

Appeal No. VA15/5/055

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

**Michael Leonard**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In Relation to the Issue of Quantum of Valuation in Respect of:**

Property No. 1277226, Fuel/Depot, Floors 0,1, 5.6.7 Moore Street, Cappamore,  
County Limerick.

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 30TH DAY OF JANUARY, 2017**

BEFORE:

**Barry Smyth - FRICS, FSCSI, MCI Arb**

**Deputy Chairperson**

**David Gill - FSCSI, FRICS, FCI Arb, Dip Arb Law**

**Member**

**Carol O'Farrell BL**

**Member**

By Notice of Appeal received on the 10th day of September, 2015 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a Net Annual Value of €75,000 (but adjusted to €71,200 to take account of appropriate corrections in connection with the 'Valuation Scheme' for petrol filling stations) on the above described property on the grounds as set out in the Notice of Appeal attached to this Judgment at **Appendix 1**. The Tribunal sat on 26<sup>th</sup> day of September 2016 to hear the Appeal.

**Appearances:**

Mr. Eamonn Halpin B. Sc., MRICS, MSCSI appeared for the Appellant

Mr. Peter Gilsenan appeared for the Commissioner of Valuation

### **Valuation Certificate**

The final Valuation Certificate was issued on 7<sup>th</sup> day of August 2015 with a valuation of €75,000. Following an adjustment to the Commissioner's method of valuation the net annual value was amended to €71,200.

### **Issue for determination by the Valuation Tribunal**

No issue of law arises in connection with this appeal and, only the quantum of the valuation being in dispute, the Tribunal was requested to determine the Net Annual Value of the appeal property at the Valuation Date (i.e. 1<sup>st</sup> March 2012) in accordance with section 48 of the Valuation Act 2001.

### **Grounds of Appeal:**

The Appellant's grounds of appeal are:

1. That the Commissioner's estimate of net annual value is excessive and inequitable.
2. That the method of valuation adopted by the Commissioner which is based on an estimate of Fair Maintainable Trade (FMT) is not appropriate for the valuation of a property which consists of a convenience store in a rural village with ancillary fuel pumps and forecourt.
3. That the Commissioner had erred in deciding that the property should be valued using a formula which had been prepared for the valuation of filling stations in County Limerick and that having regard to the actual trading conditions for the subject property the NAV should properly be determined having regard to its primary use as a retail shop or convenience store with ancillary fuel sales.
4. That the property could not be let on the open market on the basis of the figures adopted by the Commissioner.

### **The Subject property**

The property is located on Moore Street, Cappamore and consists of a retail supermarket with ancillary stores at ground floor level together with stores and offices on the first floor. To the side of the property there is a fuel forecourt with 3 pumps under a canopy. From the information provided it is common case that the fuel dispensing facilities are old fashioned.

The floor areas were agreed as follows:

<b>Description</b>	<b>Use</b>	<b>Floor area m<sup>2</sup></b>
<b>Ground floor</b>	Supermarket	441.74 m <sup>2</sup>
	Stores	93.54 m <sup>2</sup>
<b>First floor</b>	Stores and offices	207.23 m <sup>2</sup>

### **The Appellant's case:**

Mr. Halpin for the Appellant gave sworn testimony and adopted his written précis as his Evidence in Chief. He was duly cross examined by Mr. Gilsean for the Commissioner.

Mr. Halpin described the location of the property as fronting Moore Street in the town of Cappamore with a population of some 645 residents and situated 25 km south east of Limerick City but not on a main road to any large town in the area. He said that Moore Street is a secondary location in the village and that there are two other filling stations in Cappamore, both of which he argued are in better locations and said these operate primarily selling motor fuel with small ancillary retail businesses.

**The case put forward by Mr. Halpin is that:**

- a) The convenience store (operating as Centra) is the primary driver of Mr. Leonard's business which has a supermarket sales area of 441.74 m<sup>2</sup> and generates 95% of the turnover achieved by Mr. Leonard.
- b) In 2014 fuel dispensing accounted for €158,870 in turnover equivalent to c. 120,000 litres which he argues was a very small turnover for fuel and reflected the fact that the bulk of the fuel trade was being carried out by the other specialist filling stations in Cappamore.
- c) Classifying the subject property as a filling station was incorrect and not consistent with the actual circumstances of the property.
- d) The pumps are old fashioned and could be said to restrict the potential parking on site.
- e) The FMT method of valuation adopted by the Commissioner is not appropriate for assessing the NAV of the subject property.
- f) FMT is based on estimating the potential trade that a property could achieve in the hands of a hypothetical tenant but the scheme adopted for filling stations and applied by the Commissioner to this property does not reflect the actual trade.
- g) The Commissioner's 3.75 % figure applied to the estimated FMT for retail turnover is grossly excessive.
- h) That the correct approach to valuation of the subject property is to value the convenience store by applying a rate psm to the retail area with varying rates to the ancillary areas, plus a 15% addition to take account of the off licence and a small addition in respect of the pumps.

Based on the approach advocated at h) above Mr. Halpin gave his estimate of the NAV at 1<sup>st</sup> March 2012 as €35,900 calculated as follows:

Description	Floor area m <sup>2</sup>	Valued @ €	NAV
<b>Ground floor</b>			
Supermarket	441.74 m <sup>2</sup>	€55.00/ m <sup>2</sup>	€24,295.00
Stores	93.54 m <sup>2</sup>	€15.00/ m <sup>2</sup>	€ 1,403.00
<b>First floor</b>			
Stores and offices	207.23 m <sup>2</sup>	€25.00/ m <sup>2</sup>	€5,181.00
Plus off licence		@ 15%	€4,632.00
Fuel sales	120,000 litres	€0.004 /lt	€ 448.00
<b>Total</b>		<b>Say</b>	<b>€35,900.00</b>

Mr. Halpin referred to a total of 11 comparators which are detailed in his précis. These included Twohig's in Askeaton, Spar in Abbeyfeale, Supervalu in Castleconnell, Greene's filling station in Cappamore, Coffey's filling station in Cappamore as well as Applegreen in Newcastle West and White's (Texaco) in Rathkeale.

**The Respondent's case was as follows:**

Mr. Gilsonan also gave evidence under oath and submitted a detailed proof of evidence. He confirmed that the measurements and floor areas of the property had been agreed between the valuers and he outlined the valuation history of the subject property.

1. On behalf of the Commissioner Mr Gilsonan explained that in carrying out the revaluation of filling station properties in Limerick City and County the Commissioner had developed a valuation model, the objective of which was to assess the Fair Maintainable Trade of properties which were properly classified as filling stations in the Valuation List.
2. This method applied % rates to the estimated FMT figure for fuel sales (based on throughput) plus a % to the turnover (gross revenue) estimated to be generated from retail sales out of the shop forming part of the filling station. These figures were then added to calculate a figure for NAV. At Appendix (vii) attached to his written précis of evidence Mr. Gilsonan detailed the approach taken in respect of fuel sales, car wash, and shop sales and the % adopted for application based on a scale of throughput or turnover to calculate NAV.
3. The Valuation Scheme for Limerick Service Stations presented by Mr. Gilsonan set out a % sliding scale in terms of € per 1,000 litres depending on the fuel throughput starting at €3.00/1,000 litres from a base level of 200,000 litres up to €11.00/1,000 litres from 12,000,000 to 15,000,000 litres. In addition shop sales were assessed at 2% from €200,000 up to 3.75.00% on estimated FMT for shop sales between €1,500,000 and €2,000,000 with 4% above €2,000,000.

At page 22 of his report Mr. Gilsonan gave his opinion that the NAV to be applied to the property should be €71,200 calculated as follows:

<b>Trade</b>	<b>FMT</b>	<b>Valued @ €</b>	<b>NAV</b>
Fuel throughput	750,000 ltrs	€5.00/1,000 ltr	€ 3,750
Shop sales	€1,800,000	3.75%	€67,500
<b>NAV Say</b>			<b>€71,200</b>

Mr. Gilsonan provided details of 7 comparators in County Limerick. These indicated figures for FMT based on fuel throughput ranging from 750,000 litres to 2,000,000 litres and shop turnover from €800,000 to €2,000,000. Some of these comparator properties are leased, others are held freehold. It was not clear from Mr. Gilsonan's evidence whether the estimates for FMT for the comparators he relied upon were based on actual figures for fuel throughput and shop turnover provided by the various

operators to the Commissioner in response to requests for information or pursuant to section 45 notices.

Mr. Gilsean supplied a copy of the lease on which the property is held. He did not suggest that the Tribunal should have regard to the rent reserved under the lease.

**The Tribunal's conclusions and reasons therefor:**

In respect of the subject property at Moore Street, Cappamore the Tribunal considered the figures provided by the operator to the Commissioner for turnover from shop sales and for fuel in respect of the years 2011, 2012, 2013 and 2014. These are set out on page 13 of Mr. Gilsean's precis of evidence Mr. Gilsean confirmed that based on the figures submitted for fuel turnover in € he had estimated the throughput in litres.

In the course of cross examination Mr. Gilsean said he disagreed with Mr. Halpin's assessment and considered the fuel throughput to be well below what the property was capable of generating notwithstanding the presence of two other filling stations in the village.

When questioned on FMT as the basis of valuation Mr. Gilsean said the Scheme had been applied by the Commissioner to all filling station properties in Limerick and he contended that the comparators he supplied indicated that the method was generally accepted by operators. With the possible exception of O'Gradys in Ballingarry the Tribunal noted that the other comparators provided by Mr. Gilsean operated primarily as filling stations and appeared to benefit from much greater passing traffic as evidenced by the fuel sales.

The Tribunal noted that the Commissioner's FMT figure for fuel throughput for the NAV of the subject property was 6 times the actual fuel throughput calculated by Mr. Gilsean from the Appellant's figures for 2012.

As regards the turnover generated by the supermarket/convenience store the Tribunal noted that the actual turnover figures supplied by the Appellant indicated a level of trade twice that estimated for FMT by the Commissioner and that the supermarket generated 95% of the revenue being derived from the property.

On page 2 of the Revaluation Appeal Report of 27<sup>th</sup> July 2015 Mr. Gilsean confirmed that he inspected the property on 24<sup>th</sup> July 2015. His conclusions following inspection were:

- i. The property comprises a ground floor Centra supermarket with ancillary stores, prep areas and cold stores.
- ii. There are 3 fuel pumps to the side but this operation appears to be a minor part of the business.
- iii. The property does not resemble a conventional service station and lacks the modern conveniences such as deli/wc associated with these operations.
- iv. Based on the throughput and shop turnover figures provided by the Appellant and his agent the estimate of FMT is reflective of the trade carried on at the service station

However, the Tribunal noted that the figures supplied by the Appellant showed a consistent pattern over the four year period from 2011 through to 2014 inclusive which self-evidently challenged the later conclusions of the Revision Officer and the FMT estimate.

This points to the FMT approach not being reflective of the circumstances of the appeal property and that by adopting a FMT method the Commissioner has attempted to fit the appeal property into a valuation model which is not appropriate for a property of this nature.

Accordingly the Tribunal is not persuaded that the FMT method of valuation advocated by Mr. Gilsenan on behalf of the Respondent in this appeal should be preferred to the conventional approach to valuation contended for by Mr. Halpin on behalf of the Appellant. Overall the Tribunal concludes that most of the value lies in the ground floor shop and ancillary space and agrees with Mr. Halpin that the NAV of the appeal property should be assessed by applying a valuation rate psm to the main (retail) supermarket area with adjustments for the off licence and fuel sales in line with the valuation of other conventional supermarkets.

The Tribunal considers that other comparisons in the village of Cappamore relied upon by Mr. Halpin including Green's filling station, Coffey's filling station and the Co-Op Superstore at 35-36 Moore Street should have prompted a 'stand back' overview by the Commissioner to assess whether the Valuation Certificate figure at €75,000 for the subject property was in line generally with the broad thrust of NAV levels in Cappamore.

Therefore, the Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having carefully examined and considered the written evidence and having heard and weighed the oral evidence adduced before us on the 26/09/2016 by Mr. Eamonn Halpin on behalf of the Appellant, who contended for a NAV of €35,900, and Mr. Peter Gilsenan on behalf of the Respondent to the appeal who requested that the figure of €71,200 be confirmed as the NAV.

#### **DETERMINES**

That the Net Annual Value of the subject property be **€44,250** (decrease) as set out below:

<b>Description</b>	<b>Floor area m<sup>2</sup></b>	<b>Valued @ €</b>	<b>NAV</b>
<b>Ground floor</b>			
Supermarket	441.74 m <sup>2</sup>	€70.00/ m <sup>2</sup>	€30,921.00
Stores	93.54 m <sup>2</sup>	€15.00/ m <sup>2</sup>	€ 1,870.00
<b>First floor</b>			
Stores and offices	207.23 m <sup>2</sup>	€25.00/ m <sup>2</sup>	€5,180.00
Plus off licence		@ 15%	€5,696.00
Fuel sales	120,000 litres	€0.004 /lt	€ 600.00

<b>Total</b>			<b>€44,267.00</b>
	<b>NAV rounded to</b>		<b>€44,250.00</b>

And the Tribunal so determines.