

**Appeal No: VA19/5/1363**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Ard Services Ltd T/A Circle K**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 303115, Fuel/Depot at Coolmine Business Park, Porters Road (Coolmine),  
County Dublin

**B E F O R E**

**John Stewart - FSCSI, FRICS, MCI Arb**

**Deputy Chairperson**

**Orla Coyne - Solicitor**

**Member**

**Gerard O'Callaghan - MRICS, MSCSI**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15<sup>th</sup> DAY OF FEBRUARY, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 8<sup>th</sup> 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 €125,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: “*The Valuation is Incorrect.*”

*The Valuation is excessive and unfair, and not in conformity with the Valuation Scheme adopted by the Valuation Office, or in accordance with rating principles and practice.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €111,700.

## **2. REVALUATION HISTORY**

2.1 On the 29<sup>th</sup> 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 €100,500.

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 increased to €125,000.

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €125,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15<sup>th</sup> day of September 2017.

## **3. THE HEARING**

3.1 The Appeal by way of an oral hearing held remotely on the 24<sup>th</sup> day of April 2023. Mr. John C. Elliot FSCSI FRICS, MCI Arb of Elliot & Fitzgerald represented the Appellant, and Mr. Michael Vallely BL and Mr. Pdraig Keenen of the Chief State Solicitors Office represented the Respondent.

3.2 The Appeal was one of 3 appeals dealing with three separate purpose-built petrol filling stations trading as Circle K. Prior to the hearing of the case Mr. Vallely BL made representations in respect of a discovery application that had been made on behalf of the Respondent seeking certain documentation from the Appellant. The Application was made by the Respondent by letter dated the 24/03/2023 to Mr Elliott for the hearing scheduled on the 24/04/2023. Mr. Vallely requested that the Tribunal consider the request made under the said letter. Mr. Vallely accepted that Mr. Elliott had attempted to deliver as much discovery as he could, however his client was not in a position to deliver a precis in this case or in any of the three cases before the Tribunal as it did not have sufficient information to do so. Mr. Vallely did accept that while the original valuation was commenced in 2017 and completed in 2019 his

client was now seeking discovery six years after the original valuation. He further accepted that his client was late in seeking discovery and that the letter of the 24/03/2023 from the Respondent was not in compliance with the time limits as set out under Rule 60 of the Valuation Tribunal (Rules) 2019. But the information requested was needed to test the figures of the Appellant and would also enable his client to produce a precis with comparators as the Appellant has no comparators in its precis.

3.3 Mr. Elliott in response replied he had endeavoured to supply the information as requested by the Respondent on behalf of his client. He pointed out however the request for discovery was out of time.

3.4 The Tribunal heard the submissions of both Mr. Vallely and Mr. Elliott and adjourned for a short period of time.

3.5 The Tribunal upon its return advised the Appellant and the Respondent that they would not accede to the request for discovery made by the Respondent as it was out of time and was not in accordance with Rule 60 of the Valuation Tribunal Rules 2019.

3.6 The Tribunal advised both parties that they were proceeding with all three appeals notwithstanding that the Respondent had not filed any precis in relation to any of the cases before it today. In accordance with the rules of the Tribunal the Appellant had exchanged its report and precis of evidence prior to the commencement of the hearing and submitted it to the Tribunal.

#### **4. FACTS**

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The property Circle K Service Station Coolmine Dublin 15 is situated within the Coolmine Business Park off the southern side of R853 approximately 12.3km northwest of Dublin City Centre.

4.3 It comprises a purpose-built petrol filling station occupying a regular shaped and surfaced site, upon which stands a single-storey retail unit, and petrol forecourt with four pump islands under a luminated canopy, together with an illuminated price / ID sign abutting the pavement.

4.4. It has a frontage of approx. 41 meters, a shop of 94.88m<sup>2</sup> and a concrete surfaced forecourt 669.7m<sup>2</sup> with four pump islands and dual sided petrol dispensers and illuminated canopy 162m<sup>2</sup> and a brush car wash.

## **5. ISSUES**

The issue to be determined here is one of quantum. The Appellant in its appeal stated that the valuation is excessive and unfair and not in conformity with the Valuation Scheme adopted by the Valuation Office or in accordance with rating principles and practice.

## **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** Mr. Elliott having taken the oath adopted his precis as his evidence in chief, in addition to giving oral evidence. Appellants summation.

7.1 Mr. Elliott during the course of his evidence stated that the valuation scheme that he had adopted is the valuation scheme adopted by the Valuation Office. He had furnished certified

trading figures to the Valuation Office on the 22/07/2019 for the years 2016, 2017 and 2018 and by email of the 09/11/22 the Valuation Office confirmed that the electronic signature on the accounts was acceptable.

7.2 Under the scheme which Mr. Elliott was putting forward to the Tribunal allowances are made for low margin fuel cards and low margin sales being tobacco and lotto. The other percentages as put forward by Mr. Elliott for retail and car washes was not disputed by the Valuation Office and deemed to be accepted by it.

7.3 Mr. Elliott emphasised in his evidence that the station was a 16 hour a day trading station. A reduction in accordance with the scheme has been applied to the low margin fuel cards based on the average forecourt sales from 2015 to 2017. This together with an adjustment to the shop low margin sales are taken at a discount based on the average of tobacco and lotto sales in accordance with the scheme.

7.4 He stated that Coolmine Circle K was in competition with the Circle K station at Hartstown and the Apple Green station at Clonsilla and two other stations within the same catchment area. He believed because it is not a 24-hour station an allowance should be made in relation to its lesser trading hours of 16 hours a day. He contended for a NAV of €107,950 a lesser sum than the NAV fixed by the Respondent in the sum of €125,000.

7.5 The calculations of how Mr. Elliott came to the NAV of €107,950 is set out as follows.

<b>Forecourt</b>	<b>Litres</b>		<b>€/1000 Litres</b>		<b>NAV€</b>		
Throughput	5,921,154	@	.008c	=	€47,369.23		
Low margin fuel card	911,442	@	.004c	=	-€3,645.77		
<b>Level</b>	<b>Use</b>		<b>Turnover</b>				
0	Retail		€1,539,138	@	3.75%	=	€57,717.68
Low margin sales			€ 437,471	@	1.875%	=	-€8,202.59)
Car Wash			€ 98,089	@	15.00%	=	<u>€14,713.35</u>
							107,951.91
							<b>€107,950.00</b>

### **Cross examination by the Respondent**

7.6 Mr Vallely had no difficulty with the throughput fuel figures and retail and accepted same, however when Mr Elliott was questioned as to where the evidence in his precis in relation to the basis for his low margin fuel cards was. Mr. Elliott agreed with Mr. Vallely that same had been omitted and accepted that the deduction he had made for low margin fuel cards could not be included in his NAV.

7.7 Mr. Vallely also questioned Mr. Elliott about the figures produced under “lotto etc.” Mr Elliott replied that these figures included tobacco. Mr. Vallely advised the Tribunal that he accepted the retail sales, but he was not in a position to advise what the sales in relation to lotto etc comprised. He believed that the figures under the heading lotto etc. could be both tobacco and lotto but there was no separate actual break down in the figures. He requested that these figures are low margin and ought to be accepted.

7.8 Mr Vallely asked Mr Elliott had he any other explanation as to why the 16 hour opening hours was being used by him in the seeking of a reduction of the NAV, he responded by saying that it would be good valuation practice to adopt a methodology as they do in England where allowances are made when there are different opening hours in stations especially when it is a 16-hour station as this one is.

7.9 Mr. Elliott also put forward the difficulty in obtaining figures because of COVID in this case. He said that the Valuation Office had changed the scheme without advising the valuers. The new scheme now requested a breakdown in relation to franchise agreements and figures in relation to same. When he provided information to the Valuation Office, they came back seeking more information which his client was unable to provide.

7.10 The Tribunal questioned Mr Elliott as to whether or not he was looking for a different percentage on margin and he said in relation to the scheme he had no difficulty with the scheme however he believed that the Valuation Office may have been working off higher figures and not the figures as provided by him, because a graduated scale rate applies within the scheme. He said the shops are based on a percentage basis rather than on a euro basis. He was asked whether or not if there was an off licence in a shop, did this have any effect and he replied no as it's figures are absorbed into the shop's turnover, namely its trading figures.

## **8. RESPONDENT'S CASE**

8.1 No precis was provided by the Respondent nor was any evidence given on how the Commissioner calculated the original NAV.

## **9. SUBMISSIONS**

9.1 Mr Elliott had no further submissions to make.

9.2 Mr Valley in his submission did not accept that the scheme was changed from time to time. The 2018 figures as produced are not relevant.

9.3 Mr Valley stated that Mr. Elliott had already accepted the low margin fuel card figures had been omitted and that no real distinction had been made between lotto and tobacco.

9.4 While Mr Elliott believed the Valuation Office ought to have made an allowance because the current service station is a 16-hour service station and while he fed this fact into his calculation of the NAV Mr. Valley believed this statement was not precise enough. There was no evidence to back it up apart from a methodology that he referred to which applied in England. This was not the case in Ireland.

Mr Valley stated that it is well established that it was up to the Appellant to prove his case and that the NAV as set by the Valuation Office is the correct one. Accordingly, Mr Valley requested that the Valuation Office's valuation should be confirmed.

## **10. FINDINGS AND CONCLUSIONS**

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, in so far 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 Fingal County Council.

10.2 The Tribunal having read the Appellant's precis and listened to the evidence of Mr. Elliott, noting that no evidence or rationale was heard by the Tribunal in respect of the Respondent's case. However, the Tribunal listened to counsel's cross examination of Mr. Elliott and to his various submissions.

10.3 The Tribunal having listened to all the evidence of Mr. Elliott is not any the wiser as to how Mr. Elliott could state that the Valuation Office had made no allowance in relation to the subject property being a 16-hour station and not a 24-hour station. Mr Elliott provided no evidence by in respect of same other than to state that in England such methodology is accepted but not in Ireland. Accordingly, the Tribunal does not accept Mr Elliott's argument that such an allowance be made.

10.4 The onus lies on the Appellant to show that the NAV of the subject property as determined by the Respondent is correct. The Appellant accepted that the low margin fuel card figures as put forward by the Appellant are not to be included in his calculation of the NAV as no evidence to support the figure of €3,645.77 was produced.

10.5 Mr Elliott further stated that the station was in competition with other stations within the same catchment area, no evidence was provided in respect of same. Neither did he produce any comparators in his precis to prove this contention.

10.5 While Mr. Elliott referred at numerous stages throughout his precis to a scheme, no evidence was produced in respect of same and was not attached to his precis.

10.6 The Tribunal did not consider the Appellant's figures for 2018, as the years concerned were 2015, 2016 and 2017.

10.7 Mr. Elliott did not elaborate on the breakdown in the figures that he produced in his precis. There was no breakdown in the low margin sales provided for Coolmine as had been provided for in the two other Circle K properties heard on the same day by the Tribunal, namely Ballymun Cross and Circle K Miltonfields, Swords. It is not acceptable to state that under the column "lotto etc." that tobacco is included therein. The Tribunal cannot accept without evidence that this statement of "lotto etc" is to include tobacco.

#### **DETERMINATION:**

Accordingly, for the above reasons the Tribunal disallows the appeal and confirms the decision of the Respondent at €125,000. The Tribunal is disappointed that the Respondent has not provided any precis of evidence and has relied on the fact that the onus of proof in on the Appellant.

**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.