

**Status of Judgment: Distributed**

Appeal No. VA97/2/041

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

**Superquinn Ltd. (Clonmel)**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Supermarket at Map Reference 31-34, Emmet Street, Clonmel East Urban, UD: Clonmel, Co. Tipperary.

Quantum - ration .5% challenged

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Barry Smyth - FRICS.FSCS**

**Deputy Chairman**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15TH DAY OF SEPTEMBER, 2000**

By Notice of Appeal dated the 15th day of April 1997, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,150 on the above described hereditament.

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

1. "The valuation is excessive and inequitabl.
2. The valuation is bad in law".

This appeal proceeded by way of an oral hearing, held in Clonmel on the 9<sup>th</sup> day of February 1998 at which the appellants were represented by Ms. Sheelagh O’Buachalla of GVA Donal O’Buachalla. The Commissioner was represented by the appeal valuer, Mr. Denis Maher, a District Valuer with over 20 years experience in the Valuation Office. In accordance with practice, parties had, prior to the commencement of the hearing, had exchanged their précis of evidence. Having taken the oath both valuers adopted their said respective précis as being and as constituting their evidence in chief. Both were cross-examined. Submissions were made and judgment was reserved.

From the evidence so adduced or obtained the following facts, largely not in dispute, are those both relevant and material to the issues arising on this appeal:

### **Location**

This property is located within the Market Place shopping development which between 1992 and 1995, on an assembled site, was constructed at an approximate cost of £10 million. The overall site lies between Gladstone Street, Kickham Street and Emmett Street and sited in the adjoining area are the Local County Council Offices and some municipal buildings such as the Post Office, Library, Swimming Pool and Local Authority Car-Parks.

### **Description**

The hereditament above described and being the subject matter of this appeal comprises a modern supermarket building, incorporating a large open plan retail area at ground floor with ancillary stores, cold room and yard to the rear together with the staff canteen, locker rooms, staff training rooms, stores and plant rooms at the first and second floor levels. The building is constructed of reinforced concrete columns with concrete block infill walls under a low pitch, insulated metal deck roof incorporating roof lights and supported on steel lattice trusses. It is irregularly shaped but has extensive service frontages to Emmett Street and Kickham Street with customer access off the New Market Place arcade. It is well finished throughout with tiled floors, suspended tiled ceilings and air/heat controlled units throughout.

**Accommodation**

There are some discrepancies between the areas as given in evidence by the appeal valuer on the one hand and by the rating consultant on the other hand. Hereunder we set out the respective areas as given by both;

<b>(Commissioner)</b>			<b>(Appellant)</b>			
		<b>Sq. ft.</b>			<b>Sq. ft.</b>	
<b>Ground Floor</b>	Supermarket	26,569	<b>Ground Floor</b>	Retail Floor	26,134	
	Stores	3,849		Stores	2,560	
				<b>Mezzanine Flr.</b>	Stores	1,154
	Plant Room	370			Plant	370
	Yard	2,411			Yard	2,411
	Stores (open)	649			Canopy Stores	649
<b>First Floor</b>	Offices/Lockers	4,172	<b>First Floor</b>	Offices/Staff Areas	4,982	
	Balance	1,149				
<b>Second Floor</b>	Offices	1,010	<b>Second Floor</b>	Offices	2,780	
	Stores	936		Plant	370	
	Plant Ho.	930		Canopy Stores	649	
	Balance	1,125		Yard	2,411	

The following should be noted about the areas above given:

- (a) Included in the area of supermarket given by the appeal valuer is an area of 2,201 sq. ft. which covers a crèche, a variety of stores including cold stores and hall and stairs.
- (b) There is a difference of about 430 sq. ft. between the supermarket area as given by the respective witnesses.

- (c) Included within the stores area on the ground floor is a store at mezzanine level containing 1,154 sq. ft.; the rating consultant places a different rate psf on this in comparison to the rest of the enclosed stores on the ground floor.
- (d) The appeal valuer has a total 5,321 sq. ft. of area on the first floor in comparison to Ms. O’Buachalla’s area of 4,982 sq. ft.
- (e) In relation to the second floor the discrepancy is even greater with Mr. Maher being a little over 4,000 sq. ft. in comparison to 6,210 sq. ft. given on behalf of Superquinn.
- (f) And finally the total area as adduced in evidence is 40,759 sq. ft. as against 41,040 sq. ft. given by the rating consultant.

### **Valuation History**

Following a request therefore, this property was listed for revision with the valuation date being the 10<sup>th</sup> day of November 1995. The list, issued at that time placed an R.V. of £1,150 on the subject property. The appellant appealed to the Commissioner of Valuation who issued the results of first appeal in on 25<sup>th</sup> March 1997. As this showed no change Superquinn appealed to this Tribunal.

### **Services**

All main services are attached to the subject property.

### **Designated Area;**

The area in which this property is located has been designated under the Clonmel Urban Renewal Scheme of 1990.

When this appeal was taken both at first appeal level and to this Tribunal there was two issues between the parties. Firstly, the appellant contended that the use of the reducing factor namely 0.5% was unjustified and instead the factor of 0.3% should be used. The second issue was one of quantum. Arising from the judgment of this Tribunal in the case of Telecom Eireann –

VA96/6/012 it is clear that in our opinion the percentage factor advocated on behalf of the Commissioner is the correct and appropriate one for use for the purposes of this appeal. And accordingly for the reasons therein stated we propose to follow and apply the reasoning in the Telecom Case to the subject appeal. That leaves the question of quantum as being the only remaining issue in this appeal.

On behalf of the Commissioner of Valuation Mr. Maher suggests that the appropriate rates psf to be applied to each segment of this hereditament should be such as to give an N.A.V. of £230,869 which, when converted by the factor of 0.5% would result in an R.V. of £1,154, Say £1,150. Hereunder we set out the specific rates so suggested in this calculation.

		<i>Sq. ft.</i>			
<b>Ground Floor</b>	Supermarket	26,569 @	£7.00 =	£185,983	
	Stores	3,849 @	£3.50 =	£ 13,472	
	Stores (open)	649 @	£2.50 =	£ 1,623	
	Plant Room	370 @	£1.00 =	£ 370	
	Yard	2,411 @	£1.50 =	£ 3,617	
<b>First Floor</b>	Offices/Lockers	4,172 @	£4.00 =	£ 16,688	
	Balance	1,149 @	£1.00 =	£ 1,149	
<b>Second Floor</b>	Offices	1,010 @	£4.00 =	£ 4,040	
	Stores	936 @	£2.00 =	£ 1,872	
	Plant Ho.	930 @	£1.00 =	£ 930	
	Balance	1,125 @	£1.00 =	<u>£ 1,125</u>	
					<b>£230,869</b>

In support of this valuation the appeal valuer gave evidence to the effect that in his opinion this supermarket comprises the focal point of this overall major development with the other elements comprising approximately 32 shop units, an omniplex cinema and two public car-parks with about 400 spaces. He informed us that this property was constructed, together with 10 shops as

phase 1 of the development and was completed in mid 1994. He believed that the anchor store cost about £3 million to build with a similar sum being expended on fit-out. Phase 2 was the cinema and Phase 3 concluded the balance of the shop units. As a result he was of the view that Clonmel was in a position to maintain a role as a significant regional shopping centre despite facing competition from new developments in adjoining counties. Furthermore he suggested that Clonmel was a major economic and administrative centre for South Tipperary and indeed also had an influence as far as north Waterford. Though its immediate population is only about 15,000 nonetheless within its accessible catchment area there lives up to 30,000 people. Overall given the scale, size, quality and importance of this development he was satisfied that the N.A.V. as suggested was fully justified.

Furthermore he referred us to four comparisons which once more, in his opinion, underpinned the suggested valuation. For ease of reference these said comparisons are listed as **Appendix One** to this judgment.

On behalf of the ratepayer Ms. O’Buachalla did not agree with the N.A.V. suggested. In her opinion the appropriate rates should be as follows:

		<i>Sq. ft.</i>			
<b>Ground Floor</b>	Retail Floor	26,134 @	£6.00 =	£156,804	
	Stores	2,560 @	£3.00 =	£ 7,680	
<b>Mezzanine Floor</b>	Stores	1,154 @	£1.50 =	£ 1,731	
<b>1<sup>st</sup> Floor</b>	Offices/Staff Areas	4,982 @	£3.50 =	£ 17,437	
<b>2<sup>nd</sup> Floor</b>	Offices	2,780 @	£2.50 =	£ 6,950	
	Plant	370 @	£1.00 =	£ 370	
	Canopy Stores	649 @	£1.00 =	£ 649	
	Yard	2,411 @	£0.10 =	<u>£ 241</u>	
			N.A.V.=	£191,862	

Hence when converted by 0.5% this gives a resulting R.V. of £960.

In support of the figures last mentioned the rating consultant referred to the almost static local population as between the 1991 and 1996 census. She advanced the view that market conditions as of November 1988 were far less buoyant than what they currently are. In addition she also referred us to four comparisons which in her opinion offered support for her N.A.V. Again for ease of reference these comparisons are listed as **Appendix Two** to this judgment. As will be seen from these appendices, three of the four comparisons used by each witness are identical.

As previously stated this Tribunal intends to apply the factor of 0.5%. On that basis the respective N.A.V.'s are, on behalf of the Commissioner - £230,869 and on behalf of the ratepayer - £191,862 which when both converted by that factor give a respective R.V. of £1,150 and £959, Say £960. The essential differences, in these N.A.V. figures relate to the rates placed on those segments of the hereditament, which are located on the ground floor. Though the areas differ the total N.A.V. for the sections on the first floor, as given by Mr. Maher amount to £17,837 as against £17,437 as given by Ms. O'Buachalla. A difference of approximately £400. On the second floor the figures respectively are £7,967 as against £8,210, a difference of £240. Given that the overall difference is only £160 and therefore in R.V. terms negligible, it is our view that no injustice whatsoever would arise if in relation to the 1<sup>st</sup> and 2<sup>nd</sup> floors we were to accept figures as given by the Commissioner of Valuation.

From the comparisons it will be noted that a rate of £6.50 applies to 22,000 sq. ft. of retail area to the Quinnswoth/Crazy Prices property at Gladstone Street. £5.50psf was agreed with Messrs GVA Donal O'Buachalla at 1995/4 revision on 22,292 sq. ft. at Oakville Shopping Centre. This is a small neighbourhood development in an off centre location as of 1970. Superquinn of Carlow which is a decision of this Tribunal placed £6.00 on 27,516 sq. ft. of retail place and since the hearing, this Tribunal has also dealt with Kilkenny and placed £7.50 on over 32,000 sq. ft. of retail space.

In our view the subject property does not equate with Kilkenny but is superior in terms of retail space and is also superior to the Dunnes Stores shopping centre on Gladstone Street. In our

respectful view having considered the evidence and submissions made we would propose to place on the retail area of this development a rate of £6.50psf In addition we feel that the rating consultant is correct in her approach in separating the stores on the mezzanine level from the balance of the enclosed storage accommodation on the ground floor. And finally, the evidence concerning the yard did not suggest that any rate other than a nominal rate is applicable to it. And so on the ground floor we propose the following rates:

Supermarket	26,569 @ £6.50	=	£172,698.50
Stores	2,560 @ £3.00	=	£ 7,680.00
Mezzanine Stores	1,154 @ £1.50	=	£ 1,731.00
Stores (open)	649 @ £1.00	=	£ 649.00
Plant Room	370 @ £1.00	=	£ 370.00
Yard	2,411 @ £0.10	=	<u>£ 241.00</u>
	Ground Floor Total N.A.V.	=	£183,369.60
	N.A.V. on 1 <sup>st</sup> Floor	=	£ 17,837
	N.A.V. on 2 <sup>nd</sup> Floor	=	<u>£ 7,967</u>
	Total N.A.V.	=	£209,173.60
	@ 0.5% R.V.	=	£ 1,045.86
	Say	=	£ 1,045.00

And we so determine.

1. The overall area in Clonmel is just under 41,000 sq. ft. whereas Kilkenny has 46,500 sq. ft. and Carlow is 39,250 sq. ft. Carlow, which is comparison No. 3 was a decision of this Tribunal, VA96/5/012 and on 27,516 sq. ft. of retail space a figure of £6.00psf was placed thereon.
2. When we heard this appeal our decision in Kilkenny was awaited. I believe we have given it since and I was wondering what did it come out as? = £7.50
3. Quinnsworth/Crazy Prices – Comparison No. 1, at Gladstone Street, was agreed at 1995/4 First Appeal at £6.50psf on 22,000 of retail space or of a total of 33,364 sq. ft.
4. This property, namely that last mentioned, was an old supermarket in a converted building with an ordinary level of finish internally and modest accommodation at upper floor level.
5. No. 2 comparison (all of these are in Denis Maher's submission) namely Dunnes Stores at Oakville Shopping Centre was agreed at 1995/4 revision with Donal O'Buachalla and Company. £5.50psf on 22,292 sq. ft. of retail space. According to Denis Maher, this is a small neighbourhood development in an off centre location built in the 1970's and finally Dunnes Stores at Davis Road which is 25,000 sq. ft. of retail, was agreed at revision at £5.00. If you look at page 4 of Denis Maher's précis he has lots of negative things to talk about this comparison.