

Appeal No: VA19/5/1287

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020**

Circle K

APPELLANT

and

Commissioner of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 303081, Fuel/Depot at Old Navan Road Dublin Co. Dublin**

B E F O R E

Hugh Markey – FRICS FSCSI

Deputy Chairperson

Michael Brennan – BL, MSCSI

Member

Eamonn Maguire – FRICS, FSCSI, VRS, ARB

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18th DAY OF JANUARY, 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 8th day of October, 2019 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 €98,300.

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: *“The Valuation is excessive and unfair, and not in conformity with the Valuation Scheme adopted by the Valuation Office, or in accordance with rating principles and practice”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €85,000.

2. REVALUATION HISTORY

2.1 On the 29th day of March, 2019 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 €96,400.

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 increased to €98,300.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €98,300

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely on the 3rd day of November, 2021. At the hearing the Appellant was represented by Mr John C. Elliott FSCSI, FRICS, MCI Arb of Elliott & Fitzgerald Ltd and the Respondent was represented by Ms Grainne O’Neill BL, Counsel instructed by the Chief State Solicitor’s Office, Mr Sean Munrey Solicitor of the Chief State Solicitor’s Office, together with Mr Patrick Nolan of the Valuation Office who gave expert evidence.

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 been affirmed, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The property comprises a service station with forecourt and shop situated on an elongated site, located on the south side of the Old Navan Road, Mulhuddart, Co. Dublin.

4.2 The forecourt comprises of a canopy with three, double sided, pump islands which provides a total of eight fuel nozzles per pump island. There is a jet car wash to the rear of the site and there is provision for general services such as water and air. The shop comprises of a retail area and store for the sale of convenience goods as well as coffee and lottery sales. There is an ATM.

4.3 The floor areas of the property and capacities of the fuel tanks have been agreed between the parties as follows:

Underground Fuel Storage Tanks

Tank No	Fuel Type	Capacity (Litres)
Tank 1	Diesel Miles Plus	11,400
Tank 2	Diesel	26,600
Tank 3	Unleaded	19,000
Tank 4	Unleaded	26,600
Tank 5	Unleaded Miles Plus	11,400
Total		95,000

Retail Areas

Use	Floor	Size (Sq m)
Shop	Ground	70.56
Store	Ground	50.38
Total		120.94

Forecourt Areas

Use	Floor	Size (Sq m)
Forecourt	Ground	765.31
Canopy	-	213.75
Yard	Ground	409.62

5. PRELIMINARY DISCOVERY APPLICATION

5.1 By notice to the Registrar of the Valuation Tribunal dated 26th October 2021, the Respondent sought discovery and production of the following categories of documents pursuant to Rule 61 of the Valuation Tribunal (Appeal) Rules, 2019 (“**the 2019 Rules**”) as follows:

1. *Verified Management accounts for the years ended*
 - a. *31st December 2015*
 - b. *31st December 2016*
 - c. *31st December 2017*

Reason:

The information has not been provided and is required to apply the valuations scheme fully. Different figures have been provided to the respondent for the same items. Incomplete information has been provided in relation to other items. It is necessary to have the verified overall management accounts to ensure the reliability of the financial information used in the valuation scheme.

The document provided on foot of the voluntary discovery request are not verified management accounts. The document contains information that has been extracted from a different source or sources and compiled into a single document. The underlying documentation has not been provided.

These documents are within the peculiar your knowledge of the Appellant and no other means of proof of such documents is available to the Respondent. The discovery of these documents as required for the disposing fairly of the cause or matter under appeal.

2. *Verified Electronic Point of Sale Reports (“EPOSR”) in its original form, which should not be manipulated into an excel file or other table for the years ended*
 - a. *31st December 2015*
 - b. *31st December 2016*
 - c. *31st December 2017*

Reason:

This information has not been provided and is required to apply the valuation scheme fully. Different figures have been provided to the Respondent for the same items and it is necessary to have the original point of sale information to ensure the reliability of the financial information used in the valuation scheme.

The document provided on foot of the voluntary discovery request is the same as that provided at representation stage. The document provided is not an EPOSR and has clearly been extracted from some underlying documents that have not been provided.

These documents are within the peculiar knowledge of the Appellant and no other means of proof of such documents is available to the Respondent. The discovery of these documents required for the sporting very of the cause or matter under appeal.

3. *Fuel Volume Reports showing the overall throughput and the throughput attributable to fuel card sales for the financial years ended*
 - a. *31st December 2015*
 - b. *31st December 2016*
 - c. *31st December 2017*

Reason:

This information has not provided and is required to apply the Valuation scheme fully. No actual trading date has been supplied.

These documents are within the peculiar knowledge of the Appellant and no other means of proof of such documents is available to the Respondent. The discovery of these documents required for the sporting very of the cause or matter under appeal.

The respondent considers this documentation to be both relevant and necessary to deal with the issues raised on appeal. The failure to provide the information sought prevents the respondent from applying the Scheme.

5.2 The Respondent sought to have the discovery application heard as a preliminary application prior to the hearing of the substantive appeal on the 3rd day of November, 2021. The Tribunal acceded to this preliminary request and the application was brought by Counsel on behalf of the Respondent.

5.3 Counsel for the Respondent outlined that their application was not in accordance with the timeline set out under Rule 61 of the 2019 Rules and requested the Tribunal to use its discretion to accede to the request of the Respondent under Rule 115 of the 2019 Rules. Counsel for the Respondent acknowledged that voluntary discovery was made by the Appellant on the 26th August 2021 but that it was not accepted by the Respondent. She stated that there was no specific reason for the delay in making the request other than that certain information was required in order to apply the valuation scheme. It was stated on behalf of the Respondent that deficiencies in documentation arose in prior cases and that there is a fear that they have not applied the scheme properly. It was also stated that the Respondent would have to be satisfied to accept their valuation of the subject property if discovery was not permitted. The Respondent stated that in accordance with the Act, it has to apply the scheme fairly and uniformly to ensure equality between all properties. The Respondent stated that there was a total of 22 service stations out of 44 that were under appeal and that it required turnover figures and a breakdown of turnover to apply the scheme. The Respondent made reference to the fact that their valuation was increased following representations. The Respondent outlined their concerns with regard to the uncertainty of the financial information provided by the Appellant by reference to the fact that three different NAV's were proposed at representations stage, appeal stage and in the written précis of Mr Elliott. They further stated that only one other competing operator together with the Appellant has failed to supply adequate financial information.

5.4 Mr Nolan gave evidence of need for discovery on behalf of the Respondent and stated that the scheme operated on the basis of financial and market evidence. He stated that the valuation scheme was derived from profitability which was based on scale, in that the higher the throughput of sales, the higher the rental value could be achieved. It was his evidence that certain information was requested from the Appellant under section 45 of the Act, such as audited accounts, management accounts and throughput details. Mr Nolan stated that he received information at representations stage and sought further clarification. He stated that he sought point of sale (**hereinafter referred to as "POS"**) reports which comprised of a stock

and sale record which in his opinion would have been required for revenue and company law purposes. Mr Nolan stated that if the Appellant was arguing for deductions for low margin items, then this information needed to be factually correct. He highlighted that throughput of fuel sales relating to fuel cards had become controversial as a result of the Appellant changing his NAV in his précis.

5.5 In opposition to the discovery request, Mr Elliott outlined to the Tribunal that the subject property was one of many properties purchased in a portfolio sale from a well known prior entity. As a result he stated that it was difficult to get the information requested by the Respondent but all the information that was possible to be obtained was sent to the Respondent. He stated that the discrepancy that arose in relation to the financial information was due to Covid-19.

5.6 When summarising the Respondent's application, Counsel stated that they were relying on the recent Valuation Tribunal decision in VA17/5/151. The Tribunal stated that they were surprised by this given that the Respondent had issued a notice of dissatisfaction under section 39 of the Act on 22nd October 2021 in relation to this decision. In response, Counsel for the Respondent stated that the Respondent was only relying upon it to the extent that it correctly references *Irish Shell v Commissioner of Valuation* for setting out the principles governing discovery in appeals to the Tribunal. She also stated that the Respondent was relying on general legal principles relating to discovery.

5.7 The Tribunal delivered their *ex tempore* decision to refuse the discovery application on the basis of delay and procedural error having regard to the 2019 Rules, factors that augured against the necessity for discovery according to general legal principles and the fact that the balance of justice did not lend itself towards making discovery in favour of the Respondent.

5.8 The Tribunal now restates their written reasons for refusing the discovery request:

5.8.1 In accordance with Rule 60 of the 2019 Rules, a party seeking discovery must make their application within 30 working days prior to the hearing date. The subject application was made on the 26th October 2021, which was 4 working days prior to the scheduled hearing date of 3rd November 2021. The ability to comply with this Rule was entirely within the power of the Respondent.

5.8.2 Furthermore, under Rule 61 where a request for voluntary discovery is not responded to within 10 working days, the requesting party, not later than five working days following the expiry of that 10-day period, can apply to the Chairperson for discovery. The Respondent was in receipt of the Appellant's discovery on 20th August 2021. The Respondent had in effect until 10th September 2021 to make an application under this Rule. It was their evidence that they had no reason for the delay in making their application until 26th October 2021.

5.8.3 Procedurally, the 2019 Rules relating to discovery require the application to be made to the Chairperson. The Respondent's application of 26th October 2021 was incorrectly made to the Registrar of the Tribunal and not the Chairperson and was sat down before a divisional Tribunal which is not within the jurisdiction prescribed by the 2019 Rules.

5.8.4 At the time of the discovery application on 26th October 2021, the Tribunal was scheduled for hearing, précis of evidence were exchanged between the parties, and notably the NAV was already ascertained by the Respondent. Even in the absence of the applicability of the factors above as reasons for refusal, to accede to a discovery request at this late stage would be contrary to the orderly running of a statutory appeal and would be at considerable unnecessary expense.

5.8.5 Whilst the relevance of the information sought is self-evident, there are a number of general legal principles that were considered in light of the necessity of the information sought. The Respondent admitted that it had regard to financial information to the sector as a whole as well as the information submitted by the Appellant. Indeed, the Respondent stated in its précis, prior to oral evidence that it had ascertained the NAV of the subject property on this basis. Therefore, having regard to *IBB Internet Services Ltd v Motorola Ltd [2015] IECA 282*, it could not be said that the Respondent had no effective means of advancing its claim. Furthermore, the Appellant when delivery its voluntary discovery stated that it was not in possession of the information being requested. Therefore in light of all the factors ascertained it would have been futile to make an order for discovery if, according to the jurisprudence in *IBB Internet Services Ltd* "the entire purpose of discovery is to ensure that the

requesting party knows what documentation the requested party has in his or her possession". In *Ryanair Plc v Aer Rianta cpt* [2004] 1 ILRM 241 it is also worth noting that the Court had regard to means of proof as an alternative to discovery, such as witness evidence which was relevant to this case. The Tribunal had regard to this factor and the pending evidence that may have been adduced by Mr Elliott.

5.8.6 In consideration of all the above factors, the balance of justice did not warrant the Tribunal using its discretion under Rule 115 of the 2019 Rules.

6. ISSUES

6.1 Following determination of the discovery application, the appeal raised the sole issue as to whether the NAV of the Property as determined by the Respondent is excessive.

7. RELEVANT STATUTORY PROVISIONS:

7.1 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.”

7.2 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.”

8. APPELLANT'S CASE

8.1 At the outset of his evidence, Mr Elliott corrected two matters that formed part of his valuation approach as contained at section 15 in his précis, at page 7. He orally withdrew the following written statement in his valuation for being erroneous *“the calculation of the shop turnover which excludes National Lottery sales has been taken at the appropriate scale”* and he also stated orally to the Tribunal that he wished to strike out the following written statement that was also contained in his valuation approach *“As a consequence of the Pandemic it has not been possible to obtain certified figures for Fuel cards sales, and these has also been omitted”*.

8.2 Mr Elliott stated that the consequence of correcting these two matters in in his valuation approach, that he now contended for a valuation of €82,500 as opposed to €85,000 as was stated in his notice of appeal and €58,000 as was contained in his written précis of evidence.

8.3 It was his evidence that he was now relying on management accounts provided to him by the occupier for the basis of his valuation. These were produced following the request for voluntary discovery. These management accounts comprise of two documents, namely an abridged profit and loss account and turnover extract together with a background email (hereinafter referred to as the **“rectified financial information”**). The profit and loss account was certified by the Head of Financial Planning and Analysis of the occupier as giving a fair and reasonable view of the profitability of the subject property for the financial years 2015 to 2018 and the second document comprises of extracts from a spreadsheet relating to turnover, certified as being correct by the Financial Controller for the occupier. The second document was provided to the Respondent at representations stage and the occupier instructed that both documents should be read in conjunction with each other. This rectified financial information was provided to Mr Elliott on 20th August 2021 and was provided to the Respondent by Mr Elliott on this date also.

8.4 Mr Elliott stated that he was not arguing for deductions for low margin fuel card sales and lotto sales as per his written précis and that his revised valuation was as follows:

Average Fuel Sales 2015-2017	4,171,060 litres @ €0.07	€31,282.95
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Average Shop Sales 2015 – 2017	€1,142,338 @ 3.5%	€39,981.73
Carwash	€75,111 @ 15%	€11,266.68
Total NAV		€82,531
Say		€82,500

8.5 Under cross examination, counsel for the Respondent questioned Mr Elliott in relation to the rectified financial information that was supplied to him. Mr Elliott confirmed that he did not himself produce the rectified financial information being relied upon by him. When he was asked how Covid-19 impacted the provision of information to him by the occupier, he stated the Head Office of the occupier was shut but did not otherwise know how Covid-19 impacted the production of the financial information. He also stated that he had no explanation as to why better quality financial information was not available electronically and did not know if a point of sale system was in place when questioned. He stated that he did properly enquire about POS information and that he didn't get an answer from the occupier in relation to POS information. Counsel for the Respondent put it to him that electronic point of sale (**hereinafter referred to as "EPOS"**) systems can produce information readily to which Mr Elliott responded confirming that he wouldn't know this as he was not an operator.

8.6 Mr Elliott was also questioned in relation to his valuation approach of the subject property. It was put to him, that in his précis, he stated that the subject property was a 24 hour station and that he made a deduction for this but that under the valuation schematic, the time at which sales take place is irrelevant. He stated that the timing of sales does impact the valuation schematic and that allowances should be made to the maintainable throughput for 24 hour days. He agreed with Counsel for the Respondent when she put it to him that the business operates for profit and that it would not open for 24 hours if it were not worthwhile. Mr Elliott was further questioned as to what authority he relied upon to apply a discount for 24 hour sales. He stated that he was relying on 'Bond and Brown on Rating' which suggested that a valuation based on an 18 hour operation was appropriate in the circumstances. It was put to him that the valuation schematic relied upon by the Respondent does not allow for a deduction and Mr Elliott accepted this and stated that it would not be equitable.

8.7 Mr Elliott was also cross-examined in relation to the absence of financial information pertaining to fuel card sales. Counsel for the Respondent put it to him that no figures were provided in relation to fuel card sales in his valuation. He responded by stating that this

information was not available in the rectified financial information on which he was now relying and that he had not included in his valuation for this reason. When it was put to him as to how fuel card sales should be recorded, he stated that the information was not available because the head office of the occupier was shut due to Covid-19. When it was put to him that information relating to fuel card sales should be somewhere, he stated that the Circle K business was acquired in 2015 as part of a gradual take over and that this also caused difficulties in obtaining this information.

8.8 Under cross-examination in relation to his valuation, it was put to Mr Elliott that he could not be confident with the financial information used to form the basis of his valuation. Mr Elliott did not accept that the rectified financial information could not be used with confidence. It was further put to Mr Elliott that the absence of POS information impugned the credibility of the financial information that he was relying upon. Mr Elliott responded by stating that the rectified financial information was verified and compiled at a significant cost. Counsel for the Respondent questioned if the rectified financial information corresponded to the financial information previously supplied and Mr Elliott stated that it now aligned to his original valuation of €85,000. He was then asked why his valuations have changed from a NAV of €78,000 at representations stage, to €85,000 in the revaluation appeal, to €58,000 in his written précis of evidence, and now €82,500 as contended at the hearing. He stated that the valuations changed based on the financial information that was supplied to him by the occupier.

8.9 When Mr Elliot was asked by the Tribunal to explain his valuation approach, he stated that he was no longer relying on the methodology and calculation outlined on page 8 of his précis of evidence. He restated that he was relying on the rectified financial information provided to him as giving a fair and reasonable view of the profitability of the subject property for the financial years 2015 to 2018. He further stated that he was applying the valuation schematic that was proposed by the Respondent. It was put to Mr Elliot by the Tribunal, that in comparing the valuation of €82,500 as contended for in oral evidence and the valuation no longer being relied upon in his précis of evidence, that it appeared that he longer contended for allowances for low margin fuel card sales and lotto sales. Mr Elliot confirmed that he was no longer contending for these discounts and that the financial information had changed based on the rectified financial information pertaining to throughput.

8.10 In summarising his evidence, Mr Elliot stated that it would be best practice to rely on the rectified financial information that was certified on 20th August 2021. He acknowledged that there were inaccuracies in his précis but urged the Tribunal to determine the NAV at €82,500 if they agreed that the certified management accounts of 20th August 2021 were correct.

9. RESPONDENT’S CASE

9.1 Mr Nolan adopted his evidence for the purposes of the discovery application as evidence for the hearing also.

9.2 Mr Nolan addressed the Tribunal in relation to a number of matters that arose in response to the Appellant’s amended valuation and evidence during oral testimony. He stated that the fuel storage tanks are not filled at the side of the property and that this does not impact on cars refuelling and parking. He stated that the subject property has decent circulation space and is a benefit that it is attributable to the property. It was Mr Nolan’s view that the rectified financial information being relied upon by the Appellant was unreliable. He was of the view that the financial information supplied at representations stage does not align to the information now being relied upon. He also outlined that the first time that the turnover of the car wash has been stated to be €75,000 was during the oral testimony of Mr Elliott. He further stated that there is no support for a 5% deduction on the fuel sales for being a 24 hour operation.

9.3 Mr Nolan directed the Tribunal to an error contained in his précis of evidence on page 24 which should correctly state that 22 out of 44 service stations in Fingal are currently under appeal. Mr Nolan arrived at his NAV on the following basis:

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,650,000	0.0375	€61,875
Shop Turnover Allowance	€400,000	-0.0188	-€7,520
Fuel Turnover (litres)	6,285,000	0.0085	€53,422
Fuel Turnover Allowance (litres)	2,375,000	-0.00425	-€10,212
Carwash Turnover	€10,000	0.075	€750
NAV			€98,315
			Say €98,300

9.4 In addition to the financial performance of the occupier, Mr Nolan relied on two key rental transactions (“KRT or KRTs”) and five NAV comparisons in support of his valuation as follows :

KRT 1 – Located 3km northwest of the subject property
 24 hour Operation
 10 year Lease from 15/10/2011
 Sub-lease from 06/09/2016
 Rent of €282,500 per annum
 NER of €282,500 per annum
 NAV of €126,600 as follows:

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€3,070,000	0.04	€122,800
Shop Turnover Allowance	€945,000	-0.02	-€18,900
Fuel Turnover (litres)	2,000,000	0.0065	€13,000
Carwash Turnover	€65,000	0.15	€9,750
NAV			€126,600

KRT 2 – Located in Swords
 24 hour Operation
 10 year Lease from 01/12/2014
 Rent of €300,000 per annum for years 1-5
 Rent of €303,000 per annum for years 6-10
 NER of €315,000 per annum
 NAV of €245,000 as follows:

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€4,000,000	0.04	€160,000
Shop Turnover Allowance	€150,000	-0.02	-€3,000
Fuel Turnover (litres)	7,850,000	0.009	€70,650
Fuel Turnover Allowance (litres)	375,000	-0.0045	-€1,688
Carwash Turnover	€130,000	0.15	€19,500

NAV			€245,563 Say €245,000
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NAV Comparison 1 – Blanchardstown, Dublin 15 – 2km from subject property

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,550,000	0.0375	€58,125
Shop Turnover Allowance	€175,000	-0.0188	-€3,290
Fuel Turnover (litres)	3,900,000	0.0070	€27,300
Fuel Turnover Allowance (litres)	600,000	-0.0035	-€2,100
NAV			€80,035 Say €80,000
Comments	Agreed NAV with Mr Elliott Allowance for low margin sales Circulation inferior		

NAV Comparison 2 – Castleknock, Dublin 15 – 4.5km from subject property

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,950,000	0.0375	€73,125
Shop Turnover Allowance	€260,000	-0.0188	-€4,888
Fuel Turnover (litres)	4,700,000	0.0075	€35,250
Fuel Turnover Allowance (litres)	270,000	-0.00375	-€1,026
Carwash Turnover	€55,000	0.15	€8,250
NAV			€110,711 Say €110,700
Comments	Agreed NAV at representations stage with Mr Elliott		

NAV Comparison 3 – Castleknock, Dublin 15 – 4.5km from subject property

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,250,000	0.035	€43,750
Fuel Turnover (litres)	3,600,000	0.007	€25,260
Carwash Turnover	€157,000	0.15	€23,550
NAV			€92,920

			Say €92,900
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NAV Comparison 4 – North Co. Dublin – 8km from subject property

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,480,000	0.035	€51,800
Shop Turnover Allowance	€205,000	-0.0175	-€3,587
Fuel Turnover (litres)	6,450,000	0.0085	€54,825
Fuel Turnover Allowance (litres)	2,550,000	-0.00425	-€10,965
Carwash Turnover	€19,000	0.075	€1,425
NAV			€93,497 Say €93,400
Comments	Agreed NAV with Mr Elliott		

NAV Comparison 5 – North Co. Dublin – 8km from subject property

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€2,700,000	0.04	€108,000
Shop Turnover Allowance	€870,000	-0.02	-€17,400
Fuel Turnover (litres)	4,000,000	0.0075	€30,000
Carwash Turnover	€260,000	0.15	€39,000
NAV			€159,600

9.5 Mr Nolan stated that his assessment of NAV was fair and is justified as per his valuation workings at 9.3 above. He stated that there was a great degree of contradictory information received from the Appellant which resulted in varying opinions of value from Mr Elliott and evidence was only adduced during his oral testimony where the turnover relating to the carwash was €75,000pa as opposed to the €10,000pa per the financial information received. Mr Nolan acknowledged that the Appellant has narrowed the differential in values between the parties, but has not answered questions relating to the provision of financial information. He stated that whilst his amended NAV was not unreasonable, it did not assist with fairness and equity.

9.6 Under cross-examination, Mr Elliott put it to him that if equity and uniformity were the purpose of the scheme, then why did he not refer to the narrow frontage of the property. Mr Nolan stated that the property has good access, egress and was not impeded by its frontage. He

further stated that the frontage does not impact turnover, given that the NAV is underpinned by the financial information received. Mr Elliott asked if the comparisons have larger frontage and Mr Nolan confirmed that with the exception of NAV comparison 1, that they have good frontage but given the valuation is per the schematic, it is based on the financial information relating to each property and not frontage.

9.7 Mr Elliott directed Mr Nolan to page 18 of his précis at section 5.3 in which he stated that he considered evidence submitted by other occupiers and enquired as to what this meant. Mr Nolan stated that he looked at the relevance of the scheme to all properties and that all evidence received by similar occupiers is considered which assists in the valuation of all properties. Mr Elliott questioned Mr Nolan as to how he derived his NAV. He confirmed that he based his NAV on the financial information that was supplied by Mr Elliott at representations stage. Mr Elliott then stated that his NAV would be lower if he had provided him with evidence of low margin sales. Mr Nolan accepted this principle but confirmed that he was not provided with what he believed as accurate evidence and that this was controversial in his eyes. It was put to Mr Nolan as to why he did not make any allowance on his NAV comparison 3 and he confirmed it was because he received no evidence that there was fuel card sales. Mr Nolan was also directed to an apparent calculation error at page 41 of his précis and he confirmed that the error did not have a material impact on the NAV.

9.8 Mr Elliott questioned Mr Nolan as to whether he was familiar with the textbook on rating by Brown and Bond and their proposition that a discount should be applied for 24 hour trading. Mr Nolan confirmed that as he was not provided with the extract being referred to on page 24, that he could confirm familiarity and stated that it was an English book applicable to the English rating system. He also stated that it had little or no mention to the Irish system and was therefore irrelevant.

9.9 The Tribunal asked Mr Nolan if he now valued the carwash on the basis of the turnover figure of circa €75,000 that was now being proposed by Mr Elliott. He confirmed that it should be valued at 15% of the turnover. Mr Nolan also clarified that any issues with regard to frontage were irrelevant as it would be reflected in the turnover figures for the property. He also stated that he applied the scheme as fully as possible with regard to the financial information that was obtained. He finished his evidence by confirming that any allowance for 24 hour trading has not been applied to any property as part of the valuation scheme.

9.10 Counsel for the Respondent summarised by stating that the burden of proof was not met by the Appellant with regard to the evidence submitted by them. Whilst in no way criticising Mr Elliott, she stated that he was relying primarily on hearsay evidence with regard to the financial information underpinning his valuation. She stated that POS figures were not provided and various valuations were produced based on various financial documents. Counsel stated that Covid-19 was not reasonable explanation for failing to provide POS figures which she stated should have been readily available. She confirmed that filling stations were valued on a scheme which relied on consistency and transparency and that the occupier of the subject property was the exception with regard to this cohort of occupiers who provided adequate financial information. She stated that the occupier should not be able to benefit from a failure to provide relevant financial information or benefit from unreliable information. She requested the Tribunal to refuse the appeal as the burden of proof was not reached and the information relied upon by the Appellant was unreliable as basic underlying records were not produced.

10. SUBMISSIONS

10.1 Aside from the discovery application of the Respondent as set out at section 5 above, there were no other legal submissions.

11. FINDINGS AND CONCLUSIONS

11.1 On this appeal the Tribunal must determine the value of the Property to achieve, insofar as is reasonably practical, a valuation that is correct and equitable.

11.2 The relevant question on this appeal concerns the amount a hypothetical tenant would pay in rent for a tenancy of the Property on the terms set out in section 48 of the 2001 Act, as amended. The rent for which the Property might, in its actual state, be reasonably be expected to let is measured by the rental value on a hypothetical tenancy of the Property on a year on year basis and not by reference to the actual occupier's business or financial means or the rent the occupier actually pays.

11.3 The Tribunal notes that the Respondent relied on a policy document outlining a valuation schematic for this type of asset class that has been relied upon by them in the rating area of Fingal and throughout various other counties. The schematic comprises an objective and subjective element of valuation. It provides for the aggregate valuation of each profit centre

within this asset class which comprises of three elements: fuel sales; shop sales; and car wash sales. The schematic has a rigid sliding scale and operates on the basis that a dedicated percentage of each profit centre reflects the NAV that is attributable to the property or the rent that a hypothetical tenant would pay. The schematic also operates on the basis of volume, in that, the higher the turnover of the business, the more profitable it is and the higher the rent that is payable. This is the objective element. Within each profit centre, the valuer has to identify what the Respondent terms as the “fair maintainable trade” (‘the FMT’) of each profit centre. This is the subjective element, being the level of trade that the hypothetical tenant would expect to obtain having regard to inter alia: location; physical characteristics; design & functionality; trading style; adaptability; and competition of the subject property using comparable properties where available.

11.4 The Appellant generally accepts the Respondent’s schematic for the valuation of this asset class. However, in his written précis, he argued that a 5% deduction should be applied to fuel sales turnover because the occupier traded on a 24 hour day. He relied on the English textbook of *Rating Valuation: Principles and Practice* by Bond and Brown for this argument. When the Appellant sought to amend his valuation during oral testimony, there was no explicit reference to this deduction being sought nor was it any way apparent from the figures relied on by Mr Elliott that the deduction was even considered at this point. Notwithstanding the omission of this deduction from his revised valuation as set out in section 8.5 above, he continued to advocate orally that he was seeking this deduction. It is the view of the Tribunal that the approach of the Appellant with regard to this deduction was somewhat contradictory and confused. The Tribunal also notes that there was no suggestion by the Appellant that he was seeking this deduction as a component of goodwill of the occupier.

11.5 The Tribunal notes that both parties have placed heavy reliance on the actual turnover of the existing occupier in assessing the FMT. The parties should be acutely aware that the business of an existing occupier does not universally transfer to a hypothetical tenant. The Appellant did not submit any comparable evidence in support of his valuation. He in fact relies entirely on the occupier’s abridged profit and loss account as provided for in the rectified financial information. The Respondent submitted two KRT’s and five NAV comparisons in support of his valuation. The Tribunal also notes that the Respondent has stated that they considered evidence of trading performance submitted by other similar occupiers in the valuation of the subject property.

11.6 The Respondent very belatedly raised concerns as to a potential material difference in the reported trading levels by the Appellant in response to various amendments to the Appellant's valuation. However, aside from the credibility that arises in relation to the production of various iterations of financial information from the period 2015 – 2018, the Appellant now relies on a valuation of €82,500 as was submitted in oral evidence. Therefore, the issue can be narrowed and the material turnover figures that have been brought into question in respective FMT valuations are now as follows:

Use	Appellant	Respondent
Shop Turnover	€1,142,338	€1,650,000
Shop Turnover Allowance	€0	€400,000
Fuel Turnover (litres)	4,171,060	6,285,000
Fuel Turnover Allowance (litres)	0	2,375,000
Carwash Turnover	€75,111	€10,000

11.7 The Appellant, relies particularly on the abridged profit and loss account that formed part of the rectified financial information provided to him on 20th August 2021. The second document comprising the extract of a spreadsheet relating to turnover certified as being correct by the financial controller for the occupier has not been relied upon. The Respondent has utilised the turnover information received from the occupier that was submitted at representations stage for the period 2016 to 2018. The second document that formed part of the rectified financial information on 20th August 2021 was previously provided at representations stage to the Respondent and has been relied upon by them.

11.8 What is now apparent is that the carwash turnover can be taken to be €75,111 as opposed to €10,000 per annum. It is also apparent that when low margin sales are excluded from shop turnover that the figures adopted by both parties are reasonably close. The Appellant is proposing €1,142,338 and the Respondent €1,250,000 in their respective valuations. The same applies to fuel sales turnover when low margin sales are excluded. When excluded, the Appellant proposes a turnover of 4,171,060 litres and the Respondent 3,910,000 litres. It is therefore the inclusion or exclusion of low margin sales that has a material impact on the valuation.

11.9 The Appellant has taken a very subjective approach to his valuation by utilising the internal abridged profit and loss account of the existing occupier as his basis for the FMT. The Tribunal is of the view that the hypothetical tenant would not take such a narrow view. This is compounded by the fact that no comparable evidence has been submitted in support of this view. It was his evidence that he did not include low margin shop or fuel sales in his valuation because he had no evidence of this in the rectified financial information. The Tribunal does not accept this for the following reasons: (1) his valuation is based entirely on the abridged profit and loss account and it is this profit and loss account that does not reflect low margin sales. Whilst it may be the internal view of management of the occupier that it should not be reflected, it is something to which a hypothetical tenant would give due consideration. The hypothetical tenant, in valuing the trading potential of the property from which the associated rent is theoretically derived, would lose competitive advantage if this were to be excluded; and (2) information was previously provided at representations stage which bridged the evidential gap in respect of this, even if it had to be adjusted to reflect a hypothetical tenancy. At no stage did Mr Elliott deny that fuel card sales did not take place and the abridged profit and loss account and FMT could have been adjusted to take account of this.

11.10 The Respondent continues to rely on the financial information provided to them by the occupier at representations stage to derive their NAV. They state in evidence that this occupier and one other out of 44 similar occupiers failed to supply sufficient financial information pertaining to turnover. They also state that they considered the evidence of other occupiers in finalising the NAV of the subject property. Having regard to their stated approach and to the rating hypothesis, their complaints with regard to the veracity of the information received are negated to a large extent. The Respondent's FMT analysis is closely aligned to the actual trading performance of the occupier but the Appellant has not objected to this on the basis that it included goodwill or otherwise. Furthermore, the Appellant did not demonstrate to the contrary or dislodge the view that the low margin sales adopted in the Respondent's FMT analysis were incorrect or should be disregarded. The Tribunal accepts that the allowances for low margin sales provided for in the FMT analysis are within the range provided for in the comparisons relied upon by the Respondent. The Tribunal also notes that the Respondent's schematic has been generally accepted in other counties as a suitable method of valuation of this type of asset class. The Tribunal accepts this schematic as an appropriate valuation method for use on the subject property.

11.11 Under Section 20 of the Valuation (Amendment) Act 2015 the Tribunal is required to achieve a determination of the value of the property, the subject of the appeal, that accords with that required to be achieved by section 19(5) [inserted by section 7(b) of the 2015 Act]. Section 19(5) provides that the Tribunal's decision must achieve (i) correctness of value, and (ii) equity and uniformity of value between properties on that valuation list and section 37(2)(ii) provides that in accordance with the matters set out in section 19(5), the Tribunal may increase or decrease a valuation as stated in the valuation certificate.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and increases the valuation of the Property as stated in the valuation certificate to €108,800.

Use	FMT	FMT / Ratio	NAV
Shop Turnover	€1,650,000	0.0375	€61,875
Shop Turnover Allowance	€400,000	-0.0188	-€7,520
Fuel Turnover (litres)	6,285,000	0.0085	€53,422
Fuel Turnover Allowance (litres)	2,375,000	-0.00425	-€10,094
Carwash Turnover	€75,000	0.15	€11,250
NAV			€108,933
			Say €108,900

