

Appeal No. VA13/2/004

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

McHale Plant Hire Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 5003268, Service Station at Great Gas 24/7, Junction 4, Turvey,
Staffordstown Business Park, Turvey, Swords, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Mairead Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF OCTOBER, 2013

By Notice of Appeal received the on 7th day of May, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €280,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are as follows:

"The valuation is excessive."

The appeal proceeded by way of an oral hearing and was held at the offices of the Valuation Tribunal, 3rd floor, Holbrook House, Holles Street, Dublin 2 on the 5th day of September 2013. At the hearing the Appellant was represented by Ms Siobhán Murphy, MSCSI, MRICS, of GVA Donal O Buachalla, 86 Merrion Square South, Dublin 2, while Mr Viorel Gogu, PhD., MSc, valuer at the Valuation Office, represented the Respondent.

The Issue

The Appellant maintains that the valuation is excessive when the actual turnover figures are considered and that the estimated levels cited by the Respondent are overly optimistic and do not echo the reality of the market.

Valuation History

The subject property was first assessed in April 2012, and a Valuation Certificate (Proposed) issued on 25th April 2012 with a valuation of €302,000. No representations were submitted by the Appellant and a Valuation Certificate issued on 31st May 2012 unchanged. A First Appeal was subsequently lodged on 6th July 2012, and following consideration of this appeal the valuation was reduced to €280,000. A Valuation Certificate was issued on 9th April 2013 and this was followed by an appeal to the Valuation Tribunal.

The valuation was assessed as follows:

| <u>Use</u> | <u>Litres</u> | <u>€</u> | <u>Rate</u> | <u>NAV (€)</u> |
|------------|---------------|-----------|-------------|----------------|
| Throughput | 11,500,000 | | 0.01 | 115,000 |
| Shop T/O | | 4,000,000 | 0.04 | 160,000 |
| Car wash | | 50,000 | 0.10 | <u>5,000</u> |
| NAV | | | | 280,000 |

The Property

The subject property is located opposite to Turvey Avenue on the R132 Swords to Dundalk road (formerly the N1) and is approximately 6 kms north of Swords and 4kms south of Lusk in County Dublin. The premises is a petrol station with a two-storey forecourt building that comprises a ground floor Centra shop, hot food and deli counter, dining area, stores, toilets, offices, truckers room and staff room, and a Supermac's restaurant that covers both ground and first floor levels. There are six pump islands under a canopy, while the underground storage capacity is approximately 160,000 litres. A carwash is located to the rear of the building, while 41 car park spaces and two HGV spaces are all on site.

Accommodation

Floor areas are agreed as follows:

| | |
|-----------|------------------|
| Shop | 428 sq. metres |
| Forecourt | 4,224 sq. metres |

The property has a total area of 12,237 sq. metres.

The Appellant's Case

Ms Siobhán Murphy of GVA Donal O Buachalla for the Appellant took the oath and adopted her précis as her evidence in chief. She amended her valuation in the précis (page 17) to €137,000, calculated as set out below:

| | | | |
|---------------|-------------------------------------|---|----------------|
| Throughput | 5,000,000 litres @ €0.008 per litre | = | € 40,000 |
| Shop turnover | €3,200,000 @ 2.75% | = | € 88,000 |
| Car wash | €60,000 @ 15% | = | <u>€ 9,000</u> |
| | Net Annual Value | = | €137,000 |

She described the layout of the subject property to the Tribunal as being a modern, purpose-built petrol station. She said that the nearest competitor to the subject is the Topaz filling station which is located on the opposite side of the dual carriageway nearer to the M1/R132 intersection. The subject commenced trading in November 2011, while the Topaz station was assessed for rates based on its 2005/2006 turnover. Ms Murphy argued that if the subject premises had been open for business at the time that the Topaz station was assessed, the turnover at the Topaz station would no doubt have been significantly weakened due to the competition from the subject, and that this reduction in throughput would be reflected in its valuation.

Ms Murphy detailed the 18 months' trading performance of the subject, and said that these figures tell the true story. The Valuation Office estimate of valuation for throughput for the subject premises is 11,500,000 litres, whereas the actual figure for the 12 months of 2012 was only 3,500,000 litres. The January-June 2013 actual figure for throughput is 2,400,000 litres, and the estimate given by Ms Murphy for the full 12 months is 5,000,000. Similarly, the Valuation Office estimate for the shop turnover is €4,000,000 whereas the actual figure for

the 12 months of 2012 is €2,465,000. The January-June 2013 actual for the shop is €1,137,000 while the full year estimate is €3,000,000.

Ms Murphy contended that the current valuation of the subject property is based on estimated throughput and turnover figures for the premises that in her opinion are excessive and based on the trading performances of competitor stations that were valued before the subject opened in late 2011. She contended that she could not accept that both stations (the subject and Topaz) would have similar turnovers when the traffic volumes would not have increased over the period, yet both stations would be in direct competition with each other.

In support of her evidence Ms Murphy introduced two comparisons, details of which are attached at Appendix 1 to this judgment.

Comparison 1

Topaz Filling Station, Turvey Road, Swords

This property is the nearest to the subject property and is located approximately 1 km south on the opposite side of the dual carriageway and catches traffic travelling towards Swords. This premises has a throughput of 10,000,000 litres, a shop turnover of €2,900,000 and a car wash revenue of €95,000. The valuation of this premises is €230,000.

Comparison 2

Texaco Service Station, Swords

This comparison is located on the Dublin road on the outskirts of Swords and links this town to Dublin Airport and the M1 and occupies a superior trading location to that of the subject. This premises has a throughput of 10,250,000 litres, a shop turnover of €3,000,000 and a car wash revenue of €220,000. The valuation of this premises is €255,000.

Under cross-examination from the respondent Ms Murphy agreed that even though estimates were used as a method of determining the net annual value (NAV), the actual throughput and turnover figures tell the true story of trading at the subject station. When asked by the chairman of the Tribunal why she did not present Blake's Cross Service Station as a comparison, Ms Murphy said that she had not requested the information on this premises as she did not wish to impose yet more costs on her client. Separately, Mr Gogu was asked to procure the details of Blake's Cross Service Station and the Round Tower Service Station and

agree figures with Ms Murphy in advance of forwarding same to the Valuation Tribunal for consideration by it.

Ms Murphy concluded her evidence by saying that the levels applied to the subject premises were excessive, that the subject property occupies an inferior trading location to those of her two comparisons, that an allowance should be made for this circumstance in arriving at net annual value, as well as that regard be given to the actual trading of the subject as opposed to estimates of volume and turnover.

The Respondent's Case

Mr Viorel Gogu, valuer with the Valuation Office for the Respondent, took the oath and adopted his précis as his evidence in chief. He said that the valuation of the subject premises was made by reference to the values of comparable properties appearing on the valuation list for Fingal County Council in accordance with Section 49(1) of the Valuation Act 2001. He said that the subject premises is in a start-up situation and that he had not seen the trading figures for 2013 until now. He described the subject premises as superior in terms of location and site, stating that the hypothetical tenant would have regard to the trading potential of the service station and that the valuation of €280,000 is fair.

In support of his evidence, Mr Gogu introduced five comparisons, details of which are attached at Appendix 2 to this judgment.

His comparisons nos. 1 and 2 are the same as those of the Appellant (see above).

Comparison 3 - Applegreen, Balbriggan, Co Dublin.

Mr Gogu stated that this is a service station located just off exit 5 of the M1 and is similar to the subject. The premises were valued on estimates of throughput of 18,000,000 litres, of shop turnover of €3,600,000 and of car wash revenue of €135,000, as actual figures were not available. The valuation of this premises of €380,000 was not the subject of an appeal to the Valuation Tribunal.

Comparison 4 – Applegreen Motorway Service Station

This station, he said, is located on the M1 motorway heading north to Belfast and has a throughput of 16,940,000 litres, a shop turnover of €7,540,000 and a car wash revenue of €25,837. The valuation of this premises is €490,000.

Comparison 5 – Applegreen Motorway Service Station

This station, he said, is located on the M1 motorway heading south to Dublin and has a throughput of 12,350,000 litres, a shop turnover of €4,320,000 and a car wash revenue of €24,980. The valuation of this premises is €311,000.

Under cross-examination, Mr Gogu agreed that the subject property was not trading at the Revaluation date when all his comparisons were valued. He further agreed that his comparison number 1 (the Topaz Service Station) was the most relevant comparison by virtue of its proximity to the property concerned and its scale and range of facilities provided, coupled with the fact that it was in direct competition with it for business. Mr Gogu, however, did not accept the proposition put to him by Ms Murphy that, had the subject property been open and trading at the time of the Revaluation, the valuation of the Topaz station would have been determined at a lower figure due to lesser levels of throughput and retail sales. When asked to comment on why the actual trading figures were 66% lower than the estimated figures used by the Valuation Office, Mr Gogu said that it takes three to four years for a new service station to reach its potential and, in his opinion, the estimated figures were fair. When asked if his comparisons 4 and 5 (the stations on the M1) were truly comparable, Mr Gogu agreed that they were not.

Mr Gogu concluded his evidence by saying that he considered his method of valuation in this case to be fair and equitable.

After the oral hearing, Mr Gogu, at the request of the Tribunal, forwarded information regarding the assessment of two other petrol service stations located relatively close to the subject property, the details of which were agreed with Ms Murphy:

Blakes Cross Service Station

| | | |
|---------------|----------------------------------|------------------|
| Throughput | 4,750,000 litres @ €0.0075/litre | = €35,625 |
| Shop turnover | €1,500,000 @ 3.75% | = €56,250 |
| Car wash | €50,000 @ 15% | = <u>€ 7,500</u> |
| | Total | = €99,375 |
| | NAV entered on list | = €103,100 |

Round Tower Service Station

| | | |
|---------------|---------------------------------|------------------|
| Throughput | 3,500,000 litres @ €0.007/litre | = €24,500 |
| Shop turnover | €1,480,000 @ 3.75% | = <u>€55,500</u> |
| | Net Annual Value | = €80,000 |

Findings

The Tribunal has carefully considered all the evidence introduced and arguments adduced and finds as follows:

1. This appeal arose following a revision of valuation carried out under section 28 of the Valuation Act, 2001 when the valuation of the property concerned was initially determined at €302,000 which figure was subsequently reduced to €280,000 following an appeal to the Commissioner of Valuation pursuant to section 30 of the Act.
2. The statutory basis for making a valuation under section 28 is contained in section 49 of the Act and in this instance more particularly subsection (1) thereof which states:

“49.-(1) 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.”

3. Fingal County Council carried out a revaluation of all relevant property in its functional area under section 19 of the Act and the new valuation list came into effect on 1st January 2011. In accordance with section 20 of the Act the “date by reference to which the value of every relevant property...shall be determined” is 30th September 2005.
4. The salient facts in relation to the property concerned and those properties introduced for the purposes of comparison are not in dispute. The only issue in dispute is the appropriate estimates of fuel throughput, retail sales and car wash income upon which the net annual value of the property concerned is to be determined in accordance with section 49(1) of the Act.
5. Included in the documents put before the Tribunal was one entitled “Petrol Stations Practice Note” dated December 2009. This practice note was prepared for the 2007

Revaluation for South Dublin County Council by the Rating Forum. This is a most useful document the type of which the Tribunal welcomes in that it has been prepared jointly by rating valuers operating in the Valuation Office and others engaged in private practice who are advising ratepayers. This kind of cooperation and willingness to devise a common and consistent scheme of valuation in regard to specific categories of property can only give rise to more transparency and understanding of the rating valuation system which should in time give rise to a reduction in the number of appeals made under sections 30 and 34 of the Act. A copy of the practice note is contained at Appendix 3 attached to this judgment.

6. The primary objective of a revaluation is the compilation of a valuation list where each assessment is fair in itself and relative to the assessments of all other properties on the list. In other words, there is equality and consistency in assessment. Once the revaluation exercise has been completed the individual valuations contained in the list collectively represent the “tone of the list” regardless of their category or mode of use. Furthermore, each individual assessment on the list will remain unaltered until such time as a further revaluation is carried out or the property concerned is the subject of a revision where a material change of circumstances has occurred. When a property is to be valued on foot of a request for a revision of valuation then the value of the property concerned must be determined in accordance with the “tone of the list” and, as section 49(1) specifically provides “by reference to the *values*...of other properties comparable to that property” [emphasis added]. In normal circumstances such an exercise is relatively straightforward but when it comes to valuing a property of a category whose assessment is determined by reference to its turnover, throughput or output, difficulties can arise, particularly when the property concerned is in a “start-up” mode at the valuation date. In such circumstances the valuer has to examine all available relevant information and make a judgment as to what a hypothetical tenant in occupation could reasonably hope to achieve. Having carried out this exercise, the value of the property concerned is to be determined in accordance with section 49(1).
7. The property concerned is located on the west side of the R132 in that section between junction 4 on the M1 and Blakes Cross. The R132 is the road from Swords to Balbriggan (with a turn-off at Blakes Cross leading to Lusk, Rush and Skerries) and includes two access points to the M1 – junctions 4 and 5. Between these two junctions there are five petrol filling stations which from south to north are:
 - a. Topaz Westview (common comparison)
 - b. The subject property

- c. Blakes Cross (details supplied by the Respondent at request of the Tribunal)
 - d. Round Tower (*ditto*)
 - e. Applegreen (Respondent's comparison no. 3)
8. Of all the comparisons put forward the valuers considered the Topaz Westview station to be the most relevant and the Tribunal shares this view. Lesser weight is attached to the Blakes Cross premises by virtue of its size, range and quality of supplementary services and facilities provided. No weight is attached to the Respondent's comparisons numbers 4 and 5 in that they are motorway service stations serving a different customer demand. Of the other comparisons the one most similar in terms of scale, layout and range of facilities provided is the Applegreen station at Courtlough (Respondent's comparison number 3). However, in the Tribunal's opinion, this station occupies a superior location to that of the property concerned and undoubtedly benefits from its proximity to junction 5 on the M1. The remaining comparisons are of limited assistance.
 9. In essence, the dispute between the parties is their respective opinion of the levels of throughput and turnover that a hypothetical tenant might hope to achieve and maintain at this location. Ms Murphy, in arriving at her estimate of net annual value, took as her starting point the throughput and turnover for the year ending 11th November 2012 and from there projected figures for the years ending November 2013 and 2014 and arrived at figures which she said reflected "a fair maintainable trade".
 10. Mr Gogu said that, whilst he had regard to the actual trading figures and the projected figures put forward by Ms Murphy, he was of the opinion that they did not represent the future trading potential of the property. In his opinion, the property concerned was superior in terms of location, size and facilities provided to the most relevant comparison – the Topaz Westview Service Station and that this superiority should be reflected in its valuation.

Conclusions

1. The property concerned is an extensive modern petrol filling station facility and the Tribunal accepts that it is not now trading at a level that a hypothetical tenant might reasonably hope to achieve and maintain.
2. The subject property is not a typical roadside station in that it is located some distance from the road and is accessed off a roundabout built to provide access to an as yet undeveloped industrial estate.

3. In the Tribunal's opinion, Mr Gogu's estimate of a fair maintainable fuel throughput for valuation purposes is unduly optimistic and not supported by evidence to date. Equally, the Tribunal considers Mr Murphy's estimate of throughput for valuation purposes to be conservative and not reflective of the location, size, layout, range and quality of facilities and services available, all of which a hypothetical tenant would have regard to when formulating an opinion of rental value.
4. In regard to the retail turnover, there is no significant difference in the estimates put forward by Mr Gogu and Ms Murphy. Nonetheless, the valuation attributed to this element of this business is markedly different - €160,000 in Mr Gogu's opinion and €88,000 put forward by Ms Murphy. This substantial difference on the face of it is due to Ms Murphy's misapplication of the figures contained in the Practice Note which provides that retail sales over €1.5 million are to be valued at 4% as against the 2.75% used by Ms Murphy. According to the Practice Note, the 2.75% figure is applicable where annual sales are in the range of €300,000 to €399,000.

Determination

5. Having regard to the foregoing, the Tribunal determines the net annual value of the property concerned pursuant to section 49(1) of the Valuation Act, 2001, to be as follows:

| | | | |
|---------------|---------------------------------|---|----------------|
| Throughput | 7,800,000 @ €9 per 1,000 litres | = | € 70,200 |
| Shop turnover | €3,500,000 @ 4% | = | €140,000 |
| Car wash | €50,000 @ 15% | = | <u>€ 7,500</u> |
| | Net annual value | = | €217,700 |