

Appeal No: VA19/5/1716

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Silverstream Service Station

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1552168, Fuel/Depot at Local No/Map Ref: 6AA.7AA/3, Tamlat, Tehallan,
Monaghan, County Monaghan

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Sarah Reid - BL

Member

Thomas J. Kearns - B.Sc. (Surv), MRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF OCTOBER 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th 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 €247,000.

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: *“I am appealing the valuation of the property as it is incorrect. There is set to be an increase of over €40,000 for the rates.*

This is simply incorrect. Silverstream could not possibly afford to pay this, therefore this must be revaluated.”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €140,000.

2. REVALUATION HISTORY

- 2.1 On the 29th 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 €247,000.
- 2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €247,000. Subsequent to this, the Respondent amended its valuation in respect of the subject property to the sum of €164,000 though the Valuation List, at the date of the hearing, reflected the figure on the Final Valuation Certificate.
- 2.3 The date by reference to which the value of the property, the subject of this appeal, is determined is the 15th day of September, 2017.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on the 26th day of September, 2022. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), B.A. (Mod) of Eamonn Halpin & Co. Ltd and the Respondent was represented by Mr. John Doorly MSCSI, M.Sc., B.Sc. (Hons) 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.

3.3 Prior to commencing his evidence and subsequent to adopting his précis, Mr. Halpin sought an adjournment of the Appeal on the basis that his Client had provided him with further financial information over the weekend and he needed to question same with the Appellant. In response, Mr. Doorly indicated that the new evidence sought to be introduced, fell to be considered under Section 34(3) of the Valuation Act, as amended, and ought not to be permitted in the Appeal as in any event it related to financial information for periods after the valuation date. Having taken time to consider the parties positions, the Tribunal refused the adjournment request on the basis that no exceptional circumstances existed (as required under Rule 87 of the Valuation Tribunal (Appeals) Rules 2019) and the matter proceeded with Mr. Halpin amending his précis to remove or otherwise withdraw references to the financial information provided by his Client.

4. RELEVANT STATUTORY PROVISIONS

4.1 The NAV of the Property must 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.”

4.2 In order to obtain necessary information in relation to a property, the Commissioner or a person acting on the Commissioner’s behalf, is entitled under **Section 45** of the Valuation Act, to serve a notice seeking information in respect of that property. Section 45 provides as follows:

“An officer of the Commissioner, or a person acting on that person’s behalf, may serve a notice on—

(a) the occupier of any property (whether relevant property or not),

(b) an interest holder, or

(c) such other person who, in the opinion of that officer or person so acting as aforesaid, has information in relation to such property,

requiring him or her to supply, within a period specified in the notice (being a period of not less than 28 days beginning on the date of the service of the notice), and in a manner specified in the notice, to the person who served it such information as is specified in the notice, being information that is necessary, in the opinion of that person, for the purpose of the performance by the foregoing officer, or another officer, of the Commissioner of his or her functions under this Act.”

4.3 **Section 34(3)** of the Valuation Act provides as follows:

“(3) A person who fails to supply information specified in a notice served under *section 45(1)* prior to the issue of—

(a) the valuation certificate pursuant to *section 24* or *28*,

(b) a global valuation certificate, or

(c) a notice under *section 28*,

shall not be permitted to ground or support an appeal to the Tribunal by reference to information that the person has so failed to supply.”

4.4 **Rule 41** of the Valuation Tribunal (Appeals) Rules, 2019 provides all expert witnesses before it to include in their précis of evidence, the following declaration:

“I, [insert Name], declare that-

1. I inspected the property the subject of the appeal.

2. I understand that both in preparing my report and giving evidence my primary duty is to the Tribunal and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me.

3. I confirm that I am not instructed under any conditional or other success-based fee arrangement.

4. I know of no conflict of interest of any kind, other than any which I have disclosed in my report. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

5. I have exercised reasonable care and skill in my report to be not only accurate but complete.

6. I have endeavoured to mention all matters which I regard as being material to the opinions I express, and I have drawn the Tribunal's attention to any matter of which I am aware which might adversely affect the validity of those opinions. This applies in relation to the factual matters to which I refer and to the opinions which I express.

7. Where I have based an opinion on facts of which I have no personal knowledge, I have noted that in my report and indicated the source of any factual information concerned.

8. Further, I have not included anything which has been suggested to me by anyone (including the lawyers engaged by the party by whom I am engaged) without forming my own expert view thereon.

9. If, on reading any report of any other expert, in this matter or for any other reason, I consider that any existing report of mine requires any correction or qualification, I will immediately notify the party instructing me in writing of this fact and, where I consider the matter significant, will prepare as soon as possible a supplementary report dealing with all such qualifications or corrections.

STATEMENT OF TRUTH

I confirm that, insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

Signed / Dated

4.5 **Rule 42** goes on to provide:

“If an expert witness has a change of view on a material matter after his or her report or précis of evidence has been filed and delivered, that change of view must be communicated to the Tribunal and to the other party in writing prior to the hearing date.”

4.6 **Rule 87** of the Valuation Tribunal (Appeals) Rules, 2019 provides that an adjournment of an Appeal can be sought as follows:

“87. An application by a party for an adjournment of an appeal hearing will be considered only in exceptional circumstances. “

5. ISSUES

5.1 The dispute in the present Appeal related to the fair maintainable trade (‘FMT’) attributed to the subject property by the Respondent and the resulting valuation cited in the Final Certificate of Valuation. The Appellant included in their filed précis of evidence, figures for fuel and shop turnover for a period of three years prior to the Valuation date. However, Mr. Halpin was unable to stand over these figures at the hearing of the Appeal and instead was obliged to argue the case based on first principles of what the hypothetical tenant would pay for the property year to year.

5.2 Revising his position, Mr. Halpin contended for a valuation based on fuel sales of 5 million litres at 0.0008% (being the rate per the Respondent’s scheme) less DCI fuel card sales of 3.4 million litres at 0.004%. The Appellant also sought the retail element and shop turnover as €600,000 at 3% with allowances of €300,000 taken @ 1.5% giving a total of €41,900. The parties had, prior to the hearing, agreed the workshop could be valued at €4,000 (being 200 m² @ €20 per m²) and so that figure was not in dispute. The total NAV contended for by the Appellant was €45,900. However, on reviewing the above valuation verbally expressed by Mr. Halpin at the hearing, the Tribunal finds that those calculations result in a different figure of € 43,900 as shown hereunder

			€
Throughput	5,000,000 litres @ 0.008		40,000.00
Less allowance	3,400,000 litres @ 0.004		<u>13,600.00</u>
			26,400.00
Shop FMT	€ 600,000 @ 3.00%		18,000.00
Less allowance	€ 300,000 @ 1.50%		<u>4,500.00</u>
			<u>13,500.00</u>
			39,900.00
Workshop	200.00m ² @ € 20.00 per m ²		<u>4,000.00</u>
			43,900.00

5.3 The Respondent contended for a valuation based on fuel sales of 7 million litres with a rate of 0.009% together with shop turnover of €2.5 million at a rate of €0.04 giving a NAV of €160,000 with the agreed €4,000 for the workshop resulting in a total NAV for the subject property of €164,000.00

6. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

6.1 The subject property is a fuel and service station with a retail element located at Tamlat on the R213 and proximate to the N12 which connects Monaghan town with Armagh town. The location is therefore proximate to the border with Northern Ireland and the A3 road that travels from Armagh to Belfast. The property consists of a forecourt consisting of 10 pump islands, six dedicated truck stations and a total of 38 refueling points on site as well as a shop car wash, food element and DCI card providing 24-hour truck and car facilities. The property also benefits from 11 tanks which combine to provide a capacity of 57,000 litres of fuel.

- 6.2 The last confirmed trading data in respect of the subject property that was available to the Tribunal was provided by the Respondent and pertained to the year 2007 wherein fuel sales of 6400 litres per week were shown and an increased fuel pump capacity (an increase of 3 pumps) from the previous revaluation in 2000 was noted at that time.
- 6.3 There was no certified financial information before the Tribunal in respect of the subject property and so no facts can be discerned or found to confirm the actual turnover on fuel sales or retail in the subject property for the period leading up to the Valuation date.

7. APPELLANT'S CASE

- 7.1 For reasons already outlined, Mr. Halpin was constrained in the evidence he could give before the Tribunal but directed his evidence to the four comparable properties in his precis and made observations on these. These were as follows:
- 7.2 Comparable #1 PN 2164775. This was a fuel station with retail element in a portacabin (30.9m²) and a total size of 52.2m². The NAV for the said property was €25,250 made up as follows:

Shop €85,000 @ 1%
Throughput 3,600,000L @ 0.007
Less Throughput allowance (fuel card) -200,000L @ 0.0035
Portacabin 21.3m ² @ €8/m

- 7.3 Comparable #2 PN 2149524. This was a fuel station with retail element though precise areas were unknown. It was a medium size property, superior to comparable property 1 (above) but inferior to the subject property in size. The NAV for the said property was €30,500 NAV though the breakdown of the calculation was not known to the Appellant.
- 7.4 Comparable #3 PN 2214187. This property comprised a hardware shop, convenience store and pumps. Precise areas and turnover breakdown between the retail and fuel were unknown and the NAV for the said property was €23,500 though the breakdown of the calculation was not known to the Appellant.

- 7.5 Comparable #4 PN 2173108. This property was included for the purposes of context and valuing the workshop area of the subject property. It was located immediately across the road from the subject property and had a NAV of €2,100 representing a rate of €20/m² which was contended for in the subject property.
- 7.6 In response to questioning by Mr. Doorly, Mr. Halpin confirmed that the subject property, though not currently operating a hot food trade, was set up for same and in fact had a 'drive through' element capable of being used by a hypothetical tenant should they wish to embark on same. Mr. Halpin stated that border fuel stations do not traditionally do well in the context of food and shop sales as people will travel for the fuel but shop locally, back across the border for other items. He did not dispute that another operator may wish to operate a hot food trade subject to planning.
- 7.7 In summing up his case, Mr. Halpin said that in the absence of precise financial information both parties in the case were engaging in speculation as to the actual FMT of the subject property. Noting the range for turnover, established in comparable properties was between €3 million and €9 million, with the latter being exceptional but €3 million being insufficient for the subject property he maintained €5million was a fair estimate in the circumstances. Mr. Halpin stated that the main divide between the parties was the retail element as the unique and unusual feature of border petrol stations was that fuel was the primary revenue not the shop and he asked the Tribunal to ascribe €45,900 (noting the comments in section 5.2 above, in this regard) on the shop in recognition of same.

8. RESPONDENT'S CASE

- 8.1 Mr Doorly sought a valuation of €164,000 and noted that the figure cited in the Final Certificate of Valuation, and appearing in the List, of €247,000 had since been amended to €164,000 by the Commissioner of Valuation. He confirmed that the Appellant had been requested to provide financial and other information about the subject property on three occasions and had failed to do so resulting in the Respondent adopting an estimate value in order to ascertain the FMT of the subject property.

8.2 Mr. Doorly contended for a valuation as follows:

Floor	Use	Area (m2)	Rate	Total NAV € (m2)
0	Shop Turnover €2,500,000	0	€0.04	€ 100,000
0	Throughput 7,000,000	0	0.0090	€63,000
0	Workshop	200	€20	€4,000
Total rounded down to				€ 164,000

8.3 In support of his valuation the Respondent confirmed that a scheme was compiled by the Respondent in order to achieve uniformity and equity for similarly circumstanced fuel stations in the rating authority of Monaghan County Council. Mr. Doorly stated that the Respondent's valuations of service stations was based on an analysis of open market rental values of service stations compatible with, or adjusted to be compatible with, the statutory definition of Net Annual Value (NAV) in Section 48 of the Valuation Acts 2001 to 2015, the trading and financial information from rented properties and the carrying out of a number of Receipts and Expenditure (R&E) analyses to test the scheme. From this analysis a correlation between open market rental value and various income streams of service stations emerged and was applied by the Respondent in the present case.

8.4 In support of his valuation, based on comparable properties to the subject property, the Respondent provided eight NAV comparisons as follows:

PN	Size	Comments	NAV
PN1669195 (NAV 1)	Shop Turnover € 72,000 Throughput 9,500,000 Car Wash € 55,000	This comparable illustrates potential throughput achievable at a location close to the Border. The subject retail offering is superior.	€ 99,200

PN2169074 (NAV 2)	Shop Turnover € 399,447 Throughput 4,005,287	This comparable illustrates potential throughput achievable at a location close to the Border. The subject retail offering is superior.	€ 50,800
PN2164775 (NAV 3)	Shop € 85,000 Throughput 3,600,000L	This comparable illustrates potential throughput achievable at a location close to the Border. The subject retail offering is superior. The comparable lacks dedicated truck on site.	€ 25,200
PN2169078 (NAV 4)	Shop € 1,950,000 Throughput 6,200,000 Car Wash€ 38,000	This comparable illustrates potential throughput achievable within the rating authority area, Retail area of the subject of this appeal is superior.	€ 115,600
PN1551107 (NAV 5)	Shop € 2,450,000 Throughput 1,175,000L	This comparable illustrates potential retail sales achievable within the rating authority area, The comparable lacks dedicated truck facilities.	€ 62,600
PN2204834 (NAV 6)	Shop Turnover € 4,200,000 Throughput 5,000,000 Car Wash € 20,000	This comparable illustrates potential shop and throughput sales achievable within the rating authority area, *Under appeal: Overall shop/fuel sales are not disputed.	€ 200,000
PN2106089 (NAV 7)	Shop Turnover € 3,275,000 Throughput 3,125,000 Car Wash € 7,200	This comparable illustrates potential shop and throughput sales achievable. Location is inferior to subject of appeal. *Under appeal: Overall shop/fuel sales are not disputed.	€ 153,200
PN1555309 (NAV 8)	Shop Turnover € 1,775,000 Throughput 3,950,000 Car Wash€ 5,000	This comparable illustrates potential throughput sales achievable within the rating authority area, *Under appeal: Overall shop/fuel sales are not disputed.	€ 92,700

- 8.5. In response to cross examination by Mr. Halpin, Mr. Doorly accepted that his comparables 1 – 3 were dissimilar to the subject property as the retail element in those properties was inferior and often just a portacabin. However, Mr. Doorly maintained they nonetheless illustrate fuel throughput achievable in Border locations.
- 8.6. In summing up his case, Mr. Doorly stated the Appellant’s case was flawed and there was no evidence on fuel sales to contradict the Respondent’s evidence which was the best data available in the circumstances. He re-emphasised that there was no legal basis for the Appellant’s introduction of figures that were uncertified (in breach of Section 45) and the inclusion of any such figures before the Tribunal was in any event barred by Section 34(3) of the Valuation Act, 2001 as amended. Based on this, he asked the Tribunal to disallow the appeal.

9. LEGAL SUBMISSIONS

- 9.1 There were no formal legal submissions but Mr. Doorly cited the Appellant’s persistent failure to comply with Section 45 of the Valuation Act, 2001 as amended, and drew the Tribunal’s attention to Section 34(4) of the Act, which prohibits the reliance on information by an Appellant where that information has not been provided to the Respondent when requested. In his summing up, Mr. Doorly called on the Tribunal to dismiss the Appeal by virtue of the Appellants non-compliance with Section 45 of the Act.
- 9.2 Though not a legal submission, Mr. Halpin raised an objection to the Respondent’s request that the Tribunal disallow the Appeal on the basis that the Final Certificate of Valuation would stand in that situation, yet the figure recorded thereon (i.e €247,000) was accepted by the Respondent as incorrect. In the circumstances he said the Tribunal could not disallow the Appeal.

10. FINDINGS AND CONCLUSIONS

- 10.1 At the commencement of this Appeal Mr. Halpin sought an adjournment on the basis that from information now in his possession (and shared with the Respondent on the

morning of the Appeal), he had cause to question the previous financial information provided by his Client and contained in his précis of evidence. That adjournment application was denied, and the hearing proceeded but Mr. Halpin indicated that given his duties before the Tribunal, he was unwilling and unable to engage with the financial element of the claim, absent discussing same with his Client and so proceeded to make his case without relying on the trading information provided by his client.

- 10.2 The Tribunal finds that in this, as in all Appeals, the onus is on the Appellant to discharge the burden of proving their case. In the present case, the Appellant's agent did not feel they could stand over or engage with the financial turnover figures contained in his précis of evidence and when an adjournment was refused for him to discuss same with his Client, the Appellant's agent pursued the Appeal in the limited manner he could by discussing objective evidence in relation to the rating authority area and comparable properties with data available thereon. The Tribunal finds that the Appellant's agent acted correctly and within both the spirit and scope of the Valuation Tribunal (Appeals) Rules 2019 in this case, and particularly in light of the Declaration made thereunder (Rule 41, point 5, 6 & 8 and of the Statement of Truth referring).
- 10.3 The Tribunal notes that the Appellant was obliged to provide information to the Respondent arising from the service of a notice under Section 45(1) of the Valuation Act, 2001 as amended, in June 2018. The purpose of Section 45 is to enable the Commissioner to seek and ascertain relevant information that would assist in the fair and accurate valuation of a given property. From the evidence before the Tribunal, the Appellant was requested to provide information on three occasions (20th June 2018, 1st April 2021 and 7th September 2022) including trading information and accounts for the three-year period prior to the valuation date. This information was not provided and the Respondent was, therefore, obliged to adopt an estimated trade and fuel turnover for the subject property in order to arrive at a valuation. The Tribunal finds that in repeatedly refusing to provide information that would materially assist the fair and accurate valuation of their property, the Appellant has done themselves and the Commissioner a disservice.

- 10.4 In addition to the above, Section 34(3) of the Valuation Act, as amended, is clear in its direction that an Appellant relying on information shall not be permitted to ground or support an appeal before the Tribunal where such information was not previously provided when requested by the Respondent. Further, the Act provides no discretion as regards permitting such evidence and the Appellant, through their agent, did not offer any reasons why they failed to engage with these requests at any stage prior to the hearing of the matter.
- 10.5 Based on the information available to it, the Respondent adopted a valuation scheme in respect of the subject property and similarly circumstanced properties in the rating area. This scheme was not challenged by the Appellant in the present case. Based on this, the Respondent's fuel turnover percentage (0.009%) and retail element (€0.04) as applied to the FMT of the Property is not disputed and does not fall to be considered in this determination.
- 10.6 No evidence was adduced by the Appellant upon which the Tribunal could be satisfied that the estimated FMT applied by the Respondent was incorrect in the circumstances. From the evidence before us, fuel turnover ranges from €3 million to €9 million across the comparable properties in the rating area of Monaghan County Council and the Respondent has estimated a level of €7 million for the subject property in recognition of the superior facilities, including large truck bays, multiple fuel islands, and retail element which is not replicated in other competitor establishments.

DETERMINATION:

- 10.7 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 Monaghan County Council.

- 10.8 Accordingly, for the above reasons, the Tribunal disallows the appeal and affirms the Commissioner's valuation, as presented to the Tribunal in the hearing of this Appeal. The Tribunal notes that a higher figure of €247,000 appears on the valuation list in respect of the subject property and Mr. Doorly for the Respondent confirmed that same would be amended to reflect the valuation contended for and included in his précis of evidence, namely €164,000.00
- 10.9 To the extent that it is required, and in order to ensure the valuation of the subject property, as it appears on the valuation list is correct, the Tribunal determines the valuation of the Property to be €164,000.00