

**Appeal No: VA19/5/1192**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Townparks Service Station Limited**

**APPELLANT**

**and**

**Commissioner of Valuation (Tailte Éireann)**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1282411, Fuel/Depot at Castletown Road, Dundalk, County Louth.

**B E F O R E**

**Donal Madigan, MRICS, MSCSI**

**Deputy Chairperson**

**Barra McCabe, BL, MRICS, MSCSI**

**Deputy Chairperson**

**Martin Connolly, MAgrSc, MSc, MSCSI, FCInstArb**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 18<sup>TH</sup> DAY OF APRIL, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 9<sup>th</sup> 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 ('the Property') was fixed in the sum of **€ 181,600.**

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal as follows:

1. *As a fundamental, we believe that the filling station formula is unsuitable to value properties such as the subject property, which have more than 50% of their sales occurring 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 this 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 placed on 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 he. This approach should be widened to take in stations such as the subject property, which are nonstandard. Properties should be valued on a rate/m<sup>2</sup> 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. *Effectively, the subject property is being punished for its local convenience store trade, which is completely inequitable. Comparable convenience stores include PN 1282390 (Londis, Castletown Road) and PN 1281057 (XL, Newry Road) – not to mention the operators other store at Greenacres (PN 1281417). The property's value was increased at representations and is now higher than the majority of supermarkets in Dundalk – despite being less than 20% of the size.*
3. *This property can be treated on an overall basis or zoned in line with the assessment of PN 1282413 or 2214845 – next door.*
4. *Indeed, a vastly superior shop unit formerly occupied by Dunnes Stores in Dundalk (PN 1282072) is currently available asking €61.50/m<sup>2</sup> - €80,000 per annum. This can be contrasted with modern supermarket accommodation in Aston Court, Drogheda (asking €55/m<sup>2</sup>)."*

1.3 The Appellant, in the Notice of Appeal, considered that the valuation of the Property ought to have been determined in the sum of **€ 57,300**.

## **2. REVALUATION HISTORY**

- 2.1 On the 29<sup>th</sup> 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 € **159,900**.
- 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 a figure of € **181,600**.
- 2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> of September 2019 stating a valuation of € **181,600**.
- 2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15<sup>th</sup> of September 2017.

## **3. THE HEARING**

- 3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom, on the 27<sup>th</sup> of February 2023. At the hearing, the Appellant was represented by David E S Halpin M Sc (Real Estate), BA Mod of Eamonn Halpin & Co Ltd and the Respondent was represented by John Doorly MSCSI, M.Sc., BSc (Hons) 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**

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

- 4.1 The Property is located at Castletown Road, Dundalk, on the N53, approximately 1.5 km east of Junction 17 on the M1 motorway.

- 4.2 The Property comprises a single storey filling station, with five islands, and ten nozzles, four on the forecourt and one beside the car wash. These latter two are not listed in Mr Halpin's précis but are noted in Mr Doorly's and are shown in a photograph at page 18 of the Respondent's précis. There is also a car wash and forecourt services, a convenience store, including a deli counter, off licence, an ATM and a store.
- 4.3 The evidence of Mr Doorly, for the Respondent, was that the premises were in good condition, a contention that was supported by photographs in both précis.
- 4.4 The floor areas, agreed by the parties are as follows:
- |                             |                       |
|-----------------------------|-----------------------|
| Service station/retail area | 204.30 m <sup>2</sup> |
| Store                       | 68.32 m <sup>2</sup>  |
- 4.5 Mr Halpin for the Appellant provided three years' sales accounts, which he summarised, providing details of turnover and throughput. These are shown at Appendix 1 (N/A to public).
- 4.6 Mr Halpin also provided details of the valuation scheme for filling stations that was used in the Revaluation of County Louth in 2017, albeit without the adjustments for low margin items and others shown in Mr Doorly's assessment of value. This is shown at Appendix 2 (N/A to public).

## 5. ISSUES

- 5.1 The primary issue in this case is quantum. Mr Halpin for the Appellant contended for a reduced NAV of €75,800 while Mr Doorly for the Respondent contended that the valuation on the list, €181,600, should be reduced to €142,400. A secondary issue was the suitability or otherwise of the valuation scheme for filling stations. Mr Halpin contended that where the retail turnover exceeded 50% of the total, as in this case, the scheme overvalues the retail element of the property.

## **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 considered 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 Halpin in his précis provided a location map, a description, external and internal photographs of the Property. He also summarised the valuation history and provided accounts of sales from 2015 to 2018 and summarised the relevant trading figures. These are shown at Appendix 1 (N/A to public).

7.2 At the outset of his oral evidence, Mr Halpin described the Commissioner’s valuation scheme for filling stations as a necessary evil where no reliable rental evidence is available. He also stated that he accepted the fuel throughput element of the scheme but contended that the retail element of the scheme was not fit for purpose where retail turnover exceeds 50% of the total, as in the present case.

7.3 In his précis the Property was described as “... a convenience store, (204.3 m<sup>2</sup>) with petrol islands (4) to the front”, located at Castletown, Dundalk, Co Louth, a town with a population of 39,004. The Property adjoins a parade of neighbourhood shops all

valued at €150/m<sup>2</sup>, Zone A, whereas the retail element of the subject property is valued at €931/m<sup>2</sup>.

7.4 Mr Halpin also contended that the Property must be viewed “... *rebus sic stantibus*...” and in that context it does not meet the Collins Dictionary definition of a filling station, “*a premises which primarily sells motor fuel*”. The shop turnover is significantly higher than that of the forecourt. Mr Halpin submitted that essentially, the subject property is a convenience store with ancillary fuel pumps. It was further contended that the subject property would be of interest to either convenience store operators who would have limited interest in fuel sales or large fuel retailers whose focus would be on the profitability of the fuel sales if the price is right. As a result, he submitted that the NAV of the retail element should fall between €35-55,000. He also stated there is an extreme level of competition for filling stations, with nineteen in Dundalk primarily due to its proximity to the border.

Mr Doorly in his précis disputes the contention that the subject property is a shop with fuel pumps. He contended that it has all the characteristics of a filling station: fuel pumps, forecourt, shop, and a car wash. He also disagrees with the use of dictionary definitions of which there are many. The description of the subject property is a matter for professional judgment.

7.5 Mr Halpin put forward details of ten retail properties to assist the Tribunal. These are shown below.

**Comparable No 1. Castletown Road, Dundalk**

These are three premises in a neighbourhood parade adjoining the Property. All have a NAV of €150/m<sup>2</sup> Zone A. Two are a semi-detached pharmacy and post office. The third is a restaurant. All are considerably smaller, ranging in size from 29%, to 52% and 16% respectively of the Property. They appear in good condition based on the photographs supplied.

(A)PN1282412

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Retail Zone A	41.48	€150.00	€6,405.00

0	Retail Zone B	17.50	€75.00	€1,312.50
0	Store	52.90	€20.00	€1,058.00
Total		101.88		€8,775.50

(B) PN 221485

Level	Use	Area (m <sup>2</sup> )	NAV €/m	NAV €
0	Retail Zone A	41.48	€150.00	€6,222.00
0	Retail Zone B	41.49	€75.00	€3,111.00
0	Retail Zone C	23.89	€37.50	€895.88
Total		106.85		€10,228.88

(C) PN 221485

Level	Use	Area (m <sup>2</sup> )	NAV €/m	NAV €
0	Retail Zone A	15.13	€150.00	€2,269.50
0	Retail Zone B	21.06	€75.00	€1,579.50
Total		36.19		€3,849.00

**Comparable No 2. Castletown Road, Dundalk. PN 1282390**

This property is located 500 metres closer to the town centre than the Property. Mr Halpin suggested that it is absurd to expect a hypothetical tenant to pay €166,000 per annum for the retail element of the subject property when a convenience store of approximately half the size could be rented closer to the town centre for €14,760. The NAV of the retail element in Mr Doorly's précis is €122,200. (See Appendix 8, N/A to public).

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Retail Zone A	44.53	€200.00	€8,906.00
0	Retail Zone B	50.37	€100.00	€5,037.00
0	Store	40.95	€20.00	€819.00
Total		135.85		€14,760.00

**Comparable No 3. Greenacres Shopping Centre, Long Avenue, Dundalk. PN 1281416**

These premises are occupied by the Appellant under same franchise as the retail element of the Property, with the same price points and margins. On analysing the turnover Mr Halpin concluded that the NAV is 1.6% of the gross turnover, not 4% as was being applied to the retail element of the Property.

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Kitchen	19.12	€35.00	€669.20
0	Offices(s)	5.60	€35.00	€196.00
0	Retail Zone A	64.33	€350.00	€22,515.50
0	Retail Zone B	67.71	€175.00	€11,849.25
0	Retail Zone C	52.75	€87.50	€4,615.63
0	Store	18.59	€35.00	€650.65
			Additional Items	€6,060.00
Total		281.10		€46,500.00

**Comparable No 4. Hazel Court Bay Estate, Dundalk.**

This comparable comprises three units in a high-density housing estate. They had been operated as a Centra store which is now closed. The three units combined had been let on a 20-year lease from 15 July 2015 for €25,000 per annum. Based on these data, Mr Halpin suggests the NAV of the retail element of the subject property cannot exceed a value in the range €54,240-79.680.

(A)PN 1281447

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Kitchen	13.60	€20.00	€272.00
0	Retail Zone A	37.82	€120.00	€4,538.40
0	Retail Zone B	9.92	€60.00	€595.20
Total		101.88		€5,400.00



(B) PN 1281449

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Kitchen	13.60	€20.00	€272.00
0	Retail Zone A	37.82	€120.00	€4,538.40
0	Retail Zone B	9.92	€60.00	€595.20
			Extra items	€810.00
Total		101.88		€6,210.00

(C) PN 128448

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Kitchen	13.60	€20.00	€272.00
0	Retail Zone A	37.82	€120.00	€4,538.40
0	Retail Zone B	9.92	€60.00	€595.20
Total		101.88		€5,400.00

**Comparable No 5. Park Street, Dundalk. PN 1282072**

This property is a vacant supermarket, which Mr Halpin stated was subject of Valuation Tribunal decision VA19/5/1093. Again, Mr Halpin contrasted the NAV of €79,150 for this 1,667.94 m<sup>2</sup> supermarket with the retail element of the Property which he said had an NAV of €166,000. The NAV of the retail element in Mr Doorly's précis is €122,200. (See Appendix 8, N/A to public).

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Canteen/Store	61.71	€52.00	€3208.92
Mezz	Store	130.22	€10.40	€1,354.29
0	Store	189.59	€20.00	€3,771.80
0	Supermarket	1,283.21	€95.00	€121,904.95
Total		1,670.73		€79,150

**Comparable No 6. Newry Road, Dundalk. PN 1281111**

This is a modern purpose-built supermarket which Mr Halpin contended had a significantly higher turnover than the Property.

Level	Use	Area (m <sup>2</sup> )	NAV €/m <sup>2</sup>	NAV €
0	Canteen	17.22	€95.00	€1,635.90
0	Cold Room	52.80	€95.00	€5,016.00
0	Entrance Hall	44.10	€95.00	€24,189.50
0	Offices	14.22	€95.00	€1,350.90
0	Store	236.82	€95.00	€22,497.90
0	Supermarket	673.20	€95.00	€63,954.00
Total		1,038.36		€114,400.00

Mr Halpin contended, having regard to the relative NAVs of this comparable and the Property and also to the turnover of this comparable, which he speculated was greater than that of the Property, the Commissioner is regarding the Property as more in common with a supermarket than a convenience store.

In response to each of the retail comparisons put forward, Mr Doorly submitted that the Appellant's NAV comparables were not similarly circumstanced, they have no fuel throughput and thus were not comparable as pursuant to s. 19(5) of the 2001 Act (as amended)

- 7.6 Mr Halpin put forward details of eight filling station comparators. In his précis Mr Halpin stated that for each comparable the Commissioner did not provide the NAV basis. However, in his précis Mr Doorly stated that the trading information was given to the Appellant and were presented at pages 31-34 in his precis. The evidence put forward by Mr Halpin is summarised below, while the trading information for each comparable is shown in Appendix 3 (N/A to public).

**Comparable No 7. Dublin Road Dundalk. PN 5016879**

NAV €85,900.

Retail size	250 m <sup>2</sup>
Total size	353.2 m <sup>2</sup>

Shop turnover	Unknown
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This is a new station, built in 2016, on the entrance to the town. Mr Halpin contended that it was a superior to the Property in construction and profile and that if a hypothetical tenant could rent this property for €85,900 the Property would not attract a higher rent. At the date of the hearing this property was under appeal, but the appeal has since been withdrawn.

In cross examination Mr Halpin accepted that there are five service stations on the Dublin Road and that this comparable is situated between two others. He also accepted that it had three islands compared with the Property's five and had no small margin items in its turnover.

**Comparable 8. Dundalk Shopping Centre. PN2214885.**

NAV €63,000.00.

NAV basis not provided by the Commissioner.

Retail size	45.94 m <sup>2</sup>
Total size	82.68 m <sup>2</sup>
Shop turnover	Unknown

Mr Halpin argued that this is the best located filling station in Dundalk, adjacent to the premier shopping centre in the town and that the NAV does not reflect this.

In cross examination Mr Halpin accepted that there were five service stations in the vicinity and that there were no small margin items in the shop. When it was put to him that it was in the shadow of a Tesco supermarket, he replied that he would regard that as an advantage.

In his précis Mr Doorly contended that the Property had a better retail offering, which was reflected in the valuation level applied to the various income streams.

**Comparable 9. Ardee Road. PN 1281592**

NAV €32,300

NAV basis not provided by the Commissioner.

Retail size	100 m <sup>2</sup>
Total size	120 m <sup>2</sup>
Shop turnover	Unknown

Mr Halpin described this property as being a typical station on an arterial route, not unlike the Property, with a similar potential albeit with a smaller retail element.

In cross examination Mr Halpin accepted that this property had two islands versus five in the Property, it had no car wash and a smaller shop. He would not accept that Ardee Road was an inferior location to Castletown but did accept that the subject property was on a direct access route to the M1.

In his précis Mr Doorly contended that the Property was better located and had a superior retail element.

**Comparable 10. Avenue Road Dundalk. PN1281456**

NAV €40,100

NAV basis not provided by the Commissioner.

Retail size	135 m <sup>2</sup>
Total size	175 m <sup>2</sup>
Shop turnover	Unknown

Mr Halpin described this comparable as one of the only stations on the east side of the town with a typical forecourt and convenience store.

In cross examination Mr Halpin accepted there were five other service stations within one kilometre and that Castletown was a superior location. The station was located in a retail parade and had two islands versus five in the Property.

Mr Doorly in his précis stated that the Property was in a better location and that its retail offering was superior.

**Comparable 11. Newry Road Dundalk. PN1281456**

NAV €111,2000

NAV basis not provided by the Commissioner.

Retail size	190 m <sup>2</sup>
Total size	329.5m <sup>2</sup>
Shop turnover	Unknown

This is a modern station built in 2016. It is larger in total size but similar to the Property in its retail area. In Mr Halpin's opinion it represented the best of the best both in profile and construction.

In cross examination Mr Halpin agreed that there were six filling stations on the Newry Road and an Aldi supermarket within 300 metres. There was no school adjacent and the property had three islands compared with five in the subject property.

Mr Doorly in his précis stated that the subject property had a better retail offering and at the date of the hearing it had been under appeal. The appeal was withdrawn in April 2023.

**Comparable 12. Dublin Road, Dundalk. PN1281545**

NAV €40,400

NAV basis not provided by the Commissioner.

Retail size	Unknown
Total size	Unknown
Shop turnover	Unknown

Mr Halpin commented that there were a number of defunct filling stations in Dundalk and that it was difficult to know how they were assessed in the absence of any trade.

In cross examination Mr Halpin agreed that this property was not comparable with the Property.

In his précis Mr Doorly stated that this property has been vacant for many years, has no retail element, with just a pay point. Estimated throughput is set out in Appendix 3 (N/A to public).

**Comparable 13. Castletown, Dublin Road, Dundalk. PN1280832**

NAV €40,000

NAV basis not provided by the Commissioner.

Retail size	Unknown
Total size	Unknown
Shop turnover	Unknown

This is the only other filling station on the Castletown Road close to the M1. It had been closed for some time. Mr Halpin, while accepting the at this property was inferior to the Property, contended that if the Castletown Road were a goldmine for fuel sales it would still be open and trading.

In cross examination when put to Mr Halpin that this property no longer functioned as a filling station, he replied that he and the Tribunal had to take the property as it was on the valuation date, September 2017. When Mr Doorly put it to him the valuation had been changed on appeal, Mr Halpin replied that based on evidence at a previous hearing the property had been subject of a revision. He accepted Mr Doorly's evidence that the NAV of the property is now €9,700.

Mr Doorly in his precis stated that the property no longer functioned as a service station and has been subdivided.

**Comparable 14. Newry Road, Dundalk. PN1281169**

NAV €97,100

NAV basis not provided by the Commissioner.

Areas and turnover were unknown.

This service station was described as defunct, and it was accepted in cross examination that it was not comparable with the Property.

7.7 Mr Halpin put forward three Valuation Tribunal judgements, two in Co Carlow and one in Co Limerick, for the assistance of the Tribunal. These were described as “*Context Comparisons*”. The Tribunal finds that they are too remote from the Property to be of direct assistance in determining the NAV. However, they do indicate how the Tribunal approached cases in which there were relatively high retail sales and they will be considered in that context in Paragraphs 10.9 to 10.11 below.

- 7.8 On questioning of his valuation calculation, Mr Halpin confirmed that the figures at page 8 of the Appellant's précis, which are also included at Appendix 1 (N/A to public) of this herein decision, were the actual trading figures and he also accepted the Respondent's estimate of Fair Maintainable Trade ('FMT') for the fuel element of the valuation. He further confirmed that he had reduced the shop turnover by 38% of Mr Doorly's estimate of FMT and increased the level of low margin items by 15%, to reflect good will. The service/bill pay items were unchanged.
- In the course of questioning of Mr Doorly by the Tribunal, Mr Halpin clarified his approach to the valuation of the storeroom. The area and rate/m<sup>2</sup> were agreed and he applied these in his revised valuation. However, he reduced his estimate of FMT in the shop by a further €100,000 to reflect the fact that the storage area of the shop was in an adjoining, but separate building. In normal circumstances the shop storage is in the same building and is assessed as part of the FMT.
- 7.9 When asked by Mr Doorly for evidence of goodwill, Mr Halpin replied that it was clear no other occupier could trade at the same level. When it was pointed out to him that he had presented no statistical analysis of the profits, Mr Halpin replied that there were no super normal profits.
- 7.10 Mr Halpin accepted that Castletown Road was a good residential area and that there were two schools within 500 metres from the subject property. He also accepted that the hypothetical tenant would be interested in making a profit and that he or she would have access to the trading accounts.
- 7.11 Mr Halpin confirmed that the NAV of €150/m Zone A for adjacent shops was calculated on an area basis. When it was put to him that his analysis of convenience store turnover to give an NAV of 1.65% of turnover was based on one property, he replied two. (There are details for only one analysis, PN1281416, given in Mr Halpin's précis.).
- 7.12 Mr Halpin stated in reply to Mr Doorly that he accepted the figure of 4% applied to retail sales and that he accepted the scheme because he had no other choice.

- 7.13 In summing up, Mr Halpin stated that to succeed he had to establish that the occupier was exceptional and that the hypothetical tenant could not replicate his performance. He contended that he had done that. The retail turnover, shown in Appendix 1 (N/A to public) was exceptional; no other filling station in Dundalk was achieving similar turnover. The retail turnover per litre of fuel was €2.00 compared with the highest of the Respondent's examples, €0.70 per litre. It is this fact that the hypothetical tenant would take into consideration. The NAV of the retail element was much higher than the NAV of a similar convenience store run by the occupier. Applying the scheme to the convenience store implied that the NAV of the shop in the Property included 40% for the business. If two different systems of valuation give two vastly differing answers for similar properties, then one of them must be wrong. Mr Halpin accepted that the Property had some locational benefits, but did not accept that competition was bad, despite, as Mr Doorly pointed out, having described the competition between filling stations in Dundalk as fierce in earlier evidence. Mr Halpin argued that the Property had a bad pitch, and was not the highest and best use for the site, and it was being saved by exceptional retail sales. This made the Property unique, something that could not be replicated by a hypothetical tenant, and hence, the reduction applied to the FMT for the shop.
- 7.14 Mr Halpin contended for an NAV of €75,800 based on applying the valuation scheme to the FMT for fuel sales, and to his estimate of retail FMT that he had reduced to reflect the exceptional nature of the operator and the presence of the adjoining store. He also put forward an alternative valuation of €59,800 on a square metre basis plus a multiplier of the fuel throughput. The calculations are set out at Appendix 4 (N/A to public).

## **8. RESPONDENT'S CASE**

- 8.1 Mr Doorly provided a summary of his case that included his response to the Appellant's case, commentary on the valuation scheme for filling stations, the valuation history of the subject property, a location map, block plans and photographs in support of his description of the subject property.
- 8.2 Mr Doorly stated that the Property was located on the N53 at Castletown Road and was the only filling station on this road connecting with Junction 17 on the M1. The Property



comprised a single storey service station. There were four islands on the forecourt and one other adjoining the car wash, giving ten nozzles in all. Retail services include a shop with deli, an off licence, an ATM and a store. The premises operate on a 24-hour basis. The Property was in excellent condition and the areas were agreed as set out in Paragraph 4.4 of the Respondent's précis and in the Appellant's estimate of value. (The area cited at page 6 of Mr Halpin's précis, 73.92 m<sup>2</sup>, seems to be a misprint.) The Property was held freehold.

In cross examination Mr Halpin accepted that there were five islands; he had listed four in his précis.

8.3 Mr Doorly set out in detail the basis for revaluation, the methodology for valuing filling stations and the Property in particular. The NAV is determined in accordance with ss 48(1), 48(3) and 19(5) of the Valuation (Amendment Act), relative to the values of comparable properties on the list. Analysis of open market rental transactions (Key Rental Transactions) and analysis of receipts and expenditure from trading data provided by ratepayers enabled the creation of a valuation scheme which was applied to determine an NAV that is both correct and equitable as required by s 19(5) of the Act. This scheme was applied to value filling stations in various counties in 2017. Mr Doorly contended that this scheme was well accepted, and he provided two specific Tribunal cases in Co Louth, VA19/5/0342 and VA19/5/1051, which were settled in accordance with the scheme prior to hearing. Mr Doorly provided no evidence of Key Rental Transactions nor of the receipts and expenditure analysis referred to.

8.4 Mr Doorly provided details of nine comparable properties in respect of the NAV from the County Louth rating list. Six were from Dundalk, two from Drogheda and one from Ardee. These are summarised below, and the trading figures are set out at Appendix 5 (N/A to public). He also provided a table summarising the trading ratios of these comparables and Mr Halpin's, which are set out at Appendix 6 (N/A to public).

**Comparable No 1. PN 1277417**

Ballymakenny Road, Drogheda

NAV €52,800.

This comparable is located in Drogheda but Mr Doorly asserted that both towns have similar characteristics. In Mr Doorly's view the Property was in a better trading location with access to a National Road and close to the M1 motorway. The Property also had less competition whereas the comparable was in direct competition with the nearby PN 1277451. The valuation was agreed with an experienced rating agent with the benefit of full accounts.

**Comparable No 2. PN 2214885**

Dundalk Shopping Centre, Dundalk

NAV €63,00

This filling station adjoins the major shopping centre in Dundalk. The NAV was agreed at representation stage with a professional rating agent. The station had the highest throughput and the lowest retail sales of all the comparables put forward. Mr Doorly contended that this was an indication of the potential for fuel sales in Dundalk.

**Comparable No 3 PN 1281597**

Carrick Road, Dundalk.

NAV. €75,600.

Mr Doorly contended that the Property was better located with direct access to a national road leading to a nearby junction on the M1 and thus had better trading potential. In addition, the Property had less competition than this comparable which is collocated with another filling station. The NAV was agreed at representation stage with a professional rating agent using verified trading accounts.

**Comparable No 4. PN 1278985**

Townparks, Ardee.

NAV. €79,200.

The valuation was agreed with a professional rating agent prior to a Tribunal hearing. The throughput is higher, and the shop turnover is lower than the Property, which Mr Doorly contended was in a better location in the town of Dundalk.

**Comparable No 5 PN 1307668**

128a Loughboy, Drogheda  
€83,900.

This comparable is located in Drogheda, which Mr Doorly contended is a similar town to Dundalk, with broadly similar populations. However, in his view the Property was in a better location, adjacent to a junction on the M1 motorway. The valuation was done with the benefit of full accounts and there were no representations.

**Comparable No 6. PN5015610**

10G Forkhill Road, Dundalk  
NAV €92,100.

The NAV of this property was agreed with a professional accountant on behalf of the occupier prior to a Tribunal hearing. Full trading figures were produced. Mr Doorly contended that the relatively high fuel turnover indicated the potential trade for service stations in Dundalk. He also was of the view that the Property had a superior retail element and was better located; this comparison has direct competition from another filling station two hundred metres away.

**Comparable No 7. PN 2180912**

Ballymascanlon, Dundalk  
NAV €108,100.

Mr Doorly stated that the valuation of this property was agreed with a professional rating consultant prior to a Tribunal hearing and with access to full trading accounts. The high throughput indicated the potential for service stations in Dundalk in Mr Doorly's opinion.

**Comparable No 8. PN5016895**

1 Newry Road, Dundalk.  
NAV €111,200

At the date of the hearing Mr Doorly indicated that this property was under appeal to the Tribunal, and that the occupier was professionally represented. The appeal was

withdrawn in April 2023. Mr Doorly also contended that the Property was better located with access to the N53 and the M1 and that the relatively high throughput indicates the potential for filling stations in Dundalk.

**Comparable No 9. PN 1278571**

66BA Mell, Drogheda

NAV €160,000

This property, located in Drogheda, is under appeal at present. Mr Doorly contended that Drogheda and Dundalk were similar towns. He also stated that notwithstanding the pending appeal trading figures provided were correct.

- 8.5 Mr Doorly summed up the nine comparable properties that he put forward and provided commentary on them. All comparables cited had provided full trading details. Throughput ranged from 10,500,00 to 2,400,00 litres per annum. The Appellant's throughput, which Mr Halpin provided, is shown at Appendix 1 (N/A to public). Retail FMT ranged from €4,500,00 to €396,000. In his opinion, the Appellant's retail FMT, shown in Appendix 8 (N/A to public) (the Respondent's estimate of value), is consistent with the accounts submitted, shown at Appendix 1 (N/A to public). Mr Halpin was contending for a figure 38% lower as set out in his valuation at Appendix 4 (N/A to public). All fifty filling stations in Co Louth were valued on a similar FMT method, and none on a per square metre basis. He submitted that the Appellant's profits were consistent with the other properties on the list and that there was no evidence of exceptional goodwill.
- 8.6 Mr Doorly provided analysis of the trading patterns, the percentage of shop turnover comprising low margin items and low margin service items, in his own and Mr Halpin's comparables. These are shown at Appendix 6 (N/A to public) and are further analysed by the Tribunal at Appendix 7 (N/A to public). None of Mr Halpin's comparables had low margin items, nor did two of Mr Doorly's, PN2214885 and PN 5016895. Mr Doorly pointed out that these two properties had different business models. PN 2214885 was located beside a large supermarket, had high throughput, but the lowest retail sales, probably because it was located adjacent to a large supermarket. PN 5016895 catered

for the haulage industry. Of the comparables with low margin items the percentage of shop turnover ranged from 13.3 to 60.8, with three between 53.87 and 60.8. The figure cited for the subject property in the table, 52.7%, seems to be a misprint. Based on the figures used in Mr Doorly's estimate of value, at Appendix 8 (N/A to public). the correct figure would be 31%. This is also consistent with the Tribunal's analysis of the trading figures provided by Mr Halpin for the years 2015 to 2018: 30.4%, 31.94% and 31.44%, respectively. Four of the Respondent's comparables and all of the Appellants had no low margin service sales. For the others these ranged from 6% to 34% of retail turnover. The figure for the Property is 21%. Mr Doorly argued that these figures for the Property were not exceptional and within the range expected for a filling station with a convenience store attached.

- 8.7 Mr Doorly cited two tribunal cases: VA19/5/0048, Aisling McMahon T/A The Wishing Well Pub and the Commissioner of Valuation and VA19/5/0543, Cloughvalley Stores and The Commissioner of Valuation.

In VA19/5/048 the Tribunal examined the question of an exceptional trader. It was held that a high level of trade *per se* does not qualify as exceptional and in that case there was no evidence adduced to prove that the appellant was an operator of exceptional ability.

In VA19/5/0543 it was held that FMT was the appropriate method of valuation for filling stations. Furthermore, there should be no adjustment to the FMT figures, even in that case where 64% of the turnover was made up of shop sales, a ratio similar to the Property's.

- 8.8 Mr Halpin put it to Mr Doorly that the Property had the highest retail to fuel ratio of any of the comparables cited and that none were close to the retail turnover of the Property. Mr Doorly replied that the Commissioner does not look at the fuel to retail ratios. Rather, the process of analysing the various income streams and applying appropriate factors to each derives an accurate estimate of NAV. He attributed the high retail sales to the location adjacent to a residential area and schools. He contended that the percentage of low margin items was within the range for filling stations and stated that the hypothetical tenant could replicate the retail turnover.

- 8.9 Mr Halpin questioned Mr Doorly at length on the various comparable properties that he cited. In the case of all the Dundalk comparables the response could be summarised as saying that all suffered from competition from nearby filling stations, six on the Newry Road and five on the Dublin Road. In addition, there was competition from nearby convenience stores and a new supermarket in the case of comparable No 8, PN 5016895. Except for PN2214885, all the others had fewer fuel islands. In Mr Doorly's view the Property was better located than any of the comparables submitted. The Property had direct access to the M1 Motorway, had no competition for either fuel or retail, was located beside a large residential area and close to two large schools with approximately 1,400 students. Mr Halpin challenged Mr Doorly's introduction of evidence about the schools since it had not been included in his précis. However, the Tribunal notes that in cross examination Mr Halpin accepted the presence of the two schools although he did not know the number of pupils attending them.
- 8.10 Mr Doorly was questioned by Mr Halpin on the purported benefit of being located on an access road to Junction 17 of the M1. Mr Halpin's point was that traffic coming from the south was more likely to use Junction 16 and traffic from the north Junction 18. On the other hand, Mr Doorly contended that the choice of junction was governed by the driver's destination in the town rather than the origin of the journey.
- 8.11 Mr Halpin questioned Mr Doorly's assertion that Castletown Road was such a good location. If it were, why were his [Mr Halpin] Comparable No 13, and other locations on the road not developed for use as filling stations. Mr Doorly replied that perhaps they could not compete with the subject property.
- 8.12 On questioning by the Tribunal it was pointed out that the Property was the only one where high margin retail sales were greater than fuel throughput and Mr Doorly was asked if that indicated an exceptional operator. He replied that each income stream is examined. High margins do not imply goodwill. One had to look at the factors at play, convenience and fuel sales which attract custom as opposed to in a stand-alone convenience store.
- 8.13 On questioning by the Tribunal Mr Doorly outlined his approach to valuation of the store, as will be discussed at paragraph 10.18. He also confirmed that his estimate of

FMT for the car wash was based on the tone of the list and stated that in some years the accounts showed that the car wash was not in use full time.

8.14 Mr Doorly confirmed to the Tribunal that only other filling stations were considered as comparable and that retail units were ignored. In his view they would not be relevant having regard to s 19 (5) of the Act.

8.15 In summing up Mr Doorly stated that the NAV was based on the FMT, trading information that would be available to the hypothetical tenant. In his opinion the hypothetical tenant would be able to maintain this level of trade because of the exceptional location in a residential area, beside schools, with direct access to the M1 and with fuel sales to drive the retail trade. He contended that the Appellant has not proved his case. Of the comparable properties that Mr Halpin put forward, four have higher fuel throughput than the subject property and none had low margin items. In addition, all had higher levels of competition, none were located in a residential area and all but one had fewer fuel islands. In Mr Doorly's opinion, the Appellant's estimate of NAV does not reflect a hypothetical tenant's bid. It ignores the trading figures, the location with its lack of competition, the presence of schools and the higher number of islands. He distinguished the Property from Comparable No 3 in Mr Halpin's list, a convenience store which is also run by the Appellant, on the basis that the Property has no competition and has fuel sales to enhance the retail business. In Mr Doorly's opinion the profits being achieved were not based on goodwill and no evidence of such goodwill was adduced. The Property was not exceptional. It had the fifth highest NAV in Co Louth and the fourth highest in Dundalk. Finally, Mr Doorly quoted the judgement in VA19/50543, which held that adjusting the Fair Maintainable Trade figures would not be correct.

8.16 Mr Doorly contended for an NAV of €142,400 with the calculations therein, available at Appendix 8 (N/A to public) of this decision.

## **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, 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 Louth County Council.
- 10.2 The Tribunal accepts Mr Doorly's evidence and finds that the Property is a filling station, which incorporates a retail store rather than a shop with pumps as contended by Mr Halpin.
- 10.3 The Tribunal accepts Mr Doorly's contention that the valuation scheme is well accepted in Co Louth. He put forward evidence of six cases that had been agreed with professional rating valuers and one with an accountant.
- 10.4 Mr Doorly's evidence was that all fifty filling stations in Co Louth were valued using the FMT method and the valuation scheme prepared on behalf of the Commissioner. Mr Halpin in his opening remarks described the use of the valuation scheme as a necessary evil in the absence of good rental evidence. Thus, the Tribunal finds that application of the Commissioner's valuation scheme is the preferred method of valuation in this case and for that reason the ten retail comparables put forward by Mr Halpin are of less weight. As the Tribunal found in VA19/5/0543 they represent a different class of property.
- 10.5 Details of fifteen filling station on the Co Louth list were put forward for the assistance of the Tribunal, eight on behalf of the Appellant and nine for the respondent. Two, PN 2214885 and PN 5016895, were common to both. At the date of the hearing four of the comparables were under appeal. PN 1278571 submitted by Mr Doorly is still before the Tribunal and thus following the judgement in the *Commissioner of Valuation and Stanberry Investments*<sup>1</sup> is of little evidential value, although Mr Doorly argued that the trading figures for that property were factual, and this was not challenged by Mr Halpin. Of the three cases under appeal submitted by Mr Halpin, PN1281592 was agreed at a

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<sup>1</sup> 2020 IECA 33



lower NAV of €22,800, but there were no details available of the agreed analysis. Thus, it is of little assistance. Numbers PN5016895 and PN5016879 were withdrawn.

- 10.6 The Tribunal regards four of the comparable filling station properties put forward as being of little, if any, help. PN1278571 submitted on behalf of the Respondent is under appeal. Mr Halpin describes PN1281545, Comparable 12, as being “*defunct*”. It has been closed for some time and even when it did trade according to Mr Doorly it had no retail element. Comparable 13, PN 1280832, put forward by Mr Halpin, according to Mr Doorly’s evidence is not listed as a filling station. It has been subdivided into two industrial units. Mr Halpin accepted this in subsequent cross examination. PN 1281169, Comparable 14 in the appellant’s précis, is also described as “*defunct*”, not having traded for a decade. Mr Doorly confirmed that it was assessed as a filling station, but without the benefit of trading figures.
- 10.7 The Tribunal finds the remaining comparables in Co Louth are similarly circumstanced to the subject property in accordance with the requirements of s. 19(5) of the Valuation Act (as amended). All are service stations, all but one, with a retail element attached. All had been assessed in accordance with the valuation scheme and at least six were professionally represented. The various NAVs ranged from €22,00 to €111,200, with throughput from 2,500,000 to 10,500,00 litres, and shop turnover from €396,000 to €3,400,000. The ratio of throughput to shop turnover calculated by the Tribunal and shown at Appendix 7 (N/A to public), ranged from 1.47 to 15.58, with an average of 3.07, which was skewed by one particularly high figure of 15.58. The ratio for the subject property was 0.49, as derived by the Tribunal from the data in the table at Appendix 8 (N/A to public).
- 10.8 Five Tribunal decisions were put before the Tribunal. Mr Halpin cited three in support of his argument that the valuation scheme for filling stations as it applied to filling stations where the retail turnover was more than 50% of the total was unfit for purpose: VA15/5/055, VA17/5/085 and VA17/5/0151. Mr Doorly cited VA19/5/0543 to argue the opposite and VA19/5/0480, which found that high turnovers are not in themselves evidence of an exceptional operator. These cases are reviewed below.

10.9 VA15/5/055, Michael Leonard, Cappamore, concerned a filling station and retail unit, in which the Tribunal held that the retail element should be valued on an area basis. However, in that case the retail element made up 95% of the turnover. It is not comparable to the subject property, where the retail element comprises approximately 66% of the turnover and the Tribunal in this case, therefore, distinguishes VA15/5/055 from the present case as did the Tribunal VA19/5/0543 where the retail element comprised 64% of turnover.

10.10 VA17/5/085, Rayro Service Station, Carlow. This case concerned a filling station in Carlow, which the Tribunal assessed in accordance with the valuation scheme but reduced the estimate of Fair Maintainable Trade by 40%. It was held at Par 10.15 that:

*“... the undisputed evidence was that the occupier also occupied a number of convenience stores, supermarkets, and filling stations. They have considerable financial, and business means and acumen and buying power. This forms part of the goodwill of the occupier and is specific to them and is an advantage that the hypothetical tenant does not have.”*

No such evidence was put before the Tribunal in the present appeal. Mr Halpin adduced evidence of a different convenience store also run by the Appellant in the present case, his NAV Comparable No 3. He analysed the turnover to argue that the retail element of the Property was overvalued. He gave no evidence that this second shop was of any special advantage to the Appellant, for example giving improved buying power.

10.11 VA17/5/151, Munnely Brothers, Carlow. This case involved a filling station with relatively low fuel sales and high shop sales. The Tribunal reduced the retail FMT by 40%. The Tribunal identified three factors that limited the property's trading potential. At paragraph 11.9 it found that the delicatessen sales benefited from the proximity to Carlow Institute of Technology but noted that:

*“...aside from the Institute [Carlow Institute of Technology] the location was peripheral with limited surrounding commercial property and low-density residential housing. It was located on a secondary road relative to the comparisons. These are all factors which limit its trading potential.”*

Furthermore, at paragraph 10.10 the Tribunal identified:

*“... two real and potential risks for any hypothetical tenant concerning the subject property. The first risk is direct competition internally from a new or*

*existing shop or delicatessen within Carlow Institute of Technology. The second is from a discounted, expanded new or improved offering from the adjacent drive thru. Both ... would be considered by the hypothetical occupier.”*

In contrast the subject property is situated on a national road, with access to the M1 Motorway, with a large residential development in the vicinity. Furthermore, Mr Halpin accepted in cross examination that there were two schools with 1,400 pupils within five hundred metres, which in the Tribunal’s view would contribute significantly to the turnover of the shop. On these grounds this case can be distinguished from the one before the Tribunal.

10.12 VA19/5/0480, Aisling McMahon T/A The Wishing Well Gastro Pub. As with fuel sales in the present case, the FMT for drink sales was agreed. As with the retail sales in the present case, the appellant argued that the turnover for food, which at a ratio of 1:1.38 was the reverse of the normal, should be reduced by 30% to reflect the exceptional skill of the appellant. The Tribunal considered these arguments at length. At paragraph 9.6 of the judgement, it is stated that in the case of *Watney Mann Ltd v Fredrick George Langley (All ER 967)* Mr Justice Thompson held that the hypothetical tenant would:

*“...endeavour to estimate what trade could reasonably be expected to be done by the ordinary tenant if he were the licensee in the particular premises as they now are in the area in which they are located. While I do not doubt that such a prospective tenant would consider in his mind whether he could make as great or greater success of the house than his predecessor, the base from which he would ponder on his prospects would, I have no doubt whatever, be the actual trade his predecessor had done.”*

At paragraph 9.10 the Tribunal found that:

*“... Mr Halpin proffered no evidence to prove that the appellant is an operator of exceptional ability to warrant a 30% reduction in the FMT adopted by the respondent for the food trade. There is no doubt that the appellant has regularly achieved high turnovers in the property and has established considerable good will, but this is not the answer to the question of whether the appellant is an exceptional operator. ... The open market includes prospective tenants who would recognise the advantages of the Wishing Well and no evidence has been put before the Tribunal to suggest that prospective tenants could not operate the premises just as successfully as the appellant.”*

Similarly, in the present case Mr Halpin has asserted that the high retail turnover is due to the occupier's particular skill, but he put forward no specific evidence of this.

- 10.13 VA19/5/0543. The facts in this case are in many ways like those in the present case. It concerned a filling station with a shop where the retail turnover was 64% of the total. A similar argument was put forward on behalf of the appellant that the valuation scheme was not suitable where shop turnover was more the 50% of the total and that the shop should be valued on an area basis instead rather than trying to "*bend the turnover formula*." At paragraph 11.9 the Tribunal found that the FMT method was appropriate method of valuation and cited Mr Halpin's view [for the appellant] that discounting would be the wrong thing to do. At paragraph 11.10 the Tribunal discounted the evidence of supermarket values put forward on behalf of the appellant on the basis that the method of assessing supermarkets, NAV/m<sup>2</sup>, was not appropriate for valuing filling stations. The Tribunal applied the formula as it was, and still is, in the valuation scheme to value the retail element of the property.
- 10.14 The Tribunal must assess the NAV of the subject property so that it is both correct, s. 19(5)(a), and that there is equity and uniformity of value between properties on the list s 19(5)(b).
- 10.15 Mr Doorly stated in his evidence that all fifty filling stations in Co Louth were assessed in accordance with the same valuation scheme. Allowance was made where appropriate to reflect the profitability of the different income streams. Consequently, he contended that the NAV of the subject property was consistent with the others on the list, a contention that was not challenged by Mr Halpin. The Tribunal accepts Mr Doorly's evidence in this regard and finds, that the NAV proposed by the Respondent is consistent with the requirements of s.19(5)(b) of the Act.
- 10.16 The difference between the parties is on the correctness of the NAV proposed as required by s. 19(5)(a) and on the method of its calculation. The valuation scheme is an abbreviated version of the 'Receipts and Expenditure' method of valuation. Factors are applied to the various income streams to provide a proxy of the landlord's share of the divisible balance, which is taken as the NAV. Mr Halpin, for the Appellant contended that the valuation scheme prepared for the Commissioner was not fit for purpose in

cases such as this one where the turnover of the shop exceeds 50% of the total. Mr Doorly was of the opposite opinion. However, neither valuer produced any analysis of filling station transactions or accounts to support their respective positions. Mr Doorly provided no evidence of Key Rental Transactions, mentioned at page 38 of his précis, nor was the 'Receipts and Expenditure' analysis stated at page 37 of the Respondent's précis to have been undertaken to test the scheme. Mr Halpin also did not produce a Receipts and Expenditure valuation for the subject property, notwithstanding the availability of accounts. Ultimately, the Tribunal did not have to decide on this issue in any case. Under cross examination, Mr Halpin accepted the valuation scheme and used it in his valuation albeit with an adjusted estimate of Fair Maintainable Trade for the retail element.

10.17 Neither party adduced evidence of rental values of filling stations County Louth. This lack of evidence makes it difficult to establish a correct, equitable and uniform valuation and the Tribunal accepts Mr Halpin's comment that in those circumstances use of a valuation scheme is as a necessary evil.

10.18 The parties are agreed on the assessment of the NAV of the fuel throughput. They also agree on the actual NAV of the adjoining store. However, there is disagreement on how this agreed NAV should be applied to the assessment of the total NAV. Mr Doorly argues that it should be added to the other elements to come to a total NAV. Mr Halpin also accepted that the store should be assessed separately but, as discussed at paragraph 7.8 above, he argued that the Fair Maintainable Trade of the shop should be reduced by €100,000 to reflect the fact that normally in such properties the storage would be provided within the shop and thus assessed as part of the FMT. The Tribunal is persuaded by the respondent's arguments in this regard. As Mr Halpin argued, as detailed at para 7.4, the property must be valued *rebus sic stantibus*: fuel pumps, a car wash, a shop, and a store. There is a minor difference between the parties on the FMT of the car wash. As discussed at paragraph 8.13 Mr Doorly based his estimate on the tone of the list but the Tribunal finds that Mr Halpin's estimate, which is more closely aligned to the trading accounts is likely to be more accurate.

10.19 Mr Halpin contended that the occupier was a particularly efficient operator achieving exceptional trade figures, the highest retail turnover of all the properties put before the

Tribunal. Accordingly, he reduced his estimate of FMT by 38% compared with the figure based on the trading accounts proposed by Mr Doorly and by a further €100,000 to account for the treatment of the adjoining store as discussed at paragraph 7.8. He cited two Tribunal judgements VA17/5/151 and VA17/5/085 in support of his contention. However, as discussed at paragraphs 10.10 and 10.11, these cases can be distinguished from the present case. No evidence of exceptional circumstances attaching to the present case was adduced by Mr Halpin, much less direct evidence from the occupier, which could have demonstrated how the subject property was being operated in an exceptional manner. Mr Doorly cited the Tribunal judgement VA19/5/0480, as discussed at paragraph 10.12, which found that high turnover *per se* was not proof of exceptional skill and in that case no evidence of exceptional skill was proffered. Mr Halpin also argued the valuation scheme was not suitable for filling stations with turnover in the shop was more than 50% of the fuel sales and put forward the Tribunal judgements VA17/5/151 and VA17/5/085 to support this point. As discussed at paragraphs 10.10 and 10.11 these cases can be distinguished from the present one. Mr Doorly cited VA19/5/0543 (paragraph 10.13) which upheld the use of the valuation scheme in similar circumstances where the shop turnover was 64% of the total. In defence of his estimate Mr Doorly pointed out the lack of competition in the immediate area and the presence of two large schools nearby, which was acknowledged in cross examination by Mr Halpin.

10.20 It is possible, as Mr Halpin contended, that the particularly high retail turnover being achieved, the highest of all the properties cited, is indicative of an especially skilled operator and that the retail FMT should be reduced to reflect this. However, equally it could be argued, as Mr Doorly did, that this reflects a particularly favourable location for retail, beside a large residential area and two schools, an advantage that none of the comparator properties put forward by either party had. Consequently, the FMT was capable of being replicated by the hypothetical tenant.

10.21 The onus is on the Appellant to establish, as contended, that the level of FMT applied by the respondent to the retail element of the property was not correct by virtue of the exceptional circumstances of the of the occupier or that the valuation scheme as constructed was not suitable to value the subject property. The Tribunal, on the evidence before it, finds that, notwithstanding the relatively high turnover in the shop,

the appellant did not discharge the onus of proof regarding the valuation scheme nor for reducing the level of FMT adopted by the Respondent except for that applied to the car wash turnover.

**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 €142,000, calculated as set out at Appendix 9 (N/A to public).

**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.