

Appeal No: VA17/5/088

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MILLDAWN LTD.

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 220508, Service Station. at Local No/Map Ref: 22Cab, Newtown, Thomastown,
County Kilkenny.

B E F O R E

Eoin McDermott – FSCSI, FRICS, ACI Arb

Deputy Chairperson

Allen Morgan – FSCSI, FRICS

Member

Caroline Murphy - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF FEBRUARY, 2021.

1. THE APPEAL

1.1 By Notice of Appeal received on 4th October 2017 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 €115,400.

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:

1. *“The Valuation of the subject property is excessive and inequitable. The property’s value is not in line with the actual rental values of filling stations in the county of Kilkenny.*

2. *The Commissioner's formula based approach to Filling Stations is flawed. The subject is a clear case in point as the Commissioner is valuing the subject's shop at €100,000 NAV. This is: a) almost 4x PN 192726 in Callan (a similar station with an identical population base to Thomastown); b) Comparable in value terms to most supermarkets, particularly Lidl (PN 2196238), a supermarket of over 1,000m² with turnover ca. 10x the subject and almost double the former SuperValu (PN 220734). These properties are worth multiples of the subject property in terms of net annual value.*
3. *The occupier's retail acumen is being unfairly taxed. The subject's shop should be valued on zoned or overall rate per m² in line with other retail in the town. The subject property is a convenience store with pumps as evidenced by the turnover and the predominant business element.*

The Appellants do not believe that the Commissioner's turnover based formula approach to Filling Stations is universally correct. The formula can be effective in dealing with highly trafficked areas on the edge of cities of Motorway stations, however, it fails in the face of local 'filling stations' which are really just shops with pumps who derive the majority of the turnover from the shop. Stations where shop turnover exceeds 30% of gross receipts should be considered on a Zoned Retail Basis or an Overall Retail Basis (/m²) in order to ensure equity and fairness."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €57,000.

2. REVALUATION HISTORY

2.1 On 25th May 2017 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 €127,400.

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 €115,400.

2.3 A Final Valuation Certificate issued on 7th September stating a valuation of €115,400.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing, on 1st December 2020. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA. (Mod) of Eamonn Halpin & Co. and the Respondent was represented by Mr. Adrian Power Kelly FRICS, FSCSI, ACI Arb, RICS Reg Val of the Valuation Office.

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.

4. FACTS

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

4.2 The property is located on the east side of Lady's Well Street on the outskirts of Thomastown. The town centre is approximately 400m south of the subject property and the local Lidl and Supervalu stores lie to the north of the subject.

4.3 The property comprises a single storey premises consisting of a filling station, retail outlet, and manual car washer. The filling station comprises 2 islands with 3 diesel pumps, 11 unleaded pumps, 1 kerosene pump and a gasoil pump.

4.4 The floor areas and NAV of parts of the property have been agreed as follows:

| Unit | Floor area (Sq. M.) | NAV € psm | NAV | Comment |
|------------|------------------------|-----------|-----------|--------------|
| Retail | 251.14 | N/A | N/A | To be valued |
| Offices | 38.76 | | | To be valued |
| Stores | 137.12 | | | To be valued |
| Cold Store | 80.34 | | | To be valued |
| Workshop | 93.80 | €25 | €2,345.00 | Agreed |

| | | | | |
|------------|--|--|------------|--------|
| Throughput | | | €11,100.00 | Agreed |
| Car wash | | | €2,000.00 | Agreed |

5. ISSUES

The issues that arise in this appeal are the quantum of value and the Respondents assessment of the turnover from the shop.

6. RELEVANT STATUTORY PROVISIONS:

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

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

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

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

7. APPELLANT’S CASE

7.1 Mr. Halpin, on behalf of the Appellant, opened his case by describing the location and layout of the property, using photographs contained in his précis. He pointed out that the subject property was the only petrol filling station in Thomastown. He noted that the sole item of dispute between the parties was the approach to be taken to valuing the retail element of the property, everything else being agreed. He said that the turnover figures provided indicated that the retail turnover drove fuel sales, while for most petrol stations the reverse applied. He doubted that the Respondents valuation schematic, which was set out in detail, was flexible

enough to allow for this and noted that the NAV proposed for the retail element of the subject property was close to that of the NAV applied to the two major supermarket properties in Thomastown, Lidl and SuperValu, despite the supermarket properties being substantially larger properties than the subject. He also pointed out that the valuation schematic did make allowances in situations where properties have low throughput volumes and high shop sales, albeit only in cases where the throughput was less than 1 million litres. In these situations the percentage multiplier applied to turnover was reduced. He noted that the Respondent had been unable to obtain any evidence of rental comparisons for similar properties within the Local Authority area and so had relied solely on the schematic in assessing the NAV. Finally, Mr. Halpin raised the issue of whether the Appellant was being penalised for supplying accounts to the Respondent and questioned whether accounts had been received in all cases.

7.2 Mr. Halpin put forward 9 NAV comparisons, nos. 1-6 were supermarket properties and nos. 7-9 were petrol filling stations with retail stores attached.

| No. | Location | Supermarket area M2 | Supermarket NAV/M2 | Comments |
|------------|-------------------------------------|--------------------------------|-------------------------------|--|
| 1 | O'Keefe's Daybreak Thomastown | 108.28 (overall) | €105 overall | Zoned valuation. No valuation for petrol pumps at front. NAV €11,350 |
| 2 | Former SuperValu, Thomastown | 712.40 | €70 | NAV €63,200 |
| 3 | SuperValu, Thomastown | 1,485.90 | €70 | Tribunal decision. NAV €140,800 |
| 4 | Lidl, Thomastown | 1,088.88 | €70 | NAV €112,000 |
| 5 | Centra, Piltown | 264.61 | €160 Zone A | Zoned property. Similar size and turnover to subject NAV €26,000 |
| 6 | SuperValu, Ballyragget | 674.80 | €60 | Tribunal decision. NAV €63,500 |
| No. | Location | Retail area | NAV (entire) | Comments |

| | | | | |
|---|-------------------------|-----|---------|--|
| 7 | Costcutter, Mooncoin | 182 | €29,700 | Fuel throughput slightly smaller than subject. Retail substantially less. |
| 8 | Campus, New Ross | 223 | €58,200 | Fuel throughput larger than subject. Retail substantially less. |
| 9 | Londis, Callan | 100 | €34,300 | Fuel throughput similar to subject. Retail substantially less. Population very similar. |

7.3 Mr. Halpin also put forward details of three Tribunal decisions as follows.

| No. | Case ref. | Name | Comments |
|-----|------------|-----------------|---|
| A | VA15/5/055 | Michael Leonard | Tribunal decision to value property as a supermarket with addition for pumps. Fuel sales in this instance were very small. |
| B | VA15/5/069 | Cloonreask | Tribunal decision to adjust retail turnover as it considered same to be excessive taking into account the size of the shop and the personal experience and skill of the operator. In this instance the retail T/O greater than 50% of the overall T/O |
| C | VA17/5/573 | Naas Oil | Tribunal decision to affirm Respondents valuation but drawing attention to what it saw as anomalies in the system adopted by the Respondent. |

7.5 Finally, Mr. Halpin put forward two rental comparisons located in Wexford and Athy, which he argued gave context to his argument.

7.6 Mr Halpin summarised his position by stating that the Appellant was being unfairly penalised for their skill and expertise in driving turnover in the store. As the Appellant occupied the only filling station in Thomastown there was little they could do to generate more fuel sales and so they had concentrated on building up the retail element of the business. This resulted in the unusual position for a petrol filling station where the retail sales accounted for well over

50% of the gross turnover of the business. Mr. Halpin's opinion was that the property should be valued as a retail store with petrol pumps attached, at an overall NAV of €70/M2 or €160/M2 for Zone A if the property was to be zoned, rather than as a percentage of turnover as per the Respondents schematic. He said this would be in line with the Tribunals previous decision in VA15/5/055 (*Michael Leonard*). Failing this, he suggested that the Tribunal should consider adjusting the retail turnover to take into account the size of the shop and the personal experience and skill of the operator, as per the Tribunals previous decision in VA15/5/069 (*Cloonreask*).

7.7 Mr. Halpin sought an NAV of €53,000, calculated as follows:

| Unit | Floor area (Sq. M.) | NAV € psm | NAV | Comment |
|-------------|------------------------|-----------|------------------|-----------------------|
| Retail | 427.02 | 70 | €29,891.00 | |
| First floor | 80.34 | 35 | 2,811.90 | |
| Off licence | | 15% | €4,905.00 | |
| Workshop | 93.80 | €25 | €2,345.00 | Agreed |
| Throughput | | | €11,100.00 | Agreed |
| Car wash | | | <u>€2,000.00</u> | Agreed |
| | | | €53,052.90 | Say €53,000.00 |

Mr. Halpin also provided a valuation on a zoned retail basis, however the retail zonings were not agreed with or by the Respondent.

7.8 Mr. Halpin put forward an alternate valuation of €57,400 based on an adjusted formula method. This involved a substantial reduction in the retail turnover and valuing the adjusted Turnover in line with the Respondents schematic.

7.9 Under cross examination Mr. Halpin agreed that the subject property was located close to both the Lidl and SuperValu supermarkets. He accepted that convenience stores tended to have a different price point to supermarkets but argued that they still competed with each other. He noted the Respondents position on the different sizes of supermarkets and convenience stores but pointed out that the subject was the only property of its type in Thomastown. In relation to Costcutter in Mooncoin, he confirmed that he had not been in the property but had inspected

from the outside. He accepted the Respondents contention that the standard of the internal fit out of the property was poor. He accepted that the Campus property in New Ross acted as a truck stop for the port but noted that this presented an excellent opportunity for the retail store, although he did accept that there was strong competition in the area. The parties disagreed on the relative merits on the location of the Londis unit in Callan. Mr. Halpin accepted that there was another filling station in Callan but noted that fuel sales in the comparison were similar to those of the subject property. He did not accept that there was greater competition in Callan. He accepted that retail sales made up 95% of turnover in the *Leonard* case. He accepted that the Tribunal did not accept the assertion that the property under appeal should be valued as a retail property in the *Cloonreask* case. He also accepted that a hypothetical tenant would look at turnover figures but argued that they would weigh them accordingly, adding that they seemed out of line in the subject case.

7.10 In response to queries from the Tribunal, Mr. Halpin explained that he had not made any allowance for fit out when valuing on a supermarket basis as the property was under 1,000 m². He advised (following discussion with Mr. Power Kelly) that the competition in Campus, New Ross was located approximately 1Km to 1.5Km away. Finally, he doubted that the price of fuel was a significant matter in this case, although it was noted that while retail turnover was net of VAT, the price at the pumps contained VAT and that this had to be deducted when considering relative turnovers.

8. RESPONDENT'S CASE

8.1 Mr. Power-Kelly, on behalf of the Respondent gave evidence of the property and the location, noting that a number of issues had been agreed between the parties. He noted that part of the first floor had not been valued as it was incapable of beneficial use due to the presence of a large RSJ.

8.2 Mr. Power-Kelly gave evidence of the valuation scheme adopted by the Respondent and the varying levels applying to shop turnover. This valuation scheme provides that retail properties attached to petrol filling stations should be valued on the basis of applying a percentage to the recorded turnover. NAV evidence was given of ten petrol filling stations in Kilkenny, with varying levels of throughput and turnover and it was noted that the scheme was consistently applied across each one. The comparisons were as follows: -

| No. | Property | NAV | Comments |
|------------|---|------------|---|
| 1 | Applegreen, Gallowshill, Kilkenny City | €140,000 | Agreed with agent at Tribunal stage. Accounts supplied. |
| 2 | Topaz, Waterford Road, Kilkenny City | €90,900 | No appeal. Accounts supplied. |
| 3 | Topaz, Callan Road, Kilkenny City | €115,600 | No appeal. Accounts supplied. |
| 4 | Applegreen, Vicar Street, Kilkenny City | €97,900 | No appeal. Accounts supplied. |
| 5 | Maxol, Dublin Road, Kilkenny City | €56,300 | Representations lodged. No appeal. Accounts supplied. |
| 6 | Texaco/Farrells, Castlecomber | €58,100 | Affirmed at Tribunal. Accounts supplied. |
| 7 | Top/Daybreak, Borris Road, Graiguenamanagh | €56,300 | Unchanged at Representations |
| 8 | Texaco/Daybreak, Urlingford | €81,000 | Unchanged at Representations |
| 9 | O'Mahonys, Bennetsbridge | €24,950 | Agreed with agent at Tribunal stage. |
| 10 | Eurofuels, Waterford, Co. Kilkenny | €157,600 | |

8.3 Mr. Power-Kelly noted that the subject property was the only petrol filling station in Thomastown and that the hypothetical tenant would have regard to the accounts of the business when formulating a rental bid. He was of the opinion that the subject property should be valued on the same basis as other petrol filling stations in the local authority area.

8.4 Mr. Power-Kelly requested the Tribunal to affirm the NAV of €115,400 made up as follows:

| Unit | Floor area (Sq. M.) | NAV € psm | NAV | Comment |
|-------------|--------------------------------|------------------|------------|----------------|
|-------------|--------------------------------|------------------|------------|----------------|

| | | | | |
|------------|-------|-----|------------------|-------------------------|
| Retail | | | €100,000 | Calculated on turnover. |
| Workshop | 93.80 | €25 | €2,345.00 | Agreed |
| Throughput | | | €11,100.00 | Agreed |
| Car wash | | | <u>€2,000.00</u> | Agreed |
| | | | €115,455.00 | Say €115,400.00 |

8.5 Under cross examination Mr. Power-Kelly said that he had not ranked his comparisons but accepted that the first 5 comparisons were located in or around Kilkenny City. Mr. Halpin asked if Mr. Power-Kelly agreed that the average fuel throughput of the 10 comparisons cited by the Respondent was 2.5m litres with an average retail turnover of €1.765m, equating to a fuel:retail turnover ratio of 66:34, while the ratio for the subject property was in the region of 28:72. Mr. Power-Kelly did not accept this analysis, saying that each property had to be looked at on its own merits. Mr. Halpin pointed out that the Top/Daybreak, Borris Road, Graiguenamanagh comparison had an almost identical fuel throughput to the subject, but that the retail turnover was only half that attributable to the subject. He queried whether that had raised any concerns about the valuation of the subject property but Mr. Power-Kelly said that it depended on the location. Mr. Halpin asked Mr. Power-Kelly to confirm that the Graiguenamanagh comparison was the only filling station in Graiguenamanagh, which had two supermarkets, a Supervalu and an Aldi, and Mr. Power-Kelly confirmed that to be the position. He also confirmed that the Texaco/Daybreak property in Urlingford was located close to a junction on M8 motorway.

8.6 In response to queries from the Tribunal, Mr. Power-Kelly confirmed that while he had inspected the listed comparisons, he had not measured them and could not confirm retail areas for any of the comparisons that he had put forward. He could not confirm whether accounts had been received for the Urlingford property.

8.7 The parties were asked by the Tribunal to comment on an observation that the comparisons tended to be one of two types, either located in relatively large conurbations such as Kilkenny City, or located in smaller towns or more rural areas. Mr. Power-Kelly responded by noting that the properties within the City boundary tended to have more competition, the one thing common to all the comparisons was that they were convenience stores and dealt mainly on

impulse buys. He gave his opinion that some stores charged at a higher price point and that may explain the greater retail turnover enjoyed by the subject property. Mr. Halpin disagreed with this assessment, arguing that the margin of overperformance by the subject property could not be explained by higher prices. He gave his opinion that the averages that he had quoted were a fair reflection of the market and that his Callan comparison, together with the Respondents Graiguenamanagh comparison, were the most relevant comparisons to be considered.

9. SUBMISSIONS

9.1 There were no legal submissions.

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 Kilkenny County Council.

10.2 Further in this as in all appeals before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination. In the present appeal the Appellant has argued that the valuation approach adopted by the Respondent in this instance is flawed, that the valuation schematic adopted by the Respondent is not sufficiently flexible to deal with the issues that this appeal deals with, and that the subject property is effectively a convenience store with petrol pumps attached as opposed to a petrol filling station. The Tribunal notes that the Appellant accepts the schematic as applied to Fuel Throughput, Car Wash Sales (which have been agreed) and Shop turnover (where shop turnover is less than 50% of the entire turnover). The Appellant has submitted NAV assessments for the subject property, two on a 'rate per sqm' basis, (the first 'overall', the second 'zoned') and the third using the 'adjusted formula' schematic for the Turnover Over-related elements of the business. Based on these different methods NAVs on the subject property of €53,000, €56,500 and €57,400 respectively were derived. The Appellant believes that Stations where shop turnover exceeds 30% of gross receipts should be considered on a Zoned Retail Basis or an Overall Retail basis (/M2) or the schematic should be adjusted in order to ensure equity and fairness.

10.3 In advancing this argument, the Appellant has compared the proposed NAV of the subject property to supermarket properties, convenience stores and other petrol filling stations in the same Local Authority area. The Appellant has also drawn the Tribunal's attention to previous decisions of the Tribunal and to evidence of open market lettings, all outside the Local Authority area. The Respondent gave evidence of 10 petrol filling stations from the same Local Authority area. The Tribunal notes that the NAV figure which the Appellant ascribes to the subject property under the schematic method (which applies to the FMT elements) of €57,400. This figure closely aligns to both of the alternative per M2 approach the Appellant's witness has given in evidence and specifically to the figure he has derived under the 'overall floor area' method (i.e. €53,000), as set out in his Precis. The Tribunal also notes that the Respondents have assessed a total NAV figure of €115,000 for the subject property under the schematic method.

10.4 The Tribunal notes the parties were unable to obtain any evidence of rental comparisons for similar properties within the Local Authority area. The Tribunal notes when examining the 13 petrol filling station with convenience store comparisons put forward by the parties, that in only two comparisons is the percentage of gross turnover attributable to retail sales greater than that attributable to fuel throughput. In these two comparisons one was located in Kilkenny City and the other was close to a motorway junction. It was also unclear whether accounts had been received in the latter case. Furthermore, the retail turnover of the subject property was the joint second highest of the 13 comparisons put forward, the highest listing being attributable to a filling station located close to Waterford Port. It should also be noted that the fuel throughput of the subject property ranked 10th out of the 14 properties (subject and petrol station comparisons) considered. The Tribunal considers that the high level of retail turnover when compared with the relatively low level of fuel throughput, based on the comparisons put forward by the parties, goes some way in supporting the Appellants case in this matter. In terms of location, the Tribunal notes that the Appellants comparison 9 and the Respondents comparison 7 are located in rural towns, Callan and Graiguenamanagh, similar to the subject property. The Respondent's comparison 7 is the only filling station in the town, similar to that of the subject property in Thomastown. However, the Tribunal notes that when examining the filling station comparisons in terms of size of retail areas that Mr. Power Kelly could not confirm retail areas for any of the comparisons that he put forward and that the retail area of the Appellant's comparison 9 is smaller than the subject property.

10.5 Mr. Halpin gave evidence that the NAV of the Appellants comparison 5 applicable to the retail element of the subject, calculated using the valuation schematic, is almost four times greater than that applicable to a standard convenience store of similar size and turnover. The Tribunal notes the evidence that the subject property is the only petrol filling station in Thomastown. It is therefore quite possible that the presence of the petrol pumps is driving extra business to the retail element – however, it still does not explain the differential between the NAV proposed for the subject and the NAV of a similar sized property with a similar turnover but with no pumps. In addition, the Tribunal cannot identify any reason given in evidence to suggest a special operation, skill or expertise in driving turnover in the store. The Tribunal feels that a competent hypothetical tenant would be reasonably confident of sustaining turnover.

10.6 The Tribunal was provided with evidence of the valuation schematic applied by the Respondent to the subject property. It provides that retail properties attached to petrol filling stations should be valued on the basis of applying a percentage to the recorded turnover, as opposed to applying a rate per square metre as is the approach for standard retail properties. The Tribunal understands that the Respondents adopt the schematic as they believe that convenience stores attached to petrol stations are more valuable than standard convenience stores, as the pumps attract custom to the shop. The Tribunal understands that this position is generally well accepted across the filling station industry. The Tribunal is satisfied that the valuation schematic has been generally established in County Kilkenny. However, having carefully reviewed the evidence in this appeal, the Tribunal notes the concerns raised by the Appellant regarding the different approach adopted when valuing a convenience store on a filling station site and on a non-filling station site. The Tribunal considers that a schematic that results in anomalies such as the one highlighted in 10.5 above cannot be considered sufficiently flexible to produce a fair and equitable assessment of NAV in every case. -However, in this instance the Appellant has not established to the satisfaction of the Tribunal a case for overturning this approach which has been widely accepted in Co. Kilkenny.

10.7 The Appellant drew attention to a proviso in the schematic which reads 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 % applied to the shop sales

has been reduced. A number of these types of properties may merit special attention.”

Neither party delved in any detail into the Respondent’s rationale which would explain this particular proviso or the final caveat – “*a number of these types of properties may merit special attention.*” Nonetheless the Tribunal considers it relevant in the context of this appeal insofar as it explains how the Respondent deals with properties that have low fuel throughput volumes and high shop sales. The Tribunal notes this concessionary approach is limited to situations where fuel throughput is less than 1,000,000 litres.

10.8 Mr. Halpin made reference to other decisions of the Tribunal dealing with filling stations but it is important to state that each appeal decided by the Tribunal falls to be decided on its own facts. This Tribunal is not bound to follow the decision of another Division of the Tribunal. However, to avoid inconsistencies in decision making, the Tribunal will normally give weight to a prior decision where the properties are comparable, and the relevant circumstances are substantially the same. Having considered the evidence in this appeal, the Tribunal does not consider that the particular circumstances set out in the following Tribunal decisions cited in this appeal exist. In the **Leonard** case, the proportion of fuel sales to gross turnover was nominal and the Tribunal does not therefore accept that the same principle to value the property as a retail store with petrol pumps should apply in this appeal. In the **Cloonreask** case, the Tribunal reduced the retail turnover to take account of the size of the shop and the skill and experience of the operator. It is unclear whether the same schematic applied in that case. There is also little evidence as to the size of the retail units in the Respondent’s comparisons available in this case. Finally, the Tribunal’s attention was drawn to an extract from the **Naas Oil** case which the Tribunal notes but does not consider relevant to this appeal, as it was primarily predicated on the rent passing on an existing lease.

10.9 Having regard to the evidence in this appeal, the Tribunal finds that the Appellant has proved the case that the valuation applicable to the retail element in this case is flawed. The Tribunal considers that the matter is best and most fairly dealt with by keeping to the principles as outlined in the valuation schematic applied by the Respondent but applying them in this case as if the proviso regarding low throughput volumes were applicable in order to achieve a valuation that is correct and equitable so that the valuation of the Property is relative to the value of other comparable properties on the valuation list in the rating authority area and fairly reflects the risk to a hypothetical tenant.

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 €77,900 as shown in **Appendix A** (N/A to public).