

Appeal No: VA23/5/0212 & VA23/5/0208

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Sharkeys Service Station

APPELLANT

and

Commissioner of Valuation (Tailte Éireann)

RESPONDENT

In relation to the valuation of
Property No's. 2209192 and 2199527, Store at Dunglow, Glenties, County Donegal.

B E F O R E

Donal Madigan, MRICS, MSCSI
Frank O'Grady, MA, FCSI, FRICS
Orla Coyne, Solicitor

Deputy Chairperson
Member
Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF DECEMBER, 2024

1. THE APPEAL

1.1 By Notice of Appeals received on the 9th day of October, 2023 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value (the 'NAV') of the above relevant Properties was fixed in the sums of **€2,050** and **€59,300**.

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. *The subject property should be amalgamated with PN 2199527, being a store for the filling station."*
2. *The subject property's valuation is incorrect and excessive owing to trading data. The Commissioner has taken the most aggressive view possible of the data provided. The subject property fits the Commissioner's scheme if valued under 1m litres."*

1.3 The Appellant considered, in the Notice of Appeal, that the valuation of the Properties ought to have been determined in the sums of **€ 0** (PN 2209192) and **€ 41,400** (PN 2199527).

2. REVALUATION HISTORY

2.1 This is a Revaluation appeal arising from the Donegal County Council revaluation which was undertaken as a result of the Donegal County Council Valuation Order 2022 that was signed by the Commissioner of Valuation on 6th September, 2022 and is for the Valuation List published on 22nd September 2023.

2.2 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1st March, 2023 (S.I. No.58/2023 - Tailte Act 2022 (Commencement) Order 2023).

2.3 On the 23rd day of September, 2022 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 € 90,000. (PN 2199527)

2.4 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 € 59,300. (PN 2199527)

2.5 A Final Valuation Certificate issued on the 15th day of September, 2023 stating a valuation of € 59,300 (PN 2199527) and € 2,050 (PN 2209192).

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the **1st February, 2022.**

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom, on the 7th day of October, 2024. At the hearing the Appellant was represented by Mr. David Halpin, M.Sc. (Real Estate), BA. (Mod), of Eamonn Halpin & Co., Chartered Valuation Surveyors & Estate Agents and the Respondent was represented by Mr. Anthony Kenneally M.Sc. (Hons) of Tailte Éireann.

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 Valuers submitted précis containing the Standard Declaration and Statement of Truth 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 to the north of Dunglow aside the N56.

4.2 The Property comprises a service station with four double sided pump islands under a canopy together with a shop with hot deli counter, seating, ATM, and off-licence. There is a car wash facility also on the site. The staff canteen and stores are located at first floor level.

4.3 The agreed floor areas are as follows:

Ground Floor

Shop	160.14m ²
Office/Stores	32.11m ²

First Floor

Stores etc	<u>133.40m²</u>	[This includes the area of PN 2209192]
	325.65m ²	

4.4 Financial information taken into account in the valuation was provided to the Tribunal but is not set out in this Determination in order to preserve confidentiality.

4.5 The Property is freehold.

4.6 Both Valuers use the shortened Receipts and Expenditure method of valuation by estimating the fair maintainable trade (FMT) a reasonably efficient operator could attain at the valuation date. This benchmarks the valuation by reference to the earning capacity of the Property by reference to percentages applied to differing income streams to produce net annual value.

5. ISSUES

Firstly, that the assessment for PN 2209192 be amalgamated with the main larger valuation in PN 2199527. Secondly, that the valuation for the (enlarged) assessment of NAV be **€ 40,100** as contended by the Appellant or at NAV **€ 62,200** as contended by the Respondent. The valuation for PN 2199527 currently appearing in the Valuation List is € 59,300.

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 statutes.

6.2 In **Revaluation** type appeals, as in this appeal, sec. 37 of the Act provides that the Valuation Tribunal must reach a determination having regard to the provisions of section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

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

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area."

6.3 The Net Annual Value (the **NAV**) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act, as amended, 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:

"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 expected to let from year to year, on the assumption that the probable average 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 submitted a detailed précis of evidence outlining, inter alia, the location, description, size etc of the Property supplemented by maps, photographs and included a history of the appeal and tables indicating financial and throughput figures. He supplied an opinion on the valuation and relevant comparables in support thereof. He included in the Appendices a copy of the Tribunal Determination in **Galfer Filling Station VA.17.5.046** concerning a service station and shop in Cloghan, Co. Offaly.

7.2 Mr. Halpin submitted a valuation of € 40,100 calculated as follows:

1. Fuel Throughput	982,500 litres @ 0.005		4,912.00
No allowance			
2. Shop FMT	€ 1,800,000 @ 0.025	45,000.00	
(a) less low margin items	€ 680,000 @ 0.0125	8,500.00	
(b) less low margin items	€ 60,000 @ 0.025	<u>1,500.00</u>	
		10,000.00	35,000.00
3. Car Wash	€ 5,100.00 @ 0.05		<u>255.00</u>
			40,167.00
		Rounded to NAV	€ 40,100.

7.3 In support of his valuation he relied on the following comparables, reproduced here in different layout and supplemented by additional facts (e.g. size) emerging from the oral evidence tendered at the hearing:

Comparable Number 1.

PN 2214353

Redacted Crossogs, Letterkenny, Co. Donegal Total Floor area: 276.08m² approx.

This property is valued at the NAV of € 21,000 that is calculated as follows:

1. Fuel Throughput	500,000 litres @ 0.004	2,000.00
2. Shop FMT	€ 800,000 @ 0.025	20,000.00
Less allowance	€ 210,000 @ 0.0125	2,625.00
Less allowance	€ 30,000 @ 0.025	<u>750.00</u>
		16,625.00
3. Workshop	121.68m ² @ € 20.00 per m ²	<u>2,433.60</u>
		21,058.60 say € 21,000

Eamonn Halpin & Co. acted in this case at representation stage.

Comparable Number 2.

PN 2183191

Stranolar, Co. Donegal

Ruled out of evidence by mutual agreement of the parties at the appeal hearing.

Comparable Number 3.

PN 2093969

Redacted, Circular Road, Letterkenny, Co. Donegal. Total Floor area: 135.00m².

This property is assessed at the NAV of € 42,800 that is calculated as follows:

1. Fuel Throughput

	1,400,000 litres @ 0.0055	7,700.00	
Less allowance	100,000 litres @ 0.00275	<u>275.00</u>	
			7,425.00

2. Shop FMT

	€ 1,600,000	@ 0.0375	60,000.00	
Less allowance	€ 590,000	@ 0.01875	11,062.50	
Less allowance	€ 360,000	@ 0.0375	<u>13,500.00</u>	
				<u>35,437.50</u>
				42,862.50 NAV € 42,800.

Comparable Number 4.

PN 2106319

Redacted, Money More. Co. Donegal. Total Floor Area 612.71m² + first floor not known

This property is valued at the NAV of € 22,700 that is calculated as follows:

1. Fuel Throughput

	1,200,000 litres @ 0.0055	6,600.00	
Less allowance	350,000 litres @ 0.00275	<u>962.50</u>	
			5,637.50

2. Shop FMT

	€ 500,000	@ 0.03	15,000.00	
Less allowance	€ 100,000	@ 0.015	1,500.00	
Less allowance	€ 75,000	@ 0.03	<u>2,250.00</u>	

			11,250.00	
3. Workshop	392.71m ² @ € 15.00 per m ²		<u>5,890.65</u>	
				22,778.15 NAV € 22,700.

Comparable Number 5.

PN 2005030

Main Street, Dunglow, Co. Donegal.

This property is valued at the NAV of € 11,030 that is calculated as follows:

Retail Zone A	28.06m ² @ € 140.00 per m ²	3,928.40
Zone B	28.06m ² @ € 70.00 per m ²	1,964.20
Zone C	45.14m ² @ € 35.00 per m ²	1,579.90
Remainder	39.22m ² @ € 17.50 per m ²	686.35
Store	72.00m ² @ € 20.00 per m ²	<u>1,440.00</u>
Additional items		<u>1,439.83</u>
		11,038.68 NAV € 11,030.

Comparable Number 6. (Context Comparison)

PN 1513286

Galfer Filling Station, Cloghan, Co. Offaly.

This property was determined at the Valuation Tribunal (VA.17/05/046) at NAV € 60,700 which has been analysed as follows:

1. Fuel Throughput	950,000 litres @ 0.005	4,750.00
2. Shop FMT	€ 2,200,000 @ 0.025	55,000.00
3. Car Wash		<u>1,000.00</u>
		60,750.00 NAV € 60,700.

7.4 In his oral testimony, Mr. Halpin, in summary, inter alia, submitted, in addition to a review of his valuation and comparable evidence in his precis, that:

(a) the confirmation of agreed floor areas with Respondent (to include first floor store PN 2209192) [sec.4.3 above]

(b) mutual agreed exclusion of his comparable no. 2 (PN 2183191 Respondent's no. 3)

(c) the Property is located north of the town of Dunglow adjacent to the N56

(d) reference to seven year's trading figures [redacted here] and the effects of Covid 19 on those, one feature being shop FMT increasing because of lock downs (being typical at that time) and that he had additionally provided an estimate of trade from 2020 to 2022.

(e) he agrees the valuation schematic outline provided by the Respondent (but not its application in this appeal) as set out in each separate précis

(f) the difficulty in the application of the Respondent's valuation scheme in that, because a line is drawn in the scheme for stations producing/selling more than 1m litres in fuel and, that consequently, this causes the shop FMT to be regraded upwards, in valuation terms, purely because of that basis of measure for the scheme (and relationship between fuel sales and shop FMT). Whilst there might be very little difference in NAV between fuel volume of 950,000 versus 1.1m fuel volume, once the station achieves over 1m in **fuel** throughput, the **shop FMT** rate of value applied to that trade is increased from 2.5% to 3.75% before allowances are applied for low margin items.

(g) he outlined two possible scenarios for the valuation by, firstly, adopting a lower volume of fuel sales at 1,035,000 litres and taking the shop FMT at € 1.8m to yield, on the valuation schematic an NAV of € 58,000 and then, with secondly, a corresponding example with taking fuel volume of 982,500 litres by deducting the volume of DCI fuel sales in advance and taking the shop FMT as before, at € 1.8m, to yield an NAV of € 40,100. He submits that a variance in NAVs in the two scenarios of € 17,900 (€ 58,000 minus € 40,100) is a very significant difference.

(h) whilst he accepts that valuation schemes and banding are a necessary part of the valuation process, he considers that the Commissioner of Valuation is taking a hardline here and that, in looking at banding where, on the scale, a point of change is encountered, some element of “smoothing” of the figures needs to be applied to prevent the occurrence of anomalies.

(i) by his reckoning the hardline application of the valuation scheme will lead to the rated occupier paying an extra € 40,000 in rates over ten years.

(j) he submits that the Commissioner of Valuation does not often take such a rigid approach and quotes from the decision in Galfer Filling Station VA.17.5.046 in support of this view where the Valuation Tribunal affirmed the Commissioner's valuation, who had adopted a level of fuel throughput below the average of the last three years (in that case) to bring the volume of fuel throughput below 1m litres.

(k) the difficulty facing the Appellants in terms of equity and uniformity in this case is twofold in that, firstly, information on service stations is not made public and one cannot tell from looking at the Valuation List how the valuation of comparables is arrived at. Secondly, there is a high proportion of valuations in this rating authority area which are estimated (i.e. lacking returns and full financial information to validate the scheme) The lack of compliance in this rating area is stark with 31 out of 90 [98] service stations under appeal.

(l) data was requested from ratepayers in Donegal in three tranches (mainly because of the incidence of Covid) over three separate periods and thus some service stations provided information earlier than others, and were valued by the Respondent based on that, so there could be differences owing to when other properties were valued and what returns those valuations were based on.

(m) some context can be drawn by reference to the retail comparable in the town, set out at number 5 in his précis, which is a similar sized shop to the retail area in the subject Property.

(n) commenting on his own comparables, he said that with regard to Number 1 that this is an example of a station that trades under a million litres and has Shop FMT of € 800,000 and this deals with agri-sales via a workshop and is located approx. 7 kilometres south west of Letterkenny on a regional road. He regards the subject Property as being better than this. Given the similarities in size it is difficult to see that the subject could be worth as much as treble this (NAV € 21,000) as the Respondent contends (€ 62,200), but believes it is worth double this at his figure of € 40,100. His number 2 comparable is struck from the evidence. Turning to no. 3 this is on the Circular Road in Letterkenny, being the most valuable town and having the highest population centre in the county and would be, in his opinion, superior to the subject Property and is valued at NAV € 42,800 but that it has unusually large allowances (as mentioned by the Respondent in his précis) deducted from the retail FMT and this looks like an error as the allowances are € 950,000, leaving only € 650,000 FMT straight sales, whereas he would have expected them to be in the order of € 590,000, in total, as the ratio of FMT retail sales to allowances, as set out in the breakdown, looks unlikely to be true. With regard to Comparable number 4, the fuel throughput is 1.2m litres and the NAV is just € 22,700 and this points to the shop trading not so well, possibly due to being in a poorer location, he concedes, than the subject Property but he does not believe that the subject [at the Respondent's figure of € 62,200] is worth treble the NAV of this comparable. His No. 5 is a retail comparable being the Mace unit in the main street of Dunglow, with an NAV of € 11,030, and so he suggests that if there are no fuel pumps outside the shop the Commissioner is content to value it at a unit value rate per square metre rather than having regard to sales. This creates an inherent unfairness by the application of the filling station formula because there is no other form of property where the Commissioner assesses two things selling the same item on different bases. For his final comparable, No. 6, this was a decision of the Tribunal on a service station with a valuation date of October 2015 and this case is the best example in his view of an appeal where the fuel was reduced by the Commissioner of Valuation from the actual figure to correct, in his opinion, an anomaly, and this indicates that the Commissioner made this adjustment to produce a more equitable result.

7.5 In cross examination, Mr. Halpin, confirmed in answer to questions, that:

(a) with regard to his comparable Number 3 (PN 2093969) that this valuation (€ 42,800) this appears low in his opinion because of the large amount of allowances for low margin items that had been applied to it, taking around 40% out of the trade but he notes it has a very prominent car wash which does not seem to have been included

(b) that this other comparable, PN 2093969, is less than half the size of the subject Property, which he accepted [clarified later in evidence from Respondent as Shop 63.00m² and Store 72.00m² Total 135.00m²]

(c) whilst he accepted that the Commissioner of Valuation (now TE) need a valuation scheme, he does not regard it as perfect and has queried it in several other appeals on service stations in the past, especially when there is no rental evidence to underwrite it

(d) he accepts that the subject is a standard service station with adequate profile, car parking and hot deli facility with seating area

7.6 In taking questions from the Tribunal, Mr. Halpin responded as follows:

(a) with regard to the authority quoted, i.e. the case of Galfer Filling Station VA.17.5.046 , that in that case, the fuel throughput for 3 years had averaged over 1m litres but that the Commissioner of Valuation, had, on that occasion, adopted a throughput of under a million litres (950,000 litres) which he interpreted as meaning the Commissioner had decided not to take a throughput over 1m as, in the scheme, that would cause the shop FMT to be valued at 4% because, on his reckoning, that would over-value the property relative to the scheme and that, therefore, the Commissioner had chosen to discount the fuel sales which, in turn, as that brings the fuel below the 1m threshold, then this discounts the rate used to value the shop FMT

(b) notwithstanding that the years' accounts tendered for the three calendar years in the Galfer case, that the valuation date in that case had been 30th October 2015 and that the date fell almost in the middle of those years and information for 2013 was not available but no fuel throughput was supplied to the Commissioner below 1m litres and he did not agree that the Commissioner may have had regard to earlier years in fixing the fuel throughput at 950,000 litres.

(c) that the point is that as one reaches an inflection pint of 1m litres fuel that care must be exercised in the interpretation of the figure produced by the application of the scheme

(d) that no lease details were provided in Galfer but that it had been a form of licence between Spar and the occupiers and that it was not an open market leasehold in the usual sense

(e) the 982,500 litres fuel he had adopted was achieved by deducting the DCI fuel in advance instead of giving the allowance after the gross value of fuel throughput is calculated

(f) details of sizes etc and breakdown of valuations for Appellant's comparables supplied and set out earlier [now embodied in this Determination above]

(g) that the first floor store (PN 2209192) at the Property be amalgamated with the service station PN 2199527 [agreed by Respondent]

8. RESPONDENT'S CASE

8.1 Mr. Kenneally submitted a detailed précis of evidence in which, inter alia, he outlined the location, description, size, condition etc of the Property supplemented by photographs, maps and a block plan. He also provided a commentary on the Appellant's written evidence and provided a history of the appeal and representations as well as general statistics for the rating area of Donegal and trading data endorsing the figures provided by the Appellant. He also referred to three authorities to vouch his stance that the onus of proof in appeals rests with the Appellant being VA00/2/032 **Proundlane Ltd. t/a Plaza Hotel**, VA07/3/054 **William Savage Construction** and VA09/1/018 **O'Sullivan's Marine Ltd.**

8.2 Mr Kenneally provided a valuation of € 62,200 (revised from the figure of € 59,300 that was set out in the Valuation Certificate) which he calculated as follows:

1. Fuel Throughput	1,100,000 litres @ 0.0055	6,050.00	
Less discount fuel card	110,000 litres @ 0.00275	<u>302.50</u>	
			5,747.50
2 Shop FMT	€ 1,900,000 @ 0.0375	71,250.00	
(a) less low margin items	€ 680,000 @ 0.01875	12,750.00	
(b) less low margin Payzone	€ 60,000 @ 0.0325	<u>2,250.00</u>	
		15,000.00	56,250.00
3. Car Wash	€ 5,000 @ 0.05	<u>250.00</u>	
			62,247.50
			Rounded to NAV € 62,200.

8.3 In support of his valuation, Mr. Kenneally relied on the following comparables, reproduced here in different layout and supplemented by additional facts (e.g. size) emerging from the oral evidence tendered at the hearing:

Comparable Number 1.

PN 2163326

Redacted Newmills, Letterkenny, Co. Donegal

Total Floor Area: 278.87m²

This property is valued at the NAV of € 59,600 that is calculated as follows:

1. Fuel Throughput	1,100,000 litres @ 0.0055	6,050.00	
Less discount fuel card	110,000 litres @ 0.00275	<u>302.50</u>	
			5,747.50
2 Shop FMT	€ 1,700,000 @ 0.0375	63,750.00	
(a) less low margin items	€ 400,000 @ 0.01875	7,500.00	
(b) less low margin Payzone	€ 64,000 @ 0.0375	<u>2,400.00</u>	
			53,850.00
			59,597.50
			NAV, € 59,600.

This property was subject to representations but not an appeal.

Comparable Number 2.

PN 2005881

Redacted Newtowncunnigham, Lifford, Co. DonegalTotal Floor Area: 268.84m²

This property is valued at the NAV of € 78,100 that is calculated as follows:

1. Fuel Throughput	1,200,000 litres @ 0.0055	6,600.00	
Less discount fuel card	110,000 litres @ 0.00275	<u>302.50</u>	
			6,297.50
2 Shop FMT	€ 2,150,000 @ 0.04	86,000.00	
(a) less low margin items	€ 475,000 @ 0.02	9,500.00	
(b) less low margin Payzone	€ 115,000 @ 0.04	<u>4,600.00</u>	
			<u>71,900.00</u>
			78,197.50
			NAV, € 78,100.

This property was subject to representations but not an appeal.

Comparable Number 3.

PN 2183191

Stranolar, Co. Donegal

See Appellant's No. 2 comparable above.

Ruled out of evidence by mutual agreement of the parties at the appeal hearing.

Comparable Number 4.

PN 2003894

Redacted Dunfanaghy, Co. DonegalTotal Floor Area: 605.89m²

This property is valued at the NAV of € 61,800 that is calculated as follows:

1. Fuel Throughput	1,000,000 litres @ 0.0055	5,500.00	
2 Shop FMT	€ 1,500,000 @ 0.0375	56,250.00	
(a) less low margin items	€ 220,000 @ 0.01875	4,125.00	
			52,125.00
3. Workshop	211.73m ² @ € 20.00 per m ²	<u>4,234.60</u>	
			61,859.60
			NAV, € 61,800.

This property was not subject to representations and was not appealed.

8.4 In his oral testimony, Mr. Kenneally, in summary, inter alia, submitted, in addition to a review of his valuation and comparable evidence in his precis, that:

(a) comparable to be omitted No. 2 (Appellant) and Comparable No. 3 (Respondent) which will require to be listed for revision

(b) agrees factual information on the Property provided by the Appellant

(c) the amalgamation of store with service station is agreed

(d) that the Property was originally valued at € 90,000 being estimated owing to lack of information-i.e. for being non-compliant

(e) once the information was provided and it therefore became compliant the valuation was amended

(f) that the integrity of the Commissioner's valuation scheme is proved by the Appellant's number 1 comparable and accepts that what the Appellant says regarding size is correct and that it is in a poor location contrasted to the subject Property; that the subject has a valuation almost double this valuation and is in a rural setting which he feels is more like 14 kilometres from Letterkenny rather, than the 7 kilometres mentioned by Mr, Halpin, and with no major passing trade. This comparable property was originally non-compliant and the valuation was amended after representations were made. Whilst this comparable illustrates the scheme he considers it is not comparable on an FMT basis to the subject, and on account of the inferior location

(g) with reference to the Appellant's third comparable, this is less than half the size of the subject Property and has an FMT of € 1.6m and fuel throughput of 1.4m litres and is valued in line with the valuation scheme

(h) with reference to the Appellant's fourth comparable he states that this is in a rural setting and has a workshop and cannot achieve the levels of retail turnover in the subject in his opinion and that it has an estimated throughput of 1.2m litres which is more than the subject Property

(f) with reference the Appellant's fifth comparable, this is a retail property and not comparable with a service station in his view

(g) with reference to the Appellant's sixth comparable, this is a property that was revalued as part of Revaluation 2017 for County Offaly, being in a different rating authority area and should be disregarded

(h) with regard to his own comparables cited he made the following comments: his first comparable being of similar size to the subject, with a Shop FMT slightly lower than the subject Property, but that the fuel throughput is exactly in line with it at 1.1m litres; his second comparable, the shop is of similar size to the subject with Shop FMT slightly more at € 2.15m and the fuel throughput is more than the subject but that this is a slightly better location than the subject and is otherwise very comparable to it; his third comparable is disregarded [corresponding to Appellant's No. 2]; his fourth comparable demonstrates that the valuation scheme works in terms of the fuel throughput and in terms of the thresholds; is of similar size to the subject with an additional workshop. The Shop FMT is less at € 1.5m but that the fuel is at exactly 1m litres and has been accepted as there were no representations and no appeal

(i) the issue arising here is whether the fuel throughput should be over or under the 1m litres threshold and, as the Appellant Valuer is in general agreement with the scheme, which he says has been accepted by many ratepayers and agents, that going against the scheme would be contrary to sec. 19 (5) of the Act and that the scheme, emerging tone, equity and uniformity are paramount

(j) he has adopted a fuel throughput of 1.1m and though this is only his opinion, there are 7 years' accounts to refer to and that in all those years, it runs above the 1m litres threshold and whilst the trend varies, the average is above 1.1m (being 1,105,463) and therefore should not be fixed below the 1.1m litres accordingly

8.5 In cross examination, Mr. Kenneally, responded:

(a) in regard to the valuation scheme for service stations and why the level of throughput threshold is set at 1m litres fuel throughput he said this is for non-standard stations he said that this is important to reflect the effect of the scheme in, for instance, the case of a station with low fuel sales and high retail sales in the shop, but could not say why it was set at 1m as opposed to 950,000 litres or 750,000 litres or 1.2m litres other than this is what has been applied by the scheme before and reflects equity and uniformity in several revaluations

(b) it was put to him that there was hardly enough rental evidence to test the level of threshold at 1m but he responded by stating it has been adopted in earlier revaluations and accepted by ratepayers and the Tribunal in past decisions

(c) that the basis of his valuation amounted to a small increase in the shop FMT to € 1.9m and a decrease in fuel throughput to 1.1m litres

(d) it was put to him that if the shop had traded at shop FMT of € 2.7m and 990,000 litres fuel, would that make it worse, as the scheme would seem to advocate, he felt that this was hypothetical and not factual about the subject and not prepared to answer that accordingly

(e) that in regard to Respondent Comparables 1 and 2 being in superior locations to the subject he said that both are beside substantial roads but he did not necessarily agree they are in better locations

(f) in regard to Comparable number 4, the occupiers provided financial information in 2019 and made no representations (or subsequent appeal) but was not able to confirm the date that the occupier was provided with the valuation schematic

(g) he was asked if occupiers are ever provided with details of the valuation schematic-he was not sure

(h) he was asked if he was aware of the difference in the NAV because of a one litre increase at the threshold in the scheme there is a difference here of € 17,900 NAV for one litre difference in fuel and therefore if he had been the occupier would he have accepted this [in terms of the scheme] which he said he would, but that there were various figures provided at different stages and that he could not be more specific as he did not value the subject originally himself

(i) that there are few comparables under 1m fuel throughput in Donegal they would be few in number and not helped by the high degree of non-compliance in Donegal county [in the provision of trading information] and not confined to service stations

(j) out of 98 stations in Donegal he was asked how many service stations were non-compliant at final valuation certificate stage across the board he said there were 31 appeals but he could not confirm the number of others but agreed that to encompass all non-compliance cases it could be upwards of 50%

(k) it was put to him that if 50% of ratepayers are non-compliant [not providing trading information] are they, therefore, accepting of the scheme, to which he replied that, in this rating area there was non-compliance with properties generally, not just service stations, and that some might have valuations fixed based on estimated figures and considers that they might be undervalued and thus reluctant to appeal

(l) he accepts that with a high level of non-compliance this does make it difficult to apply an equitable and uniform scheme in the absence of being able to invoke the scheme properly

(m) regarding Appellant's Comparable No. 3, he was asked if he considered the Subject property is significantly more valuable than this comparable in terms of NAV, having regard to the fuel throughput and being half the size, to which he said yes

(n) it was put to him if the Appellants are victims of their own honesty, in that if a ratepayer is only partly compliant, Tailte Éireann would make an estimate which might well be higher than 1.1m fuel throughput (if not supplied) and he rejected that the scheme would incentivise people to lie and believes that not providing correct information is breaking the law

(o) if persons do not comply, he was asked what action is taken by Tailte Éireann to which he replied that every effort is made to capture a fair figure but possibly adjusted upwards for absence of data

8.6 In taking questions from the Tribunal, Mr. Kenneally confirmed:

- (a) he was unsure why the valuation scheme is not made public but considers that it is a new system that might be impacted by GDPR but that he could not state so conclusively
- (b) there are times when the hardline is not taken by the Commissioner (TE) especially if there is evidence before them
- (c) he confirmed the sizes of the Appellant's comparables and breakdown of those valuations [now embodied in this Determination for each above in section 7.]
- (d) that the rateable occupier would see the breakdown of the valuation [but not the whole service station valuation scheme] by reference to page 2 of the valuation certificate which, though not demonstrating the entire scheme, would have the figures showing how the valuation was calculated
- (e) that sec. 68 of the Valuation Act 2001 relating to the preservation of confidentiality would apply in regard to the non-publication of trading information on the TE website

9. SUBMISSIONS

There were no legal submissions in this case.

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, equitable and uniform 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 Donegal County Council.

10.2 In this appeal there were two distinct grounds of appeal stated in the Notice of Appeal, the first being the amalgamation of the valuation for the first floor store, PN 2209192 with the larger valuation of the service station itself, PN 2199527. That issue was agreed between the parties and confirmed at the hearing. The second and remaining issue to be determined, therefore, is the quantum of the valuation that should apply to the enlarged property PN 2199527 to incorporate the store.

10.3 This is a Revaluation appeal, which seeks to establish a correct, equitable and uniform net annual value for the Property as at 1st February, 2022, being the valuation date specified in the Valuation Order. It is usual in Revaluation type appeals to consider appropriate rental evidence from transactions in addition to comparable net annual value assessments to best guide that exercise. Neither Valuer, for Appellant or Respondent, submitted rental evidence in support of their opinions.

10.4 In this appeal the chosen valuation method is the shortened form of the Receipts and Expenditure method, being the estimation of fair maintainable trade (FMT) for various income sources from which to derive components of net annual value, by the application of percentages to each source to produce the valuation. Furthermore, any areas in addition in the Property over and above that (or considered not already encompassed by the FMT figures) are valued at a unit value rate per square metre.

10.5 By their nature, service stations create a certain difficulty which requires the adoption of a rather intricate valuation scheme. That scheme is outlined in the written evidence of both Valuers. The application of the scheme provides a range of indicative value rates to apply to fuel throughput, retail FMT and car wash FMT from which to derive net annual value but the application depends very much on the level of business being undertaken at the Property, with a sliding scale operated to try and rationalise the end value. Discounts are applied from FMT for low margin items and the scale has two main branches depending on the level of fuel throughput versus retail FMT. This provides a relatively complex matrix for the valuation of service stations that is unique in contrast to properties (shops, offices, industrial) that are valued, in the main, by simple comparison of unit value rates per square metre.

10.6 Whilst it is clear that the construction of a valuation scheme for service stations might be necessary to endeavour to accurately assess value, there are some fundamental prerequisites to be borne in mind, being:

(a) it is important that, on conclusion of the mathematical calculations used in the valuation scheme, that the Valuer stands back from that exercise and looks at the result to ensure it accords with reality in the context of the statutory mandate, (being the **estimate of a rent**) and

(b) the integrity of that scheme will lack credibility,

(i) if rental evidence is absent from the grounding of the metrics used in that valuation scheme, by actual rents, notwithstanding that rental transactions might be few in number in contrast to owner occupied properties in the service station category of property, and

(ii) if, in the case of a new Revaluation, the acceptability of that scheme by professional Valuers and Surveyors is not clearly demonstrated by the provision of other comparable agreements.

10.7 If the valuation scheme cannot be tested against rental evidence this places heavy reliance on the opinion of Valuers and on the perception of the level of acceptance of the scheme from agreements between Tailte Éireann and professional rating Valuers and Surveyors. In the early stages of a Revaluation, as in this appeal, that can be an arduous task. The Tribunal can only reach a decision based on the evidence provided by the parties with the addition of reasonable input to the valuation process from the panel of experts that constitute the Division hearing the appeal. The onus rests on the Appellant to show that the valuation by the Respondent is incorrect but both parties should have sufficient knowledge of the scheme to examine it, and clearly, as this information does not appear on the Tailte Éireann website, the Appellant is at an acute disadvantage, in this regard, in seeking to prove their case.

10.8 In cases, such as this, involving properties valued by reference, primarily, to the earning capacity of the subject property (e.g. hotels, pubs, service stations) care must be taken not to value the business, as distinct from the property, as rates are a tax on property occupation, and not a further tax on the business conducted therein. The valuation that is ultimately determined should represent a **rent** for the **property** as per sec. 48(3) and nothing more nor less.

10.9 The implied acquiescence of ratepayers to the level of valuation applied to their properties must be cautiously evaluated, where they have not mounted initial representations or subsequent appeals against the net annual value fixed by Tailte Éireann, **especially in the early stages** of a Valuation List, where the general tone of values has not been afforded the opportunity to be fully tested. This is because, in the case of unrepresented ratepayers, their primary interest will, most probably, be in the amount of the ultimate rates bill, rather than any concern with the niceties of the valuation. If, following a revaluation, their liability is reduced or remains the same as before, they would have no reason or incentive to seek to challenge the level of the valuation. They may not then seek professional advice, either, thus leaving the valuation unquestioned. Evidence of unchallenged net annual values appearing on the Valuation List must be closely examined, as the mere fact that representations or appeals have not been made in respect of them, should not lead, inevitably, to the conclusion that those valuations are sacrosanct or above question.

10.10 (a) In the absence of rental evidence, the focus of the appeal is on the interpretation of the comparables to guide the valuation exercise of the subject, having regard to the application of the valuation scheme for service stations, in the particular circumstances of the subject Property. The Tribunal considers that the primary evidence in this regard is confined to those comparables other than Appellant's comparable Number 2. (omitted by agreement), No. 5 (retail, but providing background context) No. 6 (different rating area, and different valuation date, though same scheme as applied in earlier years, providing a guide to the principle of adjustment of fuel throughput rather than being conclusive on value items) and Respondent's No. 3 (omitted by agreement being the same as Appellant's No. 2).

(b)Turning to the more relevant comparables in sequence as presented at the hearing, these are the observations of the Tribunal:

Appellant Comparable Number 1.

PN 2214353 Nav € 21,000.

It has been established at the hearing that the location of this comparable is inferior to that of the subject Property.

This had much less fuel throughput than the subject being only 500,000 litres and shop FMT of only € 800,000 before discounts applied.

The other distinguishing feature of this comparable is that it had a workshop.

If the workshop value is deducted from the NAV calculations, thus € 2,433.60 from a total, before rounding applied, of € 21,056.60, then this leaves an NAV total of € 18,625 for the service station proper, being all that, in this relevant property, which is assessed by reference to earning capacity or FMT.

The floor area, on that basis (minus the workshop) becomes 154.60m² (276.08m² less the workshop of 121.68m²).

Although this is a much smaller NAV (irrespective of whether reduced for workshop or not) than the subject Property at € 62,200 (Respondent) or € 40,100 (Appellant) it is useful because it represents a valuation that has been challenged by a professional agent and agreed with Tailte Eireann.

Therefore, on an earning capacity basis (FMT), excluding the workshop, the comparison exercise becomes one of using € 18,625 to compare with either € 62,200 or € 40,100.

Appellant Comparable Number 3.

PN 2093969 NAV € 42,800.

This comparable, in terms of location, is difficult to categorise as it is within the built up area of Letterkenny next to a shopping centre and on the face of it would be more urban with consequent greater catchment pool of customers.

This had fuel throughput of 1.4m litres (before allowances) and a shop FMT of € 1.6m before discounts applied but doubt was expressed at the hearing by the various exchanges as to whether the low margin discounts applied to shop FMT had been excessive thus devaluing this. A question arose as to the exclusion of any additional value for the car wash, the existence of which seemed clearly visible in the photographs. The floor area of this was established to be 135.00m².

The Tribunal is minded not to fully rely on this property as a comparable as it seemed from the exchanges at the hearing that doubts were cast on the veracity of the valuation.

Appellant Comparable Number 4.

PN 2106319 NAV € 22,700.

This comparable appears to be in a more rural location than the subject Property.

The property had fuel throughput of 1.2m litres (before allowances) and shop FMT of € 500,000 before allowance for small margin items.

The other distinguishing feature of this comparable (like Comparable Number 1 above) is that it also had a workshop.

If the workshop value is deducted from the NAV calculations, thus € 5,890.65 from a total, before rounding applied, of € 22,778.15, then this leaves an NAV total of € 16,887.50 for the service station proper, being all that, in this relevant property, which is assessed by reference to earning capacity (FMT).

The floor area, on that basis (minus the workshop) becomes 220.00m² (612.71m² less the workshop of 392.71m² but ignoring the first floor which is unknown).

Therefore, on an earning capacity basis (FMT), excluding the workshop, the comparison exercise becomes one of using € 16,887.50 to compare with either € 62,200 or € 40,100.

Respondent Comparable Number 1

PN 2163326 NAV € 59,600.

This property lies 6 kilometres from Letterkenny, aside the R250 with large layby and good sightlines, and had fuel throughput of 1.1m litres (before allowances) and shop FMT of 1.7m before discounts applied.

The floor area is 278.87m².

This property was subject to representations but no agent was involved.

Respondent Comparable Number 2

PN 2005881 NAV € 78,100.

This property is located around 1.5 kilometres south of Ramelton and had fuel throughput of 1.2m litres (before allowances) and shop FMT of € 2,150,00 before discounts applied.

The total floor area is 268.84m².

This property was subject to representations but no agent was involved.

Respondent Comparable Number 4

PN 2003894 NAV € 61,800.

This is located aside the N56 in the village of Dunfanaghy and had fuel throughput of 1m litres (before allowances) and shop FMT of € 1.5m before discounts applied.

The other distinguishing feature of this comparable is that it had a workshop.

If the workshop value is deducted from the NAV calculations, thus € 4,234.60 from a total, before rounding applied, of € 61,870.60, then this leaves an NAV total of € 57,636 for the service station proper, being all that, in this relevant property, which is assessed by reference to earning capacity or FMT.

The total floor area is 605.89m² but if reduced by the area of the workshop (211.73m²) this becomes an area of 394.16m² that is assessed by reference to FMT.

This property was not subject to representations.

10.10 (c) Further consideration of the evidence places the Respondent Comparable Number 4 as similarly circumstanced to the subject Property, by reference to adjusted size, location, and amount of shop FMT especially, as both properties can be said to more in the nature of a retail reliant service station model rather than a purely fuel driven model. Examination of this shows that, for the earning capacity (i.e. omitting the value of the workshop) gives an adjusted NAV of € 57,636 to compare with either € 62,200 (Respondent) or € 40,100 (Appellant) for the subject Property. Unfortunately, this valuation was not subject to representations, and so has not been tested. Furthermore, one must allow for the fact that the workshop could bring added value to the property overall, in addition to the value in isolation of that component.

10.11 Taking each of the elements that go to make up the valuation of the subject Property the Tribunal finds as follows:

Fuel Throughput

The nearest volume figure for fuel to the valuation date (1st February, 2022) is in 2022 and this shows a decline from the seven-year average which leads the Tribunal to adopt a more cautious outlook in forming a view, to correspond, as far as reasonably possible, with the expectations of a hypothetical Tenant. Rating law in Ireland permits a degree of hindsight as outlined in sec 19(5) where it provides:

(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)—
(a) correctness of value, and
(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

The key part of this is in the line

*The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available **on or before the date of issue of the valuation certificates***

The accounts information predated the date of issue of the final valuation certificate which was 15th September 2023 and thus the Tribunal considers that a more cautious outlook for fuel volume would persuade the hypothetical Tenant to adopt a lower figure of 983,250 litres being 95% of the last figure reported, (i.e. discounting the last actual figure by 5 % as it is declining) as far as can be adequately forecasted.

From this an allowance needs to be made for fuel card payments of 10.5% (to reflect accounts) corresponding to 103,241 litres at 50% discount to align it with the scheme. When it is appreciated that the valuation date fell on 1st February, 2022, coming off the back of two years of turmoil because of the coronavirus pandemic, the Tribunal believes that an incoming Tenant for this property, assuming it to be vacant and to let at that time, would be more inclined to take a cautious view of future earnings/fuel output than might apply in more stable market conditions.

Shop FMT

The Appellant suggests a figure of € 1.8m for Shop FMT in contrast to the Respondent who contends for a figure of € 1.9m FMT. The Tribunal considers that the figure of the Respondent is to be preferred because it is just slightly below the 2022 out turn in actuality. The parties are agreed on the discount amounts and the Tribunal, whilst taking note of those, considers these be adjusted to relate more closely with the 2022 actual figures, on a pro rata basis, to yield discount figures of € 650,560 (lotto, cigarettes) and € 41,401 (services).

However, the Tribunal considers that as regards the rate to apply to FMT in the scheme should be ameliorated, somewhat, from the 3.75% as proposed by the Respondent and increased substantially from the 2.5% proposed by the Appellant, to a more realistic rate of 3.5% to align it better with the comparables on a stand back and look approach, as reflecting a retail model for the service station but recognising the smoothing of the scheme where it meets a threshold amount. This more fairly reflects the locational, size, profile and other characteristics of the subject Property, when compared with the comparables, recognising the importance of these factors in addition, alone, to earning capacity.

Car Wash

Careful examination of the trend for the FMT of the car wash would show this declining to the extent that it might not reach the threshold of € 5,000 required by the valuation scheme and accordingly, the Tribunal does not consider an additional value arises, in this case, for this facility, especially having regard to the lower last reported figure for 2022.

10.12 The Tribunal considers the inputs outlined above to be the best that can be achieved to meet the obligations imposed on it by sec. 37 and sec.19 (5) but recognises the difficulty in reaching a highly precise valuation, in this appeal, because:

- (a) the comparable evidence advanced in this appeal is very limited;
- (b) no rental evidence has been provided to benchmark the valuation scheme or to cross check with the reality of rental values at the valuation date;

(c) the chosen valuation method relies on the earning capacity of a property for which there are many variables to be considered unlike a more straightforward unit value per square metre approach;

(d) in the early stages of a Valuation List, as in this appeal, the integrity of a valuation scheme depends on a demonstrable degree of acceptance, and in this appeal that was not abundantly clear because of the high level of non-compliance in the return of trading details;

(e) this puts the strict application of the valuation scheme in doubt for want of precision if key inputs like trading information details are not forthcoming to assist Tailte Eireann in finding and assembling the correct data;

(f) the Tribunal can only decide the appeal based on the evidence presented;

(g) whilst the onus of proof in these appeals lies with the Appellant, the application of fair procedures in any Tribunal hearing mandates that the Respondent must also provide a transparent insight into how the valuation scheme is grounded and what rents have influenced the generation of values attributed within that scheme, and

(h) the rigid application of a valuation scheme for service stations, being not a mandated legal requirement, but a method of valuation, must be considered against the framework that property valuation is not a precise science and thus, on completion of any mathematical exercise, common sense must prevail to allow any final adjustment by use of realistic human appraisal. In this appeal, it is apparent that the strict adherence to the tabulated scheme creates an anomaly in resultant valuations as between a property just under the stated threshold, with one just over that threshold, to such an extent that smoothing of such effects, to reflect a margin of error in interpretation, is required in the interests of equity.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and determines as follows:

Firstly, that PN2209192 be amalgamated with **PN 2199527**

Secondly, that the valuation of the enlarged PN 2199527 be **€ 58,300**

This is calculated as follows:

			€
1. Fuel Throughput	983,250 litres @ 0.0050	4,916.25	
Less discount fuel card	103,241 litres @ 0.0025	<u>258.10</u>	
			4,658.15
2 Shop FMT	€ 1,900,000 @ 0.035	66,500.00	
(a) less low margin items	€ 650,560 @ 0.0175	11,384.80	
(b) less low margin Payzone	€ 41,401 @ 0.035	<u>1,449.04</u>	
		12,833.84	53,666.16
3. Car Wash	no additional value @ nil	<u>00.00</u>	
		58,324.31	
		Rounded to NAV	€ 58,300.

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.