Appeal No: VA19/5/1389

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

Ard Services Ltd T/A Circle K **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 292829, Fuel/Depot at Service Station Dublin Airport Hangar Area, Dublin, County Dublin.

B E F O R E

Eoin McDermott - FSCSI, FRICS	**Deputy Chairperson**
Barra McCabe - BL, MRICS, MSCSI	**Member**
Eamonn Maguire - FRICS, FSCSI, VRS, Arb	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MAY 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 €550,000.

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 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 under the Notice of Appeal stated that the valuation of the Property ought to have been determined in the sum of €164,500.

2. REVALUATION HISTORY

2.1 On the 7th day of June, 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 €500,000.

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 increased to €550,000.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €550,000.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15thday of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely in conjunction with VA19/5/1404, on the 16th day of May, 2023. At the hearing the Appellant was represented by Mr. John C. Elliott FSCSI, FRICS, MCI Arb of Elliott & Fitzgerald and the Respondent was represented by Mr. Michael Vallely BL and Mr. Michael Collins of the Chief State Solicitors Office.

3.2 Out of matters arising from the first hearing, the parties were requested to provide a copy of the scheme and certified figures for car wash turnover. A further oral hearing was held with the parties remotely, on the 13th day of July 2023, to allow the parties to make oral submissions on the additional evidence and to sum up their cases.

3.3 In accordance with the Rules of the Tribunal, the Appellant had provided their précis of evidence prior to the commencement of the hearing. At the oral hearing, the witness for the Appellant, having made his affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence. No valuation expert witness appeared on behalf of the Respondent.

4. FACTS

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

4.2 The Subject Property is situated on the north side of Corballis Road South, a one-way internal roadway serving vehicles exiting the airport, and leading to the Swords Road, at the airport roundabout, and within the jurisdiction of the Dublin Airport Authority (DAA).

4.3 The Subject Property is a service station of single-storey construction with a canopy covering the forecourt, which contains four pump islands and 16 fuel dispensers. The shop element of the property comprises retail, café, deli and ancillary areas. There is a brush carwash on the property.

4.4 The property is held under a licence agreement from the DAA.

5. ISSUES

5.1 The appeal is one of quantum. The grounds of the appeal are 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.

5.2 The Subject Property is subject to a number of restrictions and outlay unlike a stand-alone station.

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. Elliott, acting on behalf of the Appellant, contended for a valuation of €205,800, which was amended from the valuation of €164,500 submitted in the Notice of Appeal.

7.2 Mr. Elliott submitted floor areas for the subject property as follows.

Description	Sq. m.	Sq.ft.
Shop	100	1,076
Café	70	754
Deli	47	506
Ancillary areas	153	1,647
Total:	**370**	**3,983**

7.3 When questioned by the Tribunal whether the floor areas had been agreed, Mr. Elliott confirmed that they had not, but was not sure of the relevance, as the Subject Property had been valued in accordance with the Valuation of Service Station Reval 2019 ("the Scheme").

7.4 As there was no valuer present for the Respondent, the Tribunal asked Mr. Elliott if he had a breakdown of the valuation on the Final Valuation Certificate, he replied that there was none given.

7.5 Mr. Valley stated that it was his understanding that the NAV was derived from the annual licence fee for the service station.

7.6 Mr. Elliott stated that it was not in dispute that the most appropriate way to value the Subject Property was in accordance with the Scheme adopted for valuing service stations. He stated that the Subject Property is a 24-hour operating service station, and where operations exceeded 18 hours, he would normally allow a discount of 5% on throughput to arrive at the hypothetical maintainable output, but he acknowledged that the Valuation Office disregarded this approach under the present valuation scheme.

7.7 Mr. Elliott stated that in accordance with the Scheme, he had applied discounts to low margin fuel cards, and low margin sales of tobacco and lotto, based on the average forecourt sales from 2015 to 2017 inclusive.

7.8 Mr. Elliott stated that certified trading figures were furnished to the Valuation Office on 22nd July 2019.

7.9 Mr. Elliott stated that the proposed Valuation of €550,000 is excessive, and that the Subject Property is subject to a number of restrictions and outlay unlike a stand-alone service station. The subject property is within an area under the control of the DAA and operates within a "bubble", without the benefit of local authority services. Those services are provided by the DAA. The site is regulated by the Licensor which control the operation of the station and this fact has a negative effect on the free marketing of the product and consequential profitability of the site, a restriction which does not apply in areas outside of the DAA area of influence.

7.10 The Site is adversely affected by a number of additional factors. Principal amongst these is the payment of the airport service charge increased annually by reference to CPI. This cost is payable as a contribution to the costs incurred by the DAA in providing airport services (a cost which would in other circumstances be covered by the local authority rates). This outlay distorts the "valuation" unless an appropriate adjustment is made to level the playing field as between the subject property and other properties on the List. Mr. Elliott also stated that there were restrictive fuel price criteria set out in the Licence Agreement.

7.11 He stated that the Subject Property cannot be compared with the service stations concerned in PN348987 or PN346383 (contained in Appendix E, N/A to public) where none of the above restrictions apply.

7.12 Mr. Elliott referenced paragraphs 1.3, 5.3 and 5.4, of the Steering Committee on Harmonisation (Practice & Procedure) England / Wales, Scotland, Northern Ireland & Republic of Ireland and stated that in line with that document, he believed that it was appropriate that an adjustment of 10% should be made to the net annual value in the interest of fairness and to reflect the unusual nature of the Service Charge and restrictive nature of the Licence Agreement.

7.13 Mr. Elliott set out his opinion of valuation as follows:

Description	Litres	€/1000 Litres	NAV
Forecourt			
Throughput	8,887,783	9.50	€84,433.94
Fuel Card	1,240,712	4.75	€5,893.39
Use			
Shop	€4,076,387	4%	€163,055.48
Low Margin Sales	€1,200,606	2%	(€24,018.12)
Car Wash	€73,691	15%	€11,053.65
Subtotal			€228,637.56
Less 10% Allowance			€22,863.76
Total			€205,773.76
But Say			**€205,800**

7.14 In summing up, Mr. Elliott stated that service charges normally relate to services provided to a building by a landlord and in this case it relates to services provided by the DAA that would normally be recouped by the Local Authority under a rates levy.

8. RESPONDENT'S CASE

8.1 Mr. Vallely stated that a Section 45 notice was served on the Appellant, seeking audited or certified accounts including Profit and Loss accounts for the most recent three years, and if those were not available, management accounts would suffice, and he asked Mr. Elliott if it was correct that these were not provided. Mr. Elliott responded that whilst that was the case, subsequently figures were provided on a number of occasions and that appeared to satisfy the

Respondent, but latterly they were not accepting the figures. He said that the Valuation Office had changed the goal posts and are now relying on the Section 45 returns.

8.2 Mr. Vallely put it to Mr. Elliott that of the financial data presented in the appendices of Mr. Elliott's precis, page 12 was certified by the Appellants financial controller, but the subsequent page, giving a further break down of the figures including merchandise were not certified, and Mr. Elliott accepted that was the case.

8.3 In terms of the scheme adopted, Mr. Vallely put it to Mr. Elliott that whilst he sought to apply a reduction to the NAV to reflect the fact that an airport service charge was incurred by the Appellant, Mr. Elliott had noted in his precis that the scheme did not allow for it. Mr. Elliott confirmed that was the case, but it proved that in certain cases the valuation scheme was too rigid, unfair and unequitable. Mr. Vallely stated that might be the case for another day, but that Mr. Elliott had accepted the valuation method adopted in the Scheme, had made no reference to service charges.

8.4 He asked Mr. Elliott whether the recommendations of the Steering Committee on Harmonisation, had been adopted by the Scheme, as there was no reference in the Scheme to that document. Mr. Elliott confirmed that it had not.

8.5 He asked Mr. Elliott why he included comparable evidence PN 348987 and PN 346383, when he went on to say that they were not comparable to the Subject Property. Mr. Elliott responded that from the history of the representations made during the revaluation of those comparables, it proved that the Valuation Office were prepared to adjust their valuation on the basis of the figures provided by the Appellant, however in this case they were not.

8.6 In terms of the DAA licence agreement which the Appellant furnished to the Tribunal, Mr. Vallely stated that on Schedule 8, the guaranteed annual minimal sum to be paid to the DAA was €550,000, and there is a mention of that sum being paid over at the start of the agreement and did that reflect the annual rent. Mr. Elliott replied that it did not, that the figure on page 34 of the document, refers to the rent payable of €330,000 plus Vat in the first year.

8.7 Mr. Vallely put it to Mr. Elliott that if you go back to page 32 and 33 of the licence agreement, it is stated that the maximum annual payment of €220,000 is tied to the fuel

throughput sold by the Appellant and that the payment cited on page 34, of €330,000, is tied to shop turnover, adding the two figures together, is what gets us up to the figure of €550,000 paid in advance by the Respondent, Mr. Elliott accepted that was the case.

8.8 Mr. Vallely put it to Mr. Elliott that whilst his valuation included a figure of €73,691 for the carwash, no annual figures were submitted in his appendices for the car wash. Mr. Elliott stated that this was an oversight as he had the figures in a spreadsheet.

8.9 The Tribunal requested Mr. Elliott to submit back up figures for the carwash to the Tribunal. The Appellant subsequently submitted certified figures for the car wash, and these were circulated to all parties prior to the reconvened Tribunal hearing on the 13th July 2023.

8.10 Mr. Vallely put it to Mr. Elliott that at representation stage a figure for throughput of fuel was submitted of 13 million litres, yet subsequently a figure of 8.8 million litres was submitted to the Respondent and was being relied upon by the Appellant. Mr. Elliott stated that the latter figure was certified by the Appellant but that he was not sure about the previous figures.

8.11 The Tribunal asked Mr. Vallely was it the case that the Respondent was not accepting the NAV of €205,000 advanced by Mr. Elliott. He responded that they did not and had the Section 45 notice been complied with by the Appellant, they would have been in a better place.

8.12 The Tribunal put it to Mr. Vallely that the Respondent had the power to compel the Appellant to comply with the Section 45 notice. Mr. Vallely replied that in other cases there have been discovery applications, he was not aware of such an application in this case, but that there was a legal obligation on the Appellant to comply with the Section 45 Notice in any event.

8.13 The Tribunal asked Mr. Vallely at what stage was it indicated to the Appellant that the financial figures submitted were not sufficient, Mr. Vallely replied that he did not know, only that the Section 45 Notice was not fully complied with, and that on the return dated 9th August 2018, the Appellant confirmed the capacity of the fuel tanks and stated that the licence was to follow, which they subsequently received. The requirement for audited or certified Profit and Loss accounts, a breakdown of turnover etc and market information, were not complied with by the Appellant.

8.14 The Tribunal noted from Mr. Elliott's precis that financial figures were provided to the Respondent on the 22nd July 2019. Mr. Vallely could not confirm at what stage these figures were deemed to be not acceptable by the Respondent.

8.15 In the second Tribunal hearing convened on the 13th July, 2023, Mr. Vallely referred to the document published by the Steering Committee on Harmonisation (England/Wales, Scotland, Northern Ireland and the Republic of Ireland) at paragraphs 1.3, 5.3 and 5.4, referenced by Mr. Elliott in both his precis and at the earlier Tribunal hearing, in seeking to justify applying a discount of 10% to the NAV. Mr. Vallely said that section 5.3 of that document stated that "where the lease provides that the landlord can recover the cost of services by way of a separate service charge then no adjustment to the rent is necessary. Where the rent includes a service charge it will require adjustment". Mr. Valley stated that in his interpretation of the licence agreement, the service charge payment was in addition to the licence fee, and therefore under the grounds of the document introduced by Mr. Elliott, no discount was required to reflect the presence of a service charge.

8.16 In any event, he said that Mr. Elliott's approach to apply a discount to the NAV to reflect the imposition of a service charge on the Appellant, was not supported by the revaluation scheme adopted by all parties and that the scheme makes no refence to the harmonisation document referenced by the Appellant.

8.17 The Tribunal directed Mr. Vallely subsequent to the hearing to furnish it with a copy of the Harmonisation document. The document was subsequently received by the Tribunal and is included at Appendix E (N/A to public).

8.18 In summing up, Mr. Vallely stated that in the absence of the Profit and Loss account, the point-of-sale document and bearing in mind the figures submitted to the Respondent which are included in Mr. Elliotts precis, some of which had not been certified by the Appellants accountant, there was insufficient evidence to be relied upon. He said that whilst he was not suggesting any impropriety on behalf of the Appellant, the Respondent required full compliance with the Section 45 Notice to interpret the figures more fully.

8.19 Mr. Vallely, citing the Hight Court judgment in the *Brenagh Catering Limited* case, stated in his opinion that the Appellant had not met the requirements to prove his case that the Valuation Certificate figure of €550,000 was incorrect.

9. SUBMISSIONS

9.1 There were no submissions of a legal nature.

10. FINDINGS AND CONCLUSIONS

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

10.2 It is a well-established principle that the Appellant in each Appeal must satisfy the Tribunal of their case. In the present instance, though the Respondent did not submit a précis or call expert evidence to support the valuation on the List, the onus remained on the Appellant to discharge the burden of proof in order to succeed in their Appeal.

10.3 The Appellant, referencing the Steering Committee on Harmonisation (England/Wales, Scotland, Northern Ireland and the Republic of Ireland), contended that where a service charge was paid by the service station operator, a discount of 10% should be applied, in deriving the NAV. The Tribunal is persuaded from its review of all the evidence submitted, that the need for such a discount is not sufficiently supported and noted that no evidence was put forward by the Appellant to show the application of such a discount in the Local Authority area.

10.4 Mr. Vallely made strong reference to the Appellant not complying with the s.45 notice. While it would have been of assistance in this matter, it was not disputed that the relevant figures were provided to the Respondent in July 2019, after the issue of the proposed Valuation Certificate but before the issue of the final Valuation Certificate. As the figures provided by the Appellant do not appear to have been taken into account by the Respondent, the Tribunal does not attach any weight to this argument.

10.5 The Tribunal notes Mr. Vallely's understanding that the NAV was derived from the annual licence fee for the service station. The Tribunal accepts that Mr. Vallely was not in a position

to be definitive on this point but for the avoidance of doubt accepts the Appellants case that the proper valuation approach in this matter is contained in the Respondents valuation scheme.

10.6 Mr. Vallely stated from his review of Mr. Elliott's evidence, that the figures on page 12 of his precis were certified, while those on page 13 were not, a point conceded by Mr. Elliott. The Tribunal therefore has had regard only to the figures stated as certified on page 12 of the Appellant's précis, and those certified figures subsequently submitted to the Tribunal for the carwash turnover.

10.7 In adopting the certified figures in its valuation, the Tribunal gave most weight to the figures for the valuation year (2017) and considered that they were representative of the Fair Maintainable Trade of the subject property. The Tribunal has followed the rounding recommendations contained in Step 1 (Establish the FMT) and used the percentages as set out in Step 2 (Apply percentages to the Various Income streams). Step 3 does not arise in this case. As no certified figures for low margin fuel sales were provided the Tribunal has made no allowance for these.

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 **€251,000 (Two Hundred and Fifty-One Thousand Euro)**

And the Tribunal so Determines.

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 <u>and</u> 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.