

Appeal No. VA91/2/001

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Irish Shell Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Petrol Filling Station at Lot No. 39.41 Fortfield Road, Kimmage, County Borough of Dublin

B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Paul Butler

S.C.

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF OCTOBER, 1991

By notice of appeal dated the 10th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of the above described hereditaments at £250.00.

The grounds of appeal as set out in the Notice of appeal are that:-

(1) The valuation is excessive and inequitable, and

(2) Regard shall be had to Section 5 of the Valuation Act, 1986.

The Property

The property is a petrol filling station at Fortfield Road, Terenure. It has a long narrow site with a frontage of 230 feet. The property contains a shop, office, forecourt, canopy and petrol pumps.

Written Submissions

A written submission was received on the 30th August, 1991 from Mr. Desmond Killen FRICS IRRV of Donal O'Buachalla & Co. Ltd. on behalf of the Appellants. Mr. Killen stated that the major development of this hereditament was made in 1983 costing £200,000 and that minor alterations carried out since then comprise of (a) a mobile car wash machine (not rateable) and (b) the provision of shutters and an alarm.

Mr. Killen referred the Tribunal to Section 11 of the Valuation (Ireland) Act, 1852 and Section 5 of the Valuation Act, 1986. He also referred to the Judgment of Mr. Justice Barron in the High Court in the case of The Irish Management Institute V The Commissioner of Valuation which was delivered on the 9th March, 1990.

Mr. Killen said that the shop rental is £2,500 p.a.. Payment to Irish Shell is based on throughput and calculated at 1.3p per litre. He supplied the throughput figures as follows:-

<u>Year</u>	<u>Litres</u>	<u>Payment</u>
1988	2.47m	£32,110
1989	2.60m	£33,800
1990	2.62m	£34,060

Mr. Killen said that the rental payments to Irish Shell Ltd. include rates, repairs, and insurances. He said that levels of valuation are based on N.A.V. as at November, 1988 and that the appropriate ratio to be applied to N.A.V. to yield the rateable valuation for that date is 0.63%.

He also said that an allowance known as the "Rates Impact Factor" has been accepted by the Commissioner of Valuation and that this should apply to adjust the estimate of net annual value to reflect the increase in rates, which the increased valuation brings about but which would not have been envisaged by a tenant when entering a rental/licence agreement.

Mr. Killen gave his estimate of net annual value as follows:

Actual Rental Shop	£ 2,500	
Throughput	<u>£32,110</u>	£34,610

Deduct

Rates (£115 x 32.13)	£ 3,695	
Repairs (Est.)	£ 6,000	
Insurance	£ 2,219	
Bank/Credit Card charges	<u>£ 9,200</u>	<u>£21,114</u>
		£13,496

Mr. Killen said that the application of the Rates Impact Factor would adjust the Net Annual Value to £14,301. He then submitted that the rateable valuation should be £90.00.

Mr. Killen submitted one comparison i.e. a petrol station situated in Tallaght comprising "Garage, Shop & Tanks" with a rateable valuation of £140.00 which was settled at 1989 first appeal.

A written submission was received on the 29th August, 1991 from Mr. Brian O'Flynn, a valuer with 16 years experience in the Valuation Office, on behalf of the Respondent. In this submission Mr. O'Flynn comments on the grounds of appeal and describes the property. He said that the shop is poorly laid out and would benefit from reconstruction and refitting.

Mr. O'Flynn said that the station is owned by Irish Shell and the principal business carried out by their "agent" (also known as licensee) is the sale of their products. He said that the licensee is not responsible for rates, repairs or insurance and operates the shop and car wash for his own benefit.

Mr. O'Flynn made the following submissions:

- (a) the licence is not in the nature of a landlord and tenant agreement,
- (b) Irish Shell have invested heavily in stations and have done so as experts in their trade,
- (c) Irish Shell as hypothetically the ideal tenant are prepared to pay a rent commensurate with a reasonable yield on investment, and
- (d) if the rent obtainable from the retailers margin is insufficient which it clearly is, then the owners have to cut into their distributors margin to fund the return on investment.

Mr. O'Flynn said that throughput has declined from approximately 18,000 gallons in 1982 to 11,000 gallons per week at present. He said that sales should remain at this level due to the difficulty in obtaining sites and planning permission for new outlets in the mature suburban area.

Mr. O'Flynn then outlined his calculation of the rateable valuation as follows:-

Fuel sales average 572,057 gallons @ 5.596 p.p. gallon	= £32,011
Shop 353 sq ft @ £8 p.s.f.	= £ 2,824
Office 121 sq ft @ £4 p.s.f.	= £ 484
Car Wash £80 p. week	= <u>£ 4,160</u>
	£39,479

R.V. = £250 (£39,479 @ .63%)

An undated written submission was received from Mr. Declan Fallon, Corporate Services Manager, Irish Shell Ltd. setting out the details of the price control mechanism in relation to motor spirit products.

All of the written submissions are attached as Appendix A to this judgment.

Oral Hearing

At the oral hearing which took place in Dublin on the 4th and 5th September, 1991. Mr. Marcus Daly S.C. instructed by Messrs. McKeever & Sons, Solicitors, represented the Appellants and Mr. Aindrias O'Caomh B.L. instructed by the Chief State Solicitor represented the Respondent. Also present were Mr. Desmond Killen, Mr. Patrick Browne, Mr. Declan Fallon on behalf of the Appellants and Mr. Brian O'Flynn on behalf of the Respondent.

Mr. Desmond Killen in evidence described the subject premises stating that since the major capital investment of £200,000 in 1983 only an alarm system, shutters and a non-rateable mobile car washer have been provided. He said that throughput deteriorated since 1983 and that the rental value is based on the shop rent at £2,500 p.a. and throughput calculated at 1.3p per litre with the Respondents paying the outgoings. He argued that in making a rateable valuation assessment one is bound by Section 11 of the 1852 Act and Section 5 of the 1986 Act and must be guided by the judgment of Mr. Justice Barron in the Irish Management Institute case delivered on the 9th March, 1990. He also argued that the "Rates Impact Factor" must be considered and taken into consideration in deciding the Net Annual Value because some premises were not valued for a long time thus creating an additional factor for consideration by an intending tenant in deciding a rent. On the existence of recent valuations which are comparable he said that there were few. He referred to the comparisons contained in the respondent's precis stating that three of them are at the first appeal stage and that the first comparison therein contains an error showing

the R.V. at £470.00 which should correctly show it at £300.00. He added that the only recent and determined comparison is at Tallaght and is referred to at page 8 of his precis with his calculations appearing on page 9 thereof. He contended that the Respondents comparisons appearing in his written submission as comparisons number 1, 2 and 3 are each the subject of an appeal and therefore inadmissible. He said that, in relation to comparison 4 that the £35,000 p.a. leasehold rent has been reduced to £30,000 in making the assessment of £190.00 R.V. As to the B.P. Ireland comparison at page 12 he said that this valuation is also under appeal and has not been resolved. He also expressed dissatisfaction with the method used by the Respondent at page 7 of his precis, queried the 15% of the 37.3 pence margin referred to and that an allowance was not made for outgoings under Section 11 of the Act of 1852. He contended that Credit Card and Bank charges, which are not in any way attributable to maintenance, affect a rent to be offered. He said that the "rates impact factor" must be taken into consideration as a tenant would allow for it in negotiating a rent or terms in the case of an agent. The Tribunal ruled, following an objection by Mr. Daly to the use of comparisons by the Respondent, contained in his written submission, which are the subject of appeal and therefore, sub judice, that it shall not in reaching its finding have regard to such comparisons as are under appeal and that cross examination will be allowed on the prices or figures used in the Irish Shell comparison. Mr. Killen expressed agreement with the figures contained in comparison no. 1 at page 8 of the Respondent's precis except that the throughput figure of 3,300,000 litres should read 3,000,000. He also agreed with the figures for 1989 - 1990 contained in comparison no. 3 at page 10 except to say that he has no knowledge as to the purchase price of £433,000 in 1984 or of any changes since that year. As to comparison no. 4 at page 11 of the same precis he said that the R.V. was fixed in 1991 at £190.00 and that the valuation was not calculated on the square foot basis. He could not disagree with the Esso (Irl) Ltd comparison at page 12. Mr. Killen said that he could not agree that the price paid for a premises and the amount expended thereon would be the method used when determining the return on an overall investment but that such return is determined by what the hypothetical tenant will pay.

Mr. Patrick Brown, Retail Manager of the Appellant company explained the account produced and, in referring to the copy Trial Balance for 1989 agreed the expenditure of £2,406 on unleaded development, in addition to other items mentioned, was not a recurring item. Mr. Declan Fallon Corporate Services Manager with Irish Shell explained his written submission stressing that motor spirit product prices are revised monthly by Statutory Order. That submission fully explains the system and is appended to this judgment as Appendix "A". He said, that although Irish Shell Ltd. forms part of the Shell group of companies the Appellant company is completely independent in this country.

Mr. Brian O'Flynn Valuer for the Respondent said that petrol companies use most of their wholesale margins to subsidise rent. He also said that the car washing site was worth £80.00 per week. He said that he had no certain knowledge of the return on capital expected by oil companies and that the £575,000 paid in 1989 for the Esso filling station at Palmerstown Upper (P. 12 of Respondent's precis) reflects neither an increase or decrease in the prices paid for filling stations. In relation to the Ushers Quay station (P. 11 of Respondent's precis) he said he was not aware of the price paid for the site nor if B.P. purchased and developed it but that he was aware of the leasehold rent paid. He said that he did not have the figures for throughput etc. in relation to the Joe Keane Bray Ltd. station (P. 12 of Respondent's precis). As to the Tallaght Petrol Station referred to at page 8 of Mr. Killen's precis he said that he performed calculations based on (a) improvements and capital value and (b) on the square metre basis on each portion of the premises and arrived at an R.V. of £140.00 by each method but in the case of the subject premises the valuation is reflected in sales. The Valuation Office Notebooks in relation to the assessment on the Ushers Quay Petrol Station by Mr. Hickey of the Valuation office was forwarded. Mr. O'Flynn was referred to page 141 thereof which indicated an annual rent of £35,000 (including a shop and throughput of 364,000 gallons) with an R.V. of £190.00. Mr. O'Flynn was directed by the Tribunal to apply the same method of calculation in arriving at an

N.A.V. to the subject premises and in doing so got an R.V. of £125.00. In conclusion he said that the car wash was fully drained and that the area or site only was taken into consideration.

Determination

The Tribunal has had regard to the totality of the evidence and written and oral submissions and has disregarded the comparisons contained in the Respondent's written submission previously referred to in this judgment and ruled on by the Tribunal at the hearing. In arriving at an N.A.V. the Tribunal has appropriated the cost of repairs and insurance between machinery and buildings and determines that the appropriate Rateable Valuation for the subject hereditament, including the car wash area, should be £185.00.