

Appeal No: VA19/5/0537

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Online Oil Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 639141, Fuel/Depot at Local No/Map Ref: 7B Ashford, Glenealy, Rathdrum,
County Wicklow

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF SEPTEMBER, 2023**

BEFORE

Eoin McDermott, FSCSI, FRICS, ACI Arb

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on 14th 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 €56,500.

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:

"Fule [sic] depot closed. No activity. Valuation excessive and inequitable"

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. RE-VALUATION HISTORY

2.1 On 15th 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 €56,500.00.

2.2 A Final Valuation Certificate issued on 10th September 2019 stating a valuation of €56,500.00.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th 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. The Appellant's summary was prepared by Mr. Tadhg Donnelly of Donnelly & Associates and the Respondents summary was prepared by Mr. Viorel Gogu MSCSI, MRICS, IAAO. As Mr. Gogu had the opportunity to consider the Appellants summary before preparing his own, Mr. Donnelly was offered the opportunity to respond to Mr. Gogu's summary and did so.

3.3 Both summaries contained the Declaration and Statement of Truth required under Tribunal Rules.

3.4 Having reviewed the documentation submitted by the parties, the Tribunal was concerned that neither party had correctly described the property as it existed at the effective valuation date. The parties were requested to consider making further submissions and their attention was drawn to an online planning file referenced in the Respondents submission, together with images on Google Street View, which had been touched on in the Respondents submission. No response was received from the Appellant while the Respondent said that it did not intend to make any further submissions but reserved the right to comment on any submissions made by the Appellant.

4. ISSUES

The issue is one of quantum and, specifically, whether the property was capable of beneficial occupation as at 31st October 2019, the effective date for the valuation list.

5. RELEVANT STATUTORY PROVISIONS:

5.1 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.”

5.2 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.”

5.3 Section 19(5) (inserted by section 7(b) of the 2015 Act) of the 2001 Act provides:

“(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) —

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on

that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.”

6. APPELLANT’S CASE

6.1 Mr. Donnelly, on behalf of the Appellant, described the property as being located in Rathdrum, vacant for some time and consisting of a fuel depot and yard. He states that the property would need to be updated considerably for it to be occupied. He also makes mention of potential environmental issues were the pumps to be used now.

6.2 Mr. Donnelly gives his opinion of value as €0.00.

7. RESPONDENT’S CASE

7.1 Mr. Gogu, on behalf of the Respondent, states that the property is located on the R772, Main Street, Ashford with a site area of 0.28 hectares. He describes the property as a service station comprising shop and forecourt. The forecourt contains three pump islands with six pumps each, all under canopy. Jet car wash, air and water services are also provided. There are four 20,000 litre tanks on site (diesel, unleaded, MGO and kero). The shop is described as being well presented, with an area of 158.5 m² together with stores of 86.50m². Photographs of the property dated 19/04/2023 are also provided.

7.2 In response to the Appellants submission, Mr. Gogu notes that the property had been substantially improved and that the Appellant had not put forward any evidence to certify that the subject property was incapable of beneficial occupation at the effective valuation date. It is also noted that in the planning documentation which preceded the improvement works, the contractor states in a letter dated 10th May 2019, that the tanks were not faulty but were replaced due to their age and that a new tank had been supplied by another firm. Finally, he points out that the onus of proof is on the Appellant and that no evidence has been put forward to support any amendment to the NAV applied to the property.

7.3 Mr. Gogu sets out the broad parameters adopted for the valuation of service stations, noting that the valuation scheme entails applying a percentage to the Fair Maintainable Trade

(FMT) attributable to shop and car wash turnover, and the application of an NAV per litre of fuel throughput FMT to arrive at the NAV.

7.4 Mr. Gogu puts forward five pieces of NAV evidence as follows: -

PN	Address	NAV
639177	Ashford, Co. Wicklow.	€39,300
2170354	Rathdrum, Co. Wicklow	€114,200
634899	Kilcoole, Co. Wicklow	€80,400
648115	Tinahely Co. Wicklow	€41,300
632865	Enniskerry, Co. Wicklow	€107,300

7.5 Mr. Gogu requests the Tribunal to affirm the valuation of the subject property appearing on the valuation list. No breakdown is provided for this valuation.

7.6 Mr. Gogu also makes reference to the Tribunal decision in *VA 19/5/1244 Cosgrave Property Group and Commissioner of Valuation* where the Tribunal dismissed the appeal on the grounds that, inter alia, Rules 36D and 38 of the Tribunal had not been complied with, no comparable properties had been put forward and the Appellant had not proved its case.

7.7 Replying to the Respondents submission, Mr. Donnelly encloses a letter from the Appellant. The letter states that the Appellant purchased the property in 2019, that it was in poor condition with the roof having fallen in and the walls being cracked and falling. The owner also states that he renovated the premises and subsequently leased them to the current occupier in March 2022. Mr. Donnelly states that this confirms that the property was not capable of beneficial occupation on the valuation date but accepts that a subsequent revision of the property would be required if his argument succeeds.

8. FACTS

8.1 From the evidence put forward by the parties the Tribunal finds the following facts: -

8.2 The property is located on the western side of the R772, in the town of Ashford, Co. Wicklow.

8.3 The property was in use as a service station and shop for a number of years but became vacant at some stage in the last decade.

8.4 The property was subsequently purchased by the Appellant and was renovated by the Appellant under planning permission 19/76, The renovation works were described as follows: -

“The development to be retained and completed consists of demolition of original service station building (c.306m²), removal of redundant fuel storage tanks above and below ground; construction of replacement single storey service station building (c.245m²) and replacement tanks below ground; upgrade works to forecourt area and rear car park to provide 23 no. car parking spaces; all site development, landscape and boundary treatment works.”

8.5 Work on the site was underway by May 2019, the old tank had been removed by that date and a new one installed.

8.6 The property was subsequently let to the current occupier and started trading in March 2022.

9. CONCLUSIONS

9.1 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 Wicklow County Council.

9.2 In effect, the case put before the Tribunal by the Appellant is that, because the station was closed and the buildings were in poor repair on the valuation date, it is their view that the property should have a nil valuation. The grounds of appeal are stated as follows:

“Fuel depot closed. No activity. Valuation excessive and inequitable.”

9.3 The Valuation Order made by the Respondent for the revaluation of the county of Wicklow specified 15th September 2017 as the valuation date, 17th September 2019 as the publication date of the valuation list and 31st October 2019 as the effective date for the valuation list.

9.4 There is no agreement between the parties as to the condition of the property as at the effective valuation date. The Appellant claims that the property was not capable of beneficial occupation, the Respondent has given a detailed description of the property as it currently stands.

9.5 It should be noted at the outset that the Appellant has submitted no supporting evidence to support its claim that the property was not capable of beneficial occupation. There are no contemporaneous photographs of the property, no schedules of condition, no architects or engineer's reports. All that has been provided is a statement from the owner to the effect that the property was purchased in 2019, was in very poor condition at that stage, was subsequently renovated by the owner and let to a tenant who commenced trading in March 2022.

9.6 While the Appellant has not provided supporting evidence, the Respondent has given evidence of a January 2019 planning application in respect of the property. The application is for the retention and completion of works already done. The Respondent also provides evidence of a letter submitted as part of the planning process, dated 10th May 2019, to the effect that the underground fuel storage tank had been removed and replaced.

9.7 It appears to the Tribunal that substantial works must have taken place on site by mid-2019 and that what remained outstanding at that point was the completion of those works. This opinion is backed up by images publicly available on Google Street View, which the parties declined to comment on when requested to do so by the Tribunal. It would therefore be difficult to say that the property was incapable of beneficial occupation at the effective valuation date.

9.8 The Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

9.9 The Tribunal finds that the Appellant has failed to prove that the property was incapable of beneficial occupation at the effective valuation date.

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.