

Appeal No. VA01/1/021

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

Dunnes Stores Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Map Reference: 19-51 (incl. 2.2a.3a.5 Horse Slip), St. Kieran Street, Townland: Sundry Townlands, Ward: Kilkenny No. 2 Urban, **County** Borough of Kilkenny

B E F O R E

Henry Abbott - Senior Counsel

Chairman

John Kerr - MIAVI

Member

Frank O'Donnell - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF FEBRUARY, 2002

By Notice of Appeal dated the 20th April 2001 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €3,174.35 (£2,500) on the above described hereditament.

The grounds of appeal as set out in the said Notice of Appeal are that

"(1) The valuation is excessive inequitable and

(2) The valuation is bad in law."

This appeal proceeded by way of an oral hearing which took place in Kilkenny on the 19th of October 2001. Mr Desmond Killen, FRICS., FSCS., IRRV. a Director of GVA Donal O Buachalla appeared on behalf of the Appellant.

The Respondent was represented by Mr Pat Kyne BE., ARICS., Dip P&D. Economics, a Chartered Surveyor and District Valuer in the Valuation Office. Both Valuers adopted as their evidence in chief their written submissions which had been received previously by the Tribunal and exchanged between them. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

The Property

The Property comprises an open plan supermarket incorporating drapery, restaurant offices, stores and staff facilities on three levels. The Property fronts St Kieran Street and adjoins the main Kilkenny Corporation surface Car Park. It is the largest supermarket in Kilkenny, and the premises are acknowledged to be in very good repair and well laid out.

Valuation History

The Complex was built in 1986 and valued at RV £1,700. The valuation remained unchanged until 1999 when redevelopment work commenced with the acquisition of buildings on St Kieran Street and sites adjoining the town centre car park. The main extensions have been to the ground floor retail area and the restaurant area together with new stores.

RV increased to £2,900 at 1999 revision.

RV reduced to €174.35 (£2,500) at First Appeal.

This RV is now the subject of this appeal to the Tribunal. In relation to the appeal the valuation of all areas except the ground floor retail area was agreed prior to the hearing as were the areas.

Appellant's Estimate of NAV:

	<u>SQ.M.</u>		
Retail area	4,917.80	@ £68.60	= £337,361
Remainder – Stores	773.55	@ £43.06	= £ 33,309
Restaurant	262.74	@ £64.58	= £ 16,968
Mezzanine Stores	705.94	@ £36.00	= £ 25,414
First Floor: offices/lockers	460.15	@ £48.44	= £ 22,290
Second Floor: Training room/office	84.18	@ £37.67	= £ 3,171
Staff Car Park	448.00	@ £ 5.00	= £ <u>2,240</u>
	NAV		£440,753
	RV		£ 2,203
	Say	€793.42	(£ 2,200)

Respondents Estimate of NAV.

Retail (Total) 4,917.58sq.m (52,932.83sq.ft.) @£80.73/sq.m (£7.50/sq.ft.) =

£396,996

Stores (GF)	773.55sqm @ £43.06/sq.m (£4.00/sq.ft.)	= £33,309
Restaurant (Mezz)	262.74sqm @ £64.58/sq.m (£6.00/sq.ft.)	= £16,968
Stores (Mezz)	705.94sqm @ £36.00/sq.m (£3.35/sq.ft.)	= £25,414
Offices (1 st Floor)	460.15sqm @ £48.44/sq.m (£4.50/sq.ft.)	= £22,290
Offices (2 nd Floor)	84.18sqm @ £37.67/sq.m (£3.50/sq.ft.)	= £3,170
Staff Car Park	448.00sqm @ £5.00/sqm (£0.46/sq.ft.)	= <u>£2,240</u>

Total Nav = £500,387

Valuation Office Valuation	NAV	£500,000
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R.V. at 0.5% = €3174.35 (£2,500).

Three comparisons were adduced in evidence : -

1. Superquinn Kilkenny VA97/2/040
2. Roches Stores Waterford 1993/4 FA
3. Dunnes Stores Waterford 1993/4 FA

The appellant relied on the comparison of Kilkenny Superquinn as the most relevant comparison for all practical purposes in this field apart from some comments that might be made later in the judgement in relation to supermarkets elsewhere but not for strictly comparison purposes. The thrust of the appeal was set out clearly by the appellant in three points

- (1) The fact that the subject premises was 1.6 times larger than the most relevant comparison, Superquinn, Market Cross Shopping Centre, prompted the appellant to argue the applicability of a quantum relief. The Tribunal is very conscious that the Tribunal has not applied quantum relief to supermarkets and while Mr. Killen drew the attention of the Tribunal to the AIB, West Street, Drogheda, appeal VA97/4/006 and Moyglare Holdings VA97/5/004 as indicating that the Tribunal had accepted that there were cases where quantum allowance could be made, he very fairly accepted that there was no concrete evidence or empirical information showing that a quantum allowance would be given in relation to supermarkets of the size of the Superquinn and Dunnes Stores premises, given that the areas are quite large. The Tribunal also considers that the quantum effect may not be operative in the minds of those who are actually in the market looking for a supermarket location, in so far as the background of such buildings now is very circumscribed by planning regulations and to a large extent the attainment of a very large area suitable for a supermarket is a prize which may not come on the market too often. For that reason the quantum effect may not have any great influence in relation to the matter.
- (2) Mr. Killen did very skilfully seek to exploit a point made by Mr. Kyne that economies of scale apply to the Dunnes Stores premises and which possibly greatly exceeded the Superquinn premises and Mr. Killen argued that such economies of scale should give rise to a quantum effect which should be reflected

in cost savings including cost saving on the rent. Again the Tribunal is not convinced that the argument can be pressed so far in relation to the rent for the reason that supermarkets tend to feed on size and strength as a particular virtue in terms of ascertaining their value and as a means of enabling the developers and operators of supermarkets to actually set up in an area.

- (3) The second point made by Mr. Killen was that there was better access to the Superquinn premises from High Street and the access from High Street to the Superquinn premises is by means of going into the Market Cross Centre and ascending by way of travelator into the Superquinn premises, whereas the access from High Street to the Dunnes Stores premises by way of two laneways which are stepped for pedestrian access. It was unclear whether there was pedestrian or vehicular access through Kieran Street however the Tribunal, mindful of these differences, finds that there is a very clear advantage to the Dunnes Stores premises from the point of view of access for the ordinary shopper perhaps with a vehicle and a number of children doing family type shopping. In so far as the access to the Superquinn premises is from a multi storey car park across a road, (James Street), into the Centre, the Tribunal is of the opinion that this is far less user friendly for the average shopper than the flat access from the car park into Dunnes Stores. The Tribunal is not impressed at all that the access would be in favour of the Superquinn premises.
- (4) The last main point which was canvassed by the appellant related to the slightly lower tone of the list around the Dunnes Stores premises for the small units. The units on Kieran Street and units in the vicinity of Dunnes Stores were mentioned particularly. While the evidence was not entirely clear as to what the differential was, there was agreement between the appellant and the respondent that the tone of the list for smaller premises was slightly lower around the Dunnes Stores premises than it was around the Superquinn premises mainly in the Market Cross Shopping Centre. The Tribunal considers that such slight difference does not weigh to any extent (or at all), in relation to moving the Tribunal to reduce the

NAV of the Dunnes Stores premises. The Tribunal in its deliberation has considered the influence and the authoritative approach of the Tribunal in the Carlow shopping centre cases Superquinn Ltd. VA96/5/012 and Power Supermarkets Ltd VA96/5/014, where there was no quantum allowance as between these two supermarkets in the one town.

Having regard to these considerations and all the arguments ably made by the appellant and the respondent the Tribunal considers that no change should be made in the valuation and accordingly the valuation of €3174.35 (£2500.00) stands.

Before concluding the Judgment the Tribunal would like to refer to the fact that new evidence was introduced through cross examination on behalf of the appellant, and while the Tribunal allowed the matter to be proceeded with, the Tribunal was mindful of the fact that Mr. Kyne might have been in some difficulty in relation to responding “there and then” to that evidence. The evidence as it transpired was not such as to move the Tribunal to depart from its overall view of this case. Furthermore the Tribunal would note that Rule 7 of the Rules of the Valuation Tribunal, which were made in 1988 under the powers given to the Tribunal to make rules with the approval of the Minister for Finance under the Valuation Act of 1988, provides as follows:

- 1) The respondent and any other party should give a summary of evidence proposed to be adduced to the Tribunal and there shall be an exchange of summaries between the parties (including any comparisons to be relied upon) in advance of the hearing.*
- 2) Any party to an appeal shall give to the Tribunal any document or information in his possession or procurement which the Tribunal considers necessary for the purpose of determining the appeal.*
- 3) Where a person neglects or refuses to give to the Tribunal, any such document or information within such period, as may at any time be specified by the Tribunal, the Tribunal may determine the appeal without the document or information.*

The Tribunal is mindful of the fact that the parties throughout the life of the Tribunal have honoured these rules by the efficient production of précis of evidence giving a very

full depiction of the case to be presented on both sides, as was the case in this appeal in the very excellent presentations made by the two sides. The Tribunal nevertheless would wish parties to remain mindful of the requirement that documentation should not be produced at the last moment and the Tribunal would reserve its position to enforce strictly the rules in future cases.