

**Appeal No: VA17/5/246**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**Walsh Bros Ltd**

**APPELLANT**

**and**

**Commissioner Of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 226532, Retail (Warehouse) at Local No/Map Ref: 1Ba, Abbeylands,  
Kilculliheen, Waterford, County Kilkenny

**B E F O R E**

**Dearbhla Cunningham - BL**

**Deputy Chairperson**

**Barra McCabe – BL, MRICS, MSCSI**

**Member**

**Fergus Keogh – MSCSI, MRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 22<sup>nd</sup> DAY OF MARCH, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> day of 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 €109,700.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

- *“The Appellant considers that the Valuation is excessive and inequitable, the property’s value as set by the Commissioner is not in line with its actual rental value.*
- *The Valuation is not in line with PN 2196251 let at €43,000 p.a.;*

- *The motor trade in Kilkenny badly was affected by the recession;*
- *Valuation of the filling station is excessive and inequitable (occupier's acumen, zoning of retail area)."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €69,100.

## **2. REVALUATION HISTORY**

2.1 On the 11<sup>th</sup> day of May, 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 €111,800.

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 €109,700.

2.3 A Final Valuation Certificate issued on the 7<sup>th</sup> day of September, 2017 stating a valuation of €109,700.

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

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 4<sup>th</sup> day of November, 2020. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA (Mod) of Eamonn Halpin & Co. and the Respondent was represented by Mr. Adrian Power Kelly FRICS, FSCSI, ACI Arb, RICS Reg Valuer 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.

4.2 The subject property comprises Nissan car showroom, workshop, yard, service station and 'Daybreak' branded retail unit / convenience store, which is located 5 Kilometers from Waterford City on the south side of the R711 Slieverue to Ferrybank Road. The R711/N25 roundabout intersection is approximately 3.2 Kilometers to the northeast and Ferrybank approximately 1.2 Kilometers to the southwest.

4.3 The agreed accommodation is as follows:

<b>Ground Floor</b>	<b>Floor Area M2</b>
Car showroom	446.27 m <sup>2</sup>
Workshop	520.88
Retail Unit / Convenience Store	136.70
Store	87.37
<b>First Floor</b>	
Mezzanine office	47.20
Mezzanine store	149.43
<b>External</b>	
Yard	1,071

4.4 The property is held on a freehold basis.

4.5 No audited financial accounts or turnover figures were provided. The Appellant provided a 12 monthly sales report from January to December 2015.

4.6 The value to be applied of the car showroom, workshop, offices and stores was not in dispute and had already been agreed between the parties at €44,519.00.

#### 5. ISSUES

5.1 The issue that arises in this Appeal is that of the quantum pertaining to the service station / fuel sales and convenience store only to be combined with the agreed valuation in paragraph 5.2. The appellants have contended for a valuation of €41,300 in respect of the service station and convenience store, which would equate to an overall NAV of €85,800. The Respondent has requested that the Commissioners valuation of the service station and convenience store of

€65,250 be confirmed. This equates to an overall NAV of €109,769 for the subject property rounded to €109,700.

## **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 The case before the Tribunal concerns only the value applied to the service station element of the subject property, which includes the convenience store and petrol pumps. The valuation of the garage element including the car showroom, workshop, yard and officers have already been agreed between the parties at €44,519.00 as currently assessed by the commissioner.

7.2 Mr. Halpin stated that the issue in respect of the appeal between the parties was net: While the turnover figure of €1.5 million for the convenience store was agreed, there was a dispute over the fuel throughput figure and the percentage applied to the shop turnover and the throughput figure. The Appellant contended that the correct fuel throughput figure based on 2015 figures was 760,000 litres and not the estimated 1,500,000 litres used by the Respondent.

7.3 In their FMT calculation, the Appellant applied a figure of 2.5% to the shop turnover and a discount of 0.005 to the fuel throughput figure. In contrast, the Respondent applied a higher figure of 3.75% to the shop turnover and 0.0060 to the fuel throughput. The Appellants had no issue with the method of valuation used by the Respondent and therefore the comparables they provided were solely for the assistance of the Tribunal, rather than to prove a value different from the actual figures of the Respondent. In this regard, the Appellant submitted five comparisons along with four Context comparison.

Where comparisons, fuel sales substantially lead shop sales, however comparable number 5 has a car showroom similar to the subject property. The Appellant relied on a 12 monthly Station Master Report ('SM Reports') from 2015 showing sales/turnover figure report to illustrate the net of VAT turnover figures for the convenience shop and also the basis of the calculation of the fuel throughput figure of 760,000 litres.

In response to questions from Mr. Power-Kelly for the Respondent, Mr. Halpin replied that due to computer hard drive and software issues the Appellant did not have SM Reports for 2016 or 2017. Mr. Halpin also said that audited accounts did not separate out car sales from other types of sales for the garage and that the 2015 SM Report was the only document available to present to the Tribunal. The Appellant was unable to provide or confirm to the Tribunal an accurate figure for the throughput of fuel sales. While the Respondent had made a section 45 request for accounts from the Appellant, who also had an opportunity to submit audited accounts at Representations stage, Mr. Halpin replied that the Respondent had informed him that the subject property was being valued as one and audited accounts did not show the different categories of sales figures for the business.

The Appellant was not able to provide a mathematical calculation for the fuel throughput figure of 760,000 litres, relied upon by the Appellant in its valuation. Mr. Halpin said that he tried to verify the figures with his client's accountant but was unable to obtain any further information in relation to the how the figure of €760,000 was calculated.

Mr. Power Kelly responded that by virtue of section 34 of the Valuation Act, that the onus was on the Appellant to provide the necessary documentary evidence and the Appellant had ample opportunity to provide evidence to prove his case. Mr. Halpin said that he had requested the sales and throughput figures for 2013 and 2014 but he was unable to obtain them. He said he

thought his client had been selling petrol since the mid-1990's when he bought the garage and that he had requested figures for earlier years but received no further documents.

Mr. Power Kelly said that all the context comparisons were located outside the valuation area and therefore did not apply. Mr. Halpin replied that they that they were there to provide context and he agreed with the Respondent's comparisons.

## **8. RESPONDENT'S CASE**

8.1 In his précis, Mr. Power Kelly for the Respondent provided details of the scale the Commissioner applies when assessing the NAV of service stations. In addition, six NAV comparisons were included.

In reply to a question from Mr. Halpin, Mr. Power Kelly stated that he would stand by all the figures included in his précis. Mr. Halpin pointed out that the Appellant only receives the NAV figures for comparable properties and no financial accounts are provided by the Respondent for other properties.

Mr. Power Kelly said that the SM Report supplied by the Appellant did not indicate that the turnover figures included in the report were VAT inclusive. He said the Appellant only supplied a SM Report for one year with no verification from an independent auditor or accountant. The information contained in the SM Report is not sufficient to bear up and to be relied on by the Respondent.

Mr. Halpin said that if the Respondent had divided the fuel sales figure in the SM Report by €1.32 to €1.35, which was the average net price per litre for fuel, they would have calculated that throughput of fuel at the subject property was less than 1 million litres, to which Mr. Power Kelly replied that he had reservations about the source of the information.

Mr. Power Kelly said that he had not been involved in the original valuation of the subject property. He said that accounts had been supplied for NAV comparison No. 1 and No. 2 but not for No. 3 and No. 4, which were estimated. NAV comparisons No. 3 and No. 4 were for car garages with no service stations and were therefore not materially relevant to subject property.

There was no formal inspection of NAV comparison No. 4, which was closed when Mr. Power-Kelly called to view the property. Finally, he stated that estimated figures were not ideal in preference to obtaining the trading accounts for a business that was valued using the FMT method.

Neither party chose to make closing submissions / summaries.

## **9. SUBMISSIONS**

9.1 There were no legal submissions.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of County Kilkenny.

10.2 The Tribunal finds there was no disagreement between the parties on the value to be applied to the car showroom, workshop, offices and stores, which had already been agreed between the parties at €44,519 as assessed by the Respondent. In addition, it was agreed between the parties that the correct turnover figure for the retail unit / convenience store was €1,500,000 pa.

10.3 The Tribunal has noted that the Appellant accepted the application of the Commissioners valuation formula and schematic. In this context the Appellant offered comparisons in support of its own calculation of the NAV and not to prove a different value to the figures derived using the Commissioners schematic. It was therefore not necessary to provide a detailed analysis of the either the Appellant or the Respondent's comparables.

10.4 The Tribunal has not been provided with the methodology adopted to determine FMT and is not aware how the Commissioner has determined the levels of FMT, the NAV of the subject property or the NAV comparables used in support of its valuation of the subject property. Without evidence to the contrary it must accept that the same criteria has been adopted in the

evidence put forward by the Respondent, to maintain correct and equitable valuations relative to the value of other comparable properties in County Kilkenny. In this regard it would assist the Tribunal if the methodology behind the assessment of FMT for filling station shops was provided.

10.5 The Tribunal is of the view that the onus is on the occupier / Appellant to provide the necessary evidence to prove its case. The Appellant had the opportunity to provide audited accounts or independently verified 12 monthly SM Reports for the relevant years, but instead provided an unverified SM Report for one year only and was unable to provide to the Tribunal an accurate verified figure for the fuel sales throughput.

10.6 The Tribunal believes that in circumstances where there is a conflict of fact with something as fundamental as the throughput of fuel, there must be a verified record of fuel sales and detailed calculation as to how throughput was calculated, based on verified sales figures. While the Appellant posited that actual turnover should be used in preference to estimated figures, no verified turnover figures or detailed calculations were put before the Tribunal. In the absence of providing appropriate factual evidence as to fuel sales throughput, the Tribunal can give very little if any weight to the figures provided by the Appellant.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms the Respondent's valuation of the subject property.

**And the Tribunal so determines.**



