

Appeal No: VA22/4/0028

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Ashgrove Oil Ltd. & Joseph Wallace Ltd. T/A Q Oil & Costcutter

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2008788, Fuel/Depot at Costcutter Service Station, Wellingtonbridge, County Wexford.

B E F O R E

Donal Madigan - MRICS, MSCSI

Michael Brennan - BL, MSCSI

Caroline Murphy - BL

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF DECEMBER 2025**

1. THE APPEAL

1.1 By Notice of Appeal received on the 22nd day of December, 2022 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 €120,000.

1.2 The grounds of appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows:

1. The subject property requires subdivision between Joseph Wallace Limited (shop) and Ashgrove Oil Limited (fuel). The two companies require separate rates assessments, having two completely separate companies and separate audited accounts. In the normal course, the Commissioner insists that such properties are separately assessed – and the approach was affirmed by the Tribunal in VA20/4/0004.

2. In the alternative, the assessment of the entire subject property on an estimated NAV basis at €120,000 is completely unsustainable. The subject property must be valued by reference to Section

49 (1) of the Valuation Act 2001 – namely by comparisons in the list. Wellingtonbridge has a population of 523 persons and requires comparison with stations in similar rural communities – such as Kilmuckridge, Blackwater, Curracloe, Adamstown etc. Sales at the date of revision are not to be taken into account, as emphasised by VA19/4/0041.

3. It should be noted that the appellants contend for €24,500 in respect of Ashgrove Oil Ltd. and €36,300 in respect of Joseph Wallace Ltd. However, as the appeal form does not allow text or multiple numbers this has to be expressed as a singular €60,800.”

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 € 36,300 and € 24,500 but see below under **5. Issues**.

2. VALUATION HISTORY

2.1 This is a post Revaluation Revision appeal arising from a material change of circumstances cited in an original request for revision, to amalgamate the adjacent hair salon with the main shop and service station. Whilst the amalgamation was actioned by the Commissioner of Valuation a subsequent request for sub division as between the two companies, Joseph Wallace and Company Limited and Ashgrove Oil Limited was not conceded, thereby being one of the reasons for this current appeal, the other being one of quantum of the valuation.

2.2 The functions of the Commissioner of Valuation are now performed by Tailte Éireann with effect from 1st March, 2023 (S.I. No. 58/2023 - Tailte Act 2022 (Commencement) Order 2023).

2.3 On the 15th day of October, 2021, a copy of a valuation certificate proposed to be issued under section 28 of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of **€ 120,000**.

2.4 Being dissatisfied with the valuation proposed, representations were made to the Revision Manager in relation to the valuation. Following consideration of those representations, the Revision Manager did it not consider it appropriate to provide for a changed valuation.

2.5 A Final Valuation Certificate issued on the 8th day of December, 2022 stating a valuation of **€ 120,000**.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 2nd day of October, 2023. At the hearing the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co and the Respondent was represented by Mr. Neil Corkery MSCSI, MRICS, BSc. (Hons) Property Valuations and Management, of the Valuation Office and Mr. David Dodd BL and Mr. Pdraig Kennan.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

3.3 Each Expert Witness provided a standard Declaration and Statement of Truth in their précis in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

4. FACTS

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

4.1 The Property is located on the R733 approximately 22 kilometres south west of Wexford town and approximately 24 kilometres south east of New Ross in the centre of the village, opposite a pharmacy, and diagonally opposite Super Valu. Wellingtonbridge has a population of 523 persons.

4.2 The Property comprises a service station and convenience shop in the ground floor of a two storey building, the upper parts of which are in offices and separately assessed. The forecourt has a canopy under which there are four pump islands with one double sided pump on each island with three nozzles on each side.

4.3 The agreed floor areas are as follows:

Canopy	300.90m ²
Forecourt	1,463.00m ²
Retail	261.84m ²
Stores/ancillary	108.21m ²

4.4 It is understood that the Property is freehold.

4.5 Both parties have referred to trading data which has been considered by the Tribunal but is not replicated here so as to preserve confidentiality.

5. ISSUES

5.1 That the Property be subdivided as contended by the Appellants, and

5.2 (a) In the event that the Property is determined to be so divided, that the valuation overall be reduced to € 28,180 (Shop) and € 24,500 (Service Station) as contended, and as revised at the hearing, by the Appellant, in contrast to the Respondent who contends for a single assessment of € 108,000 (revised downwards from € 120,000 at the hearing to exclude the value of a car wash facility), and

(b) In the event that the Property is not determined to be sub divided, (i.e. valued as a single entity) that the valuation be reduced to € 66,500 in contrast to the Respondent at € 108,000.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The principal Act for rating valuation and appeals is the Valuation Act 2001. All references herein to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, or modified by the Valuation (Amendment) Act, 2015 and other subsequent Acts.

6.2 As this is a Revision type appeal, the initiator of the process of valuation is the occurrence of a material change of circumstances (abbreviated to **MCC**) which is defined in sec 3(1) of the Valuation Act 2001 as:

(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or

(b) a change in the value of a relevant property caused by—

(i) the making of structural alterations to that relevant property, or

(ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause, or

(c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or

(e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or

(f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property, or

(g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority (other than in accordance with the Local Government Act 2019), or

(h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;

6.3 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

6.4 As this is a Revision type appeal, as opposed to a Revaluation appeal, the Tribunal is constrained to only consider the **relative** Net Annual Value of the subject Property to the other net annual values of comparable properties in the rating authority area. Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis in calculating the net annual value:

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

7. APPELLANT’S CASE

7.1 Mr. Halpin provided a detailed précis of evidence in which he outlined, inter alia, the location, description, floor areas (with revisions) and other characteristics of the Property along with milestones in the appeal history and his valuation and comparables. In addition he supplemented this information with photographs and maps. He set out details of the Commissioner of Valuation’s schematic for service stations as well as trading data. In support of his legal case on sub division he made reference to the Tribunal Determination in VA.20.4.0004 Tapbury Management and set out this in the Appendix to his report. In support of his approach on the quantum case he also cited the Tribunal decision in VA.19.5.0041 O’Briens Centra, Mullingar, and attached that in the Appendix to his report.

7.2 Mr. Halpin sets out two main issues of appeal, firstly, that the Property should be divided and depending on the outcome of that legal issue an argument to seek reduced valuations, if sub divided. There is thus the legal issue and the quantum issue.

7.3 Taking, then, the subdivision issue, he explained that his Client had contacted the rating authority to seek separate invoices for the two companies Joseph Wallace Limited and Ashgrove Oil Limited and had been informed that the production of separate valuations was not within its power as it was pointed out to his Clients that this is the function of the Commissioner of Valuation.

7.4 On the subdivision issue his further argument can be summarised as follows:

(a) The subject property requires subdivision under Section 37 (2)(b)(vi) of the Valuation Act 2001 between the shop and the forecourt. The shop is occupied by Joseph Wallace Limited trading as Costcutter and the forecourt is occupied by Ashgrove Oil Limited trading as Q Oil;

(b) It is the Appellant's case that separate occupiers are entitled to separate assessments and it is the Commissioner's practice to insist on same;

(c) In a recent case of the Valuation Tribunal, VA20/4/0004 Tapbury Management Limited, the Commissioner advocated that a single wind turbine, which formed part of a wind farm of 17 turbines, required a separate assessment on the basis that the occupiers were different and hence, the property could not be rated as a single entity. This is despite the fact that the single turbine could not function on its own. The Tribunal accepted this argument;

(d) In the subject case, the division is actually much more straightforward in that the two occupations can function entirely separately of one another owing to the presence of an automatic 24 hour payment machine facility located on the forecourt. There is therefore no question of the subject being unable to function as two properties (even if other occupiers outside of the Appellants were to arise);

(e) If the subdivision is granted by the Tribunal, he requests that the shop will be valued by zoning in tandem with the level of values applicable in the village and that the forecourt would be valued by reference to the fuel component of the service station valuation schematic as demonstrated, for example, by the context comparison Number 10 below, PN 5011936 in Sligo;

(f) He accepts that although the companies are related, and have common owners, he considers that because of the decision in VA.20.4.004 Tapbury Management Limited, that this does not matter in asserting that there are two separate occupations;

7.5 As regards the issue of quantum, Mr. Halpin contends for two alternative valuations depending on whether his legal point concerning sub-division is accepted or not, as the case may be, as follows:

As Sub-divided units

(a) Joseph Wallace Limited

Shop Retail Zone A 144.36m ² @ € 110.00 per m ²	15,880.00
Zone B 117.48m ² @ € 55.00 per m ²	6,461.00
Ancillary 108.21m ² @ € 20.00 per m ²	<u>2,164.00</u>
	24,505.00
Add 15% for Off Licence	<u>3,675.00</u>
	€ 28,180.00

(b) Ashgrove Oil Limited

Fuel Throughput 3,500,000 litres @ 0.007 per litre € 24,500

As a Single entity

Fuel Throughput 3,500,000 litres @ 0.007 per litre	24,500.00
Shop FMT € 1,200,000 @ 3.5%	<u>42,000.00</u>
	€ 66,500.00

7.6 In regard to his valuations he relies on the following comparables as summarised here, with any revisions at the hearing, (including additional information inserted here as clarified by the Respondent at the hearing also) from his written précis, divided between retail and service station/filling stations.

Retail

Comparable Number 1.

PN 2008791

AHC Vets

Shop and office of 140.81m² adjacent to the subject Property valued at the NAV of € 6,670 which is based on a Zone A unit value rate of € 110.00 per m² and € 22.00 per m² on the ancillary space.

Comparable Number 2.

PN 2008776

Bridge PC Repair and Takeaway

Shops and stores of 140.11m² adjacent to the subject Property valued at the NAV of € 9,890 which is based on a Zone A unit value rate of € 110.00 per m² and € 35.00 & 20.00 per m² on the ancillary space.

Comparable Number 3.

PN 2008784

Lloyds Pharmacy

Shop and store of 73.38m² opposite the subject Property valued at the NAV of € 7,160 which is based on a Zone A unit value rate of € 110.00 per m² and € 20.00 per m² on the ancillary space.

Filling Stations

Comparable Number 4.

PN 2182141

Ballycullane Stores, Fair Green, Ballycullane. Co. Wexford

Filling station and shop of total 249.75m² located approx.. 9 kilometres from the subject Property which is valued at the NAV of € 20,500 which is calculated at: Shop FMT € 770,000 @ 2.5% and fuel throughput at 425,000 litres @ 0.003 per litre.

Comparable Number 5.

PN 2009225

Geelan's Filling Station, Cleariestown Co. Wexford

Filling station and shop of total 177.90m² which is valued at the NAV of € 16,350 which is calculated at: Shop FMT € 550,000 @ 2.5% and fuel throughput at 650,000 litres @ 0.004 per litre.

Comparable Number 6.

PN 2189084

Tesco Filling Station, New Ross Retail Park, Co. Wexford

Filling station and shop of total 70.61m² which is valued at the NAV of € 14,900 which is calculated at: Shop FMT € 200,000 @ 1.5% and fuel throughput at 1,600,000 litres @ 0.006 per litre and car wash FMT € 23,000 @ 10%.

Comparable Number 7.

PN 2203383

Wexford Service Station, Wexford

Filling station and shop of total 355,26m² located on an arterial route in Wexford town which is valued at the NAV of € 79,763 which is calculated at: Shop FMT € 1,450,000 @ 3.5% (less allowances) and fuel throughput at 4,100,000 litres @ 0.0075 per litre (less allowances) and car wash FMT € 13,500 @ 7.50%.

This was agreed by Elliott & FitzGerald at representation stage being reduced from the NAV of € 177,500 to NAV € 99,000. The figure of € 79,763 is the part of the valuation attributable to the service station and shop only.

Comparable Number 8.

PN 2009187

Applegreen, Rosslare Road, Wexford

Filling station and shop of total 407.02m² located the Rosslare Road in Wexford town which is valued at the NAV of € 69,800 which is calculated at: Shop FMT € 1,375,000 @ 3.5% (less allowances) and fuel throughput at 3,350,000 litres @ 0.007 per litre (less allowances) and car wash FMT € 6,000 @ 5%.

This was also agreed by Elliott & FitzGerald at representation stage, being a reduction from the NAV of € 144,000 to NAV € 69,800.

Comparable Number 9.

PN 2009171 (VA.19.5.1320)

Roches Service Station, Drinagh, Co. Wexford

Filling station, shop and workshop of total 356.50m² which is valued at the NAV of € 55,000 which is calculated at: Shop FMT € 1,220,000 @ 3.5% (less allowances) and fuel throughput at 3,600,000 litres @ 0.007 per litre (less allowances) and workshop of 195.60m² @ € 25.00 per m².

Context Comparisons

Comparable Number 10.

PN 5011936 (Pumps) & PN 5011935 (Shop)

Great Gas, Drumcliff, Co. Sligo

Located on the N15 at Drumcliff, Sligo.

PN 5011936 This is valued at the NAV of € 2,130 that is calculated as 532,000 litres @ 0.004 per litre.

PN 5011935

Shop and store of 107.95m² valued at the NAV of € € 7,020 which is calculated at a unit value Zone A rate of € 100.00 per m² and € 10.00 per m² on the store.

This is an example of a separately assessed shop and forecourt in separate occupations.

The fuel is valued in line with the Commissioner's schematic and the shop is valued based on a unit value Zone A rate.

Comparable Number 11.

PN 2193550 VA.19.4.041

O'Brien's Centra, Mullingar, Co. Westmeath.

This case was determined by the Valuation Tribunal, being a post revaluation revision appeal, at NAV € 86,750. It is a service station and shop of 649.70m² and the calculation is as follows:

Fuel Throughput	2,000,000 litres @ 0.0065	13,000
Shop FMT	€ 1,900,000 @ 0.0375	71,250
Car Wash FMT	€ 25,000 @ 0.10	<u>2,500</u>
		86,750

7.7 In addition to his précis, as regards quantum, (as distinct from subdivision) he makes the following points in oral testimony, summarised here, as follows:

- (a) The revised floor areas [now set out in this Determination above];
- (b) The consequent amendment of valuations [also now set out above];
- (c) Agrees the Respondent's figures on the size of the canopy and yard;
- (d) Outlines locational characteristics and population of the village (523 persons);
- (e) The station has four petrol/fuel pump islands to the front and a 24 hour payment facility kiosk
- (f) The location is not highly trafficked in his view being aside the R733 between Wexford and Duncannon;
- (g) He cites the decision in VA.19.4.0041 O'Briens Centra, Mullingar which was also a post revaluation revision appeal in which the approach was outlined where the Tribunal looked at the ratio of fuel sales to retail FMT, and that, where the fuel throughput had been agreed, to establish the appropriate FMT for shop sales by examining the ratio of fuel sales in litres to shop sales in euro to produce a result;
- (h) There is no other comparable filling station within a 5 kilometre radius of the subject
- (i) It is necessary, because of the subject's volume of fuel sales to look further afield for comparables such as in Wexford town;

(j) His comparables 1-3 are all retail properties in the village;

(k) Comparable No. 4 is Ballycullane which is in another village some 9 kilometres from the subject although he accepts the subject Property is physically superior to this comparison and is on a better road and with a higher population catchment, though shop is not dissimilar in size, and needs consideration on a relativity basis, but the NAV by contrast is only € 20,500;

(l) Comparable No. 5 is Top Oil which is about 15 kilometres from the subject and in one sense is in a much better pitch than the subject, being on a main road but against that the site is quite tight and this is illustrated by the level of throughput it is doing and smaller catchment but comparing NAVs it is at € 16,350 versus the subject at € 120,000;

(m) Comparable No. 6 is Tesco which is one of the better stations in the county being at the entrance to a retail park and adjacent to Tesco's main supermarket in New Ross, a town with one of the highest population centres in the county and on examination one can see that the shop is small because in his view the operator does not build a shop to compete with itself and thus the shop sales are minor, but it is nonetheless a modern filling station that can accommodate more vehicles than the subject, and yet is only assessed at the NAV of € 14,900 by contrast to the subject Property and that he considers this comparable to be under assessed;

(n) Next are the comparables in Wexford town proper, being a town with a population in excess of 20,000 persons, these Comparables No. 7, 8 & 9 all have fuel sales in the region of the subject Property (No.7 4.1m litres; No.8 3.35m litres; No.9 3.6m litres) but that none of these can achieve the level of retail FMT that the subject Property attains and in his view this indicates an element of exceptional trade being achieved which is better than stations located in a much larger population centre. Comparable No. 7 is situated on the Dublin Road which is an arterial route and the valuation of the filling station is not quite € 80,000 and is valued with some other elements [at € 99,000 NAV total]. Comparable No. 8 is located on the Rosslare Road on the other side of Wexford town and has good strong fuel sales but the shop trade FMT is only € 1.375m and an NAV of € 69,800. He considers that the subject could not possibly be more valuable than this comparable. Comparable No. 9 is slightly more removed from Wexford town and is on the Rosslare Road between Wexford and Rosslare being popular with trucks but although the fuel throughput is 3.6m litres, the shop FMT is only € 1.22m; and

(o) Finally there are the two context comparables, comparable No. 10 which is in Sligo and illustrates the point about subdivision (see 7.4 (e) above) and Comparable No. 11 which is the appeal case of VA.19.4.0041 O'Briens Centra, Mullingar where reliance was placed on the comparables and the relationship (or ratio) between fuel sales and shop FMT.

7.8 In cross examination by Mr. Dodd, BL, Mr. Halpin confirmed that:

(a) His designation of " trading as Q Oil" in his precis is his own naming; he does not know if this is a registered name;

(b) Costcutter is a franchise, one of many in the State but he agrees that the operators of that franchise, the Barry Group, are not in occupation for rating purposes;

(c) In the locality the Property is known as Wallace's Service Station. Wallace do not put their branding over the canopy and therefore do not deem themselves to be in occupation of that part of the Property but that Wallaces is part of the Costcutter section but is not part of the filling station;

(d) That it is a successful property as evidenced by the Point of Sales receipts set out on page 20 of the Respondent's precis [redacted here];

(e) That prior to the MCC there was a hair salon and before the amalgamation of that with the main property, it was valued at NAV € 130,000 and therefore the most comparable property to the subject is the pre-MCC valuation but that in this case the Commissioner had to use an estimate to arrive at his valuation;

(f) In regard to the decision in Dayhoff Limited and Commissioner of Valuation [2022] IECA 35 the pre MCC property is to be considered in a section 49(1) valuation exercise as it is the most comparable because all the key variables of the pre MCC are identical to the subject Property;

(g) That valuations on the Valuation List are deemed to be correct [sec.63 of the Act] apart from occasional anomalies and that the pre MCC valuation of € 130,000 must be taken to be correct but that this was never tested and that the valuation was based on an estimate only;

(h) That if he was confined to considering only the subject Property for the sec.49(1) valuation he would be constrained by the pre MCC figure of € 130,000;

(i) There was no **revaluation** appeal prior to the MCC but that this was because there were circumstances with a member of staff and health issues that lead to this not being challenged or an appeal being made at that time;

(j) There is no branding of the 24 hour kiosk; it is the only one on the site and it is free standing located just across from the pumps in front of the building;

(k) Customers usually pay for fuel in the shop when it is open;

(l) The forecourt does not have a separate address from the Property which is the same as the laundry unit on the site [which is separately assessed];

(m) That the same till serves both fuel and sales, when the shop is open (12 hours or so per day);

(n) There is no separate insurance as far as he is aware (all in the name of Joseph Wallace as far as he is aware);

(o) There are no separate services and the toilet is common to both parts of the Property;

(p) There is no lease or subletting agreement (because both companies are related) and no rent or licence fee is paid;

(q) Customers pay for their petrol at the till in the retail area although customers can pay for fuel at the facility on the forecourt;

(r) Ashgrove accounts show that there are no employees;

(s) He states that if a customer pays for fuel in the shop it is a Joseph Wallace employee who takes the payment and that, likewise, if there is an accident on the forecourt the incident is reported in the shop which he said is like in the case of his first context comparison in Sligo;

(t) With regard to his first context comparison he does not have full facts underpinning that, only that information which is publicly available;

(u) With reference to the accounts at page 7 of the Ashgrove Abridged financial statements there are no employees;

(v) He says that he had previously provided the unabridged accounts to the Respondent;

(w) That the principal activity in the Joseph Wallace accounts, 2022, is the operation of a Supervalu supermarket, hardware store, a Q Oil service station and Costcutter convenience store;

(x) With regard to the comparables, numbers 1-3 only apply in the case of subdivision, and for numbers 4 5 and 6 he does not accept that these are “struggling filling stations” but that the subject is superior to 4 & 5 and number 6, which is Tesco, is a valid comparable and is operated so as not to compete with the main Tesco store which is not, necessarily, what a hypothetical tenant would do and he considers it would do more business than the valuation reflects; numbers 7 and 8 have high fuel sales and are in Wexford town where there is plenty of retail competition but have lower shop turnover; no. 9 is different with a workshop at the back and is popular with trucks because it is on the road to Rosslare with a wide area for trucks to access; and

(y) With regard to the context comparison No. 1 he accepts that this had a rent on it which he was not previously aware of.

7.9 In answering questions from the Tribunal, Mr. Halpin said that:

(a) In regard to the 24 hour payment facility kiosk he does not know if it is linked to a specific bank account;

(b) Joseph Wallace own the freehold;

(c) That € 66,500 is his figure if the sub division is rejected on the basis of the valuation scheme;

(d) With regard to his Comparable No. 7 PN 2203383 that the NAV is € 99,000 on the Valuation List currently and that he had used the apportioned part for the filling station and shop in his written evidence excluding the industrial component;

(e) That the Table on page 8 of his précis is litres which does agree with Respondent's figures in euro on page 20; and

(f) With regard to the status (appeal wise) he does not know if numbers 4, 5 and 6 were appealed and thinks it unlikely but cannot be certain, likewise with numbers 7 and 8.

8. RESPONDENT'S CASE

8.1 Mr. Neil Corkery provided a detailed précis of evidence in which he outlined, inter alia, the location, description, floor areas (with revisions) and other characteristics of the Property along with milestones in the appeal history and his valuation and comparables. In addition, he supplemented this information with photographs, a block plan and maps. He set out details of the Commissioner of Valuation's consideration of the initial representations as well as commentary on the Appellant's grounds of appeal. He stated that the initial material change of circumstances had been satisfied by PN 2166213, the former hair salon, being incorporated into the main building since the end of 2017.

8.2 Mr Corkery, at the conclusion of his oral evidence, clarified the status of the Appellant's comparables regarding representation or appeal.[which have been inserted into the details above for ease of recording and for the benefit of the reader of this text.]

8.3 Mr. Corkery confirmed, in his oral testimony, that in relation to the sub division issue that he inspected the property in August 2019 and observed the former hair salon space now subsumed into the main area and now comprises a seating area. This is identified as Block 12 on the plan he provided and comprises an area of 79.50m² and that formerly had an NAV assessment of € 6,950. He said that he noted the signage and that he had purchased petrol at the pump and paid for this in the shop. He also noted the presence of a launderette on site but which he said is separately assessed. By reference to internal photos and site layout plan, he stated that it is a large site with good access, ample parking and a well laid out shop with all the customary goods one would expect to find in such an outlet. He said that the forecourt had briquettes, gas cylinders etc and that there are three tills in the shop and this seemed to be where patrons paid for fuel and other items. He said that the deli is on the left hand side. He confirmed that he had obtained evidence of point of sales receipts, which were gathered in the absence of full audited accounts. He said this necessitated assumptions and that the figures were obtained from Mr Harpur of Joseph Wallace. Mr Corkery said that, from examination of the accounts for both Ashgrove and Joseph Wallace he noted there were no employees shown for Ashgrove and no indication of figures going through Joseph Wallace for Ashgrove. He said he did not find evidence for the revenue figure for fuel from the point of sales information of € 3.8m in the Ashgrove accounts. In the accounts for Joseph Wallace these state that Q Oil is one of their properties, that is one they are running and that he had concluded it is all one property, a single entity. Accordingly, he said that the original MCC request had been met by inclusion of the hair salon in the larger property but that there were not

two separate occupations thereafter to warrant a further subdivision. He further confirmed that the property is known locally as “Wallaces”.

Mr. Corkery stated that, with regard to the situation prior to the material change in circumstances, that the Property was valued at an NAV of € 130,000 but that when he inspected he observed the amalgamation of the former hair salon with the main building. He explained that in this type of case where amalgamation occurs, the approach, generally, was to simply add the NAV of the unit to the other which, in this case, would bring the NAV for the entire up to NAV € 136,950 but that, in light of the figures received from Mr. Harpur, that he had considered it more appropriate to provide for a revised valuation of NAV € 120,000. estimated nav to be 120,000. He stated that contrasting the figures of € 136,950 with € 120,000 he believed that the addition of the seating area would boost the turnover of the shop but that he had only taken the point of sales receipts for the existing operation upon which to base his valuation.

8.4 (a) Mr. Corkery provided a valuation of the Property, in his precis, as a single entity at Net Annual Value € 120,000 which he calculated as follows:

Fuel Throughput	3,750,000 litres @ 0.007			26,250.00
Shop FMT	€ 2,450,000	@ 0.04	98,000	
Less low margin items	€ 810,000	@ 0.02	<u>16,200</u>	
				81,800.00
Car Wash FMT	€ 80,000	@ 0.15		<u>12,000.00</u>
				120,050.00
				Say, NAV € 120,000.

(b) Under cross examination at the hearing he agreed that there was no car wash in existence before the issue of the Valuation Certificate and so this element of his valuation should be removed leading to a revised valuation of € 108,000 (i.e. € 120,000 minus car wash € 12,000)

8.5 In support of his valuation he relied on the following comparables

Comparable Number 1.

PN 2008755

Drive Service Station, Cushenstown, Carnagh, New Ross, Co. Wexford

Filling station and shop of total 533.90m² plus canopy of 550.00m² and yard 1,100.00m² located on the N25 linking Wexford Town to New Ross which is valued at the NAV of € 120,800 which is calculated at:

Shop FMT € 3,100,000 @ 4.0% (less allowances) and fuel throughput at 2,625,000 litres @ 0.0065 per litre (less allowances) and car wash FMT € 10,000 @ 7.5%.

This property was subject to representations and an Agent was involved and it was appealed and agreed prior to Tribunal hearing.

Comparable Number 2.

PN 2008898

Knockavilla Service Station, Knockavilla, New Ross, Co. Wexford

Filling station and shop of total 518.03m² plus canopy of 262.50m² and yard 114.00m² located on the outskirts of New Ross which is valued at the NAV of € 119,900 which is calculated at:

Shop FMT € 3,100,000 @ 4.0% (less allowances) and fuel throughput at 2,625,000 litres @ 0.0065 per litre (less allowances) and car wash FMT € 10,000 @ 7.5%.

No accounts received in this case.

This property was not subject to representations or an appeal and no agent was involved.

Comparable Number 3.

PN 2009041

Flanaghans, Castlebridge, Co. Wexford

Filling station and shop of total 515.30m² plus canopy of 70.00m² located 5 kilometres north of Wexford Town which is valued at the NAV of € 100,000 which is calculated at:

Shop FMT € 3,100,000 @ 4.0% (less allowances) and fuel throughput at 2,625,000 litres @ 0.0065 per litre (less allowances) and car wash FMT € 10,000 @ 7.5%.

This property was not subject to representations or an appeal and no agent was involved.

8.6 With regard to his comments on the Appellant's comparables he made the following observations:

Appellant Comparable No.4 (Ballycullane)

He said that this station has much lower turnover, reflecting different characteristics, but that this was valued in line with the figures returned for it.

Appellant Comparable No.5 (Cliersetown)

He said this was also valued in line with the valuation scheme for Wexford too.

Appellant Comparable No. 6 (Tesco)

He considered that the valuation of this [at NAV € 14,900] seems low but that it is on the Valuation List at this figure. He agreed that the turnover of the shop would be diminished by proximity to the main Tesco supermarket, located adjacent to it, as that operator would not choose to compete with itself.

Appellant Comparable No. 7 PN 2203383 (Wexford Town)

This, like Comparable Number 8, is better quality than the others cited. The figures provided by the Appellant show that it has been, like No. 8, valued in line with the scheme of valuation for service stations in the Wexford County Council area. The shop FMT is lower than the subject but the valuation scheme takes account of this by applying a lower unit rate to value it than the subject. He said location can be good for properties valued by reference to FMT but this can be offset by increased competition. As regards competition he said the town itself is served by eleven stations and he considered that, generally, the station with the cheapest fuel would positively impact the turnover of the shop which would derive from the accounts information provided and the estimates placed on them by the Valuation Office. The draft valuation certificate was issued at € 177,500 and following representations with an agent it was reduced to a valuation of NAV € 99,000.

Appellant Comparable Number 8 PN 2009187 (Rosslare Road)

This was reduced at representation stage from € 144,000 to a valuation of NAV € 69,800.

Appellant Comparable Number 9 (Roches)

This has a workshop to the rear so it is different to that extent.

Context Comparables

Sligo. There are three assessments here, as he recalls, because and at the time of valuation part was unoccupied and available to let.

8.7 Under cross examination, by Mr. Halpin, Mr Corkery confirmed, in summary, the following:

- (a) he agreed that the car wash was not in existence at the relevant date and therefore should not be valued which leads to his valuation being reduced to NAV € 108,000 [€ 120,000 minus value of car wash of € 12,000];
- (b) he clarified that his date of inspection was 28th August 2021;
- (c) date of photos in his precis should be amended to reflect the above inspection date;
- (d) he did not have a record that three years 'accounts (unabridged, in full) had been submitted but said there should be no query here as he had summary details already;
- (d) that there are 75 service stations in the rating area of Wexford County Council;
- (e) that he used three comparables two of which have not been tested -they were estimated as no information was provided but that they are estimated based on a fair NAV and that there is a difficulty in revision cases, post revaluation, finding similar properties assessed on an FMT basis
- (f) the best comparable is the valuation of the subject Property pre MCC [NAV € 130,000];
- (g) the Property is the only service station in the village and to that extent enjoys a level of monopoly but the shop would have certain competition from SuperValu across the road from it;
- (h) with regard to his Comparable Number 1 (Respondent) the address is Ballynabola and is the only station on the main Wexford to Cork road but is turning similar figures to the subject Property but does not accept it should be significantly more valuable than the subject Property;
- (i) he accepts that Ashgrove Oil [on reviewing accounts resent during the hearing] had a turnover of € 3.846m in the year 2018 and he does not know if the company provides oil to any other station.

8.8 In taking questions from the Tribunal, Mr Corkery said, in summary, that:

- (a) Respondent Comparable Number 1 this was agreed with lay person as opposed to an agent as far as he knows; and
- (b) Respondent Comparables 2 and 3. There is no breakdown of the valuations here as they had no information and so the NAV was estimated only based on spot valuations from taking a “stand back and look approach”. There are no calculations to be provided.

9. SUBMISSIONS

9.1 The Appellant’s case on subdivision is set out above at 7.3 and 7.4 of this document.

9.2 The Respondent case on subdivision was advanced by Mr David Dodd, BL, who had provided a written submission to the Tribunal dated September 2023 in which he outlined his argument which he supported by reference to several cases encompassing rateable occupation and the essential ingredients for such to exist, most especially *Iarnród Eireann v Commissioner of Valuation HC 27th November 1992*.

9.3 In his oral submission at the hearing Mr. Dodd expanded on his submission by citing two previous decisions of the Tribunal both of which involved Eamonn Halpin & Company as advisers which are: VA.14.4.028 Keane Auctioneers and VA.14.4.018 Furninova Ltd and Osso Furniture Ltd which dealt with applications for sub division and in each case the Tribunal decided that there was no material change of circumstances. The Keane appeal concerned an office building where one of the partners in the practice was operating a rear office and the claim was that the office was sub divided from the rest but the Tribunal rejected this because it was not factually supported. Mr. Dodd referenced page 6 of that decision where he stated that in that case the Tribunal was concerned to establish if there were two distinct properties and that they are capable of operating as separate entities but that the prior question to that, in his view, is are they in fact so operating ? In the Keane case he said the Tribunal found that there was no clear signs of physical separation This suggests that is what one would expect to see-is there physical separation if someone is asserting that there are two properties ? That is, in his view, the first indicator and in the current appeal he states that there is no physical separation evident. There are no signs of separation -no walls, no gate, no separate alarms, etc. In the Keane case the Tribunal noted that there was no separate address for the rear office, no separate post box, no separate electricity meter, and thus held it was not a separate unit. Mr. Dodd said that leaves the question advanced by the Appellant on the subject of the accounts but he says that accounts do not prove occupation. Occupation is about who is in occupation, use and control of the property, in other words it is about the actual position on the ground. Accounts show where revenue has been accounted for the purposes of taxation and that is all they show. Accounts do not prove possession or occupation. A further indicator is that Ashgrove have no employees and that the only operational staff at the Property are Joseph Wallace employees. They are tasked with cleaning, locking up and all that goes with operating the service station including the forecourt. The Joseph Wallace staff are the ones in control and occupation of the Property being the only such persons present on the site. When a customer wants to pay for fuel they do so in the shop and that it is a Joseph Wallace person who takes the money for the fuel and other items of purchase. If a problem occurs it is dealt with by a Joseph Wallace member of staff. Furthermore it is stated in the accounts of Joseph Wallace that

they operate a Q Oil service station. Whilst a revenue figure is shown in the Ashgrove accounts there is no statement in those accounts to indicate that they are operating a Q Oil station. He contends that if the Tribunal were to hold that Joseph Wallace are not in occupation of the forecourt that this would be contrary to what is clearly stated in their statutory accounts. If, on the other hand, the argument to be considered is one of competing interests, then the Tribunal must decide which occupation is in paramount occupation and control of the site and in his view that is clearly Joseph Wallace. There is not only no physical separation but there is no lease or letting agreement suggesting two occupations or some conferral of a right over the forecourt. He contends that Ashgrove have not produced any evidence of rights in this regard and all they have offered is by way of accounts. In his opinion that does not prove occupation. If the other occupation was genuine one would expect to see different employees, a manager, separate keys, an interest assigned, which is absent here and the fact is that the owner is Joseph Wallace too. There is no evidence that Joseph Wallace have given away their rights over the forecourt, no separate water, electricity, insurance etc. If one is to consider the Property functionally then he contends that it is functioning as a single property. If a customer pays for petrol he does so at the till in the shop and internally the staff are running the service station. The office inside is not just for Cost Cutter it is for the entire property. The "Wallaces" branding covers the entire property. Turning to the point about the relevance of the pre material change of circumstances and the subject Property, he states that the Valuers are agreed on this that the pre MCC property must be considered as a comparable in a revision valuation following the decision in **Dayhoff Limited and Commissioner of Valuation [2022] IECA 35** . He contends that the Tribunal must have regard to this in making their Determination. On the quantum issue, he submits that this is a very successful service station that has been valued in accordance with three comparables by the Respondent and considers that some of the Appellant's comparables are struggling stations.

9.4 In reply to Mr. Dodd's legal submission, Mr. Halpin stated, in summary, that where the companies are related, there are always questions on who is in occupation or if there is a formal division between the occupations, and that he might have previously agreed with much of what Mr. Dodd contended but that since the decision in *VA.20.4.0004 Tapbury Management* [a windfarm case where one turbine was being considered in relation to the remainder] that has changed his thinking as in that appeal there were two separate companies despite the fact that one entity controlled and operated the wind farm in that case did not appear to make any difference to the Tribunal.

He submits that in the current appeal what we have is an oil company supplying one service station that is, one forecourt, and turns over around € 3.8m and therefore to suggest to him that the oil company has no occupation on that basis runs counter to logic and that goes to the core of the issue as all his Clients ever wanted was to have two rates bills to reflect the nature of that occupation.

He submits that the relevance of case law submitted by the Respondent be questioned because, as far as he is concerned, the question of the MCC has already been satisfied. He contends that the key question arising from the cases put forward by Mr. Dodd is are the properties materially changed ? He contends that in this appeal we are not considering that question but refers to Mr. Dodd's submission regarding operation and are they being operated separately as separate entities and also if they can be so operated. He considers that there is in fact physical division: an inside property and an outside property and that there is a wall between the two. With regard to operation

he submits that there are two separate companies, separately formed with two sets of accounts. He submits that in the case of the context comparable in Sligo, that Mr Corkery had confirmed that at the time of valuation, in that case, that there were not two occupations in existence. The separate assessment was made in that case, he says, simply because the pumps were being offered to let on the basis that they *could* be occupied separately. If that case had been examined on the basis of actual occupation, then he contends that that division should not have been permitted. He contends that the Appellant should have a right to request a division similar to the Valuer acting for the Commissioner exercising his discretion. He feels that the Commissioner seems to be against this request suspecting some type of rates “device” but he rejects this inference because Ashgrove Oil was founded as long ago as 2009 so for them to raise an issue only now would not seem credible if it was some sort of “device”. Whilst, in general, he accepts that accounts do not prove occupation as put forward by Mr Dodd, he considers that in this instance there is an oil company that supplies one forecourt and so 100% of its income comes from this. It has signage erected and signage for Wallace on the forecourt is absent; it appears over the shop only. In terms of the Dayhoff decision he submits that, although the prior MCC property can be considered [as a comparable] but that in this case the original valuation was an estimated value (no trading figures available) and so has to be adopted with caution. He submits that his comparables are largely tested whereas in the case of the Respondent they are largely not so tested.

9.5 Mr. Dodd outlined the background to the decision in *VA.20.4.0004 Tapbury Management* and said that factually he considered that case very different to the subject appeal. Carrowleagh was a wind farm with 16 turbines which was occupied by an entity called Powercon and which was, in turn, owned by a German company that had contacted the Tribunal to advise that they were an interested party in that appeal and that Powercon were in occupation. A new turbine was added to the wind farm and an appeal was made in regard to the valuation of that by Eamonn Halpin & Co. who contended at the time that Tapbury Management Limited were the occupiers of the new turbine T17 but then later in the hearing submitted that it should be amalgamated. Mr Dodd explained, physically the T17 turbine is a separate individual unit and that Tapbury had secured the planning permission and as regards the power purchase agreement (PPA). Powercon had a PPA for 16 turbines whereas no power purchase agreement had been produced for T17. The Tribunal held that Tapbury were in occupation.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to decide

- (a) whether to determine that a sub division is appropriate to apply, or not, and
- (b) determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is 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 The approach to be adopted in the quantum part of this appeal requires a prior decision, firstly, on the legal issue of sub division contended for by the Appellant and rejected by the Respondent.

Legal Issue

10.3 The Tribunal has considered the submission and oral argument of the Appellant in this regard and the evidence of the Respondent Valuer as well as the written submission and oral argument of Counsel for the Respondent.

10.4 The Tribunal considers that the Appellant has not demonstrated, to the degree reasonably required in this type of appeal, sufficient grounds to discharge the onus of proof because:

(a) no evidence was adduced to indicate separate occupations within the expected realms of rating law to show a material or distinct occupancy of each part of the property to warrant sub division, as fuel purchased on the forecourt is primarily paid for in the shop, and insufficient data was placed before the Tribunal to persuade it otherwise, as for example in the case of the 24 hour payment kiosk and to whom funds are banked from that;

(b) the accounts information supplied indicates that Joseph Wallace Limited is in paramount occupation of this Property;

(c) Joseph Wallace Limited is the freeholder of this Property and evidence of any lease that might exist indicating a further occupant was not provided;

(d) the reliance of the Appellant on the earlier decision of the Tribunal in the case of *VA.20.4.0004 Tapbury Management Limited* can be distinguished from the circumstances in this appeal because there was an obvious deficit in material information being provided to satisfy the Tribunal to validly ground the issue being prosecuted by the Appellant in that other appeal;

(e) notwithstanding that the Appellant has demonstrated that the categorisation of the Property leads to the invoking of a valuation scheme for service stations that appears to place a higher value on these types of property, by reference to earning capacity (as opposed to comparable unit value rates per square metre), that assertion is not conclusive as that contention goes to valuation practice rather than to the quest to find the essential ingredients for rating occupancy;

(f) there are no separate invoices for services or for a separate address, separation of utilities or other indicators of a defined separation;

(g) there are no employees in Ashgrove Oil Limited according to the accounts leading to the conclusion that Joseph Wallace Limited is in paramount control and occupation of the Property;

(h) the example quoted by the Appellant of Context Comparable number 10 in Sligo was found in cross examination not to be relevant as the circumstances at the time of the revaluation in that case were that part of the property was being offered to let and would (assuming that remained the case) be a defined separate relevant property for valuation;

Quantum Issue

10.5 Proceeding from the determination of the legal issue in 10.3 above, the next stage in this case is the determination of the valuation which, by reason of 10.3, is that of a single entity being a service station and shop without a car wash facility.

10.6 The valuation in this post revaluation revision appeal must be made only by reference to the net annual values of other comparable properties in this rating authority area to comply with sec.49 of the Valuation Act 2001.

10.7 The weighting of the comparables allows for a focus on what the Tribunal considers to be the most appropriate to guide it in its Determination. In this regard the Appellant's first three comparables, being retail, only provide a context and similarly with his Context Comparables 10. & 11 in sequence. These do not provide direct application for quantum purposes. His Comparables 4, 5 & 6 are less relevant on account of size of NAV assessment, ranging in value from € 14,900 to € 20,500. In the case of the Respondent, Comparables 2 & 3 are not considered highly relevant as no figures were provided to the Commissioner of Valuation upon which to base an FMT type valuation; they were both estimated by placing a spot value on each.

10.8 The comparables submitted by both experts provide a broad range of net annual values which have been considered. The Tribunal finds the most appropriate comparables are the Appellant's Comparables 7,8 and 9 and the Respondent's Comparable Number 1 in this appeal, primarily because they are fully tested having been the subject of agreement, in each case, and in the case of no's 7 & 8, having been agreed with a recognised rating expert Chartered Surveyor, and in the case of No.9 having also been agreed with Eamonn Halpin & Co. too, but also on account of the fact that they show adherence, in each case, to the application of the valuation scheme for service stations in Wexford County as applied by the Commissioner of Valuation (now Tailte Éireann). It is acknowledged that the Respondent's Comparable Number 1 is on the N25 in Ballynabola which might be expected to draw, from that location, more trade but the figures on which that was based point to a level of trade that suggests otherwise. By comparison with the subject Property, and considering the more remote location for the subject, relative to that, this factor is offset by the slight monopoly in terms of competition, for fuel. When the subject Property is compared it is shown to be the proper application of the valuation scheme with the value for the car wash removed and the metrics of that calculation are correct, leading to a revised NAV of € 108,000. The Tribunal is not persuaded, on this occasion, to depart from the application of that scheme or to adjust the inputs to the exercise as, considering all the evidence, the valuation of € 108,000 is found to be correct, equitable and uniform relative to other, comparable, net annual values.

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 **€ 108,000**.

This is calculated as follows:

Fuel Throughput	3,750,000 litres @ 0.007			26,250.00
Shop FMT	€ 2,450,000	@ 0.04	98,000	
Less low margin items	€ 810,000	@ 0.02	<u>16,200</u>	
				<u>81,800.00</u>
				108,050.00

Say, NAV € **108,000**

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.