

Appeal No: VA19/5/1468

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Milliways Nurseries

APPELLANT

and

Commissioner of Valuation (Tailte Éireann)

RESPONDENT

**In relation to the valuation of
Property No. 2009345, Retail (Shops) at Ballydungan, Tagoat, County Wexford.**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF SEPTEMBER, 2024**

BEFORE

Donal Madigan - MRICS, MSCSI

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 11th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of **€ 14,090**.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:

“We believe that the valuation is too high, As we are paying more per SQM than other in the area who are in better positions i.e. on main roads. It is very difficult to pay this amount.”

1.3 The Appellant considered in the Notice of Appeal that the valuation of the Property ought to have been determined in the sum of **€ 6,000**.

2. RE-VALUATION HISTORY

2.1 On the 15th 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 € **14,090**.

2.2 A Final Valuation Certificate issued on 10th day of September,2019 stating a valuation of € **14,090**.

2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is **15th day of September, 2017**.

2.4 The functions of the Commissioner of Valuation are now undertaken by Tailte Éireann since 1st March, 2023. S.I. No. 58/2023 - Tailte Act 2022 (Commencement) Order 2023.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

3.3 Mr. Robert Kinahan put forward a submission on behalf of the Appellant, Milliways Nurseries, dated 9th October, 2023 in which he outlined his case (set out hereafter at **section 7**. below) and provided a Statement of Truth. Mr. Oliver Parkinson, Valuer for Tailte Éireann, put forward a submission dated 23rd October, 2023 (set out hereafter at **section 8**. below) for the Respondent which contained the Standard Declaration and Statement of Truth.

4. FACTS

From the information provided the following are the background or undisputed facts:

4.1 The Property is located south of the village of Tagoat on the R736 in a rural setting;

4.2 The Property comprises a Nursery premises comprising of a building and attached yard;

4.3 The floor areas and size of yard at the Property are agreed as follows:

Ground Floor	Shop	95.60m ²
First Floor	Store	<u>96.00m²</u>
		191.60m ²
Yard		441.00m ²

4.4 The Property is freehold

5. ISSUES

The sole issue arising in this appeal is the quantum of the valuation. The Appellant had proposed a valuation of € 6,000 in the Notice of Appeal which he suggested, in his subsequent commentary on the Respondent's submission might be increased to € 8,000. The Respondent had originally valued the property at a valuation of € 14,090 in the Final Valuation Certificate (the figure appearing in the Valuation List) but in his submission to the Tribunal he has amended this to the lower valuation of € 10,160.

6. RELEVANT STATUTORY PROVISIONS:

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

6.2 In **Revaluation** type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, which provides:

that shall achieve both (insofar as is reasonably practicable)—

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

6.3 The net annual value (**NAV**) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

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

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the

property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT’S CASE

7.1(a) Mr. Robert Kinahan, for the Appellant, provided a detailed précis of evidence in which he outlined, inter alia, the basis of his appeal supplemented by some 35 comparables, commentary, photographs, and a table showing details of the other properties referenced by him. He explained in his submission that Milliways has been a nursery since 1989 and that he has owned it since 2013, and that it is a small, rare, coastal, plant nursery in south county Wexford near Carne and that it produces plants suitable for the harsh coastal climate locally, and that it also acts to improve the biodiversity of gardening in the area.

(b) The operation is run by his wife and himself, with occasional summer students in attendance too, seeking to learn propagation techniques. He clarified that they only sell plants, some sundries and very few other lines. He confirmed that they do not sell paving, sheds, conservatories, greenhouses, tools, jacuzzies, decking, furniture, BBQs, etc. He contended that their operation is a nursery and not a garden centre in that 90% of their sales are plants. He explained that they have been facing increasing competition from supermarkets and, even more so since they were forced to lockdown, and that now, it appears to him that nearly every shop in the country has begun to sell plants to the point that their bedding plant and added value sales have collapsed to about 10% of what they were pre-lockdown. This is coupled with their B2B sales which have not recovered, due to lockdown. He further stated that they always considered that the rates were unviable and that he had tried to work with the council to seek a solution. He states that they had requested an appeal before and were advised to wait for the revaluation.

(c) He considers that there is not much point in continuing with the cost of doing business in the future as they are working seven days a week to generate the sales to pay overheads of which rates are a substantial portion, and that the rates are even more than electricity and insurance. This year he expects to turnover less than € 10k. He contends that they are a seasonal business and that they are weather dependent, and that, for every € 1,000 in overheads, they need sales cover of € 8,000 (made worse by energy costs increasing along with other input costs). He believes that, furthermore, that they are not really getting the benefits that businesses in a town would get. He states that they have no street lighting, private bins, private water, or private sewage, and that they clean the roads outside, themselves, and that there are no pavements. He poses the question as to why they are paying [rates] when others in the same type of business are not, or are rated [valued] substantially less than them. He asserts that the Property is valued by including spaces not commercially used and that the valuation is overpriced and therefore unrealistic. He further references the unusual allowances apparently being granted on the valuations of other properties that he has researched.

7.2 Mr. Kinahan had submitted a valuation at € 6,000 in his Notice of Appeal but see below where he adjusted this in his commentary on the Respondent’s précis to € 8,000. He considered this to be a reasonable amount but no computations were submitted as to how this figure was calculated, be that either a unit value per square metre or some other calculation basis.

7.3 In support of his valuation he relied upon the following 35 comparables to support his opinion, which are as briefly summarised here, and cross referenced, where possible, to the breakdown of each valuation from the Valuation List:

(1) **PN 2188440**

Beechdale Garden Centre, Enniscorthy, Co. Wexford.

This property is assessed at the NAV of € 28,800 that is calculated based on unit values per square metre of € 22.00 (showroom) € 18.00 (store) with ancillary rates of € 2.20 on the yard. The building amounts to 1,207.92m² excluding yard and canopy.

(2) **PN 2082882**

Ballykelly Garden Centre, Ballykelly, Drinagh, Co. Wexford.

This property is assessed at the NAV of € 11,900 that is calculated based on unit values per square metre of € 40.00 on both showroom and store and € 4.50 on the yard. The building amounts to 198.22m² and the yard is 884.00m².

(3) **PN 5015526**

Coolaught Gardens, Clonroche, Enniscorthy, Co. Wexford.

This property is assessed at the NAV of € 4,310 that is calculated at unit value rates per square metre of € 7.50 & € 15.00 for Stores with € 1.50 on the yard. The building area is 318.82m² and the yard is 430.00m².

(4) **PN 5023721**

Wilton Gardens, Bree, Co. Wexford.

This property is assessed at the NAV of € 3,570 that is calculated at unit value rates per square metre of € 40.00 (Showroom) and € 4.00 on the yard. The building is 79.30m² and the yard is 100.00m².

(5) **PN 5010322**

Hylands Nursery, Oulart, Co. Wexford

This property is assessed at the NAV of € 1,200 that is calculated at unit value rates per square metre of € 25.00 (Stores) plus ancillary rates. The buildings are 62.10m² excluding canopy.

(6) **PN 2209463**

Tommy Williamson Farm & Landscaping Supplies, Templescoby, Enniscorthy, Co. Wexford

This property is assessed at the NAV of € 27,300 that is calculated at unit value rates per square metre of € 21.60 (showroom) € 18.00 (Store) and € 1.80 (yard). The buildings are 1,173,87m² excluding a canopy and the yard is 3,300.00m².

(7) **PN 644734**

Van Der Well Limited, Capagh Nurseries, Aughrim, Co. Wicklow.

This property is assessed at the NAV of € 13,190 that is calculated at unit value rates per square metre of € 50.00 (Shop & Café) € 25.00 (Store) € 7.5 (External Sales and canopy) and it comprises a total area of 526.34m² excluding the canopy which is a further 146.06m². This is outside the rating authority area.

(8) **PN 1993243**

Fleming's Garden Centre, Tonlegee, Athy, Co. Kildare.

This property is located just south of Athy and is assessed at the NAV of € 3,530 which is calculated at unit value rates per square metre of € 12.00 (Store of 106.88m²) and €5.00 (hardcore yard of 450.00m²). This is outside the rating authority area.

(9) **PN 5024409**

Joly's Garden Centre, Avoca, Co. Wicklow.

This property is assessed at the NAV of € 13,590 which is calculated at unit value rates per square metre of € 38.40 (Showroom of 321.00m²) € 3.20 (Yard and Display yards of 36.00m² and 225.00m²; portacabin and containers at € 12.80 & € 6.40 per m². This is outside the rating authority area.

(10) **PN 2009169**

Drinagh Garden Centre, Co. Wexford.

This property is assessed at the NAV of € 54,200 that is calculated at unit value rates per square metre of € 40.00 (Showroom) € 11.00 (Store) and yards at € 2.20 & € 4.00. The building is in total 1,535.80m² and the yards total 2,800.00m².

(11) **PN 2214734**

Botanic Home & Garden Centre, Drinagh, Co. Wexford.

This property, which is classified as a retail warehouse on the Valuation List, is assessed at the NAV of € 34,900 which is calculated at unit value rates per square metre of € 60.00 (Retail Warehouse of 465.00m²) € 9.00 (Canopy of 564.00m²) and € 6.00 (Yard of 332.00m²).

(12) **PN 2192884**

Springmount Garden Centre, Barnadown Lower, Ballycanew, Co. Wexford.

This property, south of Gorey, is assessed at the NAV of € 35,000 that is calculated at unit value rates per square metre of € 32.40 (Showroom of 506.13m²) € 27.00 (Store of 240.95m²) € 4.90 (Mezzanine Store of 152.90m²) and € 6.00 (Yard of 1,892.00m²).

(13) **PN 2174841**

Woodie's, Wexford

This property, which is classified as a retail warehouse, is assessed at the NAV of € 180,100 and that is calculated at unit values per square metre of € 50.00 (Retail warehouse of 3,360.20m²) € 20.00 (First Floor retail warehouse of 333.00m²) € 5.00 (yards of 402.57m² and 700.00m²).

(14) **PN 2198773**

Cois na Abhainn, Kilcomb, Gorey Road, Wexford.

This property, which is classified as a retail warehouse, is assessed at the NAV of € 43,600 that is calculated at unit value rates per square metre of € 30.00 (Ground Floor Retail Warehouse of 732.83m² and First Floor Retail Warehouse of 621.53m²) € 3.00 (Yard of 1,009.00m²).

(15) **PN 2080180**

Fig Tree Garden Centre, Castlebridge, Co. Wexford.

This property is assessed at the NAV of € 1,990 that is calculated as Workshop 79.86m² @

€ 25.00 per square metre.

(16) **Kilmurry Nurseries**

Not cross checked with Valuation List as PN number no longer valid. Taking the Appellant's evidence this is defined as an office with an NAV of € 1,200 and comprises 33.34m².

(17) **PN 1207844**

Tir Lan Country Life, Bunclody, Co. Carlow.

This property is in County Carlow and is assessed at the NAV of € 17,430 which is calculated on the basis of a different valuation date, 30th October, 2015.

(18) **PN 2195355**

Spice Retail Home & Garden, WFC Retail Park, Gorey, Co. Wexford.

This property is assessed at the NAV of € 99,800 that is calculated at unit value rates per square metre of € 50.00 (Retail Warehouse/Warehouse 1,900.12m²) € 15.00 (Mezzanine office of 58.36m²) and € 5.00 (Yard).

(19) **PN 2007888**

Tir Lan Country Life, Clonroche, Enniscorthy, Co. Wexford.

This property is assessed at the NAV of € 23,700 which is calculated at unit value rates per square metre of € 26.40 (Showroom of 294.71m²) € 22.00 (Warehouse and Store of total 639.28m²) € 8.80 (Store) € 4.40 (Mezzanine store) and € 2.20 (Yard of 523.00m²).

(20) **PN 5014298**

O'Loughlins, Ballynestragh Demesne, Gorey, Co. Wexford.

This property is assessed at the NAV of € 7,690 that is calculated at unit value rates per square metre of € 20.40 (Showroom of 81.25m²) € 17.00 (Workshop 193.64m²) € 3.40 (Mezzanine store of 28.64m²) and € 1.70 (yards of 1,558.00m²).

(21) **PN 2189020**

Dermot Kehoe Supply and DIY, Hewitsland, New Ross, Co. Wexford.

This property is assessed at the NAV of € 132,000 and the property is a retail warehouse on ground and mezzanine levels of 2,458.84m² and 573.63m² valued at unit value rates per square metre of € 40 & € 12 with levels of € 6.00 per m² on the canopy (266.00m²) and € 15.00 per m² on a Store of 1,440.28m² and € 4.00 per m² on the yard of 900.00m².

(22) **PN 2176491**

Ballycallan Garden Centre & Nursery, Co. Kilkenny

This property is assessed at the NAV of € 1,700 (being a store and yard valued at € 14.00 & € 4.00 per m² for a building of 86.37m² and yard of 495.00m²) and has a different statutory valuation date of 30/10/2015, and is situated in a different rating authority area.

(23) **PN 2161390**

Arboretum Home and Garden Centre, Rathvinden, Co. Carlow.

This property is assessed at the NAV of € 186,000 that is calculated at unit value rates per square metre of € 40.00 (retail warehouse of 3,392.45m²) € 25.00 (Offices, Store and warehouse) and € 16.00 (retail warehouse of 1,638.28m²) and € 5.25 (canopy of 72.00m²). This is situated in a different rating authority area with a different statutory valuation date.

(24) **PN 2214114**

Rathwood, Shilelagh, Co. Wicklow.

This property is assessed at the NAV of € 199,700 which is calculated at unit value rates per square metre of € 40.00 (Retail areas and restaurant) with lesser rates on ancillary areas with canopies at € 4.00 per m² as with the yard. Although it has the same statutory valuation date as the subject it is located in a different rating authority area.

(25) **PN 5006090**

Hammels Expert, Kilmuckridge, Co. Wexford.

This property is assessed at the NAV of € 18,400 that is calculated at unit value rates per square metre of € 40.00 (Retail warehouse of 334.07m²) and € 4.00 (Yard of 1,261.20m²).

(26) **PN 2009466**

Bank of Ireland, Rosslare Harbour, Co. Wexford.

This property is a bank which is assessed at the NAV of € 15,640 that is calculated at unit value rates per square metre of € 180.00 Zone A, halving back for other zones (retail area 120.38m²) and applying € 20.00 per m² to a Store of 14.26m² and with an allowance clarified by the Respondent for frontage to depth ratio.

(27) **PN 2214250**

Tesco, Distillery Road, Wexford

This property is assessed at the NAV of € 28,300 that is calculated at a base rate of € 5,000 and a unit value rate of € 350.00 per m² for a kiosk of 66.75m².

(28) **PN 2214249**

Tesco, Distillery Road, Wexford (2)

This property is assessed at the NAV of € 10,000 that is calculated at base value of € 5,680 plus a rate per square metre of € 750.00 for a kiosk of 5.76m².

(29) **PN 2108791**

Petit's Supervalu, Green Street, Wexford.

This property is assessed at the NAV of € 214,000 that is calculated at unit value rates per square metre of € 95.00 (Supermarket of 1,742.64m² and Store of 40.15m²) and € 47.50 (First Floor Store of 464.49m²).

(30) **PN 5009856**

Camping Outdoors Adventure Centre, Six Acre, Tagoat, Co. Wexford.

This property is assessed at the NAV of € 17,640 that is calculated on the basis of a unit value per caravan stand with 70 being computed at € 180 each and 14 at € 360 each. The value for offices and toilets is reflected in the rate per stand.

(31) **PN 5009902**

Wexford Lavender Farm, Coolnagloose, Inch, Gorey, Co. Wexford.

This property is assessed at the NAV of € 12,440 that is calculated at unit value rates per square metre of € 48.00 (Ground Floor Café of 189.08m²) € 36.00 (First Floor Café of 42.00m²) and € 30.00 (First Floor Store of 62.02m²).

(32) **PN 2168319**

Supervalu, Rosslare, Co. Wexford.

This property is a supermarket and is assessed at the NAV of € 20,300 that is calculated at unit values per square metre of € 200 Zone A (retail area both zones 119.09m²) and with an allowance for frontage to depth.

(33) **PN 2009366**

Rathdowney, Lady's Island, Co. Wexford.

This property comprises a caravan park that is assessed at the NAV of € 21,400 which is calculated on the basis of 65 caravan stands valued at € 330.20 each.

(34) **PN 2204251**

Carne Beach Caravan & Camping Park, Co. Wexford.

This property comprises a caravan park that is assessed at the NAV of € 172,700 that is calculated at € 276.59 per caravan stand for 492 stands with an addition of € 4,950 and € 10,000 for a shop.

(35) **PN 2009367**

St. Margaret's Beach Caravan and Camping Park, Co. Wexford.

This property is a caravan park that is assessed at the NAV of € 24,100 which is calculated at € 180 per stand for 10 stands and € 360 per stand for 62 other stands.

7.4 In his response to the Respondent's précis, Mr. Kinahan made, in summary, the following points (but omitting, where possible, repetition, in whole, of the arguments already made by him):

(a) Milliways is a small nursery and not a garden centre

(b) The criteria for assessment does seem unfair as larger businesses seem to be paying less

(c) Whilst he has private water, sewage, bins, they maintain the road frontage and clean it and remove debris, litter, and clear the drains, etc. They have no council Christmas lighting or visible policing whereas other businesses seem to benefit from the infrastructure the council supports.

(d) Respondent section 4.2. He takes issue with the Respondent's description of the property as a garden centre and reiterates that it is only a nursery. He states that their yard outside is used for growing and displaying plants and has plants at various stages of production and that it is not a covered yard like many of the other comparisons.

(e) Respondent section 4.3. He states: *The property was built in 1989 by a local builder and was constructed from recycled material from the demolition of the old Pierces foundry; the windows are so old and rotten they are from the Georgian period. It is a very basic construction that has been dressed up to look nice. It is a single glazed block building with h beam and ring beam construction like a big shed. We have owned it since 2013. We are in the process of doing maintenance which fell behind due to lockdowns and me having a long covid.*

(f) Respondent section 5. He takes issue with the process of what actually occurred and his interactions with the local authority, Valuation Office and the Tribunal office. [This point is addressed in this Determination later: see 10.2 & 10.6 below.]

(g) Respondent's section 6. He makes the point that there might be scope to increase the figure in his notice of appeal from € 6,000 to € 8,000 to allow for the passage of time since then and in an effort to be fair.

(h) Mr. Kinahan then provides further comments on the comments made by the Respondent Valuer on his (see sec. 8.4 below) own comparisons:

Appellant Comparable 1. It is a large retail operation, yet they are only paying about twice the Milliways' rates demand. He states that the other coach park is bigger than his site, and that the café is larger than the Milliways building.

Appellant Comparable 2. Response: *Building was designed more like a house. Much larger site just off main N25 and closer to town.*

Appellant Comparable 3. Response:

Again included to show disparity, this operation sells plants and garden equipment and has a large display area and display garden.

Appellant Comparable 4. Response: *Large garden centre with added substantial tomato growing business. Set in a courtyard of the old Wilton Castle estate.*

Appellant Comparable 5. Response: *In a sense it is, [comparable to Milliways] as John Joe Hyland produces stock like us and sells to a similar market in fact we often refer clients to each other.*

Appellant Comparable 6. Response: *Essentially a hard landscaping depot but significant business.*

Appellant Comparable 7. Response: *One of the largest providers and importers of plants in the country, with large retail and wholesale business.*

Appellant Comparable 9. Response: *We believed it was worth referencing due to the scale of the buildings, the cafe /food truck and the large display area, retail and landscaping business.*

Appellant Comparable 10. Response: *Comparable due to proximity to us and the location, very close to Wexford town and a major interconnecting roundabout connecting Waterford, New Ross, Enniscorthy, directly on the national route N25. Also has a landscaping business. We seem to pay more per sqm than them. Has a covered yard cafe, and paving centre. Sell a wide range of products from plants to hardware home furnishing, etc.*

Appellant Comparable 11. Response: *This was shown as proximity to us but does have major retailers Meadows and Byrne, McDonalds and Kelly's cafe and a major furniture store in one unit. It has footfall in the thousands a day. Very close to Wexford town and major roundabouts. Not rural or seasonal. Has a covered yard.*

Appellant Comparable 12. Response: *as for his comments for number 10 above (Drinagh).*

Appellant Comparable 13. Response: *This business takes more in a week than we do a year. These larger firms have greater buying power and can benefit from SOR deals and higher discounts which result in higher margins. It is in a major retail park with Aldi, KFC, Dealz and others.*

Appellant Comparable 14. Response: *Clad in black granite and has won awards for luxury retail excellence, etc, it is a full service garden centre. The paving of the drive costs more to build than our building. Has a great luxury designer gift store. We seem to pay more*

Appellant Comparable 15. Response: *Very comparable in our opinion has similar sized businesses a better turnover and less seasonally affected than us. The local catchment is bigger. There isn't much between their building and ours. He just has a corrugated type roof.*

Appellant Comparable 16. Response: *Somewhat comparable to us. Again above just shown to reflect widely differing ratings from our perspective.*

Appellant Comparable 23. Response: *Generally considered to be the largest in Ireland, this is a massive enterprise. We wish we were comparable.*

Appellant Comparable 24. Response: *Again like the Arboretum in Carlow, Rathwood takes more on the Santa train than we do in a year.*

Appellant Comparable 26. Response: *just an example of a local building.*

Appellant Comparables 27, 28 & 29: Response: *We were really looking for the total for Tesco's but info isn't available. Kiosks went in much later than the original building. So fair enough.*

Appellant Comparable 30. Response: *It is not a caravan park, it is a large adventure sports centre with food vending areas, shops, event spaces, etc. They host many scout events and schools go there for adventure activities. It does have some spaces for RVs and tents but not core business. It's very local to us. As was shown here to show local rates.*

Appellant Comparable 31. Response: *They have event spaces, a cafe, a cosmetics business, less seasonally affected and their use is much better constructed than ours. It is set up as a tourist attraction and benefits from many of the support available.*

Appellant Comparable 32. Response: *Again just a local comparison. And working off the public information.*

Appellant Comparables 33, 34 & 35. Response: *The three sites above apparently have a seasonal adjustment, yet occupancy seems to be 12 months, obvious more in summer. And again were included due to proximity.*

(i) Mr. Kinahan then gives responses on two of the Respondent's comparables as follows:
Respondent Comparable 1. Response: *This is a significant tourist attraction and food business and events space.*

Respondent Comparable 3. Response: *But it is a very different business. Has many other revenue streams. Also the building is built a lot better than ours.*

(j) Mr. Kinahan expresses difficulty in finding truly comparable properties in the general location but concedes that the Wexford Lavender Farm (PN 5009902) may be similar but is of a very different enterprise.

8. RESPONDENT'S CASE

8.1 Mr. Oliver Parkinson, Valuer, appeared as Expert Witness for the Respondent, Tailte Éireann, and he provided a detailed précis of evidence in which he outlined, inter alia, the basis of valuation; sources of information; statistics on the rating area of Wexford; outline of the location, description, floor areas etc of the Property together with photographs, map, block plan and copies of the valuation certificate and a previous Tribunal decision. He also provided a history of the rating valuation for the Property and supplied a commentary on the appeal and on the Appellant's submission.

8.2 Mr. Parkinson submitted a valuation of the Property at € 10,160, which is a reduced figure from the valuation that was originally set out in the Final Valuation Certificate and that is also below that figure as presently shown on the Valuation List, of € 14,090. He offered the explanation for the difference being the recalculation of floor areas upon which his valuation had been based. He calculates the revised valuation as follows:

Ground Floor Shop	95.60m ²	@ € 48.00 per m ²	4,588.80
First Floor Store	<u>96.00m²</u>	@ € 36.00 per m ²	3,456.00
	191.60m ²		
Yard	441.00m ²	@ € 4.80 per m ²	<u>2,116.80</u>
			10,161.60 say, € 10,160.

8.3 In support of his valuation, Mr. Parkinson relies on the net annual values of three comparable properties, in summary, as follows:

(1) **PN 2168280**

Kilmokea Gardens, Campile, Co. Wexford.

This property is assessed at the NAV of € 4,660 that is calculated as follows:

Ground Floor	Café	84.98m ²	@ € 48.00 per m ²	4,079.04
	Shop	<u>12.21m²</u>	@ € 48.00 per m ²	<u>586.08</u>
				4,665.12

NAV € 4,660.

It is understood that no representations were made in respect of the valuation of this property; the ratepayer was not represented by an Agent, and no appeal was made to the Tribunal.

(2) **PN 2008539**

The Cowhouse Restaurant, Courtown Harbour, Gorey, Co. Wexford.

This property is assessed at the NAV of € 6,790 that is calculated as follows:

Ground Floor	Restaurant	141.46m ²	@ € 48.00 per m ²	6,790.08
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NAV € 6,790.

It is understood that no representations were made in respect of the valuation of this property; the ratepayer was not represented by an Agent, and no appeal was made to the Tribunal.

(3) **PN 5009902**

Wexford Lavender Farm, Inch, Gorey, Co. Wexford.

This property is assessed at the NAV of € 12,440 that is calculated as follows:

Ground Floor	Café	189.08m ²	@ € 48.00 per m ²	9,075.84
First Floor	Café	42.00m ²	@ € 36.00 per m ²	1,512.00
	Store	<u>62.02m²</u>	@ € 30.00 per m ²	<u>1,860.60</u>
		293.10m ²		12,448.44

NAV € 12,440.

It is understood that no representations were made in respect of the valuation of this property; the ratepayer was not represented by an Agent, and no appeal was made to the Tribunal.

8.4 In his response commentary on the Appellant's comparables, Mr. Parkinson made the following points:

Comp.1 PN 2188440 Beachdale Garden Centre. Industrial type building and approx. 10 times the size of the subject property which is reflected in the NAV. Not directly comparable.

Comp. 2 PN 2082882, Ballykelly Garden Centre. Industrial Type building similar in size to the subject property, not directly comparable.

Comp. 3 PN 5015526, Coolaught Gardens, Cluster of agricultural type buildings and yard area used as a garden centre on house/farm site. No Showroom. Not directly comparable due to construction which is reflected in the NAV.

Comp.4 Wilton Gardens, PN 5023721, Industrial Type buildings, not directly comparable due to construction.

Comp. 5 Hylands Nurseries, PN 5010322, Industrial Type buildings and Portacabin, not directly comparable.

Comp.6 Tommy Williamson Farm & Landscaping Supplies, PN 2209463, Industrial Type buildings approx. 10 times the size of the subject. Allowance to one of the buildings as it is open sided. Not directly comparable.

Comp. 7 Van Der Wel Ltd, PN 644734, Industrial Type buildings with Portacabin and Canopy on site. Not directly comparable.

Comp. 8 Flemings Garden Centre, PN 1993243, Industrial buildings and polytunnel used as a shop., Not directly comparable.

Comp. 9 Joly's Garden Centre, PN 5024409, Industrial type buildings with portacabins, glasshouse in use as a shop and display yard. Not directly comparable.

Comp. 10 Drinagh Garden Centre, Industrial Type buildings, approx. 6 times the size of the subject with industrial showroom and display yard. Not directly comparable.

Comp.11 Botanic home and Garden Centre, PN 2214734, Retail Warehouse valued at €60psqm compared to €48 on the subject. Approx twice the size of the subject. Not directly comparable.

Comp. 12 Springmount Garden Centre, PN 2192884, Industrial Type buildings, approx. 3 times the size of the subject. Not directly comparable.

Comp. 13 Woodie's Wexford, PN 2174881, Retail Warehouse construction approx. 15 times the size of the subject property, not directly comparable.

Comp. 14 Cois na hAbhann Garden Centre, PN 2198773, Retail warehouse construction, approx. 6 times the size of the subject property. Not directly comparable.

Comp. 15 Fig Tree Garden Centre, PN 2080180, Industrial Type building, not directly comparable.

Comp. 16 Kilmurray Nursery, PN 5010053, Timber cabin in use as a tearoom, not directly comparable.

Comp. 17 Tirlan Country Life, Bunclody, PN 1207844, Retail Warehouse construction, not directly comparable.

Comp. 18 Spice Retail Home and Garden, PN 2195355, Retail Warehouse construction approx. 10 times the size of the subject, not directly comparable.

Comp. 19. Tirlan Farm Life Clonroche, PN 2007888, Industrial type buildings, approx. 4 times the size of the subject, not directly comparable.

Comp. 20. O'Loughlin Landscaping supplies, PN 5014298, Industrial type buildings, not directly comparable.

Comp. 21. Dermot Kehoe Supply and DIY, PN 2189020, Retail Warehouse located in a Business Park, approx. 19 times the size of the subject property. Not directly comparable.

Comp. 22 Ballycallan Garden Centre and Nursery, PN 2176491, Industrial buildings and yard, not directly comparable.

Comp. 23. Arboretum Home and Garden Centre, PN 2161390. Located in a different rating authority area to the subject (Carlow) . Not directly comparable.

Comp. 24. Rathwood, PN 2214114, Located in Wicklow, a different rating authority area to the subject, not directly comparable.

Comp. 25. Hammel's Expert, PN 5006090, Retail Warehouse type buildings, not directly comparable.

Comp. 26. BOI Rosslare Harbour, PN 2009465, Valued on a Zoned basis with an allowance for frontage to depth. The subject is unsuitable for zoning and valued on an overall basis which equates to approx. €91 per m² whereas comp 25 equates overall to €117 per m² to reflect location.

Comp. 27. Tesco Wexford 1, PN 2214250, Kiosk located to the rear of the Tesco supermarket. Not comparable due to size and location which is reflected in the NAV and is approx. twice the valuation of the subject.

Comp. 28. Tesco Wexford 2. PN 2214249, Kiosk located in a shopping centre, not comparable due to size and location.

Comp 29. Petitt's SuperValu, 2108791, Supermarket approx. 10 times the size of the subject, not comparable due to size and location.

Comp. 30. IOAC Camping Outdoors Adventure Centre, PN 5009856, Not Comparable as Comp. 30 is a Caravan Park, and the subject is a Retail Shop.

Comp. 31 Wexford Lavender Farm, PN 5009902, suitable comparison and valued on the same basis as the subject. Similar in size and construction.

Comp. 32 SuperValu, Rosslare, PN 2168319, Retail shop valued on a zoned basis with an allowance for frontage to depth. Superior in location to the subject which is reflected in the NAV. The subject is valued on an overall basis which equates to €91 per m² whereas comp. 32 equates to €171 per m² overall. Not directly comparable.

Comp. 33 Rathdowney Mobile Park, PN 2009366. Not Comparable as Comp. 32 is a Caravan Park, and the subject is a Retail Shop.

Comp. 34 Carne Beach Caravan and Camping Park, PN 2204251, Not Comparable as Comp. 34 is a Caravan Park, and the subject is a Retail Shop.

Comp. 35. St. Margaret's Beach Caravan and Camping Park. Not Comparable as Comp. 35 is a Caravan Park, and the subject is a Retail Shop.

8.5 Mr. Parkinson stated further in his submission that properties which are '*similarly circumstanced*' are considered comparable. He contended that this means they share characteristics such as use, size, location and/or construction. In addition to the relevant market evidence which underpins the valuation scheme, he said that his report sets out comparative evidence to demonstrate that both correctness, equity and uniformity of value have been achieved in this case.

8.6 Mr. Parkinson also made reference to a decision of the Valuation Tribunal in the appeal known as **VA. 00.2.032 Proudlane Ltd v Commissioner of Valuation** and set out a brief quotation from that judgment as follows:

"The Tribunal is of the view that in relation to these matters the onus of proof lies on the appellant and in the absence of that type of evidence the Tribunal considers that the Valuation should stand on the basis of the quantum arising from the comparisons offered. The Tribunal is not disposed to give such a discount in relation to the Tallaght area without further evidence and on that basis the valuation should stand...."

He provided a copy of the full judgment in the Appendix to his report.

9. SUBMISSIONS

There were no legal submissions in this appeal.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct, equitable and uniform, so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the Valuation List in the rating authority area of Wexford County Council.

10.2 As is the case in many rating appeals before the Valuation Tribunal mounted by lay Appellants (i.e. those ratepayers who are not professionally represented by either a Valuer, Surveyor, or Solicitor) confusion can arise in the understanding of the role of the Tribunal and its scope of power. A rates bill is comprised of two parts. The first is the valuation (**Net Annual Value**) and the second is the **ARV**, the annual rate on valuation. The total rates payable is a factor of one component multiplied by the other. The jurisdiction of the Tribunal is solely concerned with the correct and equitable determination of the first of these, the **valuation**. The second of these, the ARV is fixed annually by the local rating authority and the Tribunal has no function on the determination of this figure. The ARV will vary from local authority to local authority and the amount of this will also vary greatly depending on whether the local authority area has been revalued or not. As stated in Section 6. of this Determination above, the basis of the valuation is the net annual value of the property having regard to the prevailing level of rents at the statutory valuation date of 15th September, 2017 for this rating authority area, as measured by those analysed rents and other net annual values of other properties that are comparable to this Property.

10.3 Whilst the Commissioner of Valuation (now Tailte Éireann) is independent of the rating authority, which, in this case, is Wexford County Council, it is worth also confirming that the Valuation Tribunal is independent of both of those bodies, too.

10.4 The process for an Appellant in dealing with their appeal is provided for on the Valuation Tribunal website and all Appellants are encouraged to read the relevant rules applicable to their appeal, which, in this case, are the Valuation Tribunal (Appeals) Rules 2019. These Rules provide guidance on all aspects of the process and outline what is usually expected to be comprised in a summary of evidence that is to be submitted to the Tribunal for consideration. Previous judgments of the Tribunal covering all types of commercial properties are listed on the website, too, from which information can be obtained to assist in presenting a case.

10.5 The scope of the Tribunal's power in determining appeals is restricted to those grounds identified in the Notice of Appeal unless the Appellant is granted permission to amend those grounds, or rely upon a new ground, by the Tribunal on receiving an application to do so. (Rules 55-59 of the Valuation Tribunal (Appeals) Rules 2019.) In summary, those grounds are stated to be that the valuation is too high and that the Appellant believes the operation is paying more than others per square metre in the area which are better located on main roads, and further that this is

an amount that is difficult to pay. The Tribunal can only determine the valuation (see section 10.2 above) as ability to pay or affordability are matters that are outside its powers to express any opinion or judgment thereon.

10.6 The Tribunal has no function over prior negotiations or circumstances and is not empowered to adjudicate on the conduct of the parties' exchanges outside of the appeal. The Tribunal only becomes involved in the valuation process, as a result of the appeal, and has no access to documents that might be retained either by Tailte Éireann or Wexford County Council other than those submitted to it by Direction **for this appeal**.

10.7 The Tribunal does not have information indicating the change, if any, in the ultimate rates liability amount (as distinct from changes in the valuation) that arises after the Revaluation, not only for the subject Property but also in respect of any of the comparable properties advanced in evidence. However, the Respondent Valuer has outlined the general appeal statistics for this rating authority area on page 10. of his submission.

10.8 Both the Appellant and the Valuer for the Respondent provided very detailed précis of evidence to guide the Tribunal, which are much appreciated.

10.9 This is a Revaluation type appeal and as such can consider, as being pertinent to the exercise of the Determination, any available rental evidence as well as the evidence demonstrated by other net annual values of comparable properties. It is noted that neither party presented rental evidence in this appeal.

10.10 Rating law has evolved over many years and from that body of knowledge it is worth indicating, for the benefit of a lay Appellant, that certain principles are observed such as the assumption of a hypothetical letting at the valuation date of this relevant property on the statutory basis mandated by sec. 48(3) (see **section 6** above) of the Valuation Act 2001, as amended, assuming that it is vacant and to let for that purpose and is valued on the basis too, of existing use encapsulated by the Latin phrase "*rebus sic stantibus*". In the context of the current appeal this is important, as the indicators of relative value advanced by both Appellant and Respondent chart the spectrum of net annual values from other "comparable properties" to guide the valuation. These are essential, in this instance, because (a) no rental evidence is submitted and (b) differences are apparent between the parties as to what are to be considered **comparable properties** to the subject Property. It is important to state that what is being valued for rating purposes is the **Property** and not the business.

10.11 It is observed in this appeal that the Appellant raises issues with regard to the designation of properties (or their categorisation for valuation purposes) and expresses difficulty reconciling these classifications with the actual user in reality. This is an area of rating valuation practice that frequently causes misunderstanding. No mandate is contained in the Valuation Act for the act of designating valuation categories, as such, as that discretion is left to the judgment of the Valuer in Tailte Éireann undertaking the valuation exercise. Rating valuation practice seeks to avoid over precise definitions as there can be difficulty in the nomenclature of certain activities, and case law has evolved, over many years, to persuade valuers to utilise broad categories or modes

of occupation (rather than precise, narrow designations) resulting, for example, in the case of retail, where a shop is valued as a shop but not as any **particular type** of shop.

10.12 Whilst the Appellant offers to amend his valuation from € 6,000 to € 8,000 it would be improper of the Tribunal to increase the figure for the reason put forward by the Appellant, as he is mistaken that the statutory valuation date “moves in time”. The valuation date is fixed as **15th September 2017** and it is only the net annual value at that date which is relevant.

10.13 The case for the Appellant draws on a wide spectrum of properties some of which might set a context for the revaluation but it will be appreciated that others which are not essentially comparable, include retail warehouses, shops, kiosks, supermarkets and caravan parks. He also refers to some properties outside the Wexford County Council area. Unfortunately, for him, it is not possible to consider comparables outside the rating authority area because the appropriate section of the Valuation Act specifies that comparables relied upon must be from within the same rating authority area as the appeal property. This might seem illogical in the case of two adjacent rating areas which are revalued and have the same statutory valuation date, as for example, in the case of Wicklow and Wexford, which both have 15th September, 2017 as their valuation date, but there is no scope, legally, to go beyond what the Act mandates.(see section 6.2 above.) Furthermore, the two rating areas will most likely have a different annual rate on valuation (ARV) leading to a variation in the amount ultimately payable in rates and that might also justify a reason for that restriction too.

10.14 Whilst the Appellant does not provide computations of his alternative valuation he references various comparables from which a range of suitable unit values can be witnessed. The Tribunal is persuaded that the most relevant (having regard to similar circumstances and ignoring higher magnitude properties) in this appeal are, in sequence: Appellant Comparables 1 (Beechdale), 2 (Ballykelly), 3 (Coolaught), 4 (Wilton), 5 (Hylands), 6 (Williamson), 15 (Fig Tree), 20 (O’Loughlins), and 31 (Wexford Lavendar Farm). These give an indicative range of unit values for Retail at € 48.00 per m²; Showrooms at € 20.40 to € 40.00 per m²; Stores at € 15.00 to € 30.00 per m² and a range on the yards/lands at € 1.50 to € 4.50 per m². Some of these comparables have better profile, access to major roads and proximity to villages and towns.

10.15 The case for the Respondent is that he values the Property at: Buildings at € 48.00 per m² for ground floor Retail; first floor Store at € 36.00 per m²; the land of 441.00m² at € 4.80 per m² which produces a total valuation of € 10,160 and he relies upon three NAV comparables to support his opinion. The Tribunal considers his comparables number 1 (Kilmokea) and no.3 (Wexford Lavendar Farm) as most relevant, with his third one being the same property as advanced by the Appellant, as his number 31, in 10.14 above. The Kilmokea comparable has the benefit of a hotel/restaurant alongside which does not seem to appear on the Valuation List.

10.16 There are three components to the valuation of this Property, namely, the unit value rates that should be applied for ground floor retail, first floor storage and the yard. The Tribunal considers that the unit value rate applied by the Respondent for the ground floor retail of € 48.00 per m² is sustainable having regard, in particular, to the levels adopted for Wexford Lavendar Farm and Kilmokea. The unit value for the first floor store seems slightly high at € 36.00 and the Tribunal considers that a more appropriate unit value would be € 30.00, reflecting what has been

adopted for a similar use in Wexford Lavendar Farm. Turning to the value of the yard, it is apparent to the Tribunal that these lands used for horticulture cannot be compared with yards attached to higher category retail garden centres and it is noteworthy that lands in some other comparables cited have not been valued, such as Kilmokea, Wexford Lavender Farm, Fig Tree Garden Centre and Hylands. Taking the Property overall it is difficult to envisage a hypothetical Tenant offering a unit value rate for the gardens in this case, as distinct from the building, and taking account of the setting of the Property and its remote location, no additional value accrues for this amenity, in the opinion of the Tribunal. Accordingly, this approach more truly reflects the mandate of sec.19 (5) of the Valuation Act which is to not only achieve a valuation that is correct but also, where practical, to achieve one that is also uniform and equitable.

10.17 The Respondent Valuer made reference to the previous determination of the Valuation Tribunal in the case of **VA. 00.2.032 Proudlane Ltd v Commissioner of Valuation** which was a decision issued on 12th January 2001. It concerned the Plaza Hotel in Tallaght which was categorised as a four star hotel but there had been two main arguments in that appeal, namely the discount for only partial completion and the extent of evidence provided by the comparables cited. The first point was rejected on account of the lack of architectural or engineering evidence being put forward by the Appellant and the second point was also rejected because of a lack of evidence in regard to trading difficulties, etc when viewed against the comparables. This decision was concerned with a revision type appeal prior to the revaluation of that rating authority area; was given prior to the commencement of the Valuation Act 2001 (2nd May, 2002 as per S.I. number 131 of 2002) and is a decision of the Tribunal which, though persuasive, (and often referred to) is not binding (unlike Court judgments) on other, subsequent, judgments of the Tribunal. It is pertinent nonetheless in advancing the principle that the onus of proof in these appeals rests with the Appellant as more stated in sec. 35 of the Act which, inter alia, provides that an Appellant must specify the grounds on which he/she considers that the value of the property, the subject matter of the appeal, is **not** a determination of its value that accords with that required to be achieved by *section 19(5)* [in this case] and to specify what the Appellant considers ought to have been determined as the property's valuation. Sec. 19(5) only came into existence on 8th June 2015 by virtue of the Valuation (Amendment) Act 2015.

10.18 Accordingly, the Tribunal determines that the appeal is allowed to the extent of the reduction outlined below, because:

- (a) On the basis of the information submitted by both parties, the Property is found to constitute a small scale nursery that can be distinguished from most other comparables on account of use, remote location, lack of proximity to urban settlements, lack of profile and the ultimate total size of the holding;
- (b) On the rating valuation assumption of being “ *vacant and to let* “ at the valuation date of 15th September, 2017, the Tribunal cannot envisage this Property being of potential interest to mainstream garden centre operators because of the factors listed in (a) above;
- (c) Whilst the Appellant might not have shown calculations of his proposed alternative valuation he did, in compliance with the provisions of the Valuation Act 2001, indicate an alternative figure and provided grounds for his appeal in addition to listing 35 possible comparables (though some are barred by the Act's provisions) and sufficient extracts from websites to supply essential details of those other properties to enable full consideration and examination by the Tribunal;

- (d) The Tribunal considers that the Appellant did prove his case, to the extent admitted, and by the sheer weight of information provided by him, indicated valid grounds for an adjustment of the valuation;
- (e) In the absence of rental information, (as no rental information was provided by either party) the exercise is, necessarily, confined to one of comparing the net annual value of the appeal property with those others appearing on the Valuation List;
- (f) As outlined in section 10.16 above, with particular reference to the common comparable to both parties, PN 5009902 (Wexford Lavendar Farm), the unit value rate of € 48.00 per m² is deemed to be appropriate but the First Floor Store requires to be adjusted to € 30.00 per m² and the lands attract no additional value not already reflected in the value of the building, taking a holistic view of this holding, on the assumption of it being vacant and available to let at the valuation date, and more properly reflecting the approach to this type of property taken by the High Court in **Nangles Nurseries and Commissioner of Valuation [2008] IEHC 73**, and
- (g) By this determination it is considered the Tribunal has adhered to the requirements of sec 37 of the Act in applying the mandate, for revaluation appeals, from sec. 19(5) to ensure a correct, equitable and uniform result, and to avoid the perpetuation of an error between revaluations.

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 **€ 7,470**.

This is calculated as follows:

Ground Floor Shop	95.60m ²	@ € 48.00 per m ²	4,588.80
First Floor Store	<u>96.00m²</u>	@ € 30.00 per m ²	<u>2,880.00</u>
	191.60m ²		7,468.80

Yard/Lands 441.00m² no additional value

7,468.80
Say, NAV € 7,470

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.