

Appeal No: VA17/5/032

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

JAMES FARRELL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 200003, Service Station/Garage at Local No/Map Ref: 45B Donaguile Castlecomer, County Kilkenny.

B E F O R E

Rory Lavelle – MA, FRICS, FSCSI, ACI Arb

Deputy Chairperson

Rory Hanniffy - BL

Member

Eoin McDermott – FSCIS, FRICS, ACI Arb

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF AUGUST, 2018**

1. THE APPEAL

1.1 By Notice of Appeal received on 28th September 2017 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 €63,000.

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:

“Rental income of this property in Castlecomer would never achieve €63000 per annum. This figure is totally unrealistic.”

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €24,000

2. REVALUATION HISTORY

2.1 On 25th May 2017 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 €63,000.

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 manager did it not consider it appropriate to provide for a lower valuation

2.3 A Final Valuation Certificate issued on 7th September 2017 stating a valuation of €63,000

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is 30th October 2015.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on 31st July 2018. At the hearing the Appellant was present and was also represented by Mr John Algar of GVA Donal O’Buachalla and the Respondent was represented by Mr Adrian Power-Kelly FRICS, FSCSI, ACI Arb, RICS Reg Val of the Valuation Office.

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.

4. FACTS

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

4.2 The property is located on the west side of Kilkenny Street (the N78) at the southern end of Castlecomer Village, some 17.5 km north of Kilkenny city. The surrounding area is predominantly residential.

4.3 The property comprises a single storey premises consisting of a filling station, retail outlet, car showroom, garage facility, yard and car wash.

4.4 The floor areas and NAV of parts of the property have been agreed as follows:

Unit	Floor area (Sq. M.)	NAV € psm	NAV	Comment
Shop	130	N/A	N/A	Valued on turnover
Showroom	81.78	€60	€4,906.80	
Store	143.93	€22	€3,166.46	
Workshop	549.2	€20	€10,984.00	
Yard	374	€2	€748.00	
Tanks			€310	

4.5 The parties agreed that no value be applied to the car wash due to its low turnover.

4.6 Petrol filling stations and accompanying retail units are valued on the basis of an agreed scheme, which applies set levels to fuel throughput and shop turnover. These levels vary depending on the level of throughput and turnover. The levels applicable to the subject unit are agreed by both parties as representing a throughput NAV of €5.50 per 1,000 litres and 3.25% of retail turnover.

5. ISSUES

5.1 The issues that arise in this appeal are the quantum of value and the Respondents approach to arriving at a throughput figure from the filling station and the basis of assessment of the turnover from the shop.

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. Algar, on behalf of the Appellant gave evidence of the property and the location, noting that a number of issues had been agreed between the parties.

7.2 Mr. Algar gave evidence of the fuel throughput for the station for the years 2012 – 2017 (see Appendix A) and averaged the throughput over the full period to give a figure of 1,157,900 litres.

7.3 Mr. Algar gave evidence of the breakdown of the shop turnover (see Appendix B) and highlighted what he considered to be the high percentage applicable to sales of cigarettes, lotto tickets and scratch cards. He noted that approximately 45% of the turnover came from these items and gave evidence that comparable properties that he had researched suggested that a figure of 15% would be more normal. He explained that these items gave far lower margins to the retailer than the sale of other products and that the Respondent had failed to consider this as a factor in their analysis. He suggested that a more appropriate approach would be to adjust the turnover figure to allow for this imbalance and put forward an adjusted turnover figure of €736,000.

7.4 Mr. Alger sought an NAV of €50,000 made up as follows:

Unit	Floor area (Sq. M.)	NAV € psm	NAV
Showroom	81.78	€60	€4,906.80
Store	143.93	€22	€3,166.46
Workshop	549.2	€20	€10,984.00
Yard	374	€2	€748.00
Tanks			€310.00
Fuel	1,157,900	€0.0055	€6,368.45
Retail	€736,000	3.25%	€23,420.00
			€50,903.71

Say €50,000

7.5 In reply to queries from the Respondent, Mr. Algar confirmed that he was not in a position to provide evidence of the comparable properties whose turnover he had analysed, and upon which his opinion of 15% for Cigarettes, Lotto tickets and scratch cards is based, but stressed that he had considered a wide number of such comparables. He accepted that the comparable properties were situated around the country although at least one other was located in the Kilkenny area. He accepted that surrounding uses were predominantly residential. He reiterated his view that throughput figure should be averaged over the six years as provided as it was the fullest information available. He accepted the Respondent had to ensure equity and uniformity but argued that where an occupier had provided full information then the Respondent should take this into account and that the turnover could not simply be taken on the top line figure.

7.6 Mr. Farrell gave evidence relating to the family nature of the business and the impact of the recession on Castlecomer. He noted that it was listed as having the 14th highest rate of unemployment in the country. He gave information about the impact that the rates increase would have and noted that he was probably the second largest employer in the town. He pointed out that his was the only petrol station in the town, whereas there had been three six years ago.

8. RESPONDENT'S CASE

8.1 Mr. Power-Kelly, on behalf of the Respondent gave evidence of the property and the location, noting that a number of issues had been agreed between the parties. He noted that the property was surrounded by predominantly residential uses.

8.2 Mr. Power-Kelly gave evidence of the valuation scheme adopted by the Respondent and the varying levels applying to fuel throughput and shop turnover. NAV evidence was given of four petrol filling stations in Kilkenny, with varying levels of throughput and turnover and it was noted that the scheme was consistently applied across each one.

8.3 Mr. Power-Kelly sought an amended NAV of €58,100 made up as follows:

Unit	Floor area (Sq. M.)	NAV € psm	NAV
Showroom	81.78	€60	€4,906.80
Store	143.93	€22	€3,166.46
Workshop	549.2	€20	€10,984.00
Yard	374	€2	€748.00
Tanks			€310.00
Fuel	1,250,000	€0.0055	€6,875.00
Retail	€960,000	3.25%	€31,200.00
Car Wash	€3,000		€0.00
			€58,190.26

Say €58,100

8.4 In response to queries from the Appellant, Mr. Power-Kelly explained that the rationale for an increasing percentage applying to increasing retail turnover was to reflect the more profitable nature of the higher turnover store. He accepted that all turnover could not be treated in the same way but pointed that very limited information was available and that the Respondent had an obligation to ensure equity and uniformity. He accepted that the hypothetical tenant would take account of the breakdown of the turnover but argued that the hypothetical tenant would also take into consideration the potential for increasing the turnover.

8.5 In response to a query from the Tribunal, Mr. Power-Kelly confirmed that the valuation scheme had been consistently applied across the Local Authority area.

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 Kilkenny County Council.

10.2 The issues that arise in this appeal are the quantum of value and the Respondents approach to valuing the throughput from the filling station and the turnover from the shop.

10.3 The Appellant has assessed the throughput of the filling station by taking an average of the six-year period 2012-2017, to arrive at an annual average throughput of 1,157,900 litres. It was noted that this average was significantly distorted by a very low level of throughput in 2012. The Respondents throughput figure of 1,250,000 litres is a fair reflection of the actual throughput in the years 2015/2016 and is more helpful to the Tribunal. We have accepted the Respondents approach in this matter.

10.4 The Appellant has provided detailed figures showing the breakdown of the shop turnover and the proportion attributable to cigarettes and lottery and scratch card tickets. The Tribunal notes this argument. However, the Appellant was not able to give any specific evidence to show that this breakdown of turnover is in any way unusual or to sustain the percentages sought. The Tribunal also notes the reduction in the NAV between the Final Valuation Certificate of €63,000 and the figure of €58,100 in the Respondents submission. The Tribunal accepts that the difficulty of the Respondent in analysing what is, in many cases, limited information and notes that the Respondent has applied the valuation scheme uniformly across the Local Authority area. Accordingly, the Tribunal accepts the Respondents approach in this matter.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent at an NAV of €58,100.

And the Tribunal so determines.