

Appeal No. VA05/2/005 &
006

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

Peter Gunter & Carrigaholt Restaurants Ltd.

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. Unit 1- (VA05/2/005) & Restaurant/Cafe at Lot No. Unit 4- (VA05/2/006), Clare Road Business Centre, Clonroad More, Ennis A.R.A, Ennis Urban, County Clare.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF OCTOBER, 2005

By Notices of Appeal dated the 7th day of April, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of €80.00 and €145.00 respectively on the above described relevant properties.

The Grounds of Appeal as set out in each Notice of Appeal are:

"The valuation is excessive and bad in law. Not valued in line with comparables."

1. With the consent of the parties these appeals were held contemporaneously on the 30th of May, 2005 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing the appellants were represented by Ms. Sheelagh O Buachalla, BA, ASCS, MRICS, a Director of GVA Donal O Buachalla. Mr. Shay Aylward, B.Comm., FCCA, a Staff Valuer with the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation, in relation to each appeal.

The Properties Concerned

2. The properties concerned are located within a newly built development known as the Clare Road Business Centre which is located at a roundabout on the east side of the main Ennis to Limerick road on the edge of Ennis town almost directly opposite to St. Flannan's College. Access to the development, which is built on a sloping site, is off a side road about 50 metres from the roundabout. The surrounding area is mainly residential in character with some localized retail and commercial activity.
3. The Clare Road Business Centre development consists of a restaurant and three retail units on the ground floor with offices at first floor level. There are two additional floors overhead but these have not yet been fitted out and are incapable of beneficial occupation. At the side and rear there is an enclosed car park, which also provides access to stores at this level.
4. The properties which are the subject of these appeals are unit No.1 and unit No. 4 and the relevant facts as agreed in relation to these properties are as set out hereunder:

a) VA05/2/005 – Appellant Peter Gunter

Unit No. 1

User: Video Rental Shop

Agreed area measured on nett internal area basis

Shop area 153.96 sq. metres

Shop store 17.80 sq. metres

Occupied under a 25-year lease from the 1st of June, 2004 at an initial yearly rent of €60,000 with provision for rent reviews at five-yearly intervals.

b) VA05/2/006 – Appellant Carrigaholt Restaurants Ltd.

Unit No. 4

User: Restaurant/Café

Agreed area measured on nett internal area basis

Restaurant/Café including kitchen	276.8 sq. metres
Food preparation/wash area	18.36 sq. metres
Basement stores and staff accommodation	100.9 sq. metres
Basement offices	8.7 sq. metres

Occupied under a 30-year lease from the 1st June, 2004 at an initial yearly rent at €15,000 with provision for rent reviews at 5 yearly intervals.

Valuation History

On the 1st November, 2004 valuation certificates were issued by the relevant revision officer pursuant to Section 29 of the Valuation Act, 2001 to the effect that the rateable valuations of Unit 1 and Unit 4 had been determined at €0 and €175 respectively. Following appeals to the Commissioner of Valuation the above assessments were reduced to €80 and €145 and it is against these determinations by the Commissioner that the appeals to this Tribunal lie.

The Appellant's Evidence

Ms. O Buachalla having taken the oath adopted as her evidence-in-chief the written précis and valuations which had previously been received by the Tribunal. At the hearing Ms. O Buachalla amended her opinions of rateable value and contended for assessments of €52 and €95 for units 1 and 4 respectively. The details of Ms. O Buachalla's valuations as amended are set out below:

(a) Unit 1

Appeal No. VA05/2/005 - Peter Gunter

Retail	153.96 sq. metres @ €80.14	= €12,338.00
Store / Staff Room	17.8 sq. metres @ €41.00	= €729.80
Total NAV		€13,067.80
Rateable Valuation @ 0.4%		= €52

(b) Unit 2

Appeal No. VA05/2/006 – Carrigaholt Restaurants Ltd.

Ground Floor Restaurant	221.94 sq. metres @ €73.80	= €16,379.17
Kitchen	56.16 sq. metres @ €60.14	= €3,377.46
Prep Area	18.36 sq. metres @ €41.00	= €752.76
Basement Store	83.35 sq. metres @ €27.33	= €2,277.95
Office / Canteen	25.22 sq. metres @ €34.17	= €861.76
Total NAV		€23,649.10
Rateable Valuation @ 0.4%		= €95

In support of her opinion of net annual values Ms. O Buachalla introduced a number of comparisons, details of which are attached in Appendix 1 to this judgment. The same comparisons were relied upon in relation to each appeal.

In her evidence Ms. O Buachalla said the Clare Road Business Centre occupied an out of town location and benefited little from passing traffic due to the fact that there was no direct access from the Ennis to Limerick road. In effect the shops in the centre which, in addition to the subject properties, consisted of an Off-Licence, Bookmaker and Restaurant (VA05/2/006), relied mainly upon custom drawn from housing estates in the immediate vicinity. Ms. O Buachalla said both businesses were in a start up position at

the valuation date and experienced relatively low levels of trade due to the out of town location.

Ms. O Buachalla in additional oral evidence was critical of Mr. Aylward's use of his comparisons A and B (see Appendix 2). These properties, Ms O Buachalla said, were shop units attached to modern filling station forecourts and hence were not retail units in the accepted sense. Ms. O Buachalla said that in her experience shops attached to filling stations attracted a premium of about 10% in valuation levels over and above assessments of standard retail units in the immediate vicinity of the filling station concerned.

Under examination Ms. O Buachalla agreed that all her comparisons occupied town centre locations but did not agree with Mr. Aylward's contention that they were off prime. She agreed that the Xtra-Vision unit (her comparison No. 1) had a short frontage relative to its depth and her comparison No. 2, Mid-West Tiles, was in a refurbished former mill building with frontage onto a local authority car park.

Respondent's Evidence

Mr. Aylward having taken the oath adopted his précis and valuation in respect of each property which had previously been received by the Tribunal as being his evidence-in-chief.

In his evidence Mr. Aylward contended for rateable valuations of ~~€80~~ and ~~€145~~ in respect of units 1 and 4 calculated as set out below.

(a) Unit 1

Appeal No. VA05/2/005 - Peter Gunter

Retail/Ground floor	153.96 sq. metres @ €23.01	= €18,938.00
Stores	17.8 sq. metres @ €2.00	= €1,460.00
Total NAV		€20,398.00
Rateable Valuation	@ 0.4%	= €80

In support of his opinion of the net annual value of Unit 1 Mr. Aylward introduced 4 comparisons, details of which are set out in Appendix 2 attached to this judgment.

(b) Unit 4

Appeal No. VA05/2/006 – Carrigaholt Restaurants Ltd.

Ground Floor Restaurant	276.8 sq. metres @ €16.17	= €32,155
Ground Floor Wash Area	18.3 sq. metres @ €8.34	= €1,251
Basement Office	8.7 sq. metres @ €41.00	= €357
Basement Stores, Staff Room	100.9 sq. metres @ €41.00	= <u>€4,137</u>
Net Annual Value		= €37,900
Rateable Valuation @0.4%		= €151.60
Further allowance for quantum/kitchen	Say	= €145

In support of his opinion of the net annual value of Unit 4 Mr. Aylward introduced 5 comparisons, details of which are set out in Appendix 3 attached to this judgment. The same comparisons were advanced in his report for each appeal.

In evidence Mr. Aylward said that in arriving at his opinion of net annual value he had examined the valuation of other retail premises in the vicinity of the property concerned. Mr. Aylward said that there were four filling stations on the Ennis to Limerick road located relatively close to the Clare Road Business Centre. Each of these filling stations, he said, had shops attached to them all of which were valued at €136.67 per sq. metre. He said that his comparisons A and B were the nearest to the subject property- comparison A was on the town side of the subject whilst comparison B was on the other side. Contrary to Ms. O Buachalla's statement Mr.

Aylward said that it was not the practice of the Valuation Office to apply a loading factor to shops attached to filling stations.

Mr. Aylward said he had also looked at assessments elsewhere in Ennis and had selected comparisons C, D and E as examples. Mr. Aylward said that in his opinion his comparisons A, B and C were most relevant as they were located relatively close to the subject property and were somewhat similar in category of use.

Under examination Mr. Aylward agreed that shops in Ennis town centre would have a better passing trade than that enjoyed by the subject property. He further agreed that the surrounding area was predominantly residential in character and was still in the course of development. Mr. Aylward said that he had taken all of these factors into account when arriving at his opinions of net annual value including the proximity of St. Flannan's College which in his opinion was a positive factor.

Findings

The Tribunal has carefully considered all the evidence both oral and written and has had regard to the arguments advanced by both parties and makes the following findings.

1. The Clare Road Business Centre occupies an out of town location and hence the Tribunal does not attach much weight to comparisons which are located in or close to Ennis Town Centre.
2. Of all the comparisons introduced the Tribunal considers Mr. Aylward's comparisons A, B and C to be of most assistance.
3. It is common case that there is no direct vehicular access to the car park attached to the Clare Road Business Centre off the main Ennis to Limerick road. The Tribunal accepts Ms. O Buachalla's opinion that this drawback coupled with the proximity to the roundabout would have an adverse effect on the rental values of the property concerned. The Tribunal also accepts Ms.

O’Buachalla’s opinion that the properties concerned enjoy little passing trade and hence would not be considered to be an attractive retail location. This to some extent is borne out by the present tenant mix which are more in the line of service providers than retailers as such.

4. The Tribunal is of the opinion that Mr. Aylward in arriving at his opinion of net annual value did not have sufficient regard to the inherent drawbacks in the location above referred to.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuations of Unit 1 & 4 as being €66 and €23 respectively calculated as set out below.

A) Unit No. 1

Appellant: VA05/2/005 – Peter Gunter

Ground Floor Shop	153.96 sq. metres @ €100 per sq. metre	= €15,396
Stores	17.8 sq. metres @ €5 per sq. metre	= <u>€1,157</u>
Net Annual Value Say		= €16,500
Rateable Valuation @ 0.4%		= €66

B) Unit No. 4

Appellant: VA05/2/006 – Carrigaholt Restaurants Ltd.

Ground Floor Restaurant	276.8 sq. metres @ €5 per sq. metre	= €6,296
Ground Floor Wash Area	18.3 sq. metres @ €3 per sq. metre	= €90
Basement Office	8.7 sq. metres @ €3 per sq. metre	= €87
Basement Stores/Staffroom	100.9 sq. metres @ €3 per sq. metre	= <u>€3,329</u>
Net Annual Value Say		€3,800
Rateable Valuation @ 0.4%		€23