

Appeal No. VA05/3/050

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

Xtra-vision Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Lot No. Unit 7, Owenabue Mall, Carrigaline Middle, Carrigaline, Cork Lower, County Cork

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF JANUARY, 2006

By Notice of Appeal dated the 20th July, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €190.00 on the above described relevant property.

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

"The RV €190 is excessive having regard to the established tone of the list and to the levels applicable to other retail units in Carrigaline."

At issue

Should the Valuation be carried out by reference to zoning, or not, and if in the affirmative, how should the subject relevant property be zoned?

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin, on the 7th October, 2005. The appellant was represented by Mr. Joseph Bardon, FSCS., FRICS., Dip. Environmental Economics, and the respondent by Mr. Terence Dineen, B.Agr.Sc., District Valuer with the Valuation Office.

In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their respective submissions to the Tribunal. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property

The property comprises of an irregularly shaped retail unit within the Ground Floor of a part single, part two storey and part three storey mixed commercial development recently constructed and all identified as Owenabue Mall, positioned in close proximity to Main Street Carrigaline and with a south elevation fronting a public car park overlooking the Owenabue River and the recently upgraded Crosshaven Road. The subject property is occupied and trades as Xtra-vision and its frontage is set back and primarily facing Main Street to its west, and a return portion of circa 4 metres facing south to the adjoining car park.

The building was recently constructed to a modern standard with concrete floors, smooth rendered concrete walls, PVC framed windows, a flat roof to its single storey section and pitch roof to its two storey section. Internally, the subject floors are carpeted, ceilings are fitted with acoustic tiles and walls are smooth plastered and timber panelled. Owenabue Mall comprises five ground floor units (one incorporating a basement), three first floor units and one second floor unit. The main frontage of the subject retail unit, incorporating a set of double doors, being the ground floor of the two storey block, measures circa 10.8 metres with circa 9.1 metres within the timber shopfront. The front elevation extends by a further circa 6 metres within the single storey extension to the north. These two elevations feature overhead timber fascias incorporating signage to the style of Xtra-vision, and fenestration below. The remaining elevation, which does not contain a window or other forms of relief or decoration

and is essentially on the gable side of the two storey structure, faces south and measures circa 4 metres.

Tenure

The subject relevant property is held on a 20 year lease, which commenced in February, 2004, at a Passing Rent of €85,000, taken in a shell condition, with rent reviews on the expiry of each five-year term, and with a break option in year 10.

Valuation History

The property was revised on 6th December, 2004. The Commissioner of Valuation (COV) issued a Valuation Certificate with a rateable valuation (RV) of €205. An Appeal was filed on 14th January, 2005, and following consideration of same, the COV reduced the RV to €190 on the 24th June, 2005.

Appellant's Case

Proceedings commenced when Mr. Bardon assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and provided the Tribunal with a review and synopsis of his submission.

Mr. Bardon explained that in early January 2005 his firm, representing the appellant, had made representations to the Valuation Office but failed to persuade the Revision Officer to reduce the RV determined at that time at €205. Following the submission of a formal Appeal on 14th January, 2005 further discussions took place between the parties, including both the Revision Officer and the Appeal Officer, which resulted in a reduced RV of €190. On 20th July, 2005, Bardon & Co. filed this Appeal with the Valuation Tribunal. Mr. Bardon summarised the contents of his written submission and essentially focused on two net points for consideration, as follows:

1. The property, he contended, should have been valued on a zoned basis in common with many other Main Street retail units, revised in Carriagline in recent years. He referred to a Valuation Report, which was apparently prepared by Mr. Terry Dineen, as Revision Officer, on 30th October, 2004, which contained just one comparison property, namely Boylesports, being a Bookmaker's Shop, on a corner of Main Street, in Carriagline, which was valued on a zoned basis.

2. If the zoning approach were to be adopted in this case, how was the floor area to be measured, as the footprint of the building is of such an irregular shape?

Mr. Bardon stated that he argued at First Appeal stage that the combined external measurements of the two frontages facing Main Street should be adopted to determine Zone A, whereas the COV was also apparently including the windowless frontage on the south side of the building. Mr. Bardon expressed the view that it was erroneous for the Valuation Office to include the latter frontage. He stressed that the correct basis to calculate frontage was to include the full width of circa 10.8 metres of the primary frontage of the building, which faces west and is located within the two storey structure. He explained to the Tribunal that he came to this revised conclusion post previous discussions with the Valuation Office upon reviewing the contents of the *Valuation Office Code of Measuring Practice* (the Code) which, he informed the Tribunal, contained a distinction to be made between shop frontage and overall frontage of a unit. Mr. Bardon included a one page extract from the Code within his précis of evidence, attached as Appendix 1 hereto.

While acknowledging that the profile of the subject relevant property was good from the south due to the absence of any obstructions or vertical development in its immediate environs, he stated that conversely the profile viewed from the north was quite poor primarily because much of the unit was set back from Main Street and was somewhat hidden from view by the buildings adjoining it to its north side. However, Mr. Bardon also acknowledged that the considerable frontage of the building would, in his view, merit a premium of 5% on the calculation of its value.

Mr. Bardon provided valuation analysis on two comparison properties (see Appendix 2 hereto), namely Boylesports, which contained Zone A, Zone B and Zone C analysis, at €218.66 per sq. metre, €109.33 per sq. metre and €54.66 per sq. metre respectively over its total Ground Floor area of 121.62 sq. metres. His second comparison, which was also a Ground Floor unit on the Main Street, was Zoned A and B for Valuation purposes, at €218.66 and €109.33 per sq. metre respectively. His written submission also contained reference to an earlier structure on Main Street, which was previously zoned for Valuation purposes and which contained the former Xtra-vision Ltd., but informed the Tribunal that this building had since been demolished.

In accordance with the foregoing, Mr. Bardon sought a reduction in the RV of the subject property, to a figure of €150, which he analysed as follows:-

Zone A	65.88 sq. metres. @ €18.66 per sq. metre	€14,383
Zone B	65.88 sq. metres @ €109.33 per sq. metre	€7,191
Balance	124.54 sq. metres @ €54.66 per sq. metre	€6,807
		€28,381
Add 5% for additional frontages		say <u>€1,419</u>
		€29,800
	NAV €29,800 @ 0.5% = €149.00	Say €150.00

Mr. Bardon concluded his direct evidence by highlighting the reduced visibility of the frontage of the subject property when approaching it from the north; he acknowledged that the Passing Rent was lower than all of the other five units leased within Owenabue Mall, and suggested this might be a reflection of the trading strength, profile and covenant of Xtra-vision as a national trading brand. He expressed a strong view that the property should be valued on a zoned basis and that the aforementioned Code required thought to be given to the “timber shop front” only to establish frontage. By contrast, he cited O’Riordan’s Toymaster store at the rear of Owenabue Mall, which arguably had two large shop fronts on opposite elevations of their unit which could not all be taken together as frontage for the purpose of determining the value of the floor areas within on a zoned basis. He explained that he followed the Code by adopting a frontage of 10.8 metres in width, returning a distance of 6.1 metres in depth to establish a Zone A area of 65.88 sq. metres, and then took a further floor area of 65.88 sq. metres and designated it as Zone B and, consistent with practice, he claimed to apply a Zone C value on all of the remainder floor area of the subject shop. He employed the “halving back” approach to the €Rate per sq. metre. He then applied a 5% uplift in values to represent a premium, which he felt was attributable to the generous frontage available to this property and its enhanced elevation when viewed from the south.

Cross-examination

Mr. Dineen commenced cross-examination by seeking clarification from Mr. Bardon on the manner in which he first apparently included all of the glazed shop front areas for the purpose of zoning and later reduced same by omitting that part of the shop front which features the

front elevation of the single storey structure. Mr. Bardon acknowledged that, at First Appeal stage, he had approached it on the basis of incorporating both elevation frontages to Main Street, and at the time had not allowed a 5% premium to apply to his calculations. In reply to Mr. Dineen, Mr. Bardon also confirmed that O’Riordan’s Toymaster was trading from a retail unit at the rear of Owenabue Mall and that he, as a Valuer, would not have applied zoning principles to value any and all of the remaining units contained within Owenabue Mall. Mr. Dineen asked Mr. Bardon for his view of the relationship between ground floor shops and first floor offices as regards rent per square metre. He agreed with Mr. Bardon’s view that a first floor office would rent at approximately two thirds less per sq. metre than a ground floor shop.

Respondent’s Case

Mr. Dineen then assumed his position in the stand, took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. He handed the Tribunal a copy of the Valuation Office *Guideline on the Use of Zoning as a Valuation Model (April 1998)* (the Guideline), see Appendix 3 hereto. Mr. Bardon confirmed to the Tribunal that the *Valuation Office Code of Measuring Practise* on which he relied, and which is referred to earlier in this Judgment, predated this Guideline.

Mr. Dineen contended that the subject property in general, and the south elevation of Owenabue Mall in particular, enjoyed a very good profile and this accordingly might explain in part why the Passing Rents were as good as they were for the retail units therein. Mr. Dineen then explained in summary form how the RV of €190 could be calculated. He indicated that by adopting Mr. Bardon’s earlier approach incorporating all of the circa 15 metre frontage, the RV would calculate to a sum equivalent to €172.50. Mr. Dineen then suggested that this figure should be raised by a value of 10% to reflect the benefit of the free, on site, public parking facility. Accordingly the RV would increase in total to €190, being the sum currently determined by the COV. He commented that there were four additional retail units within the Owenabue Mall and just two units associated with the anchor, in the Carrigaline Shopping Centre across the street and in close proximity to the subject.

Mr. Dineen also expressed the view that the first floor office units above might be considered as comparison properties. He argued that the subject property could be not be valued on a zoned basis as it was attached to the other units at the rear, but that if it were to be zoned, the

valuation practice would require the adoption of all of the frontage facing Main Street or circa 15.3 metres, together with 50% of the south elevation return, which as noted previously, measured circa 4.3 metres in total and by his calculations a similar RV would result, i.e. at or about €190.

Mr. Dineen explained that at First Appeal the decision was taken not to value the property on a zoned basis, primarily as the Owenabue Mall was a stand-alone development with its own address; no other properties on the street had the same propinquity to the large public car park; the rents of the units facing south were apparently more valuable than that of the unit fronting Main Street; and the approach to valuation was consistent with the manner in which the units adjoining the anchor in the nearby Carrigaline Shopping Centre were treated for the purpose of Valuation.

Mr. Dineen said that the issues raised by the appellant at First Appeal, namely:

1. Zoning of the subject unit to reflect its unusual shape;
2. Relief as the profile of the unit from the north was poor;
3. Further relief to reflect the irregular shape of the floor plate and possible limited uses;
4. The apparent low level of Passing Rent;

did not merit support in his view.

Mr. Dineen's précis contained reference information on all of the units trading and occupied on the Ground and First Floor of Owenabue Mall. It contained details of Passing Rent, analysed Net Annual Values per square metre, as initially determined by the Valuation Office, and where applicable, later adjusted following representations made on same. In the case of the subject the initial NAV was reduced, following Appeal, by 7.5% to acknowledge shape and size considerations specific to it. Mr. Dineen also provided the Tribunal with details of the manner in which Unit 1 –3, being Toymaster, had an initial NAV per square metre calculated and later adjusted to €136.67 per sq. metre following First Appeal. He suggested that the reduction in the RV of €19 per sq. metre on Toymaster resulted from a combination of the following factors: its location at the rear of the Mall as opposed to the location on Main Street enjoyed by the subject; the apparent excessive Passing Rent; the

alleged over-selling of the Centre by the developer; and the alleged poor trading performance of that particular toy store.

Mr. Dineen's précis also contained reference details on Units No. 7 and 12 in the Carrigaline Shopping Centre, being a fashion retail unit and restaurant respectively. Mr. Dineen's comparisons are at Appendix 4 hereto.

Cross-examination

In reply to Mr. Bardon, Mr. Dineen confirmed that he had considered the configuration of the floor plan of the subject and made allowances for same in his calculation of RV. He also explained that, in his view, the subject should not be zoned as it carried an address at Owenabue Mall similar in fact to the unzoned units valued within the Carrigaline Shopping Centre across the street. Mr. Bardon queried why Mr. Dineen had not followed the principles and practice of zoning as set out in the Revision Officer's Valuation Report of 13th October, 2004 which drew on one Comparison property, namely Boylesports, which was valued and analysed on a zoned basis. He asked why Mr. Dineen, when compiling that initial Valuation Report, did not cite the two Comparison units now provided in his submission to the Tribunal, namely Units 7 and 12 in the Carrigaline Shopping Centre.

In response, Mr. Dineen stated that the Valuation Report should not be seen as an exhaustive analysis of the recommendation made by the Revision Officer. He explained that the Staff Valuer within the Valuation Office was provided with a Schedule of the Passing Rents on all of the occupied units within Owenabue Mall, which Mr. Dineen considered useful in assisting with the determination of a fair Rateable Valuation on the subject. Mr. Bardon expressed concern as to how information was shared and exchanged between the relevant parties within the Valuation Office on such an exercise commencing from the initial Revision and proceeding through the Representation stage, First Appeal and finally Appeal to the Tribunal.

Mr. Bardon contended that the Carrigaline Shopping Centre, with its anchor and two units, differed substantially from the Owenabue Mall, but acknowledged that, in his view, the parking facility at the latter was superior to the Shopping Centre across the street. Mr. Bardon also put it to Mr. Dineen that the visibility of the subject was poor when approaching from the north, and that its southern elevation did not display signage to identify Xtra-vision trading within the subject. Mr. Bardon did acknowledge that the unit was easily seen from

the bridge over the Crosshaven River, which is in close proximity to the subject, but in reply to the foregoing, Mr. Dineen contended that he did not primarily rely upon profile to the south in determining the RV on the subject. In a further response, Mr. Dineen indicated that, in his view, Passing Rent of itself should not be totally relied upon, but that a pattern of Passing Rents could be useful to the exercise of Rating Valuation. He additionally stated his belief that the lower rent apparently being paid on the subject reflected the unusual shape and floor plan, and would not acknowledge or accept Mr. Bardon's view that the Passing Rent on the other retail units in Owenabue Mall might be too high. To support his opinion on the earlier view on the use of Passing Rents, he provided the Tribunal with a copy of the Lands Tribunal for Scotland case, being **WH Smith PLC v Glasgow Assessor and Renfrewshire Joint Board Assessor** (2004) RA 197-219.

Mr. Bardon challenged Mr. Dineen's approach of introducing contemporary valuations as comparisons from the Valuation Office, all derived on the same day, in the Owenabue Mall, as appropriate or reliable evidence. Mr. Dineen responded that he could not see a reason why they could not be used as suitable comparisons and introduced into evidence, at which Mr. Bardon expressed the concern that such a procedure could lead to a disregard for the "tone of the list", and he referred to the findings of the Tribunal in **VA04/1/028 – Careworks Ltd.**, and in particular to paragraph 3 of the Findings therein, which states:

"3. Obviously what constitutes relevant evidence is a matter of opinion but having regard to the scale and variety of office developments in the Sandyford Industrial Estate, the Tribunal attaches most weight to the evidence drawn from within the estate than that drawn from elsewhere. In relation to the evidence about assessments in the Apex scheme, the Tribunal is of the opinion that Mr Hicks was entitled to put it forward for consideration by the Tribunal. Nonetheless given the fact that the properties were valued at the same time as those under appeal this evidence must be treated with some degree of caution and critically examined to see if it fits in with the prevailing pattern of values for office developments established in the Sandyford Industrial Estate."

Mr. Bardon, while arguing that the Owenabue Mall, unlike the Carrigaline Shopping Centre across the road, is not a shopping centre, questioned why Mr. Dineen used the two unzoned units in that Centre as comparative evidence in his written submission. Mr. Dineen again stated that they were not zoned, were located in a shopping centre and were actually inferior

in his mind to the subject. Referring to the definitions of “shop front” and “building front” and their respective differences based on whether the building was a shop only or mixed, sharing a front serving offices for example, Mr. Dineen argued that it was proper to include both western elevations of the subject in determining the shop frontage in this case.

Findings & Conclusion

The Tribunal has carefully considered all of the evidence, both oral and written, submitted by the parties and the arguments adduced and makes the following findings:

1. The Gross Internal area of the subject unit is agreed between the parties at 256.3 sq. metres.
2. The subject property, as commonly agreed by the parties, has an unusual floor plan with disproportionate frontage compared to its initial internal front of shop depth.
3. The shop frontage profile approached from the north is somewhat compromised but this is offset by a corresponding improved profile of the unit when approached from the south.
4. Unit No. 7, being the subject trading as Xtra-vision, should be considered as a shop bearing common features with many other retail outlets availing of Main Street location and profile in Carrigaline.
5. In addition to the foregoing, the subject property benefits from the availability of up to 80 car parking spaces adjoining the southern elevation of Owenabue Mall.
6. The subject benefits from both its position on the Main Street and its linkage with the other four retail units within Owenabue Mall.
7. The Valuation Tribunal shares the views expressed in Finding No. 3 of the Tribunal determination in Appeal ref. **VA04/1/028 - Careworks Ltd.**, which acknowledged that most weight should apply to comparative evidence from within what was in that case an Industrial Estate, and further shares the opinion in this case, that Mr. Dineen was entitled to bring forward comparative evidence derived from Owenabue Mall in support of his calculation of Net Annual Value. However, again consistent with the earlier view of the Tribunal in the **Careworks Ltd.** case, the Tribunal considers it appropriate to treat such evidence with caution and considers itself obliged to have regard to the values of other properties offered in evidence in this case.

8. The appellant's case was made essentially on two net points, namely; whether the subject property was to be valued on a zoned basis or not, and secondly, if the former were to apply, how the *Valuation Office Code of Measuring Practice* might be interpreted to determine which or to what extent the lineal distances of the frontage or frontages might apply in the formula to reach an appropriate NAV Rate per sq. metre, if applicable, on Zone A and Zone B and the balance of the gross internal area if such were to result.
9. Mr. Bardon's declaration that the appropriate Zone A level NAV for Carrigaline town centre retail units of €218.66 per sq. metre was not contested or challenged by Mr. Dineen. The Valuation Report prepared by Mr. Dineen as Revision Officer dated October 2004, contained only one Comparison property, the value of which was analysed by reference to zoning practice.
10. The Tribunal is mindful of the Valuation Office *Guideline on the Use of Zoning as a Valuation Model (April 1998)*, which contemplates zoning as a method of analysis of rental evidence, which, if correctly applied, is an important valuation tool for retail property. The Guideline requires its use to be regarded as an aid to valuation and states that its use must at all times be over-ruled by common sense.
11. In the circumstances of this particular appeal the Tribunal considers it prudent to follow the Guideline in use by the Valuation Office which adopts zoning as a tool suitable for properties which are located at Ground Floor level in a High Street location, or in Shopping Centres, and where the use of zoning is based on the availability of sufficient market information to enable rental analysis to be carried out.
12. The Tribunal considers that the foregoing criteria are available, the unit is positioned and trades in common with many others in the Main Street of Carrigaline, and concurs with the appellant that the subject property should be valued by adopting zoning as a method to analyse the rental evidence in this case.
13. The primary purpose of zoning is to devise a method of analysis to provide the most accurate estimate of annual Rental Values of shops of different characteristics for Rating purposes, and in so doing must recognise the concept that the frontage of a shop is particularly important and that the retail area nearest the street is its most valuable.

14. The Tribunal regards the views expressed by an earlier division of the Tribunal in its determination in **VA95/6/025 - A.I.B. Bank, Sutton**, as referred to in the above noted Guideline, to be both relevant and appropriate.
15. The unusual configuration and disproportionate frontage to immediate depth ratio of the subject challenges the Valuers to adopt a skilful approach to ensure the appropriate assessment of value is made on a basis uniform and consistent with comparative evidence.
16. The respondent did not provide the Tribunal with comparative rental evidence of other retail units fronting Main Street Carrigaline valued on a zoned basis.
17. The appellant provided two examples of comparison properties valued for Rating purposes adopting the zoning approach as a Valuation model, namely; Boylesports and Paddy Power, both Ground Floor units trading and fronting onto Main Street in Carrigaline.
18. The configuration or floor layout of the subject property does not enable the Valuer to apply the normal zoning formula of applying the width of the shop frontage multiplied by a depth measurement of 6.1 metres, which would be the norm to apply in retail circumstances. The Tribunal is of the view that the two west facing elevations should be combined to establish the appropriate frontage of the building, namely 15.3 metres and apply a depth factor thereto to an equivalent of 6.1 metres, which would result in a Zone A area of 93.33 sq. metres. Accordingly, in this case, Zone B would assume the same floor area of 93.33 sq. metres and the remainder Zone C, an area of 69.64 sq. metres.
19. The Tribunal is of the view that in this particular case again, the “halving-back” procedure should result in a further reduction of 25% on the assessed rate per sq. metre to allow for: the unusual nature of the configuration; the untypical ratio of frontage to initial shop depth; and the significant majority floor area of the subject located far to the rear of the front section of the subject shop unit. The Tribunal has also been guided by the principle of maintaining uniformity in terms of Valuation for Rating purposes as was evidenced by the zoning model approach applied on the two comparisons cited by the appellant.
20. The Tribunal has not been convinced of the need to apply a 5% premium on the value of the subject with regard to the profile to the south, or 10% to account for parking available to the unit.

Accordingly, the Tribunal hereby adopts the following approach to valuation and determines the net annual value and the rateable valuation of the subject properties as follows:

Zone A: 15.3 metres x 6.1 metres = 93.33 sq. metres @ €218.66 per sq. metre = €20,408

Zone B: 93.33 sq. metres @ €109.33 per sq. metre less 25% = €82 per sq. metre = €7,653

Zone C 69.64 sq. metres @ €54.66 per sq. metre less 25% = €41 per sq. metre = €2,855

Total NAV €30,916

NAV: €30,916 @ 0.5% = €154.58

Say: RV €155

And the Tribunal so determines.