

Appeal No: VA19/5/0522

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Tedcastles Oil Products

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 1803676, Fuel / Depot at Local No/Map Ref: 13E Rathbeg, Fennor,
Slieveardagh, County Tipperary. ("the Property")

B E F O R E

Hugh Markey -	FSCSI FRICS - Deputy Chairperson
Orla Coyne -	Solicitor - Member
Fergus Keogh -	MSCSI MRICS - Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 12TH DAY OF DECEMBER, 2022

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th 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 **€30,900**.
- 1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

"...The valuation of the subject property is excessive and does not accord with Section 19 (5) of the Valuation Act, 2001 as amended by the Valuation (Amendment) Act, 2015 (the Act)... It does not achieve correctness of value, more particularly, the tanks have been decommissioned as submitted in the representations. This was not verified by the Valuation Office by way of inspection."

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €3,000.

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 €30,900.
- 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 manager did not consider it appropriate to provide for a lower valuation.
- 2.3 A Final Valuation Certificate issued on the 10th day of September 2019 stating a valuation of €30,900.
- 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. CASE BACKGROUND

- 3.1 The Tribunal considers that it should set out in this judgment a summary of the history of this appeal.

This appeal was in the Related Appeals Directions List on the 6th January 2022 when Directions were issued by the Chairperson of the Valuation Tribunal for the hearing of the appeal. The Chairperson directed that any 'without prejudice' settlement negotiations between the parties should take place within a period of 4 weeks commencing on Monday 10th January 2022 and if a settlement was not reached within that 4 week period, that the Appellant was to file a précis of evidence within the 15 working days commencing from and inclusive of the 7th February 2022 and that that the Respondent was to file a précis of evidence within the 15 working days commencing from and inclusive of the 28th February 2022.

On the 28 March 2022 Mr. Mooney, for the Appellant, sought an extension of time and the Chairperson of the Tribunal consented and directed that the Appellant's précis of evidence was to be filed by close of business on the 11th April 2022 with the Respondent's précis to be filed on or by the 5th May 2022.

A reminder was issued by the Valuation Tribunal on the 9th May and the Chairperson granted a further extension of time for the filing of the Respondent's précis by 10 working days from the 12th of May 2022 and the appeal was listed for hearing on the 15th July 2022.

Both the Appellant and the Respondent were granted extensions of time by the Valuation Tribunal to file their respective précis of evidence and a very reasonable timetable was set by the Valuation Tribunal, without objection from the parties, as to the listing of the appeal for hearing on the 15th July 2022. No additional application was made for a further extension of time when the extended time for the Respondent's précis expired on the 26th May 2022, however, the Respondent allowed 6 weeks to elapse and then submitted a request for an adjournment.

An email to the Valuation Tribunal on behalf of the Respondent dated 8th July 2022 confirmed that the Respondent did not appoint a valuer to prepare a précis of evidence until the first week of July 2022 and a further email of the 11th July 2022 requesting leave to submit a précis and advising that only three days were required for the Respondent's valuer to inspect the property and prepare and submit a précis. The request to allow the submission of a précis of evidence on behalf of the Respondent was denied. The Respondent was advised that it was in order to have a representative present at the Hearing to examine the Appellant's witness, but they would not be allowed to introduce any evidence on behalf of the Respondent

- 3.2 On the 13th July 2022 the Respondent submitted a precis of evidence to the Tribunal and was advised on the 14th July 2022 that the précis would not be considered by the Tribunal Division.
- 3.3 On the 14th July 2022 Mr. Mooney, for the Appellant, advised the Tribunal that he was seeking to continue with the Appeal on a quantum only basis and would not pursue his position as set out in the Notice of Appeal that the oil tanks had been decommissioned. Mr. Mooney submitted a revised précis of evidence and he advised in correspondence that he had no objection to the Respondent submitting a précis of evidence and requested that the Tribunal consider the appeal on a quantum only basis with précis from both parties.
- 3.4 On the 14th July 2022 the Tribunal advised the parties that in light of the changing circumstances and in the interest of justice, fairness and to have the hearing of the appeal completed, that the Deputy Chairperson of the Division had considered the application by the Appellant and had agreed to accede to the request to vary the basis of the appeal to a quantum only appeal. The Tribunal advised the parties that it was also acceding to the request to consider the précis as submitted on behalf of the Respondent on the 13th July 2022.

- 3.5 The parties were advised that the appeal was to proceed on the basis outlined above to facilitate the appeal being dealt with in a timely fashion. The Tribunal considered that the background to the appeal gave rise to unusual circumstances and advised that both the Chairperson of the Valuation Tribunal and the Members of the Division hearing the appeal did not intend that a precedent be set in relation to permitting the changing of grounds of appeal or the late submission of précis of evidence.
- 3.6 In order for the case to proceed on this basis both the Appellant and Respondent were required to acknowledge and accept the changed basis in writing, which they both did.

4. THE HEARING

- 4.1 The Appeal proceeded by way of an oral hearing held remotely on the 15th day of July 2022. At the hearing, the Appellant was represented by Mr Paul Mooney MSCSI MRICS, (Hons) Dip Rating, of Avison Young. The Respondent was represented by Mr. David Dodd BL, instructed by the Chief State Solicitor who was represented by Mr. Michael Collins. Mr. Ian Power of the Valuation Office was called to give valuation evidence on behalf of the Respondent.
- 4.2 At the commencement of the Hearing, Mr. Mooney said that he was not made aware in advance that the Respondent would have legal representation. The Chair of the Division asked Mr. Mooney if he had been aware, would he have sought to have legal representation, to which Mr. Mooney replied that he probably would. Following a short recess to allow Mr. Mooney consider the matter, he advised the Tribunal that he was satisfied to proceed with the Hearing without legal representation.
- 4.3 At the commencement of the Hearing, Mr. Dodd advised the Tribunal, that as part of the Respondent's case, he would make a legal submission to the Tribunal that the Appellant's appeal was no longer grounded due to the change in the basis of the appeal. This was because the Appellant was now appealing on a quantum only basis which was not in accordance with the Notice of Appeal.
- 4.4 The parties exchanged their respective reports and précis of evidence prior to the commencement of the Hearing and submitted them to the Tribunal.

5. FACTS

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

- 5.2 The subject Property is situated in a rural location on a narrow country road at Fennor, Slieveardagh, in the townland of Rathbeg, Co. Tipperary, approximately 4.5 kms south of Urlingford and 18 kms east of Thurles, a short distance from the village of Gortnahoe.
- 5.3 The Property comprises a fuel distribution depot, formerly used for the distribution of kerosene / home heating oil and occupies a site of 0.54 acres (2,185 sq. m.). The Property was constructed in the 1970's and contains buildings of basic construction detail, including a single storey bungalow type office building and ancillary facilities including stores, a concrete yard and gantries. The Property is connected to public services including electricity.
- 5.4 There are 5 no. fuel storage tanks within the Property with a combined capacity of 698,000 litres as follows; 1 no. x 6,000 litre tank, 3 no. x 64,000 litre tanks and 1 no. x 500,000 litre tank. The tanks are approximately 40 years old.
- 5.5 The areas of the various buildings and structures within the Property have been agreed by the parties, as has the fuel tanks' capacity of 698,000 litres.
- 5.6 Photographs provided by the parties in their respective précis indicate a vacant disused Property.
- 5.7 In their respective valuations the parties are in agreement on that portion of the NAV to be attributed to the buildings and structures. The parties substantially agree on the value to be attributed to the land / yard element of the Property and disagree on the value to be attributable to the fuel oil tanks. Mr. Mooney valued the tank element of the Property by adopting the Contractor's Method of Valuation and applying a discount to the estimated replacement costs of the tanks. Mr. Power adopted the principles of a valuation scheme used by the Respondent to value similar properties, whereby the tanks are valued based on applying a rental value to the tank capacity.

6. ISSUES

- 6.1 The appeal raised the sole issue as to whether the Net Annual Value ('NAV') of the Property as determined by the Respondent is excessive.

7. RELEVANT STATUTORY PROVISIONS:

- 7.1 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.”

- 7.2 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.”

8. APPELLANT’S CASE

- 8.1 Mr. Mooney, having made the affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence.
- 8.2 Mr. Mooney corrected a typographical error in his précis whereby he had omitted to include and value a gantry structure which increased his opinion of value as set out in his précis by €1,000 and he contended for a revised valuation of €8,750.
- 8.3 Referring to his submission, Mr. Mooney described the physical attributes of the Property and included a selection of photographs of the subject at dates between 2009, 2019 and 2022. The photographs dated March 2019 are the closest to the valuation date of 15th September 2017. Mr. Mooney noted that the Property was described as being in fair condition in the Respondent’s Valuation Report of 1995. Mr. Mooney said that as the majority of the oil tanks and plant were in excess of 40 years old, that they had reached the end of their useful life.
- 8.4 Mr. Mooney said that the Property ceased operation as a fuel depot to distribute fuel oil locally in 2011, however the 500,000 litre tank was used until 2019 as an overflow storage facility for other fuel depots owned by the Appellant. All of the tanks have

now been decommissioned, which involves the removal of fuel hoses and pumps. Mr. Mooney said that the Property does not currently comply with the Dangerous Substances Act 2019 and that tanks have effectively been mothballed and are now in a derelict condition.

- 8.5 In support of his opinion of value of the subject Property, Mr. Mooney submitted a chart containing 17 no. identified properties in Tipperary which are listed as being 'fuel depots'. The chart, which is set out in Appendix 1 (n/a to public) attached, indicated the NAV values applied to the individual properties with an analysis of the Euro rate per square metre of the value which was applied to the buildings elements of the properties by the Respondent when the properties were entered on the Valuation List. Mr. Mooney included his analysis of the plant value expressed as a percentage of the overall NAV value of each property. The value of the plant element of the subject Property was said to be 76.86% of its total assigned value. The plant value of the 17 no. properties as a percentage of their value ranged from 44.36% up to 87.24%.
- 8.6 In addition Mr. Mooney included in his précis details of 6 no. comparisons of fuel depots and properties with large plant and tank facilities. Details of each comparison as they appear on the Valuation List are set out in Appendix 1 (n/a to public) to this judgement and are summarised below. Mr. Mooney said that he was unable to analyse the valuations of the tank elements as they are recorded as 'additional items' with no itemised capacity or values being noted.

Comparison 1 - is a fuel depot located close the M8 Motorway. The facility has fuel sales in addition to fuel storage. Offices and a portacabin are valued at €22 psm and €8.80 psm respectively. An undefined yard is valued at €1,000 and a defined yard of 2,000 sq. m. is valued at €2.20 psm. Additional items (tank and fuel throughput) are valued at €42,225 to give a total NAV of €48,400.

Comparison 2 - is a fuel depot located close to Cashel. A workshop and a steel container are valued at €20 psm and €4 psm respectively. A canopy is valued at €1,000 and a defined yard of 747 sq. m. is valued at €2.00 psm. Additional items (tanks) are valued at €7,950 to give a total NAV of €11,190.

Comparison 3 - is a fuel depot located close to Cashel. Offices and a store are valued at €37 psm. A canopy is valued at €1,000 and a defined yard of 702 sq. m. is valued at €3.70 psm. Additional items (tanks) are valued at €25,205 to give a total NAV of €32,700.

Comparison 4 - is a fuel depot located close to Thurles. A warehouse is valued at €27 psm and a portacabin at €10.80 psm. An undefined yard is valued at €1,000 and a defined yard of 1,665 sq. m. is valued at €2.70 psm. Additional items (tanks) are valued at €18,010 to give a total NAV of €36,200.

Comparison 5 - is a large meat plant facility. Mr. Mooney advised the Tribunal that he does not consider this comparison to be directly comparable to the subject Property but drew the Tribunal's attention to the valuation of tanks with a capacity of

984,682.91 litres, valued at €8,180, equivalent to €0.008 per litre; whereas the tanks in the subject Property are valued at €0.50 per litre.

Comparisons 6 - is a light industrial / commercial premises located close to Thurles. It is not a fuel depot. The property has a store valued at €22 psm and a defined yard of 492 sq. m. valued at €2.20 psm. There are no additional items and the total NAV is €9,000.

- 8.7 Mr. Mooney said that in preparing his valuation he adopted the Respondent's assessment applied to the offices within the Property of €20 psm and did not apply a separate value to the yard area as it was not used for storage purposes and he considered that it was intrinsically linked to the tanks to facilitate the turning and manoeuvring of articulated trucks.
- 8.8 To value the tanks in the Property, Mr. Mooney said that he had adopted the Contractor's Method of Valuation. He estimated the replacement cost of the tanks by reference to a document he said was prepared by the Respondent entitled '*Valuation of Tanks Practice Note (VO) 2005*' ('the Practice Note') which listed the 2005 cost of 'Sectional Water Tanks' and 'Sectional Tanks (Steel)' and a descriptive note as to the Valuation of Tanks. A copy of this Note is attached in Appendix 1 (n/a to public)
- 8.9 Mr. Mooney said that he established his opinion of the September 2017 replacement cost of the subject's tanks by increasing the adduced 2005 costs taken from the Practice Note by 13% by reference to the Consumer Price Index (CPI) and subsequently decreased that established value by a factor of 80% by reference to the Valuation Tribunal's decision in VA17/05/074 (Kells Wholemeal Ltd.), whereby a depreciation factor of 80% was applied to a number of grain storage bins which were in excess of 40 years old.
- 8.10 Mr Mooney valued the Property as follows:

i. Valuation of buildings: €4,648

Floor Use	Areas (M2)	NAV € per M2	NAV€
Office	82.96	€20	€1,659
Store	99.44	€20	€1,989
Gantry			€1,000
		Buildings Total	€4,648

ii. Valuation of plant: €8,515

Tanks	2005 Replacement	Total Replacement	CPI +	Adjusted Replacement 1	Depreciation	Adjusted Replacement 2
3 x 64,000	€15,500	€46,500	13%	€52,545	80%	€10,509
1 x 500,000	€69,000	€69,000	13%	€77,970	80%	€15,594
1 x 6,000	€5,500	€5,500	13%	€6,215	80%	€1,243
				€95,146		€27,346
	Add Land Value	0.5 Acre @ €100,000				€50,000
						€77,346
				Decapitalised @	5%	€3,867
					Add Buildings Value	€4,648
					Total	€8,515
					Rounded to Say,	€8,750

8.11 Under cross examination by Mr. Dodd, Mr. Mooney acknowledged that the onus of proof is upon the Appellant to show that the Respondent's valuation is incorrect and that evidence is required in order to establish an incorrect valuation.

Mr. Mooney also acknowledged that the table of properties titled 'Comparisons on Valuation List' in his précis, see Appendix 1 (n/a to public), did not provide evidence as to the incorrectness of the Respondent's valuation of the Property. He agreed that the Respondent's value of €20 psm applied to the offices is at the lower end of the scale of office values of the other properties as set out in the chart. Mr. Mooney said that the benefit of his analysis of the 17 no. properties was that the value of the tanks in the subject Property comprised 76.86% of the total NAV of the Property which encouraged him to look elsewhere regarding the basis of the subject Property's valuation.

- 8.12 In relation to Comparison No. 1, Mr. Dodd asked Mr. Mooney if he was aware as to how the value of €42,225 applied to the Additional Items was calculated. Mr. Mooney said that he was aware that it comprised a value attributable to oil storage and a value attributable to oil sales through-put but as the Respondent does not supply this information to Appellants, he could not analyse it further. Mr. Dodd confirmed that the assessment was based on tank storage capacity of 395,000 litres valued at €0.05 per litre resulting in a value of €19,750, with the balance attributable to fuel through-put sales.
- 8.13 In relation to Comparison No. 2, Mr. Dodd provided Mr. Mooney with the Respondent's basis of valuation for the Additional Items of €7,950 which he said was fuel tank capacity valued at €0.05 per litre with no through-put element. In relation to Comparison No. 3, Mr. Dodd said that the Additional Items of €25,205 reflected a capacity of 504,100 litres and was also valued at €0.05 per litre.

The Chairperson of the Division asked Mr. Dodd if he was inviting Mr. Mooney to accept the figures in relation to Comparisons Nos. 2 & 3. Mr. Dodd said that he did not think that it was controversial and that his comments were more concerned with valuation methodology, which would be confirmed by Mr. Power in his evidence.

Mr. Dodd advised of the valuation of the Additional Items at €18,010 in Mr. Mooney's Comparison No. 4 as being 360,200 litres valued at €0.05 per litre. Mr. Mooney agreed with Mr. Dodd that Comparison No. 5 was not a fuel depot but a large meat factory with a tank capacity of 984,682.91 litres which was valued at €8,180 (€0.008 per litre), a lower rate than applied to the tanks in the Property. Mr. Dodd said that these were water tanks, ancillary to the factory use and not fuel tanks. Mr. Mooney said that this information was not available to him.

- 8.14 Mr. Dodd asked Mr. Mooney from where he had obtained the '*Valuation of Tanks Practice Guidance Note (VO) 2005*' ('the Practice Note') referenced in his précis. Mr. Mooney said that the Practice Note was on file in his office and in circulation amongst rating valuers.
- 8.15 Mr. Dodd asked if Mr. Mooney was aware that the Practice Note did not refer to fuel tanks but to tanks such as water tanks in an ancillary use to other businesses and that the Respondent did not use the Practice Note to value fuel tanks. Mr. Mooney said that he considered that the steel tanks in the Practice Note could be used for fuel storage and said that there was nothing in it that said that the tanks could not be used for fuel storage purposes.

Mr. Mooney accepted, when advised by Mr. Dodd, that the 2005 Practice Note was out of date and not used in the 2017 valuation of the Property. Mr. Mooney said that he had expected to see what was relied upon by the Respondent in the valuation of the subject in Mr. Power's précis but did not.

- 8.16 Mr. Mooney acknowledged that his estimated replacement costs in September 2017 of the tanks in the subject Property was not their actual replacement costs but his 2005 estimated cost adjusted for inflation. The subsequent 80% reduction in the adduced value used in his valuation he said was based on the adoption of the principles used in the *Kells Wholemeal* case, as his opinion was that the tanks in the Property were vacant and derelict and closely aligned to those the *Kells Wholemeal* case.

Mr. Mooney acknowledged that the Contractor's Method of Valuation is often known as the valuation method of last resort, saying that it can often give skewed results.

- 8.17 Mr. Mooney was asked by the Tribunal if he was aware of the existence of any updated version of the 2005 Note and he confirmed that he was not.

9. RESPONDENT'S CASE

- 9.1 Having been affirmed, Mr. Power confirmed the truth and accuracy of his précis and adopted his précis as his evidence in chief.

- 9.2 Mr. Power's description of the location, accommodation and capacity of the tanks within the Property generally accords with that of the Appellant. Mr. Power described the Property on the day of inspection being in need of some general repair and maintenance but nothing beyond that which would be expected for a property of its age and included a selection of photographs, dated August 2019.

- 9.3 Mr. Power confirmed that elements of his précis were prepared in response to and having regard to Mr. Mooney's first précis submitted to the Valuation Tribunal and the Appellant's initial grounds of appeal that the subject Property was not capable of beneficial occupation. He noted that this ground of appeal was no longer being pursued and that the appeal was being pursued on a quantum only basis.

- 9.4 Mr. Power outlined the development of the *Scheme of Valuation* used by the Respondent to value properties similar to the subject Property whereby the NAV is established by the analysis of Net Effective Rents of comparable properties sourced from a variety of sources. This provides the basis for developing a scheme of valuation to be applied to a group of properties sharing similar characteristics, including the subject Property.

- 9.5 Mr Power valued the subject Property as follows:

Floor	Use	Area (M2)	NAV € (m2)	Total NAV € (m2)
0	Store	99.44	€20.00	€1,988.80
0	Gantry	1	€1,000.00	€1,000.00
0	Offices(s)	82.96	€20.00	€1,659.20
0	Plant / Other Tanks - in Litres	475,000	€0.05	€23,750.00
0	Yard (Concrete / Tarmac)	1,260	€2.00	€2,520.00
				€30,918.00
			Say,	€30,900

9.6 Mr. Power said that in the case of the subject Property, two items of market information were available to him which he referred to as Key Rental Transactions (KRT's). Details of these KRT's are set out in Appendix 2 (n/a to public) to this judgement and are summarised as follows:

KRT 1 - was described as being an old industrial unit located in a rural location and of basic condition which was used for car sales and as a workshop. The premises were let subject to a nine year lease, close to the valuation date. The letting was analysed by applying €17 psm to the office, workshop and stores elements, €2.40 psm to a concrete yard and €2.55 psm to a canopy.

KRT 2 - was described as being an old workshop located to the rear of a house in a rural location approximately 5 km from Tipperary town. The building is of basic corrugated iron construction. The premises were let subject to a fourteen month lease, close to the valuation date. The letting was analysed by applying €17 psm to the workshop element and €1.70 psm to a concrete yard.

Mr. Power said that the subject Property was valued in line with other similar properties at €20 psm and he valued the tanks at €0.05 per litre based on tank capacity. There was no information in Mr. Power's précis as to the basis of the calculation of the valuation rate of €0.05 per litre applied to the tank capacity.

9.7 Mr. Power set out in his précis the analysis of a further five transactions, which he termed NAV Comparisons. Details of these NAV Comparisons are set out in Appendix 2 to this judgement (n/a to public) and are summarised as follows:

NAV Comparison 1 - was described as being a small oil fuel depot located in a small town and was an old development. A workshop was valued at €20 psm, a portacabin at €8 psm, a gantry at €1,000, a concrete yard at €2 psm and fuel tank capacity of 200,000 litres at €0.05 per litre.

NAV Comparison 2 - was described as being an oil/fuel depot, similar to the subject Property, located in a Thurles town and was an old development. A warehouse was valued at €27 psm, a portacabin at €10.80 psm, a gantry at €1,000, a concrete yard at €2.70 psm and fuel tank capacity of 360,200 litres at €0.05 per litre.

NAV Comparison 3 - was described as being a similar oil/fuel depot to the subject Property being located in a rural area. It was an old development. A workshop was valued at €17 psm, a portacabin at €8 psm, a gantry at €1,000, a concrete yard at €1.70 psm and fuel tank capacity of 263,436 litres at €0.05 per litre.

NAV Comparison 4 - was described as being a similar oil/fuel depot to the subject Property being located in a rural area. It was an old development. A warehouse was valued at €20 psm, a portacabin at €8 psm, a gantry at €1,000, a concrete yard at €2 psm and fuel tank capacity of 140,802 litres at €0.05 per litre.

NAV Comparison 5 - was described as being an oil/fuel depot located in a rural location. It was an old development that included a shop, petrol pumps, workshop, offices, gantry and tanks. A workshop was valued at €17 psm, a shop at €40 psm, a gantry at €1,000, a concrete yard at €1.70 psm, a store at €17 psm, offices at €17 psm, a yard at €1.70 psm, and fuel tank capacity of 198,000 litres at €0.05 per litre, with fuel through-put at €1,000.

9.8 Mr. Dodd asked Mr. Power to comment on elements of Mr. Mooney's submission. In relation to the summary chart of seventeen fuel depots in Tipperary, Mr. Power acknowledged that the subject was positioned at the higher end of the samples in terms of its tanks representing a percentage of its total NAV. He noted that it could have been even higher in that the Respondent had only valued 475,000 litres of capacity and in theory could increase the NAV by valuing the Property's full capacity. He also noted that all the tanks in the sample, regardless of age and capacity, are valued at the rate of €0.05 per litre capacity; including a property in which Mr. Mooney had previously acted and his client had accepted the valuation rate of €0.05 per litre capacity.

9.9 Mr. Dodd invited Mr. Power to comment upon Mr. Mooney's comparisons. In relation to Comparison No. 1, he said that the Additional Items were mainly older tanks with 395,000 litre capacity valued at €0.05 per litre and that the property was not valued by the Contractor's Method of Valuation.

9.10 Mr. Power said that Comparison No. 2 had a capacity of 159,000 litres and is smaller than the subject, though in a similar rural location and was valued at €0.05 per litre.

He said that Comparison No. 3 had a capacity of 504,000 litres and was older than the subject Property. The tank capacity was valued at €0.05 per litre and was not valued using the Contractors Method of Valuation.

He said that Comparison No. 4 was a common comparison and had 360,200 litres capacity, valued at €0.05 per litre and was not valued by the Contractors Method of Valuation.

He said that Comparison No. 5 was a meat processing plant facility. The Additional Items referred to were water tanks and ancillary to the main purpose of the facility, as opposed to being a purpose built fuel storage facility. It was valued at 5% of cost with no depreciation applied. Mr. Power said that no fuel storage tanks throughout the country were valued on the valuation method as applied in Comparison 5.

In relation to Comparison No. 6, Mr. Power said that his enquiries indicated that its valuation was increased from €6,000 to €9,000 due to a size increase. He acknowledged its valuation and confirmed that there were no tanks or plant valued with the assessment.

9.11 Mr. Mr. Power, in response to a question by Mr. Dodd, confirmed that the '*Valuation of Tanks Practice Note (VO) 2005*' was an internal guidance note used within the Respondent's office to assist in the valuation of ancillary plant, specifically water tanks. This version was no longer in use and had been updated for each revision / revaluation exercise undertaken by the Respondent. Mr. Power confirmed that this guidance note was not used in the valuation of any fuel tanks in the rating area and confirmed that there was no comparable guidance note used in the valuation of fuel tanks.

9.12 Under cross examination, Mr. Mooney asked Mr. Power what he understood to be required of the Respondent in relation to Section 19.5 of the Valuation Act. Mr. Power said that the valuation manager must achieve both correctness of value and equity and uniformity in relation to the valuation of properties under appeal and confirmed that in his opinion, equity meant fairness and that all similar properties were to be valued in a similar way. Mr. Power also confirmed that his understanding of the provisions

of Section 63 of the Act permitted the Respondent to rectify incorrect valuations that may appear on the Valuation List.

- 9.13 Mr. Power agreed with Mr. Mooney that neither of the KRT comparisons in his précis contained rental evidence of fuel tanks, adding that they were included in his précis to indicate the operation of the Respondent's valuation schematic. This was in relation to industrial levels per square metre for offices and stores within fuel depots and were based on rental evidence.

Mr. Power confirmed to Mr. Mooney that his précis did not contain any rental evidence of fuel tanks in Tipperary and that the 2017 re-valuation in Tipperary was based on applying a rate of €0.05 per litre capacity which was derived from the valuation of tanks in other rating areas, including Offaly, Kildare and South County Dublin, where values were applied between €0.28 and €0.12 per litre capacity and a value of €0.50 was decided upon as being a fair level and an accepted model of valuation. Mr. Power confirmed that he relied upon evidence from other local authority rating areas.

Mr. Power confirmed to Mr. Mooney that his précis did not contain any evidence or comment as to how the Respondent's valuation schematic was established adding that his précis was prepared in response to the first version of Mr. Mooney's submitted précis and the initial ground of appeal which contended that the subject Property was incapable of beneficial use.

In response to a question from the Division Chairperson, Mr. Power acknowledged that as he had contended that the Property was capable of beneficial occupation and was defending a position that the tanks were to be rated and as The Respondent was on quite long notice of this position, that his précis should have contained rental evidence of tanks and the rental evidence used in the formation of the schematic.

- 9.14 In response to a question from a Member of the Division, Mr. Power said that he had very recently inspected the Property and acknowledged its poor condition. He said that he was unable to comment on the condition of the Property on the valuation date but would have expected it to be better than its current condition.
- 9.15 In reply to a question from the Division Chairperson, Mr. Power said that there were four of five properties in Offaly and Kildare and the analysis of these rents in 2017 formed the basis of the derived €0.05 valuation rate. The Division Chairperson asked Mr. Power if the Contractors Method of Valuation would not be more equitable and valid methodology to rely upon than the use of a limited number of comparisons outside the local authority area. Mr. Power said that this was possibly so, adding that the adopted schematic had produced a very low appeal rate for this county and if the Contractor's Method of Valuation was to be adopted, then much more factual

information would be required than that as offered by Mr. Mooney in relation to the cost of sectional tanks.

- 9.16 Mr. Power was asked by a Member of the Division as to whether there was any rental evidence for fuel depots in Tipperary and should the Contractor's method not be adopted and also, whether it was unsafe to bring in rental evidence from other rating authorities. He said that it was not the ideal scenario to bring in evidence from other local authorities, however the schematic was based on rents on similar properties in similar type counties and has been accepted by occupiers and was the best available.

10. SUBMISSIONS

- 10.1 Neither party made written legal submissions.

- 10.2 The Deputy Chairperson invited each party to summarise their respective cases.

- 10.3 Mr. Mooney said that he accepted that the onus of proof is on the Appellant and that all valuations on the Valuation List are deemed to be correct unless otherwise proven. He said that information is not readily shared by the Respondent, which has been the situation in this case. He said that he considers that he has presented more evidence than the Respondent, whilst acknowledging the limitations of the weight that may be applied to the basis of his valuation of the Property due to his adoption of indexed 2005 tank replacement costs.

Mr. Mooney said that the lack of evidence by the Respondent is not in keeping with the requirement for a Revision Manager to act with equity and uniformity in accordance with the Valuation Act. He said that he accepted that the Contractor's Method of Valuation is a valuation method of last resort but said that it is an accepted method of valuation.

- 10.4 Mr. Dodd said that the Tribunal is an appeal body dealing with appeals on the basis of the stated grounds as set out in the relevant Notice of Appeal and based on the Tribunal's Rules 23 and 24. Referring to Section 7 of the Notice of Appeal of the subject Property, which sets out the grounds of appeal, Mr. Dodd contended that the subject appeal must fail, as the Appellant did not pursue its appeal on the originally stated grounds.

Mr Dodd said that Mr. Mooney relied on the Contractor's Method of Valuation which was not stated in the Notice of Appeal and was based on the use of a 2005 internal guidance note which Mr. Power had confirmed was both out of date and not used by the Respondent in the valuation of fuel tanks.

In relation to the use of market evidence from outside of the local authority area Mr. Dodd said that as the subject Property was subject to a revaluation exercise and not a revision exercise the Respondent, under Section 19.5 of the Act, is entitled to consider relevant market evidence including that from outside the rating authority area, whilst acknowledging its limitations.

11. FINDINGS AND CONCLUSIONS

- 11.1 Despite being aware of the Tribunal's issued directions from as early as 6th January 2022 and having been issued with multiple reminders, each party sought extensions to précis submission dates and in the case of the Respondent, despite having failed to adhere to the Tribunal's directions, sought an adjournment just days before the hearing on the basis that a valuer had yet to be appointed to act in the appeal.
- 11.2 The Tribunal was advised that the Respondent's appointed valuer would require just three days to inspect the Property and to prepare and submit a précis. Whilst the Respondent sought leave to submit a précis of evidence following the expiry of the allocated submission date and having been advised that it would not be considered by the Division, the Respondent continued and submitted a précis on the 13th July 2022 two days before the hearing.
- 11.3 Mr. Mooney, shortly before the hearing date, sought leave to amend the basis of the grounds of the appeal and submitted a revised précis continuing to pursue the appeal on the grounds of quantum, having accepted that the fuel tanks were capable of beneficial use.
- 11.4 Mr. Dodd in his oral submission contended that the appeal should fail, as the Appellant had not pursued the appeal on the grounds set out in the Notice of Appeal.
- 11.5 The Tribunal has considered, in the round, all of the various events leading up to the hearing of this appeal, to include the late submission of his précis by Mr. Power, the revised ground of appeal adopted by Mr. Mooney and his submission of a revised précis along with Mr. Dodd's contention that the appeal should fail due to the amending of the grounds of appeal. Having regard to the Valuation Tribunal Rules (2019) and in the interest of justice and fairness, the Tribunal determined that the Hearing should proceed, so that the appeal could be expedited.
- 11.6 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.

- 11.7 The Tribunal finds that the Property comprises a disused fuel depot located in a rural location with offices, out buildings and with 5 no. fuel oil storage tanks, approximately 40 years old, with a combined capacity of 698,000 litres. The facility is in poor condition and has not operated since 2019. The parties have agreed that the Property is capable of beneficial use.
- 11.8 Despite the Parties being in agreement on the values to be applied to the buildings within the Property and the capacity of the tanks at 698,000 litres, the evidence and their respective approach to the valuation of the tanks on any basis, provides a very mixed picture. Mr. Mooney contended for a reduction in the NAV of the property from €30,900 to €8,750 based on the buildings being valued at €4,648. He approached the valuation of the tanks by adopting the Contractor's Method of Valuation, by first establishing his opinion of the replacement cost of the tanks on the valuation date and then by depreciating the resultant value to reflect their age.
- 11.9 Mr. Mooney established his opinion of the replacement cost of the tanks by reference to the 2005 replacement cost of sectional water and sectional steel tanks as set out in the internal Practice Note prepared by the Respondent's office and then indexing this value by 13% to reflect the movement in the Consumer Price Index in the intervening period up to the valuation date. He then reduced this figure by a factor of 80% to take account of the age and condition of the tanks, reflecting a Valuation Tribunal decision in VA17/05/074 (*Kells Wholemeal Ltd.*).

Mr. Power confirmed that the internal Practice Note of 2005 was out of date and no longer in use and that the replacement costs for the sectional water and sectional steel tanks referenced in the Practice Note were never used by the Respondent in the valuation of fuel oil tanks in this particular revaluation.

The Tribunal considers that Mr. Mooney's approach to valuing the fuel tanks by indexing the 2005 replacement costs of sectional water and sectional steel tanks to be unreliable. Whilst the Contractor's Method of Valuation has both merits and flaws, Mr. Mooney's use of the method would have been better served by reference to the replacement costs of comparable oil tanks to those in the Property at the relevant valuation date. Mr Mooney advised the Tribunal that such information was not available to him, however the Tribunal considers that an experienced valuer with the appropriate research being undertaken would be able to establish such costs. Mr. Mooney could have sought advice from an expert in this particular area.

The Tribunal considers that Mr. Mooney's reliance on the indexation of the 2005 replacement costs of sectional water and sectional steel tanks, as set out in the Practice Note, to be inappropriate and further accepts the confirmation by Mr Power that the Practice Note was both out of date and not used in the valuation of fuel tanks in the instant revaluation. The Tribunal further considers that Mr. Mooney's précis, oral

evidence and valuation approach did not contain the necessary proofs to make good the claim adduced therefrom.

- 11.10 Mr. Power valued the tanks by reference to a valuation schematic whereby he applied a rate of €0.05 per litre to a tank capacity of 475,000 litres, despite the actual and agreed capacity of the tanks in the Property being 698,000 litres. The rate of €0.05 per litre of tank capacity which Mr. Power said was derived by reference to a basket of rates applied to similar properties within other rating authority areas based on tank rental values in those areas. This schematic had been applied to the 17 no. properties within the Tipperary local authority area of which 2 assessments had been appealed. One had been agreed and settled by its appellant at the schematic rate.
- 11.11 Having regard to the principles of fairness and equity, the Tribunal considers that the agreed actual capacity of 698,000 litres of the fuel tanks should fall to be valued.
- 11.12 The Tribunal considers that Mr. Mooney's approach to using the Contractor's Method of Valuation has its merits, however the manner in which he executed the method was not supported by his evidence. The Tribunal considers that Mr. Mooney's reliance on the indexation of the 2005 replacement costs of sectional water and sectional steel tanks as set out in the Practice Note to be inappropriate. The Tribunal further accepts the confirmation by Mr. Power that the Practice Note was out of date and not used in the valuation of fuel tanks in the instant revaluation or the valuation of fuel tanks elsewhere.
- 11.13 The Parties are in agreement that the Property is disused and though the tanks are approximately 40 years old and decommissioned, it is accepted by Mr. Mooney that they are not obsolete and are capable of beneficial use. The Tribunal considers that it is appropriate to have particular regard to the age and condition of the tanks and the actual state of the Property. The pictorial evidence of the comparisons relied upon, as submitted by Mr. Power in his valuation of the subject, indicate significantly superior properties in better condition and locations. Whilst Mr. Mooney has failed to convince the Division that the Respondent's Valuation Schematic should be disturbed, the Tribunal considers that while the full tanks' capacity should fall to be valued in line with the Respondent's schematic, cognisance needs to be taken of their somewhat dilapidated condition as evidenced by the photographs adduced. The Tribunal finds it appropriate to apply a discount of 50% to the value of this element of the Property to reflect their age and condition.

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 €24,600 as follows:

Floor	Use	Area (M2)	NAV € (m2)	Total NAV
0	Store	99.44	€20.00	€1,988.80
0	Gantry	1	€1,000.00	€1,000.00
0	Offices(s)	82.96	€20.00	€1,659.20
0	Plant / Other Tanks - in Litres	698,000	€0.05	€34,900.00
0	Yard (Concrete / Tarmac)	1,260	€2.00	€2,520.00
			Total	€42,068.00
		Allowance,		€17,450.00
				€24,618.00
			NAV Say,	€24,600

And the Tribunal so Determines

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.