

Appeal No: VA17/5/386

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

KEVIN MAHON

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No. 1738277, Hospitality at 38a Claregate Street, Kildare, County Kildare.**

B E F O R E

John Stewart – FSCSI, FRICS, MCI Arb

Deputy Chairperson

Thomas Collins – PC, FIPAV, NAEA, MCEI, CFO

Member

Dairine Mac Fadden - Solicitor

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF JANUARY, 2020**

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of October 2017 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €32,000.

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

1. *“The Valuation on the subject property is excessive and inequitable. The property’s value as applied by the Commissioner is not in line with its potential rental value.*

2. *The subject property is clearly overtrading – as evidenced by both PN 1738260 (the pub across the road) and PN 1738279 (the pub next door), not to mention others in the town. The long-established personal goodwill of the operator should not be taxed.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €18,400.

2. REVALUATION HISTORY

2.1 On the 10th day of March 2017 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €32,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 7th day of September 2017 stating a valuation of €32,000.

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

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 25th day of November 2019. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Co. Ltd. and the Respondent was represented by Mr. Ian Power of the Valuation Office.

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

4. FACTS

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

4.2 The subject property is located on the southern side of Claregate Street in Kildare Town which had a population of 8,634 in the 2016 Census. Kildare Town is approx. 50km southwest of Dublin and 8km from Newbridge. It has a mainline rail link from Dublin-Cork/Limerick and provincial bus services.

4.3 The subject property comprises a ground floor licensed premises in a two storey over basement end of terrace premises and the upper floor and basement areas comprise residential accommodation.

4.4 The agreed floor areas are as follows:

LEVEL	USE	AREA M²
Ground	Front bar	46.77
Ground	Lounge	16.88
Ground	Canopy	13.84
Ground	Stores	27.74
Ground	Toilets	21.94
		127.17

The trading area is 63.65M². The property has an ordinary seven-day licence and does not serve food.

4.5 The certified turnover figures for the year ending 2013 to 2015 were provided.

5. ISSUES

5.1 The issue is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

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

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

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

7. APPELLANT’S CASE

7.1 The Appellant stated that there are 11 pubs in Kildare Town with he argues comprise three ‘super-pubs’ and these have NAV’s s of €68,000, €76,000, and €193,500 respectively and are not comparable to the remainder of the town’s pubs. The other pubs comprise an adjoining pub which has an NAV of €5,440 and the NAV’s for the remaining pubs range from €14,000 to €36,000 NAV and the others have NAV’s of €18,400; €19,700; €16,800 and €24,000.

Pub Number	Valuation	Est FMT	Est Trading Area	Distance from Subject
1(Subject)	€32,000	€400,000	63.65 M ²	
2	€5,440	€68,000	50.00 M ²	Next door
3	€18,400	€230,000	88.70 M ²	20m
4	€36,000	€450,000	100.00 M ²	50m
5	€19,700	unknown	78.42 M ² -pub 26.35 M ² Off- licence	50m
6	€16,800	€210,000	80.00 M ²	100m
7	€14,000	€200,000	120.00 M ²	230m
8	€24,000	€300,000	118.60 M ²	250m

9	€68,000	unknown	134.7 M ²	60m
10	€76,000	unknown	unknown	120m
11	€193,500	unknown	Greater than 1,000 M ²	120m

The Appellant stated that the Commissioner does not provide trading areas or information relating to turnover of the comparisons and consequently the floor areas have been estimated from planning records and/or OSI and land registry records.

7.2 The Appellant argued that similar sized pubs to the subject one in the immediate vicinity with slightly smaller or slightly larger floor area are assessed and have NAV's varying from €5,440 to €24,000, if the one at €36,000 is disregarded as it was in receivership at the date of the appeals and was not challenged. He claims that the level of the proposed NAV at €32,000 is a tax on the business which is incorrect as the building only should be rated.

7.3 He further claims that the hypothetical occupier would not base his offer on the actual turnover which he argues refers to over-trading and the hypothetical occupiers would take into account location, size and what turnover other pubs in the vicinity were achieving. He argues that the turnover figures provided in the subject property reflects an inflated level which should be discounted to take the business acumen of the occupier out of the equation. In support he refers to refers to VA 14/5/959 which states *"The individual whose business acumen pushes a business into a healthy turnover and in turn into a healthy profit drives himself and the business into extended arms of another branch of revenue, that is to say, the Collector General, with such turnover and/or profit scrutinised with appropriate tax lawfully deducted and paid.*

It would and in the circumstances be palpably unfair for such profit, driven as it is by business acumen and endeavour, to be taken into account on the one hand when assessing liability for corporation and/or income tax and at the same time taken into account in striking the appropriate measure of rate to be borne by the same individual. Such collateral intrusion on an already stretched tax base demands extreme caution.

All of this illustrates the potential mischief of a too rigid application of the practice, when assessing rates for licensed premises by reference to FMT, informed as it is by evidence of turnover.”

He further argues that this rationale was expanded in two recent cases in Athy County Kildare VA 17/5/129 and VA 17/5/145 whereby the Tribunal was particularly mindful of the values of comparable properties on the underlying physical facts associated with them. He provided the supporting extract as follows *“It is long established in practice, and by the Tribunal, that the appropriate method of valuation in licensed premises is by the application of a percentage to the Fair Maintainable Trade. However in considering what the Fair Maintainable Trade may be, and what factors affect it, consideration has to be given to more than just turnover, and judgement has to be made as to whether a premises is under or overtrading and what level of Fair Maintainable Trade the reasonably competent operator could achieve or maintain. There is also the question of equity and fairness between ratepayers and it must be borne in mind that what is being valued is the building and not the business. This Tribunal is conscious of not straying from an established method of valuation and does not propose to value licensed premises on the basis of the size of the trading areas but information on floor areas would assist in considering whether or not the level of turnover or FMT is realistic and whether or not a reasonably competent operator/ the hypothetical tenant, could improve or maintain that level”.*

He refers specifically to VA 17/5/145 where he argues that the Tribunal was particularly concerned with the relative merits of size and location in defining the NAV *“ Mr Power’s comments that location, size and physical attractiveness were not as important as trading information when assessing NAV or rent are misplaced when assessing the subject property which is a small premises on the edge of the town centre and therefore under the normal rules of valuation weight should be accorded to all factors size and location.”*

He concludes this argument by stating that in the first instance a reduction of 20% was given and 50% in the 2nd instance. He argued that in the current case the hypothetical tenant is very unlikely to pay more than €18,400 as evidenced by the larger adjacent property and no more than 3 times the NAV established on the adjoining property.

7.4 In relation to comparison number 1 on the Claregate Street he argues that while this property is slightly smaller than the subject property it has an NAV of €5,440 which indicates an estimated FMT of €68,000 and the subject property could not be valued at more than 6 times this level at €32,000.

7.5 In relation to the 2nd comparison on Claregate Street he argues that this property which is adjacent to the subject property, larger than it at 88.7 m² but which is valued at €18,400 which is €13,600 below the subject property, undermines the valuation on the subject property. He further stated that this 2nd comparison property was surveyed by him, had been subject to representations and was not appealed to the Valuation Tribunal as the value was in general accordance with its value as shown by the tone of the list.

7.6 He referred to his 3rd comparison and stated that as the property was in receivership at the time of the appeal procedure that no representations or appeals were made. He stated this property was approximately 100 m² and he claimed it was substantially superior to the subject property as the cost of the fit-out had led to the receivership.

7.7 He referred to his 4th comparison on Market Square with had an estimated area of 78.42 m² and an off-licence of 26.35 m² (extracted from the planning file at Kildare CO. CO.) which had an NAV of €19,700. He argued that the subject property could not be assessed at a higher level than this.

7.8 His 5th comparison is also located on Market Square and based on an estimated trading area of 80 m², had an NAV of €16,800 and he claimed that this property was very comparable to the subject property in terms of value.

7.9 His 6th comparison referred to a pub on Grey Abbey Road which he claimed had an estimated trading area of 120 m² and an NAV of €14,000. He agreed that this property was in an inferior location to the subject property.

7.10 The 7th comparison referred to Dublin Road and the estimated trading area 118.6 m² had been established by way of full-site inspection. This property had an NAV of €24,000 and while it was subject to representations it was not appealed to the Tribunal as the valuation was generally in accordance with the tone of the list.

7.11 The 8th comparison referred to a large premises, 134.7 m² (areas from KCC planning file), on Market Square and it had an unknown food and drink estimated FMT and an NAV of €68,000. Mr Halpin referred to this property as comprising an award-winning gastropub which had been completely reconstructed in 2005 and comprised a restaurant, bar, commercial kitchen, stores, and guest accommodation on the first floor. He argued that it was superior to the subject property.

7.12 His 9th comparison also referred to premises in Market Square which had an unknown floor area and an unknown food and drink FMT but had an NAV of €76,000. The property comprised a bar, restaurant, commercial kitchen and first floor function room.

7.13 His 10th comparison referred also to a large premises in Market Square and had a floor area in excess of a thousand square metres and an NAV of €193,500. He referred to his 8/9 and 10th comparisons as exceptional and not comparable to the subject property.

7.14 He included one context comparison from North Main Street Naas which had an estimated trading area 110 m² and an NAV of €14,800 based on an FMT estimate of €185,000. He claimed that this property could have been available to the hypothetical tenant at €14,800 for a larger trading area and consequently he could not see how the Commissioner's proposed level of €32,000 could be sustained in Kildare Town.

7.15 In conclusion he argued for an NAV as at 31 October 2015 based on an FMT of €230,000 at 8% which equals €18,400. He summarised by stating that the Commissioner appeared to have rejected the difficulties of trading in Kildare town for most pubs in competition with the large super-pub. However he found that the subject property had not been treated equally and that the Commissioner had unduly relied on the actual turnover from the subject property. He argued that the properties other than the super pubs were generally similar and they should be represented by a balanced approach and he could see no justification why the subject property should be valued considerably in excess of immediate contemporaries. He concluded by stating that FMT cannot be regarded as interchangeable with actual turnover as highlighted in the Tribunal extracts included in his précis.

7.16 During cross-examination Mr Halpin stated that he could not look at turnover in isolation of size and location and that to do so could unfairly prejudice good business acumen or poor business acumen. He argued that a small bar with high turnover would raise concerns with a hypothetical tenant and referred to a case in Wicklow where a substantial turnover of €3 million fell to €300,000. He agreed that his first comparison did not fairly represent the market in Kildare Town as it was 1/6th of the subject property however it had been published. When questioned in relation to the 3 large pubs in Kildare Town he stated that they were operating on a different level and included large commercial kitchens and had substantial food offerings. He stated that the Appellants was disadvantaged as he did not have access to the accounts of the various comparisons, and he did not agree with the Respondent that the food business was transient. He argued that the Commissioner had not undertaken a look back approach.

8. RESPONDENT'S CASE

8.1 Mr Power on behalf of the respondents adopted his précis. He provided a number of internal and external photographs of the subject property and confirmed that he relied on 3 comparisons.

8.2 His first rental comparison on White Abbey Road referred to a pub which was also included in the Appellant's schedule as number 6. He stated that it contained a total trading area of 74.93 m² from a total area of 99.29 m² and that the property had been let for 4 years and 9 months from 1 July 2015 at €23,400 per annum. He acknowledged that the rent included first floor residential accommodation and confirmed that he had allowed €7,200 per annum for this accommodation which provided an NER of €14,364pa. He confirmed that this property had a fair maintainable trade of €200,000 which had been valued at 7% giving an NAV of €14,000. He claimed that this premises were in a tertiary location.

8.3 The second rental comparison referred to the licensed premises in Monasterevin which had a total trading area 117.48 m² of the total floor area of 284.64 m². This property was let on a lease for 4 years 9 months from 1 April 2014 at €36,000 per annum with an NER of €32,550pa. These premises had a fair maintainable trade of €330,000 valued at 7% giving an NAV of €23,100. Mr Power claimed the first-floor lounge area was not used due to leaks in the roof and that Monasterevin was a poorer town in Kildare Town.

8.4 The 3rd rental comparison referred to a large bar and Grill in Market Square Kildare Town which was also included in the Appellant's schedule no.8 and Mr Power confirmed that it had been let for 5 years on an internal repairing and insuring lease from 1 September 2014 at €78,000 per annum and an NER of €76,050pa. He stated that the trading area comprised 153.69 m² the total floor area of 333.96 m² and that the FMT for drink sales was €300,000 at 8% with €800,000 for food at 5%.

8.5 Mr Power included details of the 11 pubs in Kildare Town as evidence of equity and uniformity and confirmed that the subject property was the only one that had gone to the Valuation Tribunal. He stated that the values for NAV varied from €5,440 up to €193,500 and confirmed that all the pubs in the general area were valued on the basis of 7% to 8% of the estimate of FMT. He provided 6 comparisons from this list to support his opinion of the NAV.

8.6 The first NAV comparison is located in Market Square and referred to No. 9 in the Appellant's schedule. He stated that this property comprised a ground floor bar and ground floor level store with the smoking area to the rear and that the pub had a drinks trade and a busy foodservice. He stated that it was similar type of condition to the subject property and was located in a similar position. He provided an analysis of the trade as follows:

Trade	FMT €	@	NAV
Drink /FMT	€700,000	8%	€56,000
Food FMT	€400,000	5%	€20,000
			€76,000

He confirmed that the property had been subject to representations and that the NAV had been reduced from €80,000 to €76,000.

8.7 The 2nd NAV comparison referred to a large licensed premises on Market Square which comprised a restaurant, pub and nightclub and refers to number 10 in the Appellant's schedule. This property was not subject to representations or a Valuation Tribunal appeal.

He provided an analysis of the trade as follows:

Trade	FMT €	@	NAV
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Drink /FMT	€1,450,000	8%	€116,000
Food FMT	€1,500,000	5%	€77,500
			€193,500

8.8 The 3rd NAV comparison referred to licensed premises on Dublin Street which was included in the Appellant's schedule and referred to as number 5. He confirmed this property comprised a ground floor bar with a smoking area and that the pub had a predominantly drinks orientated trade and was in a similar condition to the subject property. Following representations, no change had been made.

He provided an analysis of the trade as follows:

Trade	FMT €	@	NAV
Drink /FMT	€300,000	8%	€24,000
			€24,000

8.9 His 4th NAV comparison referred to a licensed premises in Market Square -no. 4 in the Appellant's schedule. He confirmed that this comprised a ground floor bar and storage area with a smoking area to the rear. The premises included an off license located to the front of the property and it was referred to as older than the subject premises. It had been subject to representation and reduced from €21,700 to €19,700 but was not subject to a Valuation Tribunal appeal.

He provided an analysis of the trade as follows:

Trade	FMT €	@	NAV
Drink /FMT	€175,000	8%	€14,000
Off/sales	€190,000	3%	€5,700
			€19,700

8.10 The 5th NAV comparison referred to a licensed premises opposite the subject property -no. 2 in the Appellant's schedule- and it comprised a ground floor bar, storage, and rear smoking area. It was described as having a similar type condition to the subject property and had a good fit out internally. It had a been subject to representations but was not subject to a Valuation Tribunal appeal.

He provided an analysis of the trade as follows:

Trade	FMT €	@	NAV
Drink /FMT	€230,000	8%	€18,400
			€18,400

8.11 The 6th NAV comparison referred to a premises that is located opposite to the subject property listed as no. 3 in the Appellant's schedule and comprises a ground floor bar and smoking area. It was referred to as an old development. It had not been subject to representations or an appeal to the Valuation Tribunal.

He provided an analysis as follows:

Trade	FMT €	@	NAV
Drink /FMT			€36,000
			€36,000

8.12 In response to arguments put forward by the Appellant, Mr Power stated that the method of valuation is well established as confirmed by Tribunal Judgements VA 95/5/024 and VaA95/5/025 from Swigmore Inns Ltd t/a Doheny & Nesbitt Baggot Street Dublin 2 and Nallob Ltd t/a O'Donoghue's Merrion Row Dublin 2. He argued that both judgements were of particular relevance to the issues raised in the appeal for the subject property as both indicated that the profits method is the preferred method for valuing licensed premises and he included extracts as follows: *"there is no doubt that in our opinion profits, turnover etc are hugely influential in the mind of hypothetical tenant when determining the amount of rent which he is prepared to pay on an annual basis..... this is a method which in our view is a forerunner in approaching the valuation of licensed premises"*. He further argued that the Tribunal had determined that no allowance was warranted for the fact that both premises are well known Landmark Dublin pubs and quoted from the judgements *"This is undoubtedly a well-known Dublin public house enjoying both local and tourist business. The dilemma facing both the appellant's and the respondent's valuer's is how to deal best with what can be described as the goodwill of any public house where undoubtedly the turnover can be affected by the ability of the proprietor. The rateable valuation is a function of the net annual value of the building and not of the business and it is therefore important to distinguish the elements of turnover*

which reflect the location and nature of the building as opposed to those that reflect the ability (or lack of it) of the proprietor. In our opinion Doheny and Nesbitt's (O'Donoghue's) it is now so long-established as a landmark pub that its turnover is less affected by the proprietor might be the case otherwise."

8.13 He states that the hypothetical tenant will also have access to the financial statements and trading data on this premises as well as the same management and staff of the current occupier. He argues that the hypothetical tenant can choose to employ the same methods of the current occupier or make changes to increase trade if necessary as it is assumed that he will seek to maximise the potential turnover of the premises. He also states that the hypothetical tenant can replicate the characteristic skills and approach of the current occupier and states that in his opinion there is no evidence of anything out of the ordinary within the financial statements for the subject property and none had been shown by the Appellant.

8.14 Referring to Principles and Practice 3rd edition by Bond and Brown p.291 he states *"It is important to note, as with any receipts and expenditure valuation, or valuation involving percentage of likely receipts, that the valuation is of the property and not present occupier. Actual receipts should be used as a guide to the likely gross takings the hypothetical tenant could achieve. It may be that the actual tenant is achieving exceptional trade due to personal characteristics of the licensee, who may achieve the additional trade through perhaps being a famous ex-footballer or TV chef, having exceptional personality business acumen. The likely trade needed for the valuation is what a reasonably competent individual would achieve, not what a particular individual can achieve."* He stated that where there is clear evidence that the actual turnover is considerably different from the hypothetically achievable turnover, an adjustment to the supplied turnover may be appropriate. He argues that this must be based on an identifiable characteristic that would not be available to the hypothetical tenant and he claims that the Appellant has not identified any such characteristic.

8.15 He relies on VA /15/5/036 JRW Ltd. where the Valuation Tribunal in his determination stated *"The Tribunal also notes that financial statements relating to the business operated from the subject property were included in the respondent's precis of evidence. However, there was no entry in the balance sheet in respect of goodwill. Whilst the Tribunal draws no adverse inference from this fact, the presence of goodwill in the balance sheet of the business would have assisted the Appellant's in establishing the existence and quantum of the goodwill which*

they maintained existed.” ... “no evidence was adduced in support of this proposition other than Mr Halpin’s bare assertion.” The Tribunal affirmed the valuation.

8.16 Mr. Power argues that the current occupier has no greater ability to trade than any other hypothetical tenant and states that there are a range of physical factors that affect the value of a public house inter alia the attractiveness of the premises, its location, physical characteristics and size and he states that these attributes are reflected in the actual level of trade achieved in the subject premises. He states that the level of trade in the subject premises is the most reliable determinant of NAV. He argues that reducing revenues is not in line with best practice and in his opinion the hypothetical landlord would not accept a rent lower than the FMT applied.

8.17 He concluded his direct evidence and requested that the Tribunal affirm the NAV of €32,000 based on 8% of €400,000(FMT).

8.18 Under cross examination Mr Power did not agree that a similar premises across the road was a determining factor to show excess business acumen. He argued that the information extracted from the accounts provided was the most important evidence available when determining the NAV. He agreed that location and size were factors to be taken into account when assessing rental value however he did not agree that the differential of €230,000 versus €400,000 for similar properties and adjacent indicated that a special business acumen was present. Mr Power agreed that the property should be assessed and not the business and he agreed that a fair and equitable valuation should apply. He did not agree that the 3 large pubs in the town should be discounted when assessing the valuation of the subject property and he indicated that food turnover figures were subjective. He argued that there was nothing unique about the turnover of the subject property. Mr Power confirmed that there was a large lounge at 1s floor level in his Monasterevin rental comparison. He agreed that his NAV comparison No. 4 comprised a similar size to the subject premises but argued that the off-licence was in the front or best section. Mr Power did not regard the adjoining pub as comparable as it had a very small turnover and a small area.

8.19 Both parties provided summaries with Mr Halpin emphasising the fact that the special business acumen in the subject property was clear based on the comparisons from adjacent/adjoining similar premises all of which had substantially lower NAV’s. He claimed that the lower turnover in these other premises proved that the turnover in the subject property

was special and he could see no justification why it should be rated higher than a pub on the opposite side of the road that was of similar size and construction but had an NAV of €18,400. Mr Power concluded his remarks and asked the Tribunal to confirm the valuation and stated that the Appellant had not shown any special business acumen and requested that the valuation of €32,000 be confirmed.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

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

10.2 Both valuers relied generally on the same evidence but with different weight applied to the respective properties. The Tribunal has reviewed the evidence provided by both parties which has been presented with different approaches. The Tribunal considers that the Appellant's comparisons 8, 9 and 10 (comparison 1,2 and 3 in the Respondent's list) refer to premises with significantly larger floor areas and consequently larger drink and food FMTs whereas the subject property does not include any food and is significantly smaller. Consequently, they had been disregarded by the Tribunal. Comparison No. 1 in the Appellant's list (no. 11 in the Respondents list) has also been disregarded as it does not relate in terms of NAV to any other comparison provided. The Tribunal finds that comparisons from Monasterevin and Naas are not of any particular assistance due to their distant locations while there is clear and available evidence in Kildare Town.

10.3 The three rental values adduced by the Respondents are not considered by the Tribunal to be of great assistance as the first one refers to a rent of €23,400 pa which is inclusive of undetailed overhead residential accommodation and it is located by agreement in a less comparable location and is valued at 7% of FMT, whereas the subject premises is valued at 8% though no case was made in relation to the applied percentages. The second rental comparison refers to a pub in Monasterevin and is also valued at 7% and the Tribunal does not see any need to go outside Kildare town for comparable evidence when there is sufficient evidence within

the town. The third rental comparison refers to a much a larger premises (no 8 in the Appellant's schedule and no 3 in the Respondent's schedule) with an NER rent of €76,050 pa in a building approx. 334M² with a trading area of 154M². This premises had a drink FMT of €300,000 and food of €800,000 valued at 8% and 5% respectively and the Tribunal considers that it is clearly not comparable to the subject premises.

10.4 The Tribunal acknowledges that turnover figures from which FMT is derived provide material evidence when assessing the NAV; however, they are not the only criteria to be considered. Size, location and building layout, quality of fit-out and construction are also very important when assessing a valuation and testing comparability. While turnover may be considered to be the primary evidence it can only be contextualised in the prism of the other determinants. The Tribunal is concerned that it is not being provided by the Respondents with the floor areas for the various NAV comparisons. The Appellant has however attempted to provide floor area information by reference to OSI, Land Registry, planning documents and on-site measurement. The size of the trading area preferably with floor areas for ancillary accommodation is material when engaging in an exercise to compare and contrast. To rely substantially on a single input, in this case turnover without reference to the others can undermine equity and fairness.

10.5 The Tribunal is conscious of the reference made to Principles and Practice 3rd Edition Bond & Brown where they state inter alia that *...the valuation is of the property and not the present occupier*” and *“The likely trade needed for the valuation is what a reasonably competent individual would achieve, not what a particular individual can achieve.”* The Respondent has argued that for a claim for business acumen to succeed the Appellant must provide an ‘identifiable characteristic’. The Tribunal acknowledges this claim may in some circumstances have merit, but it does not accept it when there is clear evidence from adjacent and similar sized comparable properties which have lower NAV’s.

10.6 The Tribunal considers that comparisons 2, 4, 5, 6 and 7 in the Appellant's schedule (Nos 6, 7, 8, 9, and 10 in the Respondent's schedule) to be the most important. It notes the drink FMT for Appellant comparison 8 (Respondent No. 3) at €350,000 which comprised a substantially larger premises. It has taken account of the good quality, internally and externally of the subject property as evidenced by the Respondent's detailed photographs, the relevance of comparisons 2, 4, 5, 6 & 7 and to maintain fairness and equity for similar sized premises, it

has reduced the FMT for the subject property to €300,000 @ 8% which provides an NAV of €24,000.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €24,000.

And the Tribunal so determines.