

Appeal No. VA09/2/017

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

**Hutchinson 3G Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2196631, Shop, Store at Lot No. Unit 5 floor 0 & 1, Johnston Court Shopping Centre, Knappagh Beg, Sligo West, Sligo Borough, County Sligo.

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Leonie Reynolds - Barrister**

**Member**

**Damian Wallace - QFA, MIPAV, Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 3RD DAY OF DECEMBER, 2009**

By Notice of Appeal dated the 10th day of June, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €80.00 on the above-described relevant property.

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

1. The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23rd day of October, 2009.
2. At the oral hearing the appellant was represented by Mr. Patrick Hennigan, BSc(Surv), DipEnvEcon, ASCS, MRICS, of Hennigan and Company, Chartered Valuation Surveyors & Rating Consultants. Mr. Briain Ó Floinn, a District Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

### **The Property Concerned**

3. The property concerned in this appeal is a retail unit (No.5) in Johnston Court, Sligo. Johnston Court is an enclosed retail mall running from O'Connell Street to what is known as the Wine Street car-park. Johnston Court, which forms part of a mixed development with apartments at two levels overhead, provides a total of 28 retail units, two of which have frontage onto O'Connell Street. The mall is so designed as to provide accommodation at two levels. The accommodation at the upper level is not directly accessed from the mall, but in some instances occupiers have as part of their fit-out provided an internal staircase linking the two levels. The mall is well finished and by virtue of its two level design provides an attractive shopping environment with unit sizes ranging from circa 37 sq. metres to 334 sq. metres.
4. The property concerned in this appeal is located approximately one third along the length of the mall from the O'Connell Street entrance and has an agreed internal area of circa 45 sq. metres at mall level and 36 sq. metres at the upper level. The accommodation at mall level, which is used for the sale of mobile phones and accessories is fitted out to a good standard with a suspended ceiling and air conditioning. The accommodation at the upper level which is not directly accessible from the mall is in shell condition and is used for storage purposes.

### **Area**

5. The agreed area measured on a net internal area basis is as follows:

Mall level (retail) 44.95 sq. metres

Upper level stores 35.92 sq. metres

### Tenure

6. The property concerned is let under the provisions of the lease for 25 years from 1<sup>st</sup> October, 2007 at an initial yearly rent of €50,000 per annum with rent reviews at five yearly intervals. Since the second quarter of 2009 the passing rent has been reduced by 50%.

### Valuation History

7. The valuation of the property concerned together with that of several other units in the mall was first entered in the valuation list on 16<sup>th</sup> October, 2008 at a rateable valuation of €80. No change was made following an appeal to the Commissioner of Valuation under section 30 of the Valuation Act, 2001 and it is against this determination by the Commissioner that the appeal to this Tribunal lies.

### The Appellant's Evidence

8. Mr. Hennigan having taken the oath adopted his very detailed and well-presented précis which had previously been received by the Tribunal and the respondent as being his evidence-in-chief.
9. In his evidence Mr. Hennigan contended for a rateable valuation of €60 calculated as set out below:

#### Mall level

Zone A:	35.38 sq. metres	@ €73.35 per sq. metre	= € 9,671.12
Zone B:	9.57 sq. metres	@ €136.67 per sq. metre	= € 1,307.93
Stores (upper level):	35.92 sq. metres	@ € 41.00 per sq. metre	= <u>€ 1,472.72</u>
NAV			= € 12,451.77
Rateable Valuation @ 0.5% = Say €60			

10. In support of his opinion of net annual value Mr. Hennigan introduced four comparisons, details of which are set out in Appendix 2 attached to this judgment.
11. In his evidence Mr. Hennigan said that Johnston Court was not designed to be a “stand alone” self-contained shopping centre, but an integral part of a comprehensive large scale scheme of development proposed for the area between O’Connell Street and Adelaide Street, as provided for under the National Building Agency’s Centre Block Masterplan for Sligo.

The implementation of this plan, Mr. Hennigan said, which envisages a town centre block and multi-storey car-park, is currently at a very early stage and indeed Johnston Court would not achieve its full potential until the development was more advanced. This, he said, was borne out by the actual footfall achieved in 2008, which was 2,427,956 as against a projected footfall of 5,000,000.

12. Mr. Hennigan said the Wine Street car-park facility was inadequate for the demand created by the major stores in the area including Tesco, Dunnes, Penney's, Johnston Court and other retail units on O'Connell Street. This shortfall was exacerbated by the fact that there was a two-hour parking restriction in the area.
13. Mr. Hennigan said that there were a number of vacant units when Johnston Court commenced trading in 2007. Since then a number of traders have vacated their units so that there are currently eleven unoccupied units in the mall with an absence of any anchor tenants or well-established trading names. He also drew attention to the fact that the landlord had given a rent rebate of 50% in order to encourage existing tenants to continue trading.
14. In relation to his comparisons, Mr. Hennigan said two of these were located in the Quayside Shopping Centre, where the established Zone A rate was €273.35 per sq. metre. This centre, he said, formed part of a large mixed-use development which also includes offices and residential accommodation together with 375 car-parking spaces in a multi-storey building accessed off Lower Quay Street. Mr. Hennigan said Quayside Shopping Centre was fully occupied and provided 40 retail units of various sizes, including two anchor units each with an area in excess of 2,000 sq. metres occupied by Next and T.K. Maxx. Pedestrian access to the centre, he said was from Wine Street, Quay Street and directly from the multi-storey car-park. Quayside, Mr. Hennigan said was a superior retail location to Johnston Court and provided a good tenant mix which included well known national and international traders.
15. Mr. Hennigan said Unit 7 in the Tesco Arcade was somewhat similar in size and configuration to the property concerned, occupied a prime location in the arcade adjacent to the main entrance to the Tesco supermarket and the Wine Street car-park. This, he said, was a better trading location than the property concerned and he had regard to this in arriving at his estimate of the valuation of the property. His other comparison, Mr. Hennigan said, the

16. Under-examination Mr. Hennigan conceded that his devaluation of Unit 7, Tesco Arcade was on an overall basis and not on a zoning basis. However following discussions with Mr. Ó Floinn, Mr. Hennigan agreed that the appropriate Zone A rate for unit 7 was €316.44. He further agreed that Tesco Arcade and Johnston Court were similar in some respects in that both linked O'Connell Street and the Wine Street car-park, with small retail units on each side. However, Mr. Hennigan was of the view that whilst Johnston Court was designed and built to a higher specification, this apparent disadvantage was more than offset by the presence of the Tesco supermarket which gave rise to a high level of activity in the arcade.
17. When questioned about the Quayside development Mr. Hennigan agreed with Mr. Ó Floinn that Wine Street was not predominately a retail location and that a number of properties on both sides of the street were either in commercial/office use or indeed residential use. He also agreed that O'Connell Street was the primary retail street in Sligo and that there was a strong retail presence on John Street and Gratton Street close to their intersections with O'Connell Street.

### **The Respondent's Evidence**

18. Mr. Ó Floinn having taken the oath adopted his written précis and valuation which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence Mr. Ó Floinn contended for a rateable valuation of €80 calculated as set out below:

Shop Floor (Zone A)	35.38 sq. metres	@ €350.00 per sq. metre	= €12,383.00
Shop Floor (Zone B)	9.57 sq. metres	@ €175.00 per sq. metre	= € 1,674.75
Stores Floor 1	35.92 sq. metres	@ € 50.00 per sq. metre	= <u>€ 1,796.00</u>
Total			= €15,853.75
NAV €15,853.75 @ 0.5% = €79.26 Say €80			

19. In support of his opinion of rateable valuation Mr. Ó Floinn introduced four comparisons details of which are set out in Appendix 3 attached to this judgment.

20. In his evidence Mr. Ó Floinn said that in arriving at his valuation of the property concerned he had regard to the assessments of retail outlets on O’Connell Street and Quayside Shopping Centre. Mr. Ó Floinn emphasised that O’Connell Street was the prime retail location in Sligo and that the average prevailing Zone A rate on the street was €410 per sq. metre, although some individual units were assessed at levels in excess of this figure. Johnston Court, he said, was a well designed and attractive mall development linking O’Connell Street and the Wine Street car-park which served Tesco, Penneys & Dunnes Stores. From a locational standpoint Johnston Court, he said, was similar to the Tesco Arcade but other than that there was little similarity between the two in terms of scale, design, specification and the range of retail units available. Having regard to the established Zone A levels on O’Connell Street and Quayside Shopping Centre, Mr. Ó Floinn said he considered a Zone A rate of €50 per sq. metres was appropriate for the property concerned, having regard to its size.

21. Under cross-examination Mr. O Floinn confirmed that his comparisons 1 and 2 were no longer on the valuation list, as they were demolished and incorporated into the Johnston Court development. Nonetheless, he said, they were valid comparisons in that they provided historic evidence of Zone A rates at this section of O’Connell Street.

### **Findings**

The Tribunal has carefully considered all the evidence and arguments adduced and finds as set out below. It should be said that in arriving at its determination the Tribunal was greatly assisted by the written and oral presentations made by Mr. Hennigan and Mr. Ó Floinn both of whom presented their evidence and arguments in a most professional manner.

1. This appeal came before the Tribunal as a result of a request for a revision of valuation pursuant to Section 28 of the Valuation Act, 2001.
2. The method for valuing property under section 28(4) is set down in Section 49(1) of the Act which states *“If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property”* – In other words the value of the property concerned is to be determined by reference to “the tone of the list”.

3. The property concerned in this appeal is a retail unit in Johnston Court which is a new enclosed mall-type development running from O'Connell Street to the Wine Street car-park.
4. It is common case that O'Connell Street is the premier retailing street in Sligo.
5. The Tribunal accepts Mr. Ó Floinn's evidence that a Zone A rate of €410 per sq. metre represents the "Tone of the list" for retail premises on O'Connell Street in the vicinity of Johnston Court.
6. It is common case that under the National Building Agency's Centre Block Masterplan for Sligo the area between O'Connell Street and Adelaide Street has been identified for integrated retail developments to include a town centre block and multi storey car-park at its core. Johnston Court is an integral part of this overall scheme.
7. A short distance north of Johnston Court is a Tesco Supermarket which is accessed off O'Connell Street by an arcade containing a number of small retail outlets and kiosk-type units. Unit No. 7 (Mr. Hennigan's Comparison No. 2) is one of the outlets which is located close to the main entrance to the Tesco store convenient to the Wine Street car-park.
8. In his written précis Mr. Hennigan had devalued the net annual value of Unit No. 7 on an overall basis as being €73.35 per sq. metre. During the course of the oral hearing he and Mr. Ó Floinn agreed that on a zoning basis the Zone A rate was €16.44 per sq. metre.
9. It is common case that Johnson Court is designed and constructed to a higher specification and finish to the Tesco Arcade and that it provides a total of 28 units of sizes from c37 sq. metres to 334 sq. metres. It is accepted that a number of units were vacant at the date of assessment and that 10 or 11 units are still currently unoccupied.
10. The Quayside Shopping Centre is located on the north side of Wine Street some distance from Johnston Court but convenient to the Dunnes Stores complex. Quayside which opened in 2005 is a mixed use development with 40 retail units, office and residential accommodation together with a 375 space multi-storey car-park. The retail element is dedicated primarily to fashion and ancillary uses and in common with Johnston Court does not contain a food supermarket. Two major anchor stores are included and they are occupied by Next and T.K. Maxx.
11. It is common case that Quayside is not located in a prime retail area but Mr. Hennigan contended that any locational disadvantages by comparison with Johnston Court are offset by the provision of two anchor stores and on-site car-parking at a reasonable price.

This, he said, was borne out by its tenant mix which was much superior to that in Johnston Court which contained a number of vacant units.

12. On balance the Tribunal has come to the conclusion that the most relevant comparison is Unit 7 in the Tesco Arcade, which is similar in size and configuration to the property concerned. Notwithstanding Mr. Hennigan's argument, the Tribunal is of the view that the property concerned should be valued at a higher Zone A rate than Unit 7 to reflect the better physical attributes of Johnston Court, there being no discernable locational differences between the two properties. The Tribunal accepts that the Zone A rate of €73.35 per sq. metre applied to retail units in Quayside reflects the difference between a Wine Street location and an O'Connell Street location which by common consent is the prime retail pitch in Sligo.
13. Both valuers valued the first floor stores which are not directly accessed from the retail space at approximately 15% of their respective opinions of Zone A rate. The Tribunal proposes to do likewise.

### **Determination**

Having regard to the above the Tribunal determines the value of the property concerned to be as set out below:

Shop:	Zone A:	35.38 sq. metres	@ €320 per sq. metre	= €1,322
	Zone B:	9.57 sq. metres	@ €160 per sq. metre	= € 1,531
Stores (Upper Level):		35.92 sq. metres	@ €48.00 per sq. metre	= <u>€ 1,724</u>
Net Annual Value				= €4,577
Say €14,500				
RV @ 0.5% = €72				

And the Tribunal so determines.