

**Appeal No: VA19/4/0041**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**O'Briens Centra**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2193550, Fuel/Depot at Local No/ Map Ref:1Da/ Unit 3 to Unit 5, Ballinderry, Mullingar, County Westmeath.

**B E F O R E**

**Darine Mac Fadden - Solicitor**

**Deputy Chairperson**

**Michael Brennan - BL, MSCSI**

**Member**

**Fergus Keogh - MSCSI, MRICS**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 12<sup>TH</sup> DAY OF JULY, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 3<sup>rd</sup> day of December, 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 €199,800.

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 28(4) of the Act because : *"The subject property's proposed NAV at €199,800 is excessive and inequitable.*

2. *The subject property is a non-standard service station, being 661.50m<sup>2</sup> total area (615.50m<sup>2</sup> retail, 46m<sup>2</sup> stores/ancillary). As such, it is a supermarket (category 2) with pumps, rather than a filling station. Plans can be found online at Westmeath planning file 196015.*

3. *The subject property should therefore be valued in line with the Tribunal's decision in VA15/5/069, which valued the shop on a rate per m<sup>2</sup> basis and added for the fuel element.*

*4. Indeed, the nature of the Commissioner's proposed assessment clearly indicates that this is the appropriate method – as the subject's business is ca. 70% shop, 30% fuel. This business clearly indicates it is a supermarket and should be compared with similar supermarkets.*

*5. Comparisons for the subject property in the Mullingar area (in order of relevance) include Pn 1445693 (Londis), Pn 2198536 (Aldi), Pn 2145398 (Lidl), Pn 5008192 (Aldi), Pn 5005597 (Lidl), Pn 2096250 (Dunnes). All of these comparisons are valued at €70/m<sup>2</sup>, and the Commissioner is suggesting that the subject property is superior in NAV terms to all of them – despite the comparisons being up to 3x the size of the subject.*

*6. Indeed, a valuation at €70/m<sup>2</sup> actually brings the subject property back into line with filling station comparisons on an NAV basis locally, such as Pn 1446269, Pn 1446021, Pn 1446022."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €76,200.

## **2. VALUATION HISTORY**

2.1 On the 10<sup>th</sup> day of June, 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 €199,800.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 6<sup>th</sup> day of November, 2019 stating a valuation of €199,800 amount.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of by way of a remote hearing on the 24<sup>th</sup> day of February, 2022. At the hearing the Appellant was represented by the Mr. Eamonn S. Halpin B.Sc.(Surveying) MRICS, MSCSI and the Respondent was represented by Mr. Viorel Gogu PhD., Msc., 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**

The background facts to this appeal are as follows:

4.1 The property is located on the west side of Lynn Road, Mullingar, Co. Westmeath approximately 1.5km from Mullingar Town Centre. Lynn Road is a southern arterial route connecting Mullingar to the N52.

4.2 The subject property comprises of a fuel forecourt with a canopy and four pump islands, carwash and retail unit.

4.3 The property which has been valued by the Respondent for the purposes of this revision as a service station with fuel forecourt, carwash and convenience store. At the revaluation date, it was valued as two separate properties comprising a car showroom and petrol filling station. The car showroom commenced trading as a shop in 2019 following a conversion of the property and change of use to retail and the revision arises from this material change of circumstance. As part of this revision, the Respondent seeks to value the retail unit and petrol filling station as a single rateable property under the Act.

4.4 The retail unit converted from a former car showroom extends to 649.70 sq m overall, and is now in use as a Centra shop and the parties are in agreement in relation to this floor area. There is an adjoining retail unit within the same converted building and which is occupied separately by a third party and is in use as a butcher's shop.

4.5 The filling station canopy was previously attached to a retail unit but this has since been demolished. Payments received in respect of fuel sales are taken in the Centra shop.

4.6 The parties are in agreement with regard to the level of fuel throughput used in the assessment of NAV applicable to the petrol filling station which has been assessed at 2,000,000 litres per annum.

4.7 The relevant valuation date is 30<sup>th</sup> October 2015.

4.8 The property is held freehold by the occupier.

## **5. ISSUES**

5.1 The issue to be determined by the Tribunal is one of quantum and the value attributable to the retail element of the subject property.

## **6. RELEVANT STATUTORY PROVISIONS:**

The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

*“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*

## 7. APPELLANT'S CASE

7.1 Mr Halpin for the Appellant, submitted three valuation methods for the subject property and contended that his Method 1 was most applicable on the basis of a prior Tribunal decision in VA15/5/055. Mr Halpin directed the Tribunal to the omission of carwash turnover in his précis and corrected it to include FMT of €25,000, and FMT Ratio of 0.10 and an associated NAV of €2,500. Mr Halpin contended for the following valuations:

### Method 1

<b>Fuel</b>			
<b>Use</b>	<b>FMT</b>	<b>FMT / Ratio</b>	<b>NAV</b>
Fuel Throughput (litres)	2,000,000	0.0065	€13,000
Car Wash Turnover (euro)	25,000	0.10	€2,500
Sub-total			€15,500
<b>Retail</b>			
<b>Use</b>	<b>Size (Sq m)</b>	<b>Rate (per Sq m)</b>	<b>NAV</b>
Shop	661.50	€70.00	€46,305
Office licence Premium @ 15%			€6,946
<b>Total NAV</b>			<b>€68,751</b>
		<b>Say</b>	<b>€68,750</b>

### Method 2

<b>Fuel</b>			
<b>Use</b>	<b>FMT</b>	<b>FMT / Ratio</b>	<b>NAV</b>
Fuel Throughput (litres)	2,000,000	0.0065	€13,000
Car Wash Turnover (euro)	25,000	0.10	€2,500
Sub-total			€15,500
<b>Retail</b>			
<b>Use</b>	<b>Size (Sq m)</b>	<b>Rate (per Sq m)</b>	<b>NAV</b>
Retail Zone A	142.45	€150.00	€21,368
Retail Zone B	148.74	€75.00	€11,156
Retail Zone C	153.72	€37.50	€5,765
Retail Zone D	170.59	€18.75	€3,199
Stores	46.00	€15.00	€690
Office licence Premium @ 15%			€6,327
<b>Total NAV</b>			<b>€64,005</b>
		<b>Say</b>	<b>€64,000</b>

### Method 3

<b>Fuel</b>			
<b>Use</b>	<b>FMT</b>	<b>FMT / Ratio</b>	<b>NAV</b>
Fuel Throughput (litres)	2,000,000	0.0065	€13,000
Car Wash Turnover (euro)	25,000	0.10	€2,500

Shop Turnover (euro)	1,450,000	0.035	€50,750
<b>Total NAV</b>			<b>€66,250</b>

7.2 Mr Halpin stated that the parties have taken a different approach to the valuation of the subject property. It was his contention that the shop was the primary driver of business and for that reason his valuation Method 1 was most appropriate. He stated that the Respondent has valued the property in reliance on the Fair Maintainable Trade (referred to hereinafter as “FMT”) method of valuation as is their policy for valuing this type of asset class.

7.3 Mr Halpin stated that prior to this revision, the petrol filling station and shop were valued separately but were now being amalgamated and valued as a single occupancy property. In reference to the FMT method adopted by the Respondent, he highlighted that the methodology adopted in this schematic is wrong if the value of the retail element in combination with a petrol filling station varies significantly to its valuation as a standalone retail unit.

7.4 Mr. Halpin confirmed that the retail unit was converted from a former Hyundai car showroom which was carried out between 2018 and 2019. He also stated that prior to redevelopment of this retail unit, there was a retail unit directly attached to the canopy of the filling station but that this has since been demolished. He also stated that the occupier has been twice denied planning permission to alter the location of the canopy and fuel pumps. He also made reference to the fact that the redeveloped retail unit is not directly attached to the canopy of the fuel station.

7.5 Mr Halpin stated that the retail unit comprises of a trolley supermarket and the size of the unit accords to the Respondent’s ‘Supermarket 2’ category. He stated that the trading ratio of the subject property is 70:30 shop sales to fuel sales. He made reference to an adjoining retail unit which is in use as a butcher’s shop. He stated that it has a NAV of €150 per sq m Zone A on the retail area whilst the subject retail area has the equivalent NAV of €640 per sq m Zone albeit that it has been valued by the Respondent under the FMT method and not by the retail zoning method.

7.6 Mr Halpin stated that there are 12 petrol filling stations in Mullingar and that there is significant competition between them. He stated that two of these stations are directly accessed from the Dublin to the Sligo road. He also stated that the accompanying retail element to all of these comparisons would not be classified as a supermarket due to the small size of the retail accommodation. It was his view that the subject property has different physical characteristics to these comparisons and had a different style of trade. It was his view that the sustainable FMT of the retail element is €1,450,000.

7.7 Mr Halpin relied on a number of NAV comparisons in support of his valuation which are set out in **Appendix 1** hereto. He included both retail NAV comparisons and filling station comparisons. He stated that his retail NAV Comparison 1 was the best comparable as it was located within the same building as the subject retail unit and was valued at €150 per sq m

retail Zone A. He emphasised that the filling station canopy does not abut or adjoin the subject retail unit and that it does not add to its profitability.

In relation to his retail NAV Comparison 2, it comprised of a purpose built out of town supermarket with dedicated car parking occupied by a well-known international operator. Mr Halpin stated that this comparison is better located than the subject property and despite the retail area being twice that of the subject property, the NAV is €75,000 less. He stated that his retail NAV Comparison 3 is the most successful shop in Mullingar and comprises of a neighbourhood supermarket. He stated that the NAV is €70 per sq m overall and the NAV is €58,000. In relation to his retail NAV Comparisons 4-8, which comprised of large purpose built supermarkets, he stated that they are all valued at €70 per sq m overall and the Respondent is completely ignoring retail values in assessing the NAV of the subject property.

In addition to the retail NAV comparisons, Mr Halpin also submitted 11 filling station NAV comparisons in support of his valuation. In relation to these comparisons, he said that the turnover was not comparable to the subject property as they would have been valued using financial information from prior to 2015. In addition to these NAV comparisons, Mr Halpin also relies on the Tribunal decision in VA15/5/055 as a basis for excluding retail turnover in the FMT method of valuation and instead applying a rate per sq m to the retail area of the supermarket.

7.8 Mr Halpin stated that there is no dispute in relation to the FMT for fuel throughput of the subject property. He said that both parties assessed 2,000,000 litres of annual fuel sales based on the comparisons. He stated that his valuation Method 3 highlights that if the subject property had fuel sales of 2,000,000 per annum that this would generally equate to a shop turnover of €1,450,000 based in the average filling station in the town. He stated that his valuation Method 1 was his preferred method on the basis that the filling station was not structurally connected nor purpose built. He said that his Method 2 & 3 comprised of a check for valuation accuracy.

7.9 Under cross-examination, it was put to Mr Halpin if he was relying on the decision in VA/15/5/069. Mr Halpin stated that he was relying on it at representations stage only and that he was not relying on it for the appeal but was relying on the decision in VA15/5/055 as it is more relevant. Mr. Gogu asked Mr Halpin if his issue was whether the FMT should be adjusted for size and location. Mr Halpin confirmed that the adjustment was in issue because of the size of the subject property. Mr Halpin also accepted that there was a carwash when the question was put to him. Mr Halpin was asked to confirm if the retail element comprised of a convenience store, off-licence, restaurant seating area and deli and he confirmed that he agreed with the physical characteristics. It was put to Mr Halpin that it was not appropriate to value a filling station shop separately and he replied by stating that planning permission for a filling station shop normally restricts the shop size to 110 sq m and that the physical attributes of filling station shops are similar to supermarkets. When it was put to Mr Halpin, that the FMT for shop turnover at €4,420,000 was reasonable, he stated that it was not reasonable because of the size of the retail area and that it should be aligned to a supermarket. It was put to Mr Halpin that the reasons for the decision in VA15/5/055 were not applicable in the subject case

and Mr Halpin confirmed that it was applicable because the driver of trade is the supermarket and the fuel sales are ancillary. He also stated that it was not a conventional filling station.

7.10 When questioned by the Tribunal, Mr Halpin confirmed that there was full planning permission for the petrol filling station but there was no planning permission to move it nearer to the retail unit. Mr Halpin also confirmed to the Tribunal his NAV Comparison K was the best purpose built filling station in Mullingar, followed by his NAV Comparison D and NAV Comparison B. He stated that no weight should be attached to the turnover of the subject property which relates to trade from 2019 given the valuation date of October 2015 and having regard to section 49 of the Act. He also confirmed to the Tribunal that he was happy to adopt the floor areas proposed by the Respondent. Mr Halpin also clarified to the Tribunal that part of the stores pertaining to the retail unit are not contained within the same building and he clarified that an adjoining building not forming part of this revision appeal comprises a former workshop that are used as stores for the retail unit. He also confirmed to the Tribunal that the filling station canopy does not adjoin the shop.

7.11 In summarising the Appellant’s position, he stated that the subject property was physically different to other filling stations and that the shop is accessed from the carpark as opposed to the forecourt. He stated that there is no dispute relating to the estimate of fuel turnover and that it was the value of the retail element that remained to be determined. He stated that the retail unit was a trolley supermarket and had an An Post agency. He said that the Act mandates that regard should be had to other retail units and he made reference to his retail NAV Comparison 3, which he had stated earlier in his evidence was the best retail unit in Mullingar, with a NAV of €58,000. He stated that a fair NAV lies much closer to €68,000. He said that it was not the Appellant’s choice to value the filling station separately to the retail unit but stated that there was an inherent unfairness by the application of the schematic to the subject property having regard to the comparisons. He stated that his NAV Comparison D was relevant as it was located on the same site as a large supermarket. He said that the Tribunal in a prior decision VA15/5/055 has recognised circumstances in which the retail element can be excluded from the schematic. He stated that the driver of trade was the supermarket and that it was appropriate to value the retail element and filling station separately.

## 8. RESPONDENT’S CASE

8.1 Mr. Gogu for the Respondent, contended for a valuation of €199,800 as follows:

Use	FMT	FMT / Ratio	NAV
Fuel Throughput (litres)	2,000,000	0.0065	€13,000
Car Wash Estimated	10,000	1	€10,000
Shop Turnover (euro)	4,420,000	0.04	€175,800
<b>Total NAV</b>			<b>€199,800</b>

8.2 Mr. Gogu stated that the property benefits from significant passing trade and is located approximately 1.2km from Mullingar town centre. He said that the shop trades under the Centra brand and comprises a convenience store, delicatessen, internal and external seating area for food consumption, alcohol licence and An Post. He stated that the filling station is branded as Circle K comprising of four double sided pump islands under a single canopy. He stated that the property is in excellent condition following the substantial conversion from a former car showroom.

8.3 Mr. Gogu stated that the property received planning permission for the redevelopment of the car showroom to retail under Westmeath County Council planning reference 18/6/140. He also stated that planning permission was also obtained to transfer the off-licence from the demolished retail unit that was formerly attached to the filling station canopy to the new retail unit under Westmeath County Council planning reference 19/6/015.

8.4 Mr. Gogu stated that the retail NAV Comparisons submitted by Mr Halpin were not comparable to the subject property and did not share the same hypothetical tenant base. He also stated that the Appellant did not submit any petrol filling station comparisons in County Westmeath that supported a position to exclude the retail element from the schematic.

8.5 In relation to petrol filling station comparisons submitted by Mr. Halpin, he made the following observations:

- |                    |  |
|--------------------|--|
| NAV Comparison A - | It was his view that this was not comparable due to the size of the shop, site access and trading potential;   |
| NAV Comparison B - | He stated that this comparison had a much greater trading potential based on location, access and size. He also stated that the fuel throughput is in line with the subject property;  |
| NAV Comparison C - | It was his view that the subject property had much greater trading potential and that this comparison did not have a delicatessen, seating area or car wash. He said that the fuel throughput was in line with the subject property; |
| NAV Comparison D - | He stated that this comparison was designed mainly to provide fuel services which was demonstrated by the fuel throughput. He was of the opinion that the subject property has much greater potential;                               |
| NAV Comparison E - | He stated that the shop turnover is higher than fuel throughput at ratio of 1:1.26 per litre of fuel sales to €1 shop sales. He stated that the fuel throughput is in line with the subject property;                                |



- NAV Comparison F - It was his view that the subject property has much greater trading potential based on location and size;
- NAV Comparison G - He stated that the shop turnover is higher than fuel throughput at ratio of 1:1.44 per litre of fuel sales to €1 shop sales. It was his view that the subject property has much greater trading potential based on location and size;
- NAV Comparison H - It was his view that the subject property has much greater trading potential based on location and size;
- NAV Comparison I - It was his view that this property is located in an industrial area with limited passing trade. It was his view that the subject property has much greater trading potential based on location and size;
- NAV Comparison J - It was his view that the subject property has much greater trading potential based on location and size; and
- NAV Comparison K - It was his view that the subject property has much greater trading potential based on location and size.

8.6 In relation to Mr. Halpin's reliance on the Tribunal decision in VA15/5/055, he stated that the property that was the subject of this prior appeal was not comparable to the subject appeal. He stated that it was not comparable as the subject property is a modern filling station with the benefit of a modern convenience store, various food options, indoor and outdoor seating and a car wash facility.

8.7 Mr. Gogu submitted three NAV Comparisons in support of his valuation and are included in **Appendix 2** hereto.

Mr. Gogu's NAV Comparison 1 is located on the Robinstown Road in Mullingar (this is the same property as Mr Halpin's NAV Comparison K which he stated in his evidence to be what he considered the best purpose built filling station in Mullingar). This property has a NAV of €150,100 which is based on a throughput of 3,500,000 litres, €3,000,000 shop turnover and €45,000 carwash turnover. Mr. Gogu considers this to be comparable to the subject property.

His NAV Comparison 2 is located on the Dublin Road and is the same property as Mr Halpin's NAV Comparison E. The NAV of €109,400 was assessed based on a fuel throughput of 1,900,000 litres, shop turnover of €2,400,000 and a carwash turnover of €20,000. It was Mr. Gogu's view that the shop turnover is impacted by a supermarket in the vicinity of this property. He stated that it was comparable to the subject property and that the throughput is in line with the subject property.

Mr. Gogu's NAV Comparison 3 is located in the village of Ballinalack, Co. Westmeath, approximately 16km north west of Mullingar on the N4. He stated that the NAV of €196,700 was assessed on the basis of a fuel throughput of 4,500,000 litres, €4,000,000 shop turnover and fuel card sales of 400,000 litres. Mr. Gogu stated that the property benefitted from a delicatessen and off-licence and he considered it to be comparable to the subject property.

8.8 Under cross-examination, Mr. Gogu accepted that it was a revision valuation and confirmed that the property comprised of a different use and category in 2017 when the revaluation was agreed at a much lower level. He stated that it was a petrol filling station when it was put to him that retail properties in Mullingar are valued at €70 per sq m on an overall basis. He stated that it could not be valued separately when it was put to him that the NAV would be significantly lower if the shop was valued at an overall rate per sq m instead of adopting the valuation schematic. He acknowledged that all occupiers were to be treated equitably under the Act, and stated that Mr Halpin's NAV Comparison D, which comprises of a multi-national supermarket chain and filling station operator, had in fact its own retail unit attached to the filling station.

When he was questioned on the fact that there is a large supermarket adjacent to the filling station but not attached to it, he stated that the subject property was not comparable to this type of entity. He also stated the filling station element had a self-contained shop, carwash, stores and canopy. He stated that since the original shop was demolished, there was one entity operating the shop and filling station and that this was different to the prior situation that existed which comprised of a car showroom and filling station. He also stated that customers pay for their fuel in the shop.

When it was put to Mr. Gogu that the occupier of Mr Halpin's NAV Comparison D occupied the filling station and large adjacent supermarket, he confirmed that he was not aware if the same entity occupied both. He accepted that there were no filling station comparisons which had a shop that extended to 600 sq m but stated that this was advantageous to the subject property. He also confirmed that the Respondent categorises a "supermarket" as a convenience store in excess of 500 sq m. He would not confirm the shop could be classified as a supermarket and that it was not usual to have trollies in filling station shops. When it was put further to him that the classification is based on size, he stated that it was valued using the FMT method.

Mr. Gogu did not accept that the ordinary meaning of a petrol filling station as a property that primarily sells fuel and stated that there are filling station properties where the shop turnover is higher than throughput. When it was put to him that the comparisons all differed to the subject property because the canopy is not connected to the retail unit, he said that the shop and filling station were ancillary to each other in terms of trade. He did not agree that his NAV Comparison 3 was one of the finest filling stations in the country and stated that a motorway location is what he considered to be a prime filling station. It was put to him that the size of the shop of his NAV Comparison 3 at 228.81 sq m was incorrect and is much larger. In response, he stated that he did not inspect this comparison and obtained the information from the Respondent's database.

It was put to Mr. Gogu that the turnover for 2019 and 2020 for the subject property was irrelevant having regard to section 49 of the Act. Mr. Gogu stated that there was no danger in looking at the turnover as it was an indicator of the business there and that a throughput of 2,000,000 litres corresponded to a conservative estimate of shop sales of €4,420,000. It was put to Mr. Gogu that his valuation approach valued the business and not the property and he responded by saying that the FMT method was appropriate. When he was asked what was the turnover of the various retail NAV Comparisons that were submitted by Mr. Halpin, he stated that the turnover was irrelevant and they were valued at a rate per sq m. He also said that as the forecourt attracts business, it was not comparable. When it was put to him that the adjoining butcher shop, which is located in the same building, has a NAV of €150 per sqm, that the subject property was not being treated fairly, he responded by stating that the use of the subject is a supermarket and this differentiated it.

8.9 When questioned by the Tribunal in relation to what he considered his best comparison was Mr. Gogu stated that his NAV Comparison 3 was the best comparison. When he was questioned as to manner in which he derived the shop turnover to be €4,420,000 he stated that it was based on the information supplied to him at the time of inspection. He confirmed that he did not undertake any specific analysis to derive this turnover amount.

## **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 Westmeath County Council.

10.2 The relevant question on this appeal concerns the determination of the value of the Property on the terms set out in section 49 of the 2001 Act, as amended by “*reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.*”

10.3 The Tribunal notes that the Respondent relied on a policy document outlining a valuation schematic for this type of asset class in County Westmeath and throughout various other counties. The Schematic comprises an objective and subjective element of valuation. It provides for the aggregate valuation of each profit centre within this asset class which comprises of three elements: fuel sales; shops sales; and car wash sales. The Schematic has a rigid sliding scale and operates on the basis that a dedicated percentage of each profit centre reflects the NAV that is attributable to the property. The schematic also operates on the basis of volume, in that, the higher the turnover of the business, the more profitable it is and the higher the rent that is payable. This is the objective element.

Within each profit centre, the valuer has to identify what the Respondent terms as the “fair maintainable trade” (‘the FMT’) of each profit centre. This is the subjective element, being the level of trade that the hypothetical tenant would expect to obtain having regard to inter alia: location; physical characteristics; design & functionality; trading style; adaptability; and competition of the subject property using comparable properties.

10.4 The first issue that the Tribunal has to consider is whether the Respondent’s FMT method of valuation is appropriate in the circumstances. Mr Halpin describes the property as a supermarket with petrol pumps to the front which contrasts with the Respondent’s categorisation as a service station with a fuel forecourt, a convenience shop and a car wash. Mr Halpin during oral evidence conceded to the fact a carwash did form part of the property although this was originally omitted from his written précis. He considers that the valuation which has been derived pursuant to the schematic is not appropriate as it places a significantly higher value on the retail element compared to a situation where the property would comprise solely of a shop unattached to a filling station due to the size of the retail unit. Mr Halpin stated that there is no fuel canopy directly attached to the retail unit and that filling station customers have to cross a section of the car park to access the shop. It is his view that these factors distinguish the subject property from other filling stations on the valuation list. Notwithstanding this opinion and his preference to have the valuation revised with the shop being excluded from the schematic, he does in fact accept the Respondent’s schematic with a significantly reduced FMT for shop sales which is set out in his Valuation Method 3.

10.5 Mr Halpin also relies on the Tribunal decision in VA15/5/055 to support his case for the retail element to be valued on an overall basis and be excluded from the FMT method. Those earlier decisions, like all other Tribunal decisions, are based on the evidence before the Tribunal and cannot be binding if different evidence is adduced on another occasion. The duty of the Tribunal in each appeal is to consider the evidence adduced and the arguments advanced. Furthermore, the Tribunal notes that the decision in VA15/5/055 related to a revaluation appeal under section 48 of the Act whereas this appeal is to be decided under section 49. It notes that direct evidence was adduced in VA15/5/055 that demonstrated shop sales contributed to 95% of total turnover and this appeared to underpin that determination. No such financial evidence exists for the subject property and under section 49 of the Act, the Tribunal can only have regard to the existing tone of list. For this reason, the Tribunal considers that that the decision on VA15/5/055 does not lend support to have the retail element excluded from FMT method.

10.6 The Tribunal is of the view that materially the property aligns to the categorisation of a service station with a forecourt, shop and carwash. The Tribunal also notes that the schematic is a turnover based calculation and therefore the size of the retail unit and any associated term used to describe it by virtue of its size should not prejudice the operation of the schematic in the absence of any corroborating evidence to the contrary. The Tribunal notes that payment for fuel sales and carwash sales take place in the retail unit which is adjacent to the fuel pumps. Whilst the Tribunal accepts that the fuel pump canopy is not directly attached to this retail unit, this fact of itself without further supporting evidence is insufficient to support the proposition that the FMT method is inappropriate in the circumstances.

10.7 Whilst the Tribunal accepts that the property conforms to a service station with a forecourt, carwash and shop and considers the FMT method to be an appropriate method of valuation, it is still necessary to consider the FMT levels adopted by the Respondent. The Tribunal notes that the FMT for fuel throughput is agreed between the parties but there is a substantial difference in respect of shop turnover. As this appeal concerns a revision, under the terms of section 49 it is necessary to have regard only to comparisons as they appear on the valuation list. The Tribunal notes that the Respondent was provided with financial information pertaining to the turnover of the subject property in 2019 and 2020 and that it only commenced trading in 2019. As the valuation date is 30<sup>th</sup> October 2015, any financial information used in the assessment of the comparisons on the valuation list would generally relate to the trading period 2012 – 2015. In addition, there is no equivalent updated financial information for 2019 - 2020 pertaining to the comparisons on the list and this evidential gap disallows any relativity analysis with the subject property. In a revision, it would be inequitable to have regard to financial information that significantly post-dates the valuation date and section 49 is the statutory mechanism that exists to prevent this inequity. Having regard to all the above, the Tribunal has disregarded the 2019 - 2020 trading information pertaining to the subject property.

10.8 In assessing the relevant similarity of comparable NAV's, careful analysis of each individual property is required. In this regard, the Tribunal had regard to, *inter alia*, the following factors which would be key considerations under section 49 of the Act:

- (a) locational characteristics;
- (b) physical characteristics;
- (c) design & functionality;
- (d) trading style;
- (e) adaptability; and
- (f) competition.

10.9 Mr. Halpin submitted 11 service station NAV comparison's out of a total of 12 in the Mullingar area and it was his contention that NAV Comparison K, D and B were the best service stations respectively. The Appellant's comparisons can be analysed as follows:

<b>NAV Comparison</b>	<b>Shop FMT (total size)</b>	<b>Fuel Throughput (litres)</b>	<b>Carwash FMT</b>	<b>NAV</b>	<b>Sales Ratio Fuel : Shop 1 L : €1</b>
A	€300,000 (105 sq m)	500,000	€50,000	€17,000	1 : 0.60

B	€1,250,000 (311.39 sq m)	2,400,000	€16,000	€60,500	1 : 0.52
C	€550,000 (53.11 sq m)	1,900,000	€0	€27,900	1 : 0.29
D	€315,000 (44.62 sq m)	3,250,000	€25,000	€33,100	1 : 0.10
E	€2,400,000 (275.85 sq m)	1,900,000	€20,000	€109,400	1 : 1.26
F	€650,000 (90 sq m)	2,000,000	€37,000	€36,500	1 : 0.33
G	€1,800,000 (258.14 sq m)	1,250,000	€0	€74,300	1 : 1.44
H	N/A (314.61 sq m)	N/A	N/A	€95,000	N/A
I	€1,400,000 (534.60 sq m)	1,650,000	€0	€59,700	1 : 0.85
J	N/A (155 sq m)	N/A	N/A	€80,000	N/A
K	€3,000,000 (350 sq m)	3,500,000	€45,000	€150,100	1 : 0.86
<b>Average</b>				<b>€67,590</b>	<b>1 : 0.69</b>

10.10 Mr. Gogu for the Respondent, submitted three NAV Comparisons that can be analysed as follows:

<b>NAV Comparison</b>	<b>Shop FMT (total size)</b>	<b>Fuel Throughput (litres)</b>	<b>Carwash FMT</b>	<b>NAV</b>	<b>Sales Ratio Fuel : Shop 1 L : €1</b>
1 (Appellant Comparison K)	€3,000,000 (350 sq m)	3,500,000	€45,000	€150,100	1 : 0.86
2 (Appellant Comparison E)	€2,400,000 (275.85 sq m)	1,900,000	€20,000	€109,400	1 : 1.26
3	€4,000,000 (228.81 sq m)	4,500,000	€0	€196,700	1 : 0.89
<b>Average</b>				<b>€152,067</b>	<b>1 : 1</b>

10.11 The subject property comprises a suburban service station with a large shop. In terms of location, the Appellant's NAV Comparisons A is also located on the Lynn Road and his NAV Comparison I is located in very close proximity to the Lynn Road. The Tribunal considers this location to be less advantageous to the Dublin Road and the main arterial routes in close proximity to the Dublin Road. With regard to physical characteristics, the subject property is on par with any of the modern purpose built service stations given its recent redevelopment. With regard to design, functionality and trading style, the Tribunal considers that the subject property bears very similar characteristics to NAV Comparisons E – K. The Tribunal has disregarded the Appellant's NAV Comparisons A by virtue of its trading style and has also disregarded NAV Comparisons B, C and D by virtue of their trading style and location. When these NAV Comparisons are excluded, the average fuel sales to shop sales ratio increases to 1 : 0.95 from 1 : 0.69.

10.12 In relation to the Respondent's assessment of FMT for shop sales at €4,420,000, this corresponds to a ratio of fuel sales to shop sales of 1 : 2.21. This bears no comparability to the properties submitted in support of this valuation or to the tone of the list for Mullingar. It is 340% greater than the average ratio of the Appellant comparisons and 221% greater than the average ratio of the Respondent comparisons. The Tribunal also notes the absence of any evidence to support this and when questioned by the Tribunal, the Respondent confirmed that no analysis was performed to derive this FMT figure. It was also evident that reliance was placed on the 2019 and 2020 financial performance of the occupier which has to be disregarded having regard to the requirements of section 49. The fact is that this information post-dates the valuation date by approximately four years and post-dates the financial information used to ascertain the Tone of the List by four to seven years. In relation to Mr. Gogu's comparisons, the Tribunal has disregarded his NAV Comparison 3 as the location is not comparable and notes that his NAV Comparison's 1 and 2 are located on the main arterial routes into Mullingar from the N4 and would command a premium in comparison to the subject property. When the Respondent's NAV Comparison 3 is disregarded, the ratio of fuel sales to shop sales is 1 : 1.

10.13 The Tribunal notes that the parties are in agreement in relation to the volume of fuel sales for which the FMT is assessed at 2,000,000 litres. The Tribunal considers it necessary to look at the relationship between fuel sales and shop sales in considering the appropriate FMT for shop sales having regard to the comparisons on the list. A logical analytical method to consider is the ratio of fuel sales per litre to shop sales per euro, in order to provide a relativity exercise between these two primary FMT constituents. As evidenced by this analysis, the relationship between fuel sales and shops sales is highly variable depending on the locational and physical attributes, design and functionality characteristics, trading style, adaptability and competition of the NAV comparisons. Outside of the statutory valuation framework, it would be plausible for an expert valuer to contend that the subject property would have strong hypothetical retail sales in October 2015, on the basis of its 2019 and 2020 trading performance. However, the

function of the Tribunal for revision purposes is restricted to the requirements of section 49 and the Tone of the List. On the evidence of the comparable NAV's and for the reasons set out above, the Tribunal considers it reasonable to apply a fuel sales to shop sales ratio of 1 : 0.95 to the subject property. When this ratio is applied to the fuel sales FMT of 2,000,000 litres, this equates to a shop sales FMT of €1,900,000.

**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 €86,750, as follows:

<b>Use</b>	<b>FMT</b>	<b>FMT / Ratio</b>	<b>NAV</b>
Fuel Throughput (litres)	2,000,000	0.0065	€13,000
Car Wash Estimated	25,000	0.10	€2,500
Shop Turnover (euro)	1,900,000	0.0375	€71,250
<b>Total NAV</b>			<b>€86,750</b>