Appeal No. VA91/4/012

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Power Supermarkets Limited t/a Quinnsworth **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop (part of) at Lot No. 87 to 101/16a Merrion Centre, Merrion Road, E.D. Pembroke East, County Borough of Dublin
Quantum

B E F O R E

Henry Abbott	**S.C. Chairman**
Brian O'Farrell	**Valuer**
Padraig Connellan	**Solicitor**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF OCTOBER, 1992

By notice of appeal dated the 17th day of December, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation on the above described hereditament at £200.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also."

THE PROPERTY

The property comprises the check-out-area of the Quinnsworth Supermarket in Merrion Shopping Centre. It is located at the junction of Nutley Lane and Merrion Road and has frontage onto both. The total floor area is 990 square feet.

TENURE

The subject held on a 999 year lease from 1st January, 1989 at a nominal ground rent of £1.00 per annum. The lease was purchased for £60,000. The tenant is responsible for payment of rates, internal repairs, contribution towards insurance and a service charge for maintenance and services provided by the lessor.

VALUATION HISTORY

The property was listed for revision by Dublin Corporation and was assessed at R.V. £200 by the Commissioner of Valuation in November, 1990. This was subsequently appealed but the Commissioner made no change to the valuation.

WRITTEN SUBMISSIONS

A written submission including photographs was received from Mr. Thomas Davenport A.R.I.C.S. of Lisneys on 28th February, 1992 in which he relied on Section 11 Valuation (Ireland) Act 1852 and Section 5 Valuation Act 1986 to support his estimate of rateable valuation, which is as follows:-

Estimated N.A.V. as at November 1988:

990 sq. ft. at £7.00 per sq. ft. = £6,930
Reducing factor to translate from N.A.V. to R.V. =0.63%
Rateable Valuation £6,930 X 0.63% = R.V. £44

Mr. Davenport also submitted a schedule of 15 comparable properties, all occupied by Power Supermarkets Limited, trading either as, Quinnsworth or Crazy Prices. These properties were included in the 1990/2 Quarterly Revision of Valuation lists and were subsequently appealed. Details of the agreements reached with the Commissioner of Valuation are listed in the schedule, a copy of which is annexed to this judgement as Appendix 'A'. The relevant valuation date for each appeal was November, 1988 and the 0.63% ratio was used to convert N.A.V. to R.V. in all cases. The submission also states that the subject hereditament should be valued on a pro rata basis as the existing supermarket within the Centre. It also states that the lease specifically restricts the use of the area solely to the purposes of providing an

entrance or exit for the supermarket for 25 years from 1st January, 1989, and on the expiration of this period there is still a restriction to use the premises as a part of the supermarket for a further 10 years. Mr. Davenport stated, therefore, that the area in its actual state forms an integral part of the main supermarket and could not be regarded as a separate unit.

A written submission was also received on the 28th February, 1992 on behalf of the respondent from Mr. Terence Dineen, B. Agr. Sc., a District Valuer with 17 years experience in the Valuation Office. In the submission, Mr. Dineen described the property and its location and tenure. He stated that the standard 330 square foot unit in the Centre has an R.V. of £70 following 1990 First Appeals and that the subject unit is valued at approximately three times the figure at £200, it being three times the size. He also contended that in order to maintain the tone of the list the R.V. must be kept in line with comparable units in the Centre. If the unit was to be amalgamated with the supermarket it should carry an equal valuation to it, since the area it occupies is all Zone A space, which is defined as gross frontage x 20 feet depth. Here the dimensions are 69 feet frontage x 16 feet depth, consequently the area is 'comfortably' Zone A.

Mr. Dineen's basis of valuation on each standard 330 square foot unit is as follows:-

1990 Rent Passing	£40	X	330 sq. ft.	=	£13,200
at Revision deduct 10% for 1988 base				=	£ 1,320
					£11,880
At appeal, deduct 7.5% for Rates Correction Factor					£ 891
					£10,989

£10,989	X	0.63%	=	£69.18	**Say £70**
Unit 16a £70	X	3	=	£210	**Say £200**

Mr. Dineen confirmed that the subject R.V. cannot be amalgamated with that of the supermarket due to the 1901 Switzer decision, as the properties are held under separate leases (I.L.T.R. page 236).

ORAL HEARING

The oral hearing took place here in Dublin on the 4th day of March, 1992. Mr. Hugh O'Neill B.L., instructed by Noel Smyth & Partners, Solicitors, appeared for the appellant and Mr. Robert Haughton B.L., instructed by the Chief State Solicitor, appeared for the respondent. Mr. Thomas F. Davenport gave evidence on behalf of the appellant and Mr. Terence Dineen gave evidence on behalf of the respondent. From the outset both parties agreed that, by reason of the fact that the premises were held on a separate 999 year lease from the 1st January, 1989 at a nominal pound per annum rent, they should be valued separately from the rest of the supermarket premises to which they were attached. This is on the basis of the decision in the Switzer case reported in volume 35 I.L.T.R.. The parties diverged substantially in relation to the basis of valuation. The appellants argued that the premises should be let at the same bulk rent, of an average of £7.00 per square foot, as applied to the rest of the supermarket premises of which the subject comprised the check-out area. The respondent argued that the subject could equally have been devoted to a letting as an independent shopping unit and that it should be valued on the basis of £40 per square foot discounted back to 1988 with an allowance for a rates adjustment factor. Mr. Dineen asserted this on the basis that the supermarket premises itself, with an average rent per square foot of £7.00, could be valued on a zoning basis "ex post facto" with the frontage zones having a considerably higher rent. Mr. Dineen was cross-examined in relation to his knowledge of any supermarket premises being let on a zoning basis and he conceded that he had no actual experience of such lettings actually taking place. The Tribunal is of the view that generally supermarket premises are let on a bulk rent basis and that the zoning method which is sometimes used for ordinary high street retail premises is not generally applicable. The appellant queried whether the relevant rent, even for a separate unit, ought to be £40 per square foot. At the prompting of the Tribunal, which had heard parallel appeals in various shopping unit cases in this Centre, the appellant and the respondent were prepared to accept the overall decision of the Tribunal in relation to the reduction of the base rent of £40 per square foot for a separate lock-up unit if that criterion is to be used in determining the N.A.V. of the subject premises. While the appellants queried the correctness of a 10% rent reduction factor adjusting from 1990 to 1988 no other factor was advanced. Mr. Dineen suggested that it would be invidious to seek to apply blindly any of the provisional commercial rent indices, such as those of Lisney or Jones Lang Wootton, to the particular Centre in view of the fact that the later lettings of lock-up units in the Centre were producing significantly lower rents than the earlier lettings. In view of the forgoing the Tribunal is inclined to be guided in an approximate way by the 10% rule of thumb figure in this particular case. Indeed the

particular circumstances of this case indicate the undesirability of automatically following index type statistics in a non- critical fashion.

It seems to the Tribunal that resolving the conflict between the two valuations depends upon taking a view on the submission by Mr. Haughton that the Switzer case not only compels valuation on the basis of a separate hereditament as far as the record is concerned but also in relation to the premises having regard to the almost geometric comparisons available in the Shopping Centre. This suggests the direct applicability of the lock-up unit rents in the region of £30 to £40 per square foot to the subject premises. The Tribunal is not of the opinion that the passages cited by Mr. Haughton or any of the judgment of Chief Barron Palace in the Switzer case will be put forward as authority for the extreme proposition which he has sought to advance. The Tribunal views the Switzer case as authority for the proposition that the record of the valuation of various premises ought to be kept as accurate as possible.

In this context the provisions of Section 11 of the Valuation (Ireland) Act, 1852 as amended by Section 5 of the Valuation Act 1986 are the highest binding authority on the Tribunal. The section provides that:

> "such a valuation in regard to houses and buildings shall be made upon an estimate of the Net Annual Value thereof; that is to say, the rent for which one year with another, the same might in its actual state be reasonably expected to let from year to year, ...".

The subject while held on a separate tenancy in its current actual state is not only a check-out premises, very much subsidiary to the larger supermarket, but also has neither commonly accepted frontage or a back wall. Its actual state at all relevant times was such that it could not be then and there let as a separate shopping unit without significant structural alterations. The Tribunal is driven by the authority of the judgment of Mr. Justice Henchy in Harper Stores Limited -V- Commissioner of Valuation (1968) Irish Reports page 166 to deciding that the subject premises must be valued in the actual state as it stands and as used and occupied by the appellant at the date when the assessment was made. Mr. Haughton cited the passage in Behan and Lockwood on Rating and Valuation Principles, third edition page 20, dealing with the irrelevance of the actual (as opposed to the potential) trade of a shop or the occurrence of restrictive covenants in relation to the determination of valuation. The Tribunal accepts the passage as far as it goes and accepts that the restrictive covenant contained in the lease of the subject premises, compelling its use as a check-out premises for a considerable amount of years, ought to be ignored in this case. However, the Tribunal is guided by the very next paragraph on page 20 which states:

> "when dealing with problems of user, where no special statutory provisions are invoked, the first and most important question is; can the property be utilised for alternative purposes without structural alterations?. If it can be so utilised, then the rents which would be obtainable for the premises vacant and let can be taken into account".

The Tribunal is of the view that the subject premises are not available to let as a separate unit. While the subject premises ought to be valued as an integral part of the supermarket premises the valuation of £7 per square foot whether based upon the bulk value of the supermarket rent or upon the acquisition cost of the long lease at £60,000 is much too low a base upon which to value the subject premises. The Tribunal has taken particular account of the fact that the subject premises were taken on as an additional unit to the supermarket premises three years after the same commenced trading and that the subject must have a higher marginal value than the average square footage of the supermarket premises. Having regard to the forgoing and all the circumstances of the case the Tribunal considers that the valuation of the subject premises ought to be reduced to £120.