

Appeal No. VA91/2/032

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

Texaco (Ireland) Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop, Petrol Tanks and Yard at Lot No. 28A, Townland of Templeogue, E.D. Templeogue
- Osprey, Templeogue, Co. Dublin
Quantum - Comparisons

B E F O R E

Padraig Connellan

Solicitor (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF FEBRUARY, 1992

By notice of appeal dated 17th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £350 on the above described hereditament.

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

THE PREMISES

The subject property comprises of a petrol filling station incorporating a shop and office, forecourt, canopy and car wash facilities situated at the south side of Tallaght Road between the intersection with Wellington Lane and Western Park Way about one mile east of Tallaght Village. The accommodation comprises a forecourt, canopy, shop and office, stores and car wash. The tank capacities are petrol 66,000 litres (14,520 gallons) and Diesel 9,000 litres (2,000 gallons).

VALUATION HISTORY

The subject premises was originally valued at £55 rateable valuation and increased to £95 on the 1982 annual revision. Following expenditure on the premises in 1985 and 1989 the rateable valuation was increased to £280 on the 1990 revision, published on the 10th February, 1990. This was appealed to the Commissioner of Valuation and the rateable valuation was revised upwards on first appeal to £350. It is against this determination of the Commissioner of Valuation that the appeal now lies with the Tribunal.

WRITTEN SUBMISSIONS

A written submission was received on the 14th November, 1991 from Mr. Thomas F. Davenport A.R.I.C.S. of Lisney on behalf of the appellants. In this Mr. Davenport outlines the description of the property, its location and the rateable valuation history. He says that in 1985 a sum of £74,000 was expended on the premises as follows:

- (1) New line of pumps.
- (2) Canopy extended.
- (3) Change of signage on the site
- (4) Resurfacing of forecourt

- (5) General drainage carried out on the forecourt as requested by Dublin County Council in respect of the granting of planning permission relating to the above works.

A further £35,000 was spent in 1989 on refurbishing the shop, the main items were as follows:

- (1) New electrically operated aluminium sliding door
- (2) New light fittings
- (3) New suspended ceiling
- (4) New floor covering
- (5) New shelving

In addition the sum of £55,000 was expended in replacing old pumps.

Mr. Davenport said that there were town planning considerations in that the property was located in an area Zoned Objective G i.e. "to protect and improve high amenity areas". He said that the property is affected by the Southern Cross Route Motorway Scheme and has been included in a proposed compulsory purchase order which is at present awaiting confirmation from the Department of the Environment. Mr. Davenport set out his calculation of Net Annual Value and Rateable Valuation as follows:

" Estimate of Net Annual Value

Licence rental as at November 1988 £23,000

(Average annual rental over three year period)

Deduct

Rates £3,050

Repairs £6,000

Insurance	<u>£2,000</u>	£11,050
Net Annual Value		£11,950
Adjusted Net Annual Value		
(to allow for rates impact factor)		£12,500
Rateable Valuation £12,500 x 0.63%		RV£80

Alternatively

Having regard to the comparisons as set out in the attached schedule, ie. valuations which;

- (a) are comparable
- (b) relate to the tenements and hereditaments of similar functions; and
- (c) have been made or revised in a recent period

My estimate of a fair and equitable rateable valuation for the subject premises would be as follows:

Shop	800 sq.ft. @ £8 psf	£ 6,400
Office	134 sq.ft. @ £5 psf	£ 670
Stores	286 sq.ft. @ £4 psf	£ 1,144
Throughput 825,000 gallons @ 1.4p per gallon		£11,500
(3,748,609 litres)		
Total Net Annual Value		£19,764
Reducing factor to translate from NAV to RV		0.63%
Rateable Valuation £19,764 x 0.63%		RV£125"

A written submission was received on the 14th November, 1991 from Mr. Brian O'Flynn a valuer in the Valuation Office on behalf of the respondent. In this Mr. O'Flynn comments on the

grounds of appeal as set out in the Notice of Appeal and includes information from "The Fair Trade Commission Report" published on the 8th January, 1990. Mr. O'Flynn comments in detail on the property and sets out his basis of valuation as follows:

Profits Valuation:

Throughput 750,000 gallons	@ 6.66p/gallon	£49,950
Shop 851 sq.ft	@ £12 psf	£ 9,780
Car Wash Areas £80/week		<u>£ 4,160</u>
		£63,890

$$\text{N.A.V. } £63,890 \text{ } 0.63\% = \underline{\underline{£400 \text{ R.V.}}}$$

6.66p per gallon calculated as follows:

Retailers Margin -

$$3.5\text{p p.l.} = 15.9\text{p p.g. allow } 15\% \text{ to rent} = 2.385 \text{ p.p.g}$$

Wholesale Margin -

$$4.71\text{p p.l.} = 21.406\text{p p.g allow } 20\% \text{ to rent} = \underline{4.28} \text{ p.p.g.}$$

$$6.665 \text{ p.p.g}$$

Compare retailers margin at 15% available to rent with actual licence payments as shown

$$2.385 \text{ X } 750,000 \text{ gallons} = \underline{\underline{£17,887}}$$

The N.A.V. relates only to the rateable items.

Capital Valuation:

Estimated Capital Value	<u>N.A.V.</u>
(11.11y.p) Throughput	- 554,944 @ 9% yield = £49,945

(8.33y.p) Shop & Car Wash - 116,120 @ 12% yield = £13,940

£63,885

63,885 @ 0.63% = £400 R.V.

ORAL HEARING

At the oral hearing which took place on the 20th November, 1991 and the 11th December, 1991 Mr. Hugh O'Neill, Barrister instructed by Messrs Matheson Ormsby & Prentice Solicitors represented the Appellants. Mr. Aindrais O'Caomh, Barrister instructed by the Chief State Solicitor represented the Respondents. Also present was Mr. Tom Davenport of Messrs Lisney and Mr. James Kelly of Texaco on behalf of the Appellants. Mr. Brian O'Flynn, Valuer and Mr. Brian Mc Creery on behalf of the Respondent.

Mr. O'Neill in opening said that prior to 1982 the R.V. in respect of the subject property was £55, in 1982 £95 and in 1990 increased to £280 and when appealed increased to £350 representing an increase of over 300% between 1982 and the result of first appeal. The property has been let on a 3 year licence to Mr. Brian Lennox from October 1987 at an average annual rental of £20,600 increased to £28,000 in March 1990.

Mr. Davenport in his evidence described the property as a standard petrol filling station comprising shop, car wash facilities, office, stores, forecourt, canopy and tank capacity of 16,500 gallons. He said that in 1985 £74,000 was expended on the premises for a new line of pumps, extended canopy, change of sign, resurfacing the forecourt and generally improving the station and a further £35,000 was spent in 1989 in refurbishing the shop. He said that the property is affected by the Southern Cross Route Motorway Scheme and is included in a compulsory purchase order for the purpose of completing this route, and the property would be acquisitioned by compulsory purchase in due course. He contended that the hypothetical tenant would have been aware that the rental property, for this reason, would have been adversely affected. He

outlined the two alternative means of arriving at an estimation of R.V. having regard to Section 11 of the 1852 Act and Section 5 of the 1986 Act and also having regard to the judgment of Mr. Justice Barron in the High Court I.M.I. -V- Commissioner of Valuation which was delivered on 9th March 1990. His first estimate of £80 R.V. was based on the licence rental in November 1988, making deductions for rates, repairs and insurance and adjusting for a Rates Impact Factor. His second estimate of £125 R.V. was based on his comparisons of similar function, which had been revised in recent times and arrived at by using the square foot method, taking throughput into account. Mr. Davenport then referred to the comparisons which are set out in his precis. In response to Mr. O'Caomh, Mr. Davenport insisted that the capital value of the subject property was irrelevant as it was the N.A.V. that was in issue and that he had no idea of the capital value. Mr. O'Caomh stressed that the R.V. of the first comparison bears no relation to the N.A.V. and he also said that the second comparison was an 1986 agreement calculated on the old square metre basis. He further said that at least half of Mr. Davenport's comparisons related to 1984 or 1986 at a time when a multiplying fraction was not used. Mr. O'Neill said, on the relationship between the capital value and the yield expected, that if the rates, repairs and insurance charges were payable by a tenant or licensee then the licence fee would go down by the amount of the outgoings and Mr. Davenport confirmed that this would be so.

Mr. James Kelly confirmed that the subject property is a tied garage; that Mr. Lennox as licensee is obliged to purchase products from Texaco which are sold to him at the wholesale price ruling at the time. He said that about half the stations owned by Texaco had an annual throughput of less than 300,000 gallons. He said, during a discussion of the Kylemore Road station that the effect of the discontinuance of the promotion programme in April 1988 was a drop in throughput. Discussion followed on the purchase of some premises by Texaco in recent years and the price of £270,000 given for a site in Waterford with an expenditure of £460,000. Mr. Kelly disputed the throughput figure put forward by Mr. O'Caomh expressing the view that it was overstated. Reference was made to the Newtownpark Avenue Station which cost about

£200,000 with development costs of another £200,000 and Ringsend Station bought for £300,000 in 1990. Mr. Kelly said that his Company would seek a throughput of around 450,000 to 500,000 gallons for the Ringsend and Newtownpark Avenue stations.

Mr. O'Caoimh before examining Mr. O'Flynn again stated that the essence of the matter was the different approach taken by the appellant and the respondent.

Mr. O'Flynn said that the Fair Trade Commission Report indicated that owner occupied stations have shown a considerable increase in sales and through the Company stations there had been an increase of 36.5% in 1979 to 1988 when 41.6% was the figure for the total retail sales. He said that there was significant competition in the signing up of dealer outlets and the purchase of Company sites with little or no price competition. He pointed out that the average throughput in Company owned stations at a million litres is considerably greater than the average throughput in dealer outlets which would include "solus" agreements at 229,000 litres as against all retail outlets at 338,000 litres. He expressed the view that anybody looking at the industry would have difficulty with the concept of an Oil Company dipping into its wholesale margins to fund the purchase of a filling station. He questioned the logic of having one N.A.V. for a Company owned station and another for a dealer owned station. Whilst a Company does not supply fuel at different wholesale prices they do in effect subsidise the price of the fuel in their "solus" agreements with dealers who have a sufficient volume of throughput. He said that this is done by means of investment in the site, in the refurbishment or the purchase of the site by way of direct cash grants or subsidised loans. He stressed that the Valuation Office looks at all stations in the same light whether Dealer owned or Company owned and that the essential factor in considering the N.A.V. is the volume of throughput and he refused to accept that the only return that the appellants could get is the sum paid by a licensee. He expressed disbelief that Mr. Davenport ignored the capital value of the sites in arriving at the N.A.V.. He said that the capital values are the true indicator of the value of the filling station ultimately and that the site purchase

price is directly related to their expected return in terms of throughput and turnover and general business. Mr. O'Neill objected to some of the comparisons used by Mr. O'Flynn i.e no's 1,6,7 & 9 as they are under appeal. He also objected to Appendix 3 of Mr. O'Flynn's written submission saying that it was an attempt to revalue comparison No. 8. He stressed that 5th November 1991 was the significant date having regard to the date of this appeal and of the Irish Shell decision.

Mr. O'Caoimh said that he would not seek to rely on the comparisons objected to but that he wished to refer to the purchase price, expenditure and improvements contained therein in that they would help to support the case of the value in relation to the capital value. Mr. O'Flynn gave thorough descriptions of his comparisons under cross examination.

Mr. O'Flynn agreed that although sales through Company owned stations increased from 36.5% to 41.6% that this did not mean that there was an increase in any particular station. He said that in the United Kingdom a pipeline distribution system operates but admitted that his knowledge of the industry in the U.K. in nil and that any information he has was obtained from Mr. Sedgewick of the Fair Trade Commission. He also said that the "Whitegate" share of Irish imports is sold to the industry at a dictated price. Mr. O'Flynn, in relation to credit card sales, could not say that 40% of petrol sales would be credit card sales in relation to the subject property. He said that he got his figures from a number of stations in Dublin. He said that Texaco does not refine oil and that their charges to licensees or tied stations is the same and that the wholesale price is the same for all stations. He indicated that the policy of Texaco is to express interest in stations with large throughput or in those with a lower throughput with great potential. He would not agree that a heavy flow of traffic is a disincentive to motorists to stop at a filling station. He said that at the subject premises there are two carriageways and a hard shoulder and that it is not located in a congested City traffic area. He would not agree that the compulsory purchase order would affect the rent because, he said, the occupant will be compensated. He argued that throughput will not be affected by ancillary services but by the

number of other service stations in the area and that some ancillary services are not complementary for example, car sales. He added that a shop is complementary and adds to the profits. He said that he was not valuing the car wash machine but only the area it occupies, the piping and drainage. He said that the wholesale margin of 4.7% comes from the Fair Trade Report and is an average over a period of time and that wholesale margins vary from month to month and are not static. Following this Mr. O'Neill cross examined Mr. O'Flynn on each of the comparisons contained in his precis and finally referred to the Tribunal's decision No. VA/91/2/1 between Irish Shell appellants and The Commissioner of Valuation and suggested to Mr. O'Flynn that the ratio which £34,610 bears to £185 R.V. in that case, if applied, to the average license payment of £23,000 in the case under appeal would produce an R.V. £125. Mr. O'Flynn agreed but only as a mathematical calculation and not as a comparison. He said that he had agreed on a multiplying fraction of .63% with Mr. Davenport. He said that all his comparisons indicate capital value but not an R.V.. He said that the capital approach is an established method of reaching a valuation and that a valuer must look to the characteristics of the letting.

Mr. O'Neill in conclusion said that the Tribunal must have regard to Section 5 of the 1986 Act with regard to comparisons to ensure similar rateable valuation. He said that the Respondents were trying to rate the profits of a business and that they are not rateable. He contended that the analysis of approach does not stand scrutiny and the figures contained in part of the Respondents precis are taken out of the sky. He said that he strenuously objected to an N.A.V. based on profits and that such a method was outside the ambit of the Valuation Acts. He further said that he had no objection to a capital value method in reaching a valuation which was in assessing the capital value and then assessing the yield and that the capital value can not be tied in with the rentals.

Mr. O'Caoimh said the Appellants did not present their own comparisons even though they were concerned with many stations but they took others and worked backwards in reaching their

calculations which is only a mathematical exercise. He said that the Tribunal's function was to establish the N.A.V.. He said that the rating practice in England and Ireland proceeds in the same way towards establishing an N.A.V., when established it must have Section 5 (1) of the 1986 Act applied at the agreed multiplier of .63% in this case. He said that it would be most incorrect to take an N.A.V. from an existing property and to work backwards.

Determination

Having regard to the provisions of Section 5, sub-section 1 of the Valuation Act 1986, and the Judgment of Barron J. in I.M.I. - V -the Commissioner of Valuation [1990] 2 I.R., the Tribunal notes and accepts the ratio of .63% which has been agreed by both parties.

What remains to be determined by the Tribunal is the correct N.A.V. of the subject premises.

The Tribunal is not satisfied that sufficient or convincing evidence has been put forward to show a Net Annual Value based on the profits method. Although Mr. O'Flynn offered certain statistics based on a report published by the Fair Trade Commission, he has conceded that, although the report may have shown an overall increase in throughput in petrol stations between 1979 and 1988, it does not prove anything specific in relation to the particular petrol station the subject of this appeal.

The Tribunal notes that both parties agreed, in the course of the oral hearing, that a Net Annual Value might well be arrived at by assessing first the Capital Value and then the expected annual returns therefrom.

Nonetheless, in the absence of such clear evidence, the Tribunal must look to comparisons, not in this instance by reason of the absence of an overall ratio between letting values and valuations, but in order to arrive at an equitable and reasoned N.A.V..

In the opinion of the Tribunal the most appropriate comparison is Luke Lawlor Motors Limited set out at page 25 of the Commissioner's comparisons. It has a similar throughput of fuel product, is located on the southern side of the roundabout close to the subject premises, has a recent valuation, and has ancillary activities carried on therein. Taking into account the foregoing the Tribunal determines that a fair and equitable N.A.V. of the subject premises is £35,000 based on comparisons but taking into account the various advantages of the subject property, unusually high throughput and notes that the Appellants and Respondents have agreed a multiplier of .63%. The Tribunal finds that the appropriate rateable valuation should be £220 and so determines.