

**Appeal No: VA19/5/1006**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Supermacs**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2213463, Retail (Shops) at Tivoli Road, Clonmel, County Tipperary.

**B E F O R E**

**John Stewart - FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Michael Brennan - BL, MRICS**

**Member**

**Allen Morgan - FSCSI, FRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 10TH DAY OF MAY, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 14<sup>th</sup> 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 €151,700.

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: *“it does not achieve correctness of value, more particularly, as based rental evidence available for drive-thru’s. I believe a lower valuation as set out herein is more representative of a reasonable Net Annual Value in accordance with section 48 of the act. Furthermore I do not believe the equity and uniformity of value have been*

*achieved between comparable properties as restaurants of a similar size in the locality are valued at significantly lower rates per sq.m. and other comparable drive- thru facilities have been similarly valued at lower rates psm.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €80,000.

## **2. REVALUATION HISTORY**

2.1 On the 15<sup>th</sup> 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 €151,700.

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 10<sup>th</sup> day of September, 2019 stating a valuation of €151,700.

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

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 9<sup>th</sup> day of February, 2022. At the hearing the Appellant was represented by Ms. Siobhan Murphy MSCSI, MRICS, IRRV (Hons) of Avison Young and the Respondent was represented by Mr. Seamus Costello B.Sc., MRICS, MSCSI 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 their précis as their 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 is located in a cul de sac off a roundabout on the Frank Drohan Road/N 24 inner relief road on the outskirts of Clonmel. The property is adjacent to Tesco Extra supermarket and service station, Mr. Price shop and Teagasc offices.

4.3 The subject property comprises a two storey Supermac purpose built restaurant/drive-thru facility and extends to an overall area of approx. 725m<sup>2</sup>. The building has concrete floors, rendered block walls and flat roofs and includes two large display windows one at ground floor and one first floor level. The ground floor comprises a restaurant/dining area together with a retail counter, kitchen, freezer and storage facilities and customer and staff toilets located to the rear and a small enclosed yard area. The ground floor also incorporates a canopy covered drive-thru facility and access to the first floor is provided by way of a lift and staircase. The first floor which has a generally similar configuration to the ground floor comprises a dining area and toilet accommodation however a large area is set aside as storage accommodation and is not open to the public. The Supermac on-site customer carparking provides capacity for approximately 40 cars.

4.4 The floor areas were agreed on an overall basis with the ground floor comprising 359.57 m<sup>2</sup> and the first floor 365.96 m<sup>2</sup> with a total of 725.53 m<sup>2</sup>.

4.5 The property is held freehold

#### **5. ISSUES**

5.1 The Appellants state that the valuation is excessive and does not accord with section 19 (5) of the Valuation Act 2001 as amended by the Valuation (Amendment) Act 2015. They state that it does not achieve both correctness of value and equity and uniformity of value between comparable properties on the list. It does not achieve correctness of value, more particularly, as based evidence available for drive-thru's. They state that they do not accept that uniformity of value has been achieved between comparable properties as restaurants of a similar size in

the locality as they are valued on a significantly lower rate per square metre and that other drive thru facilities have been valued at lower rates per square metre.

## **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 Ms. Siobhan Murphy valuer for the Appellants took the oath, confirmed her statement of truth and adopted her precis of evidence. She confirmed the relevant valuation date was the 15th of September 2017 and that valuation on the list was €151,700. She provided a breakdown as to how this valuation was calculated and confirmed that it remained unchanged after representations:

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	128.00	€300.00	€38,400.00
	Kitchen	103.89	€300.00	€31,167.00
	Cold rooms	37.51	€300.00	€11,250.00

	Office	3.30	€300.00	€990.00
	Stores	40.51	€300.00	€12,1583.00
	Corridor	14.4	€300.00	€4,320.00
	Toilets	31.97	€300.00	€9,591.00
First floor	Restaurant	122.00	€120.00	€14,640.00
	Staff rooms	34.00	€120.00	€4,080.00
	Store	170.00	€120.00	€20,400.00
	Toilets	14.40	€120.00	€1,728.00
	Corridors	25.56	€120.00	€3,067.20
			Say	<b>€151,700.00</b>

7.2 Ms. Murphy confirmed the subject property was located in a cul de sac off the N 24 inner relief road adjacent to Tesco supermarket, Teagasc and Mr. Price discount warehouse. She added that the area was predominantly industrial/ commercial in nature and included Carigeen Business Park and that the subject property was located north of the rail line serving Clonmel. She provided an aerial photograph, site plans and several photographs at street level.

7.3 Ms. Murphy described the subject property as comprising a two-storey restaurant/drive-thru approximately 725m<sup>2</sup> with customer car parking for approximately 40 cars. She stated that the entrance provided direct access to the ground floor dining area and the ground floor also included a retail counter, kitchen, freezer and storage facilities as well as customer and staff toilets located to the rear. She stated that two staircases provided front and rear access to the first-floor accommodation which included a second dining room as well as staff facilities and storage accommodation. She noted that the property included a yard area to the rear of the drive through facility which incorporated marked lanes encircling the building and provided access to the retail hatches off the kitchen area. She provided detailed floor plans for both floors.

7.4 Ms. Murphy provided a schedule of accommodation.

<b>Floor</b>	<b>Use</b>	<b>Sq. M</b>
Ground floor	Restaurant	128.00
	Kitchen	103.89
	Ancillary	127.68
First floor	Restaurant	122.00

	Store	170.00
	Ancillary	73.96
<b>Total</b>		<b>725.53m<sup>2</sup></b>

7.5 She provided various photographs including an external photograph, together with ground floor dining room, entrance to the first floor and first floor dining area and stores areas and she also provided floor plans and elevations of the subject property.

7.6 She confirmed that she relied on a three NAV valuations of Drive-thru's in arriving at her opinion of value: notably KFC drive-thru Poppyfield Retail Park Clonmel Co. Tipperary; McDonald's drive-thru Junction 8, M8, Cashel, Co. Tipperary; and McDonald's drive-thru Parkmore Roscrea, Co. Tipperary. She provided a location map showing all three locations and the subject property. In relation to her first comparison she provided photographs and a location plan noted that this was the only other comparable drive through restaurant in Clonmel. She claimed it is located in a superior location in Poppyfield Retail Park and that it enjoyed a superior profile to the subject property with good visibility from the Cahir Road. She added that in her opinion the drive-thru enjoyed a synergy with the Clonmel Park Hotel and a number of other prominent retailers within the retail park including SuperValu, Woodie's EZ living, Costa Coffee and Harry Corry. She provided a copy of the Valuation Report:

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	286.96	€300.00	<b>€86,000.00*</b>

\*rounded

She noted that this valuation was currently subject to a Valuation Tribunal appeal.

7.7 Her second NAV comparison referred to McDonald's drive-thru at junction 8 on the M8. She stated that it was located on the M8 motorway which she regarded as a superior location to the subject property due to the high volume of passing traffic. She also stated that it had the advantage of being located next to a busy Topaz Service Station approximately halfway between the M7/M8 interchange and Cork city. She noted that it had been valued at a lower rate than the subject property at €280.00/m<sup>2</sup>.

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	358.51	€280.00	<b>€103,300.00*</b>

\* rounded.

7.8 Her third NAV comparisons referred to McDonalds' Drive-Thru in Roscrea which she stated was approx. 4km from Junction 22 off the M7 and adjoined a busy Circle K Service Station and was valued at a lower rate than the subject property.

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	207.61	€280.00	€58,13.80
Ground floor	Store	14.40	€32.00	€460.80
Total				€58,500*

\*rounded

7.9 She also referred to Valuations of restaurants in Clonmel. Her 4th NAV comparison refers to McDonald's Gladstone Street Clonmel. She stated that this fast-food outlet was located on one of the main retail high streets in the town and that based on the retail area of the ground floor only the valuation breaks back to €216/m².

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Retail Zone A	39.16	€340.00	€13,314.40
	Retail Zone B	37.96	€170.00	€6,453.20
	Retail Zone C	23.56	€85.00	€2,002.60
	Offices	6.64	€34.00	€219.64
	Store	40.22	€34.00	€1,367.48
First floor	Restaurant	71.03	€80.00	€5,682.40
	Store	19.54	€60.00	€1,172.40
	Offices	9.72	€60.00	€583.20
	Canteen	8.12	€60.00	€487.20
Total				<b>€31,200</b>

\*rounded

7.10 Ms Murphy referred to Rocking Joes Showground's Shopping Centre Clonmel and she noted that this unit was located within the shopping centre and that it devalued at €131/m<sup>2</sup> on an overall basis and confirmed that it does not have a drive-thru facility. She included a copy of the valuation report as follows:

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Retail Zone A	40.26	€300.00	€12,078.00
	Retail Zone B	50.52	€150.00	€7,578.00
	Retail Zone C	63.44	€75.00	€4,758.00
	Retail Zone remainder	43.10	€37.50	€1,653.75
	Other	1.00	€2,600.00	€2,600.00
<b>Total</b>				<b>€28,600.00*</b>

\* rounded

7.11 Ms. Murphy stated that in her opinion the subject property was overvalued and that it would be more correct to attribute a value of €280/m<sup>2</sup> in line with the other drive-thru comparisons in Tipperary. She added that the subject property whilst located off the Clonmel Inner Relief Road does not benefit from frontage directly onto it and is obscured and located to the rear of the Teagasc office building. She provided various photographs which showed eastern approach, the western approach to the subject property and the entrance to Tesco, noting that the subject property was not immediately obvious from any of these photographs. She acknowledged that there was an advantage to the subject property due to its proximity to Tesco but she added that it did not have the benefit of proximity to other retail units such as those in Poppyfield. She stated that the first-floor dining area is used occasionally mostly for parties and events but that a large portion of the first floor described as a restaurant was not fitted out and was currently used as storage accommodation only. She submitted a previous Valuation Tribunal determination VA 16/5/ 016 (appendix 3) which referred to the subject property and confirmed that it was appropriate to apply a lower rate per square metre to the unfinished store equation to a discount of 25% which she stated she has applied in her calculations.

7.12 Ms. Murphy concluded by stating that in her opinion the NAV for the subject property should be reduced to €137,000 based on the following analysis.



<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	128.00	€280.00	€35,840.00
	Kitchen	103.89	€280.00	€29,089.20
	Cold rooms	37.51	€280.00	€10,502.80
	Office	3.30	€280.00	€924.00
	Stores	40.51	€280.00	€11,342.80
	Corridor	14.4	€280.00	€4,320.00
	Toilets	31.97	€280.00	€8,951.00
First floor	Restaurant	122.00	€112.00	€13,664.00
	Staff rooms	34.00	€112.00	€3,808.00
	Store	170.00	€84.00	€14,280.00
	Toilets	14.40	€112.00	€1,612.00
	Corridors	25.56	€112.00	€2,862.72
			Say	<b>€137,000</b>

7.13 During cross examination Mr Costello put it to Ms Murphy that the subject property being a drive-thru is unique in relation to other properties insofar as the drive-thru use required a specific planning permission which was accepted by Ms Murphy. Mr Costello noted that the difference between the values was only €14,700 or approx. 10%. Ms Murphy accepted that the Clonmel Inner /Relief Road was also known as the N24 which applied to her first comparison. She acknowledged that the rent from a 2016 rent review for her second comparison was €175,000 per annum. No issues arose in relation to the third comparisons and Mr Costello argued that the fourth and fifth comparisons should be disregarded as they referred to a different type of restaurant and not a drive-thru. That completed the cross-examination. .

7.14 In summarising her evidence, Ms Murphy stated that there are both pros and cons regarding the location of drive-thru restaurants and their proximity to other users and road networks. She stated that the property should not be loaded for location and the area which had not been fitted out on the first floor should be discounted.

## 8. RESPONDENT'S CASE

8.1 Mr Costello valuer for the Respondent took the oath, confirmed his statement of truth and adopted his precis of evidence. He provided a summary on the revaluation and its purpose together with the statutory provisions governing revaluation.

8.2 He provided an aerial photograph showing the subject property, Tesco Supermarket Teagasc Offices and Mr. Price shop and their relationship with the N24 Limerick- Waterford Road and the access roundabout. He provided a second location map which identified the subject property located north of Clonmel Town Centre between the railway line to the south and the N24 to the north.

8.3 Mr Costello confirmed that he had inspected the subject property in the 31<sup>st</sup> May 2021 and confirmed that it comprised a two storey modern detached restaurant with a drive-thru facility approx. 725m<sup>2</sup>. He stated that the property had profile to the N24 and good access. He added that the building had a large proportion of glazing to the front and side and the area around the property comprised a tarmacadam finished car park with accommodation for approximately 40 cars. He described the property as a designated drive-thru restaurant with car lanes and a canopy allowing cars to wait while the takeaway drive-thru order was being prepared and that the building had an attractive design, colour and branding and was easily recognisable. He noted that the restaurant internally was laid out with a large bright mainly glassed walled seating area and the ground floor included a well-designed kitchen. He confirmed that the offices and storage areas were located to the rear of the property and the first floor was accessed by a lift and stairs and was set out with tables and chairs. He acknowledged that a large portion of the first floor was not open to the public and was used as storage and is partitioned but that it should be valued as a dining area. He stated that this area was designed to be used for customer seating however it is not utilised for this purpose at present. He added that the property generally was in excellent condition and had been well maintained and repaired.

8.4 He confirmed the floor were not in dispute.

Floor	Use	Sq. M
Ground floor	Restaurant	359.57
First floor	Restaurant	365.96
Total		725.53

He provided floor plans for both levels noting the vacant space at first floor level. He also provided external and internal photographs.

8.5 He referred to representations made by the agent for the occupier which had a valuation of €78,333.50 based on two comparisons comprising Burger King Kilkenny and KFC Clones Co. Monaghan but stated that both were outside the rating area. The claim was calculated as follows:

Level	Area M²	€/M²	€
Ground floor	359.57	€150.00	€53,935.50
First floor	122.00	€100.00	€12,200.00
First floor	243.96	€50.00	€12,198.00
Total			€78,333.50

He added that the Appellant had attached a determination of the Valuation Tribunal VA 16/2/ 016 which included a reduction to the RV granted to the subject property. He noted the particulars relating to the floor rateability etc of the subject property were not challenged and the comparative evidence adduced was outside the rating area and not suitable. He noted that the inclusion of VA 16/ 2/ 016 was not considered as it was based on a revision case prior to the start of the revaluation project. He noted that determination was based on car parking spaces being valued which was not the case in this instance. The valuation was not amended.

8.6 Mr Costello referred to the grounds of appeal contained in the Appellants precis which claimed the property was overvalued and that it should be valued at €280.00/m<sup>2</sup> in line with other drive-thru's at Junction 8 on the M8 and at Roscrea. He noted that the Appellant had sought to maintain a 40% allowance attributed to the first floor in the original valuation and that it should be applied pro rata to the suggested level of €280.00/m<sup>2</sup> for the area at first floor level and that the area referred to as "store" should be valued at the reduced rate of €84.00/m<sup>2</sup>. He added that the Appellants opinion of value of representation stage was € 78,333.50, € 80,000 on notice of appeal and € 137,000 in the Appellant's submission.

8.7 Mr Costello addressed the five comparisons relied upon by the Appellant noting that all five were in Co. Tipperary with the majority in Clonmel. He stated that the drive-thru properties

2181059, 2211240 and 2007183 are the only direct comparisons from the five listed. He acknowledged that these properties are indeed drive-thru restaurants that offer customers the option of sitting in, take-away or drive-thru options. He noted that the properties were valued at €300.00/m<sup>2</sup> for KFC in Poppyfields with the rate of €280.00/m<sup>2</sup> for the two McDonald's premises at Roscrea and Junction 8. He added that the decision to value these properties at different rates was based on the added advantage of subject property and KFC being located in urban settings which added to their customer base. He noted the other two comparisons cited comprised regular retail outlets 881956 on Gladstone Street Clonmel and valued on a zoning basis similar to other retailers on that street and the final comparison 2207569 in the Showground's Shopping Centre was valued as a retail unit on a zoning basis and neither included drive-thru options. He acknowledged that rental evidence must be considered however he stated that there were distinct differences between retail units and drive-thru restaurants. He added that Gladstone Street and Showground Shopping Centre units were considered but stated that drive-thru restaurants should be valued by comparison with similar properties rather than standard retail units within a town or shopping centre. He stated that a drive thru restaurant is a unique property with many additional benefits such as its ability to attract from a broader consumer base including transient vehicles and that planning permission was required for the drive thru element of the property which provides added value. He noted the fact that the property must be assessable by vehicle on all sides and must be a detached property making it a special and a distinct type of property.

8.7 Mr Costello relied on one Key Rental Transaction details of which are included in the appendix. It comprised a McDonald's drive thru off the M8 at Cashel based on a floor area of 358.51m<sup>2</sup> and no representations had been received, no third-party expert was engaged, and no appeal was made to the Valuation Tribunal.

8.8 He provided details of three NAV comparisons. They comprised the same three NAV comparisons provided by the Appellants and the details are the same. Mr Costello noted that the KFC Drive Thru in Clonmel was valued at €300/m<sup>2</sup> on the ground floor and acknowledged that this valuation had been before the Tribunal but that the judgement was not yet published. He argued that the subject property was valued at the same rate as KFC as these drive-thru's had the additional benefit of proximity to Clonmel. He noted that this property had been subject to representations, was represented by an agent and had been appealed to the Valuation

Tribunal. He provided a location map showing the subject property KFC and Clonmel town centre As well as an external photograph of KFC.

8.9 Mr Costello next referred to McDonald's drive thru at Junction 8 M8 Cashel which had been valued at €280/m<sup>2</sup> he noted that this property had not been subject to representations, that no third party expert was engaged, and no appeal had been made to the Valuation Tribunal. This property was subject to a lease from the 13th of May 2011 for 25 years and the rent was reviewed in 2016. Details are included in the appendix. Mr Costello provided a location map showing the subject property and this comparison together with an external photograph.

8.10 Mr Costello provided a third NAV comparison which referred to McDonald's at Roscrea Co. Tipperary which comprised a drive thru restaurant and store which were valued respectively at €280/m<sup>2</sup> and €32/ m<sup>2</sup>. He confirmed that there were no representations received on this property, the occupier was not represented by an agent and there was no appeal to the Valuation Tribunal. He provided a location map showing the location of this comparison with the subject property and noted that this property was located at the rear of a service station on the outskirts of Roscrea. He provided an external photograph from Google Street View.

8.11 Mr Costello referred to VA 07/3/ 054 William Savage Construction and VA 09/1/ 018 O'Sullivan's Marine Limited confirming that the onus of proof in appeals before the Tribunal rests with the Appellant.

8.12 He stated that he had investigated all the particulars of the appeal and considered the grounds of appeal and the evidence submitted by the appellant. He also confirmed that he had investigated three similar properties that were currently on the list and described as drive-thru restaurants and concluded by stating that in his opinion the correct NAV for the subject property was €86,000. He concluded his direct evidence by confirming that the property had been valued in accordance with section 48 and 19 (5) of the Valuation Act 2001, as amended. He confirmed that the subject property was a drive-thru restaurant and customers had the advantage of being able to access their choice of food while travelling by car, by sitting down inside or by ordering and collecting while remaining in their car. He stated that the subject property should be valued in line with similar drive thru restaurants. He noted that the subject property had the benefit of a roundabout exit from the N 24 proximity to Tesco Extra, a Tesco filling station and Mr. Price outlet. He added that the passing rent on his second comparison

was very important and demonstrated what the market was prepared to pay for a drive thru facility.

8.13 During cross examination Mr Costello acknowledged that the subject property was slightly obscured from the N24. He confirmed that the first-floor area referred to as a store by Ms Murphy should in his opinion be valued at the first floor restaurant rate. He argued that it was built as a restaurant space but accepted that it had not been used since the building was built in 2013. He accepted that his report did not include any internal photographs of this space but added that at the time of his inspection there was some confusion with the timing of his inspection, but he did acknowledge that the photographs provided by Ms. Murphy accurately represented the vacant restaurant space. Mr. Costello confirmed that he was aware of the rental values from Kilkenny and Monaghan but as they were outside the rating area they were not taken into account in this case. When asked by Ms. Murphy why he had not accepted the 2016 Valuation Tribunal description of this area and whether he disagreed with the Tribunal, Mr. Costello confirmed that he had not disregarded the Tribunal decision and stated that he had valued this space at its best use and he regarded the previous decision as representing a different case. Mr. Costello confirmed that the Clonmel drive-thru's were in an urban setting which is why there are valued at €300/ m<sup>2</sup> rather than €280/ m<sup>2</sup> but he accepted that customers would not walk to the subject property. Mr Costello when asked why there was such a material difference between the rate of €280/ m<sup>2</sup> and the rate per square metre from the McDonald's letting stated that they had looked at all the available evidence but that they had considered what people would have to pay in rates and in the interest of fairness and uniformity he had adopted a rate of €280/ m<sup>2</sup>. Mr. Costello confirmed that he was not aware of the details relating to the KFC case. Following a query from the Tribunal Mr. Costello confirmed that the reason the Respondents had adopted gross internal measurements for drive-thru restaurants when net internal areas were used for McDonald's in the town was due to the fact that in town units were valued on a zoning basis and that drive thru's were different properties, were much larger and the non-core areas such as toilets should be valued. He accepted that the M8 was busier than the N24 but added that the proximity of the urban population was important to the subject property. He noted that the drive thru was located behind the convenience store. He confirmed that there were no unoccupied sections in any of the three comparisons provided. In relation to Roscrea he accepted that the location of the drive thru was in a similar position on the outskirts of the town but argued that the motorway was of greater significance.

8.14 In summarising his evidence, Mr. Costello asked for the rate of €300/ m<sup>2</sup> to be confirmed as the subject premises was an excellent property had the benefit of proximity to a large Tesco and filling station. He also stated that the first floor area should be valued at the same rate as the 1<sup>st</sup> floor restaurant.

## **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 Tipperary County Council.

10.2 It is generally recognised that market rental evidence is very important in establishing the NAV. In this case there is only one such comparison provided and it is obvious to the Tribunal that the analysis of this transaction was not particularly relevant to the determination of the proposed NAV as the NER is substantially in excess of proposed level of €300/ m<sup>2</sup> and has effectively been disregarded by the Respondents. The Tribunal is conscious of the potential danger in relying on a single rental comparison without corroboration.

10.3 Both parties relied on the same three NAV comparisons. The first is the subject of an appeal to the Tribunal and has not been determined. Consequently, the Tribunal cannot rely on this disputed comparison.

10.4 The second and third comparisons were based on a ground floor rate of €280/ m<sup>2</sup> and no other evidence was provided for ground floor drive-thru restaurants. The Tribunal also notes that the subject property has limited profile to the N24. Consequently, the Tribunal finds that the ground floor accommodation should be valued at €280/ m<sup>2</sup>.

10.5 Ms. Murphy argued for a reduction in the value of part of the first floor that had not been fitted out as a restaurant and she referred to this issue which had previously been the subject to a Tribunal revision appeal in 2016 where the Tribunal determined that this area should be valued at a lower level to reflect the lack of finish. Both parties accepted that the space had not

been fitted to restaurant standards and comprised bare floor, walls and no ceiling was installed. While the decisions of this Tribunal are not subject to the determination of the 2016 case it nonetheless finds that this section of the first floor which comprises 170 m<sup>2</sup> should be valued at a reduced rate to reflect its actual state. Both parties agreed that this space is not and has never been used as a restaurant since its construction in 2013. It is referred to as a store in the valuation list. The first-floor store area was agreed at 170 m<sup>2</sup>.

10.6 The Tribunal accepts the established differential between the ground floor at €300/ m<sup>2</sup> and the first floor at €120/ m<sup>2</sup> and by reducing the ground floor rate to €280/ m<sup>2</sup> the first floor rate is determined at €112/ m<sup>2</sup>.

10.7 This Tribunal accepts that the required discount for the lack of fitout for the first floor store area should be 25% and consequently the rate of €84.00/m<sup>2</sup> applies.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €137,000.

<b>Floor</b>	<b>Description</b>	<b>Sq. M</b>	<b>€/Sq. M</b>	<b>NAV €</b>
Ground floor	Restaurant	128.00	€280.00	€35,840.00
	Kitchen	103.89	€280.00	€29,089.20
	Cold rooms	37.51	€280.00	€10,502.80
	Office	3.30	€280.00	€924.00
	Stores	40.51	€280.00	€11,342.80
	Corridor	14.4	€280.00	€4,032.00
	Toilets	31.97	€280.00	€8,951.60
First floor	Restaurant	122.00	€112.00	€13,664.00
	Staff rooms	34.00	€112.00	€3,808.00
	Store	170.00	€84.00	€14,280.00
	Toilets	14.40	€112.00	€1,612.80
	Corridors	25.56	€112.00	€2,862.72
			Say	<b>€136,902.92</b>
				<b>€137,000.00</b>



