

Appeal No. VA92/3/020

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**James Conway**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Sandpit and Workshop at Lot No. 1Aa.2 Kildavin, E.D. Kildavin, Clonegal, Co. Carlow  
Quantum - Sandpit

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Padraig Connellan**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF NOVEMBER, 1992**

By notice of appeal dated the 25th day of May, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation on the above described hereditament at £61.00 (sandpit £56.00, workshop £5.00).

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive, inequitable and bad in law".

**The Property:**

A sandpit and workshop situated near Carlow/Wexford Border. Entrance to sandpit is on Carlow/Enniscorthy Road one mile from Kildavin village and one and a half miles from Bunclody. The average annual output is 20,000 tons approximately.

**Written Submissions:**

A written submission was received on the 23rd of September, 1992 from Mr. Patrick J. Nerney, Rateable Valuation Consultant, Valuer and Auctioneer on behalf of the Appellant. Mr. Nerney stated that the valuation of £56 on the sandpit and £8 on buildings was fixed at the 1990/4 Revision. Buildings valuation was reduced from £8 to £5 at 1st appeal. Appellant is engaged in the business of selling washed sand/gravel and filling material. Demand for large stones is small and there are no facilities for crushing boulders. A washing plant is installed on site. Average annual output is estimated at 20,000 tons.

In the written submission Mr. Nerney stated that it was apparent that the valuation of the pit had been determined in this instance by reference to a formula devised by the Commissioner for quarries about 25 years ago and amended slightly following the introduction of decimalisation.

In the amended version the recommended unit rate for quarries with outputs not exceeding 50,000 tons was 0.28p per ton.

Mr. Nerney said that years ago there may have been some validity in this approach when there was a market for run of the pit material i.e. sand or gravel. Now the demand is for washed sand and aggregate. He said that sandpits are now obliged to instal screens and washing plants, the cost of which does not leave much scope for profit on small outputs. Mr. Nerney used the following methods in arriving at the N.A.V. and R.V.:-

Average annual output 20,000 tons @ 30p = £6,000

R.V./N.A.V. - £6,000 @ .5% = £30

**OR**

Average annual output 20,000 tons @ 0.15p = £30 R.V.

When buildings at accepted £5 valuation are included the overall unit rate per ton is 0.175p viz:

20,000 tons @ 0.175p = £35 (Pit - £30; Bldgs - £5)

Mr. Nerney compared the subject property to a gravel pit in R.D. Westport, Co. Mayo which was reduced from £105 to £70 by Castlebar Circuit Court in December 1985 which equated at 35,000 tons output p.a. @ 0.2p = £70. The £70 was apportioned at £66.50 on pit. Mr. Nerney also referred to **Appeal No. VA/92/2/50 Thomas Meehan -V- Commissioner of Valuation**. In this case R.V. £36 (£1 buildings) was fixed on a sandpit in Co. Galway. Average annual output was 20,000 tons, production facilities were limited and there were five other pits and a quarry operating within a radius of a few miles.

Mr. Nerney also set out the matters which he had regard to in arriving at the valuation estimates in subject appeal:-

- "(1) This is a small pit.
- (2) E.S.B. supply is laid on.
- (3) There are no facilities for crushing large stones or boulders for which demand is limited.
- (4) Costs are increased through double handling.
- (5) Demand has fallen due to decline in construction work.
- (6) Competition is keen.
- (7) There are at least six other pits within a distance of about 3 miles on either side of the subject.
- (8) Severe price cutting is necessary in order to remain in business."

Mr. Desmond Feehan presented a written submission on the 16th September, 1992 on behalf of the Respondent. In this submission Mr. Feehan described the premises and set out the basis of the valuation of the sandpit as follows:-

**Sandpit:**

The sandpit was valued on output of 20,000 tons at .28p = R.V. £56 (absolute)

Mr. Feehan also set out the basis for the use of the .28p per ton:-

"Following the Roadstone decision (Supreme Court) of 1956 the Commissioner of Valuation, having analysed Circuit Court and First Appeal decisions, drew up a schedule of prices per ton output. The figures have had widespread acceptance, and are rarely challenged by Rating Consultants, except on the grounds that the valuation office figures for tonnage output are too high.

At the conclusion of the Roadstone judgement, Mr. Justice Kingsmill Moore stated:-

"Finally, it must be remembered that the valuation directed by the Act of 1852 was to be a uniform valuation. In so far, therefore, as there is evidence of the existing valuations of similar hereditaments made on a proper basis, the valuation put on a quarry must bear a relation to other such valuations". "

Mr. Feehan set out four comparisons:-

1. 1991 Co. Wicklow R.D. Baltinglass  
E.D. Baltinglass  
Townland: Merginstown Glen on 6  
Sandpit R.V. £44 (absolute)  
Basis 15,600 tons P.A. X 0.28p = £43.68 Say £44.00

2. 1991 Co. Wicklow R.D. Baltinglass  
E.D. Donaghmore  
Townland: Castleruddery Lr 3A
- Office & Sandpit
- R.V Office £5 Sandpit £320 (absolute)
- Basis: 50,000 tons @ 0.28 = £140.00  
50,000 tons @ 0.24 = £120.00  
32,000 tons @ 0.185 = £ 59.20
- Total: 132,000 tons £319.20 say £320
3. 1991 Co. Galway R.D. Glenamaddy  
E.D. Scregg  
Townland: Richmond - 4Aa.Bc
- Sandpit R.V. £75 (absolute)
- Basis 26,000 tons @ 0.28 = £72.80 Say £75
4. 1984 Co. Carlow R.D. Carlow  
E.D. Clonegal  
Townland: Kildavin On 3A3
- Concrete block making works & Sandpit R.V. £87
- Basis:
- Store & Yard R.V. £27
- Sandpit 22,000 tons X 0.28 R.V. £61.60 say £60

**Oral Hearing:**

At the oral hearing which took place on 28th September, 1992 the appellant was represented by Mr. Patrick J. Nerney, Rateable Valuation Consultant. Mr. Desmond Feehan, District Valuer appeared on behalf of the Respondent. Also present was Mr. James Conway.

Mr. Nerney referred to his written submission dated 23rd September, 1992 and pointed out that the subject hereditament was a small sandpit which achieved relatively small prices for output because of its location in an area where there were several competitors. In this context Mr. Nerney said that, in his view, the decision in the Roadstone case of 1956 on which the respondent placed such emphasis, suggested that in areas where there were many competitors for business, the hypothetical tenant would pay less in terms of rent.

If the .5% fraction were to be applied to N.A.V. in arriving at the Respondent's estimate of 0.28p per ton this would result in an N.A.V. of £0.56p per ton. Accepting the appellant's evidence in relation to his selling price of £1.00 per ton for gravel, this would, he said, result in a patently unfair estimate of N.A.V.

Mr. Conway gave evidence that there were approximately 10 other sandpits in the immediate vicinity. He confirmed that he was getting around £1.00 per ton for gravel and around £3.75 for washed sand, which he might deliver in a radius of approximately 25 miles.

Mr. Feehan referred the Tribunal to comparative properties in the vicinity, which are shown in the map appended hereto as Appendix A and pointed out that most of these comparisons were 1988 revisions and the R.V.'s had been arrived at by settlement and based on the application of 0.28p per ton.

Mr. Feehan also furnished the Tribunal with a detailed analysis of the formula devised by the Commissioner of Valuation after the Roadstone decision in 1956. In his view, the increasingly high capital costs of running a very large operation justified the descending scale of R.V. percentage per tonnage.

### **Findings**

In arriving at its decision the Tribunal has had regard 'inter alia' to the judgment of Justice Barron in the I.M.I. case and his interpretation of Section 5 Subsections 1 & 2 of the 1986 Valuation Act.

In the instant case the subject hereditament is one of a group of sandpits, all in the same area, at least 5 of which have been recently revised and agreed, apparently on the basis of an R.V. of £0.28p per ton.

Although Section 11 of the Valuation (Ireland) Act 1852 and its unequivocal relation of Net Annual Value to rateable valuation may appear to be diluted by Section 5 of the Valuation Act, 1986, nonetheless as Justice Barron says in relation to the latter:-

"The section does not alter the fundamental basis upon which valuations are made, i.e. what the hypothetical tenant will offer on the basis of taking one year with another".

Mr. Justice Barron goes on to say that Subsection 2 of Section 5 of the 1986 Act:

"is not a provision standing on its own. What is being sought is an overall proportion between hypothetical rents and valuations".

The application of £0.28p per ton on sandpits of up to 50,000 tons in output has been observed and largely uncontested for almost 30 years.

It does not seem to take account of the essential and fundamental necessity of estimating Net Annual Value. While the Tribunal is conscious of the necessity for uniformity and equity among properties which are comparable, of similar function and recently revised the bedrock of Net Annual Value, whether actual or estimated, must be established.

The subject property is a small scale operation, with an average annual output of 20,000 tons. It is surrounded by at least 10 competitors in the immediate vicinity. The appellant has given evidence that the lorries he owns are more lucratively used in the haulage business than in the transport of materials for the sandpit.

The minimum capital investment for this type of business, even on a small scale is considerable. An organisation like Roadstone's with an output of 166,000 tons in 1956 is so vastly different in scale that its relevance in arriving at an estimated R.V. per ton is diminished.

Regardless of the several comparative R.V.'s in the area, the Tribunal feels that an estimate of N.A.V. must be sought for the subject, and that such N.A.V. must be estimated on a realistic basis, taking into account the size of the hereditament, its location among competitors and the finite nature of the business itself.

In all the circumstances the Tribunal is of the opinion that the correct R.V. of the subject hereditament is £52 (sandpit £47, workshop £5) and so determines.