

Appeal No: VA19/5/1005

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Donohoe's Supermarket Ballyconnell Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2160830, Supermarket at 1b/Unit F 2, Realta Centre, Ballyconnell, County Cavan.

B E F O R E

Donal Madigan - MRICS, MSCSI

Annamaria Gallivan - FRICS, FSCSI, MPhil SEE

Sarah Reid - BL

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY, 2024**

1. THE APPEAL

1.1 By Notice of Appeal received on the 11TH 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 **€209,000**.

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:

“1. As a fundamental, we believe that the filling station formula is unsuitable to value properties as such as the subject property, which have more than 50% of their sales in the shop. The definition of a filling station is a property that sells primarily motor fuel. If more than 50% of the sales in a “filling station” occur in the shop, it is not in fact a filling station at all – it is a convenience store or indeed a supermarket with petrol

pumps as an ancillary. The nature of the trade has already been explored by the tribunal in VA15/5/069. Valuations of such properties need a complete rethink, as valuations multiples of superior supermarkets are paced on a much smaller shop, solely due to the presence of pumps outside the door. The Commissioner does not investigate the turnover of a Tesco superstore adjoining a Tesco fuel outlet, nor should she. This approach should be widened to take in stations such as the subject property, which are non-standard. Properties should be valued on a rate/m² with an addition for pumps. A major filling station operator (Circle K, Applegreen etc.) would not be interested in the subject property as it is not capable of the fuel sales necessary to attract a bid.

2. The native population of Ballyconnell is just 1,150 persons. The subject property is on a regional road as is the town itself. This is not a highly trafficked road as reflected in the fuel sales.

3. The subject property is the largest supermarket type property in the village. This has led to a complete over assessment of the subject property.

4. Effectively, the subject type property is being punished for its local supermarket trade, which is completely inequitable. Comparable supermarkets include PN 2188083 (Centra, Ballinagh), PN 1989510 (Londis, Ballyconnell), PN 1990216 (Centra, Killeshandra).

5. The subject property used as a supermarket comparison in VA12/1/023. The judgment also includes the agreed areas of the subject property. ‘

1.3 In the Notice of Appeal, the Appellant considered that the valuation of the Property ought to have been determined in the sum of **€71,500**.

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 **€227,000**.

- 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 **€209,000**.
- 2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of **€209,000**.
- 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 on the afternoon of 15th day of February, 2022. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) BA (Mod) and the Respondent was represented by Mr. John Doorly MRICS, MSCSI, ACI Arb, of the Valuation Office (now Tailte Eireann since 1st March, 2023).
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.
- 3.3 Both Expert Witnesses provided a Declaration and a Statement of Truth in their respective précis in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules, 2019.

4. FACTS

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

- 4.1 The Property is located next to Ballyconnell bridge in the Realta Shopping Centre just south of the centre of the town, approx.. 2 Kms East of the N3. Ballyconnell is in the

north of County Cavan, approx. 2.2 Kms from the border with Northern Ireland, and has a population of 1,105 according to the last Census.

4.2 The Property comprises of a service station and supermarket. The forecourt consists of two islands with 8 nozzles covered by a canopy. Services provided on site include a car wash, deli cold/hot, full off-licence (beer, spirits, wine), lotto, payzone, ATM, post office, coffee service. There is ample parking on site.

4.3 The floor areas of the Property are agreed as follows:

| | |
|----------------|------------------------|
| Shop | 631.99m ² |
| Stores/passage | 233.00m ² |
| Offices | 155.62m ² |
| Total | 1,020.61m ² |

4.4 It is understood that the Property is freehold.

4.5 Trading information is provided in Section A of the Appendix to this Determination (N/A to public).

5. ISSUES

5.1 The sole issue for Determination by the Tribunal in this appeal is quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015 and other Acts.

6.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, *that shall achieve both (insofar as is reasonably practicable)—*

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation

list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

6.3 The net annual value (NAV) of the Property must 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.”

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably 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. David Halpin, for the Appellant, set out his case, in summary, that the core issue arising in this appeal is the categorisation of the property either as a supermarket, as he contends, or as a service station as submitted by Mr. Doorly for the Respondent, that was extensively argued already in the earlier appeal heard that day concerning his Client’s other property in Belturbet (VA.19.5.0996). He outlined that the subject

Property is a supermarket with petrol islands to the front, located at the Realta Centre, Ballyconnell, Co. Cavan. (population:1,105) just on the edge of the town c. 2.2 Kms from the border. He submitted that supermarkets are not required to submit accounts but, because this is categorised as a filling station, the occupiers received a section 45 request for such information which they must comply with. Accounts information is set out in his precis which he referenced.

7.2 Unlike the case in Belturbet, this Property has higher retail turnover [figure redacted] which endorses his view that it is primarily a supermarket rather than a filling station. He asserted that, because of the size of the retail turnover, there is no comparable that can be advanced by either party in the filling station category, and he cites the reason for this is that it is not a filling station but is a supermarket. In terms of floor size comparison with the property in Belturbet, the retail is approx. 20% larger and overall, it is 15-20 % larger.

7.3 On page 11 of his precis, he set out his understanding of the valuation schematic that has been adopted for valuing filling stations by the Commissioner of Valuation in this revaluation of Cavan which has been used also in the revaluations of counties Monaghan, Meath, Wicklow, Wexford and Tipperary. He submits that by applying the service station schematic to this *supermarket* it is guaranteed to give an anomalous result.

7.4 Mr. Halpin submits that, despite being assessed as a filling station, the subject property is a SuperValu supermarket and that at the last rating assessment revision in 2011, the Valuation Office used three comparisons, all of which were also valued by reference to supermarkets, being as follows:

PN 1990536 – the appellants other property in Belturbet and now subject to Tribunal appeal VA19/5/0996.

PN 1989106 – the SuperValu at Main Street, Bailieborough (used in his submission as comparison 4)

PN 1989510 – the Londis (now Spar) located just 200m from the subject (used in his submission as comparison 2)

He submits that there was no reference in the revision report to comparing the subject Property to filling stations and that a further remark in that revision report was made to the effect that “the property has a difficult trading location adjoining N.I. border”. He considers that the reason for this is the different currency giving customers of both jurisdictions the opportunity to choose the most advantageous price.

7.5 By way of context, he set out the analysis of the subject Property as compared to NAV values of the units in the Realta Centre, as follows:

| PN | Size (Retail/Total) | Zone A Rate | Overall Rate | NAV |
|---------|---|-------------|--------------|----------|
| Subject | 631.99m ² //1,020.61m ² | N/A | €195 | €209,000 |
| 2160804 | 66.12m ² //101.84m ² | N/A | €72 | €7,330 |
| 2160805 | 148.50m ² //148.50m ² | N/A | €25 | €3,710 |
| 2160807 | 62.64m ² //62.64m ² | N/A | €25 | €1,560 |
| 2160808 | 17.64m ² //17.64m ² | €120 | €120 | €2,110 |
| 2160819 | 44.59m ² //44.59m ² | €120 | €120 | €5,350 |
| 2160824 | 29.40m ² //29.40m ² | €120 | €120 | €3,520 |
| 2160831 | 206.89m ² //206.89m ² | €120 | €82 | €16,980 |
| 2160836 | 47.10m ² //47.10m ² | €120 | €120 | €5,650 |
| 2199950 | 104.14m ² //104.14m ² | €120 | €88 | €9,120 |
| 2199951 | 33.59m ² //33.59m ² | N/A | €45 | €1,410 |
| 5015604 | 107.29m ² //107.29m ² | €120 | €93 | €9,950 |

From this he concludes that by assessing the subject Property based on its turnover, the Commissioner has applied a rate that is more than two and a half times the appropriate overall rate (subject Property valued at € 195.00 per m² which is more than the overall rate per square metre in the rest of the units in the Centre and in excess of the Zone A rate of € 120.00 per m²). He states that the Zone A rate used in the development is in keeping with the remainder of the town at €120.00 per m². He submits that for the smallest units (circa. 30m²) that these are all Zone A (in floor area) and that where the units increase in size, overall levels towards €72.00 per m² are adopted. The example he cites, of this, is PN 2160804 which is valued by the Commissioner as “supermarket”

as it now forms part of the supermarket floor area. He submits that, in trying to appraise the value of the subject Property, it would be impossible to ignore the evidence of net annual values within the Centre and it is difficult to understand how the Commissioner could value a small section of this supermarket at €72.00 per m² with no reference to turnover and then value the remainder at €195.00 per m² by turnover. The level of €72.00 per m² itself is higher than the standard supermarket level in the town due to the small size of this unit.

7.6 By contrast, he asserts that the Commissioner has valued the other supermarket in the town (Londis, now Spar) at € 50.00 per m² overall. Taken with the information above from the development, it is Mr Halpin’s opinion that this is more than enough to define the subject Property’s retail value at €50-60 per m².

7.7 Mr. Halpin was of the opinion that the Property could be of interest to two types of hypothetical tenant: (a) Convenience Store/Supermarket operators who are interested in the potential profits generated by shop sales, with limited interest in the fuel and (b) Filling station occupiers, namely Applegreen, Circle K, Maxol, Texaco, etc., who are interested in the potential profits generated by fuel sales, with limited interest in the shop. In the case of the former he contends that no chain supermarket operator would consider the subject property as it is simply too small for occupiers such as Lidl, Aldi, Dunnes etc. In this context, the hypothetical tenant would have to be similar to the actual occupier, a one-off willing to work in the local community to make a profit. In order to inform his rental bid, Mr. Halpin says that the hypothetical tenant would look at rental values (NAVs) and turnovers of comparable convenience stores/supermarkets to inform him, as per the following table:

| PN | Location | Size (Retail/Total) | Shop Turnover | Retail NAV |
|---------|---------------|---|---------------|------------|
| Subject | Ballyconnell | 631.99m ² //1,020.61m ² | [Redacted] | €200,000 |
| 1989510 | Ballyconnell | 571.39m ² //882.19m ² | Unknown | €36,800 |
| 2188083 | Bellananagh | 760m ² //1,043m ² | Unknown | €61,500 |
| 1989106 | Bailieborough | 826.52m ² //1,301.51m ² | Unknown | €85,900 |
| 2204275 | Bailieborough | 2,969.69m ² //4,537.29m ² | Unknown | €277,000 |
| 1990752 | Cootehill | 1,475.69m ² //2,050.36m ² | Unknown | €115,600 |

He contends that by any measure (be that Location, Size, Turnover), the subject property's **shop** component of NAV falls very clearly between €50,000-65,500 NAV, and not anywhere near the Commissioner's estimate of €200,000.

7.8 For context, the retail Zone A rate fixed by the Commissioner versus the rate applied in the case of supermarkets is as follows:

| Location | Population | Zone A rate | Overall rate |
|---------------|------------|---------------------|-----------------------|
| Ballyconnell | 1,105 | €120/m ² | €50/m ² |
| Bellananagh | 936 | €120/m ² | €50/m ² |
| Bailieborough | 2,863 | €180/m ² | €60-65/m ² |
| Cootehill | 1,853 | €120/m ² | €55/m ² |
| Kingscourt | 2,499 | €180/m ² | €60/m ² |
| Belturbet | 1,369 | €120/m ² | N/A |

Which he says shows that, the higher the population, the higher the Zone A and, consequently, the higher the overall rate.

7.9 He contends that the problem for potential filling station occupiers being interested in the Property is the lack of passing trade and as it trades in the region of 1.5 million litres of fuel a year, being located on a regional road in the centre of the village. He considers that there is no way to significantly increase fuel sales at this location, even if a hypothetical tenant drastically cut the price of fuel, because the route is not highly trafficked and there are just two fuel islands. For a filling station operator to get interested, he maintains that a station needs around double the fuel potential as a starting point. Therefore, he says that large fuel operators would not bid on the subject property but feels that local and regional occupiers could be interested and sets out a table in this regard as follows:

| PN | Location | Size (Retail/Total) | Number of Petrol Islands | NAV |
|---------|---------------|---|--------------------------|---------|
| 2211122 | Bailieborough | 39.00m ² //39.00m ² | 4 | €28,400 |
| 2140219 | Ballyconnell | 214.28m ² //365.80m ² | 4 | €48,400 |

| | | | | |
|---------|------------|---|---|---------|
| 2167148 | Kingscourt | 118.14m ² //209.72m ² | 2 | €36,800 |
| 2206239 | Belturbet | 140.00m ² //305.79m ² | 4 | €26,300 |

7.10 Mr. Halpin states that question therefore arises as to how the hypothetical tenant can reconcile the rental values (NAVs) with a rental bid for the subject property. To the Appellants mind, he suggests that the most straightforward route is to value the subject property on a rate per square metre basis (in line with the comparisons and the Tribunal's decision in VA15/5/055). In this way, he submits that the hypothetical tenant can adopt either the Zone A rate in the village (€120 per m²) and/or on the subject Property's own forecourt. By way of contrast, he suggests that the hypothetical tenant could discount the turnover for goodwill to make relative (as was done by the Tribunal in VA15/5/069). However, in the subject's case, he says that this would require write-downs of 50+%. Therefore, whilst it can be done, the Appellants believe that it is more likely that the hypothetical tenant would say that the subject does not fit the turnover formula, rather than attempt to bend the turnover formula.

7.11 Mr. Halpin submitted the following comparables in support of his case (full details in the Appendix, N/A to public) of which brief details are set out hereunder:

Retail Comparables

1. Property Numbers 2160804, 5015604, 2160805, 2160807, 2160808, 2160819, 2160824, 2160831, 2160836, 2199950, & 2199951

(Realta Shopping Centre, Ballyconnell, Co. Cavan)

The 11 other individual units in this Centre are assessed as follows: Retail at Zone A of € 120.00 per m² ; Stores at € 25.00 and first floor office at € 45.00 per m².

One unit (Unit 1B) PN **2160804** is occupied by Supervalu but separately assessed and comprises a total of 101.84m² (supermarket & store) which is valued at a unit value rate of € 72.00 per m² overall.

2. Property Number 1989510

(Kennedy's Spar, Church Street, Ballyconnell, Co. Cavan.)

This property comprises a convenience shop of 882.19m² in the centre of Ballyconnell (population 1,075 persons), c. 13 Kms from Belturbet, which is assessed at the NAV of € 36,800 that is calculated at a unit value rate overall of € 50.00 per m².

3. Property Number 2188083

(Gavin's Centra, Granard Road, Ballinagh, Co. Cavan.)

This property comprises a convenience shop of 1,043.00m² in Ballinagh (population 936 persons) which is assessed at the NAV of € 61,500 that is calculated at a unit value rate overall of € 50.00 per m².

4. Property Number 1989106

(Harris's Supervalu, Main Street, Bailieborough, Co. Cavan.)

This property comprises a supermarket of 577.81m² in the centre of Bailieborough (population 2,863) with parking to the rear which is assessed at the NAV of € 85,900 that is calculated at a unit value rate on the main ground floor retail area of € 65.00 per m².

5. Property Number 2204275

(Tesco Supermarket, Thomas Street, Bailieborough,)

This is a supermarket with a total of 4,537.29m² which is assessed at the NAV of € 277,000 that is calculated at a unit value rate on the retail space of € 60.00 per m².

6. Property Number 1990752

(Foy's Supervalu, Cootehill, Co. Cavan.)

This property comprises a supermarket and ancillary accommodation of 2,032.86m² which is assessed at the NAV of € 115,600 that is calculated at a unit value rate overall of € 55.00 per m² generally.

Filling Station Comparables.

7. Property Number 2211122

(Tesco, Thomas Street, Bailieborough, Co. Cavan. Located adjacent to Number 5. above)

This is a service station property of 44.44m² that is assessed at the NAV of € 28,400 that is calculated on the basis of the scheme.

8. Property Number 2140219

(Smith's Service Station, Rakeelan, Ballyconnell, Co. Cavan)

This is a service station property of 365.80m² that is assessed at the NAV of € 48,400 that is calculated on the basis of the scheme.

9. Property Number 2167148

(Nibeck Limited, Dublin Road, Kingscourt, Co. Cavan.)

This property comprises a service station of 238.78m² that was let [details in Appendix (N/A to public) but redacted here]. This is assessed at the NAV of € 36,800 on the basis of the scheme.

10. Property Number 2206239

(Spar 24 Hour, Drumacon, Belturbet, Co. Cavan.)

Filling station and Spar supermarket of c. 305.79m² located on the N3, west of Belturbet which is assessed at the NAV of € 26,300 on the basis of the scheme.

Adjacent Restaurant Unit to above for context

10.(a) Property Number 2206240

This is assessed at the NAV of € 20,800 that is calculated as follows:

| | | | |
|--------------|---------------|--|-----------------|
| Ground Floor | Retail Zone A | 102.50m ² @ € 100.00 per m ² | 10,250.00 |
| | Retail Zone B | 153.00m ² @ € 50.00 per m ² | 7,650.00 |
| | Retail Zone C | <u>118.34m² @ € 25.00 per m²</u> | <u>2,958.50</u> |
| | | 373.84m ² | 20,858.50 |
| | | | NAV € 20,800. |

Car Wash to the above is valued separately.

Context Comparisons-Valuation Tribunal decisions

A. Property Number 1139189 VA. 17/5/151

(Munnelly Bros.,Kilkenny Road, Carlow.)

This service station in Co. Carlow had 154.19m² with retail amounting to 118.19m² and it is assessed at the NAV of € 38,000.

B. Property Number 2148429 VA. 17/5/085

(Rayro Service Station, Ring Road N80, Carlow)

This service station is also in Carlow and is assessed at the NAV of € 98,500.

C. Property Number 1277226 VA.15/5/055

(Michael Leonard-Leonard's Centra, Cappamore, Co. Limerick.)

This property comprises a supermarket with petrol pumps in Cappamore (population 620) in Co. Limerick with a total of 742.51m² and is assessed at the NAV of € 44,250.

7.12 Mr. Halpin, for the Appellant, contends for a valuation of € 69,400 as at the valuation date of 15th September, 2017, which he calculates as follows:

| | € |
|--|--------------------|
| (1) Fuel 1,625,000 litres @ € 0.006 per litre | 9,750 |
| (2) Ground Floor Supermarket 631.99m ² @ € 50.00 per m ² | 31,600 |
| Offices 106.12m ² @ € 50.00 per m ² | 5,306 |
| ancillary 49.50m ² @ € 50.00 per m ² | 2,475 |
| Stores 221.76m ² @ € 50.00 per m ² | 11,088 |
| WC 7.00m ² @ € 50.00 per m ² | 350 |
| Passage 4.24m ² @ € 50.00 per m ² | <u>212</u> |
| <u>ADD</u> 15% for Off-Licence | 7,655 |
| 2% for fit out | <u>1,021</u> |
| Total (1) & (2) | 69,457 |
| | say, NAV € 69,400. |

7.13 Mr. Halpin offers an alternative valuation on an “adjusted formula basis” which yields a figure of NAV € 69,700, but this is, he submits, only for reasons of context, and ultimately his reliance is placed on the above figure of € 69,400 set out above. This alternative figure he calculates as follows:

| | |
|---|--------------------|
| | € |
| (1) Fuel 1,625,000 litres @ € 0.006 per litre | 9,750 |
| (2) Shop FMT € 2,400,000 @ 2.5% | <u>60,000</u> |
| | 69,750 |
| | say, NAV € 69,700. |

8. RESPONDENT'S CASE

- 8.1 Mr. John Doorly, for the Respondent, outlined his case for defence of the existing valuation in the Valuation List. Mr. Doorly had submitted a very detailed precis of evidence in which he outlined the basis of valuation, the market information sources, a profile and statistics on the County Cavan rating area, the appeal history including the consideration of initial representations, a commentary on the Appellant's grounds of appeal and his precis and other information. He outlined in detail the characteristics of the Property which are supplemented by maps, photographs, and a block plan. He also attached fuel price statistics at the valuation date as well as a copy of the Valuation Certificate, earlier representation documents and other cases from the Valuation Tribunal on which he relied being: VA.17.5.573 Naas Oil (Prosperous) Limited; VA.17.3.020 John Crowley and VA 17.5.615 Ace Autobody Limited.
- 8.2 In his precis he had confirmed the approach taken in these cases by the Commissioner of Valuation, which is to value service stations according to a valuation scheme that attempts to link rental value to trading and profitability and the proper assessment of genuine sustainable trading levels. He confirmed that the valuation of service stations is made on a direct rental basis; suitably adjusted rents being devalued for analysis purposes to a price per thousand litres of maintainable throughput. Analysis is also carried out on turnovers achieved from the shop and car wash elements of trade with regard being had to the Fair Maintainable Trade (FMT).

This scheme has evolved since the first Revaluation in 2005 and has been modified since, lastly in 2015, to take account of low margin items. He said the scheme is tested each year by reference to a full Receipts and Expenditure appraisal to ensure that it is still appropriate to apply, and this has been employed in the valuation of some 40 service stations in County Cavan. The scheme is applied to both small scale enterprises

with low throughput and basic shop i.e. a fuel model, to larger stations with substantial convenience stores attached i.e. a retail model, as in the present case.

- 8.3 Mr. Doorly clarified that the Commissioner of Valuation decided to categorise the Property as a service station because there are two income streams, i.e. fuel and retail, and the fuel element in this case is significant. Consequently, the valuation scheme for service stations based on the shortened form of the Receipts & Expenditure method (estimates of FMT being calculated and then converted to NAV by the application of an appropriate percentage) is used to calculate the net annual value. He stated that, as the retail turnover is very high in this case the Valuer must, after invoking the scheme, stand back and make a professional judgment on the result to ensure that it is correct in accordance with established practice guidelines in this methodology issued by the Royal Institution of Chartered Surveyors (RICS). He had accordingly discounted back the FMT on the shop to meet the requirements of section 19.(5) and to reflect what the market would do based on the assumption of the property being vacant and to let. He explained that this is what he believed would be the FMT that a Reasonably Efficient Operator (REO) would expect to achieve as postulated by the RICS guidance notes.
- 8.4 He clarified that there are two models encompassed by the schematic one retail model and fuel model and he confirmed that the scheme as outlined in the precis submitted by Mr Halpin is correct and that this is still the scheme but with some adjustment for small margin items.
- 8.5 Mr. Doorly submitted the following comparables in support of his case (full details in the Appendix, N/A to public) of which brief details are set out hereunder:

1. Property Number 2206237 Key Rental Transaction Number 1

(Top Oil Limited, Kilconny Street, Belturbet, Co. Cavan)

The property comprises a service station of 187.97m² which was let [terms redacted here] The property is assessed at an NAV of € 45,000 which is calculated on the basis of the scheme. [This has been reduced since the appeal hearing to NAV € 39,900]

2. Property Number 5018111 Key Rental Transaction Number 2

(C K 6 Fuels, Cavan, Co. Cavan)

This property comprises a service station of c. 16.00m² and which was let [terms redacted here]. This property is assessed at an NAV of € 10,800 which is calculated on the basis of the scheme.

3. Property Number 2167148 Key Rental Transaction Number 3

(Nibeck Limited, Kingscourt, Co. Cavan.)

This property comprises service station with a shop of 238.78m² which was let [terms redacted here]. This property is assessed at the NAV of € 36,800 which is calculated on the basis of the scheme.

4. Property Number 2198421 NAV Comparison No. 1

(P.J & K Retail Limited, Ballyjamesduff, Co. Cavan.)

This property comprises a filling station and shop of 518.18m² which is assessed at the NAV of € 137,000 that is calculated on the basis of the scheme

5. Property Number 1990451 NAV Comparison no. 2

(Lisnasaran, Cootehill, Co. Cavan.)

This property comprises a filling station and shop of 354.10m² which is assessed at the NAV of € 50,400 that is calculated on the basis of the scheme.

6. Property Number 1990387 NAV Comparison No. 3

(Knockanoark, Stradone, Co. Cavan.)

This property comprises a filling station and shop of 287.29m² which is assessed at the NAV of € 59,000 that is calculated on the basis of the scheme.

7. Property Number 5019377 NAV Comparison No. 4

(Circle K Energy, Killygarry, Co. Cavan.)

This property comprises a filling station and shop of 192.51m² which is assessed at the NAV of € 123,300 that is calculated on the basis of the scheme.

8. Property Number 1989793 NAV Comparison No. 5

(Lisduff, Virginia, Co. Cavan.)

This property comprises a filling station and shop of 442.60m² which is assessed at the NAV of € 32,200 that is calculated on the basis of the scheme.

9. Property Number 2211122 NAV Comparison No. 6

(Tesco, Thomas Street, Bailieborough, Co. Cavan.)

This is a service station property of 44.44m² that is assessed at the NAV of € 28,400 that is calculated on the basis of the scheme.

10. Property Number 2206239 NAV Comparison No. 7

(Spar 24 Hour, Drumacon, Belturbet, Co. Cavan.)

Filling station and Spar supermarket of c. 305.79m² located on the N3, west from the centre of Belturbet which is assessed at the NAV of € 26,300 that is calculated on the basis of the scheme.

Appeal cases agreed prior to Tribunal

11. Property Number 1990333

(Sharpmount Limited, Moynehall, Co. Cavan.)

This property comprises a filling station and shop of 428.87m² which was agreed at €95,600 that is calculated on the basis of the scheme.

12. Property Number 2120439

(Cassidy Service Station, Ballyconnell, Co. Cavan.)

This property comprises a filling station with shop of 387.40m² that was agreed at the NAV of € 66,700 that is calculated on the basis of the scheme.

13. Property Number 2191783

(Finian O'Reilly, Loch Gowna, Cavan.)

This is a filling station and shop of 283.78m² that was agreed at the NAV of € 13,900 which is calculated on the basis of the scheme.

Other comparables outside the rating authority area

14. Property Number 2008671

(Adamstown, New Ross, Co. Wexford.)

This is a filling station and shop of 676.91m² that is assessed at the NAV of € 43,600.

15. Property Number 1556510

(Portlaoise Road, Mountrath, Co. Laois.)

This is a filling station and shop of 778.96m² that is assessed at the NAV of € 75,600.

16. Property Number 1218911

(O'Grady's Food Market, Sparr Street, Ballingarry, Co. Limerick.)

This is a filling station and shop of 971.90m² which is assessed at the NAV of € 69,300.

- 8.6 Mr. John Doorly, for the Respondent, contends for a valuation of € 209,000 as at the valuation date of 15th September, 2017, which he calculates as follows:

| | € |
|---|----------------|
| (1) Fuel 1,625,000 litres @ € 0.006 per litre | 9,750 |
| (2) Shop (adjusted) FMT € 5,000,000 @ €0.04 | <u>200,000</u> |
| Total: | 209,750 |
| | NAV € 209,000. |
| | (rounded down) |

9. SUBMISSIONS

There were no legal submissions in this case.

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, equitable and uniform so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Cavan County Council.

- 10.2 Both Surveyors set out extensive submissions in their respective Precises of Evidence and followed up with further clarification of items at the hearing, for which the Tribunal is grateful. Much of the evidence supplied was the same as submitted at the earlier hearing for the Appellant's other property in Belturbet (VA.19.5.0996) but there were some differences too.

- 10.3 The key contentious issue here (being very similar to the other sister appeal of VA.19.5.0996 Belturbet) is the classification of the property for valuation purposes and flowing from that, the suitability of the valuation scheme as it is applied to this property, given the contentions by the Appellant and the counter responses of the Respondent. 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, in essence 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 value rates, shown as percentages, which is dependent on volume/turnover level and is applied to each component of the income generating element of a service station, be that fuel throughput, car wash FMT, retail FMT etc from which to derive an NAV. The Commissioner of Valuation deem solely retail properties as not relevant comparisons for the valuation of service stations as they are materially different due to the lack of fuel element, and *'not relative to the value of other properties comparable to that property'*.
- 10.4 The difference here between the two Surveyors is significant, with Mr. Halpin for the Appellant proposing a valuation of € 69,400, in contrast to Mr. Doorly for the Respondent at a valuation of € 209,000. Both Surveyors are agreed on the value attributable to the fuel throughput at € 9,750 and so the remaining net difference that arises in their respective valuations is **only** regarding the treatment of the **retail** element (Mr. Halpin at € 59,650 versus Mr. Doorly at € 200,000, after rounding of figures).
- 10.5 In cases of rating valuation where the Commissioner of Valuation has developed a scheme of valuation, the Tribunal normally respects the legitimacy of that, because, on examination, it is usually accepted by Rating Surveyors and Rating Consultants for general application in the valuation of certain classes of property. Strong contrary evidence would ordinarily be required to direct the Tribunal to depart from adherence to that scheme. The Tribunal considers that the Appellant's agent has identified the significant disparity in the value of the **retail** element of this Property relative to **other**

retail properties which occurs because of (a) the classification of the property as a service station/fuel depot and consequently, (b) the methodology employed by invoking the valuation scheme for ascertaining the NAV of the retail element. In contrast, convenience stores and supermarkets without fuel pumps are valued by reference to a unit value per square metre. The Tribunal notes that this gives rise, in some cases, including the current appeal, to the retail element in service stations being valued vastly in excess of other retail properties in the same rating authority area. However, the Tribunal also notes the stance of the Commissioner of Valuations that solely retail properties are not relevant comparisons as they are materially different due to the lack of fuel element.

- 10.6 The Tribunal considers that the valuation scheme must ultimately produce the correct result in each case, in order to meet the fundamental tests laid down by the statutory framework of sec. 19 (5) and section 48. of the Valuation Act 2001. After the scheme is applied, the Valuer/Surveyor must take a “stand back and look” approach to the result to ensure that the value arrived at by the valuation scheme accords with reality and is properly within the context of what the law is seeking to achieve by those provisions. The valuation exercise is not completed without doing so. The Tribunal agrees with the Respondent Valuer when he said in evidence that professional judgment has to be exercised after the scheme is applied and he endorsed the application of a “stand back and look” approach. The Tribunal understands the need for employing a valuation scheme that enables similar types of property to be valued in line with an agreed framework. Ultimately, it is a tool of convenience for the Surveyors and Valuers acting for both parties. However, the development of a valuation scheme that is not demonstrated to be soundly grounded on **rental evidence** could lead to the class of property being valued being out of sync with reality. This might entail the resultant valuations of that class of property being, not only incorrect, but also neither uniform nor equitable with the other classes of property appearing in the Valuation List.
- 10.7 Whilst it is acknowledged that the onus of proof rests with the Appellant, as with all rating appeals, to demonstrate that the valuation made by the Respondent is incorrect, the Tribunal directs caution in applying, as in this appeal, in a narrow formulaic manner, the scheme as devised without having due regard to the goals of the statutory quest posed by sections 19. and 48. of the Valuation Act 2001 which are, ultimately, the

estimate of net annual value being, a **rent** payable by a **hypothetical tenant** for the subject property. It is not a case of whether a property fits the framework of the valuation scheme but whether the resultant calculations, from invoking that scheme, produce a rent that accords with the statutory basis.

10.8 Accordingly, care must be exercised, especially in the case of categories of property valued, primarily, by reference to their profitability/earning capacity, not to value beyond the scope of the statutory direction to encompass what might be construed as valuing the business, as opposed to the property. The details of this valuation scheme given in evidence were set out by the Appellant and not, unusually, by the Respondent but was confirmed by the Respondent Valuer as being correct in answer to a question to that effect from the Tribunal. The Tribunal considers that the information on the valuation scheme is lacking by reference to rental evidence. Three key rental transactions were advanced by the Respondent Valuer to endorse the valuation scheme. The first was subject to an appeal (and now appears in the Valuation List at a reduced figure); the second was a service station only with no significant retail offer, being a fuel model type property unlike the subject Property. The third key rental transaction is important as it is a common comparison to both Surveyors and thus is the most reliable. The provision of one rental comparable in support of a retail model for the scheme is not encouraging in persuading the Tribunal that the scheme is well founded and appropriate to apply in **all** cases. If the rental evidence exists to endorse the scheme of valuation the Tribunal needs to see and examine that, in order to ensure a correct, uniform and equitable valuation results from its Determination.

10.9 Notwithstanding the evidence advanced by Mr. Doorly for the Respondent, the Tribunal notes the contrast in the net annual value of the retail properties displayed in the evidence put forward by Mr. Halpin for the Appellant, especially where he demonstrated that the current valuation of the retail element devalues to an overall unit value rate of € 195 per m² which places it in excess of the Zone A rate in the rest of the town as well as to the adjacent retail units, the zoned ones being valued at the Zone A rate of € 120.00 per m². The unit rate for the subject Property is also in excess of the other section of the supermarket (albeit a small unit of 101.84m²) **PN 2160804** which is valued at an overall rate of € 72.00 per m².

- 10.10 The Tribunal has no evidence that the hypothetical Tenant envisaged by sec. 48 of the Valuation Act 2001 would be willing to pay **so much more** for the subject Property, given the pattern of net annual values of retail properties or the comparisons presented, because the Property must be viewed “vacant and to let” at the valuation date. Accordingly, the estimate of FMT of the retail element in this case must be based on the reasonable expectations of an incoming Tenant seeking to fix in his/her mind as an appropriate **rent** for the Property. Therefore a ‘stand back and look’ approach, and an appropriate adjustment of the FMT should be made to represent what a Reasonably Efficient Operator (REO) would achieve.
- 10.11 The core issue arising in this appeal is the dispute between the Surveyors as to the value of the **retail** element which flows directly from the categorisation of the property as a service station. Mr. Halpin, for the Appellant, considers that the Ratepayer is prejudiced in the amount of the valuation because once it is labelled as being a service station owing to the fuel pumps to the front, this causes the Commissioner of Valuation to ascertain the trading accounts for the throughput and shop etc which results in one class of properties (service stations/filling stations) being over valued relative to other classes (i.e. retail).
- 10.12 The Tribunal acknowledges the difficulty for the Commissioner of Valuation in developing and employing a scheme of valuation for service stations with precise mathematical inputs to achieve the requirements of sec. 19(5) of the Valuation Act 2001, as amended. The consequence of adopting such a scheme, without flexibility, is to prioritise obtaining **uniformity** over **correctness** and **equity** which are the other two prerequisites ordained by the section. Section 19(5) mandates that, as far as practicable, the result must combine all three, i.e. correctness, equity and uniformity, absent which the approach lacks credibility.
- 10.13 It is clear to the Tribunal that the hypothetical Tenant envisaged in section 48.(3) of the Valuation Act, 2001, as amended, would consider their rental bid after, not only examining the accounts of the existing business, but would also consider the various characteristics of the other comparable properties and their net annual values which are evident on the Valuation List. The Tribunal is tasked to determine the rent that a Tenant taking the Property assuming it to be “vacant and to let” would pay for the **Property**,

and not the business. Express reliance on the method of FMT and the accounts of the existing business drives the evaluation in a direction that might not achieve the parity mandated by the three aspirational “pillars” in section 19.(5) of- **correctness, equity and uniformity**. Furthermore, it places sole concentration on the business as opposed to other rental values (net annual values) and attaches less importance to issues such as- in the current appeal, building size, forecourt size, fuel dispensers and capacity, ancillary services, traffic volumes, ease of entry and exit, sightlines, profile and visibility, age of buildings, layout, customer catchment, competition as well as other factors.

10.14 Based on the foregoing the Tribunal considers that, as the scheme employed by the Commissioner is generally applicable, (the fuel throughput element is agreed) the preferred method is, having taken a “stand back and look” approach, to adjust the FMT of the retail element in order that the resultant NAV for that component achieves a correct, equitable and uniform result. The Tribunal accepts that the Appellant’s agent has identified an anomaly in the application of the scheme to retail models such as the current Property and accepts the evidence of the Respondent’s Valuer that a decision must be made after the scheme is invoked to use professional judgment in finalising an appropriate valuation of the Property. The Respondent Valuer has acknowledged in evidence that an adjustment is required for the retail element of FMT (as the implied level is extremely high) and so all that remains is to bring this into alignment with the other evidence presented to arrive at the figure that is correct, equitable and uniform.

10.15 Much comprehensive evidence was placed before the Tribunal and both Experts submitted very detailed written evidence augmented by oral testimony to guide the decision too, which is appreciated. The Tribunal has considered all of the evidence put before it and finds the following are the preferred comparables to the subject Property:

- **PN 2120429** Cassidys Service Station, Ballyconnell, valued at NAV € 66,700. This case was agreed prior to Tribunal and represents a filling station close to the subject but enjoying cross border traffic
- **PN 2140219** Smiths Service Station, Rakeelan, Ballyconnell valued at NAV € 48,400. This case is also just north of the town and south of Cassidys above.

- **PN 2167148** Nibeck Limited, Dublin Road, Kingscourt, Co. Cavan valued at NAV € 36,800. This case is common to both Surveyors and reflects the rental basis that aligns, broadly, with the scheme and was an agreed settlement.
- **PN 1990333** Sharpmount Limited, Moynehall, Co. Cavan valued at NAV € 95,600. Located just south of Cavan town this reflects a model that has high fuel and high retail FMT but the latter is adjusted downwards for small margin items. It was also an agreed case prior to Tribunal.

10.16 The Tribunal is obliged to determine a valuation for the Property in line with the pattern of net annual values demonstrated by the evidence, especially when viewed vacant and to let at the valuation date, reflecting factors such as location, size, and other physical attributes in addition to earning potential. Accordingly, the Tribunal considers that the Respondent’s adopted FMT for the retail element be further adjusted downwards by 40% as set out below.

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 **€ 129,750**

This is calculated as follows:

| | | | |
|-------------------------|------------------|---------------------|-------------------|
| (1) Fuel | 1,625,000 litres | @ € 0.006 per litre | € 9,750 |
| (2) Shop (adjusted) FMT | € 3,000,000 | @ €0.04 | € <u>120,000</u> |
| | | Total: | € 129,750 |
| | | NAV | € 129,750. |

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