

Appeal No: VA19/5/1370

**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. 1141053, Fuel/Depot at Ballymun Cross, Dublin, County Dublin.

B E F O R E

John Stewart - FSCSI, FRICS, MCI Arb

Deputy Chairperson

Orla Coyne - Solicitor

Member

Gerard O'Callaghan - MRICS, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15th 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 €147,300.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *“The Valuation is excessive and unfair, and not in conformity with the Valuation Scheme adopted by the Valuation Office, or in accordance with rating principles and practice.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €110,640.

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 €241,000.

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 €147,300.

2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €147,300.

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

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

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

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

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

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

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

4. FACTS

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

4.1 The property is located on the R108 between M50 Ballymun roundabout and Ballymun Cross, approximately 11km north of Dublin city centre.

4.2 The property comprises a purpose-built petrol filling station with overhead canopy and ancillary single storey retail shop.

4.3 There is a concrete forecourt with 3 no. double sided fuel dispensers and an automatic car washer as well as ancillary carparking.

4.4 The floor areas provided by the Appellant, and which were not disputed by the Respondent are as follows;

Description	SQ.M
Shop	180.48
Store	23.22
TOTAL	203.7

5. ISSUES

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

6. RELEVANT STATUTORY PROVISIONS:

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

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

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

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

7. APPELLANT'S CASE

7.1 Mr. John C. Elliot for the Appellant, Ard Services Ltd. began by taking the oath and adapting his precis as his evidence in chief.

7.2 Mr. Elliott briefly described the location and characteristics of the property as set out under the section 3 above.

7.3 Having regard to the nature of the property, the Appellant proposed that the most appropriate method for assessing the net annual value (NAV) is to adopt the Valuation Scheme for Service Stations (The Scheme) as set out by the Valuation Office. Mr. Elliot stated that this was agreed with the Valuer from the Valuation Office. The Appellant cited Section 48 of the Valuation Act 2001 which states;

The "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 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 and charges (if any) payable by and under any enactment in respect of the property, are borne by the tenant.

7.4 Mr. Elliott stated that *"the value of petrol filling stations is determined by it's potential for trade and therefore rents are analysed having regard to the throughput of the forecourt achieved by a competent operator pursuing policies that seek to maximise the profitability based on normal 18-hour operations."*

7.5 Mr. Elliott stated that he applied the scheme when deriving his Valuation and while he felt the scheme was flawed by the fact that no allowance was made for different operating hours in the scheme, he accepted that scheme of the Valuation Office and calculated his proposed NAV accordingly.

7.6 The Appellant provided three sets of data relating to the turnover of the subject property (See Appendix 1, N/A to public). The first set of data outlined trading performance for the business for the years 2016 to 2018 inclusive under 3 headings namely;

a) Total Shop Sales; b) Low margin shop sales i.e Lotto, Tobacco etc. c) Fuel sales in litres

7.7 The second set of data offered separate financial information relating the years 2015 to 2017 inclusive under another 3 headings;

a) Total and Fuelcard fuel sales in litres; b) Shop and Lotto turnover; c) Carwash sales

7.8 The third set of data offer information for the years 2015 to 2017 inclusive which broke down shop sales into various categories such as Merchandise and beverage, candy and snacks, food, groceries, entertainment etc.

7.9 Adopting the Valuation Office scheme for service stations and taking average data over 3 years, the Appellant proposed a NAV of €110,640 as calculated as follows;

Forecourt	Litre sales	Margin €/1000 litres	NAV €
Total throughput	6,127,478	8.5c	€52,083.57
Less low margin fuelcard	1,787,148	4.25c	- €7,595.38,
Shop	Turnover	Margin %	NAV
Total Shop Sales	€1,991,074	3.75%	€74,665.28
Less low margin sales	€1,023,755	1.875%	- €19,195
Car wash	€71,220	15%	€10,683
Total			€110,641.06

Cross Examination by Mr. Vallely for the Respondent.

7.10 The Respondent questioned whether the data as presented could be relied upon and asked why certified financial accounts and/or Verified Electronic Point of Sale Reports in its original form could not be provided. Mr. Elliott responded by stating the certified financial accounts were completed for the company as a whole (operating multiple service stations) and were not undertaken for individual service stations. Mr. Elliott further stated that Verified Electronic Point of Sale Reports could not be provided as there had been a change in ownership of the business since the Valuation date and that the current owners did not have access to the previous owners point of sale reports.

8. RESPONDENT'S CASE

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

9. SUBMISSIONS

9.1 Mr. Vallely questioned the method of calculation and figures submitted for low margin shop sales as not enough detail was provided.

9.2 Mr. Vallely further stated that the figures for 2018 submitted should be disregarded as they are not relevant for the Valuation date of 15th, September 2017.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Fingal.

10.2 For properties that are classified by the Commissioner of Valuation as service stations/filling stations, the Commissioner employs the use of a tabulated scheme of valuation, which is a shortened form of the Receipts and Expenditure Method by reference to the trading/earning capacity of the property, where estimates are made for each component of trade (or streams of income) by applying a rate (%) to the estimated Fair Maintainable Trade (i.e. the FMT) that a hypothetical Tenant would expect to achieve at the valuation date from which to derive the Net Annual Value (NAV). This scheme assigns varying unit values, dependent on volume/turnover level to each component income generating element of a service station, be that fuel throughput, car wash FMT, retail FMT etc from which to derive an NAV.

10.3 No comparison properties were submitted by either party for this Appeal. The Tribunal finds that the method of valuation as proposed by the Appellant is appropriate and accepts the margins applied to fuel and shop sales. Based on the information provided the Tribunal believes that the appropriate years to base the calculation of NAV are 2016 and 2017 as these were the only years that were present in all the data submitted by the Appellant and furthermore the Tribunal agreed with the Respondent that the trading figures for 2018 are not relevant to the Valuation date of September 15th, 2017.

10.4 The Tribunal were provided with data on the categories of different products such as beverages, candy and snacks, car products, consumer products, prepared drinks, entertainment, food, grocery, and tobacco for the subject property Circle K Ballymun Cross and also for the

Circle K Station at Milton Fields, Swords. No breakdown of product categories were supplied for the third appeal for Circle K, Coolmine and hence the Tribunal made a different finding for this Appeal.

10.5 The Tribunal accepts the figures provided by the Appellant and whilst certified turnover figures and /or point of sale reports for the subject property would be preferable, the Tribunal considers the justification offered by the Appellant under cross examination to be reasonable.

10.6 Amongst the three data sets regarding the turnover submitted to the Tribunal by the Appellant, there were some anomalies between the data sets regarding shop turnovers for different years. Where these anomalies were observed the higher figures were used by the Tribunal in prejudice to the Appellant.

Forecourt	Litre sales	Margin €/1000 litres	NAV €
Total throughput	6,136,798	8.5c	€52,162.78
Less low margin fuelcard	1,609,898	4.25c	- €6,842.07
Shop	Turnover	Margin %	NAV
Total Shop Sales	€1,945,267	3.75%	€72,947.51
Less low margin sales	€777,541	1.875%	- €14,578.89
Car wash	€77,727	15%	€11,659.05

Total **€115,348.38**
Say €115,350.

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 €115,350. The Tribunal is disappointed that the Respondent has not provided any precis of evidence and has relied on the fact that the onus of proof is on the Appellant.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.