

Appeal No: VA17/5/046

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Galfer Filling Station Ltd T/A Healy's Spar Express

APPELLANT

and

Commissioner Of Valuation

RESPONDENT

**In relation to the valuation of
Property No. 1513286, Fuel/Depot at Creggan/Glosterboy, Cloghan, Birr, County Offaly.**

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Kenneth Enright - Solicitor

Member

Eamonn Maguire – FRICS, FSCSI, VRS, ARB

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 17TH DAY OF MAY, 2022

1. THE APPEAL

1.1. By Notice of Appeal received on the 28th day of September 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 €60,700.

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 property is excessive and inequitable. The property’s value as set by the Commissioner is not in line with its actual rental value.*
2. *The Respondent’s formula-based approach to Filling Stations is flawed. The property is located on Hill St., Cloghan (population 612). It has a monopoly for more than 8*

square kilometres on fuel sales but still does not exceed 1 million litres a year on fuel and it only has one pump. No filling station operator would be interested in this site. The classification of the property as a filling station is incorrect. It is a convenience store with a pump. Ca. 70% of its business is done in the shop. The rural nature of the location and exceptionally high shop turnover mean that it cannot fit the Respondent's formula."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €28,200.

2. REVALUATION HISTORY

2.1 On the 3rd day of 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 €60,700.

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 manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €60,700.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 27th day of January 2022. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd and the Respondent was represented by MS. Joanne Duggan B.Sc. (Real Estate), 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/her précis as 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 Property is located on Hill Street, in the village of Cloghan, trading as Healy's Service Station and comprises a forecourt with a canopy and two pumps below each with three nozzles and a third pump which is not under the canopy with three nozzles. There are two jet car washes to the left hand side of the site situated in an open store, and an enclosed store adjoining the open store.

4.3 The property comprises a Spar branded shop which includes a delicatessen and seating for 10 people, a designated An Post desk and ancillary accommodation including stores, customer toilets and office. There is mezzanine storage over part of the ground floor storage area. The shop has an off-licence and an ATM.

4.4 The floor areas agreed are as follows:

Description	Sq. m. (GIA)
Ground Floor (Block 1)	309.92
Mezzanine Floor (Block 2)	48.31
Total Shop Building	358.23
	Sq. m. (GEA)
Open Sided Store	75.23
Enclosed Store	70.00
Total Stores	145.23

5. ISSUES FOR DETERMINATION BY THE TRIBUNAL:

Quantum. The Appellant has contended for an NAV of €25,500 whereas the Respondents have requested that the Tribunal reaffirm the Respondent's valuation of the NAV at €60,700.

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 Mr Halpin, for the Appellant, having made his affirmation, adopted his précis as his evidence-in-chief before giving oral evidence.

7.2 Mr. Halpin stated that in terms of the rental market, the country was divided, with Dublin, Cork and Galway being the only population centres large enough to attract increases in commercial rents across the board. Therefore, across the rest of the country, rental values continued to remain static or decline slightly through 2015 and 2016. He stated that the two largest chain operators in Ireland are Applegreen and Alimentation Couch-Tard (who own Topaz). Applegreen stations in Ireland would expect up to 20-25% of their turnover to come from shop sources. This he stated was a very good benchmark in determining the parameters in which the Respondent’s current formula works. The Appellants estimate that stations with more than 80% fuel are fairly assessed by the Respondent under the current system proposed.

He added that the formula begins to come under strain between 70-80% fuel and fails at less than 60% fuel in almost every case. The peculiarity of the Irish filling station means that there are many independent stations which obtain more than 40% of their net turnover from the shop, which is completely out of line with actual rental value, if assessed by the Respondent's formula.

7.3 He stated that the Property comprises, a local supermarket which serves the village of Cloghan. The fuel sales are limited and dispensed from a single double-sided pump. For this reason, the occupiers have concentrated on the local convenience trade and competed directly with major supermarket operators such as Aldi, Lidl, Tesco and Supervalu in Birr and Ferbane.

7.4 The Appellants accepted the schematic in regard to fuel throughput, car wash sales, and shop turnover where shop turnover was less than 50% of the entire turnover and it is only the 'shop sales' part of the schematic which was under challenge. It is the Appellants contention that where shop sales exceed 50% of the total turnover, that the property transitioned to a convenience store/supermarket and was more readily comparable with other retail properties. Mr Halpin argues that the Respondent was suggesting that a hypothetical tenant would pay three to four times more in rent for the same turnover in a filling station shop versus a conventional convenience store or supermarket.

7.5 The Appellants provided a policy document from the Respondent outlining the schematic valuation approach adopted in Westmeath, Roscommon, Sligo, Offaly, Leitrim, Longford and Kildare and stated that the Respondent in applying their schematic, included the following commentary:

A number of properties which have low throughput volumes and high shop sales have now been reflected in the scheme and where throughput has been provided and it is less than 1,000,000 litres, the % applied to the shop sales has been reduced. A number of these types of properties may merit special attention.

Mr. Halpin states that the Respondent has therefore accepted that where shop sales exceed fuel sales that a different approach may be required.

7.6 He claimed that the Respondent's current assessment places a value of 62% of the village's total retail value on the Property and that a hypothetical tenant could rent all other retail units in the village (7) for a total of €37,800 NAV. The Property is assessed at almost four times that of the nearest retail comparison and 11.25 times that of the average shop in the village.

7.7 He argued that all parties must take the property rebus sic stantibus. The definition of a filling station is a premises which sells primarily motor fuel (Collins). By this definition, the subject property is not a filling station at all, selling significantly more in the shop than on the forecourt. He claimed that the Property's retail area did not comprise a filling station shop. He argued that filling station shops must conform to planning guidelines, which prevented them from having shops larger than 100 sq. m. He stated that, the property could be of interest to two types of hypothetical tenant. Firstly, convenience store/supermarket operators who would be interested in the potential profits generated by shop sales, with limited interest in the fuel part of the business and secondly filling station occupiers, namely Applegreen, Circle K etc., who would be interested in the potential profits generated by fuel sales, with limited interest in the retail accommodation.

7.8 He accepted that there would be interest from the convenience store/supermarket sector, but only at the right price. No chain supermarket operator would consider the Property as it is simply too small for occupiers such as Lidl, Aldi, Dunnes etc. He claimed that the hypothetical tenant would have to be similar to the actual occupier.

7.9 Mr Halpin argued that the Property's shop value falls very clearly between €15,000-€17,000 NAV, well removed from the Respondent's estimate of €55,000 on the retail element. Analysing the Property at the prevailing Zone A rate of €90.00/sqm established in Cloghan, would provide a retail value of €17,482. Whereas the Respondent's retail value of €55,000 implies a Zone A rate of approximately €360/sqm four times more than other shops in the village.

7.10 He argued that the problem for potential filling station occupiers is the lack of passing trade. He stated that The Property trades under 1 million litres of fuel a year and that the Respondent appeared to have specifically designed his scheme around the threshold of 1 million litres. He claims that there does not appear to be significant rental evidence to distinguish this threshold and or to suggest an appropriate percentage on associated shop sales.

Nonetheless, filling station comparisons cannot be completely disregarded and added that values applied to Tesco filling stations, which occupy sites in proximity to their superstores were particularly instructive. He argued that the Respondent took no account of the turnover of the superstores when assessing these filling stations despite the fact that business clearly passes between the two entities. Whatever the methodology employed, the NAV must reflect the occupation of the hypothetical tenant.

7.11 He queried how the hypothetical tenant could reconcile the market values (NAVs) with a rental bid for the Property and argued that the most straightforward approach was to value the Property on a rate per sq. m. basis (in line with the comparisons and the Tribunal's decision in VA15/5/055). The hypothetical tenant could use either the Zone A rate in Cloghan (€90/sq. m.) or an overall rate as applied to supermarkets (€55/sq. m.) as the Property and was open to either method. Alternatively, the hypothetical tenant could discount the goodwill element of turnover (see VA15/5/069). However, in the subject's case, this would require write-downs of 50+%. Therefore, while it can be done, the Appellants claim that it is more likely that the hypothetical tenant would disregard the turnover formula as inappropriate.

7.12 Mr Halpin provided details and photographs of the following three of the list comparables.

1. PN 1513457 – Kilcormac, Co. Offaly – comprising a ground floor commercial premises measuring 306.4 sq. m. of which the retail content measures 176.95 sq. m. The Respondent has valued the retail Zone A area of 74.95 sq. m. at €100 per sq. m., retail Zone B area of 102 sq. m. at €50 per sq. m., and the store area of 128.75 sq. m. at €20 per sq. m. The total NAV is €15,170.
2. PN 1513402 – Ferbane, Co. Offaly – comprising a ground and first floor commercial premises measuring 556.53 sq. m. of which the retail content measures 367.60 sq. m. The Respondent has valued the retail Zone A area of 57.34 sq. m. at €100 per sq. m., the retail Zone B area of 57.34 sq. m. at €50 per sq. m., the retail Zone C area of 66.12 sq. m. at €25 per sq. m., the remaining retail area of 186.80 sq. m. at €12.50 per sq. m., the store area of 101.25 sq. m. at €20 per sq. m., a ground floor office measuring 27.68 at €20 per sq. m. and a first floor office of 60 sq. m. at €20 per sq.m. The total NAV is €16,360.
3. PN 1325408 – Birr, Co. Offaly – comprising a ground floor commercial premises measuring 390.26 sq. m. of which the retail content measures 132.12 sq. m. The Respondent has valued the retail Zone A area of 52.06 sq. m. at €130 per sq. m., the retail Zone B area of 70.19 sq. m. at €65 per sq. m., the retail Zone C area of 9.87 sq.

m. at €32.50 per sq. m., a store area of 112.01 sq. m. at €10 per sq. m. and a further store area of 146.13 sq. m. at €20 per sq. m. The total NAV is €15,690.

4. PN 1514308 – Clara, Co. Offaly – comprising a ground and first floor commercial premises measuring 831.9 sq. m. of which the retail content measures 335 sq. m. The Respondent has valued the supermarket of 335 sq. m. at €50 per sq.m. showrooms of 211 sq.m. at €50 per sq.m., toilets of 4.90 sq.m. at €50 per sq. m., stores of 164 per sq. m. at €50 per sq.m. and a further store area at first floor level of 117 sq. m. at €50 per sq. m. and a floor area and NAV adjustment of minus €4,150. The total NAV is €37,400.
5. PN 2177990 – Tullamore, Co. Offaly – comprising a filling station with a retail area of 43 sq. m. and a total size of 62.3 sq. m. The Respondent has valued the NAV of the fuel throughput at €0.006/litre, the shop turnover at 2% and the car wash at 11%. The adjoining supermarket, PN 2176367 is assessed by the Respondent at €70 per sq.m. on both the supermarket floor area of 5,260.10 sq. m. and the store area of 1,705.98 sq. m. The total NAV is €25,800.
6. PN 1514361 – Clara, Co. Offaly – comprising a filling station with a retail area of 58.9 sq. m., a total size of 108.70 sq.m. . The Respondent has valued the NAV of the fuel throughput at €0.003/litre, and the shop turnover at 2.5%. The total NAV is €13,770.
7. PN 2201417 – Edenderry, Co. Offaly – comprising a filling station with a retail area of 64.47 sq. m., a total size of 64.47 sq.m. The Respondent has valued the NAV of the fuel throughput at €0.007/litre, the shop turnover at 2.5% and the car wash turnover at 7.5%. The total NAV is €31,500.

7.13 Mr Halpin also submitted in evidence the following NAV comparables by way of ‘context’, five of which are located outside of County Offaly.

1. PN 2189968 – Banagher, Co. Offaly – comprising a ground and first floor commercial premises measuring 2,031.39 sq. m. of which the retail content measures 1,611.33 sq. m. The Respondent has valued the NAV of supermarket of 1,611.33 sq. m. at €50 per sq.m., the first floor office of 246.06 sq. m. at €35 per sq.m., and a mezzanine store of 174 sq. m. at €10 per sq. m. The total NAV is €103,300.
2. PN1277226 (VA15/5/055) – Cappamore, Co. Limerick - comprising a supermarket and petrol pumps with a retail area of 441.74 sq. m., a total size of 742.51 sq.m. The shop turnover is significantly more than the Property. The Tribunal on appeal classified the shop as a supermarket and valued that element of the property on a value per square metre with an addition for off-licence and fuel, the latter at €0.004/litre. The total NAV is €44,250.
3. PN1268459 (VA15/5/069) – Askeaton, Limerick - comprising a filling station with a retail area of 182.85 sq. m., a total size of 547.58 sq.m. The Tribunal on appeal determined that the shop was overtrading and reduced the turnover figure to be assessed, by 30%. The total NAV is €51,000.

4. PN1738937 (VA17/5/573) – Prosperous Co. Kildare comprising a filling station with a retail area of 117.30 sq. m., a total size of 247.56 sq.m.. Mr. Halpin stated that the Tribunal judgement affirmed the valuation of the Respondent, but raised its concerns not being provided with the methodology by which the Respondent arrived at the FMT figure. It noted the concern of the Appellant of the different approach adopted in valuing a convenience store on a filling station site and on a non-filling station site and is concerned that there is no clear link between established NAV's and reported rents extracted from the key rental transactions. The total NAV is €79,000.
5. Wexford Town, Co. Wexford – occupied under a 25-year lease, reviewed in 2014 to €30,000 per annum. The retail area measures 344.15 sq.m. the entire floor area measures 403.87 sq. m. The Respondents NAV valuation is currently under appeal to the Tribunal.
6. – Athy, Co. Kildare – occupied under a 20-year lease, from 1st March 2014 at €42,500 per annum. The floor area measures 340.13 sq.m. GIA. The Respondent has valued the shop FMT at 3.25%, the fuel throughput at €0.0065/Litre and the car wash turnover at 10%. Mr. Halpin stated that a hypothetical tenant would not offer €60,700 for the Property, when they could rent a modern station in Athy for €42,500. The total NAV is €48,000.

7.14 In contending for a reduced NAV of €25,500, Mr. Halpin sets out his opinion of how the NAV should be arrived at, setting out three valuation approaches.

7.14.1 The Rate per sq. m. Method (Zoned)

Fuel 950,000 L @ 0.005 L = €4,750*

Car wash €1,000 NAV*

Retail Zone A: 92.11sq. m. @ €90/sq. m. = €8,290

Retail Zone B: 88.83sq. m. @ €45/sq. m. = €3,997

Ground floor Store: 128.98sq. m. @ €20/sq. m. = €2,580

Mezzanine: 48.31sq. m. @ €10/sq. m. = €483

+ Off-licence (15%) = €2,302

External Store: 70sq. m. @ €20/sq. m. = €1,400

Open-sided Store: 75.23sq. m. @ €10/sq. m. = €752

Total Nav: €25,554. Say €25,500 (rounded)

7.14.2. The Rate per sq. m. Method (Overall)

Fuel: 950,000 L @ 0.005 L = €4,750*

Car wash: €1,000 NAV*

Supermarket: 180.94sq. m. @ €70/sq. m. = €12,666

Ground floor Store: 128.98sq. m. @ €20/sq. m. = €2,580

Mezzanine: 48.31sq. m. @ €10/sq. m. = €483
+ Off-licence (15%) = €2,359

External Store: 70sq. m. @ €20/sq. m. = €1,400

Open-sided Store: 75.23sq. m. @ €10/sq. m. = €752

Total NAV: €25,990. Say €26,000 (rounded)

7.14.3 The Adjusted Formula Method

Fuel: 950,000 L @ 0.005 L = €4,750*

Car wash: €1,000 NAV*

Shop sales: €2,200,000 @ 1% = €22,000

Total NAV: €27,750. Say €27,700 (rounded)

The Appellants contend for a valuation of €25,500 based on Method 1, which is in line with both the Respondent's approach to convenience stores and small supermarkets in the county and the Tribunal's approach in VA15/5/055.

*Note: The Appellants have accepted the Respondent's valuation of the fuel throughput and car wash.

7.15 Under cross-examination, Mr. Halpin accepted that there are two pumps under the canopy but was unsure about a third pump.

Mr. Halpin stated that he had not seen a lease/licence agreement and had not requested copies. Mr. Halpin could not confirm whether there was a Solus agreement in place for the petrol pumps and the forecourt.

In the context of the Applegreen service stations, Mr. Halpin was asked whether he was aware that franchise agreements were covered in the turnover figures. Mr. Halpin was not able to confirm this. The Tribunal asked Mr. Halpin whether he could explain the difference in percentages attributable to shop sales in their service stations in Ireland versus the UK. Mr. Halpin stated that what they were in the business of volume fuel sales, but that now travellers now want an 'add on', so they are starting to invest in their shops.

Mr. Halpin confirmed that the Respondent had made an adjustment to the percentage of shop turnover, to allow for the fact that shop sales exceed that of fuel sales in the Property.

Mr. Halpin confirmed that comparisons 1 to 4 inclusive were not filling stations. In regard to comparison 4, Mr. Halpin was asked whether the turnover figures were an estimate or were they derived from the trading accounts. Mr. Halpin said they were an estimate. With regard to comparison 5, Mr. Halpin confirmed in his opinion that it was the best filling station in Tullamore. With regard to comparison 6, Mr. Halpin could not confirm whether it had been refurbished since 2015 but did agree that the photograph contained in his Precis, was a Google Street view image from 2019. With regard to comparison PN1277226, Mr. Halpin confirmed that the fuel throughput was five times less than the Property. Mr. Halpin stated that in his opinion, that aspect was not the significance of the case, the Respondent had classified it as a service station and the Tribunal had subsequently correctly classified it as a supermarket, that happens to sell fuel.

8. RESPONDENT'S CASE

8.1 Ms Duggan having made her affirmation, adopted her précis as her evidence-in-chief in addition to giving oral evidence.

8.2 Ms Duggan stated that the subject property was situated approximately 100 metres from the N62 National Secondary Road which links Birr with Athlone. There were four different roads intersecting in the centre of Cloghan, which is 100 metres from the subject station. These roads are the N62, the R356, the R357 and the Belmont Road. She described the Property as Healy's Service Station. The forecourt was Top branded and had a canopy to the front of the shop with two pumps. There were three nozzles on each of the two pumps, and a third pump to the side of the site, not covered by a canopy, which had three nozzles for larger vehicles.

There were 2 jet car washes to the left hand side of the site, situated within an open sided store and another enclosed industrial store. The shop comprised a Spar branded unit and included a convenience shop, a deli, designated seating area for approximately 10 people, an Insomnia coffee station, a designated An Post desk and ancillary accommodation which included stores, toilets and an office. There was a mezzanine store over part of the store area. The shop had the an off licence and an ATM. The opening hours were 6.30am-10pm 7 days a week.

8.3 Ms Duggan stated that she understood the property was leasehold. The shop, service station and carwash element of the site were leased by the Appellant. Ms Duggan stated that she had requested a copy of the lease agreement from both the occupier and the agent, but had not received them. Verbal information in relation to the letting agreement was given by the occupier on the date of inspection. The Appellant was responsible for the rates, insurance, internal and external repairs, effectively an FRI lease. The carwash element of the business is currently sublet.

8.4 The Appellant confirmed that the rent passing on the Property was by way of 7.5% of net turnover of the shop element and there is a Solus agreement in place for the fuel.

8.5 Some financial information had been supplied for this property by way of a Section 45 Return one week prior to Precis exchange date. The Appellant provided further financial information to include the Station Master Reports for the shop for the years 2014 to 2017, and the fuel throughput reports for 2013 to 2015 (in litres and Euros).

8.6 Ms Duggan stated that three items of market information were relied upon to inform the valuation scheme for service stations within County Offaly. Each of these transactions were investigated and analysed in accordance with Valuation Office Policy. Market rents were adjusted where appropriate to take account of the date of the transaction relative to the statutory valuation date, any inducements which are included in the transactions; and any other individual features of the transaction. The result of this investigation Ms Duggan stated provided what is described as the Net Effective Rent (NER) in each case. The NER equates to the basis of valuation as set out in Section 48 of the Valuation Act, 2001 (as amended), on the statutory valuation date.

8.7 Ms. Duggan stated that financial information has been supplied to date in 21 cases or 64% of cases with no financial information provided in the remainder. The financial information received on the “key rental transactions” was then analysed along with the NER. The result of this analysis is that the Valuation Scheme which has been widely accepted by agents and occupiers in revaluation areas to date, was also suitable to be applied in County Offaly.

8.8 This comparative valuation approach has been confirmed as the best approach in a number of recent Valuation Tribunal Judgements, most notably the most recent Service Station judgements from Revaluation 2017, VA 17.5.573 and VA 17.5.032.

8.9 The assessments, Ms. Duggan stated had regard to both market evidence and the revenue generating ability of each site. The expenses incurred in operating each site were also considered where the information was provided. The valuation scheme was applied to the Property's estimate of fair maintainable trade.

8.10 The evidence before the Valuation Manager following representations sought a reduction to €28,228 based on a zoning analysis of the subject property. The Valuer, Team Leader and Valuation Manager recommended that the NAV of €60,700 should not be amended. Ms Duggan stated that a total of thirty three service stations were valued in the Offaly Local Authority Area. Of the thirty three valued, five were appealed to the Valuation Tribunal, the subject and four other sites. In relation to the other four service stations appeals, two have been agreed and two have been withdrawn. In the case of four out of five service stations appealed in Co. Offaly, the Appellants were represented by Halpin & Company and one service station was appealed by the occupier. Of the NAV valuation figures concerned, and supplied in Ms Duggan's Precise, the two NAV figures concerning appeals that had been subsequently agreed, were corrected downwards in her oral evidence to the Tribunal.

8.11 Having analysed the market information and the accounts submitted the scheme applied 4% to the FMT of the shop element (over €2m euros FMT). In some circumstances where fuel FMT was less than 1million litres p.a. the rate applied to the shop turnover was reduced from 4% to 2.5%. In the subject case as fuel sales were estimated at less than 1m Litres, the lower rate was applied. The financial information supplied indicated that fuel sales were above the 1million Litres p.a. limit, but Ms Duggan did not propose to increase the rate applied to the Shop FMT, at the Valuation Tribunal hearing stage. At the hearing Ms. Duggan stated that separate turnover figures for the car wash were not extracted from the accounts and therefore an estimate was applied.

8.12. In addition to the financial performance of the occupier, Ms Duggan relied upon three key rental transactions (KRT's) as follows.

KRT 1, Co. Offaly. This comparable is located 30 km from the Property and was let on a 25-year FRI lease, with 5-year reviews at an initial rent of €70,000 per annum from 2012. Financial information was provided for the years 2014-2016.. The NAV is €67,500.

KRT 2, Co. Offaly. This comparable is located 15 km from the Property and was let on a 10-year FRI lease, with 5-year review at an initial rent of €85,000 per annum from 2016. Financial figures and projections were provided for the year 2016. The NAV is €72,500.

KRT 3, Co. Offaly. This comparable is located 8 km from the Property and was let on a Head lease for a 10-year term, with 5-year reviews at an initial rent of €80,000 per annum from 2012. Financial figures in the form of management accounts were provided for the year 2016 and details of the sub-licence was provided.. The NAV is €62,000.

8.13 Ms Duggan provided four NAV comparisons to demonstrate equity and uniformity in the List, as follows:

NAV 1 - PN1329103, Tullamore, Co. Offaly. This comparable is located 30 km from the Property. No financial information was supplied. The Fair Maintainable Trade figures derived, which were not subject to appeal to the Valuation Tribunal, are provided in the appendix (n/a public). The estimated NAV is €75,000.

NAV 2 – PN1513396, Ferbane, Co. Offaly. This comparable is located 6.4 km from the Property. No financial information was supplied. The Fair Maintainable Trade figures derived, which were not subject to appeal to the Valuation Tribunal, are provided in the appendix (n/a public). The estimated NAV is €70,000.

NAV 3 – PN2170547, Tullamore, Co. Offaly. This comparable is located 31 km from the Property. Financial information was supplied for the years 2015-2017. The Fair Maintainable Trade figures were appealed but subsequently agreed prior to a hearing by the Valuation Tribunal and are provided in the appendix (n/a public). The estimated NAV is €78,600.

NAV 4 – PN1514202, Tullamore, Co. Offaly. This comparable is located 32 km from the Property. Financial information was supplied for the years 2012-2015. The Fair Maintainable Trade figures derived, which was subject to representations by the occupier were not appealed

to the Valuation Tribunal, are provided in the appendix (n/a public). The estimated NAV is €61,700.

8.14 Under cross-examination, it was put to Ms. Duggan by Mr Halpin that the franchise was held under a licence agreement and not a lease. In addition, Mr Halpin queried whether the production of a licence agreement was covered under Section 45 of the Act. Ms Duggan stated that the Appellant had verbally confirmed to her that a lease was in place but a copy was not provided on request. Ms Duggan confirmed to Mr Halpin that the production of franchise agreements is covered under Section 45 and agreed with Mr. Halpin that such agreements are not typically in a standard format, but the key element was the rent as a percentage of net turnover, the latter of which had been confirmed by the Appellant to Ms Duggan.

8.15 Mr. Halpin asked Ms Duggan as a valuer, could she see a premises being classified as a convenience store, that happens to sell fuel, and cited VA15/5/055. Ms. Duggan accepted that the Valuation Tribunal in that case determined that the property was a supermarket with petrol pumps outside. Whilst Ms. Duggan accepted that a premises could be considered primarily a convenience store first, it would depend on the level of fuel throughput.

8.16 In the case of KRT 1, Mr. Halpin asked whether Ms Duggan would accept that it was in a better location than the Property. Ms Duggan confirmed it was in a town, but a little off the beaten track, and every location in her view has its merits. In the case of this comparable, it had more competition being in a town with several filling stations. He also asked whether the operator of that service station would consider it a better location to the Property, given the level of fuel throughput, to which Ms. Duggan conceded that in her opinion, they would. Mr. Halpin asked Ms. Duggan what was leading the business in that property. Ms Duggan stated that in her opinion, one element of the trade of service stations benefits the other. It is a service station, and you would expect all elements of the trade to take place on the site. Ms. Duggan agreed in terms of turnover, the fuel accounted for a higher volume of trade but that the profit margin could be still higher for the shop. Mr. Halpin stated that while it did multiples of the fuel throughput as per the Property, it did only half of the retail turnover of the Property, and did this not suggest that there was an element of overtrading. Ms. Duggan did not agree.

8.17 Concerning the location of the Property, Ms Duggan agreed that it was not located directly on a primary road route but was situated within 100 metres from one.

8.18 On KRT 2, Mr. Halpin again asked Ms. Duggan would she consider it a better location, to which she stated it had more competition being in a town with several filling stations. Mr. Halpin stated that there was one key element that confirmed it was a better location and that was the market rent secured, yet the Respondents view of the NAV value was less for the Property.

8.19 On KRT 3, Mr. Halpin asked Ms. Duggan would she considered it a better location, and she stated it was a similar location to the Property and was considered by the Appellant to be his main competition. In response as to why the Respondent valued this comparable property's NAV at a higher level, Ms. Duggan stated that all things were taken into consideration and in the case of the Property, there wasn't full clarify on the actual rent, as the lease was not provided following a Section 45 request.

8.20 On the NAV comparison PN1513396, Mr. Halpin asked of Ms. Duggan would she consider it a better location, to which she stated that it was a slightly better and estimated that there were five pumps.

8.21 On the NAV comparison PN1513396, Mr. Halpin reminded Ms. Duggan of her statement that this was the main competitor to the Property, yet Mr. Halpin stated that it does nearly twice the level of fuel throughput as the Property, a point Ms Duggan disputed and reminded the Tribunal that the valuation of the Property was based on an estimated fuel throughput, which turned out to be less than the true turnover, as evidenced from the accounts subsequently submitted. Mr. Halpin queried why the turnover of the shop was significantly less than that of the Property when the level of fuel sales was higher and could it be down to the skill of the occupier? Ms. Duggan stated that it could be down to the range of services offered and due to its location. and she did not believe that the operator was overtrading.

8.22 On the NAV comparison PN2170547, Mr. Halpin asked Ms. Duggan would she consider it a better location, and she stated that given all of the attributes of that site, the NAV was set higher than the Property. Mr Halpin asked Ms. Duggan to confirm that the comparable property sold twice as much fuel and the car wash did five times the turnover of the Property, and Ms. Duggan agreed. Mr. Halpin queried that while the fuel throughput was double the Property, why was the shop trade less than the Property. Ms. Duggan stated that it was down to the various attributes of the Property and that a service station provides more than just fuel.

8.23 On the NAV comparison PN1514202, Mr. Halpin asked Ms. Duggan would she consider it a better location she stated that because it was located on the outskirts of its town. Mr. Halpin asked that if the fuel throughput was double the Property, why was the shop trade less than the Property. Ms. Duggan stated that it was down to the various attributes of the Property.

8.24 When queried if the level of trade in the Property could be replicated by the hypothetical tenant, and what was driving the business. Ms. Duggan accepted that the greater portion of turnover was accounted for in the shop, but that one activity complemented the other and that fuel sales drew customers to the shop.

8.25 Mr. Halpin questioned why in evidence, Ms. Duggan had not presented any comparable properties where the level of turnover in the shop was equal to that of the Property. Ms. Duggan stated that they had looked at the market objectively and applied multiples of between 3.5%, 3.75% and 4% depending on the level of trade in a service station shop per the scheme and in the case of the Property they had applied a very strong allowance by adopting the lower rate of 2.5%, the Property which was a service station, with the fuel offering drawing in customers to the shop.

8.26 Mr. Halpin asked whether if it would be appropriate if valuing the shop on its own, that a value of €90 per square metre would be appropriate. Ms. Duggan stated, that would be the case where there were no pumps, but in the case of the Property, they were valuing a service station and therefore she would not agree with such a valuation approach.

9. CLOSING ARGUMENTS

9.1 Mr. Halpin in conclusion stated that there was no prescribed system in the act for valuing such properties and therefore the overriding principles were that of fairness and correctness. Correctness is ahead of uniformity and in the case of the Property, Mr. Halpin stated, if it was treated in the same way as other convenience stores, it would automatically drop to a valuation of €20,000 on the shop element.

9.2 While Mr. Halpin agreed with the approach to the car wash and the fuel adopted by the Respondent, he stated that it was the value of the shop, wo which he took issue. In a country location, whether you have fuel pumps or not, if yours was the only convenience store in the

location, you had the only convenience store. The stand back and look part of the valuation has not been considered in this case. Mr. Halpin in the circumstances was seeking a reduction in the NAV to €25,500.

9.3 Ms Duggan in conclusion stated that the scheme used to value service stations is well established and widely accepted in all local authorities. The valuation of the Property is supported by the rental and financial evidence available. Ms Duggan stated that she had handled 237 service station valuations in the county and all had been agreed with the exception of the subject property. She stated that the Property was a service station, and it's exactly what a hypothetical tenant would look for. The trading hours from 6.30 am to 10.00 pm, seven days a week, were standard opening hours for a service station.

9.4 The Appellant, Ms. Duggan stated had chosen to apply very little weight to the financial or rental information available in this instance, and a hypothetical tenant would consider these factors foremost in negotiations on a rent.

9.5 The accounts answered the question as to whether this was a service station or a supermarket. The gross profit margin was very decisive factor at 17% including the fuel margin and a percentage one would expect in service stations, while the supermarket businesses operated on a lower percentage profit margin, relying on a higher quantity of goods sold.

9.6 The reduced percentage of 2.5% was applied to their estimate of shop turnover to make an allowance for the low level of fuel sales and a higher rate could be claimed based on the accounts provided. Ms. Duggan asked the tribunal to confirm the valuation at €60,700.

10. SUBMISSIONS

10.1 There were no legal submissions in this case.

11. FINDINGS AND CONCLUSIONS

11.1 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 Offaly County Council.

11.2 The Appellants sought to have the NAV of €60,700 as contended for by the Respondents reduced to €25,500.

11.3 The Property comprises a well-constructed commercial property situated 100 metres from the centre of the village and a national primary route.

11.4 Mr. Halpin's Precis stated that there was one pump on the forecourt, but from the oral evidence and that adduced from photographs in the Respondents Precis, the Tribunal finds there are three pumps on the site, two of which are located under a central canopy, giving a total of six nozzles.

11.5 Mr Halpin contended that filling station shops must conform to planning guidelines, which prevented them from having shops larger than 100 sq. m. yet he provided no supporting evidence to support his contention.

11.6 While the Appellants accepted the schematic devised by the Respondents for the valuation of service stations, in this case they argued that what was driving the business was the shop, where sales exceed 50% of total turnover from the site, and therefore the property transitioned to a convenience store/supermarket and was far more readily comparable with other retail properties. Mr. Halpin introduced three valuation methodologies, all of which he stated could be applied to the Property to determine the NAV while incorporating the Respondents schematic approach to valuing the car wash and fuel throughput, which he accepted.

11.7 The Tribunal finds from the evidence, that following the serving of a Section 45 request, no licence or lease agreement was furnished by the Appellant, and had it been, it may have informed the valuation process.

11.8 In the case of PN 1325408 submitted in evidence by the Appellant, the Tribunal finds that the petrol pumps had been removed and therefore this comparison is of little assistance to the Tribunal.

11.9 In the case of PN 1325408 (VA15/5/055), submitted in evidence as a context comparison, the Tribunal finds that the percentage derived from shop sales on the site, and the level of fuel throughput are not comparable to the Property.

11.10 In the case of the Appellants comparable PN151436, the Tribunal finds from inspection of the photograph contained in the Precis, that the forecourt does not have a superior fuel setup to the Property and the fuel throughput level adopted in the valuation, is less than half the Respondents estimation for the Property and less than the actual fuel throughput of the Property. The Tribunal finds this evidence of limited assistance.

11.11 In the case of the Appellants comparable PN2201417, the Tribunal finds that its proximity to a food superstore would unduly impact on the level of the shop trade, the floor area of which is 20% of the floor area of the Property. Consequently, this evidence is not of assistance to the Tribunal.

11.12 In the case of KRT 3, provided by the Respondent, the Tribunal finds the rental comparison very instructive in terms of the licence details provided and the ratio of fuel throughput to shop sales FMT, where the latter had a higher multiple of 3.5% applied, which was greater than the Property. In that case, the Appellant withdrew their Tribunal appeal.

11.13 With regard to the total annual turnover of fuel throughput estimated by the Respondent at less than €1 million, the Tribunal finds from the trading accounts furnished, that the actual trading figures recorded were in excess of the Respondents estimate.

11.14 The Tribunal finds from the evidence that the Property offers all of the customer services one would expect in a modern filling station and with trading hours expected of a service station. The Tribunal is satisfied that the subject property should be valued as a filling station in line with most similar properties in the County. It finds that Mr Halpin's description of the subject property was lacking particularly in relation to the facilities in the filling station with regards to pumps.

11.15 Ms. Duggan stated in evidence that in the case of the Property, the fuel sales were low in comparison to shop turnover from the accounts furnished, but the profit margin derived from the site at 17%, were at a much level higher than one would expect of a

supermarket/convenience store, an opinion the Tribunal finds was unchallenged by the Appellant.

11.16 In applying their valuation scheme, the Tribunal finds that the Respondent did carry out a step back and look exercise and took into account their understanding of the ratio of fuel to shop sales, as evidenced by the lower percentage of 2.5% applied to the shop turnover. This contrasts with levels ranging from 3.5% to 3.75%, applied to the shop turnover in the Respondents KRT and NAV comparables submitted in evidence.

11.17 The Tribunal noted that none of the KRT's included shop floor areas which would have assisted and informed the Tribunal.

11.18 Whilst noting the concerns raised by the Appellants regarding the different valuation methodologies adopted for valuing the retail element of a service station compared to that of a standalone shop, in this instance the evidence adduced has not established to the satisfaction of the Tribunal a case for overturning the valuation approach adopted by the Respondents for the Property.

DETERMINATION:

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

