

Appeal No: VA19/5/1404

**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. 5005970, Fuel/Depot at Clonshaugh Road, 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 €300,000.

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 considers that the valuation of the Property ought to have been determined in the sum of €166,970.

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 €238,000.

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 €300,000.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €300,000.

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 proceeded by way of an oral hearing, held remotely in conjunction with VA19/5/1389, 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 valuation scheme for service stations, certified figures for carwash turnover and details of any franchise agreement. 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 off the roundabout at Clonshaugh Road adjacent to the Clayton Hotel, a short distance from the junction with the R139 and the M50 junction, approximately 11.4 kilometres north-east of Dublin City Centre. The immediate surrounding area is predominantly commercial in character providing local neighbourhood facilities.

4.3 The Subject Property comprises a modern petrol filling station of single storey construction occupying a commodious and surfaced site set a substantial single storey retail unit and petrol forecourt with six pump islands under illuminated canopy, together with an illuminated Price / ID sign abutting the pavement.

4.4 The Subject Property is held under a 25-year lease from 2015 subject to the initial rent of €480,000 with rent reviews linked to the increase in the Consumer Price Index.

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.

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 €186,500, an increase from the figure of €171,200 contained in his Precis.

7.2 Mr. Elliott submitted the floor areas as follows:

Description	Sq. m.	Sq.ft.
Shop	583.50	6,280.21
Canopy	510.60	5,495.59

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”). A copy of the Scheme is included in Appendix B (N/A to public).

7.4 Mr. Elliott stated that both the valuers were in agreement that the most appropriate way to value the Subject Property was in accordance with the Valuation Scheme adopted for valuing service stations.

7.5 Mr. Elliott stated that in his valuation he had applied discounts in accordance with the scheme to low margin fuel cards and low margin sales of tobacco and lotto, based on the average annual sales turnover from 2015 to 2017 inclusive.

7.6 Mr. Elliott further stated that certified trading figures were furnished to the Valuation Office on 22nd July 2019, prior to the issue of the final Valuation Certificate.

7.7 In oral evidence, Mr. Elliott set out his opinion of valuation as follows:

Description	Litres	€/1000 Litres	NAV
Forecourt			
Throughput	9,583,248	9.50	€91,040.83
Fuel Card	4,764,542	4.75	(€22,631.58)
Use			
Shop	€3,122.739	4%	€124,909.56
Low Margin Sales	€1,200,606	2%	(21,233.78)
Car Wash	€83,014	15%	€14,452.10
Total			€186,537.16
But Say			€186,500

7.8 In summing up, Mr. Elliott stated that the Valuation Scheme that was set out and employed by professional valuers for many years was explained in the first three pages of the Reval document provided by the Respondent, but that the scheme had recently been updated without prior consultation or acceptance, with a new ‘Step 3’ setting out how franchises should be valued. This update was introduced on the 1st August 2019, five months after the release of the proposed valuation certificates and two months after representations were made on some of those certificates. ‘Step 3’ treats franchises as rent and not shop turnover. The scheme provides

for shop turnover, not rent assessment and therefore franchise income should not be included in the valuation.

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. If those accounts were not available, then management accounts would suffice. He asked Mr. Elliott if it was correct that this financial information had not been provided by the Appellant and Mr. Elliott confirmed that that was the case, noting that the figures were subsequently provided to the Respondent.

8.2 Mr. Vallely asked whether the certified figures were management accounts and Mr. Elliott confirmed they were not. He also asked Mr. Elliott whether he would agree that they were not what was sought under the Section 45 notice and Mr. Elliott agreed that they were not.

8.3 The Tribunal put it to Mr. Vallely that in the absence of figures from the Respondent, fundamentally, all there was to run on was the Appellant's figures and his cross the examination of the witness. Mr. Vallely stated that the Tribunal had received an eleventh-hour amendment by the Appellant to the figures submitted in the Appellant's precis, which left the Tribunal having to make a decision based on moveable, changeable and imprecise figures. The Respondent believes that if they had been given the proper information requested, the Tribunal would not have such difficulty in making its decision without the proper financial reports. The Appellant conceded the figures they provided are not profit & loss accounts.

8.4 Mr. Vallely, referring to the 'Valuation of Service Stations Reval 2019' document, under step 3, stated that where there is franchise income in a service station, 75% of the franchise payment is to be treated as a separate valuation item in the valuation grid. He noted that Circle K's own website makes mention of the "wonderful franchise", yet the Appellant provided no figure for the franchise income and therefore Mr Vallely submitted, the shop sales were clearly understated by the Appellant.

8.5 The Tribunal asked Mr. Vallyly how the Respondent came up with the valuation of €300,000. Mr. Vallyly gave a verbal breakdown and the valuation report with the following breakdown was subsequently provided by the Respondent to the Tribunal, as requested.

Use	Area /EST FMT	NAV € (Sq.m.) /Rate	NAV
Canopy	510.60	€0.0	€0.0
Shop	583.50	€0.0	€0.0
Shop Turnover	€5,440,000	€0.4	€217,600
Carwash Turnover	€90,000	€0.15	€13,500
Throughput (Litres)	10,440,000	€0.01	€104,000
Shop Turnover Allowance	€490,000	€0.02	(€9,800)
Throughput Allowance	5,000,000	€0.01	(€25,000)
Total			€300,300
Valuation (Rounded)			€300,000

8.6 The Tribunal asked Mr. Elliott to revert to the Respondent and with clarity on the franchise arrangement in Clonshaugh, and to submit the information to the Tribunal by 26th May 2023, to which Mr. Elliott replied that he would ask his clients again. Mr. Elliott subsequently informed the parties that he had been unable to get the franchise income details.

8.7 At the second hearing, Mr. Vallyly stated that there was no dispute that the certified carwash figures recently supplied by the Appellant, should be included in the NAV of the Subject Property. However, given there is a substantial franchise operation, for which figures were not provided by the Appellant, that this presented a difficulty.

8.8 Mr. Vallyly asked Mr. Elliott to confirm that in the certified figures for fuel throughput, there was no mention of low margin fuel in the certified spreadsheet on page 11 of his precis, and Mr. Elliott agreed.

8.9 In summing up, Mr. Vallyly stated that in the absence of the Profit and Loss account, and the point-of-sale report and bearing in mind that some of the figures submitted to the

Respondent had not been certified by the Appellant's 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.

8.10 Mr. Vallely stated that without the requested detail on the franchise income the shop income was understated.

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

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of 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, while the Respondent did not submit a précis or call expert evidence to support the valuation on the List, the onus remains on the Appellant to discharge the burden of proof in order to succeed in their Appeal.

10.3 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.

10.4 Mr. Vallely stated from his review of Mr. Elliott's evidence, that while the figures on page 11 of his précis were certified, 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 11 of the Appellants précis, and those certified figures subsequently submitted to the Tribunal for the carwash turnover.

10.5 In adopting the certified figures in its valuation, the Tribunal, as set out in the Scheme, gave most weight to the figures for the valuation year (2017) and considered that they were representative of the Fair Maintainable Trade of the 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). As no certified figures for low margin fuel sales were provided the Tribunal has made no allowance for these.

10.6 Step 3 of the Scheme deals with Franchise Income and states *"This is treated as representing rent and should not be included in the shop turnover. Take 75% of the franchise payment as a separate valuation item in the valuation grid."* It would appear that this was introduced on 1st August 2019, four months after the issue of the proposed Valuation Certificate and a month after the proposed certificate was appealed. Mr. Elliott was unable to advise whether a franchise arrangement was in place or, if so, what the terms of such arrangement might be.

10.7 The Tribunal has a number of concerns in regard to the Franchise Income provision and its apparent introduction at a late stage in the Revaluation Scheme. Franchise arrangements are not homogenous and can differ from property to property according to the requirements of individual franchisers and franchisees. The Tribunal has therefore a degree of concern about the introduction of a blanket figure for all franchise arrangements. Furthermore, there is no evidence before the Tribunal of any other properties in the Local Authority area being subject to such an arrangement. In addition, the timing of the introduction would suggest that any operator who did not appeal their valuation would not be subject to such a provision. It should also be noted that while counsel for the Respondent suggested that the omission of a figure for franchise income meant that the figures for sales were clearly understated, there is no evidence that this is the case and, in any event, the scheme requires the exclusion of franchise income from shop turnover. Finally, the wording of the provision requires that the Respondent specifically shows the franchise as a separate valuation item in the valuation grid – this was

not shown in the valuation report provided to the Tribunal by the Respondent. The Tribunal therefore finds that on the facts of this particular case the implementation of the franchise provision may result in a valuation that is not relative to the value of other comparable properties on the valuation list in the rating authority area of Fingal County Council. The Tribunal has made no provision for franchise income in its determination of NAV.

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 **€234,000 (Two Hundred and Thirty-Four thousand euro)**. The analysis of the breakdown is included at Appendix A (N/A to public).

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 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.