Appeal No. VA 17/5/573

AN BINSE LUACHÁLA
VALUATION

AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

NAAS OIL (PROSPEROUS) LTD	**APPELLANT**
AND	
COMMISSIONER OF VALUATION	**RESPONDENT**

In relation to the valuation of
Property No. 1738937, Fuel/Depot at Floors 0,1, 9Aa/1 Main Street, Prosperous, County Kildare.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb	**Deputy Chairperson**
Eoin McDermott - FSCSI, FRICS, ACI Arb	**Member**
Michael Connellan Jr – Solicitor	**Member**

JUDGMENT OF THE VALUATION
ISSUED ON THE 2ND DAY OF OCTOBER, 2018

1. THE APPEAL

1.1 By Notice of Appeal dated the 12th October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €79,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

"*1. The Valuation of the subject property is excessive and inequitable. The property's value is not in line with its actual rental value.*

2. The subject property is let on a 25 year lease from 11th December 2014 at a rent net rent of €70,000 per annum.

The Commissioner is determined to ignore the actual rent in favour of his turnover formula.

Other Grounds

The Appellant does not believe that the Commissioner's turnover based formula approach to Filling Stations is universally correct. The formula can be effective in dealing with highly trafficked areas on the edge of cities or Motorway stations, however, it fails in the face of local 'filing stations' which are really just shops with pumps who derive the majority of the turnover from the shop. Stations where shop turnover exceeds 30% of gross receipts should be considered on a Zoned Retail Basis or an Overall Retail Basis (/m^2) in order to ensure equity and fairness."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €70,000.

2. REVALUATION HISTORY

2.1 On the 10th March 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €100,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €79,000.

2.3 A Final Valuation Certificate issued on the 7th September 2017 stating a valuation of €79,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation at Holbrook House, Holles Street, Dublin 2, on the 6th and 7th March 2018. At the hearing the Appellant was represented by Mr David ES Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr Alan Sweeney B.SC. (Property Val & Mgmt) MSCSI, MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts. The subject property of this appeal comprises a modern filling station with three double pumps on three islands, a retail unit under a canopy of approx. 245.2m² on a site area of approx. 1,500m². The site has dual frontages to the R403 and R409 at the western end of Prosperous Co. Kildare. Prosperous has a population of 2,333 in the 2016 Census.

4.2 The site also has a Gala branded retail unit which includes a convenience store, deli and an external ATM and ancillary stores and toilet accommodation on the ground floor and first floor offices. The shop had the benefit of a wine licence.

4.3 The areas are agreed as follows:

Ground floor	Convenience store	117.30m²
	External stores	45.60m²
First floor	Offices	84.66m²
Total		247.56m²

4.4 The premises are let for a term of 25 years from 11th December 2014 at €70,000/pa for 10 years with rental increases to €75,000/pa from11th -15th years inclusive; €80,000/pa from 16th -20th years inclusive and to €85,000/pa from 21st to 25th years inclusive.

Trading data

Year	Year end	Fuel litres	Shop sales
2014			
2015-annualised	30th June	4,810,632	€1,317,658
2016	30th June	5,013,148	€1,890,155

* 2015 accounts based on a 212-day period.

5. ISSUES

5.1 The Appellants have contended for an NAV of €70,000 whereas the Respondents on behalf of the Commissioner has requested that the Commissioner's valuation of €79,000 be confirmed. Mr David Halpin on behalf of the Appellants made a preliminary statement to clarify that this appeal was not a test case. He also stated that it was very difficult for the Appellants to compare properties based on redacted financial information.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

7. APPELLANT'S CASE

7.1 Mr Halpin confirmed that the Appellant had taken a 25-year lease on the subject property as €70,000/pa as and from 11 December 2014 and that the statutory valuation date was 30 October 2015. He further confirmed that the proposed certificate for the subject property was originally stated at €100,000 which was reduced to €79,000 NAV when the Commissioner of Valuation published the final certificate for the subject property. He confirmed that the Appellants had lodged an appeal seeking a reduced assessment to €70,000 as they regarded the published valuation as excessive and inequitable. Mr. Halpin maintained that the property's value was not in line with its actual rental value. He contended that the Commissioner had ignored the actual rent in favour of the Commissioner's turnover formula. He stated that in his opinion the Commissioners turnover-based formula was not universally applicable and while it could be effective for highly trafficked areas on the edge of cities or motorway stations it failed regarding local filling stations which he maintained were just shops with pumps which derived most of the turnover from the shop. His claim was for the NAV to be reduced from €79,000 to €70,000 to reflect its actual rental value.

7.2 Both parties agreed on the location of the subject premises and confirmed the details of the description.

7.3 Mr Halpin supported his contention that the turnover formula was inappropriate by reference to the annual accounts for Alimentation Couche-Tard (European division) and Applegreen Ireland and UK for the years 2013 to 2017 which showed total revenue from shop sales varying from 10.3% in 2013 to 15.7% for Alimentation Couche-Tard, and from 8.1% to 12.8% for Applegreen UK and from 20.7% to 25.7% for Applegreen Ireland only. He contended that service stations with more than 80% fuel were fairly assessed by the Commissioner on the formula basis, however he stated that in his opinion the formula came under strain between 70% to 80% fuel and failed at less than 70%. He stated that as many Irish filling stations accounted for more than 50% of their net turnover from the shop that the formula was completely out of line with the actual rental value.

7.4 He stated that the subject property was to all intents and purposes a brand-new filling station that been completely redeveloped in 2013/14 and that it had been let in an open market transaction as €70,000/pa as and from 11 December 2014. He confirmed that as the property had been let from new without goodwill that it provided essential key rental evidence.

7.5 The appellant confirmed his acceptance of the schematic with regards to fuel throughput and car wash sales and that the Appellants challenge related to the schematic insofar as it is referred to shop sales. He took issue with the fact that the Commissioner already valued convenience stores on a rate per square metre basis and did not accept the Commissioner's approach to convenience stores attached to filling stations.

7.6 In relation to FMT information he confirmed that the Appellant had sought from the Commissioner the basis of valuations however this request had been declined. The Appellants maintained that in their opinion there was nothing confidential contained within FMT calculations or the dimensions of the property in relation to a Hearing.

7.7 The Appellants referred to the passing rent of €70,000 per annum and noted that the NAV calculated from the 2016 trading data would have provided an NAV of €110,979.

(Fuel 5,013,000 @ 0.008 = €40,104 &
Shop €1,890,000 @ 3.75%= €70,875)

7.8 Based on the passing rent of €70,000, the Appellants maintained the shop should therefore not exceed €30,000 NAV. However, the Appellants argued that the Commissioner has attempted to address this anomaly by arbitrarily reducing the fuel turnover to 4 million litres and the shop sales to €1.4 million to maintain the credibility of the formula. Mr Halpin argued that the reason the Commissioner discounted the subjects trade (fuel and shop turnover) was because it would not fit the formula and that this arbitrary reduction was only arrived at because of the passing rent of €70,000. He further maintained that this discount should be applied in all other similar cases in the interests of equity however he maintained that the Commissioner had not done so.

7.9 The Appellants maintained that there is a fundamental unfairness in assessing filling station shops based on the turnover as it took no account of skilled business acumen and goodwill. He further argues that if FMT applied to all retail units then these disparities could be accounted for but as filling station shops were in a category of their own no such disparity appraisal could be undertaken. He stated that the Commissioner has adopted an inequitable basis of assessment and that the only way to address this inequity is to apply a rate per square metre to all retail units. In support he referred to the fact that this system is adopted in Northern Ireland and applied to the Republic prior to the revaluation.

7.10 The Appellants referred to 3 different methods of valuation for the Tribunal to consider namely the 'rate per square metre method', the 'adjusted formula method' and the 'capping method'. The Appellants have argued that the 'rate per square metre method' is equitable in that it is used for all other shops, was previously adopted by the Commissioner and is employed in Northern Ireland and has no negative connotations. They state in relation to the 'adjusted formula method' that this is the simplest method and most in line with the Commissioner's current approach and should be capable of determining NAV based on turnover across other grocery outlets but could undervalue shops with low turnover if adjusted uniformly and finally the 'capping method' which is employed in the UK as a counter to large shop turnovers and would make filling station values more in line with convenience store values but the criteria to measure of the cap is difficult to determine.

7.11 In relation to the 'rate per square metre method' the Appellants referred to the fact that the Commissioner regards filling station shops as being more valuable by being on a forecourt however the Appellants have provided 10 examples of other shops on forecourts which have been valued on a rate square metre basis. They conclude that consequently there is no advantage to retailers in a forecourt over any other location.

7.12 In relation to the 'adjusted formula method' the Appellants have analysed the rent of €70,000 per annum and by discounting their previously accepted level for the fuel calculation of €40,104 which they argue leaves a residual multiplier of 0.1581 as distinct from the rate of 3.5% adopted by the Commissioner. The Appellants point to an apparent inequity whereby a hypothetical tenant with a turnover of €2 million in a stand-alone convenience store can pay €40,000/pa and question why such a tenant would pay €80,000 per annum to locate on a forecourt. In conclusion they state that if this methodology is to be utilised then a rate of 1.5% of turnover should be applied unilaterally to all filling station shops. They have supported this argument by reference to a case study in Ballymahon whereby the supermarket with annual shop sales of €5.0 million in shop of 850 m² has a NAV of €50,600 which is 1% of turnover; whereas Finns Centra unit located in the main filling station in the town with a turnover €2.45

million from shop of 400m² has a shop NAV of €98,000 or 4%. They argue that this disparity is not equitable and if the adjusted formula methodologies are to be utilised then a rate of 1.5% of shop turnover should be applied unilaterally.

7.13 Referring to the capping method the Appellants stated that this methodology was adopted to ensure that shops with higher or exceptional turnovers would not be penalised. The Appellants refer to the UK system whereby it caps the value of filling station shops at £110,000 irrespective of turnover and that this system applies to all filling stations except motorway services. The Appellants have argued that the application of the formula is not generally applicable to the Irish model as many of the filling stations referred to are in effect hybrids that is to say they are convenience stores rather than fuel sellers. The Appellants have argued that filling station shops in an Irish context should be compared with the equivalent sized convenience stores. They refer to the fact that the Commissioner has valued 20 convenience stores between 150 m² and 500 m² in Co Kildare and that a hypothetical tenant would know that turnover in an average convenience store of this size would be equivalent to or greater than that of a filling station shop and hence the hypothetical tenant would cap its rental bid at the average value of such a convenience store. The Appellants stated that the NAV of the 20 convenience stores is €36,136 and consequently should this method be adopted they claim that all filling station shops in Co. /Kildare under 500 m² and not located on a motorway should be capped at a maximum of €36,000.

7.14 The Appellants provided two market comparisons the first refers to Old Dublin Road Kildare were the premises was let on a five-year lease from 23 July 2013 at an average rent for the first five years of €40,000 per annum based on a shop size of 140 m² and the tenant was given a €10,000 contribution towards fit out. This unit had average shop sales for 2014 to 2016 of €1.4 million and average fuel sales for the same period of 3.2 million litres.

Calculation of NAV
Shop €1,400,000 @ 3.5% = €49,000
Fuel 3,200,000 L @ €0.007/L = €22,400
Total NAV €71,400.

The Appellants referred to the average rent of €40,000 per annum as being almost 50% of the NAV based on the Commissioner schematic. The Appellants argued that based on the fuel

NAV of €22,400 the residual amount of €17,800 NAV would represent 1.27% of shop turnover which they maintain supports their claim that the Commissioners formula does not work.

7.15 The Appellants referred to a second comparison based on Carlow Road, Athy where the rent peaked in 2007/8 at €22,800 per annum and was subsequently reduced to €17,420 in 2010, €10,400 in 2012 and €7,020 per annum in 2015. In 2015 this outlet had shop turnover of €1.0 million and fuel sales of 550,000 L. They argued that based on a rate of €0.004/litre fuel sales would equate to €2,200 NAV leaving an average balance for the shop of €9,240. This they state would be reflective of a 0.94% of shop turnover or 1.32% of shop FMT as assessed by the Commissioner. The NAV in this case of €25,000 is under appeal to the Tribunal.

7.16 The Appellants referred to several tone of the list comparisons with the first comprising the Tesco Dublin Road Maynooth Co Kildare. The NAV basis of calculation was not supplied by the Commissioner. This unit had an NAV of €51,000 which they argue is possibly one of the best sites in Kildare not on a national primary route and they state that the trade in the shop of 50 m² is very small as it sits in the shadow of a Tesco Extra store. They claim that a hypothetical tenant would pay more for this station than the subject property.

7.17 The second tone of the list comparison refers to the N7 Kill Co Kildare which has a shop of 35 m² and is located on a highly trafficked road and has an NAV of €58,200. The NAV basis of calculation was not supplied by the Commissioner. The Appellants claim that this comparison distinguishes filling station such as this with a convenience store with allied petrol pumps. They claimed that a filling station operator would offer more for this property than he would for the subject property.

7.18 The third tone of the list comparison refers to the second N7 Kill Co Kildare premises which comprises retail unit of 250 m² and has an NAV of €102,000. The NAV basis of calculation was not provided by the Commissioner. The claimants maintain that these premises would prove very attractive to an independent operator but despite this they maintain the Commissioner still believes poorer filling stations with higher shop turnovers-such as the subject property-are worth more.

7.19 The next comparison refers to Crookstown Service Station Crookstown Co Kildare which has an NAV of €121,200. These premises had a retail unit of 200 m² of trading details as follows

2013	Fuel 3,188,078	Shop €2,680,540
2014	Fuel 3,452,538	Shop €2,867,476
2015	Fuel 3,590,146	Shop €3,056,979

The Appellants have analysed the shop as having an NAV at €100,000 based on an FMT of €2.5m and fuel with an FMT of 3,000,000 @ €0.007/L. Mr. Halpin claims that this shows the Commissioner has devalued the shop at a rate of €500 per square metre whereas other shops on the forecourt are valued at €180 per square metre substantially more than the going rate per square metre.

7.20 The Appellants also referred to premises in County Offaly Sligo and Roscommon. m²

7.21 The Appellants concluded by providing valuations on the three bases firstly based on The Rate per Square Metre method:

Fuel	5,000,000	@ €0.008/L	€40,000
Shop	117.30m²	@ €190/ m²	€22,287
External store	45.60 m²	@ €42/ m²	€1,915
1st floor	84.66 m²	@ €70/ m²	€5,926
Total			€70,128

Say €70,000

The Adjusted Formula method:

Fuel	5,000,000	@ €0.008/L	€40,000
Shop	€1,890,000	@ 1,5%	€28,350
Total			€68,350

Say €68,300.

The Capping Method

Fuel	5,000,000	@ €0.008/L	€40,000
Shop/max cap	€1,890,000	@ 3.75%	€70,875> €36,000
			€76,000

In conclusion the Appellants contended that the valuation should be reduced to €70,000 based on the first method.

7.22 Under cross examination Mr Halpin agreed that the previous rent had been subject to a verbal agreement and that the former premises comprised pumps but no retail area. He further stated that he was not aware if there had been a Solus agreement and he was not aware if the new agreement had been subject to tenancy rights under the Landlord and Tenant legislation. Mr Halpin confirmed that the redevelopment had been funded by Pat McCormick the fit-out element by provided by Naas Oil at a cost of €198,170, Topaz provided €67,000 and Gala contributed €30,260. Mr Halpin also confirmed that the property had been let in shell condition. He also confirmed that the size of the retail area had been restricted due to a planning condition. On further cross-examination Mr Halpin confirmed that he accepted the basis of calculation for the fuel and car washes adopted by the Commissioner. However, he took issue with the lack of information provided by the Commissioner in relation to the FMT calculations which he maintained made analysis very difficult for the Appellants.

7.23 Mr Halpin maintained that the letting of the subject property on a long-term lease from December 2014 at €70,000/pa provided strong market letting evidence however he was unable to provide details as to how the rent was arrived at. Mr Halpin agreed that a larger shop would provide more turnover. When queried as to which of the three methods proposed by the appellants was the best Mr Halpin stated that he was unsure which was the best however his preference was for the rate per square metre method. He also maintained that the rate per square metre method provides equity and balance across the convenience retail trade. Mr Halpin agreed that this method was not used in Scotland. When queried in relation to the rents achieved on forecourt shops other than for convenience stores Mr Halpin confirmed that he had not provided plans or site location maps. In the case of' E' Dublin Road Clane he agreed that the subject property was located at the rear of the forecourt.

7.24 When queried in relation to the ‘adjusted formula method’ Mr Halpin stated that as the fuel calculation had been accepted by him the residual value for the shop was €29,896 or 1.58% of the turnover which did not accord with the Commissioner’s methodology.

7.25 In relation to the ‘Capping Method’ Mr Halpin stated that in his opinion a different level of capping should apply to Ireland and he relied on the Commissioners valuation of 20 convenience stores in County Kildare which provided an average of €36,136 which he maintained should be the appropriate cap for Co Kildare. In relation to the comparison refer to as old Dublin Road Mr Halpin agreed that information had been obtained from the PSRA website and he also agreed that the rental comparison for Carlow Road was the subject of an appeal to the Tribunal.

7.26 Following queries from Mr Sweeney Mr Halpin maintained that the NAV of €51,000 for the Tesco unit was more attractive to the market than the subject property. He also confirmed that the financial information behind the tone of the list comparisons had not been provided by the Commissioner which made any analysis very restrictive. Mr Halpin agreed that the comparisons drawn from Offaly Sligo and Roscommon were not directly comparable with Kildare.

7.27 When queried by the Tribunal the Appellant did not give any evidence on retail rents and NAVs in Prosperous, despite his contention that this was how the property should be valued. He stated in response to a subsequent that such evidence would not have been appropriate

8. RESPONDENT’S CASE

8.1 Mr Alan Sweeney for the Respondents agreed the location and description details and included several photographs as well as a site plan with his submission. He confirmed that the subject property comprised a Gala branded convenience store and a Topaz filling station and had a wine licence and was a 24/7 operation.

8.2 Mr Sweeney confirmed the lease details but stated that in his opinion the lease terms were unusual and that he did not consider the rent to be a market rent. He also confirmed that he sought information from the appellant in relation to a motor fuel supply agreement/Solus agreement; the costs of the redevelopment works; who carried out the works and had ESSO or Topaz contributed to the works; details of the period when the property was closed 2013 to 2016; the capacity of the underground tanks; whether Naas Oil was in occupation before the new lease was signed; full details of the previous lease agreement and financial information if available.

8.3 The trading data was agreed between the parties and Mr Sweeney confirmed that the valuation had been reduced from €100,000-€79,000. He further confirmed that the Commissioner relied on six items of market information to inform his valuation scheme for service stations in County Kildare and in 59% of cases financial information was provided as part of the Kildare revaluation and the financial information from the key rental transaction was then compared with the NER.

8.4 The first key rental transaction PN1737827 referred to the lease of a petrol station and convenience store in Newbridge and was for a term of 25 years from 1 December 2012 with the rent for year 1 €70,000/pa, year 2 €80,000/pa, year 3 €100,000/pa, year 4 €110,000/pa and year 5 €120,000/pa with a break clause after 7 years. Financial information for years 2015 to 2016 was supplied. The tenant had been represented by Hennigan and Co.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	3,150,000	€0.007	€22,050
Shop sales	€1,500,000	3.75%	€56,250
Total NAV rounded			**€78,300**

8.5 The 2nd key rental transaction PN2213150 referred to Caragh, Co Kildare and comprised a petrol station, shop and car wash which was let from 29 July 2010 on a 20-year lease with five-year reviews at €55,000/pa and no rent review was completed. Financial information for years 2015 to 2016 was supplied. The tenant was represented by Elliott and FitzGerald.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade	**@**	**NAV**

Fuel throughput Litre	3,725,000	€0.007	€26,075
Shop sales	€650,000	3.0%	€19,500
Car wash	€6,500	5.0%	€325
Total NAV rounded			**€45,900**

This property had been listed for a hearing but was agreed at €45,900.

8.6 The 3rd Key rental transaction PN 1739749 comprised a petrol station, shop, car wash and training facility in Celbridge which had been let from 1 September 2013 on a 25-year full repairing and insuring lease at €138,000/pa. Financial information for years 2015 to 2016 was supplied. The tenant was represented by Elliott and FitzGerald.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput litre	5,000,000	€0.008	€40,000
Shop sales	€725,000	3.0%	€21,750
Car wash	€12,000	7.5%	€900
Training room	76.50m²	€54.00	€4,131
Total NAV rounded			**€66,700**

This property had been listed for the Valuation Tribunal but was settled at €66,700.

8.7 The 4th key rental transaction PN 1738812 at Derrinturn Kildare comprised a petrol station and retail unit and was let from 1 February 2012 on a 10-year full repairing and insuring lease of €30,000 per annum. Financial information for years 2015 to 2016 was supplied. Representations were made by the occupier.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	950,000	€0.005	€4,750
Shop sales	€1,000,000	2.5%	€25,000
Total NAV rounded			**€29,700**

8.8 The 5th key rental transaction referred to a filling station shop and car wash in Athy which was let from 1 March 2014 on a 20-year full repairing and insuring lease at €42,500 per annum. The occupier carried out improvement works after the lease commenced. Financial information for years 2015 to 2016 was supplied. Representations were made by Elliott and FitzGerald.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	2,500,000	€0.0065	€16,250
Shop sales	€900,000	3.25%	€29,250
Car wash	€25,000	10.0%	€2,500
Total NAV rounded			**€48,000**

8.9 The 6th key rental transaction referred to a filling station shop and car wash in Athy which was let from 1 July 2011 on a 20-year full repairing and insuring lease at €300,000 per annum with CPI linked rent reviews. Financial information for years 2015 to 2016 was supplied. Representations were made by Elliott and FitzGerald.

NAV calculation- based on FMT-fair maintainable trade

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	2,800,000	€0.0065	€18,200
Shop sales	€2,050,000	4.0%	€82,000
Car wash	€28,000	10.0%	€2,800
Total NAV rounded			**€103,000**

8.10 Mr Sweeney provided an additional 7 NAV comparisons none of which were subject to an appeal to the Valuation Tribunal.

8.11 The 1st comprised a filling station retail unit and car wash in Rathangan which was let on a 10-year lease from 29th of July 2013 and €160,000/pa. No financial information was provided and the estimated NAV of €130,000 was determined based on the following fair maintainable trade FMT:

Fair Maintainable Trade		@	NAV
Fuel throughput Litre	3,500,000	€0.007	€24,500
Shop sales	€2,500,000	4.0%	€100,000
Car wash	€40,000	12.5%	€5,000
Estimated NAV			**€130,000**

8.12 The 2nd NAV comparison referred to filling station, shop and car wash in Newbridge which had been let on lease of one year and one month from 11 December 2013 at €75,000 per annum. No financial information was provided and the estimated NAV of €70,000 was determined as follows based on the following fair maintainable trade FMT:

Fair Maintainable Trade		@	NAV
Fuel throughput Litre	3,250,000	€0.007	€22,750
Shop sales	€1,250,000	3.5%	€43,750
Car wash	€30,000	11.0%	€3,300
Estimated NAV			**€70,000**

The respondent also referred to the commercial lease register and a new 25-year lease from 1 July 2016 was reported as having a rent of €220,000 per annum.

8.13 The 3rd NAV comparison is in Kildare comprised filling station and retail unit and was subject to a 10-year full repairing and insuring lease from July 2013 €60,000/pa and the fit out was carried out by the occupier. No financial information was provided and the estimated NAV of €60,000 was determined as follows based on the following fair maintainable trade FMT:

Fair Maintainable Trade		@	NAV
Fuel throughput Litre	2,000,000	€0.0065	€13,000
Shop sales	€1,350,000	3.5%	€47,250
Estimated NAV			**€60,000**

The fuel throughput figures had been provided verbally on the day of Mr Sweeney's inspection.

8.14 The 4th NAV comparison referred to Allenwood and comprised a filling station and retail unit. Financial information was provided for the years 2011 to 2014. The NAV was determined as follows based on the following fair maintainable trade FMT:

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	2,850,000	€0.065	€18,525
Shop sales	€3,000,000	4.0%	€120,000
Total NAV rounded			**€138,500**

8.15 The 5th NAV comparison referred to a service station retail unit and car wash at Clane and financial information was provided for the years 2013 to 2016. The NAV was determined as follows based on the following fair maintainable trade FMT:

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	2,500,000	€0.065	€16,250
Shop sales	€1,100,000	3.5%	€38,500
Car wash	40,000	12.5%	€5,000
Total NAV rounded			**€59,700**

8.16 The 6th NAV comparison referred to a 2nd filling station retail unit and car wash at Clane and financial information for the years 2012 to 2015 was supplied. The property was subject representations by Elliott and FitzGerald and was agreed at €99,800.

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	2,400,000	€0.065	€15,600
Shop sales	€2,100,000	4.0%	€84,000
Car wash	5,000	5%	€250
Total NAV rounded			**€99,800**

8.17 The 7th and final NAV comparison referred to a filling station retail unit at Sallins and no financial information was provided. The NAV was determined as follows based on the following fair maintainable trade FMT:

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	1,000,000	€0.055	€5,500
Shop sales	€700,000	3.5%	€21,000
Estimated NAV			**€26,000**

8.18 Based on the rental transactions and NAV comparisons the Commissioner determined that the NAV for the subject property should be based on the following fair maintainable trade FMT*

Fair Maintainable Trade		**@**	**NAV**
Fuel throughput Litre	4,000,000	@ €0.075	€30,000
Shop sales	€1,400,000	@ 3.5 %	€49,000
Total NAV rounded			**€79,000**

* Mr Sweeney confirmed that the estimate of FM T used to calculate the NAV is well below the level of trade achieved. He further stated that this level of trade could be replicated by the hypothetical tenant.

8.19 During cross-examination Mr Sweeney confirmed that approximately 40% of the cases were based on estimated FMT's and further allowances for DCI/Lotto were made on a case-by-case basis. Mr Sweeney confirmed that the Valuation Office never received all the information sought but are satisfied with the information they have received for Kildare.

8.20 Mr Sweeney confirmed in relation to key rental transaction 1 in Newbridge that the subject property was close to the Newbridge Retail Centre, Dunnes Stores and Whitewater. He conceded that the NAV of €78,300 did not accord with the average rent of €96,000. No floor area was provided consequently Mr Sweeney was unable to confirm the rate per square metre for the retail area.

8.21 Mr Sweeney confirmed that the rent in key rental transaction 2 from Caragh that the reported rent of €55,000/pa referred to a 2010 rent and though there was a rent review in 2015

Mr Sweeney was not in possession of the new rent. No floor area was provided and no rental analysis was possible.

8.22 In relation to key rental transaction 3 in Celbridge when questioned as to the relativity of a NAV of €66,700 and reported rent of €138,000 Mr Sweeney indicated that this rent may in fact refer to additional buildings. No floor areas where provided and no rental analysis was possible.

8.23 In relation to key rental transaction 4 Mr Sweeney agreed that the NAV and the reported rent were very close to one another. He confirmed that he did not have a copy of the lease and no floor areas were provided. Mr. Sweeney confirmed that he was not aware if the take-away was included with the subject property.

8.24 In relation to key rental transaction 5 in Athy Mr. Sweeney confirmed that the NAV of €48,000 was close to the rent of €42,500 per annum and confirmed that substantial improvements had been taken by the occupier.

8.25 In relation to key rental transaction 6 in also in Athy when questioned as to why the market rent of €300,000 from 2011 and the rounded NAV of €130,000 were so far apart Mr. Sweeney maintained that this was an outlier and he had disregarded the rent. No floor areas were provided, and Mr Sweeney agreed that while FMT is by definition subjective he was satisfied that the correct approach had been adopted in this instance.

8.26 In relation to NAV comparison 7 from Rathangan Mr Sweeney confirmed that he had no financial information in this instance and he was not aware if the rent of €160,000 included additional property to the rear. He confirmed he had not seen a copy of the lease and he was of the opinion that the rent was not too high in this instance. He confirmed in relation to the NAV comparison 8 from Newbridge that the rent and the estimated NAV were close to one another and that no financial information had been provided. When questioned as to the commercial lease register – information and the rent of €220,000 per annum Mr Sweeney accepted that Mr Halpin's view that the more correct information referred to the lease from November 2015 at €120,000/pa. Mr Sweeney confirmed that the rent and estimated NAV for Kildare were at idem. In relation to NAV comparison 13 at Sallins Mr Sweeney confirmed that was not aware of the make-up of floor area of 90 m².

This concluded the cross examination of Mr Sweeney.

8.27 Both parties provided brief summaries of Mr Halpin restating his contention that the schematic adopted by the Commissioner was not capable of functioning for properties such as the subject one and that the limited submissions of financial information further added to its unreliability. He stated that the different methodologies adopted for convenience stores and retail stores and filling station sites provides an uneven approach which was not consistent similar type premises.

8.28 Mr Sweeney in his summary maintained that the subject property was not a hybrid and that the approach adopted had been accepted throughout Kildare as demonstrated by various comparisons provided. He also referred to the fact that he was of the opinion that the rent of €70,000/pain the subject property was very unusual since the landlord had set out rents for the full period of 25 years and that the open market aspect of the transaction might have been damaged by the possible statutory Landlord and Tenant rights of the occupier.

9. SUBMISSIONS

9.1 No legal submissions were made.

10. FINDINGS AND CONCLUSIONS

10.1 The appellant's case is principally based on the 25-year lease from 11 December 2014 at a commencing rent of €70,000 /pa however the Tribunal having examined the draft unsigned lease provided by the appellants is concerned that it does not represent an open market transaction. The terms of the lease are considered by the Tribunal to be somewhat unusual particularly where the rent for the first 10 years is fixed at €70,000/pa with increases of €5,000 for each of the remaining rent reviews of the term. The copy lease provided refers to restrictions on the sale of items other than ESSO Premium Brand motor oil (Mobil) though the oral evidence provided indicated no Solus agreement exists. The lease is also unusual in that the landlord has retained responsibility for all external repairs on new purpose-built premises. Sections of the draft lease were missing. As this lease formed a substantial part of the appellants case the Tribunal is surprised that such an incomplete document was provided to it.

10.2 The appellant confirmed that the redevelopment of the filling station and shop was undertaken by Pat McCormack the landlord however the fit-out of the shop and forecourt was undertaken by Naas Oil (Prosperous) Ltd at a cost of approximately €198,170 of which Topaz contributed €67,000 and Gala €30,260. It is therefore clear to the Tribunal that the rent of €70,000 per annum referred to the subject property in shell condition and that a higher rent would be applicable to subject property following its fit out for valuation purposes. We therefore cannot accept that the reported rent of €70,000 per annum is the correct basis for determining the NAV in this instance.

10.3 The Tribunal has noted that the appellants have accepted the Commissioner's schematic in relation to fuel throughput and car wash sales which accounts for €40,000 approximately. As the Tribunal has not accepted that the rent of €70,000 per annum fully reflects the rent for the subject property is cannot therefore accept that the logic of deducting the fuel element of €40,000 from the stated rent of €70,000 which would provide a residual rental value for the shop of €30,000 per annum.

10.4 The Tribunal has also noted that the Commissioner's schematic has generally been accepted throughout Co Kildare by filling station operators and their advisers. However, it is concerned that there is no clear link between established NAV's and reported rents extracted from the key rental transactions which vary considerably from just below parity in one case to almost three times in the most extreme case.

10.5 The Tribunal has noted the appellant's concern whereby the formula based on the 2016 trading data produces a total NAV €110,979, however using the 2015 annualised figures a lower NAV of €87,900 is arrived at which is closer to the NAV determined by the Commissioner based on FMT fuel throughput of 4,000,000L and €1,400,000 shop sales. The Tribunal has not been provided with the methodology adopted to determine FMT and is not aware how the Commissioner has determined these levels of FMT. Without evidence to the contrary it must accept that the same criteria have been adopted in the evidence put forward by the respondents to maintain correct and equitable valuations relative to the value of other comparable properties in County Kildare.

10.6 It would assist the Tribunal if the methodology behind the assessment of FMT for filling station shops was provided to it.

10.7 The Tribunal notes the concerns raised by the appellants regarding the different approach adopted when valuing a convenience store on a filling station site and on a non-filling station site, however in this instance the appellant has not established to the satisfaction of the Tribunal a case for overturning this approach which has been widely accepted by a large number of operators and their advisers in Co. Kildare.

10.8 The Tribunal is satisfied that the FMT methodology has been accepted generally in County Kildare and as the appellants reliance on the rent of €70,000 per annum has not been accepted as comprising the market rent the Tribunal finds that the appellant has not proven its case and disallows the appeal confirms the valuation at €79,000.

DETERMINATION:

Accordingly, for the above reasons, The Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so determines.