

Appeal No. VA96/4/036

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

Power Supermarkets Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Map Ref: 43, Douglas Shopping Centre, Townland: Douglas, ED: Douglas,
RD: Cork Lower, Co. Cork
Quantum - Passing rent

B E F O R E

Liam McKechnie - S.C.

Chairman

Con Guiney - Barrister at Law

Deputy Chairman

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF JUNE, 1997

1. By Notice of Appeal dated the 28th August, 1996 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £330 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive".

2. This appeal was heard by way of an oral hearing which took place in Cork on the 11th day of June, 1997. Mr. Edward Hanafin, from Messrs. Lisney, Chartered Surveyors, appeared on behalf of the Appellant. Mr. Peter Conroy appeared on behalf of the Commissioner of Valuation.

Having taken the oath both valuers adopted, as their evidence in chief, their respective "précis of evidence". As can be seen from the Notice of Appeal there is no issue on the question of rateability in this case and accordingly the sole question for our determination is one of quantum.

3. In the early 1970's a Centre, known as Douglas Village Shopping Centre was constructed and opened. This included as its anchor tenant Quinnsworth as well as 29 shop units, a library and a bank. The centre was located north east of Douglas village which in turn is about 2½ miles south east of Cork city. In 1991 the ownership of the centre changed. Following acquisition the new owner embarked upon a major programme of redevelopment, refurbishment, alteration and reorganisation of the space within the centre. These works resulted in the creation of a larger supermarket, the establishment of at least 6 further retail units, the making of two new entrances and the covering of the main mall. Extended car parking facilities were also made available.
4. In the 1970's and indeed also in the 1980's this centre dominated retail activity in the southern suburbs. This domination however has, in the past number of years, been challenged by the opening of Douglas Court Shopping Centre, Wilton and Bishops court Shopping Centre. As against that however the recent opening of a new road network, and in particular the South Link Road, has created considerable opportunity for further development and the further enhancement of the centre.
5. The subject property with which this appeal is concerned is a shop unit on the west side of the centre. It is well fitted internally with a tiled floor and suspended acoustic tiled ceiling incorporating stripe lighting. All main services are connected. The agreed area is, 5,000 sq.ft. in respect of retail space and 399 sq.ft. in respect of stores/stockroom. The activities therein carried out relate to hardware equipment as well as children's clothing. The occupier, at the material time, was the appellant herein under its trade name "Quinnsworth". This said occupation was and so remains under and pursuant to an Indenture of Lease for the term of 25 years

commencing on the 1st day of July, 1992 at a yearly rent of £57,500 subject to 5 year reviews and to the other terms and conditions therein contained. These include a covenant obliging the tenant to accept responsibility for the rates, insurance and service charges on the aforesaid premises.

6. On behalf of the Appellant Mr. Hanafin gave evidence to the effect that in his opinion the most appropriate way of establishing the NAV was by reference to the reserved rent as contained in the aforesaid mentioned Indentured Lease. He indicated that in his view the rent reserved for the said lease was representative of open market conditions and was not in any way affected or reduced by collateral considerations. In such circumstances it was urged upon us that this rent should be taken as being the equivalent of the NAV which of course this Tribunal is obliged to determine under *Section 11 of the 1852 Act* as amended. Depreciating the figure of £57,500 by 14% Mr. Hanafin arrived at an NAV for November, 1988 of £50,000. Applying the agreed fraction of 0.5% he submitted that the correct rateable valuation of the subject unit should be £250.

7. On behalf of the Commissioner of Valuation Mr. Conroy, when dealing with the valuation history of the unit and also with the manner in which he approached the establishment of the NAV gave evidence almost precisely in accordance with that which appeared on page 2 of his précis. As this evidence is fundamental to the decision which this Tribunal has arrived at it is worth quoting the same in full. At page 2 he said:-

"This unit was first valued in 1994 at £330. This figure was appealed against and I was deputed to investigate the appeal. Having considered my report the Commissioner made no change. The matter is now the subject of this appeal to the Valuation Tribunal.

The valuation history of the shopping centre as a whole dates from 1972 when it was first built. In 1991 the centre was purchased by O'Callaghan Properties and a major refurbishment was undertaken. This involved the addition of c.20,000 sq.ft. of floor space, enclosing the mall and reorganisation of space within the centre.

In 1992, 32 units were the subject of appeals to the Commissioner. Most owners were professionally represented and a general agreement was reached, taking into account the various factors pertaining to the Centre, including the impact of the

new Douglas Court Shopping Centre.

Of critical importance is the fact that agreed rents at 1992 were below market rents as then evidenced by professional advice. They were agreed to by landlord to facilitate change from 7 year reviews to 5 year reviews."

8. He then produced in written form a document headed "Comparisons" wherein 11 units within the centre were identified and various details in respect thereof given.

This document is reproduced in full as an appendix to this judgement. In his opinion Mr. Conroy was of the view that the details contained in this document were of such a comprehensive, precise and compelling nature that the same afforded an unassailable basis to support and sustain the generality of his evidence as recited above. Indeed his approach was crystallised by a submission to the effect that the rents passing in respect of these units were not as such relevant or, in any event, highly relevant to the issue of determining the correct NAV. His view was that one should concentrate on the rateable valuations as outlined and that if this approach was followed the unit, the subject matter of this appeal, could not attract a rateable valuation of less than £12psf.

Accordingly by taking the entire area of 5,500 sq.ft. (as given by him) at £12psf this gave an NAV of £66,000 and an RV of £330.

9. To fully understand this submission it is important to point out that the same was predicated on a belief that the rents negotiated in 1991/1992 were "soft rents". This came about by reason of the fact that the new landlord was anxious to secure the agreement of the tenants to reduce the rent review period from 7 years to 5 years. In return therefore the landlord was prepared to offer a refurbished, modern and upgraded shopping centre at unit rents which did not reflect that investment and which in turn were less than that which surely could be obtained, if open market conditions applied. Hence, the rejection of the passing rents as establishing the appropriate or correct NAV for the purposes of determining the resulting rateable valuation.

10. At the conclusion of the case the Tribunal pointed out to Mr. Conroy that, as the evidence then stood, there appeared to be quite a number of inconsistencies and anomalies in the details as outlined in the document now attached to this judgement.

It offered the Commissioner an opportunity of dealing with these inconsistencies and anomalies. This offer was not acted upon. Equally so immediately before

giving this judgement the Tribunal repeated that offer to Mr. Conroy but again the same was not accepted. Judgement therefore was given against this background as just outlined.

11. Dealing with the units contained in Mr. Conroy's "Comparison" document could we comment as follows:-

Unit 1:- The evidence given suggests that the Bank of Ireland occupies this Unit under a Lease dated the 7th day of December, 1988 at a rent then prevailing of £35,000. This rent was not accepted by the Commissioner in ascertaining the NAV.

It was in fact increased by more than 50% to a figure of £53,000. No explanation was given for this. The date of the lease and hence the date of the rent was some three years prior to the change of ownership above referred to and was at least that period prior to the commencement of any negotiations either to reduce the review period from 7 to 5 years or to expend considerable sums of money on the reorganisation, refurbishment and re-alteration of the Centre, including this unit. Accordingly, at least on its face, the generalised reasons given for rejecting the rents as a basis to establish the NAV could not apply in this case. There was not, insofar as the evidence went, any suggestion that in December, 1988 the then landlord wanted to negotiate a reduction of the review period from 7 to 5 years or that it had proposed to embark upon a major expenditure in order to refurbish, renovate and modernise the centre itself. Therefore some other reason must have existed for the Commissioner's approach to the rateable valuation in this case. Unfortunately there was no evidence to that effect. It was this type of assistance that the Tribunal was looking for when making the offers above mentioned.

Unit 5B:- This unit, occupied by Pdraig Byrne, had approximately £1,000 added to the rent of £18,000pa (fixed in July, 1992) in order to arrive at the NAV used for the purposes of calculating its rateable valuation at £96. With an area of 1273 sq.ft. the price psf, utilising the rent, was £14.14.

Unit 13/14:- These units are occupied by Mr. Bresnan. They are in all 1924 sq.ft. which, works out at £17.67psf utilising the rent as against the £14.14psf paid by Mr. Byrne. Why this should be so was not explained to us. Furthermore instead of the rent being increased to arrive at the NAV, it was in fact reduced by about 10%. Again, in circumstances which were not explained to us.

Unit 17:- The occupier in this instance was Mr. Corrigan. The passing rent as of December, 1992 was £23,600. Yet that figure was reduced by 27% to arrive at the working NAV.

Unit 34:- This unit occupied by Teasers Restaurant had its passing rent increased by almost £2,000 to establish the NAV.

Unit 29:- The occupier of this unit is either Cork Corporation or Cork County Council. The area is 4,000 sq.ft. with the rent as of the 1st August, 1978 given as £30,000. That rent was increased by more than 60% to arrive at the utilised NAV. Furthermore the fraction used for the purposes of conversion was not 0.5% as in all of the other units but 0.63%. If 0.5% was used, the RV, even on the suggested NAV would be about £240. That RV in turn represents an NAV of £38,000 (at 0.63%).

12. As can be seen from the foregoing, significant increases in the rents, in respect of a number of units, were made in order to arrive at the NAV. These increases varied from 50% or more down to single figures. In other instances the NAV required to sustain the resulting RV was upwards of 60% or more in excess of the passing rents and this percentage figure, in the case of Mr. Bresnan, fell to about 10%. Why this should be so was a matter of considerable enquiry by the Tribunal. And yet, as the evidence concluded, there was in fact no explanation given for the anomalies and inconsistencies above identified which it should be said are but examples only of the difficulties faced by us.
13. As can be further seen from Mr. Conroy's "Comparison" document he refers to four further units namely, Units 31, 41, 42 and 42A which had been revised in 1994. Three of the leases involved in these units were created between December, 1993 and March, 1994. Hence the reasons given for adjusting the passing rents in order to establish the NAV's could not have applied at this period in time. And yet, each rent was lowered in order to arrive at the NAV. In the case of Unit 41, that is Crafts Shoes, the rent was reduced by about 25%. Yet in the case of Unit 42, it was reduced by about 8.8%. Whereas in the case of Unit 31 the reduction was about 12 or 13%.
14. Considering therefore the overall evidence adduced before us we were not satisfied

that the same constituted a sustainable basis for justifying the approach adopted on behalf of the Commissioner. It may well be that there is available a satisfactory explanation for the anomalies identified. If there is, there was no evidence adduced before us in order to explain the situation. As was pointed out cases must be determined not simply on submissions but also on the evidence. This Tribunal is a statutory body probably exercising a quasi judicial function. Whether or not, it clearly must act fairly, adopt fair procedures and, making due allowance for the expert nature of this Tribunal act on the evidence before it. With these considerations in mind we were not satisfied that we could reliably adopt the evidence advanced on behalf of the Commissioner and we therefore cannot agree that the correct rateable valuation for this property should be £330.

15. That being the situation the only evidence before us, of a reliable nature and upon which we could act was that adduced on behalf of the Appellant. We are satisfied that whilst the suggestion was made that the rent paid by the Bank of Ireland for the subject property was not a "market rent" as of July, 1992 nevertheless we do not believe that such a suggestion is underpinned by any evidence. Accordingly we propose to accept the passing rent as the basis for establishing the correct NAV.

Depreciating that sum by 14%, the percentage reduction agreed to by Mr. Conroy, we determine that as of November, 1988 the correct NAV for the subject unit is £50,000. Applying the agreed fraction of 0.5% that gives a rateable valuation of £250 and we so determine.

16. Finally, we readily appreciate that this RV of £250 may appear to be out of line when placed against the rateable valuations existing on the other units above identified, nevertheless if one accepted the passing rent in the Bank of Ireland unit and if one applied the fraction of 0.5% to Unit 29 the same has some relationship to these other units. Even however if it does not it remains our view and our decision that on the evidence the suggested rateable valuation of £250 is appropriate and we so determine.

