

Appeal No: VA19/5/0996

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Donohoe's Supermarket Belturbet Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1990536, Fuel/Depot at Corporation Lands, Belturbet Urban, Cavan, County
Cavan.

B E F O R E

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

Annamaria Gallivan - FRICS, FSCSI, MPhil SEE

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF DECEMBER 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th 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 € 81,500.

1.2 The grounds 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:

- ‘1. As a fundamental, we believe that the filling station formula is unsuitable to value properties as such as the subject property, which have more than 50% of their sales in the shop. The definition of a filling station is a property that sells primarily motor fuel. If more than 50% of the sales in a “filling station” occur in the shop, it is not in fact a filling station at all – it is a convenience store or indeed a supermarket with petrol pumps as an ancillary. The nature of the trade has already been explored by the tribunal in VA15/5/069. Valuations of such properties need a complete rethink, as valuations multiples of superior supermarkets are based on a much smaller shop, solely due to the presence of pumps outside the door. The Commissioner does not investigate the turnover of a Tesco superstore adjoining a Tesco fuel outlet, nor should she. This approach should be widened to take in stations such as the subject property, which are non-standard. Properties should be valued on a rate/m² with an addition for pumps. A major filling station operator (Circle K, Applegreen etc.) would not be interested in the subject property as it is not capable of the fuel sales necessary to attract a bid.*
- 2. The native population of Belturbet is just 1,380 persons. The subject property is on a regional road as is the town itself. This is not a highly trafficked road as reflected in the fuel sales.*
- 3. The subject property is the largest supermarket type property in the village. This has led to a complete over assessment of the subject property.*
- 4. Effectively, the subject the property is being punished for its local supermarket trade, which is completely inequitable. Comparable supermarkets include PN 2189510 (Centra, Ballinagh), PN 1989510 (Londis, Ballyconnell), PN 1990216 (Centra, Killeshandra).*

5. *The subject property used as a supermarket comparison in VA12/1/023. The judgment also includes the agreed areas of the subject property. ‘‘*

1.3 In the Notice of Appeal, the Appellant considered that the valuation of the Property ought to have been determined in the sum of € **55,600**.

2. REVALUATION HISTORY

2.1 On the 29th 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 € **209,000**.

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 of the Property was reduced to € **81,500**.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of € **81,500**.

2.4 The date by reference to which the value of the property, the subject of this appeal, was 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 15th day of February, 2022. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) BA (Mod) and the Respondent was represented by Mr. John Doorly MRICS, MSCSI, ACI Arb, of the Valuation Office (now Tailte Eireann since 1st March, 2023).

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 Both Expert Witnesses provided a Declaration and Statement of Truth in their respective précis in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules, 2019.

4. FACTS

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

- 4.1 The Property is located off Deanery Street within the Erne Hill Shopping Centre on the eastern edge of Belturbet approx. 2 Kms East of the N3. The shopping centre was converted out of a former boot factory. Belturbet is in the north of County Cavan, near the border with County Fermanagh in Northern Ireland, and has a population of 1,369 according to the last Census.

- 4.2 The Property comprises of a service station with supermarket. The forecourt consists of two islands with 8 nozzles covered by a canopy. Services provided on site include a car wash, deli cold/hot, full off-licence (beer, spirits, wine), lotto, Payzone, ATM, post office, coffee service. The property does not have fuel card sales, truck service or drive thru facilities. There is ample parking on site.

- 4.3 The floor areas of the Property are agreed as follows:

Shop	540.38m ²
Stores	289.96m ²
Offices	<u>70.52m²</u>
Total	900.86m ²

- 4.4 It is understood that the Property is freehold.

- 4.5 Trading information is provided in Section A of the Appendix to this Determination (n/a to public)

5. ISSUES

5.1 The sole issue for Determination by the Tribunal in this appeal is quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015 and other Acts.

6.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to sec. 19 (5) of the Valuation Act, 2001, *that 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.

6.3 The net annual value (**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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis in calculating the net annual value, as follows:

“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 Mr. David Halpin, for the Appellant, outlined his case, in summary, that the core issue arising in this appeal is the categorisation of the property either as a supermarket, as he contends, or as a service station as submitted by Mr. Doorly for the Respondent. He described the Property as having been built around the 1960s, being converted out of a former boot factory, now known as the Erne Hill Shopping Centre, and that the type and age of structure is evident from the old north light roof. The retail comprises some 540.38m² out of a total floor area including ancillary space of 900.86m². This is the only supermarket in Belturbet and at that size it is much larger than what would usually be found in a service station. He submits that the Commissioner of Valuation values this under the scheme for service stations simply because it has fuel pumps at the front, whereas if it had no fuel pumps it would be valued as a supermarket at a corresponding lower value. He outlined that, although the supermarket turnover had increased in the last four years, (in Appendix – n/a to public) that, by contrast, the fuel throughput has been declining. Once this is categorised as a filling station under the scheme the Commissioner of Valuation investigates turnover in order to value the Property, which is done by reference to the Fair Maintainable Trade method (FMT). He feels that this approach is unfair as the Commissioner does not, for example, investigate the turnover of supermarkets but chooses to value these by reference to a unit value per square metre, instead. Accordingly, he submits that the Ratepayer is penalised by having fuel pumps in front of the supermarket, causing a transition from one methodology to the next, (i.e. unit value comparative to FMT) simply on account of this *categorisation* and thus causing a greater burden of liability. He referenced the previous decision of the Valuation Tribunal in VA.12.1.023 (concerning this subject Property) which was a revision type appeal, and, in that case, he asserted, the shop was valued on a unit value per square metre, and, that, at that time, it was compared with other supermarkets.

7.2 He makes reference to the valuation scheme for service stations adopted by the Commissioner of Valuation and produced this in tabular form on page 12. of his precis. He confirms that, for the avoidance of doubt, the Appellants accept the schematic in regard to fuel throughput/ car wash sales and shop turnover (where shop turnover is less than 50% of the entire turnover) but that the ‘shop sales’ part of the schematic above 50% of the entire turnover which is under challenge. He asserts that it is the Appellant’s contention that where shop sales exceed 50% of total turnover, the property transitions to a convenience store/supermarket, which is far more readily comparable with other such properties. He maintains that the definition of a filling station is “a property which sells primarily motor fuel” and, consequently, a property engaged primarily in the sale of grocery or other shop product – i.e. where shop sales exceed fuel sales – is not a filling station in the same sense. He refers to the Commissioner’s note on the valuation scheme where he quotes from it, as follows:

“A number of properties which have low throughput volumes and high shop sales have now been reflected in the scheme and where throughput has been provided and it is less than 1,000,000 litres, the percentage rate applied to the shop sales has been reduced. A number of these types of properties may merit special attention. The Commissioner therefore acknowledges that where shop sales exceed fuel sales that a different approach may be required to make relative.”

7.3 Mr. Halpin produced various tables in his precis, the first showing the relative NAV assessments in the Erne Hill shopping Centre, itself, which indicate that the subject Property is valued on a comparative unit value per square metre basis (if analysed that way) at twice the level of the adjoining shops taking a Zoning approach (being € 240 Zone A, for the subject Property as against € 120 Zone A for the other shops in this Centre) or, if analysed on an overall basis, at a rate of € 86 per m² contrasted to rates ranging from € 50-90 per m² (excluding a store unit assessed at € 17 per m²).

The second table provides a comparative analysis of the retail NAV compared to other properties; part redacted as follows:

	Property	Retail m ² Total m ²	Turnover	Retail NAV
Subject	Belturbet	540.38m ² //900.88m ²	[Redacted]	€77,500
1989510	Ballyconnell	571.39m ² //882.19m ²	Unknown	€36,800
2188083	Bellananagh	760m ² //1,043m ²	Unknown	€61,500
1989106	Bailieborough	826.52m ² //1,301.51m ²	Unknown	€85,900
2204275	Bailieborough	2,969.69m ² //4,537.29m ²	Unknown	€277,000
1990752	Cootehill	1,475.69m ² //2,050.36m ²	Unknown	€115,600

His conclusion from this information is that the **retail value** in the subject Property clearly falls in the range of € 35,000 to € 45,000 in contrast to the Respondent's figure of € 77,500.

- 7.4 Mr. Halpin states that, for context, the retail Zone A rate fixed by the Commissioner (by the FMT method) versus the rate applied by him in the case of supermarkets, is as follows:

Location	Population	Zone A rate	Overall rate
Ballyconnell	1,105	€120/m ²	€50/m ²
Bellananagh	936	€120/m ²	€50/m ²
Bailieborough	2,863	€180/m ²	€60-65/m ²
Cootehill	1,853	€120/m ²	€55/m ²
Kingscourt	2,499	€180/m ²	€60/m ²
Belturbet	1,369	€120/m ²	N/A

From this analysis he concludes that the higher the population, the higher the Zone A and the higher the overall rate. Therefore, he asserts that the ensuing problem for potential filling station occupiers in the context of the subject Property is the lack of passing trade. The subject property trades under 800,000 litres of fuel a year, being located on a regional road at the edge of the village. He submits that there is no way to significantly increase fuel sales at this location, even if a hypothetical tenant drastically cut the price of fuel because the route is not highly trafficked. For a filling station operator to become interested, a station needs, he submits, four times the fuel potential

as a starting point. Therefore, he believes that large scale fuel operators would not bid on the subject property but concedes that local and regional occupiers could be interested:

PN	Location	Size (Retail/Total)	Number of Petrol Islands	NAV
2211122	Bailieborough	39m ² //39m ²	4	€28,400
2167148	Kingscourt	118.14m ² //209.72m ²	2	€36,800
2206239	Belturbet	140m ² //305.79m ²	4	€26,300
2206237	Belturbet	130m ² //193m ²	4	€45,000

- 7.5 Mr. Halpin also makes the point that what is required to be valued is the property *rebus sic stantibus* and, that, citing the dictionary definition of a filling station, this, he states, is for a premises that primarily sells motor fuel. As more is sold in the shop this, he contends, makes it something other than a filling station together with the fact that the shop area is larger than that which would normally be found in filling stations, generally.
- 7.6 He submits that this creates a difficulty for the hypothetical tenant as to how he can reconcile the market rental values (their corresponding NAVs) with a rental bid for the subject Property. In his view, the most straightforward approach is to value the subject property on a rate per m² basis (in line with the comparisons and the Tribunal's decision in VA15/5/055). The hypothetical tenant can use either the Zone A rate in the village (€120/m²) or from the NAVs of the other units on the subject's own forecourt. In the alternative, the hypothetical tenant could discount the turnover for goodwill to make relative (as was done by the Tribunal in VA15/5/069). However, in the subject's case, he says that this would require a significant discount. Therefore, whilst it can be done, he considers that it is more likely that the hypothetical tenant would form the view that the subject does not fit the turnover formula, rather than attempt to bend the turnover formula around it.
- 7.7 Mr. Halpin submitted the following comparables in support of his case (full details in the Appendix – n/a to public) of which brief details are set out hereunder:

Retail Comparables

1. Property Numbers 1990534, 1990535, 1990542, 2145943, 2145956, & 1990533

(Erne Hill Shopping Centre, Belturbet, Co. Cavan)

Various units adjacent assessed at, generally, rates of Zone A € 120 and € 50-90 per m².

2. Property Number 1989510

(Kennedy's Spar, Church Street, Ballyconnell, Co. Cavan.)

This property comprises a convenience shop of 882.19m² in the centre of Ballyconnell (population 1,075 persons), c. 13 Kms from Belturbet, which is assessed at the NAV of € 36,800 that is calculated at a unit value rate overall of € 50.00 per m².

3. Property Number 2188083

(Gavin's Centra, Granard Road, Ballinagh, Co. Cavan.)

This property comprises a convenience shop of 1,043.00m² in Ballinagh (population 936 persons) which is assessed at the NAV of € 61,500 that is calculated at a unit value rate overall of € 50.00 per m².

4. Property Number 1989106

(Harris's Supervalu, Main Street, Bailieborough, Co. Cavan.)

This property comprises a supermarket of 577.81m² in the centre of Bailieborough (population 2,863) with parking to the rear which is assessed at the NAV of € 85,900 that is calculated at a unit value rate on the main ground floor retail area of € 65.00 per m².

5. Property Number 2204275

(Tesco Supermarket, Thomas Street, Bailieborough,)

This is a supermarket with a total of 4,537.29m² which is assessed at the NAV of € 277,000 that is calculated at a unit value rate on the retail space of € 60.00 per m².

6. Property Number 1990752

(Foy's Supervalu, Cootehill, Co. Cavan.)

This property comprises a supermarket and ancillary accommodation of 2,032.86m² which is assessed at the NAV of € 115,600 that is calculated at a unit value rate overall of € 55.00 per m² generally.

Filling Station Comparables.

7. Property Number 2206239

(Spar 24 Hour, Drumacon, Belturbet, Co. Cavan.)

Filling station and Spar supermarket of c. 305.79m² located on the N3, at the outskirts of Belturbet which is assessed at the NAV of € 26,300 that is calculated on the basis of the scheme.

8. Property Number 2206237

(Top Oil Limited, Kilconny Street, Belturbet, Co. Cavan.)

The property comprises a service station of 187.97m² which is assessed at an NAV of € 45,000 that is calculated on the basis of the scheme.[Reduced since appeal hearing to € 39,900]

9. Property Number 2211122

(Tesco, Thomas Street, Bailieborough, Co. Cavan. Located adjacent to Number 5. above)

This is a service station property of 44.44m² that is assessed at the NAV of € 28,400 that is calculated on the basis of the scheme.

10. Property Number 2167148

(Nibeck Limited, Dublin Road, Kingscourt, Co. Cavan.)

This property comprises a service station of 238.78m² that was let [details redacted here]. This is assessed at the NAV of € 36,800 which is calculated on the basis of the scheme.

Context Comparisons-Valuation Tribunal decisions

A. Property Number 1139189 VA. 17/5/151

(Munnely Bros.,Kilkenny Road, Carlow.)

This service station in Co. Carlow had 154.19m² with retail amounting to 118.19m² and it is assessed at the NAV of € 38,000.

B. Property Number 2148429 VA. 17/5/085

(Rayro Service Station, Ring Road N80, Carlow)

This service station is also in Carlow and is assessed at the NAV of € 98,500.

C. Property Number 1277226 VA.15/5/055

(Michael Leonard-Leonard's Centra, Cappamore, Co. Limerick.)

This property comprises a supermarket with petrol pumps in Cappamore (population 620) in Co. Limerick with a total of 742.51m² This is assessed at the NAV of € 44,250.

7.8 Mr. Halpin, for the Appellant, contends for a valuation of € 48,900 as at the valuation date of 15th September, 2017, which he calculates as follows:

			€
(1) Fuel	800,000 litres @ € 0.005 per litre		4,000
(2) Ground Floor Supermarket	540.38m ² @ € 50.00 per m ²		27,019
	Office 70.52m ² @ € 50.00 per m ²		3,526
	Staff 39.00m ² @ € 50.00 per m ²		1,950
	Store 70.00m ² @ € 50.00 per m ²		3,500
	Store(poor) 180.96m ² @ € 17.00 per m ²		<u>3,076</u>
			39,071
	<u>ADD</u> 15% for Off-Licence		<u>5,861</u>
Total (1) & (2)			48,932
say, NAV			€ 48,900.

- 7.9 Mr. Halpin offers an alternative valuation on an “adjusted formula basis” which yields a figure of NAV € 47,700, but this is, he submits, only for reasons of context, and ultimately his reliance is placed on the above figure of € 48,900 set out in 7.1. This alternative figure he calculates as follows:

	€
(1) Fuel 800,000 litres @ € 0.005 per litre	4,000
(2) Shop FMT € 1,750,000 @ 2.5%	<u>43,750</u>
	47,750
	say, NAV € 47,700.

8. RESPONDENT’S CASE

- 8.1 Mr. John Doorly, for the Respondent, outlined his case for defence of the existing valuation in the Valuation List by setting out, firstly, the approach taken in these cases by the Commissioner of Valuation which is to value service stations according to a valuation scheme that attempts to link rental value to trading and profitability and the proper assessment of genuine sustainable trading levels. He confirmed that the valuation of service stations is made on a direct rental basis; suitably adjusted rents being devalued for analysis purposes to a price per thousand litres of maintainable throughput. Analysis is also carried out on turnovers achieved from shop and car wash elements of trade with regard being had to the Fair Maintainable Trade (FMT). This scheme has evolved since the first Revaluation in 2005 and has been modified since, lastly in 2015, to take account of low margin items. He said the scheme is tested each year by reference to a full Receipts and Expenditure appraisal to ensure that it is still appropriate to apply, and this has been employed in the valuation of some 40 service stations in County Cavan. The scheme is applied to both small scale enterprises with low throughput and basic shop i.e. a fuel model, to larger stations with substantial convenience stores attached i.e. a retail model. He said the scheme had been ratified by agreements in the following appeals:

- VA 19/5/0110. Sharpmount Limited, Moynehall, Co. Cavan. PN 1990333
Standard service station outside Cavan town. Shop and associated throughput valued using the scheme at € 95,600.
- VA 19/5/1413. Cassidys Service Station Limited, Ballyconnell Co. Cavan. PN 2120439
Standard service station in Ballyconnell.
Shop and associated throughput valued using the scheme at € 66,700.
- VA 19/5/0262. Finian O'Reilly, Loch Gowna, Co. Cavan. PN 2191783
Standard service station in Lough Gowna.
Shop and associated throughput valued using the scheme at € 13,900

He confirmed that the scheme has been examined to ensure that it reflects open market rental values in the market and is compliant with the requirements of Part 5 of the Valuation Act 2001.

8.2 Mr. Doorly submitted that the Appellant's agent attempts to use retail properties to undermine the valuation. He contends that the subject is a service station and should be valued accordingly and by reference to similarly circumstanced properties. The fuel element is an integral part of the business model. The use of a sales ratio analysis, to categorise a property, is not recommended, in his view, as it does not take account of petrol price fluctuations. It should be noted that the use of ratio analysis for service station is not endorsed by the Valuation Office. He maintains that the ratio used by Mr. Halpin is not a direct sales ratio, this is due to the throughput being valued at a rate per litre, not at a euro value per litre while the shop figure is at a euro value of FMT. This leads to the shop: fuel ratio to be understated. For example, a service station might trade 1,000,000 litres but the value could be 1,700,000 if the fuel is valued at €1.70 per litre. If the trade of the shop is € 1,000,000 and the fuel sales are 1,000,000 litres than the ratio used by the agent is 50:50 but in real terms, when the fuel is valued at €1.70 per litre the ratio becomes 38:62. He sets out in Appendix 5 of the precis (n/a to public) the average fuel price applicable at the valuation date as being an average of € 1.28 per litre.

- 8.3 With regard to Mr. Halpin's point concerning the categorisation of the Property, he asserts that a dictionary definition of a filling station is not to be advocated because dictionary definitions do not apply for rating purposes. Mr. Halpin, he contends, has selected one of many, as his preferred definition, but in preference he says that professional judgement and a property's characteristics, are more relevant, having regard to its most likely use by the hypothetical tenant.
- 8.4 He submits that the reference by Mr. Halpin to the previous categorisation of the Property prior to the revaluation is no longer relevant as that exercise related to a revision valuation.
- 8.5 Mr. Doorly submitted the following comparables in support of his case (full details in the Appendix – n/a to public) of which brief details are set out hereunder:

1. Property Number 2206237 Key Rental Transaction Number 1

(Top Oil Limited, Kilconny Street, Belturbet, Co. Cavan)

The property comprises a service station of 187.97m² which was let [terms redacted here]

The property is assessed at an NAV of € 45,000 which is calculated on the basis of the scheme.

[This has been reduced since the appeal hearing to NAV € 39,900]

2. Property Number 5018111 Key Rental Transaction Number 2

(C K 6 Fuels, Cavan, Co. Cavan)

This property comprises a service station of c. 16.00m² and which was let [terms redacted here]. This property is assessed at an NAV of € 10,800 which is calculated on the basis of the scheme.

3. Property Number 2167148 Key Rental Transaction Number 3

(Nibeck Limited, Kingscourt, Co. Cavan.)

This property comprises service station with a shop of 238.78m² which was let [terms redacted here]. This property is assessed at the NAV of € 36,800 which is calculated on the basis of the scheme.

4. Property Number 2198421 NAV Comparison No. 1

(P.J & K Retail Limited, Ballyjamesduff, Co. Cavan.)

This property comprises a filling station and shop of 518.18m² which is assessed at the NAV of € 137,000 that is calculated on the basis of the scheme.

5. Property Number 1990451 NAV Comparison no. 2

(Lisnasaran, Cootehill, Co. Cavan.)

This property comprises a filling station and shop of 354.10m² which is assessed at the NAV of € 50,400 that is calculated on the basis of the scheme.

6. Property Number 1990387 NAV Comparison No. 3

(Knockanoark, Stradone, Co. Cavan.)

This property comprises a filling station and shop of 287.29m² which is assessed at the NAV of € 59,000 that is calculated on the basis of the scheme.

7. Property Number 5019377 NAV Comparison No. 4

(Circle K Energy, Killygarry, Co. Cavan.)

This property comprises a filling station and shop of 192.51m² which is assessed at the NAV of € 123,300 that is calculated on the basis of the scheme.

8. Property Number 1989793 NAV Comparison No. 5

(Lisduff, Virginia, Co. Cavan.)

This property comprises a filling station and shop of 442.60m² which is assessed at the NAV of € 32,200 that is calculated on the basis of the scheme.

9. Property Number 2211122 NAV Comparison No. 6

(Tesco, Thomas Street, Bailieborough, Co. Cavan.)

This is a service station property of 44.44m² that is assessed at the NAV of € 28,400 that is calculated on the basis of the scheme.

10. Property Number 2206239 NAV Comparison No. 7

(Spar 24 Hour, Drumacon, Belturbet, Co. Cavan.)

Filling station and Spar supermarket of c. 305.79m² located on the N3, west from the centre of Belturbet which is assessed at the NAV of € 26,300 that is calculated on the basis of the scheme.

Appeal cases agreed prior to Tribunal

11. Property Number 1990333

(Sharpmount Limited, Moynehall, Co. Cavan.)

This property comprises a filling station and shop of 428.87m² which was agreed at € 95,600 that is calculated on the basis of the scheme.

12. Property Number 2120439

(Cassidy Service Station, Ballyconnell, Co. Cavan.)

This property comprises a filling station with shop of 387.40m² that was agreed at the NAV of € 66,700 that is calculated on the basis of the scheme.

13. Property Number 2191783

(Finian O'Reilly, Loch Gowna, Cavan.)

This is a filling station and shop of 283.78m² that was agreed at the NAV of € 13,900 which is calculated on the basis of the scheme.

Other comparables outside the rating authority area

14. Property Number 2008671

(Adamstown, New Ross, Co. Wexford.)

This is a filling station and shop of 676.91m² that is assessed at the NAV of € 43,600.

15. Property Number 1556510

(Portlaoise Road, Mountrath, Co. Laois.)

This is a filling station and shop of 778.96m² that is assessed at the NAV of € 75,600.

16. Property Number 1218911

(O'Grady's Food Market, Sparr Street, Ballingarry, Co. Limerick.)

This is a filling station and shop of 971.90m² which is assessed at the NAV of € 69,300.

8.6 Mr. John Doorly, for the Respondent, contends for a valuation of € 81,500 as at the valuation date of 15th September, 2017, which he calculates as follows:

			€
(1) Fuel	800,000 litres	@ € 0.005 per litre	4,000
(2) Shop FMT	€ 3,100,000	@ €0.025	<u>77,500</u>
Total:			81,500
NAV			€ 81,500

9. SUBMISSIONS

9.1 There were no legal submissions in this case.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must 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 Cavan County Council.

10.2 Both Surveyors set out extensive submissions in their respective Precis of Evidence and followed up with further clarification of items at the hearing, for which the Tribunal is grateful.

10.3 The key contentious issue here is the classification of the property for valuation purposes and flowing from that, the suitability of the valuation scheme as it is applied to this property, given the contentions by the Appellant and the counter responses of the Respondent. For properties that are classified by the Commissioner of Valuation as service stations/filling stations, the Commissioner employs the use of a tabulated scheme of valuation, in essence a shortened form of the Receipts and Expenditure Method, by reference to the trading/earning capacity of the property, where estimates are made for each component of trade (or streams of income) by applying a rate (%) to

the estimated Fair Maintainable Trade (i.e. the FMT) that a hypothetical Tenant would expect to achieve at the valuation date from which to derive the Net Annual Value (NAV). This scheme assigns varying unit value rates, shown as percentages, dependent on volume/turnover level which is applied to each component of the income generating element of a service station, be that fuel throughput, car wash FMT, retail FMT etc from which to derive an NAV.

10.4 The difference here between the two Surveyors is significant, with Mr. Halpin for the Appellant proposing a valuation of € 48,900, in contrast to Mr. Doorly for the Respondent at a valuation of € 81,500. Both Surveyors are agreed on the value attributable to the fuel throughput at € 4,000 and so the remaining net difference that arises in their respective valuations is **only** regarding the treatment of the **retail** element (Mr. Halpin at € 44,932 versus Mr. Doorly at € 77,500).

10.5 In cases of rating valuation where the Commissioner of Valuation has developed a scheme of valuation, the Tribunal normally respects the legitimacy of that, because, on examination, it is usually accepted by Rating Surveyors and Rating Consultants for general application in the valuation of certain classes of property. Strong contrary evidence would ordinarily be required to direct the Tribunal to depart from adherence to that scheme. On answering a question from the Tribunal at the hearing, Mr. Halpin stated that he was not aware of the scheme being formally agreed with Ratepayers/Agents but he confirmed that it was generally accepted. In his precis of evidence, on page 13., he confirmed that:

“For the avoidance of doubt, the Appellants accept the schematic in regard to Fuel Throughput, Car Wash Sales and Shop Turnover (where shop turnover is less than 50% of the entire turnover). It is therefore the ‘shop sales’ part of the schematic above 50% of the entire turnover which is under challenge.”

10.6 Notwithstanding the above comment, the Tribunal considers, however, that the valuation scheme must ultimately produce the correct result in each case, to be applicable, in order to meet the fundamental tests laid down by the statutory framework of sec. 19 (5) and section 48. of the Valuation Act 2001. After the scheme is applied, the Valuer/Surveyor must take a “stand back and look” approach to the result to ensure

that the value arrived at by the valuation scheme accords with reality and is properly within the context of what the law is seeking to achieve by those provisions. The valuation exercise is not completed without doing so. The necessity for employing a valuation scheme enables similar types of property to be valued in line with an agreed framework that saves time in endless negotiations for individual cases for both Respondent and Appellant. Ultimately, it is a tool of convenience for the Surveyors and Valuers acting for both parties. The development of a valuation scheme that is not demonstrated to be soundly grounded on **rental evidence** could lead to the class of property being valued being out of sync with reality. This might entail the resultant valuations of that class of property being, not only incorrect, but also neither uniform nor equitable with the other classes of property appearing in the Valuation List.

- 10.7 Whilst it is acknowledged that the onus of proof rests with the Appellant, as with all rating appeals, to demonstrate that the valuation made by the Respondent is incorrect, the Tribunal directs caution in applying, as in this appeal, in a narrow formulaic manner, the scheme as devised without having due regard to the goals of the statutory quest posed by sections 19. and 48. of the Valuation Act 2001 which are, ultimately, the estimate of net annual value being, a **rent** payable by a **hypothetical tenant** for the subject property. It is not a case of whether a property fits the framework of the valuation scheme but whether the resultant calculations, from invoking that scheme, produce a rent that accords with the statutory basis.
- 10.8 Accordingly, care must be exercised, especially in the case of categories of property valued, primarily, by reference to their profitability/earning capacity, not to value beyond the scope of the statutory direction to encompass what might be construed as valuing the business, by the rigid application of the valuation scheme. The details of this valuation scheme given in evidence were set out by the Appellant and not, unusually, by the Respondent which gives rise to the question of whether this position of the parties should not have been the other way around in the interests of clarity and transparency? Is sufficient information placed before the Appellant to examine the scheme and for the Tribunal to investigate its application having regard to rental evidence upon which to correctly ascertain the basis? The Tribunal considers that the information provided by the Respondent is deficient. Three key rental transactions were advanced by the Respondent to endorse the valuation scheme. The first was subject to

an appeal (and now appears in the Valuation List at a reduced figure); the second was a fuel service station only with no significant retail offer, being a fuel model type property unlike the subject Property. The third key rental transaction is important as it is a common comparison to both Surveyors and thus is the most reliable. The provision of one rental comparable in support of a retail model for the scheme is not encouraging in persuading the Tribunal that the scheme is well founded and appropriate to apply in **all** cases. If the rental evidence exists to endorse the scheme of valuation the Tribunal needs to see and examine that, in order to ensure a correct, uniform and equitable valuation results from its Determination.

- 10.9 Notwithstanding the evidence advanced by Mr. Doorly for the Respondent, the Tribunal notes the contrast in the net annual value of the comparable properties displayed in the evidence put forward by Mr. Halpin for the Appellant, especially as relayed in sections 7.3 & 7.4 above, and also where he demonstrated that the current valuation of the retail element devalues to an equivalent zoning unit value rate of € 240 per m² Zone A which places it at **double** the Zone A rate in the rest of the town as well as to the adjacent retail units, all being valued at the Zone A rate of € 120.00 per m². The devaluation of the NAV on an overall basis is less significant at € 86.00 per m² overall because he has referenced several supermarkets at unit value rates of € 50-65.00 per m² (his Comparables 2-6 being mainly larger shops but with Comparable Number 4 most relevant in terms of size)
- 10.10 The core issue arising in this appeal is the dispute between the Surveyors as to the value of the retail element which flows directly from the categorisation of the property. Mr. Halpin, for the Appellant, considers that the Ratepayer is prejudiced in the amount of the valuation because once it is labelled as being a service station owing to the fuel pumps to the front, this causes the Commissioner of Valuation to ascertain the trading accounts for the throughput and shop etc. The Tribunal, whilst not directly comparing service stations with retail, notes the glaring anomaly between retail components in service stations with other supermarkets which was the point made by Mr. Halpin. In those circumstances this could give rise to some ratepayers seeking to divide their relevant property into two separate ones to avail of the non-application of the scheme to the retail component, thereby securing a consequent reduction in the net annual value.

- 10.11 The Tribunal has no evidence that the hypothetical Tenant envisaged by sec. 48 of the Valuation Act 2001 would be willing to pay **so much more** for the subject Property, given the pattern of net annual values of other comparable properties, because the Property must be viewed “vacant and to let” at the valuation date. Undue reliance on accounts may run the risk of straying into the territory of valuing the business rather than the Property. Accordingly, the estimate of FMT of the retail element in this case must be based on the reasonable expectations of the hypothetical Tenant (a reasonably efficient operator) seeking to fix an appropriate **rent** for the Property.
- 10.12 The Tribunal acknowledges the difficulty for the Commissioner of Valuation in developing and employing a scheme of valuation for service stations with precise mathematical inputs to achieve the requirements of sec. 19(5) of the Valuation Act 2001 but the consequence of adopting such a scheme, without flexibility, gives primacy to obtaining **uniformity** but, as in the present appeal, that can give rise to the (albeit, unintentional) abandonment of the other two prerequisites ordained by the section, which are **correctness** and **equity**. This section of the Act mandates that, as far as practicable, the result must combine all three, i.e. correctness, equity and uniformity.
- 10.13 Accordingly, on the grounds of equity the Tribunal considers that, as the scheme employed by the Commissioner is generally applicable, (the fuel throughput element is agreed) the preferred method is, having taken a “stand back and look” approach, to adjust the FMT of the retail element in order that the resultant NAV for that component bears some broad relativity to retail values to achieve a correct, equitable and uniform result. In order to reflect what a reasonably efficient operator would expect to achieve, the Tribunal considers a method of adjustment, adopted frequently in relation to FMT for the **retail** element. In this instance the FMT requires to be adjusted downwards by 25% (which was arrived at having regard to the limited market evidence put before the Tribunal and reflects the wide range of other net annual values appearing in the list) and then valued in line with the scheme at an appropriate rate.

The Tribunal considers that this brings the valuation more into line with the pattern of net annual values demonstrated by the evidence but especially the Appellant's comparables no. 7 & 8 in Belturbet and No. 10 (Bailieborough) which are replicated by the Respondent's comparables No. 1, 3 & 10. When viewed as vacant and to let at the valuation date reflecting factors such as location, size and other physical attributes in addition to earning potential alone.

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 € **62,125**.

This is calculated as follows:

(1) Fuel	800,000 litres	@ € 0.005 per litre	4,000
(2) Shop (adjusted) FMT	€ 2,325,000	@ €0.025	<u>58,125</u>
		Total:	62,125
		NAV	€ 62,125