

**Appeal No: VA19/5/1017**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**MBCC Foods (Ireland) Ltd - KFC**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**  
Property No. 2181059, Retail (Shops) at 4A/8A Ballingarrane, Clonmel, County Tipperary.

**B E F O R E**

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

**Deputy Chairperson**

**Allen Morgan – FSCSI, FRICS**

**Member**

**Úna Ní Chatháin - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 7<sup>TH</sup> DAY OF JUNE, 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 €86,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *“The valuation is excessive having regards to the open market rent of an adjacent property and that the premium added for the drive thru element is excessive.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €50,500.

## **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 €86,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation 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 €86,000.

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 November, 2021. At the hearing the Appellant was represented by Mr. David Molony B.Sc., MA. of Hennigan & Company and the Respondent was represented by Mr. Séamus 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 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.**

**Location.** Poppyfield Retail Park is located approximately 2.5 kms west of Clonmel Town Centre in Co. Tipperary on the R707 Cahir Road out of the town and Clonmel Park Hotel is located on the opposite side of the entrance. The location is approximately 350m from the junction of the Cahir Road with the main N24/Limerick to Waterford Road.

4.3 The retail park contains 14 commercial unit, comprised of a mix of larger retail warehouse units, and retail units which include restaurants/cafes. The tenant mix includes the following 7 national retail chains - Woodies DIY, Supervalu, Maxi Zoo, Harry Corry, EZ-Living, World of Wonder and DID Electrical. The remaining 7 units are classified as neighbourhood retail units and include a large Costa Coffee outlet, a pharmacy, a mobile phone retail store, a restaurant, a hair and beauty salon and a fish shop outlet. The development is served by a total of 375 surface car-parking spaces which are available free of charge. The subject property is located on an island site separated from the main retail units in the park and has three road frontages at the entrance/exit to Poppyfields however for a Drive-Thru premises vehicular access is difficult. The property has clear frontage to Cahir Road and two internal retail park road frontages. It has good visibility to Cahir Road R 707.

#### **4.4 Description**

The subject property comprises a modern single storey detached restaurant premises with a drive thru facility situated close to the entrance/exit of the retail park. Acute vehicular access is available immediately inside the retail park opposite the main Poppyfield car park. The subject property has a small surface car park which leads to the wrap around drive-thru facility which is laid out around the restaurant building. The restaurant comprises a large rectangular shaped unit with an adjoining drive-thru canopy area to the side. The restaurant has KFC external branding including a feature pillar. The main structure has a concrete floor, block and glazed walls which are plastered and painted internally and the restaurant has a large scallop shaped roof. Internally the unit is fitted out to a standard KFC corporate finish to include a seating area to the front, a drive thru service area to the side together with a kitchen, offices, stores and toilets plus ancillary accommodation. The public area has a suspended ceiling incorporating package air conditioning units. The opening hours were 11:00 AM to 9:00 PM seven days a week.. The gross floor area of the property is stated to be 286.96 m<sup>2</sup> .

## **5. ISSUES**

The only issue for the Tribunal's consideration in this Appeal relates to quantum – i.e. whether or not the Respondent correctly determined the Net Annual Value of the Property based upon a valuation of €300 per sq. 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 Mr David Molony of Hennigan & Co, Rating consultants acted on behalf of the Appellant. He first confirmed to the Tribunal that he wished to adopt his evidence in chief. He stated that he considered the NAV figure of €300/sqm placed upon the property by the Respondents was excessive in the context of current levels of other units in the same retail estate. He reprised his written evidence providing commentary on five comparator properties within the same retail park, noting that, whilst they varied considerably in both size, and user type, i.e. both food and retail, the units all lay within a NAV range of between €135 - €160/sqm, and consequently had much lower total NAVs than the subject unit. He further pointed out that while the Costa unit

was not detached, unlike the subject unit, it was a large end unit of over 200 m<sup>2</sup>, (i.e. approximately 2/3rd of the size of the subject unit.)

7.2 Mr. Molony noted that the subject property was the only one in this retail park with a drive-thru facility, and that it was well located, but that notwithstanding these factors, the market for fast food in an internal seated environment had been badly affected by the covid pandemic and that unlike fast food outlets in larger urban centres, the takeaway element of the business in this unit generated a much smaller percentage of turnover. He called it a “reduced format” drive thru and added that the value of drive thru’s had been affected by delivery apps. While a drive thru still has value, it was not at the level estimated by the Valuation Office valuation. In answer to a question from the Tribunal, he cited a figure of 10% of total turnover for the drive-thru component of turnover. In his précis the following is stated: “Our client advises that 25% of sales generated in KFC emanates from the drive-thru lane at one side of the building. In general, if a drive-thru lane is removed, only a proportion of sales (maximum 15%) is lost. A smaller proportion (maximum 10%) would be lost in a provincial location with ample car parking such as the Poppyfield Retail Park. He stated that it is important to note that KFC in Poppyfield forms part of a larger shopping scheme and is not a stand-alone roadside drive-thru site.”

7.3 Mr Molony referred briefly to the Respondent’s three NAV comparisons (the only 3 drive-thru outlets in Tipperary), stating that although these were similar to the extent they were all Drive Thru food outlets, only one was in Clonmel (NAV1: €300/ m<sup>2</sup>), the other two being in Cashel (adjoining the M8 motorway; NAV2: €280/ m<sup>2</sup>) and in Roscrea off the N62 (NAV3: €280/ m<sup>2</sup>) and each had a NAV of between €280 - €300/ m<sup>2</sup> despite being superior in locations. He stated that none was similar to the subject property as they were superior in terms of location. He argued that NAV1 (Supermac’s Drive-Thru in Powerstown Road Clonmel) should be discounted entirely as it was under appeal. Referring to the Cashel comparison (NAV2) Mr. Molony stated that this was a unit in a location which benefits from a huge passing trade, was far busier, and had a much higher asset value. He described the comparison as an attempt to compare ‘a mini car with a Ferrari’ (i.e. in comparison to the subject property). He argued that NAV3 also benefitted from substantial passing traffic and was very valuable.

7.4 In contrast, turning to his own evidence Mr. Moloney stated that rather than focusing on other drive-thru properties, greater emphasis should be placed on open market rental evidence and the valuations of other units within the Poppyfield Retail Park. He asserted it was clear that the subject unit's NAV was substantially above all of the other units without any obvious justification.

7.5 Mr. Molony then discussed his 5 Comparisons in Poppyfield Retail Park, Clonmel as follows (lease details in Appendix (N/A public) 1):

**1 Costa Coffee, Unit 14. PN 2213461** The lease details are included in the appendix (N/A public). He argued that Costa Coffee was a sister unit to the subject property and had a similar size. He adjusted the 2015 market rent to account for the rent free and an assumed growth rate between 2015 and 2017 and calculated a rate of €105.09/m<sup>2</sup>. He stated that this property had been valued by the Valuation Office at €135/m<sup>2</sup> based on a Valuation Office floor area of 203.72sqm whereas the subject property had been valued at €300/m<sup>2</sup>. He stated that the 2020 rent review had been agreed at nil increase and that the actual measured floor area was 287.37m<sup>2</sup>.

**2 Red Herring Restaurant, Unit 8. PN 2198210** 2019 NAV €20,500 which had been calculated on a zoning basis

He referred to his second open market rental comparison and argued that this property offered similar options to KFC in the form of a dine-in, restaurant, takeaway or kerbside pickup. The lease details are included in the appendix (N/A public). He stated that the analysis of the rent equated to €140/m<sup>2</sup> and noted that the NAV was assessed at €160/m<sup>2</sup> but had been based on a zoning analysis.

Zone A 58.68m<sup>2</sup> @ €200/ m<sup>2</sup> €11,376

Zone B 60.42m<sup>2</sup> @ €100/ m<sup>2</sup> €6,042

Store 9.44m<sup>2</sup> @ €100/ m<sup>2</sup> € 944

Zone A addition € 1,872

Total NAV €20,500 equates to approximately €160/m<sup>2</sup> overall.

**3 Donna Cummins, Hair and Beauty Salon, Unit 9 PN 2186111** Total NAV €15,330 which had been calculated on a zoning basis.

He argued that the 2019 revaluation equated to approximately €147.50/ m<sup>2</sup> and he noted that the lease rent equated to an NAV assessment of €144 / m<sup>2</sup> . The lease details are included in the appendix (N/A public).

Zone A 49.47m<sup>2</sup> @ €200/ m<sup>2</sup> €9,894

Zone B 54.45 m<sup>2</sup> @ €100/ m<sup>2</sup> €5,445

Total NAV of €15,330 equates to approximately €147.50/ m<sup>2</sup> overall.

**4 Carphone Warehouse, Unit 13 PN 2190429** Total NAV €14,740 which had been calculated on a zoning basis.

He argued that the 2019 revaluation equated to approximately €149/ m<sup>2</sup> overall. No lease details were provided.

Zone A 48.68 m<sup>2</sup> @ €200/ sqm, €9,736

Zone B 50.12 m<sup>2</sup> @ €100/ sqm, €5,012

Total NAV of €14,740 equates to NAV of €149/ sqm overall.

**5 Sam McCauley Chemists, U11/12 PN 2186113** Total NAV €28,900 which had been calculated on an overall basis.

He noted that this property had been devalued on the basis of a retail warehouse at ground floor level and a first floor store. He stated the ground floor rate was €60/ m<sup>2</sup> and the first floor was €12/ m<sup>2</sup>

Retail warehouse 478.40 m<sup>2</sup> @ €60/ m<sup>2</sup> , €28,704

Level1 store 19.24 m<sup>2</sup> @ €12 / m<sup>2</sup> €231.

7.6 Mr. Molony then stated that in his opinion, of his five comparisons, the first three were the most important, and comparisons two and three were the most relevant in terms of NAV. He stated that the first comparison particularly was closest in size as the actual leased area was 287 m<sup>2</sup>, identical to the subject property. He said that it held a more prominent location within the retail park and had the advantage of full visibility to the car park as evidenced by the photograph included in his precis.

7.7 Mr Molony stated that the main thrust of his appeal was that the valuation of the subject property was loaded with a premium valuation as a drive-thru facility without reference to the open market evidence and ‘*tone of the list*’ valuation levels on the adjacent retail units in the same development. He asserted that the Respondents’ valuation appeared to be assessed and referenced solely in comparison to drive thru restaurants in the Tipperary County Council area. He claimed that this approach was inconsistent with the Tribunal findings in VA99/3/057, McDonald’s Restaurants of Ireland Ltd. It was stated therein that “*The Tribunal has in a number of decisions stressed the value of passing rents. It would be wholly inconsistent now to disregard such evidence...*”. Furthermore, in that case, in giving evidence the Valuation Office representative affirmed that “*in a specialised building such as the subject, (McDonald’s Restaurants of Ireland Ltd.) one had to have regard to rents in the Shopping Centre and he (the Respondent) had related the rents in the Shopping Centre as he had done in other shopping centres.*” He submitted that in the Appellant’s view, that followed best methodology of proper valuation practice and procedure in determining the valuation of a specialised property. He also quoted VA01/3/071, McDonald’s Restaurants of Ireland Ltd, where the Tribunal stated that “*Of all the comparisons introduced, the Tribunal attaches most weight to the adjoining unit i.e., Unit B occupied by Ned Gaddy trading as Gala. This is a common comparison and forms part of the same scheme of development.*” \_ In concluding his evidence Mr. Molony stated he was simply asking for consistency in the assessment of the specialised business operating in the subject property.

7.8 During cross-examination Mr. Costello asked Mr Molony if he would agree that the subject property is a drive thru restaurant property which was readily affirmed. Turning to the Appellant’s comparisons, Mr Molony confirmed that these comparisons were situated close to



the subject property but Mr Costello added saying that other than a proximate location, many of these units were not otherwise comparable. Mr Molony disagreed and stated that his Comparison 1 – Costa – was quite similar to the subject.

7.9 In relation to Comparison 2 (Red Herring) Mr Costello posed the question that was it not the case that it was a takeaway and not like the subject property at all. Mr. Molony disagreed and stated one could get takeaway from KFC also. Mr Molony conceded that Comparison 2 was not a drive thru. Mr. Costello put it to the witness that was it not the case that a number of the smaller units in the centre were local neighbourhood shopping facilities and were different to the subject property, which is a high profile detached standalone unit with sit-in and take away facilities with the benefit of having obtained received a special planning permission for a drive-thru, a permission which is hard to obtain. In this context Mr Molony was asked to confirm that the subject property was uniquely valuable and that there were no other units in the development that were comparable to it. Mr. Molony stated that like any other development, a drive thru required planning permission. When asked to agree that the subject property was not similar to the other properties in the retail park, his response was that there was similarity with other units in the centre to the extent that two of these were end units and thus also with a fair degree of separation/profile.

7.10 The Tribunal observed that Mr Molony in his written evidence stated his opinion that the additional value to the turnover of the business in the subject property related to the drive-thru element was 10% and that an additional premium on the valuation over the other properties in the retail park of 10% would be appropriate. When asked by the Tribunal to expand on this level of adjustment Mr. Molony affirmed that in his opinion there would be some increase in turnover associated with the drive-thru facility but that it would be within the range of 10% – 20%. He stated that the facility only opens at midday, when there is a small lunchtime trade, and that the main trade is in the evening time between 6 and 9 pm.

7.11 Mr. Molony then summed up his case, firstly asserting that the advantage of a drive thru facility on the level of business in the subject property was “overblown”, and that regard should

be had to the adjacent rents in the retail park. He did concede that a value premium over other units in the retail park was appropriate but that in his opinion this lay within a range of 10-20% above the other units.

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

8.1 Mr. Costello, the Respondent's witness, took the oath and adopted his precis. He stated that the subject property is a substantial drive thru restaurant with a unique location in the Poppyfield Retail centre. He stated that it has the benefit of direct access from the Cahir Road via a roundabout and that customers could approach it directly and use it as a drive thru. He stated that his role as a valuer in the Valuation Office is to ensure correctness of valuation and to ensure uniformity of value. In this case he said he had noted there are a total of three restaurant outlets in the centre, only the subject property was detached. He observed that he had specifically concentrated his search for the most appropriate comparables on other drive-thru properties located in County Tipperary.

8.2 Referring to the evidence put before the Valuation Manager at representation stage the Respondent confirmed the Costa Coffee lease terms but stated that the floor area was 203.72 m<sup>2</sup>, whereas the appellant had relied on a floor area of 286.96 m<sup>2</sup>. He stated that while the comparison was considered by the Valuation Manager that it was not accepted as being a direct comparison to the type of property being assessed and that a 10% premium did not represent fair value for the subject property which comprised a drive thru restaurant, the traditional sit-in option and the attraction of eating while on the move. He added that planning permission for a drive thru option can be difficult to obtain and it provides added value.

8.3 Referring to the five comparisons provided by the Appellant's Mr Costello stated that while these comparisons were located in Poppyfields he argued that they were not directly comparable. He noted the value of rental evidence as applied to properties close to the subject property but differences between the properties must also be taken into account. He argued that in his opinion none of the comparative evidence put forward by the appellants relate to restaurant drive thru properties and in his opinion they not comparable to the subject property. He argued that the Appellants had not considered valuation levels applied to other drive thru's

in Co. Tipperary which varied from €280/ m<sup>2</sup> to €300/ m<sup>2</sup> and claimed that subject property should be valued in line with other similar properties. He stated that a drive thru restaurant was a unique property that had many obvious added benefits and required a particular planning permission. He added that vehicular access was required around the premises and the property must be detached to facilitate this access.

8.4 The Respondent stated that there was limited rental evidence available for drive thru restaurants and one just item of market evidence was available. He confirmed that this transaction was referred to as a Key Rental Transaction and that it was investigated and analysed in accordance with Valuation Office policy. This analysis provides the Net Effective Rent NER which equates to the basis of valuation set out in S.48 of the Valuation Act 2001. Mr Costello stated that properties which are 'similarly circumstanced' are considered comparable where they share characteristics such as use, size location and/or construction.

8.5 The Respondent adduced one Key Rental Transaction KTR (see Appendix (N/A public) 2 for lease details) and 3 NAV comparisons. The KRT referred to a 2011 letting of a drive-thru comprising 358.51 m<sup>2</sup>. He confirmed that a rent review in 2016 gave a passing rent of €175,000pa which is an NER of €488.13/ m<sup>2</sup>.

The first NAV comparison identified by Mr Costello (NAV1) is PN 2213463, a Supermac's Drive-Thru located on the Powerstown Road, Clonmel. He stated it had been appealed to the Valuation Tribunal and as such should not be treated as a valid comparison until an outcome of the appeal is available.

The second NAV comparison (NAV2 which is also submitted as a Key Rental Transaction) is a McDonald's Drive-Thru located on a motorway in Tipperary. The property is stated to be valued on the valuation list at a NAV of €100,300 and valued at €280/ m<sup>2</sup>. No representations were received, the property was not represented by an agent and there was no appeal to the Valuation Tribunal.

The third NAV comparison, PN 2007183 (NAV3), is a McDonald's Drive-Thru located on the outskirts of Roscrea, located to the rear of a filling station off the N62. The property is noted as being held freehold. The size of the property is stated as 222.01 m<sup>2</sup> and valued at €280/ m<sup>2</sup>. It is valued on the valuation list at €58,500. He stated that no representations were received for

this property, the property was not represented by an agent and there was no appeal to the Valuation Tribunal.

8.6 Mr. Costello stated that it was not correct for the Appellants witness to assert that the Valuation Office did not consider any other properties other than drive- thru properties. He stated they did but that drive-thru's were considered the most relevant comparisons. He stated that the Valuation Office put a premium on the three subject comparisons because they were detached and in superior locations. He also pointed out that apart from drive thru services, these properties also offered customers the comfort of sit down/eat in facilities and adjacent car parking.

8.7 As regards the subject property, Mr Costello stated that this had the similar benefit to the above of both drive thru or sit in. He stated the centre was a busy place in the morning, and that although some businesses would not be busy in the morning, e.g. Red Herring, that KFC was. In terms of his Roscrea comparison, he conceded that it was not in a prominent location. Finally, he stated he was satisfied that all factors had been taken into account in terms of location for both the subject property and the comparator properties.

8.8 During cross-examination Mr Molony asked if Mr Costello had prepared his assessment before he inspected the subject property. Mr. Costello's reply was yes but that he lives locally and already knew the property. Mr. Molony queried whether it was appropriate for Mr Costello to disregard the appeal at representation stage. Mr Costello said he had taken all aspects of the case into account at representation stage. Mr Molony queried whether it was common for the Valuation Office to set values without actual inspection. Mr Costello's answer was that bulk estimates are the norm, given the volume of properties involved in the revaluation programme. He repeated that he was comfortable with his figure for the subject property even without prior physical inspection.

8.9 When asked if he had also had regard to market evidence Mr Costello stated that he had but that he also looked to ensure uniformity. He said that he does not accept that premises adjoining the subject property are similar, stating that in his view they are not. Specifically he said that he did not consider that the Red Herring restaurant was a comparable property. Mr.

Molony asked Mr Costello for his views on the Deliveroo business model and if he would agree this had affected the subject business. Mr Costello said this delivery business model is not relevant and that in any event this does not exist in Roscrea..

8.10 Mr Costello was asked by Mr Molony if he considered that it was reasonable to add a 100% increase to KFC's valuation relative to other units in the retail centre. Mr Costello' replied that each business is looked at to assess uniformity, what is fair, and to estimate what the hypothetical tenant would be prepared to pay. The specific use is looked at – he further commented that it is difficult to secure planning permission for a drive thru which marks out the subject property, which also has other benefits (e.g. directly adjacent car parking). The higher rate on the subject property reflects its additional benefits. When asked what value he would put on the subject property if there was no drive thru facility he stated that he could only assess the property as it is. Mr Costello said there would have been additional costs associated with the drive thru facility but that he could not put a value on the property in the hypothetical case of it not having a drive thru facility. Mr. Moloney asked if it was not the case that other than the cost of the drive-thru element, most of the remaining costs of the unit would have been similar to other units in the complex. (i.e. aside from the cost of the road and the ancillary parking.) Mr. Costello opined that the overall build cost could have been double a standard 'build cost'. When asked if he held a qualification as a building surveyor, he replied that he was a valuation surveyor and further observed that he would not have been able to provide an opinion on the build cost as of the date it was constructed. However he went on to state that in his opinion there would have been a substantially higher build cost for the KFC unit as opposed to the Red Herring unit.

8.11 Mr Costello was asked for his opinion on the disparity between the passing rent on NAV2 which breaks back at €488.18/ m<sup>2</sup> and the NAV ascribed to it in a 2017 valuation which was €280/ m<sup>2</sup> Mr. Costello did not directly address the level of "discount" saying that each case was viewed on its merits. In a follow up question Mr. Costello was asked whether NAV2 was valued exclusively on the "tone of the list". Mr. Costello's stated that the Valuation Office sought a fair valuation, following years of problems. He believes that the valuation rate being applied for drive-thru facilities was fair and reasonable, and took the tone of the list and rents being paid into account.

8.12 Mr. Molony asked whether Mr. Costello had accepted the Tribunal's observation in VA99/057 about the need for market rents to be taken into account. Mr. Costello replied saying he could accept this in many cases but that the particular use in the subject property is specialised and therefore the case is special and he was happy with the valuation.

8.13 The Tribunal asked Mr Costello whether it was reasonable that where a valuation of €280 / m<sup>2</sup> was applied to the McDonalds outlet at Cashel on the M8, that a rate of €300/ m<sup>2</sup> should be applied to the subject property, and was the concept of uniformity being followed, given that the M8 is a national motorway whereas the subject property is located off a national road. Mr. Costello's reply was that whilst this was correct, that the subject property also had the benefit of being located within a retail park which he said was an added advantage.

8.14 Mr. Costello stated that in his opinion drive thru properties were a special category. A person cannot just open a property and declare it a drive thru. The addition of the drive thru facility in the subject property offered a unique premium above the other units. He also claimed this advantage was related to the ability of visiting custom to both take away or sit down/eat in according to whichever customers wanted. He stated that Tenants were willing to pay for that amenity and he pointed to the rent paid on NAV2 to support his point and noted that the majority of motorways restaurant outlets nationally are owned . Accordingly he had done his best with limited rental evidence. He stated that in his view the premium value attaching to the subject unit was fair, reasonable and justified. The subject property was better than other properties in Poppyfields. He finished by stating this in his view the value of €300/ m<sup>2</sup> was fair and reasonable .

## **9. SUBMISSIONS**

9.1 No legal submissions were made in this appeal.

## **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 The Appellant's case is that that much greater weight should be given to the valuations of other units in the Poppyfield Retail Park than to the valuations of the other drive thru restaurants in Tipperary as they are the better and more appropriate comparators. The Appellant concedes that some additional premium is warranted by reason of the subject property's drive thru facility which confers an additional element of business turnover, but not at the level claimed by the Respondents. The Appellant also believes that direct comparative rental evidence should be assessed and compared in determining a fair assessment of the subject property rather than relying exclusively on tone of the list evidence of other drive thru facilities in the county.

10.3 The Respondent's position is that drive thru restaurants are a unique class of property in themselves and accordingly that other drive thru restaurants located in Co. Tipperary are the most appropriate comparators for the subject property.

10.4 The Tribunal notes that in the context of the foregoing, the two parties have not included any comparisons which are common to both. As such there was no debate on common comparables that would assist the tribunal in considering this case.

10.5 The Tribunal notes that one of the Respondents comparables, the Supermac premises in Clonmel, is under appeal. Accordingly this comparator has not been taken into consideration by the Tribunal. The significance and relevance of the sole KRT at €488.13/ m<sup>2</sup> as a basis for any NAV calculation must be regarded with some concern when the NAV for the same property has been assessed at €280/ m<sup>2</sup> .

10.6 The Tribunal does not accept the submissions of the Appellant concerning VA99/3/057 and VA01/3/071, that those cases oblige the Tribunal in this case to consider properties within the subject property's retail park in preference to the other drive thru properties adduced as comparators by the Respondent. In VA99/3/057, the context of the observation quoted by the Appellant was that neither party in the appeal had relied upon lease evidence, instead preferring NAV/RV evidence of properties said to be comparable. The Tribunal took the view that despite the preference of the parties, lease evidence could not be entirely disregarded. In VA01/3/071,

the adjoining unit was selected as the best comparison on the facts of that particular appeal and its selection is not a basis for submitting that adjoining units, or units in the same scheme of development as the subject property will necessarily be the most appropriate comparison in any given appeal.

10.7 The Tribunal accepts the Appellant contention that the locations of the Respondent's NAV2 and NAV3 are far superior to the location of the subject property. Both NAV2 and NAV3 are located adjacent to filling stations on very busy roads at busy locations. Vehicular accessibility and traffic volume are major considerations for the location of any drive thru. The Respondent's contention that the location of the subject property in a provincial retail park near a junction with a national road confers an advantage on it above the location of NAV2 on the M8 is rejected. Similarly, the location of NAV3 adjacent to a busy filling station benefitting from significant passing traffic is superior to the location of the subject property. The location of the subject property is not as favourable as suggested by the Respondent and it is not particularly easily accessible from the road upon which the retail park is located. It appears to the Tribunal that any advantage conferred by the particular drive thru on the subject property is reduced, in particular when compared to the Respondents NAV2 and NAV3, which by reason of their locations necessarily derive the vast majority of their trade from passing traffic. The subject property, as pointed out by the Appellant, is not a stand-alone roadside drive-thru but forms part of a larger shopping scheme with 375 parking spaces and necessarily derives a lesser proportion of its trade from passing traffic. Accordingly the Tribunal finds that the valuation of the subject property at €300/ m<sup>2</sup> is not fair or equitable in the context of the valuation of NAV2 and NAV3 at €280/ m<sup>2</sup> .

10.8 The Tribunal accepts the Appellant's contention that the most appropriate comparators for the subject property despite the drive thru from which it benefits are the other commercial units in the retail park in which it is located. The analysis of the Costa Coffee rent or NAV is uncertain as the floor areas provided by the Appellant 287.37 m<sup>2</sup> and the Valuation Office 203.72 m<sup>2</sup> refer to significantly different floor areas and consequently this comparison is not of assistance. The second NAV comparison provided by the Appellants provides a rate of €160/ m<sup>2</sup> overall for a restaurant use and this is supported by the rates applicable to the third and fourth NAV's for standard -non restaurant retail units at €147.50/ m<sup>2</sup> and €149.0/ m<sup>2</sup>



respectively for overall areas. The rate of €160/ m<sup>2</sup> applies to the most comparable Poppyfield Retail Park unit which is a restaurant but without the benefit of a dedicated drive-thru facility.

10.9 It is not contested that a premium should be applied to the valuation to reflect the additional value conferred by the specific advantages of the subject property, namely that it is detached and enjoys the benefit of a drive thru. The parties are not in agreement about the appropriate premium to apply – the Appellant, on questioning, conceded that a 10% - 20% premium would be appropriate, and the Respondent is of the view that a premium of 100% is warranted. The premium contended for by the Respondent is not supported by the evidence adduced. The Appellant in its précis attributed 25% of the sales generated in the subject property to the drive thru facility and the Tribunal finds that that is the appropriate basis for the calculation of the premium to be applied.

$286.96 \text{ m}^2 \times €160/ \text{ m}^2 = €45,913.60 \times 125\% \text{ (i.e. } 286.96 \text{ m}^2 \times €200/ \text{ m}^2) = €57,392.00 \text{ Say } €57,400$

**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 **€57,400**.

