

Appeal No: VA23/5/0386

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

SWEENEY'S SPAR EXPRESS

APPELLANT

and

RESPONDENT

COMMISSIONER OF VALUATION

In relation to the valuation of

Property No. 2199613, Fuel/Depot at 4E/1A Ballyraine, Letterkenny, County Donegal.

B E F O R E

Hugh Markey – FRICS, FSCSI

Deputy Chairperson

Orla Coyne - Solicitor

Member

Allen Morgan - FRICS, FSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF NOVEMBER 2025

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th 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 Property was fixed in the sum of €160,000.

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

The subject property's valuation is excessive owing to its trading data. The subject property traded at 1.4m litres prior to covid by under 1m litres in both 2020 and 2021.

The subject traded at between €3.0-3.3 in the shop throughout the relevant period, but with an increased level of low margin items. As the shop significantly out-trades the fuel, and the fuel at the relevant date was less than 1m litres, the lower shop rate (2.5%) should apply.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €64,700.

2. REVALUATION HISTORY

2.1 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 €160,000.

2.2 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €160,000.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined as the 01st day of February 2022.

2.4 The Statutory Effective date was 1st January 2023.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 11th day of December 2024. At the hearing the Appellant was represented by the Mr David Halpin M.Sc. (Real Estate) BA (Mod) and the Respondent was represented by Mr Oliver Parkinson Assoc SCSI, M.Sc. Real Estate, B.A (Hons) Acc. 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 been affirmed, adopted his précis as his evidence-in-chief, in addition to giving oral evidence.

4. FACTS

4.1 Based upon the evidence adduced and matters already agreed between the parties, the Tribunal finds the following facts.

4.2 The Property

4.2.1 Location: The subject property is located at Ramelton Road, Letterkenny, County Donegal on a national secondary route, situated approximately 1km from the centre of the town of Letterkenny. The subject is located in the townland of Ballyraine, on the N56 Ramelton Road/ Letterkenny bypass. The subject is located directly opposite Ballyraine Park and Orchard Grove residential estates.

4.2.2 Description: The property comprises of a service station with five pump islands, four under canopy with four nozzles per island and one island, separately located near the car park, to the right of the subject with two nozzles. The shop has Spar branding and comprises of a wine section, ATM, two Insomnia coffee machines, a delicatessen with kitchen to the rear and an indoor seating area. The first floor has stores/offices.

4.2.3 Tenure: The subject property is freehold.

4.2.4 Accommodation:

Retail 335.07m²

Ancillary (store/office) 61.95m²

Total 397.02m²

5. ISSUES

5.1 The sole issue in this appeal is one of quantum.

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 EVIDENCE

7.1 Mr Halpin, the Appellant’s agent, set out his grounds for appeal as follows:

7.2 That the subject property’s valuation is excessive owing to its trading data. The subject property traded at 1.4m litres of fuel prior to Covid but during the pandemic at under 1m litres in both 2020 and 2021. (Appendix One, N/A to public)

7.3 That the subject traded at a ratio of between 3.0-3.3 (shop turnover) for every litre of fuel throughout the relevant period, in contrast to the situation in “standard” stations under the Respondent’s scheme, under which Mr. Halpin claimed the normal trading ratio is 0.33 - 0.50 shop sales for every litre of fuel sold. He stated that in the case of the subject property, the shop significantly out-trades the fuel, that, as the fuel throughput at the relevant date was less than 1m litres p.a., the lower shop rate (2.5%) should apply.

7.4 The Appellant set out his understanding of the Respondent's scheme insofar as it applied to filling stations, as follows:

Fuel Throughput (in Litres)			NAV €/1,000 Litre	NAV €/Litre
Up to	<	200,000	0	0.0000
200,000	to	499,999	€3.00	0.0030
500,000	to	749,999	€4.00	0.0040
750,000	to	999,999	€5.00	0.0050
1,000,000	to	1,499,999	€5.50	0.0055
1,500,000	to	1,999,999	€6.00	0.0060
2,000,000	to	2,999,999	€6.50	0.0065
3,000,000	to	3,999,999	€7.00	0.0070
4,000,000	to	4,999,999	€7.50	0.0075
5,000,000	to	5,999,999	€8.00	0.0080
6,000,000	to	6,999,999	€8.50	0.0085
7,000,000	to	7,999,999	€9.00	0.0090
8,000,000	to	9,999,999	€9.50	0.0095
10,000,000	to	11,999,999	€10.00	0.0100
12,000,000	to	14,999,999	€11.00	0.0110

Shop Sales			% to NAV (where fuel is over 1M Litres)	% to NAV (where fuel is under 1M Litres)
Up to	to	€99,999	1%	1.00%
€100,000	to	€199,999	1.50%	1.50%
€200,000	to	€299,999	2.00%	2.00%
€300,000	to	€399,999	2.50%	2.50%
€400,000	to	€499,999	2.75%	2.50%
€500,000	to	€749,999	3.00%	2.50%
€750,000	to	€999,999	3.25%	2.50%
€1,000,000	to	€1,499,999	3.50%	2.50%
€1,500,000	to	€1,999,999	3.75%	2.50%
€2,000,000	&	Higher	4.00%	2.50%

Car Wash Sales			% to NAV
€0	to	€4,999	0.00%
€5,000	to	€9,999	5.00%
€10,000	to	€19,999	7.50%
€20,000	to	€29,999	10.00%
€30,000	to	€39,999	11.00%
€40,000	to	€49,999	12.50%
€50,000	&	Higher	15.00%

He noted that the Respondent applies a discount, by way of an end allowance, for qualifying low-margin sales as follows: - Lotto (50%) - Tobacco (50%) - DCI Fuel (50%) - instore services – phone top-ups, bill pay etc. (100%)

7.5 The Appellant noted how the Respondent's valuation was estimated. He suggested the case therefore revolves around what, if any, allowance should be given to the occupiers for their business acumen and skill to draw these levels of trade at this location, once the actual sales have been considered.

7.6 He questioned the formula concerning the level of fuel at and below 1,000,000 litres. The schematic applies a reduced shop FMT % where the sales are below such a threshold. In the

subject's case, the actual sales were beneath the threshold for 2020 and 2021. He posited it is therefore equitable to apply the reduced rate (2.5%) in this circumstance.

7.7 Mr. Halpin suggested there existed a fundamental issue concerning the approach to the relevant year of trading. He noted that the normal course is to adopt the applicable years being the 3 years prior to the Valuation Date (1st February 2022). In the strictest sense, he noted, this would be the calendar years of 2019, 2020 and 2021. Nonetheless, it is obvious that trade during the years 2020 and 2021 was affected by what he described as restrictions of an unprecedented nature.

7.8 The Appellant questioned the formula concerning the level of fuel at and below 1m litres. He said the schematic applies a reduced shop FMT % where the sales are below such a threshold. In the subject's case, he noted the actual sales were beneath the threshold for 2020 and 2021 and suggested it is therefore equitable to apply the reduced rate of 2.5% of FMT.

7.9 He explained that there exists a very significant volume of cases in regard to these kinds of properties – namely those which would be defined as convenience stores or supermarkets in retail terms, but with a filling station element. He noted that since Reval 2017, the Tribunal has decided 10-14 such cases and provided a summary of same. The Appellant provided these, he said, not to bind the Tribunal to any one individual decision but to illustrate that each must be taken on its own merits and that there are some overall themes:

- a) the shop valuation is significantly higher than predicted by the comparisons (either FMT or rate per metre)
- b) where shop sales outstrip sales of fuel taken together, the Tribunal has found that where retail leads and produces a valuation by the formula, which is not in line with the comparisons, then it has a duty to act in the interests of equity and fairness.

7.10 He said the Appellant believed that the decisions of greatest assistance to the Tribunal were VA17/5/088 (Milldawn) and VA17/5/085 (Rayro). Copies of these judgments were included in his Précis.

VA Ref	PN	Name	Rating Authority	Location	REVAL	Retail Size	Adjustment
VA17/5/260	1994020	Garlow Fuel Services Ltd.	Sligo	Grange	Reval 2017	259.46	-20% Shop FMT
VA17/5/085	2148429	Rayro Service Station Ltd.	Carlow	Carlow Town	Reval 2017	215.01	-40% Shop & Fuel FMT
VA17/5/088	220508	Milldown Ltd.	Kilkenny	Thomastown	Reval 2017	251.14	Change from 4% of FMT to 2.5% of FMT as NAV (equivalent to 37.5% reduction in FMT)
VA17/5/290	1105697	Padraig Carroll	Kilkenny	Knocktopher	Reval 2017	299.67	-50% Shop FMT
VA19/5/1065	2181434	Candy's	Wicklow	Carnew	Reval 2019	301.23	No Change
VA19/5/1005	2160830	Donohoe's	Cavan	Ballyconnell	Reval 2019	631.99	-62.5% Shop FMT
VA19/5/0996	1990536	Donohoe's	Cavan	Belturbet	Reval 2019	540.38	-25% Shop FMT
VA19/5/0185	2191776	Kanya Ltd. T/A Centra	Cavan	Mullagh	Reval 2019	278.64	-60% Shop FMT
VA19/5/0543	1323398	Cloughvalley Stores	Monaghan	Carrickmacross	Reval 2019	1130.8	32% Reduction (but no change from Respondent's precis valuation)
VA19/5/1192	1282411	Townparks Service Station	Louth	Dundalk	Reval 2019	204.3	21.5% Reduction (but only rounding change from Respondent's precis valuation)

7.11 Mr. Halpin suggested the Appellant faced significant difficulty in interpreting the tone of the list for filling stations. Partly because of the limited information which is available publicly but in the main due to the fact that a number of stations in the region are under appeal and/or have estimated valuations. He said that, including the subject, there are a total of seven stations which could be considered to be in Letterkenny and cited 6 comparator properties in the town. These are included in Appendix Two to this judgment (N/A to public).

7.12 Mr. Halpin noted that of the seven stations in the town, only three have been valued by reference to FMT. The highest of these is PN 2176089 with an NAV at €109,200, which is more

than 30% less than the subject. He suggested gives good context for a maximum achievable rental value of a strong station in Letterkenny of approximately €2,000 per week (€104,000p.a).

7.13 He said the parties can also reference retail values, which appear to be assessed by the Respondent at a fraction of the implied rate of the subject. He noted that his Comparison 7 is largely equivalent to the subject in its retail offering and yet is assessed at just €24,400 NAV. Nonetheless, he suggested the imposition of the formula for filling stations largely renders this as context.

7.14 He questioned as to what an appropriate NAV for the retail element of the subject might be. He suggested the answer can lie within the formula, although he posited that the Tribunal must adopt the reduced FMT % (2.5%). The alternative is to write back the shop sales by about 1/3rd and value under the standard formula (at 4%).

7.15 Mr. Halpin provided a schedule of 10 comparator properties assessed under the Respondent's Scheme.

7.16 The Appellant's Valuation.

Mr. Halpin contended for an 'estimated NAV on 1st February 2022 on either of two bases, as follows:

Fuel Sales 980,000 litres @ 0.005/L = €4,900		
Shop Turnover €3,300,000 @ 2.5% = €82,500		
Less Allowance €950,000 @ 1.25% = - €11,875		
Less Allowance €160,000 @ 2.5% = - €4,000		
Total NAV	€71,525	say €71,500

OR

Fuel Sales 1,400,000 litres @ 0.0055/L = €7,700		
Shop Turnover €2,000,000 @ 4% = €80,000		
Less Allowance €650,000 @ 2% = - €13,000		
Less Allowance €100,000 @ 4% = - €4,000		
Total NAV		€70,700

8.0 Cross examination of the Appellant's Witness

8.1 The Tribunal then invited Mr Oliver Parkinson, to cross examine Mr. Halpin on his evidence.

8.2 Mr. Parkinson asked Mr. Halpin in respect of the turnover for the subject property why it did not include the home heating fuel sales in the turnover figures. Mr. Halpin replied that they were included but that heating oil sales were not conducted from the subject property. Mr. Parkinson observed that oil collections were made from pumps located to the side of the service station.

8.3 Mr. Parkinson asked Mr. Halpin to confirm that the valuation date against which he had collated all his comparative evidence was 2022, to which Mr. Halpin replied that it was, specifically 1st February 2022. Mr. Halpin stated that it was not possible to project figures into the future, and, that in previous windfarm appeals in which he had been involved, that even where he had wished to include a further year beyond the valuation date, in that case one in 2018, that this had not been permitted by the Respondent.

8.4 Mr. Parkinson asked Mr. Halpin to confirm that the Appellant had not made returns in response to s.45 notices. Mr. Halpin said that this was so, although he had not been acting for his client at the time, but that this was no different to the majority of Donegal ratepayers in the petrol station category which, in consequence, had been assessed by way of estimates. He pointed out that less than one third had provided evidence, that almost 90% of those under appeal had not supplied information, and that those not appealed had been closed down in some way. His belief was that, of this remainder number, some are underestimated but that most are not and have estimates applied to them which Mr. Halpin described as “fairly savage”.

8.5 Mr. Parkinson referred Mr. Halpin to the table of previous Tribunal decisions relating to a total of 10 service stations. He asked Mr. Halpin to note his comment regarding those of the Milldown and Raypro, that the Respondent had expressed dissatisfaction with those decisions, indicating that these would be appealed to the High Court. Mr. Halpin pointed out that in the case of Milldown it was almost 5 years later when he discovered that an appeal by the Respondent had been dropped.

Mr Halpin acknowledged that the latter frequently expressed dissatisfaction with Tribunal decisions but that beyond expressing dissatisfaction, it was unusual that any legal action would be pursued.

8.6 Mr. Parkinson queried Mr. Halpin on his client's turnover figures and why he had only used the 2020 and 2021 trading years, and had ignored 2018, 2019 and 2022. Mr. Halpin's responded that there were two options of dealing with the FMT figures to fit within the tone of the list by either:

- a) Discounting the less than 1m litres throughput for which he stated there are statistics , and to value this at 2.5% of T/O because that is what the scheme says, or
- b) Leave the TO at 1.2 -1.3m litres as it was pre-Covid, and then either reduce it to 2.5% or just base it on the actual FMT by acknowledging that the operator is doing something exceptional i.e. attracting in customers who do not buy fuel, but that the answer must fall within one of these options.

8.7 Mr. Halpin confirmed he had not inspected his first comparison, but that he knew it and had passed it from time to time. Mr. Parkinson asked Mr. Halpin if he was aware there was another convenience store/shop in close proximity, in the shopping centre. Mr. Halpin confirmed that he was. Mr. Parkinson asked if Mr. Halpin felt that the close proximity of the two shops meant that the latter would have an effect on the trade in his first comparison. Mr. Halpin stated that it could have an effect, but he also noted that the car wash in his first comparison was not taken into account in the Respondent's analysis. Mr. Parkinson stated that it could have been separately assessed, to which Mr. Halpin suggested that if it was separately assessed, possibly as a separate operation, in which case Mr. Parkinson was unable to confirm a reason for its exclusion.

8.8 In terms of his second comparison Mr. Parkinson asked, that if he were travelling from the subject property towards Applegreen, was it possible to turn into it from the road. Mr. Halpin said that because the road was a dual carriageway at that point that to access Applegreen would require driving to the next roundabout and turning around. Mr. Parkinson asked whether this road

separation might affect trade in in that station to which Mr. Halpin replied that it could. Mr. Parkinson asked if Mr. Halpin thought that the road system might affect the level of business in that comparison, and Mr Halpin replied that if the figures for both fuel and the shop (which he said was smaller than the subject) were affected, then he would accept this.

8.9 Mr. Parkinson directed Mr. Halpin to his third comparison, asking him to confirm that he considered this to be the best service station in Letterkenny. Mr. Halpin confirmed this to be the case. Mr. Parkinson asked what properties were located behind, to which Mr. Halpin responded, based on the photograph, that it was a block of buildings. Beyond that, he said he did not know. Mr. Parkinson said that this was a Tesco store and that its location was in Letterkenny Square Shopping Centre to the rear of this Petrol Filling Station. The Tribunal asked for clarification as to what the building in the photo was, as it appeared the building to the rear was in residential use. Referring to Mr. Parkinson's overhead photo of this comparison, Mr. Halpin stated that there was no clear route from the main road proximate to affording vehicular access to this shopping centre to the rear. Mr. Parkinson agreed with Mr. Halpin that this was the case but queried as to whether it would affect passing trade. Mr. Halpin rejected this absolutely, saying that for this retail business to be affected, there would need to be a direct link into the Tesco premises behind, but even so it would not impact on the fuel trade.

8.10 Mr. Parkinson directed Mr. Halpin to his fourth comparison. Both agreed that the property was closed, and that the pumps had been removed but Mr. Halpin's contended that even at a relatively unexceptional annual rent under a 5-year lease from 2020, the business had failed, and this indicated weak demand for a filling station business in Letterkenny. Beyond this Mr. Halpin agreed there were few details, and that the property could be described as "oddball", that no weight could be placed on the NAV of €120,000 and overall, it was of little assistance.

8.11 Both agreed that little weight could be placed on Mr. Halpin's comparison 5, and that little information was available.

8.12 In terms of Comparison 6, Mr. Parkinson queried its relevance, and Mr. Halpin agreed since he had no details on the business or if it was fuel only or had a shop, and Mr. Parkinson stated he had figures which he would present later as part of his evidence.

8.13 Both agreed that Mr. Halpin's Comparison 7 was markedly different, including the basis of assessment and was of little or no assistance. Mr. Halpin opined that if the business was exclusively fuel related and had an NAV of €24,100, why would a prospective lessee take on the subject property (i.e. with a retail shop as part) at an NAV which was five times more than Comparison 7, just because of the way in which the Respondent assessed the shop trade element of a service station business under their scheme. Mr. Halpin stated that while there is a marriage value between both parts of a service station business, that the Respondent was substantially over-stating this marriage value. Mr. Halpin conceded that the information he had gleaned came from the owner of the subject property under appeal and was thus anecdotal other than a comment made by that owner that in locational terms both properties were broadly equivalent from a trading perspective.

8.14 Mr. Parkinson asked Mr. Halpin to confirm that he acted as advisor for the occupier of his third comparison property, which Mr. Halpin confirmed that he had. In terms of the Respondent's assessment placed upon it, Mr. Halpin said that having examined the figures he was happy to advise his client that the NAV placed on it by the was fair and reasonable, given that the majority of the turnover was fuel rather than shop related, which is the converse to the situation in the subject property.

8.15 The Tribunal then posed several questions to Mr. Halpin, the first being as to what effect, if any, would the inclusion of the 2022 turnover figures have meant to the overall assessment. Mr. Halpin said that any effect would have been relatively minor. Firstly, there would be a slight increase in the turnover of the shop, and even though there was a recovery in fuel sales, that the low margin for fuel would have limited any corresponding increase in the NAV to €3,000/4,000. In relation to two 'Scheme' cases asserted to be of most assistance to the appellant – Mildawn and Raypro the Tribunal queried whether either of these were before the High Court as 'cases stated'. Mr. Halpin replied that these were not but that two others were – VA19/5/1006 Donoghue, Ballyconnell and VA19/5/0185 Kanya Mullagh, and that none of the others on his 'Scheme' list

had been progressed. Mr. Parkinson was asked to confirm the situation as outlined by Mr. Halpin but said that at the time of writing his précis he was not au fait with the details laid out by Mr. Halpin but would verify these further. The Chair asked for the time limits attaching to seeking application expressing dissatisfaction with a Tribunal decision to which Mr. Parkinson said he was unaware. Mr. Halpin stated that the time limit for indicating such dissatisfaction was 28 days, with 6 months for the dissatisfied party to make full application but that these time limits were not followed by the Respondent and that in the majority of case (8 out of 10), they had been quietly dropped, some after 5 years. Mr. Halpin further clarified that it is only the Tribunal who is informed by the Respondent when a case stated is formally dropped, not the appellants.

9 The Respondent's Evidence.

9.1 Mr Parkinson, in his Précis, had outlined the statutory basis for and the background to the Revaluation of Donegal, including the timelines.

9.2 He noted that no representations had been made by the Appellant.

9.3 He had also commented on the Appellant's evidence.

9.4 Mr Parkinson critiqued the Appellant's evidence noting that the subject was non-S.45 compliant at the commencement of the revaluation and the NAV was therefore estimated in the absence of financial information. The subject only became compliant at appeal stage and suggested the '*NAV contended for by the Chief Operations Officer has been amended accordingly*'.

He noted how the Appellant appeared to be relying on previous revaluations by stating that the applicable years are 3 years prior to the valuation date. However, he noted that, as the Appellant had correctly stated, the restrictions of an unprecedented nature that resulted in a deferral of the Revaluation in 2021 and amending the Section 45 requirement for 5 years trading information, from 2018-2022, with the year 2022 being significant in that the valuation date is February 1st 2022 and the effective date of 1st January 2023 and that the majority of Covid restrictions were lifted in 2022.

9.5 The witness noted how Mr. Halpin, acting for the Appellant, suggested that most occupiers had not provided additional information but had not supported this statement with any evidence, and it was unclear how he had drawn such a conclusion. He noted that Section 19(5) requires that the NAV applied to a property be applied fairly and equitably, insofar as is reasonably practicable relative to comparable properties appearing on the relevant valuation list. He noted that the provision of trading data is not on its own determinative of the NAV of a property.

9.6 The Respondent noted that the Appellant acknowledged that the valuation applied to the service station is estimated. This was due to the occupier's failure to comply with the notice issued to them under Section 45 (1) of the Valuation Act 2001, as amended, on the 15th of November 2019. He questioned how the agent could draw a conclusion that this means the case revolves around what, if any, allowance should be given to the occupiers for their business acumen and skill to draw these levels of trade at this location once the actual sales have been taken into account. He noted that as per section 34 (3) of the Valuation Act 2001, as amended, a person who fails to supply information specified in a notice served under section 45(1) shall not be permitted to ground or support an appeal to the Tribunal by reference to information that the person has so failed to supply. He said that in the first instance, the legislation does not permit the actual sales to be relied upon having failed to comply with the Section 45 notice. In addition, should such evidence be permitted, the Appellant has not provided any evidence to support a claim of business acumen or skill.

9.7 The Respondent went on to note that, in the first instance, the Appellant appeared relied entirely on throughput figures for 2020 and 2021 and ignored those for 2022 which is the most relevant evidence. The throughput for 2022 was in excess of 1,700,000 litres. In addition, he suggested the Appellant had ignored the 2018 and 2019 figures. He said it was also worth noting that the Appellant appears to have excluded the home heating throughput figures in his calculations for both 2020 and 2021, which would bring the throughput to over 1,000,000 litres for 2021. He suggested, therefore, the throughput figure for both 2021 and 2022 exceeded 1,000,000 litres, which along with that for 2018, 2019 and 2022 inform an FMT in excess of 1,000,000 litres and hence, the reduced rate of 2.5% should not apply.

9.8 The witness noted how Mr. Halpin referred to “standard” service stations suggesting, in the instant case that the shop turnover to fuel throughput was ‘inverted’ but had not provided any evidence as to what constitutes a “standard” service station. He said this is evidenced by the range in the comparable evidence cited by both parties. Mr. Parkinson suggested that for the shop turnover to throughput relationship of the subject property to be considered non-standard, it would have to be somewhat unique compared to comparable service stations. He considered that the agent had not demonstrated that the hypothetical tenant could not achieve a FMT at the level of that set out in this submission.

9.9 He went on to note the Appellant appears to be reliant on both 2020 and 2021 turnover figures, which he had stated “was affected by restrictions, of an unprecedented nature” and had ignored all other relevant evidence. He posited the estimation of NAV is based on the Fair Maintainable Trade where a percentage is applied to the revenue streams, there is no mention of the ratio analysis applied by the Appellant in the scheme and he believed it to be irrelevant.

9.10 Mr. Parkinson considered the Appellant’s comparisons:

9.10.1 Comparison 1- he noted this comprises of a service station near Glencar Shopping Centre and comprises of four pump islands with four pumps, covered by a branded canopy. It was S.45 compliant at draft cert stage however, reps were made, and the NAV was reduced from €50,200 to €42,200 considering financial information provided. The revaluation scheme was not disputed. He noted the shop is smaller in size than the subject (138.68sqm) and he believed would have competition in the nearby Spar shop in the Glencar Shopping Centre, which would affect shop turnover. He noted that the shop turnover in this case exceeds the fuel throughput, albeit not to the same degree as the subject property. While noting that the agent stated that “the appellants have no way of examining the information supplied in respect of this property in order to determine whether or not these allowances are appropriate or correct” suggested it is not for the Appellants to determine if allowances are appropriate or correct. Under Section 63 of the Valuation Act 2001, as amended, the valuation as entered on the valuation list is deemed correct, a valuation which is calculated inclusive of these allowances.

9.10.2 In relation the Appellant's second comparison, he noted it to comprise of a service station with four pump islands under a branded canopy with a separate pump island located to the rear of the shop front which operates 24/7, presumably used for HGVs. The shop is approx. half the size of the subject. (183.05sqm) He noted the N56 road outside is a dual carriageway like one-way system both into and out which in turn affects turnover and throughput.

9.10.3 The Respondent noted how the Appellant's Comp. 3 comprises of a service station with six pump islands under a branded canopy while the shop is symbol brandied. There is also a car wash at this location. The shop is larger than the subject (383.99 sqm) but does not have the same turnover. He noted that Tesco is located directly behind and whilst he suggested this undoubtedly benefits the fuel throughput with a large volume of Tesco customers purchasing fuel nearby, it has the opposite impact on shop turnover given the range and potential price point of products offered in Tesco relative to this comparison. He added that it was S.45 compliant at Draft cert stage with no representations made and no appeal to the VT. He said the revaluation scheme for Service Stations makes no suggestion of putting a "cap" on any property's value as suggested by the Appellant's Agent.

9.10.4 The Respondent noted that this comparison No. 4 was last revised in 2022 where it was deemed unoccupied, and the NAV was estimated. No representations were made, and no appeal was made to the VT. However, he suggested, it is worth noting that the pumps to the front of PN 1691395 have since been removed and it may now qualify for a Revision under Part 1 section 3 of the Valuation Act 2001 as amended.

9.10.5 He outlined how this, the Appellant's fifth comparison comprises of a service station with five pump islands, four under a branded canopy and one located to the right of the shop which has symbol branding. There is a diner at this location. A S.45 return was not received, and the NAV was estimated at €145,000. No representations were made, and the NAV was not appealed to the VT.

9.10.6 The Respondent noted that this, the appellant's sixth comparison, comprises of a service station with three pump islands with two islands under canopy and one island to the right of the

shop. The shop is unbranded. There is a car wash at this location. It became S.45 compliant at representations stage and the NAV was reduced from €115,000 to €55,200. No financial information was provided for the shop or car-wash and the NAV was estimated at €37,500 while throughput figures were provided and the throughput FMT of 1,500,000 litres was applied and not the suggested 6,500,000 litres as stated by the Appellant. The NAV of €55,200 was not appealed.

9.10.7 The final comparison comprises of a ground floor shop and ancillary stores. The NAV was calculated using the zoning method of valuation on a rate per square metre basis. Mr. Parkinson suggested this is a completely different category of property and should be disregarded on the “value as you devalue” basis. He said no evidence was put forward by the Appellant to back up their statement that the turnover is similar to the subject.

9.11 Respondent’s Valuation

Mr. Parkinson contended for a NAV as set out:

Use	Est FMT €	Rate	NAV
Shop Turnover	3,250,000	4%	€130,000
Shop Turnover allowance	925,000	2%	-€18,500
Shop Turnover allowance	160,000	4%	-€6,400
Throughput (litres)	1,700,000	0.006	10,600
Total NAV			€115,300
NAV, Say			€115,300

10 CROSS EXAMINATION OF THE RESPONDENT

The Tribunal invited Mr. Halpin to question Mr. Parkinson on his evidence.

10.1 Mr. Halpin asked Mr. Parkinson, given that he had mentioned the COO (Chief Operating Officer) several times in his evidence, whether the NAV figure of €115,300 was the opinion of value of the COO or his own. Mr. Parkinson confirmed it was the opinion of value of the COO

and that he was representing the COO at the hearing, and that he was confirming that this figure was an amended figure from the previous NAV assessment of €160,000. Mr. Halpin stated that whilst he accepted that Mr. Parkinson was appearing at the Tribunal to represent the COO that he was actually presenting his own view on value. He made the point that he can only test the Commissioner's witness, not the COO, who is not in attendance. Mr. Halpin suggested to Mr. Parkinson that it might be necessary to ask the COO to attend to answer questions. The Tribunal intervened to ask whether Mr. Parkinson, having signed a statement of truth, was merely repeating the opinion of value of the COO or whether it also represented his own opinion of value. Mr. Parkinson confirmed it corresponded with his own opinion of value. The Tribunal pointed out that in reference to his evidence to the Tribunal, it was signed on behalf of the COO.

10.2 Mr. Halpin pointed out that whilst the Respondent's witness could claim that his opinion of value corresponded with that of the COO, that in Mr. Halpin's situation he was professionally representing the Appellant with his professional opinion of value that might not correspond with that of his client, i.e. the Appellant.

10.3 Mr. Halpin asked Mr. Parkinson whether the actual trading figures should be used. Mr. Parkinson replied in the affirmative, assuming it was in line with the Scheme, and should include the trading figures for 2018 to 2022. Mr. Halpin asked Mr. Parkinson whether, given that Mr. Parkinson had also stated in his evidence that the actual trading information cannot be used to ground an appeal, how could this information then be used. Mr. Parkinson replied that it is up to the Tribunal to decide if it would accept trading information on an assessed NAV under the Scheme and again, pressed by Mr. Halpin, Mr. Parkinson repeated his position that this was a matter for the Tribunal to determine.

10.4 Mr. Halpin queried Mr. Parkinson on a statement in his evidence that the provision of trading data was not, on its own, determinative of the NAV of a property. He asked Mr. Parkinson to point to any comparison in his evidence that was not entirely based on trading data. Mr. Halpin stated that as far as he could ascertain there was not a single filling station in Mr. Parkinson's evidence where the NAV was not based on trading data. Mr. Parkinson stated that where trading information

was provided, it was considered but there were many cases where trading information was not provided.

10.5 Mr. Halpin questioned Mr. Parkinson as to when trading data was provided, but that the view of the Valuation Office was that an assessment of NAV could not be founded upon same, why would it not be the case that the Tribunal could find in favour of his NAV assessment of €70,000, as he said the Commissioner would. Mr. Parkinson replied saying that the trading data for the subject for the trading period 2018-2022 was available, as were comparisons with trading data as adduced by both parties, and that this was a determination that rested with the Tribunal.

10.6 Mr. Halpin asked, that in term of trading data presented for Donegal service stations, what percentage had provided same for 2022 in particular or for 2020 or 2021. Mr. Parkinson said he did not have the detailed statistics.

10.7 Mr. Halpin referred to Mr. Parkinson's comparisons and asked if he was adopting any comparisons in Letterkenny. He stated that specifically Mr. Parkinson did not have any comparisons in Letterkenny. Mr. Parkinson stated that as regards his commentary on the comparisons in Letterkenny, he was responding to Mr. Halpin's evidence.

10.8 Mr. Halpin asked if he was thus relying on the four comparisons he had listed in in his evidence, given that none was located in Letterkenny. Mr. Parkinson confirmed that he had chosen four service stations outside of Letterkenny. Mr. Halpin said that since the subject appeal relates to a premises in Letterkenny, why was it that Mr. Parkinson had found it necessary to look beyond the urban area. The Tribunal intervened, asking Mr. Halpin to allow space for Mr. Parkinson to answer but positing that it only required a binary yes or no answer, and that it appeared that the answer could be interpreted as no. Mr. Parkinson confirmed that he had not included comparisons in the urban area of Letterkenny.

10.9 Turning to Mr. Parkinson's commentary on Mr. Halpin's first comparison – Glencar Service Station- Mr. Halpin asked on what date the owners of that property had been provided with the details of the Commissioner's Scheme. Mr. Parkinson stated that he did not know. Mr. Halpin then

asked if occupiers of service stations were provided with details of the Commissioner's Scheme. Mr. Parkinson said that a drop-in clinic had been made available throughout Donegal. Mr. Halpin asked, if there was a situation where a ratepayer could not attend such a drop-in (assuming they were aware of its existence), did the Commissioner have another method of informing ratepayers of the Scheme - i.e. paper-based communications. Mr. Parkinson said he did not know.

10.10 Turning to Mr. Parkinson's commentary on Mr. Halpin's comparison 2 – Applegreen – Mr. Halpin stated that as far as can be ascertained, this is the only comparison where the basis for the Commissioner's NAV assessment cannot be discerned. Mr. Parkinson responded stating that he did not have the detailed FMT for this property (in his précis.) Questioned further, Mr. Parkinson sought to rely on the fact that the property's NAV had not been appealed. Mr. Halpin questioned how Mr. Parkinson could provide commentary in his précis on the possible impact of the traffic flow system on Applegreen's trading performance, if he could not prove this by reference to actual trading performance. Mr. Parkinson said he did not have this information. The Tribunal asked whether, given that he would have had Mr. Halpin's précis for some time as to why he did not foresee that he might have to answer questions on the FMT to assist the Tribunal, and again querying why Mr. Parkinson had decided to confine his search for comparisons beyond the urban area of Letterkenny rather than within it.

10.11 The Tribunal members posed further questions which arose from Mr. Parkinson's evidence. Mr. Parkinson was asked to provide more detail to Mr. Halpin's query as to whether the inclusion of 2022 trading data for the subject made any material difference and/or why this had led to applying 4% on the fuel turnover, as compared with 2.5 % on the sub 1,000,000 litres turnover during the covid period. Mr. Parkinson answered that the deferral by the Respondent of the revision allowed for the 2022 figures to be included in a more normal post covid period, and that the effective date was 1st January 2023.

10.12 The Tribunal asked Mr. Parkinson to confirm that what is under appeal in this Tribunal hearing was a Revaluation. Mr. Parkinson confirmed that this is the case. Given that it is a revaluation, it was put to Mr. Parkinson that is possible to go beyond the local authority area for evidence. Mr. Parkinson replied that it was not; that that situation only applies in the case of a

Revision, under s.49.2. Mr. Parkinson was asked to reconfirm that his clarification was correct, which he did. He was probed further to clarify his previous answer of the Tribunal's understanding that it is only under a revision that evidence is confined to comparators arising within a scheme. A follow-on question was asked as to whether there was any rental evidence available, given that Mr. Parkinson had relied solely on NAVs. Mr. Parkinson confirmed that he was aware of actual rental evidence but that he chosen not to use it.

11. FINDINGS AND CONCLUSIONS

11.1 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 Donegal County Council.

11.2 In an appeal the Tribunal is charged with establishing what a hypothetical tenant would pay for the property, in its actual state on the statutory basis, 'one year with another'. The actual rent being paid (if any) or the operator's actual business are factors which may be considered but are not, of themselves, determinative of the NAV.

11.3 The Appellant has relied upon NAV information on seven comparator properties, including the subject, in and around Letterkenny, of which three also had FMT information provided. While the Respondent provided commentary on the Appellant's comparators and also submitted four NAV comparator properties, none of which are located in or around Letterkenny and are in more remote locations in County Donegal. It would have assisted the Tribunal in its deliberations had the Respondent included information on the seven filling stations valued in Letterkenny.

11.4 The Tribunal notes the Respondent's 'scheme' for valuing petrol filling stations by attributing a percentage to each of the businesses income streams in order to arrive at an NAV. The Appellant appears to have adopted this 'scheme' in arriving at his valuation, albeit with adjustments to reflect the nature of the business carried i.e. the ratio of shop to fuel sales, noting *'that the subject property traded at 1.4m litres prior to covid but reducing to under 1m litres in both 2020 and 2021. The subject traded at between €3.0-3.3 in the shop throughout the relevant period, but with an*

increased level of low margin items. As the shop significantly out-trades the fuel, and the fuel at the relevant date was less than 1m litres, the lower shop rate (2.5%) should apply.'

Previous divisions of the Tribunal have considered appeals where there was a higher proportion of the business derived from retail as opposed to fuel sales, in some cases, adjustments were made to either or the retail FMT or that of the fuel throughput, or both.

11.5 The Respondent has applied the 'scheme' rigidly to arrive at its estimate of NAV, apparently without cognisance of the aforementioned 'upside down' trading.

11.6 While the onus is on the Appellant to prove its case, the Tribunal notes the withholding of evidence by the Respondent which would have assisted in its deliberations. This also runs contrary to the 'Statement of Truth' signed by the Respondent's witness which includes, inter alia the following statements: *'I understand that both in preparing my report and giving evidence my primary duty is to the Tribunal and that this duty overrides any obligation to the party by whom I am engaged; I have endeavoured to mention all matters which I regard as being material to the opinions I express, and I have drawn the Tribunal's attention to any matter of which I am aware which might adversely affect the validity of those opinions. This applies in relation to the factual matters to which I refer and to the opinions which I express'*. It is clear the witness regarded the latter as merely aspirational. The Tribunal notes that the Respondent had rental evidence available but chose not to assist the Tribunal by including it. This was, at best, unhelpful.

11.7 The Appellant's agent has identified ten service stations in four counties covered by the Respondent's 'service station scheme' for which valuations have been determined following appeals to the Valuation Tribunal, with varying outcomes. In particular, he identified two which he considered to be of most assistance. While the Tribunal is not bound by decisions of other divisions, these decisions are of some value. The Tribunal considered that the Appellant's evidence on the service station scheme as a whole is of some evidential value.

11.8 The onus of proving that a valuation placed on a property by the Respondent lies with the Appellant: VA00/2/032 Proudlane Ltd. t/a Plaza Hotel and VA07/3/054 Construction William and O'Sullivan's Marine Ltd.

The Tribunal, having considered the totality of the written and oral evidence adduced, finds that the Appellant has established that the Respondent has erred in arriving at the proposed NAV. In particular, the Tribunal finds the Respondent failed to consider rental evidence from the immediate locality which was available to him and unhelpfully chose not to assist the Tribunal by sharing same. In the instant case, the Appellant has adduced sufficient evidence, supported by oral testimony to satisfy the Tribunal that this onus has been met and the valuation placed on the property should be adjusted.

The Tribunal finds that the Appellant's valuer has satisfied the burden of proof insofar as providing sufficient evidence to demonstrate that the Respondent's valuation is incorrect. The Tribunal believes that an adjustment is required to arrive at the FMT of the subject and adopts 30% as being the appropriate level and that the valuation should be corrected with the imposition of the correct NAV as set out below:

12. DETERMINATION:

For the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €80,900.

USE	EST FMT €	RATE	NAV
Turnover -shop	3,250,000	4%	€130,000
Turnover-shop allowance	925,000	2%	(€18,500)
Turnover-shop allowance	160,000	4%	€6,400
Throughput (litres)	1,700,000	0.006	€10,600
Total			€115,700
Adjustment factor		30%	€34,710
Total			€80,990 say, €80,900
NAV			€80,900

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.