

Appeal No. VA07/2/041

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

**Tynagh Energy Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Electricity Generating Station at Lot No. 15F.17J, Derryfrench, Bracklagh, Loughrea, County Galway.

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Brian Larkin - Barrister**

**Member**

**Frank O'Donnell - B.Agr.Sc. FIAVI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 8TH DAY OF NOVEMBER, 2007**

By Notice of Appeal dated the 10th day of May, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €34,170.00 on the above-described relevant property.

The grounds of Appeal are set out in a letter attached to the Notice of Appeal, a copy of which is at Appendix 1 to this Judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper Dublin 7, on the 9<sup>th</sup>, 13<sup>th</sup> and 19<sup>th</sup> days of July, 2007.
2. At the hearing the appellant company was represented by Mr. Owen Hickey, BL, instructed by Ms. Lisa Broderick, Matheson Ormsby Prentice Solicitors. Mr. Tadgh Donnelly, MIAVI of Brian Bagnall and Associates gave expert valuation evidence on behalf of the appellant. Mr. Colin D'Arcy, B.Sc (Engineering Mech), the Technical Manager at the property concerned, gave evidence in relation to its design and operation.
3. Mr. Brendan Conway, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation and Mr. Briain O'Floinn, District Valuer in the Valuation Office, gave expert valuation evidence.

### **The Property Concerned**

4. The property concerned is a recently constructed 400 megawatt combined gas and air electricity generating station. The property is located at the former Tynagh Mines site about 15 kilometres northeast of Loughrea, close to the village of Tynagh.
5. Mr. Colin D'Arcy, the Technical Manager at the property, in his evidence outlined in great detail the various stages in the generation process at the property and explained in clear and succinct terms the function of each component in the installation.

### **6. Rating History**

On the 27<sup>th</sup> July, 2006 the Revision Officer appointed pursuant to Section 28(2) of the Valuation Act, 2001 issued to the occupier a certificate to the effect that he proposed to value the property concerned at a rateable valuation of €34,170.00. No representations were made by the occupier and on the 8<sup>th</sup> September, 2006 a Valuation Certificate was issued wherein the proposed rateable valuation of €34,170.00 was affirmed. No change was made on foot of an appeal to the Commissioner of Valuation in accordance with Section 30 of the Valuation Act and it is against this decision by the Commissioner that the appeal to this Tribunal lies.

### **Agreed Facts**

7. Prior to the hearing, préces of evidence and valuations were received by the Tribunal from Mr. Donnelly and Mr. O'Floinn and these were subsequently received into evidence at the oral hearing. From the evidence so tendered the following material facts emerged:

- (i) Both valuers in arriving at their respective estimates of Net Annual Value employed the Contractor's Method of Valuation based upon a common schedule of costs provided by the appellant.
- (ii) In each valuation the actual costs were reduced to November 1988 levels using a common index and the resultant figures thus obtained devalued at 5% in compliance with Section 50 of the Valuation Act, 2001 in order to arrive at the Net Annual Value of the property concerned.
- (iii) Mr. O'Floinn in arriving at his estimate of Net Annual Value included all the costs incurred by the appellant in procuring the property including financing costs and banker's fee which gave rise to a rateable valuation of €34,170.00.
- (iv) Mr. Donnelly, on the other hand, in arriving at his estimate of Net Annual Value excluded the cost of a number of items of plant and machinery, which he considered to be not rateable under the provisions of Section 51(3) and Schedule 5 of the Valuation Act, 2001. Mr. Donnelly also excluded financing costs and bank advisers' fees thus arriving at a rateable valuation of €17,500.00.
- (v) Details of each expert witness's valuation are set out in Appendix 2 attached to this judgment.

### **Legal Submissions**

- 8. Mr. Hickey on behalf of the appellant contended that Mr. Donnelly was correct in excluding from his valuation certain items of plant and machinery as referred to in Section 51 and Schedule 5 of the Valuation Act, 2001. Mr. Hickey also contended that Mr. Donnelly was correct to exclude financing costs and bank advisers' fees from his calculation of net annual value.
- 9. Mr. Conway, on behalf of the respondent, contended that Mr. O'Floinn's valuation was correct and that all plant and machinery formed part of the property concerned and was to be included in its valuation insofar as electricity generating stations fell without the scope of Section 51 and Schedule 5. Similarly, financing costs and bank advisers' fees were costs necessarily incurred as part of the overall procurement process.
- 10. Mr. Conway contended that the fourth ground of appeal to the Tribunal did not form part of the appellant's appeal at first instance to the Commissioner of Valuation and was therefore ineligible for consideration in this appeal before the Tribunal by reference to the judgment of the Tribunal in **VA95/5/015 - John Pettitt & Son Limited**.

### **Findings and Determination**

1. At the hearing the parties were represented by Counsel and the Tribunal is indebted to them for the depth and quality of their submissions, both written and oral, which referred the Tribunal to a wide range of authorities and legal precedents. A copy of Counsels' written submissions are to be found in Appendix 2 attached to this judgment.
2. At the hearing a number of issues arose which were comprehensively dealt with by counsel. *Inter alia* these matters included the grounds of appeal advanced by the appellant in the appeal lodged with the Valuation Tribunal under section 34 of the Valuation Act, 2001 and the inclusion of certain items of plant and machinery in the valuation of the property concerned. We propose to deal with the issues so raised as follows.

### **The Valuation Act, 2001**

3. The Valuation Act which came into effect on 2<sup>nd</sup> May, 2002 is now the sole statute dealing with the valuation of property for rating purposes. The Act is a comprehensive piece of legislation, consisting of 67 sections and 5 schedules.
4. Whilst schedule 1 of the Act repealed all then current rating enactments, many of the provisions contained therein were carried into the 2001 Act. The basis of valuation continues to be net annual value (section 48) whilst section 49 sets down the method of valuing property at revision. *Inter alia* the Act also introduced new measures for dealing with the functions of the Commissioner of Valuation and the valuation and revision process generally.

### **The Grounds of Appeal**

5. The Valuation Act, 2001 introduced new procedures for the valuation of property on foot of a request for a revision. Section 28(2) enables the Commissioner of Valuation to appoint an officer of the Commissioner as a "Revision Officer" in order to carry out a revision of property, or properties as the case may be, on foot of an application made under section 27 of the Act. Under section 28(6) the Revision Officer issues a valuation certificate to the occupier of the property concerned and the rating authority in whose area the property is situate. At this stage the occupier has a right under section 29(2) to make representations in relation to the proposed revision. The Revision Officer having

considered the occupier's representations will, in due course and in accordance with section 29(3), issue a certificate either on the same terms as the original certificate or in amended form.

6. Under section 30 of the Act the occupier and other interested parties as listed in the section may lodge an appeal in writing to the Commissioner against the decision of the Revision Officer in relation to a number of matters as provided for under the section. An appeal made under section 30 shall specify the grounds of appeal and where appropriate the appellant's opinion of the rateable valuation of the property concerned (section 31).
7. Section 34 enables the occupier and other interested parties to lodge an appeal to the Valuation Tribunal against the determination of the Commissioner of Valuation following his/her consideration of the appeal made under section 30. Such an appeal shall again specify the grounds of appeal and where appropriate the appellant's opinion of the rateable valuation of the property concerned (section 35).
8. The determination of the Tribunal is final in relation to matters of valuation and is subject to an appeal to the High Court on a point of law only.
9. As can be seen from the foregoing an occupier or other interested party involved in the revision process is accorded a number of opportunities to object to the valuation of the property concerned determined by the Revision Officer in the first instance and subsequently as determined by the Commissioner of Valuation on appeal. This new procedure is an enhancement of the previous procedure which was a two stage process only after the initial revision. As a general rule and in line with a number of its previous determinations the Valuation Tribunal will not permit the raising of a ground of appeal which has not been advanced before the Commissioner of Valuation. This matter was comprehensively dealt with by this Tribunal in the case of **VA95/5/015 - John Pettitt & Son Limited**. Paragraph 10 of the judgement as quoted below is in our opinion an accurate statement of the law in this regard.

*“This Tribunal is of course a creature of statute. It is not a Court established by or under the Constitution or by or under the Courts (Establishment & Constitution) Act 1961. Whilst its existence depends on the 1988 Act, the validity*

*of its actions and decisions must surely be constitutionally safe as falling within the Provisions of Article 37 thereof. In any event it would in our view be quite invidious for a Tribunal of this nature to have a rule of practice or procedure or to adopt a jurisprudence which is at variance with that practiced in the Courts above mentioned and in particular in the Supreme Court. It seems to us therefore that we ought, and indeed must follow the principles enunciated in the cases above identified. Accordingly it is our firm view that it would be quite wrong to have a practice of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have previously been so raised or so adduced. We are satisfied that the previous judgments of this Tribunal, on this point, were all intended to be read and understood in this manner.”*

As to what are “exceptional circumstances” is of course a subjective judgment to be formed following consideration of the particular circumstances of the appeal before the Tribunal.

10. The appeal to the Commissioner received on 16<sup>th</sup> October, 2006 contained the following grounds of appeal:

*“The Valuation is excessive &*

- 1. The items of plant that are capable of being moved by mechanical or electrical means are included in the valuation calculation.*
- 2. The constructions which are used to primarily induce a process of change in the substance contained or transmitted are included in the valuation calculation.*
- 3. Other costs which are not relevant are included in the valuation calculation.”*

11. The appeal to this Tribunal dated 10<sup>th</sup> May, 2007 specified the grounds of appeal in the following terms:

- 1. “The valuation is incorrect being in that the items of plant that are capable of being moved by mechanical or electrical means are included in the valuation*

*calculation. Such items should be excluded from the valuation by virtue of Subsection 51 (5) of the Valuation Act 2001.*

2. *The Constructions which are used to primarily induce a process of change in the substance contained or transmitted are included in the valuation calculation. Such constructions / installations including the Gas and Steam Turbines should be excluded from the valuation by virtue of Paragraph 1 of Schedule 5 to the Valuation Act 2001.*
3. *Other costs which are not relevant are included in the valuation calculation.*
4. *Without Prejudice to the foregoing the Gas and Steam Turbines, the Cranes, All Pumps and Condensers, the Emergency Generator and the balance of plant mechanical referred to in the attached calculation constitute machinery and are not rateable by virtue of Subsection 51 (3) of the Valuation Act 2001 and should be excluded from the valuation calculation.”*

12. In our opinion the grounds of appeal submitted under sections 30 and 34 are not materially different and the items of machinery referred to in ground number 4 of the appeal to this Tribunal could be reasonably described as being integral parts of or ancillary to the items of plant and machinery referred to paragraphs 1 and 2 of the original submission. Bearing in mind the nature of the property concerned we are of the opinion that in the circumstances of this appeal the interests of justice would not be best served if we were to exclude from consideration ground number 4 as stated in the grounds of appeal to this Tribunal.

13. As outlined above, the 2001 Act affords an occupier a number of opportunities to raise any matter pertaining to the valuation of the property concerned at various stages of the revision process. In this regard, the Tribunal would expect that any person having made representations under section 29(2) and/or an appeal under section 30 would pursue the appeal with all the urgency and intensity that the circumstances would warrant. Equally we would expect the Revision Officer and the Appeal Officer as the case may be to consider all the issues raised by the appellant and that his/her report would show clearly the reasoning behind his/her recommendation to the Commissioner of Valuation. Needless to say we would expect both parties to co-operate fully with each other in the provision of such information as may be reasonably necessary for the purpose of dealing with any issue that might arise in the consideration of the revision and/or the appeal.

Given the fact that rating is a form of taxation based upon the beneficial occupation of the property it is important that all stages of the revision process and more particularly the appeal process from a procedural point of view be seen to be transparent in operation and performed in a manner consistent with the principles of fairness and in accordance with the law.

14. From the evidence put before the Tribunal it would appear that the interaction between the Appeal Officer and the appellant's representative during the pursuit of the appeal was meagre. Following receipt of the appeal on 16<sup>th</sup> October, 2006 the Appeal Officer appointed by the Commissioner wrote to the appellant's representative on 1<sup>st</sup> December, 2006 and again on 5<sup>th</sup> February, 2007 inviting him "*to make any further submissions or to provide any further information that you would feel would be of assistance*". Not having received any response to these letters the Appeal Officer rang Mr. Donnelly on 12<sup>th</sup> April i.e. three days before the date on which the Commissioner was required to issue his determination in accordance with section 33(6) of the Act. Mr. Donnelly at that time was on holiday and in the event the Appeal Officer had a brief conversation of little consequence with a colleague of Mr. Donnelly's.
  
15. In the conversation with Mr. Donnelly's colleague the Appeal Officer pointed out that due to statutory time constraints the appeal had to be decided immediately and the decision could not be delayed until Mr. Donnelly returned from holiday. Not surprisingly perhaps, the Appeal Officer's decision taken on the same day, that is 12<sup>th</sup> April, 2007, was to "make no change". Notwithstanding that Mr. Donnelly did not make contact with the Appeal Officer despite the two letters requesting him to do so, the Appeal Officer did have before him the grounds of appeal. In the circumstances and given the importance of the issues raised regarding the valuation of certain items of plant and machinery one would have expected the Appeal Officer's report to contain some notes setting out his response to the grounds of appeal as submitted, accompanied by a statement of reasons for their ultimate rejection. As it is there is nothing in the Appeal Officer's report to show that the Appeal Officer had considered the issues so identified and had rejected them with what he considered to be a good reason. The interests of fairness and transparency and indeed the reputation of the appeal process itself would have been better served if his report had included notes of how and why he had arrived at his decision to make no change.

### **The Valuation of Plant and Machinery**

16. In the context of this appeal the following sections of the Valuation Act, 2001 are particularly relevant. In section 3(1) "*Plant*" means –

(a) *any fixture or structure so attached or secured to, or integrated with, premises comprising any mill, factory or building erected or used for any such purpose as to be of a permanent or semi-permanent nature, or*

(b) *any fixture or structure associated with such premises that, although free-standing, is of such size, weight and construction as to be of a permanent or semi-permanent nature;*"

17. In Section 3(1) "*Relevant property shall be construed in accordance with Schedule 3.*"

18. Section 50 states: "*If, in determining the net annual value of property or any part of it in accordance with section 48, a method of valuation relying on the notional cost of constructing or providing the property or part is used, then, notwithstanding subsection (3) of that section, the net annual value of the property or part, for the purposes of that section, shall be an amount equal to 5 per cent of the aggregate of the replacement cost, depreciated where appropriate, of the property or part and the site value of the property or, as the case may be, part.*"

19. Section 51 states "(1) *In determining, under any provision of this Act, the value of a relevant property, the following shall be valued and taken account of in such determination –*

a) *any plant in or on the property, being plant specified in Schedule 5*

b) *the water or other motive power (if any) of the property, and*

c) *all cables, pipelines and conduits (whether underground, on the surface or overhead and including all pylons, supports and other constructions which pertain to them) that form part of the property.*

(2) *The value of any matter referred to in paragraph (a), (b) or (c) of subsection (1) shall be determined in the same manner as the value of the property to which it relates is determined under the provision concerned of this Act.*

(3) *Nothing in paragraph (b) of subsection (1) shall be construed as permitting the value of any machinery in or on the property concerned (not being machinery that constitutes plant specified in Schedule 5) to be taken account of under that subsection*

*unless it is machinery erected and used for the production of the motive power concerned.*

*(4) In subsection (3) the reference to machinery erected and used for the production of motive power includes a reference to electrical power connections.*

*(5) Notwithstanding anything in paragraph (a) of subsection (1), a part of any plant referred to in that paragraph which is capable of being moved by mechanical or electrical means, other than a telescopic container, shall not be valued or taken account of in the determination of the value of the property to which it relates.”*

20. Schedule 3(1) states: *“Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act.”*

21. Schedule 3(1)(m) states: *“electricity generating stations, including where appropriate-*

- i. all buildings and structures,*
- ii. all tanks, including fuel oil tanks, water tanks and chemical tanks,*
- iii. boilers, furnaces and ancillary fuel handling equipment,*
- iv. cooling water inlet and outlet facilities, including pump-houses, culverts, pipe-works, weirs and outfall works,*
- v. natural gas installations,*
- vi. effluent disposal works, including chimneys and treatment plant,*
- vii. wind generators, turbines and generators, together with ancillary plant and electrical equipment, including transformers,*
- viii. docks, cooling towers, embankments, canals (head race, tail race), locks, penstocks and surge tanks,*
- ix. dams, weirs, bridges, jetties, railways, roads and reservoirs,*
- x. all ancillary on site developments,*
- xi. all electric lines.*

22. Schedule 5 states: *“1.-All constructions affixed to a relevant property (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any*

*such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.*

*2.-All fixed furnaces, boilers, ovens and kilns.*

*3.-All ponds and reservoirs.”*

23. In the past the valuation of certain items of plant and machinery in buildings erected for manufacturing or other similar purposes was expressly provided for in the Valuation Acts. Section 7 of the Annual Revisions of Rateable Property (Ireland) Amendment Act, 1860 clarified the situation somewhat and provided as follows:

*“In making the Valuation of any Mill or Manufactory, or Building erected or used for any such Purpose, the Commissioner of Valuation shall in each Case value the Water or other Motive Power thereof, but shall not take into account the Value of any Machinery therein, save only such as shall be erected and used for the Production of Motive Power.”*

24. Despite the fact that machinery was not defined in the Act, section 7 as drafted endured for over a 100 years when it was replaced by a new section 7 under the provisions of the Valuation Act, 1986 accompanied by the addition of a schedule after section 15 of the Act of 1860. These changes were introduced in light of a number of major court decisions which resulted in certain items of plant formerly considered to be rateable being declared to be machinery for the purposes of section 7. The intention of the amended section 7 and the new schedule added by section 8 of the 1986 Act together with sections 1 and 2 of the 1986 Act was to reverse the effect of the various court decisions.

25. Section 51 of the 2001 Act is very similar to section 7 and maintains the situation whereby *“machinery (not being machinery that constitutes plant specified in schedule 5).....unless it is machinery erected and used for the production of the motive power concerned”* is not to be valued for rating purposes.

26. Schedule 5 of the 2001 Act is identical in form to the new schedule added to section 8 of the Act of 1860 by the 1986 Act. The effect of section 51 and schedule 5 is, in a general sense, to maintain the situation introduced under the 1986 Act.

27. Schedule 3 lists the categories of property which are “relevant property” for the purposes of the Act. Under paragraph 1(m) an electricity generating station of whatever type is distinguished as being a specific category of property concerned and which falls to be valued in a manner distinct from all other facilities used for manufacturing purposes.
28. It is accepted as a matter of fact that electricity generating stations come in different types using a variety of means of production. Paragraph 1(m) recognises this fact and hence the words “where appropriate” as they appear in the paragraph are to be interpreted as including all buildings, structures, plant and other installations particular to the type of generating station being included in the valuation of the property concerned. In our opinion, it was the clear intention of the legislature to ensure that in valuing electricity generating stations all plant and machinery therein regardless of whether or not or how it is affixed to the freehold is to be valued. To take the view that the provisions contained in section 51 and schedule 5 apply equally to electricity generating stations as they do to other categories of relevant property would render paragraph 1(m) redundant and unnecessary. Paragraph 1(m) is there for a specific purpose and that purpose, in our opinion, is that when valuing electricity generating stations of whatever type, all plant and machinery therein whether moveable or not, is to be included in the valuation of the property concerned.

### **The Contractor’s Basis of Valuation**

29. The basis of valuation of relevant property is contained in the provisions contained in sections 48 and 49 of the 2001 Act. No specific method of valuation is prescribed in these sections and it is up to the valuer to use whatever method is considered to be the most appropriate having regard to the nature of the property concerned. In this instance both valuers in arriving at their estimates of net annual value prepared their valuations using the contractor’s basis of valuation. The valuers based their respective valuations on a common schedule of costs provided by the appellant company. Details of the valuations prepared by Mr. O’Floinn and Mr. Donnelly are set out in Appendix 3 attached to this judgment.
30. Mr. Donnelly as part of his written presentation provided the Tribunal with a copy of a document entitled ‘The Contractor’s Basis of Valuation for Rating Purposes - A Guidance Note’ published by the Joint Professional Institutions Rating Valuation Forum in

November 1995. The Rating Forum is a U.K. based body comprising of representatives of the major professional bodies engaged in rating valuation practice and representatives of the Valuation Offices in England, Scotland and Wales. In our opinion, the principles of valuation contained in the Guidance Note are equally applicable in this jurisdiction and indeed paragraphs 1.5 and 1.6 of the introduction to the Guidance Note as quoted below are a useful and legally accurate statement of the principles of the contractor's basis of valuation as referred to in section 50 of the Act.

31. *"1.5 – It should be assumed that the property is owned by a hypothetical landlord who wishes to let it and that there is a hypothetical tenant who is willing to pay a rent in order to occupy it. However, although the parties to this transaction are hypothetical, the property is real and the valuer's concern is therefore with the rental value of the actual property."*
32. *"1.6 – Whilst interest on cost as a guide to rental value is the basis of the method, it is not envisaged that the hypothetical tenant should be considered as constructing an actual property, but that the rental value of the property concerned is being "tested" by having regard to the annualised equivalent of the estimated cost of construction. It is considered inappropriate to make an assumption that either the hypothetical tenant, or someone else, could or would build an alternative property, or that such a person has already built an alternative property suitable for occupation by the hypothetical tenant."*
33. It should be said that section 50 of the Valuation Act does not contain any definition of the contractor's basis of valuation or in what circumstances it is to be used. Section 50 provides that *"the aggregate of the replacement cost, depreciated where appropriate, of the property or part and the site value of the property or, as the case may be, part"* shall be decapitalised at the rate of 5% in order to arrive at the net annual value. That is the sole purpose of section 50.
34. Mr. O'Floinn in his valuation included all costs incurred by the appellant in procuring the relevant property including financing costs of €2.14 million and bank advisor fees of €4.322 million. Mr. O'Floinn said his valuation was in accordance with the provisions of section 50 and his decision to include the financing costs and bank advisor fees was supported by an extract from a document issued by the Commission for Energy

Regulation entitled “Best New Entrant Price 2006 - A Decision and Response Paper”. Paragraph 5.14 of this document deals with the total investment cost estimate for a BNE Generating Plant (same as subject) which includes financing and legal costs and interest costs during the construction period. A copy of this document is to be found in Appendix 4 attached to this judgment.

35. Mr. Donnelly omitted the financing costs and bank advisor fees and said that such costs were specifically excluded under section 3.15 of the Guidance Note which says as follows.

3.15 - *“Actual costs of providing the subject property may be used where, for example:*

*(a) full records of actual costs incurred close to the valuation date are available;*

*(b) it is possible to allocate costs clearly between rateable and non-rateable items within the actual cost; and*

*(c) the property is unique in nature with significant elements which do not readily lend themselves to the unit cost approach. If the valuer is using actual costs, care must be taken to exclude un-remunerative expenditure (i.e. that which is not reflected in the value of the premises) and non rateable items.”*

36. Mr. Donnelly also excluded the cost of those items of plant and machinery which he contended should not be included in the valuation under the provisions of section 51 and schedule 5.

37. In our opinion, financing costs and bank advisor fees should not be included in estimating replacement costs as identified in paragraph 3.1.1 in the Guidance Note which states:

*3.1.1 “The first stage of the contractor’s basis is to estimate what it would cost to construct the property, including all the buildings, site works and all rateable plant and machinery within the property on an undeveloped site.”*

*3.1.2 “The estimated cost of replacement should include all the elements which would go to make up an actual cost. Design costs, site works, provision of services and supervision costs (including fees) must all be included in the estimated replacement cost.”*

38. The contractor’s basis of valuation is a hypothetical exercise based on the estimated or actual cost of the property concerned as outlined in paragraphs 3.1.1 and 3.1.2 above.

Financing costs and bank advisor fees are not elements of the cost of the property itself but costs incurred in this instance by the appellant company as a consequence of how they decided to conduct their business affairs.

### **Determination**

Having regard to the foregoing and taking into account all the evidence offered and arguments adduced we propose to value the property concerned as follows:

#### **Valuation on Contractor's Basis of Valuation**

Total costs as provided by Appellant		€82,191,000
Less financing costs	€2,140,000	
Less bank advisor fees	€4,332,000	
		<u>€26,472,000</u>
Total costs for valuation purposes		€55,719,000
Agreed reduction factor to November 1988 - 112.8/232.9		<u>x .484328</u>
Adjusted cost		= €23,851,881
Decapitalised @ 5% as per section 50		= €6,192,594
Net annual value Say		= €6,190,000
Rateable valuation @ 0.5%		= €30,950.00

And the Tribunal so determines