

Appeal No: VA19/5/1374

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Circle K

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 304282, Fuel/Depot at Hartstown Shopping Centre, Hartstown Road,
Dublin, County Dublin.

B E F O R E

Hugh Markey - FRIC FSCSI,

Sarah Reid - BL

Eamonn Maguire - FRICS, FSCSI, VRS, ARB

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF FEBRUARY, 2024

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 8th 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 €173,500.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"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 stated in the grounds of Appeal that the valuation of the Property ought to have been determined in the sum of €152,300.

2. REVALUATION 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 €223,000.

- 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 €173,500.
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €173,000.
- 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 10th day of May 2023. At the hearing, the Appellant was represented by Mr John C. Elliot FSCSI, FRICS, MCI Arb of Elliot and Fitzgerald and the Respondent was represented by Mr. Michael Vallely BL, and Mr. Pdraig Keenan of the CCSO.
- 3.2 Prior to the hearing, at the call over for Appeals commencing in May 2023, the Respondent sought an adjournment of the Appeal on the basis that the valuer assigned to the matter was unavailable, and the Respondent did not have adequate resources to meet the commitment required to defend the present Appeal. On the 25th February 2023 the application for an adjournment was refused by the Chair of the Valuation Tribunal and the Appeal was listed for hearing.
- 3.3 The Appellant filed their précis of evidence in accordance with the Rules of the Tribunal and submitted same, prior to the commencement of the hearing. The Respondent did not file a précis and no expert evidence was adduced at the hearing on their behalf. The Respondent was represented by counsel at the oral hearing. The Appellant's witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence. The Respondent gave no evidence, but through counsel, cross examined the Appellant's witness.

4. FACTS

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

- 4.1 The property is located on Hartstown Road adjoining Hartstown Shopping Centre within a residential suburb approximately 14km northwest of Dublin city centre.
- 4.2 The property is a petrol filling station of single-storey construction with a canopy covered petrol forecourt containing three pump islands. The shop element of the property comprises retail and storage accommodation measuring 187.35 sq. m and 42 sq. m respectively. There is a car wash in the property.
- 4.3 The property is stated as "assumed freehold".

5. ISSUES

- 5.1 The Appellant's grounds of appeal are set out above and maintain that the Property was unfairly valued in light of its particular trading circumstances, and based on financial figures which were made available to the Respondent.
- 5.2 The Appellant contended for a valuation as follows:

Forecourt	Litres		€/1000 Ltrs		NAV €
Throughput	5,107,438	@	8.00	=	40,859.51
Low margin fuel card	522,629	@	4.00	=	(2,090.52)
Level	Use	Turnover			
0	Retail	€2,688,327	@	4.00%	= 107,533.08
	Low margin sales	€1,632,173	@	2.00%	= (32,643.46)
	Car Wash	€75,273	@	15.00%	= €11,290.95
					<u>€124,949.56</u>

But Say €124,950.00

- 5.3 The Respondent was not in a position to provide evidence or to otherwise support the valuation as entered on the List and no formal case was made in that regard.
- 5.4 Arising from the cross examination of the Appellant by counsel for the Respondent, the Appellant conceded that figures included in his précis of evidence were incorrect and there was agreement that same could be amended. The revised valuation contended for by the Appellant is set out in paragraph 7.9 below.

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.”

- 6.3 In order to obtain necessary information in relation to a property, the Commissioner or a person acting on the Commissioner’s behalf, is entitled under Section 45 of the Valuation Act, to serve a notice seeking information in respect of that property. Section 45(1) provides as follows:

“An officer of the Commissioner, or a person acting on that person’s behalf, may serve a notice on—

(a) the occupier of any property (whether relevant property or not),

(b) an interest holder, or

(c) such other person who, in the opinion of that officer or person so acting as aforesaid, has information in relation to such property,

requiring him or her to supply, within a period specified in the notice (being a period of not less than 28 days beginning on the date of the service of the notice), and in a manner specified in the notice, to the person who served it such information as is specified in the notice, being information that is necessary, in the opinion of that person, for the purpose of the performance by the foregoing officer, or another officer, of the Commissioner of his or her functions under this Act.

- 6.4 Arising from a S.45 request, and failed compliance by the person to whom the request was made, Section 34(3) provides:

“(3) A person who fails to supply information specified in a notice served under section 45(1) prior to the issue of –

(a) the valuation certificate pursuant to section 24 or 28,

(b) a global valuation certificate, or

(c) a notice under section 28,

shall not be permitted to ground or support an appeal to the Tribunal by reference to information that the person has so failed to supply.”

7. APPELLANT’S CASE

- 7.1 Mr. Elliot contended that the Respondent had failed to account for several matters, and these had, or should have had, a material bearing on the valuation of the property. These are outlined hereunder. He confirmed that the Respondent was furnished with the

Appellant's certified trading figures on 22nd July 2019 and a copy of same was appended to his précis.

- 7.2 The Appellant stated that the property is in competition with several other service stations in the same catchment area and relies on providing a local neighbourhood service with the shop offering being in competition with the adjoining Hartstown shopping centre for business.
- 7.3 Mr. Elliot argued that petrol filling stations were not homogeneous and competition in the catchment area was primarily from oil company operated sites and that the property is operated on a 24-hour basis. The Appellant argued that the Respondent failed to take this into account.
- 7.4 24-hour operation
The Appellant stated that the value of a petrol station is determined by its potential for trade and therefore rents are analysed, having regard to the maintainable throughput of the forecourt which was, in turn, based on a normal 18-hour trading day for such operators. The Appellant claimed that as a 24-hour station, the property should be adjusted and, in his opinion, the actual throughput volume would normally be reduced by 5% to arrive at the hypothetical maintainable throughput. Mr. Elliot posited this was accepted practice where the opening hours were in excess of 18 hours, on a manned basis.
- 7.5 Application of the Respondent's scheme:
The Respondent's scheme for petrol/fuel depots was not put before the Tribunal in evidence. Notwithstanding this, Mr. Elliot indicated acceptance of the said scheme but contended that it does not allow for a practice of reducing the NAV for 24-hour operators and thus was unfairly resulting in an incorrect valuation. He further suggested that he was justified in applying a reduction in accordance with the Respondent's scheme in respect of low margin fuel cards based on average forecourt sales from 2015 to 2017. He also noted that an adjustment to the low margin shop sales were taken at a discount, based on the average tobacco and lotto sales, which was in accordance with the Scheme.
- 7.6 NAV contended for:
Arising from the above, the Appellant contended for a NAV of €124,950.00 broken down as per paragraph 5.2 above.
- 7.7 In cross examination of the Appellant, Mr. Vallely took issue with the Appellant's calculations and in particular the breakdown of 'low margin sales' which were identified by Mr. Elliot as shop turnover and tobacco sales. The Appellant's headline figure of €1.4 million (representing a three-year average for these items) was queried in circumstances where the addition of the annual figures for such items left an unaccounted shortfall of approximately €300,000 in the Appellant's claimed sum. The Respondent took the Appellant through the figures included in his précis which totalled €1.1 million and same was agreed as the average trading figure that fell to be considered in this Appeal.

- 7.8 The Appellant noted that representations were made to the Commissioner, and that following these, the proposed valuation in respect of the property was reduced from €223,000 to €173,000. No further information was contained in the Appellant's précis beyond the figures cited above and when the Appellant was asked by the Tribunal as to what submissions were made as part of their engagement with the Respondent, Mr. Elliot felt that was a line of questioning more properly directed to the Respondent. Mr. Elliot further argued that in any event those interactions were covered as 'without prejudice' communications and maintained he was not obliged to answer the Tribunal on this point or provide an account of the reasons relied on by him when seeking a reduction in the proposed valuation.
- 7.9 Following cross examination by Mr. Valley BL for the Respondent, Mr. Elliot accepted the figures in his précis would only support a valuation of €134,950 which he then contended for in the circumstances.

8. RESPONDENT'S CASE

- 8.1 For reasons outlined in paragraphs 3.2 and 3.3 above, the Respondent cross examined the Appellant, through counsel, but did not otherwise defend or offer evidence to support the valuation of €173,500 as entered on the List.
- 8.2 In cross examination of the Appellant, Mr. Valley BL asked if the Appellant had received the Section 45 notice dated 9th August 2018 in respect of the property which sought trading figures and accounts. In reply, Mr. Elliot was unable to say if the notice had been received and it may have been sent to his client so he could not therefore say if he had responded.
- 8.3 Mr. Valley BL took issue with the Appellant's calculation of value (outlined in paragraph 5.2 above) and queried how those figures were arrived at, for example the 5.1 million litres cited for throughput. The Appellant's response was that the figures were set out in the certified accounts provided to the Respondent.
- 8.4 The Respondent was limited in his ability to engage with this Appeal, having not provided any evidence. However, Mr. Valley BL summed up the legal position insofar as the onus is on the Appellant to persuade the Tribunal that the valuation is incorrect. He noted that although he had only succeeded, through his cross examination, in establishing a €10,000 reduction for low margin items, the Tribunal had to decide what is the appropriate NAV for the subject and that task falls to the Appellant to satisfy the Tribunal that his opinion of value is correct.
- 8.5 As regards the evidence contained in the Appellant's précis, the Respondent argued the Tribunal could not be convinced that Mr. Elliot had established the discounts for which he contended. Mr. Valley BL also noted that where the Appellant could not answer the Tribunal's question regarding the representations made, it was further proof that the Appellant had not discharged the burden required of them in the Appeal.

9. SUBMISSIONS

There were no submissions of a legal nature, save the points raised by Mr. Vallely BL in his concluding remarks regarding the onus of proof in the Appeal.

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 Fingal County Council.
- 10.2 It is a well-established principle (see *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053)) that the Appellant in each Appeal must satisfy the Tribunal of their case and the onus of proof rests with the Appellant in that regard. As to the level of evidence required, the Tribunal confirmed in *FGM Properties v Commissioner for Valuation* (VA19/5/1091) that “10.13 The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.”. In that regard, the strength and reliability of the evidence is a fundamental consideration before the Tribunal. Further, although the Respondent did not submit a précis in the present appeal or call expert evidence to support the valuation on the List, the onus remained on the Appellant to discharge the burden of proof in order to succeed in their Appeal.
- 10.3 In the present instance, the Tribunal also notes that that Appellant did not provide any comparative evidence of similar or comparable properties in the rating authority, including those operating as 18 hour versus 24 hour operations. No rental transactions for comparable properties in the rating authority were relied on and the grounds were focused on the Respondent’s alleged failure to factor into their deliberations the matters outlined in section 7 above.
- 10.4 The Tribunal relies on the parties to clearly and correctly set out their case. While information can be amended if discrepancies are discovered during the hearing of an Appeal, it is unacceptable for figures to be included in a sworn précis that are later found to be in error or unsubstantiated. In this Appeal, the Appellant contended for a valuation in the sum of €152,300 in their filed grounds of Appeal. Thereafter, the Appellant contended for a figure of €124,950 in their précis – though no reference was made as to how or why this differed from the valuation cited in the Notice of Appeal. Following cross examination by counsel for the Respondent, the figure contended for by the Appellant was further amended, as outlined above, when the calculation relied on was conceded to be incorrect.
- 10.5 The Tribunal relies on the expert knowledge of witnesses before it, including specific knowledge of the parties in relation to the property under appeal. This is information within the party’s own knowledge, having ordinarily inspected the property and being familiar with the trading circumstances of the relevant operator, including having access to certified accounts for the business, those accounts being a component part of the valuation. The Tribunal trusts and relies on the witnesses before it to provide correct

and complete information so as to enable them perform their statutory task of reviewing valuations, as entered on the Valuation List.

- 10.6 The Tribunal was at an evidentiary disadvantage in the present Appeal by virtue of the fact that no evidence was available on behalf of the Respondent and therefore there was no way to ascertain which, if any, of the Appellant's concerns had been factored into the final determination of valuation for the subject property. In the ordinary course of an Appeal any representations made in respect of a property's valuation are included in, or otherwise made available through evidence at the Tribunal. However, in this instance, that information was not to hand, nor was it forthcoming from the Appellant. In the interests of understanding the process of valuation, as applied to a property under Appeal, the Tribunal often seeks guidance from the parties and it is unfortunate that in this case, objection was taken the Tribunal's enquiries as to what representations were made by the Appellant, prior to the final certificate of valuation issuing. Absent this information, the Tribunal cannot ascertain what objections were made to the Respondent and arising from which the proposed valuation was reduced from €223,000 to €173,500 in respect of the Property.
- 10.7 For reasons outlined at paragraph 7.8 above the Appellant maintained he was not obliged to convey what was put to the Respondent when a reduction was sought in the respect of the proposed valuation for the property. That is a matter for Mr. Elliot and his client, the Appellant. The Tribunal notes however that where an Appellant comes before it and asks the Tribunal to draw inferences that the Respondent did not factor in core considerations in their determination of value, the onus is firmly on that Appellant to satisfy the Tribunal of that assertion.
- 10.8 Further and insofar as Section 45(1) falls to be considered, Section 34(3) imposes a ban on evidence being given that was not previously provided, though the Tribunal notes that the Appellant was unable to say if the statutory notice had been received by him or his client, and the Respondent did not make any comments or submissions on the point. The Tribunal notes that the Section 34(3) is mandatory in its application and precludes an Appellant from relying on information during an Appeal where that information was sought by the Commissioner and not provided at the relevant time. The Tribunal was not asked to make any findings as regards this aspect of the Appeal, but notes that there is no ambiguity as to the interpretation of Section 34(3) and no discretion on the part of the Tribunal as to its application of the provision where the issue arises.
- 10.9 The Tribunal finds that the Appellant provided figures in their précis that were incorrect. Though certified figures were included in the Appellant's précis, these were did not include certified figures for the car wash element of the operation. Further, the were inconsistencies between the certified figures included at page 11, and those included at pages 12& 13 of the Appellant's précis. In the circumstances, the Tribunal is not satisfied that the evidence before it was correct or otherwise reliable.
- 10.10 In addition, where the Appellant asserted that the Respondent failed to account for a 24 hour versus 18-hour operation in the context of the Property, the Tribunal notes that the Appellant could neither confirm nor deny if this objection had been put to the Respondent previously, noting the proposed valuation was decreased to €173,000 in the final certificate. Where that is so, absent confirmation as to what was, or was not

included in the (reduced) final certificate that issued, the Tribunal is being asked to reduce further, a valuation that may have already been reduced.

- 10.11 The Tribunal can only make decisions based on the information before it and in the present case, the Appellant provided figures in their précis that were incorrect, and those incorrect figures were relied on to ground the Appellant's calculation of NAV. In addition, the Appellant argued there was an accepted practice of applying allowances or discounts for 24-hour petrol stations, yet no evidence was provided to support this contention either by way of comparative properties operating as 24 hour undertakings, or by reference to comparative 18 hour undertakings.
- 10.12 The Tribunal, while an expert body knowledgeable in matters of rating, is not at large to blindly approve NAV figures presented to it. The Tribunal relies on the parties and looks to the evidence put before it, to instruct what is a fair and accurate valuation for a property given its circumstances and trading information, as would have instructed the NAV. Inconsistent evidence and unsubstantiated arguments were offered in this appeal and accordingly the Tribunal did not have before it evidence that was reliable or capable of being tested.
- 10.13 Accordingly, and for the reasons outlined above, the Tribunal finds that the Appellant has not made out their case.

DETERMINATION:

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.