Appeal No: VA19/5/0487

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

Cahirvard Supermarket Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 1802327, Fuel/Depot at 19C1 Market Street, Cahir, County Tipperary.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17th DAY OF AUGUST, 2023

BEFORE
Hugh Markey – FRICS FSCSI **Deputy Chairperson**

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th 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 €47,100.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

"I have the shop only premises and feel it should be rated as retail and the rest of the forecourt be Andrew Fanning's (Landlord) rates and should be sub divided. "

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €18,896.

2. RE-VALUATION 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 €47,100.

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 10th day of September, stating a valuation of €47,100.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September, 2017.

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 following facts do not appear to be in dispute.

4.2 The property under appeal is a service station comprising of two pump islands under a canopy – the entire being 'Applegreen' branded together with a shop trading under the XL symbol brand. This latter contains an 'Insomnia' coffee station, delicatessen, as well as a grocery outlet. There is a toilet and private room on the ground floor. There is a first floor which can be accessed internally and externally and which comprises an office and storerooms.

4.3 **Areas**: Shop (Ground Floor) 103,75 sq. m.
Shop (First Floor) 83.75 sq. m.

4.4 **Title:** the property is held under a lease agreement, originally from 2003 for a period expiring in 2007 at a rent of €31,000 per annum. It was evidenced that the actual rent for 2019 remained at €31,000pa plus vat.

5. ISSUES

5.1 The Appellant maintains that he is responsible only for the retail sales from the property and that all the turnover from fuel and car wash sales is collected for the Landlord and the Appellant has no pecuniary interest in same.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

7. APPELLANT'S CASE

7.1 In a submission to the Tribunal, Mr. Colum Browne, a director of the Appellant company noted that his company had been renting the property since January 2004 from a named individual. He noted that the company rented the retail space, while the property also comprised four petrol pumps and a car wash area located to the side of the shop. He noted that all of the turnover and the retail sales are collected in in the shop but the Appellant company did not derive any financial gain from the proceeds of the fuel or car wash sales. He noted how there were two separate VAT numbers- one belonging to his company and the other for the landlord and was for fuel and car wash sales.

7.2 Mr. Browne had included with his evidence rent invoices and turnover information for the years 2018 and 2019. He asked that the property be divided into two areas- the shop and forecourt.

7.3 The Appellant included a memorandum of agreement between his landlord and Applegreen which referenced the subject property. One of the conditions of this agreement was that his landlord was to sign up to and remain in contract with one of the recognized retail symbol brands. This letter of offer was dated 25th May 2017 and was signed by the landlord and the fuel supplier.

7.4 Mr. Browne further noted that there had been a significant increase in the rates payable for the property, running costs had increased and the rates burden was unaffordable.

7.5 The Appellant contended for a NAV of €3,864.00.

8. RESPONDENT'S CASE

8.1 The Respondent was represented by Mr. Oliver Parkinson who submitted a Précis of evidence. He outlined the basis of revaluation and its purpose and the statutory provisions governing same.

8.2 Mr. Parkinson noted how the Appellant had stated that "*all of the money for the fuel and the shop comes through the shop…*", he posited that confirmed the subject is a single relevant property and there had not been a 'material change in circumstances' as set out in part one, Section 3 of the Valuation Act.

8.3 The Respondent went on to note that the Appellant had not provided trading information and that this was contrary to its obligations under section 45 (1) of the Act. He said that the Respondent was not therefore in a position to validate the estimate of NAV.

8.4 He went on to note that an Appellant, who had not previously provided information when requested to do so as per section 34(3) of the Valuation Act, would not then be permitted to

ground or support an appeal before the Tribunal. He cited VA19.5.1716 - Silverstream Service Station as being a relevant authority.

8.5 Mr. Parkinson noted that the Appellant had been issued with a section 45(1) notice on 20th June 2018 and while representations were made on 13th May 2019, the section 45 (1) notice had not been complied with.

8.6. The Respondent contended for a NAV of €47,100.

9. SUBMISSIONS
There were no legal submissions from either party.

10. FINDINGS AND CONCLUSIONS
10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Tipperary County Council.

10.2 In any appeal to the Tribunal, the onus of proving that the value attributed to the property under appeal should be disturbed lies with the Appellant. Nothing in the Appellant's submission gives rise to any grounds on which the Respondent's estimate of net annual value should be altered. In the instant case, the Appellant failed to return the section 45(1) notice with the required information and cannot now rely on information which should have been included but was not so provided.

10.3 The Tribunal can only act on evidence put forward and in this instance no such evidence of rental value was submitted by the Appellant, nor were any comparables adduced to support the level for which they contended.

10.4 The Tribunal is persuaded that the property under appeal is a single relevant property under Schedule 3 of the Valuation Act 2001 – 2020. While unusual insofar as the Appellant acts as a conduit for the turnover from fuel sales and car wash without gaining any benefit, it is not the function of the Tribunal to apportion the valuation as between the two entities with interests in the property under appeal. It is open to the parties to make their own commercial arrangements as to the payment of rates.

10.5 Affordability is not something which the Tribunal can consider when assessing an appeal.

DETERMINATION:
Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

RIGHT OF APPEAL:
In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.