

Appeal No. VA07/1/013

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

Joyces Supermarket (Athenry) Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Supermarket at Lot No. 4D/2, Athenry Shopping Centre, Prospect, Athenry, Loughrea, Co. Galway

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Mairéad Hughes - Hotelier

Member

Frank O'Donnell - B.Agr.Sc. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF JULY, 2007

By Notice of Appeal dated the 21st day of March, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €640.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, a copy of which is attached at the Appendix 1 to this Judgment.

The appeal proceeded by way of an oral hearing at the Offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 9th day of May, 2007. At the hearing the appellant was represented by Mr. Patrick Hennigan, B.Sc., ASCS, MRICS, of Hennigan and Company and the respondent by Mr. Bríain Ó'Floinn, a District Valuer in the Valuation Office. At the oral hearing, both parties, having taken the oath, adopted their respective précis as their evidence-in-chief.

The Issue

Quantum

The Property Concerned

The property concerned consists of a new supermarket located in Athenry Shopping Centre on the outskirts of the town of Athenry, Co. Galway and adjacent to the livestock mart. It is a two-storey structure with high ceiling and attractive finish. The ground floor is used for retail purposes while the first floor contains offices, storage area, cold store etc. It is serviced by a lift.

The car parking is shared with other tenants in the Shopping Centre. The car park has c.230 car parking spaces. There is an enclosed concrete service yard of about 600 sq. metres.

The property has a gross internal floor area of 3,086.59 sq. metres (agreed) divided as follows:

Ground Floor 2,019.56 sq. metres

First Floor 1,067.03 sq. metres

The purchase price of the site was €2.18 million in 2005 and the construction cost amounted to €4.57 million. The premises commenced trading on 9th December, 2005.

Athenry is a market town approximately 22 kilometres from Galway City. It has a population of about 4,000 approximately and has a mainly agricultural hinterland. It is on the Dublin/Galway railway line. The premises is c.740 metres from the town centre.

The Dublin/Galway road (N6) is located approximately 8 kilometres south of Athenry. Sole vehicular access to the town is via a series of narrow country roads.

Valuation History

The property was valued for the first time in 2006, the Valuation Certificate issuing on 21st July 2006 with a rateable valuation of €640. Following an appeal to the Commissioner in August 2006 the valuation issued unchanged in February 2007.

Appellant's Evidence

Mr. Hennigan in opening his presentation introduced (with consent) a copy of the 2006 census figures for the City and County of Galway. He pointed out that the population of the City and County of Galway is 231,670. The city has a population of 72,414.

He then gave the population of the towns wherein the subject and his comparisons are situated as follows:

- Athenry (the subject premises) has a population of 4,042.
- Loughrea (his Comparison No. 1) has a rural population of 885 and an urban of 4,532.
- Barna (his Comparison No. 2) is partly in the city and partly in the county. The city area has a population of 3,024 and the county 12,792 making a combined population of some 16,000.
- Tuam (his Comparison No. 3) has a rural population of 4,622 and an urban of 2,997.
- Gort (his Comparison No. 4) has a population of 2,782.

He then set out in detail the factors which influenced him in arriving at a net annual value.

- (1) The subject premises is located adjacent to the livestock mart and more importantly beside the town sewage treatment plant. This plant is in close proximity to the side of the subject premises and has resulted in ongoing problems, with foul and noxious odours emanating from the plant and noise from the mart.
- (2) The population of Athenry is small (c.4,000) with an agricultural hinterland.
- (3) The Dublin/Galway rail line passes through the town but the Dublin/Galway Road (N6) is approximately 8 kilometres from the town. Sole vehicular access to the town is via a series of narrow country roads. Other towns in Galway such as Loughrea, Tuam and Gort are served by far superior road networks, and as a result enjoy a higher level of economic activity.
- (4) The premises are large and are constructed to a good standard and are well fitted out.

- (5) The accommodation is spread over two floors with almost all of the storage space on the upper floor resulting in extensive movement of goods between both levels.
- (6) The size of the premises at 3,087 sq. metres is far in excess of the current requirements of a town the size of Athenry. He submitted that the NAV, to a hypothetical tenant, would be influenced by (a) the very large size of the premises and (b) the relatively small population of the town by comparison with towns like Tuam and Loughrea.
- (7) The premises does not have the benefit of passing pedestrian trade as a result of which there is little passing convenience shopping. There are no well known high street retail names in the Shopping Centre. Only 6 of the 20 units in the centre are occupied to date.
- (8) Car parking is shared with the other units in the centre (c.230 spaces). He maintained that the premises must be valued *rebus sic stantibus*. This was a major consideration in this case. The valuation date is July, 2006 and this is the operative date for assessment purposes. He then referred to the decision of the Tribunal in **VA05/2/022 – Lidl Ireland GmbH**, where it was stated in the findings that “*The hypothetical tenant would be required to consider the property, as is, where is, and not for what might be*”. He also referred to the Tribunal decision in **VA93/1/009 – E.G.B. Management Ltd. t/a Castletroy Park Hotel**. He reiterated that the property must be valued in its actual state, the condition it was in, and the circumstances which prevailed at the operative date (July, 2006).

In addition to the above he again repeated that the subject premises is not connected to the Town Treatment Plant. It is serviced by a private treatment plant. There are serious problems with the Town Treatment Plant. Galway County Council was recently fined in relation to pollution of the Clarin River which runs alongside the Shopping Centre. This was due to the failure of the pumping station at the plant, thus allowing the contamination of the river.

He formulated his estimate of net annual value pursuant to the provisions of sections 48 and 49 of the Valuation Act, 2001 as follows:

Ground Floor

Retail Area	1,770.72 sq. metres @ €41.00 per sq. metre = €72,600.00
Preparation Area	125.73 sq. metres @ €27.33 per sq. metre = € 3,436.00

Chill Room	18.56 sq. metres @ €34.17 per sq. metre = € 634.00
Stores	104.55 sq. metres @ €20.50 per sq. metre = € 2,143.00

First Floor

Lobby/Offices	190.12 sq. metres @ 27.33 per sq. metre = €5,196.00
Chill Rooms	104.00 sq. metres @ 20.50 per sq. metre = €2,132.00
Stores	722.91 sq. metres @ 13.67 per sq. metre = €10,566.00
Total	€6,706.00
RV @ 0.5%	= €483.50
Say	€485

In support of his valuation he gave 5 comparisons, details of which are set out in Appendix 2 hereto. He also included a map setting out the locations of all his comparisons, with Athenry almost in the dead centre. This map is also included in Appendix 2 hereto.

Comparison No. 1 – Gerard McInerney Ltd.: These premises were revised in 1997 at an RV of €426.36 by agreement on appeal. They are smaller than the subject premises, have two entrances and are just off the Main Street, Loughrea, a larger town (population 5,417) and in a superior location in relation to roads.

Comparison No.2 - Clarkes Supervalu Supermarket: These premises are in Barna and are approximately one third of the size of the subject premises. Barna has a population of c.16,000, is close to Galway City and is the gateway to Connemara. The property has a large car park capable of coping with the large tourist trade which it enjoys. These premises, like the subject premises, are serviced by a private sewage treatment plant. When they were valued the road system had not been developed. The Commissioner of Valuation had accepted that these facilities were not in place at the time and it was valued accordingly.

Comparison No.3 – O.T. Investments Ltd.: This valuation was agreed on appeal. This is the main supermarket in Tuam and is near Tuam Town Centre. There are three or four separate car parks surrounding it. Tuam is considered a medium-sized town in Galway. Athenry is considered a small town in Galway. A townland boundary divides these premises and as a result the property had to be valued in two sections. Part of the property is a period building. The supermarket is attached to same. Tuam is 32 kilometres from Galway City on

the N17 National Primary Road. It has a population of 7,619 with a catchment of over 30,000 people.

Comparisons No. 4 - W.Q. Retail Ltd. and **5 – Aldi Stores Ireland Ltd.** are in Gort. The population of Gort has increased by 53.8% since 2002 mainly because of a very substantial Brazilian community. The rural area also shows a 25% increase in population. Comparison No.4 is about half the size of the subject premises. Comparison No.5 is about one third the size of the subject premises and is close to the town centre. It has extensive car parking.

Cross Examination

Mr. Hennigan agreed that the total cost of the site, buildings and fit out was approximately €6.75 million. He said the shop opened from 8am to 11pm seven days a week.

He further stated that a passing trade is very important to a supermarket. The subject property is almost 1 kilometre from the town centre and does not enjoy such a trade. There was nothing at that end of the town except the GAA Grounds, the livestock mart and the town sewage treatment plant. He said that there are two other shops or convenience stores in the town; one is one tenth the size of the appellant's premises and the other about one fifth the size of same.

These, he maintained were catering for town trade. He agreed that the town of Athenry suffered from traffic congestion, that there was restriction on parking and that there was a one-way system in operation. The car park was controlled by the owner of the Shopping Centre and was shared by the other occupiers of the centre.

Mr. Patrick Joyce, owner of the subject premises, then gave evidence. He said that his headquarters was in Headford in County Galway. He looked at Athenry as it is, a rural town like Headford. The developer of the centre was Pdraig Connolly Construction. He (Mr. Joyce) has a 999-year lease. He said that he was disappointed that only one unit opened before Christmas 2005 and only 6 to date. The occupancy of all these units (20) would have a big bearing on the footfall.

The site is not near the local church, the two secondary schools, the banks, the Post Office nor the pedestrians, the occupants of the town. The premises are removed from all this.

He said that he was disappointed with the business since he opened up and that it got worse as time went by. He began to get foul smells in the shop and these got worse and worse.

Galway County Council gave planning permission for the centre. In their wisdom they gave permission next to the Town Treatment Plant, a plant which was built in 1980 for a different population. He got in touch with the County Council concerning the foul smells as he was getting numerous complaints from customers concerning same. Everyone was discussing the smells coming into the shop. He put up a sign asking customers to contact Galway County Council setting out their dissatisfaction with the situation.

The sewage treatment plant was for the town of Athenry. It has not been upgraded since 1980. He said that he tried to contact the Council with no success. When he threatened to go to the media they contacted him and arranged a meeting with their engineer, a Mr. Shields. He said he got no comfort from that meeting. He was told that the plant was a problem, that nothing could be done about it and that an upgrade was promised in the future. The situation was having an adverse effect on his business and still was.

He contacted the Environmental Protection Agency, filled in a complaint form and lodged same but got nowhere. He understood that the plant would be updated between 2007 and 2009 and then in 2011. Nothing has been done to date.

He said that he did not make a profit in year one and in year two (this year) had made no profit either. Only for the fact that he had two other supermarkets he would not have been able to keep Athenry open.

The 6 units that are occupied are local businesses. There is no national brand in the centre. He further said that if he had known that only 6 units would be occupied he would not have opened. As it is, he said, he could operate in a supermarket less than half the size.

Cross Examined by Mr. O'Floinn

Mr. Joyce said that he opened for business on the 9th December, 2005 with a long term view, but that he was not so sure about this now. He said that he had about 70 people in employment, some part time, to cover the seven days a week. He said that he was proud of the supermarket. It was a good one. What was wrong with it was the infrastructure around it.

He agreed that the development is served by a private treatment plant. He said that he was not aware of the Town Treatment Plant at the time of purchase.

Respondent's Evidence

Mr. Ó'Floinn took the oath and adopted his précis as his evidence-in-chief. He said the subject property was a well-equipped supermarket, an attractive building and built to a high standard. He would regard it as one of the finest supermarkets in the county. He said that he was unaware of any smells or noise when he was there.

He further said that the subject supermarket has no other competition from the town and that as well as catering for the town it also catered for the catchment area. He pointed out that Mr. Joyce stated that he was there for the long-term and that there were plans in relation to a new dual carriageway which will pass close to the town of Athenry. There were also plans to re-open the Western Rail Corridor and this would benefit the town.

He pointed out also that the growth in population for Athenry between 2002 and 2006 was 38.9% and that Athenry had been growing due to its proximity to Galway City as a commuter town. He maintained that Athenry had the potential for even greater growth.

He gave 7 comparisons, details of which are set out in Appendix 3 hereto.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings:

- (1) The subject premises is an attractive building, built to a high standard and is well equipped. It is serviced by a private sewage treatment plant. It is located outside the town of Athenry about 800 metres from the town centre. The town has no major industries.
- (2) Because of its distance from the town centre the supermarket has little passing convenience shopping.
- (3) It has the use of a car park (c230 car spaces) which is shared in common with the other businesses in the Centre.

- (4) The Centre has 20 retail units, of which only 6 are occupied to date, despite being available since late 2005. The Centre has failed to attract any of the well known high street retail names. The 6 occupied units are used by local traders.
- (5) The supermarket is located adjacent to the livestock mart and more importantly, the town sewage treatment plant. The rear of the supermarket backs onto the rear of the mart and the sewage plant is in close proximity to the side of the supermarket.
- (6) The sewage treatment plant was built in 1980 and has never been upgraded even though the population of Athenry has increased by 38.9% between 2002 and 2006.
- (7) Mr. Patrick Joyce, the owner of the supermarket, in his evidence stated that there is ongoing noise from the mart and that foul and noxious odours emanate from the town sewage treatment plant and that this was having an adverse effect on his business. No meaningful effort has been made by the County Council to address this very important problem. He further stated that he did not know about the Treatment Plant when he purchased the supermarket site.
- (8) The size of the supermarket is, it would appear, too large for a town the size of Athenry (c. 4,000).
- (9) The main Dublin/Galway road (N6) is located about 8 kilometres south of the town. Vehicular access to the town is via a series of nine narrow country roads. Other towns in County Galway e.g. Loughrea, Tuam and Gort are serviced by far superior road networks and accordingly enjoy a higher level of economic activity.
- (10) Properties must be valued in their actual state and in the circumstances in existence as at the operative date, which in this case is July, 2006.

Determination

Having regard to the foregoing the Tribunal determines the rateable valuation of the property concerned to be as follows:

Ground Floor

Supermarket	1,770.72 sq. metres @ €47.84 per sq. metre = €84,711.24
Stores	73.92 sq. metres @ €25.62 per sq. metre = € 1,893.83
Prep. Chill Room	125.73 sq. metres @ €36.00 per sq. metre = € 4,526.28
Chill Cold Room	18.56 sq. metres @ €36.00 per sq. metre = € 668.16
Passage Switch & Cleaners	30.63 sq. metres @ €24.00 per sq. metre = € 735.12

First Floor

Offices & Lobby	190.12 sq. metres @ €34.16 per sq. metre = € 6,494.50
Stores	876.91 sq. metres @ €13.67 per sq. metre= <u>€1,987.36</u>

Total NAV €11,016.49

RV @ 0.5% €55.08

Say RV €55.00

And the Tribunal so determines.