

Appeal No. VA96/3/023 &
VA96/3/024

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

Aer Lingus

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Electrical Power Connections at Map Refs: 2B/62 (West Apron) & 12A/47 (East Apron),
Ballyhennessy, ED: Clenagh, RD: Ennis, Co. Clare
Rateable Occupation

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Fred Devlin - FRICS.ACI Arb.

Deputy Chairman

Michael Coghlan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF OCTOBER, 1997

By Notices of Appeal dated the 24th day of July 1996 the Appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £25 on each of the above described hereditaments.

The grounds of appeal as set out in the said notices are:

- "1. The subject does not comprise a rateable entity.
2. Aer Lingus do not have the exclusive use of the facilities which should therefore be more correctly rated to Aer Rianta."

The properties are described by the Respondent as electrical power connections. The Respondent further describes them as static power facilities at Shannon Airport.

The valuation history is that the facilities were valued in the 1993/1 Revision and were included in the valuation of Lot 2B/5 (Pier), Townland: Ballyhennessy, Occupier - Aer Lingus, Description - Offices, RV £410.

When valuing Lot 2B/5 at first appeal, the Appeal Valuer decided to value the ground power facilities separately from the offices. The result of the first appeal was published on 1st July 1996.

A written submission prepared by Mr. Frank O'Donnell, B.Agr.Sc., on behalf of the Appellant was received by the Tribunal on 3rd December 1996 together with a written statement of Mr. Peter Reynolds, Head of Facilities, Engineering in the Appellant Company. Mr. O'Donnell was a former District Valuer with the Valuation Office and has over 30 years experience in the practice of valuation.

The essential points in the written submission were that the hereditaments were not rateable in terms of the Valuation Code and if they were rateable then they were not in the rateable occupation of the Appellant. The written submission contained a number of other issues which were either not proceeded with at the hearing of the appeal or were capable of amendment at the hearing by the Tribunal.

A written legal submission by the Appellant was received by the Tribunal on 23rd January 1997.

A written submission on the part of the Respondent was received by the Tribunal on 29th November 1996. The written submission was prepared by Mr. John Smiley. Mr. Smiley is a District Valuer with 21 years experience in the Valuation Office.

Mr. Smiley's opinion as to the rateable valuation was as follows:-

Rent fixed 1976		£10,901 (No rent review)
Say NAV		£10,000
RV £10,000 x 0.5%	=	£50.

As half the outlets were on the East Apron and half on the West Apron, this £50 was divided as follows:-

Lot No. 2B/62 (West Apron) Townland: Ballyhennessy, RV £25.

Lot No. 12A/47 (East Apron) Townland: Rineanna South, RV £25.

Mr. Smiley's written précis contained a copy document dated 30th November 1976 which set out the legal relationship between the Appellant and Aer Rianta, the owner of Shannon Airport, with respect to the subject matter of this appeal.

A written legal submission on behalf of the Respondent was received by the Tribunal on 5th March, 1997.

The oral hearing took place in Dublin on the 12th day of May 1997. Ms. Margaret Nerney BL instructed by P.J. Larkin, Solicitors for Aer Lingus appeared for the Appellant. Mr. Eamonn Marray BL instructed by the Chief State Solicitor appeared for the Respondent.

Mr. Peter Reynolds was the first witness for the Appellant. In his sworn evidence he stated he was the Head of Facilities Engineering at Dublin Airport for Aer Lingus. His duties included control of Aer Lingus activities at Shannon Airport. He described the origins of the Ground Power Units hereinafter described as GPUs at Shannon Airport. Prior to 1976 there

had been a mobile facility which was causing congestion. He said that modern airports were installing static ground power facilities.

Using photographs from Mr. Smiley's written submission Mr. Reynolds described the facility. A room some distance from the GPUs contained converters. In this room cables are connected from the E.S.B. supply to the converters. Further cables led from these converters under the Airport Apron to where they emerged through a designated opening on the apron. At this end there was attached to the cables what was essentially a plug type device. This plug device could be connected to aircraft as they arrived. Aircraft after landing relied on the electricity provided by the airport. The aircraft did not use their on-board electrical systems. Mr. Reynolds stated that the machines in the room were not generators but converters. The essential function of these machines was to convert the mains supply of electricity to a type of electricity which was usable by aircraft. He said Aer Rianta owned the room in which the converters were located and controlled access to the room. He further stated that Aer Rianta owned all the facilities attached to the GPUs including cables and ducting.

Mr. Reynolds then referred to the agreement dated 30th November 1976 between Aer Rianta and Aer Lingus. The agreement involved Aer Rianta in a capital expenditure of £82,000 of which they proposed to recover £72,000 by way of annual rent of £10,901. This, in fact was the mechanism whereby the construction of the facility was financed. The agreement also provided that electricity usage would be paid for by Aer Lingus. The agreement was signed on 16th August 1978.

Mr. Reynolds stated that the facility was used by Aer Lingus and its customers. Aer Lingus was the handling agent for other airlines at Shannon Airport. Aer Lingus were in fact the only user of the facility. Mr. Reynolds stated, however, that if any airline wished to deal directly with Aer Rianta they could do so and Aer Lingus could not interfere with this arrangement. Aer Rianta is the owner of the airport and can direct Aer Lingus' use of the facility.

Under cross-examination by Mr. Marray, Mr. Reynolds admitted that for the last twenty years only Aer Lingus had used this facility. He further admitted that the agreement of 30th November 1976 governed the relationship of Aer Lingus and Aer Rianta. In further replies, Mr. Reynolds stated that when other airlines use the facility they pay a handling charge to Aer Lingus. Again Aer Lingus pays the annual rent to Aer Rianta and it has the beneficial use of any other monies received with respect to the facility.

Mr. Frank O'Donnell in his sworn testimony adopted his written submission as his evidence to the Tribunal.

Mr. O'Donnell stated that all the power points are located in the townland of Ballyhennessy, therefore, lot number 12A/47 is incorrect. Mr. O'Donnell stated he was not sure what Mr. Smiley had valued. He stated that the room in which the converters were located is rated to Aer Rianta and is exempt. He stated that cables were useless without the converters and the electrical power connection which were both located in the room owned by Aer Rianta.

Under cross examination by Mr. Marray, Mr. O'Donnell agreed that the facility had commercial value and was governed by the written agreement dated 30th November 1976.

Mr. Smiley in his sworn testimony adopted his written submission as his evidence to the Tribunal. He requested the Tribunal to amend the error in the townlands pointed out by Mr. O'Donnell. He also requested the Tribunal to amend the Valuation List by deleting the valuations from the "Buildings" column and inserting the valuations in the "Railways Tolls etc." column. He stated that he had valued the output, cables, ducts, and connections of the GPU system. He stated that these units had been used exclusively over the currency of the written agreement of 30th November 1976 by Aer Lingus.

Under cross examination by Ms. Nerney as to what he valued he stated that he valued what Aer Lingus paid a rent for over a twenty year period and from which it got a benefit.

Under further cross examination, Mr. Smiley stated that he valued output from the buildings in which the converters were located but nothing in the building.

He further stated that he valued the output from the converter building together with the cables for which Aer Lingus paid a rent of £10,901. He stated that his valuation is based on the rent contained in the agreement dated 30th November 1976. He stated that he was unable to describe fully the physical components of the system he valued. This was a task for an Engineer. He valued what Aer Lingus paid a rent of £10,901 for. Ms. Nerney put it to him that the whole physical system from the connection to the mains electricity, through the converters, and out to the airport apron constituted the static power system. On further questioning by Ms. Nerney he agreed that a process of change occurred in the converters.

Ms. Nerney made her legal submissions. She outlined to the Tribunal what she considered was the nature and content of the hereditament before the Tribunal for decision. She stated that it was the whole physical system which began at the board which took the outside electricity supply then carried it via cables to the converters, and continued by further cables under the airport apron ending with the plug device which could be connected to the aircraft.

She then set this hereditament against *Sections 2, 3, 7 and 8 of the Valuation Act 1986* and submitted that the hereditament was not rateable within any of these Sections.

She then went on to deal with the criteria for rateable occupation and among her Authorities she cited Judge Keane's book on the **Law of Local Government in Ireland** and in particular she referred to p283 of that book. There Judge Keane spells out the four specific criteria giving rise to rateable occupation. She submitted that based on these criteria Aer Lingus were not in rateable occupation of the hereditament.

Ms. Nerney opened a number of English Authorities from the last century which she submitted established the distinction between exclusive enjoyment and exclusive occupation. The former not being rateable and analogous to the position of Aer Lingus.

Mr. Marray stated in his submission that the fundamental principle of the Rating Code is that all hereditaments are rateable except where provision has been made for specific exemption.

Mr. Marray then submitted that the hereditament was the output and the cables and duct which provided the power and attachments to the aircraft.

Mr. Marray submitted that Aer Lingus were in rateable occupation of the facility. The agreement of 30th November 1976 gave it exclusive use of a valuable commercial entity. He said it was equivalent to a commercial letting. Mr. Marray cited *Carroll v. Mayo County Council [1967] 364* as his Authority for this proposition.

Determination:

The Tribunal finds that it was clearly established in evidence by Mr. Smiley that the hereditament valued by him was the output, cabling, ducts and plug device for which Aer Lingus paid a rent of £10,901.

The Tribunal determines that this is a rateable hereditament by virtue of *Section 7(2) of the Valuation Act 1986* and as set forth in the *Schedule to the 1860 Act* inserted by virtue of *Section 8 of the 1986 Act*. The hereditaments being a construction affixed to premises comprising a building on and below the ground and used for the transmission of electric current.

The Tribunal further finds that Aer Lingus are in rateable occupation of the hereditament in view of their exclusive and beneficial user of the facility over the last twenty years. This user being determined by the written agreement dated 30th November 1976. The Tribunal's findings in this respect are strengthened by the reference in Ms. Nerney's written submission to a letter dated 6th January 1976 from Aer Rianta to the Appellant which states "Aer Lingus will have sole use of the ground power units as long as that company remains our designated handling agent...."

The Tribunal as requested by the parties to the appeal amends lot number 12A/47 description by deleting Rineanna and substituting Ballyhennessy. The Tribunal further amends the Valuation Lists by transferring the "items described in lot numbers 2B/62 and 12A/47 as "electrical power connections" from the "Buildings" column to the "Railways Tolls etc." column. As full and sufficient evidence has not been placed before it as to quantum the Tribunal will make no change to the Commissioner's figures.

Accordingly, the Tribunal determines that Aer Lingus Plc are in rateable occupation of the hereditaments the subject matter of this appeal and it further affirms the decision of the Commissioner of Valuation with respect to the quantum of each hereditament.