

Appeal No: VA20/4/0047

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SUPERMACS

APPELLANT

and

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5018302, Service Station/Garage at Kinnegad Plaza M4 Kinnegad, County Westmeath.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21st DAY OF APRIL 2023**

BEFORE

John Stewart, FSCSI, FRICS, MCI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 04th day of December 2020 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 €331,000.

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 28(4) of the Act because:

“The valuation is excessive and does not reflect the trading conditions and specifics of the subject service station by comparison to other motorway service stations, which are based on their trading performance.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €260,000.

2. VALUATION HISTORY

2.1 On the 11th day of December 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 €331,000.00.

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

2.3 A Final Valuation Certificate issued on the 9th day of November 2020, stating a valuation of €331,000.00.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The subject property is situated on the outskirts of Kinnegad on the R148 just off the M4 between Junctions 10 and 12. The property is situated south of the town and adjacent to Tesco and ALDI supermarkets.

4.3 The property comprises a modern c. 2019 two storey service station building approximately 1,413 sqm and includes a ground floor SPAR convenience shop, various food courts operated by Papa John's Pizza, Supersubs, MacDiner and Bewley's and a fast-food drive through operated by Supermacs. Ancillary accommodation comprises kitchen facilities and storage accommodation and additional seating is provided on the first floor together with ancillary offices and staff accommodation. The canopied Texaco branded service station forecourt has six double sided island fuel pumps with 24 nozzles and three HGV islands with six nozzles. The site also accommodates a jet car wash and truck filling area and a number of EV charging spaces. The planning permission refers to 110 car spaces and 35 truck parking spaces Floor plans and photographs were provided.

4.4 The property is freehold and subject to a short-term business letting for two years from the first November 2019 for the car wash subject a rent of €650.40 plus VAT. A forecourt fuel sales agreement for the supply of fuel was also in place.

4.5 The valuation date was 30.10.2015. The Proposed Valuation Certificate was issued on the 11th of December 2019 at €331,000 and following representations with a proposed NAV of €220,000 a Final Valuation Certificate was issued on the 9th of November 2020 unchanged.

4.6 Both parties provided a statement of truth as required.

5. ISSUES

5.1 The issue in dispute is quantum.

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 Relying on the details of the descriptions of the location and buildings Siobhan Murphy a valuer representing the Appellants relied on three comparisons in Westmeath and two outside the county.

7.2 The first comparison referred to property No. 5019396 a Circle K M6 Motorway Service Station Athlone County Westmeath which she stated was opened in September 2019. She stated that it had direct access off the M6 between Junction's 7 and 8 and that the retail offering included a shop delicatessen and cafe and the trading entities included Cantina, McDonald's, Krispy Kreme, Simply Great Coffee, and Froster. She stated that the McDonald's unit was a drive thru and the other accommodation included a sit-down café, car wash as well as a service station which included eight car pumps and four truck pumps. The ancillary site accommodation included car coach and truck parking and the NAV was €381,000. The precis included a site plan and photographs which identified the site and proximity to the M4. The Appellants stated that the basis of valuation was unknown.

7.3 The second comparison referred to property No. 2162244 Supermacs Texaco Station, N4, Ballinalack Mullingar, Co. Westmeath. It was described as comprising a shop delicatessen and cafe and branded with Mace, Supermacs Papa John pizza, and Bewley's coffee. The accommodation included a sit-down café, car wash, eight car pumps and car coach and truck parking and the NAV was €196,700. The precis included a site plan and photographs which identified the site on the N4. No trading figures were provided, and the fuel was estimated to be between 4-5million litres @ 0.075c/litre and the shop turnover estimated at €3.5m approx. @ 4%. There was no Valuation Tribunal Appeal.

7.4 The third comparison refers to Texaco Athlone, property No. 1444518 and comprised a shop, delicatessen and café and the branded occupiers were Mace, Supermac's, Papa John Pizza, and Bewley's Coffee. The access was via the N62 roundabout approximately 800 metres from Junction 8 on the M6 and the accommodation included a sit-down cafe and car wash. The site had eight car pumps and car parking and the NAV was €145,500. No trading figures were provided, and the fuel was estimated to be between 4-5million litres @ 0.075c/litre and the shop turnover estimated at €3.5m approx. @ 4%. A Valuation Tribunal referral was withdrawn at appeal stage.

7.5 Details of two other comparisons were provided outside Co. Westmeath which included the M4 Applegreen Motorway Service Station County Kildare, Circle K Service Station Kinnegad County Meath. The Applegreen property had two property nos. 2211665 and 2211666 and had direct access from the M4 motorway. It did not include a drive-thru and the retail offering included a shop delicatessen and cafe and the branded occupiers included Burger King, Costa Coffee, The Bakewell and Freshii. The premises included a sit-down cafe and car

wash, 16 car pumps, eight truck pumps as well as car, coach and truck parking and the NAV was €348,000 and €228,000. No trading figures were provided, and the location was acknowledged as comprising a TII motorway service station within a different County Council. The second property located in Kinnegad Co. Meath and comprised a service station and a retail shop, six car pumps and had been valued at €1,560.00 based on a rate of €30.00/sqm for the offices and €2.50/sqm for the yard. The Appellants claimed that this property was not valued as a service station and had superior access to the motorway.

7.6 The Appellants referred to a Scheme of Valuation which had been adopted by the Valuation Office and comprised three elements including throughput in litres, shop turnover per annum and car wash turnover.

Throughput in litres

Throughput Range/litres/per annum			NAV €/1,000ltr
Up to	<	200,000	0.00
200,000	To	499,999	€3.00
500,000	To	749,999	€4.00
750,000	To	999,999	€5.00
1,000,000	To	1,499,999	€5.50
1,500,000	To	1,999,999	€6.00
2,000,000	To	2,999,999	€6.50
3,000,000	To	3,999,999	€7.00
4,000,000	To	4,999,999	€7.50
5,000,000	To	5,999,999	€8.00
6,000,000	To	6,999,999	€8.50
7,000,000	To	7,999,999	€9.00
8,000,000	To	9,999,999	€9.50
10,000,000	To	12,000,000	€10.00
12,000,000	To	15,000,000	€11.00

Shop Turnover

Shop Turnover			Percentage/NAV
€100,000	to	€199,999	2.00%
€200,000	To	€299,999	2.5%
300,000	To	€399,999	2.75%
€400,000	To	€499,999	3.00%
€500,000	To	€749,999	3.25%
€750,000	To	€999,999	3.50%
€1,000,000	To	€1,499,999	3.75%
€1,500,000	To	higher	4.00%

Car Wash Turnover

Car Wash Turnover			Percentage/NAV
€0	to	€4,999	0.00%
€5,000	To	€9,999	5.0%
€10,000	To	€19,999	7.5%
€20,000	To	€29,999	10.00%
€30,000	To	€39,999	11.00%
€40,000	To	€49,999	12.50%
€50,000	To	higher	15.00%

The scheme was further refined so that low margin shop sales such as Lotto, cigarette sales etc. were valued at 2% regardless of the total volume and a discount was also applied to fuel sales via DCI fuel card sales.

7.7 The Appellants argued that subject property did not comprise a motorway service station and it does not have direct access to the M4 or M6 and it is not recognised by TII and while it was located close to the motorway intersections it was not immediately accessible to either. The Appellants stated that accessing the subject property going west it was necessary to exit at Junction 10 and traverse 4 roundabouts and that there was limited signage for the subject property. Alternatively, if travelling east from Mullingar it was necessary to exit at junction 12 with limited signage to the subject property and if travelling east from Athlone it was necessary to leave at exit 2 and traverse 4 junctions with limited signage. Various site plans and motorway photographs were provided in support.

7.8 The Appellants stated that there was no trading information as at the valuation date October 2015 as the property had only commenced operations in mid-2019. They stated that the service station was part of a larger Supermacs group and that the accounts were included in the Holdings accounts. They acknowledged that the financial manager provided monthly management accounts up to November 2020 and confirmed was sought on the subsequent years trading data and would be provided if required. The Appellants acknowledged that the trading periods 2019 to 2022 included the Covid pandemic which ran from March 2020 to March 2022 and consequently that it was very complex to analyse figures for this timespan due to travel restrictions but also inflation due to increased staycations.

7.9 The final valuation submitted by the Appellants was based on adjustments to the data to allow for a discount of approx. 14% for low margin items retail items and included an increase of 10% to allow for potential additional growth.

Description	Total/Volume	Rate	NAV
Shop turnover (assumed 12 months)	€5,500,000	4.00%	€220,000
Low margin allowance	€900,000	2.00%	€18,000
Total throughput/litres	8,650,000	0.0095	€82,175.19
DCI fuel card sales	-5,060,250	.000475	-€24,036.19
			€306,138.81
		Say	€300,000.00

CPI index at December 2015-101.5

CPI index at December 2019-103.3

CPI index at December 2015-103.0

The NAV claimed was €300,000.

8. RESPONDENT'S CASE

8.1 The Respondents confirmed that the floor areas were:

Ground floor-service station 767.1sqm

First floor ancillary 646.5sqm totalling 1,413.6sqm.

8.2 The Respondents stated that they had requested signed audited or certified accounts to assist in the calculation of the NAV on four separate dates-2/10/2019; 11/10/2019; 19/10/2019 and 31/10/2020 and stated that this information was not provided and noted that the information provided at representation stage did not comply with this request and it was impossible to verify

the information which was not on corporate paper and was not certified or signed. At representation stage the Appellants sought an NAV of €220,000. The Valuation remained unchanged.

8.3 The Respondents addressed the grounds of appeal and noted that it related to quantum and that the valuation was considered excessive in comparison to other similar properties on the list. The grounds of appeal also noted that the subject property was not a motorway service station as it did not have direct access to the M4 or M6 and the appeal included numerous Google Maps and photographs indicating the distance from the subject property to the motorway network. In relation to trading information the Respondents noted that Appellants had provided trading information up to November 2020 noting that the Appellants had stated "confirmation is being sought on the subsequent years trading data and will be provided if required". The Respondents also noted that the Appellant's opinion of value had varied from €220,000 at representation stage to €260,000; on notice of appeal stage to €300,000 in the Appellant's written submission an increase of €40,000 at each stage.

8.4 Addressing the Appellants comparable evidence the Respondent noted that it comprised 3 service stations in Co. Westmeath one in Co. Meath and two motorway service stations in Co. Kildare. He noted that the subject property was the only one which had a drive-thru restaurant and none of the Appellant's comparable evidence had this facility noting that the McDonald's drive-thru in comparison three was not part of the property and had been separately rated. In relation to comparison No. 2, he argued that it comprised an older long established petrol station which had been modernised and was located in Ballinalack a small village east of Mullingar and that while westbound access was reasonable, eastbound access was difficult. He noted that the property comprises a car petrol forecourt equipped with four double sided island pumps, a canopy and two separate HGV fuel islands as well as a two-storey amenity building including a shop, restaurant, service bays and toilet accommodation and that it did not benefit from truck or car parking nor a drive-thru facility. He regarded the subject property as superior to this comparison.

8.5 He acknowledged that comparison 3 was more comparable due to the proximity of a drive-thru restaurant however he argued that there was a difference in quality compared to the subject property. He argued that vehicle access was restrictive and congested and that the forecourt was small, and the retail component limited to a ground floor central shop and delicatessen.

8.6 He accepted that comparison No. 1 was a relevant and useful comparison and enjoyed similar physical characteristics to the subject property in terms of age, quality and design noting that it was located in a superior position which had been reflected in its NAV. He noted that this comparison did not comprise a drive-thru facility. He added that in his opinion the Circle K Service Station in Kinnegad bore little resemblance to the subject property and was located in a different rating authority.

8.7 The Respondent stated that the valuation schematic for service stations was based on calculating the Fair Maintainable Trade FMT for different income streams which provided the Net Annual Value. He noted that the elements comprised fuel sales, shop sales and car wash sales. He noted that the FMT represented the estimate of the annual level of trade that can be achieved by a reasonably efficient operator of the business in the subject property. He claimed that the accuracy of the subject valuation was likely to be greatest if it was based on evidence derived from properties which have similar characteristics to the appeal property and in this regard he referred to the Valuation Tribunal decision in **VA/04/024 Gerri Cobbe & Mary**

McGibney (the Beacon Court case) which stated inter alia *“In the absence of any definition in the act as to what is comparable the word must be interpreted in its normal sense and mean equivalence, likeness or sameness. That being the case, comparable must be interpreted as being similar in use, location and nature of construction or any other factor which will have a bearing on value. The fact that the property by its very nature is not homogeneous requires the valuer to use all his skills of analysis to arrive at what he or she considers to be the appropriate level of assessment in each individual case.”* He also referred to a recent case **VA19/4/0041 and Commissioner of Valuation** where the Tribunal found the following factors were key considerations when assessing similarity-; location; physical characteristics; design and functionality; trading style; adaptability and competition.

8.8 In terms of location he noted that the subject property was very close to the M4 motorway but was not in fact a motorway service station. He added that the motorway toll facilities allowed for motorists to leave the motorway bypassing the toll booths and reconnecting with the motorway and the subject property. He stated that the physical characteristics of the subject property are comparable to modern purpose-built motorway service stations which included multiple pump islands, parking, retail accommodation and restaurant /cafe facilities. He added that these features were included in his comparisons 1/4/5 all of which were motorway service stations and he regarded comparison No. 1 as a key comparison as it was similarly circumstanced. In relation to comparison No.1, he stated that no financial trading accounts were provided which resulted in the estimated NAV of €381,000 being calculated and while this assessment was challenged by the occupier who was professionally represented on quantum the figure remained unchanged and the occupier chose not to further dispute the valuation. Consequently, the NAV of €381,000 was entered onto the valuation list and is deemed to be a correct statement of that value.

8.9 He noted that the trading accounts provided by the Appellant for the subject property included the Covid pandemic period from March 2020 to 2021 and agreed that it was complex to analyse the trade from these figures. He acknowledged that 2019 was the first year of trading for the property and noted that it was accepted that most new service stations needed 18 to 24 months to reach trading potential and profitability. He stated that he therefore reflected these factors in his estimate of Fair Maintainable Trade. He noted that the turnover figures for 2019 and 2020 illustrate the property's capacity to achieve substantial turnover even when operating in a depressed market which did not exist in 2015. In the **O'Brien Centra case**, he noted that the Tribunal had stated” *outside the statutory 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 2019 and 20 220 trading performance.”* He stated properties which are similarly circumstanced are considered comparable.

8.10 The Respondent relied on 5 comparisons which are common to both parties. The first refers to PN No. 5019396 Circle K Athlone opened in 2019 with an NAV of €381,000 which was based on the following estimated FMT figures.

Use	Unit/ Size	NAV/Unit	NAV
Throughput	9,300,000	@ €0.0095	€88,350
Shop	€7,300,000	@ 0.4%	€292,000
Store	65sqm	€25.00/sqm	€1,625
			€381,625
		Say	€381,000

The Respondent confirmed that the occupier was non-compliant and that representations had been made by Elliott Fitzgerald with no change to the NAV. This service station was classified as a Motorway Service Station by TII operated on a 24-hour basis and the McDonald's restaurant on site was not a drive-thru. Other accommodation included the shop delicatessen and four island car forecourts with four nozzles to each and three island truck forecourts with three nozzles to each side.

8.11 The second refers to PN No. 2162244 a Texaco Service Station in Ballinalack on the N4. opened in 2019 with an NAV of €196,700 which was based on the following estimated FMT figures.

Use	Unit/ Size	NAV/Unit	NAV
Shop	227.81sqm	@ €0	€0
Shop FMT	€4,000,000	@0.04 %	€160,000
Fuel throughput	4,500,000/lt	€0.0075/lt	€33,750
Est DCI sales	400,000	€0.0075/lt	€3,000
			€196,750
		Say	€196,700

The Respondent confirmed that the subject property is larger and superior to this comparison which contained a four-island car forecourt double sided and two dedicated truck fuel islands together with a Mace convenience store an Supermacs fast food diner. He confirmed that no representations were received no agent was involved and the valuation was not appealed to the Valuation Tribunal.

8.12 The third refers to PN No. 1444518 a Texaco Service Station at Dublin Road Athlone close to the N6 Dublin/ Athlone roundabout with an NAV of €145,500 which was based on the following estimated FMT figures.

Use	Unit/ Size	NAV/Unit	NAV
Shop	461.1sqm	@ €0	€0
Shop FMT	€2,700,000	@0.04 %	€108,000
Fuel throughput	4,000,000/lt	€0.0075/lt	€33,000
Car wash	50,000	€0.15	€7,500
			€145,500
		Say	€145,500

The Respondent confirmed that this property was part of a larger commercial development which included a drive-thru, retail and hotel. He noted that it comprised a 4-island forecourt with double sided nozzles however the McDonald's drive-thru was not part of the assessment he stated there was no dedicated truck islands or parking. He claimed that the subject property was larger and superior to this comparison, and he stated that he did not agree with the Appellants shop turnover a €3.5 million and noted that while the representations had been received and they were represented by an agent that there was no appeal to the Valuation Tribunal.

8.13 The fourth refers to PN No. 2211665 an Applegreen Service Station at Enfield, Edenderry Co. Kildare and comprises a motorway service station recognised by TII with an NAV of €348,000 which was based on the following estimated FMT figures.

Use	Unit/ Size	NAV/Unit	NAV
Shop/store/lockers	1,233sqm	@ €0	€0
Shop FMT	€6,500,000	@0.04 %	€260,000
Fuel throughput	9,200,000/lt	€0.0095/lt	€87,400
Car wash	14,000	€0.075	€1,050
			€348,450
		Say	€348,000

The Respondent confirmed that this property was located in a different local authority but had been valued on the same valuation date. It comprised an 8-island car forecourt double sided, 4 island truck forecourt double sided as well as dedicated truck islands and parking and the accommodation included a Burger King which was not a drive-thru, and it also included a cafe delicatessen. No representations were received but the property was represented by an agent and there was an appeal to the Valuation Tribunal which was agreed.

8.14 The fifth comparison refers to PN No. 2211666 an Applegreen Service Station at Edenderry Co. Kildare and comprises a motorway service station recognised by TII with an NAV of €228,000 which was based on the following estimated FMT figures.

Use	Unit/ Size	NAV/Unit	NAV
Shop/store/lockers	1,241sqm	@ €0	€0
Shop FMT	€4,400,000	@0.04 %	€176,000
Fuel throughput	6,000,000/lt	€0.0085/lt	€51,000
Car wash	18,000	€0.075	€1,350
			€228,350
		Say	€228,000

The Respondent confirmed that this property was located in a different local authority but had been valued on the same valuation date. It comprised an 8-island car forecourt double sided, 4 island truck forecourt double sided as well as dedicated truck islands and parking and the accommodation included a Burger King which was not a drive-thru, and it also included a cafe delicatessen. No representations were received but the property was represented by an agent and there was an appeal to the Valuation Tribunal which was agreed.

8.15 The Respondent having reviewed the comparisons allowed a discount of 50% for low value items which provided an FMT of €6.5m inclusive of €850,000 for low margin items to €6,075,000 and applied the same process to the throughput. He stated the treatment of low margin items reflects the approach adopted for local authorities revalued as part of the Revaluation 2019 programme.

He stated the NAV for this property is €309,000 calculated as follows:

Use	Unit/ Size	NAV/Unit	NAV
Est. Shop FMT	€6,075,000	@0.04 %	€243,000
Fuel throughput	7,250,000/lt	€0.009/lt	€62,050
Car wash	15,000	€0.075	€1,125
			€309,375
		Say	€309,000

He concluded his precis of evidence stating at the subject property had been valued in accordance with the Valuation act 2001 to 2015 and represented the Net Annual Value in accordance with Section 49 (1) of the Act. He stated that he had regard to a number of considerations including location, characteristics, design, and competition and had particular regard of comparison No.1 Circle K M6 Motorway Service Station which he stated was similarly circumstanced and he sought an NAV of €309,000pa.

9. SUBMISSIONS

9.1 No legal submissions were made.

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 two precis produced by the parties included very similar or identical comparable evidence and unsurprisingly the respective claims of the Appellant at €300,000, rounded down from €306,138 and the Respondents at €309,000 rounded down by €375 are remarkably similar.

10.3 It is clear from both precis that the valuers had acknowledged difficulties with assessing values from limited account information 2019 to 2022 and re calibrating them to the valuation date. I note that the primary comparison Circle K Athlone had been subject to representations by an agent and following the negotiations the Appellant in that case had accepted the NAV of €381,000 thus confirming the NAV. Taking account of the analysis of this comparison based on estimated FMT provided by the Respondents which had been subject to scrutiny by the occupiers agent I am more persuaded by the Respondents claim of €309,000 noting that the Appellants rounding down included a claimed for discount of €6,138 which I find excessive and did not include an amount for the car wash facility.

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 €309,000.

Use	Unit/ Size	NAV/Unit	NAV
Est. Shop FMT	€6,075,000	@0.04 %	€243,000
Fuel throughput	7,250,000/lt	€0.009/lt	€65,250
Car wash	15,000	€0.075	€1,125
			€309,375
		Say	€309,000