the subject property that were below the high water mark, they were rateable with those elements above the high water mark considering: *Firstly*, they were in the same rateable occupation: *Secondly*, they were contiguous and proximate: *Thirdly*, they were functionally integrated and part of the same system, and: *Fourthly*, the platforms were the main components of the offshore facility and the pipelines were ancillary to same.

The appellant placed reliance on *Gilbert v. Hickenbotton* [1956] 2 Q.B. 40 wherein Denning M.R. stated, at page 48:

“First, take the case where two or more properties are within the same cartilage or contiguous to one another, and are in the same occupation. In that case they are, as a general rule, to be treated for rating purposes as if they formed parts of a single hereditament.”

The appellant also placed reliance on the decision of the Valuation Tribunal in *Royal Cork Yacht Club v. Commissioner of Valuation* VA06/1/004 wherein the appellant maintained that the Tribunal had held that the fact that part of a property was below the high water mark did not necessarily mean that it did not fall within the scope of section 227 of the Local Government Act, 2001.

In the alternative, the appellant argued that the portion of the subject property that was above the high water mark was rateable.

In relation to the issue of the extra-territorial exercise of jurisdiction the appellant noted that Article 29.8 of the Constitution provides that:

The State may exercise extra-territorial jurisdiction in accordance with generally recognised principles of international law

The appellant contended that the provisions of the Sea Fisheries and Maritime Jurisdiction Act, 2006, insofar as they defined the territorial or contiguous zone, were not material.

In particular the appellant referred to:

- Section 2(1) of the Continental Shelf Act, 1968 which provides that any rights of the State outside territorial waters over the sea bed and subsoil for the purpose of exploration and exploitation is vested in and shall be exercisable by the relevant Minister;
- The decision of the Court of Justice in *Weber v. Universal Ogden Services Ltd.* [2002] ECR I-2013 regarding the rights of a State over its continental shelf;
- The United Nations Convention on the Law of the Sea, 1982, which deals, *inter alia*, with the rights of the State in respect of its exclusive economic zone.

The appellant referred to particular examples of the exercise, by the State, of jurisdiction beyond the territorial seas, including:

- Section 13 of the Gas (Interim) Regulations Act, 2002, which refers to the construction of pipelines in the territorial seas of the State or a designated area;
- Section 1 of the Dumping at Sea Act, 1996, as amended by section 103 of the Sea Fisheries and Maritime Jurisdiction Act, 2006, which specifies that the maritime area includes not only the territorial seas of the State but also areas designated under section 2 of the Continental Shelf Act 1968 and the exclusive economic zone of the State;

- Section 3 of the Sea Pollution Act, 1991, as amended by section 93 of the Sea Fisheries and Maritime Jurisdiction Act, 2006, which specifies that a reference in that Act to the State includes the exclusive economic zone of the State.

The Position of the Respondent

The respondent characterised the appellant's argument as being in essence that the coming into force of section 227 of the Local Government Act, 2001 constituted a material changes of circumstances for the purposes of the Valuation Act, 2001. The respondent argued that the issue arising was one of jurisdiction, in particular, whether the appellant's jurisdiction or functional area included the platforms and the undersea pipelines connected thereto.

The respondent argued the appellant's position was based upon the section 227 (2) (c) of the Local Government, Act 2001 but that subsection (2) (c) was clearly subject to the provisions of subsection (1), which set the high water mark as the relevant jurisdictional boundary. Further, subsection (2) (a) reiterated that land consisted only of things that were above the high water mark and, accordingly, the respondent submitted, the undersea pipelines fell outside the jurisdiction of the appellant.

The respondent submitted that insofar as there was a requirement that land be contiguous or connected, that this must be taken to mean contiguous or connected above the high water mark on the basis that it was a common feature of all the items referred to in section 227 (2) (c) of the Local Government Act, 2001 that each and every one of them stood above the water and generally above the high water mark.

The respondent submitted that insofar as the appellant relied on the disjunctive sub clause in section 227 (2) (c) of the Local Government Act, 2001 "or other installations, equipment or apparatus" as constituting a reference to the platforms in this case, that such a reading was not open on the basis of the *ejusdem generis* and *noscitur a sociis* rules.

The respondent also relied on certain dicta in the Supreme Court decision of *Brown v. Donegal County Council* [1980] 1 I.R. 132 as authority for the proposition that the reference to the high water mark was a reference to a horizontal boundary for a county such that it marked the furthest extent of its jurisdiction.

The Position of the Notice Party

As a preliminary objection the notice party submitted that the respondent had no power in the first instance to appoint a revision officer in respect of the application by the appellant for such appointment. The notice party argued that it was clear from section 27 (2) of the Valuation Act, 2001 that a rating authority could only apply for a revision officer to be appointed in respect of a property situate in the area of that authority. The offshore installations which the appellant was arguing should be rated were not contained within the area of the appellant and were in fact outside the territorial jurisdiction of the State. Accordingly, it was not open to the respondent to appoint a revision officer in relation to the subject property pursuant to section 28 (3) of the Valuation Act, 2001.

The notice party observed that the appellant sought to contend that the coming into force of section 227 of the Local Government Act, 2001 constituted a material change of circumstances within the meaning given in paragraph (c) of the definition of same in the Valuation Act, 2001, (namely “the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property”) in that the effect of section 227 was that the maritime boundary (and thus the area and jurisdiction of the appellant) was extended to such a degree as to, in this case, include offshore installations which were outside the territory of the State by some margin.

The notice party observed that whilst there might be circumstances in which an offshore installation could come within the definition of relevant property in accordance with Schedule 3 of the Valuation Act, 2001, it was absolutely clear that this was not the case where the installation was outside the territorial jurisdiction of the State. The notice party argued that there was nothing in section 227 to suggest that land connected to the area of a local authority was part of that local authority’s jurisdiction even if outside the

jurisdiction of the State itself and the Valuation Act could not apply to anything outside the territory of the State.

The notice party submitted that the limits of the territorial jurisdiction of the State were set out in sections 82, 83 and 85 of the Sea Fisheries and Maritime Jurisdiction Act, 2006.

Section 82 provides:

The territorial seas of the State is that portion of the sea which lies between the baseline and the outer limit of the territorial seas.

Section 83 provides:

The outer limit of the territorial seas is the line every point of which is at a distance of 12 nautical miles from the nearest point of the baseline.

Section 85 provides:

- (1) Save as otherwise provided, the baseline is low water mark –
 - (a) on the coast of the mainland or of any island, or*
 - (b) on any low-tide elevation situated wholly or partly at a distance not exceeding 12 nautical miles from the mainland or an island.**
- (2) The Government may by order (which they may by order revoke or amend) prescribe straight baselines in relation to any part of the State and the closing line of any bay or mouth of a river, and any line so prescribed shall be taken as the baseline.*
- (3) The Maritime Jurisdiction Act 1959 (Straight Baselines) Order 1959 (S.I. No. 173 of 1959), if in operation on the passing of this Act, continues in force as if made under this section.*

The notice party asserted that the territorial jurisdiction of the State ended 12 nautical miles (or 22.224 kilometres) from the nearest point on the baseline and that on that basis the production platforms forming part of the subject property were beyond the jurisdiction.

The notice party further asserted that the appellant appeared to be asserting that the boundary of Cork County Council extended beyond the territorial limit of the State by some 22 kilometres. The notice party submitted that the appellant had not produced any evidence or made any arguments that section 227 of the Local Government Act, 2001 was intended to have extra-territorial effect and to include, in local authority areas, seas which were outside the territory of the State.

The notice party observed that the appellant sought to place reliance on the fact that the offshore installations were within the exclusive economic zone of Ireland. However, the notice party submitted that notwithstanding that the State may have jurisdiction over the exclusive zone, the said zone was outside the territory of the State and could not be subject to the laws of the State, unless such laws very clearly stated that they applied to the exclusive economic zone.

The notice party relied upon the presumption against the extra-territorial effect of legislation and argued that whilst there were certain situations in which Irish law applied to acts which were done on installations outside the territorial waters of the State, as specifically provided for in section 3 of the Continental Shelf Act, 1968, the present situation did not fall within the scope of this section. The fact that section 3 specifically provided for certain matters implied that it was not intended that Irish law would have extra-territorial application more generally. The wording of section 227 of the Local Government Act, 2001 manifestly did not provide that it had extra-territorial effect and there was no basis upon which it could be argued that the wording of the section could be read to imply extra-territorial effect.

The notice party also argued that there was a presumption against unclear changes in the law and that a provision of a statute which was ambiguous as to whether or not it effected a change in the law should be regarded as not effecting any such change. The notice party further argued that not only did the provisions of section 227 of the Local Government Act, 2001 not explicitly and clearly alter the law so as to extend the area and jurisdiction of a local authority beyond the territorial jurisdiction of the State, on no reading or interpretation of that section could it be argued that the purport of the section was to so extend the area and jurisdiction of a local authority.

The Decision of the Tribunal

The Tribunal holds that the limits of the territorial jurisdiction of the State are as set out in sections 82, 83 and 85 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 and that accordingly the said jurisdiction ends 12 nautical miles from the nearest point of the baseline as set out in section 83 of the 2006 Act.

On the evidence adduced the Tribunal finds that the subject property comprises two elements:

- (1) That part of the subject property which lies beyond the territorial jurisdiction of the State, as defined in sections 82, 83 and 85 of the Sea-Fisheries and Maritime Jurisdiction Act, 2006. This consists of elements which are above the high water mark, in the sense contended for by the appellant, and part of the associated pipelines and structures on the seabed, which are below the high water mark.

- (2) That part of the subject property which lies within the territorial jurisdiction of the State, as defined by the aforementioned provisions of the 2006 Act. This consists of the rest of the associated pipelines and structures on the seabed, which are below the high water mark.

The Tribunal holds that in construing the provisions of section 227 of the Local Government Act, 2001 it must apply the presumption against extra-territoriality. The

Tribunal is of the view, as argued by the notice party, that in order to rebut the presumption in this instance it would be necessary for such intention to be clear from the wording of the Local Government Act, 2001. The Tribunal is not satisfied that there was any intention on the part of the Oireachtas, in enacting section 227 of the said Act, that section 227 should have extra-territorial effect.

Section 227 of the Local Government Act, 2001 applies, subject to the presumption against extra-territoriality, to all land which is above the high water mark and which otherwise satisfies the conditions specified in the section. The Tribunal holds that a necessary corollary is that the section does not apply to land which is not above the high water mark.

The Tribunal is of the view that the provisions of section 227 of the Local Government Act, 2001 do not give rise to the consequences contended for by the appellant. In particular, the Tribunal is of the view *firstly*, that section 227 is not intended to have extra-territorial effect and *secondly*, that it does not apply to land below the high water mark.

In consequence thereof, insofar as the subject property *firstly*, lies outside the limits of the territorial jurisdiction of the State, and *secondly*, is below the high water mark, section 227 of the Local Government Act, 2001 can have no application. It follows, therefore, that the Tribunal finds that there is no material change of circumstances within the meaning of Section 3 of the Valuation Act, 2001.

The Tribunal notes that it was invited by the notice party to hold that the respondent had no power in the first instance to appoint a revision officer in respect of the application by the appellant for such appointment. It appears to the Tribunal that any such conclusion on its part would be moot at this point and accordingly the Tribunal expresses no view in relation to the matter.

And the Tribunal so determines.