

**Appeal No: VA19/5/0382**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020  
VALUATION ACTS, 2001 - 2020**

**Kieran and Sheila Mullen**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 1990782, Hospitality at 58A.60 Market Street, Cootehill, County Cavan

**B E F O R E**

**Dolores Power – MSCSI, MRICS**

**Deputy Chairperson**

**Kenneth Enright - Solicitor**

**Member**

**Annamaria Gallivan – FRICS, FSCSI, MPhil SEE**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 9<sup>TH</sup> DAY OF MAY, 2022**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 14<sup>th</sup> 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 €14,400.

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 subject property’s NAV is not in line with the property’s actual trade. The subject’s trade is declining due to high levels of competition in the town and reached €221,431 in 2018 and just €102,901 in the 1st 6 months of 2019.*

2. *The subject property's NAV is not in line with its potential rental value, as illustrated by the tone of the list for comparable property.*
3. *The subject property is not superior to the Bellamont Arms (NAV €14,000) which is 3x the size of the subject property, Smyth's (€10,000 NAV) which also includes commercial offices and The Oakland Arms (€3,600 NAV) which is larger than the subject property.*
4. *There is a substantial oversupply of pubs in the town. Tir Na Nog (immediately across the road from the subject property) is let at €100/week. There is a level of exceptional goodwill and acumen here which should not be taxed. FMT would be unlikely to exceed €175,000 @ 6%.*

*And the amount the Appellant considers ought to have been determined as being the valuation of the property concerned in accordance with the matters set out in section 19(5) of the Act as amended € 10,500"*

1.3 The Appellants in their Notice of Appeal stated that the valuation of the Property ought to have been determined in the sum of €10,500. At the Tribunal hearing, their representative contended for a valuation of €10,200.

## **2. REVALUATION HISTORY**

2.1 On the 29<sup>th</sup> 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.

2.2 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019.

## **3. THE HEARING**

3.1 The Appeal proceeded by way of an oral hearing held remotely, on the 6<sup>th</sup> day of October, 2021. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MSCSI of Eamonn Halpin & Company and the Respondent was represented by Mr. Deryn Ryan 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 comprises a licenced premises. The subject property is located at Market Street, Cootehill (population: 1,853). This is a town centre location.

4.3 The property consists of Ground Floor Licenced premises located on the main business street in Cootehill.

4.4 The areas were agreed between the parties as follows:

Bar Area		
	Floor	M2
	0	87.87

4.5 The Appellant is the owner and occupier of the property. The property is held freehold.

4.6

Turnover:

Year Ending	Turnover (Wet sales)
2014	€240,183
2015	€261,363
2016	€260,587
2017	€252,692
2018	€221,431

2019	€219,576
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## **5. ISSUES**

5.1 The matter at issue is 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 Mr. Halpin for the Appellants described the property as an unremarkable property located at Market Street, Cootehill, being a ground floor premises, one of thirteen licensed premises in the centre of Cootehill. He said that eight of these premises are located on Market Street, four located on Bridge Street and one located on Church Street.

7.2 He stated the agreed property measurement was 87.87 m<sup>2</sup>. He confirmed that although the bar was small, it was attractive. It was his opinion that the turnover was in decline, particularly from 2017 - 2019

7.3 Mr Halpin pointed out that the properties set out in his table of comparisons were all close to the property.

7.4 He said that his Comparison 1, Tir Na Nog was directly across the street from the property and was assessed at €25,000 with the actual rent at €5,400 which Mr Halpin believed showed a conflict within the tone of the list.

7.5 He said his Comparison 3, The Oakland Arms, was, by his own estimation (based on OSI and Land Registry records) one of the largest pubs in the Town at 360 m<sup>2</sup>. He noted this was valued in the list at €3,600 based on a turnover of €60,000, which he could not understand as he believed it was one of the best pubs in the town.

7.6 The property known as A Smith (his Comparison 4), described by Mr Halpin as a landmark property, was assessed at €10,000.

7.7 The Bellamont Arms (Comparison 6), which Mr Halpin described as located directly across from the property, was, in his estimation based on OSI and Land Registry records, probably the largest licensed premises in the town., Mr Halpin pointed out that the premises had ceased trading more than 5 years ago and was assessed at €14,000.

7.8 Kenny Connolly's (Comparison 10), under appeal at €34,000, is currently closed.

7.9 Dickey's Bar (Comparison 11), a small pub, was assessed at €25,000. The West End Bar (Comparison 12) was assessed at €14,500 and is also under appeal.

7.10 Mr Halpin wished the Tribunal to note that the Commissioner's representatives do not provide the areas of licenced premises. Therefore the areas provided by him were estimates based mostly on OSI and Land Registry records or, in some cases, on physical inspection or planning records. The Tribunal noted that Mr. Halpin's list of comparisons (a) through (f) all appeared to be based on OSI or Land Registry records.

7.11 It was Mr. Halpin's contention that there wasn't a consistent relationship between the values as assessed in the town. The Oakland Arms which is, by his estimation, the largest pub in the town was assessed at the lowest NAV on the basis, he suggested, that financial information was provided. Conversely, as he said, it appeared to him that all premises valued at €25,000 NAV or more gave no accounts and hence, were based on some sort of estimate. This estimate does not appear to be based on accounting data from the rest of the town in Mr Halpin's opinion.

7.12 Mr Halpin stated that the Appellants are aware that Tir Na nOg was let at €5,200 per annum up to 2019 when a new lease was entered into at a rent of €5,400 per annum but is valued at €25,000 NAV on the apparent basis that accounts were not supplied.

7.13 In relation to the use of turnover and FMT in assessing the property, Mr Halpin made the following observations: the property is over-trading, which, he said, is due to the longstanding goodwill of the occupiers, being located in the premises since the 1960's. Mr Halpin said that the current occupier, Kieran Mullen, is a second-generation owner-occupier, and has traded on the premises since 1990. Mr Kieran Mullen is also a funeral director for the town and Mr Halpin stated his belief that a significant amount of trade is driven by the links with his funeral home. The hypothetical tenant would not have access to this trade as the funeral home is a completely separate property. In the course of his evidence to the Tribunal, Mr Halpin identified by reference to the map on page 10 of his précis the location of the subject property relative to the funeral home on Chapel Lane and noted they were in close proximity, connected by a pedestrian laneway.

7.14 Mr Halpin in his evidence pointed to the fact that there were seven pubs in Market Street, just four are open and one of these traded as a restaurant. It was Mr Halpin's contention that trade was "artificially increased" by the fact of the closed pubs. It was Mr Halpin's evidence that the hypothetical tenant taking a letting would estimate trade with these premises being open.

7.15 Mr Halpin stated that the Appellants do not believe that the €240,000 utilised by the Commissioner, in this case, represents FMT. Mr Halpin explained that in his opinion, the Commissioner's view of FMT is based on a number of years accounts on the subject property, and then equates turnover and FMT. He further contended that in assessing the property, as both parties are charged with doing, one must look at the other information which would inform FMT such as the turnovers of other comparable pubs in order to establish over-trading, or indeed, under-trading. The question, Mr Halpin pointed out, under the statute is, what a hypothetical occupier might be able to achieve, not what the actual occupier is achieving. He noted that turnover declined in 2018 and 2019 to circa €220,000.

7.16 Mr Halpin put forward the following decision of the Valuation Tribunal, VA17/5/666, as the best summary of the methodology in use.

*"The Tribunal is of the view that it is long established in practice that the appropriate method of valuation in licenced 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 effect it, consideration has to be given to more than just the turnover, and judgment has to be made as to whether a premises is under or over trading and what level of Fair Maintainable Trade the reasonably competent operator or hypothetical tenant could achieve or maintain. There is also the question of equity and fairness between rate payers and it must be borne in mind that what is being valued is the building and not the business. The Tribunal is conscious of not straying from an established method of valuation and does not propose to value licenced premises on the basis of the size of the trading areas but information on floor areas assists 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.”*

Mr Halpin stated the Applicants wanted their valuation based on the comparables in the list, on their rental capacity.

7.17 Mr Halpin then summarised the properties in the town. He had two rental comparisons, as follows.

1. Tir na nOg, 21 Market Street, Cootehill: This property was, Mr Halpin said, was a small property located across the street from the subject and assessed at €25,000. By reference to the Commercial Lease Register, Mr Halpin noted the property - with a trading area estimated (by him) at 40m<sup>2</sup> - was let in 2013 at €5,200 per annum and that a new 5 year lease was entered into on 25 September 2019, at a rent of €5,400 per annum. This, said Mr Halpin, gives an indication of rental values for pubs in Cootehill.
2. Jaiphal Indian Cuisine, 49 Market Street, Cootehill. Mr Halpin said that according to the Commercial Lease Register, this bar, restaurant and takeaway at 49 Market Street – with a floor area by his estimate from reference to planning records at 145m<sup>2</sup> – is let at €20,000 per annum. Mr Halpin, comparing the rent with that of Tir na Nog, expressed the view that the rent reflects the food element and not the drink trade. The property is assessed at €25,000

Mr Halpin had 10 tone of the list comparisons as follows:

3. Oakland Arms, Bridge Street. Mr Halpin stated that that the property looks smaller from the façade but extends back, so is larger than it appears, estimated at 180m<sup>2</sup>, assessed at €3,600. He stated that the



property appears to have an estimated FMT of €60,000. Mr Halpin believes it is noteworthy that such a large pub is assessed so low.

4. A Smith, 11 Bridge Street, Cootehill. Mr Halpin said this was a Bar and Auctioneers office, in the list at €10,000 and he was unclear where the value came from.
5. Bannon's, 60-62 Market Street, Cootehill. Mr Halpin stated that this is a small shop and pub. The pub was valued at €30,000 but has been agreed lower since then.
6. The Bellamont Arms, 43-45 Market Street, Cootehill. Mr Halpin stated that this is possibly the largest licensed premises in Cootehill, but has been closed for some time, assessed at €14,000
7. Hannigan's, 38 Market Street, Cootehill. Mr Halpin stated that this is a traditional style Bar/Grocery/Pub. The division is unclear between the elements of the building. Assessed at €17,030
8. Donohue, 38-40 Market Street, Cootehill. Mr Halpin stated that this premises was not open regularly. Assessed at €14,000
9. Greenan's Bar & Lounge, 7 Market Street, Cootehill. Mr Halpin stated that this property had ceased trading for over 10 years. Assessed at €30,400
10. Kenny Connolly, 15 Bridge Street, Cootehill. Assessed at €34,200
11. Dacey's Bar, 13 Bridge Street, Cootehill. Mr Halpin stated that this was a poor location. €25,000
12. The West End, Bridge Street, Cootehill. Mr Halpin stated that this property was under appeal €14,400, FMT €240,000

7.18 In cross examination Mr Halpin agreed that areas of comparison properties, where mentioned, were estimated, as agents would have no access to that information. He pointed out that the Respondents should have access to that information.

7.19 In response to questions from Mr Ryan about the evidential value of his two rental comparisons - given that no information had been provided about the leases and it was unclear if they were arms-length transactions, FRI leases, if they contained break clauses and so on – Mr Halpin replied that he had checked with his client and was told there was no connection between the parties in either case.

7.20 In cross-examination, Mr Halpin accepted that he had not provided rental information from the Commercial Lease Register about his Comparison 4.

7.21 In conclusion, Mr. Halpin stated that there was no market rental evidence to support the Respondent's valuation. He stated that there were 12 pubs within 250 m radius of the subject. He stated that although the subject property provided turnover it was unclear how this was compared to others who didn't. He argued that it was the building that should be assessed and not business taking place within it. He said the level of FMT was increased by certain qualities unique to the particular operator, the fact that he had a family history in the property dating back to the 1960s, an advantage complemented by his other business as a funeral director with a funeral home in close proximity. Such circumstances would not be replicable by a hypothetical tenant. Notwithstanding these circumstances, the accounts showed business was declining. He argued that half the pubs on the street were closed and therefore turnovers were at risk if those pubs reopened. He pointed to a property across the road let at €5,200 per annum as a rental comparison and this, he said, supported his contention that the Respondent's determination of value was excessive and inequitable.

7.22 On behalf of the appellant, Mr Halpin contended that an FMT of €170,000 could not be exceeded and sought a NAV of €10,200.

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

8.1 Mr. Ryan for the Respondents said the Property, Mullens Bar was in excellent condition and described it as a ground floor licensed premises of 87.87m<sup>2</sup>. Located in the main commercial centre of the town of Cootehill on Market Street. He described the town

as home to Abbott Laboratories, which manufactures infant formulae, along with other factories include Eakins and Whelans Shoes, and the Cootehill Enterprise Centre is home to Carleton Bakery.

8.2 Mr Ryan explained that the figures provided at representation stage produced an FMT of €240,000 and there is an allowance of 1% for entertainment.

8.3 Mr Ryan put forward the following Key Rental Transactions.

<b>KRT No.</b>	<b>Property No.</b>	<b>Address</b>	<b>Lease Date</b>	<b>Rent p.a. €</b>	<b>NER €</b>	<b>NAV €</b>
1	1989196	Main Street Baileborough	20.01.2017	11,700	10,700	9,300
2	1989276	Main Street, Kingscourt	24.12.2017	44,200	42,445.26	17,500
3	1989289	Main Street, Kingscourt	01.04.2017	36,400	35,672	32,600
4	1990594	Bridge Street, Belturbet	10.09.2018	12,000		10,500
5	2204247	Main Street, Mullagh	15.08.2014	18,200		17,600

Mr Ryan asked the Tribunal to note that in Comparisons 1,3,4 and 5 the NAV reflected the rent/NER and that accordingly the Commissioner’s scheme of valuation closely reflected the market. He identified KRT 4 as a possible example of significant goodwill attaching to a premises which would account for the difference between the NAV and the NER.

8.4 Mr Ryan put forward the following NAV Comparisons.

<b>Property Number</b>	<b>Address</b>	<b>FMT</b>	<b>NAV</b>
1990687	Bellamont Arms, Market Street, Cootehill, Cavan	200,000	14,000
1990773	Donahue, Market Street, Cootehill, Cavan	200,000	14,000
1990757	Hannigan’s, Market Street, Cootehill, Cavan	200,000	17,030

Mr Ryan was of the belief that his three comparisons on Market Street, Cootehill were the strongest evidence of FMT. Mr Halpin had also used these three comparisons.

8.5 Mr Ryan quoted the rental evidence submitted by the Appellant.

1990678 Tir na NOg – “One year lease from 8th March 2013 at €5,200 per annum. New five-year lease granted on 25th September 2019 at €5,400 per annum.”

1990684 Jaiphal Indian Cuisine – “Let on a ten-year lease from 21st April 2017 at €20,000 per annum.”

In the case of both of these comparisons, it was Mr Ryan’s opinion that the evidence was limited in scope as there was no additional information regarding the details of the leases available on the commercial lease register. It was not clear, he said, if these leases were arm’s length leases or if there were any other important factors to be considered. At Revaluation, no trading figures were submitted in either case He said that the valuations of each at €25,000 had not been appealed and they informed the tone of the list.

8.6 Mr Ryan referred to the comparisons submitted by the Appellant.

1. In relation to The Oakland Arms, 22 Bridge Street, Cootehill, Co. Cavan. The valuation of €3,600 is based on an FMT of €60,000 @ 6% (% applied to properties under 100,000 FMT). Mr Ryan contended that this is an inferior property and location to the subject property, located on Bridge Street a peripheral street to the subject location on Market Street.
2. A. Smith, 11 Bridge Street, Cootehill, Co. Cavan. The valuation of €10,000 is based upon an FMT of €125,000 @ 8% (% applied if its gross profit is above 56%). Trading data was supplied at Representations stage. This property is located on Bridge Street a peripheral street compared to the subject location on Market Street. The commercial lease register shows a 4-year lease from 1/11/2016 for €15,600 per annum, which is a good example of an inferior property located in an inferior location in Cootehill.

3. Bannon's, 60-62 Market Street, Cootehill, Co. Cavan. The valuation of €30,400 placed on it at Revaluation is not contested. There were no representations made on this property at revaluation. The appellant has made several claims regarding this property of which there is no evidence submitted. There is no evidence from the sale of this property and if the transaction was between related parties or a market sale.
4. The Bellamont Arms, 43-45 Market Street, Cootehill, Co. Cavan. An FMT of €200,000 @ 7% was placed on the property after examination of comparable properties. This valuation based on FMT was not the subject of an appeal and its valuation of €14,000 informs the tone of the list. Located across the street from subject and is a good comparison.
5. Hannigan's, 38 Market Street, Cootehill, Co. Cavan. Following representations to update retail areas. The licenced premises submitted trading data and an FMT of €200,000 @ 7% accounts for €14,000 of this valuation with retail area accounting for €3,030 remainder. Located only 3 buildings away from subject and is a good comparison albeit a slightly inferior building to the subject property based upon exterior observation.
6. Donohue, 38-40 Market Street, Cootehill, Co. Cavan. An FMT of €200,000 @ 7% was placed on the property after reviewing comparable property. This valuation was not the subject of an appeal and its valuation of €14,000 informs the tone of the list. Located very close to the subject it is a good comparison with the building of similar to slightly lower quality than the subject property based upon external observation.
7. The West End, Bridge Street, Cootehill, Co. Cavan. An FMT of 240,000 @ 7% with 1% entertainment allowance gives a NAV of €14,400. Trading data was submitted by occupier at Revaluation. The property is currently under appeal to the valuation tribunal. This is a slightly superior pub to the subject property but located on a more peripheral street and is a good comparison in this context.

8.7 Mr Ryan explained the Commissioner of Valuation's methodology and reliance on market information to inform his valuation scheme. Financial information was requested on all Licensed Premises within County Cavan. Information was supplied in 113 cases or 56.78% of cases with no financial information provided in the remainder. This produced a valuation scheme of between 7%-9% of the estimate of Fair Maintainable Trade (FMT) on all licensed premises, with 6% being applied to properties with FMT below 100,000. He said that the estimated FMT for drink sales in the subject property had been valued at 7% in line with comparable properties in the immediate vicinity.

8.8 He explained that an entertainment allowance can be applied where entertainment is above 5% of total drink sales. This allowance of 1% is applied to total drink sales. For the years 2005 to 2017, the subject property had, said Mr Ryan, entertainment expenses above 5%.

8.9 Mr Ryan stated that a clear tone was emerging based on the properties on Market Street. Properties 1990687 The Bellamont Arms: NAV €14,000; 1990757 Hannnigan's: NAV €17,030 (licenced portion €14,000), and 1990773 Donohue: NAV€14,000) were identified by him as the strongest comparisons.

8.10 Mr Ryan said that the estimated FMT for drink sales in the subject property has been valued at 7% in line with comparable properties in the immediate vicinity. For the years 2015-2017 the subject property had entertainment expenses above 5%.

8.11 Under cross examination Mr Ryan agreed that most valuations would include an initial inspection, however he did not inspect any properties other than the subject property in relation to the revaluation, noting that licensed properties are valued based on FMT and an established multiple of 6%-8%.

8.12 Asked by Mr Halpin if he had taken account of the Appellant's goodwill in his assessment at representation stage, Mr Ryan said that all factors had been taken into account but declined to identify any figure or percentage that was applied for goodwill. He said the Commissioner does not use any particular formula and that there is an element of subjectivity. In response to Mr Halpin's question as to whether any allowance

had been made for goodwill given the Appellants' funeral business, Mr Ryan responded, "Very little." He said most licensed premises in the town had some form of goodwill. He did not agree that the business was in decline and said that the turnover figures were open to interpretation. He expressed the view that the reduction in turnover – which, he noted, had taken place after the valuation date – was correlated with a reduction in expenditure on entertainment and referred in this regard to the table on page 34 of his précis.

8.13 Mr Ryan in summing up asked the Tribunal to affirm the Valuation and stated that the onus of proof that the valuation is wrong is on the Appellant, and he has not discharged that burden. The hypothetical tenant would, he said, be able to achieve the Fair Maintainable Trade. He pointed out that the complementary business was not on the same street as the property but acknowledged it could be accessed by a laneway. He did not agree that the proprietorship of the funeral directors would have any effect on the turnover. He highlighted the Appellants use of an estimated trading area from OSI and Land Registry and said the accuracy of such measurements is not determinable. He said there was a clear tone of the list emerging.

## **9. SUBMISSIONS**

9.1 There were no legal submissions made by the parties

## **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 Cavan County Council.

10.2 The Tribunal has examined the particulars of the property and considered the written and oral evidence adduced by Mr. Halpin on behalf of the Appellant who contended for a revaluation of €10,200 and Mr. Ryan on behalf of the Respondent who sought confirmation of €14,400 NAV.

10.3 The Tribunal notes the Appellant's contention that the Commissioner took insufficient account of the declining turnover of the business in arriving at the valuation. The Appellant presented turnover figures for the years 2014 to 2019 inclusive. The valuation date of the property is 15 September 2017. For the year ending 2016, the year prior to the valuation date, the turnover was €260,587, very marginally down from the previous year's sales of €261,363. For the year ending 2017, the year of the valuation date, the turnover was €252,692, a decline, year on year, of only 3% and a figure which was, notwithstanding that decline, still well in excess of the 2014 returns of €240,183. The decline in the years following was much more precipitous but, whether one agrees with Mr Halpin that this decline was attributable to greater competition or with Mr Ryan that it was connected with the proprietor cutting back on entertainment, the decline occurred after the valuation date. Consequently, the Tribunal is not persuaded that it is something it needs to have regard to in this decision.

10.4 The parties gave details on the various public houses in Cootehill which was helpful to the Tribunal and gave an overview of the nature of the pub business in the town. The lack of market rental information was noted as both parties had little or no suitable information with regard to actual rents achieved in the town. Information in relation to the floor areas of comparable licensed premises was not verified.

10.5 The Tribunal notes the two rental comparisons presented by the Appellant and the five presented by the Respondent. While the two presented by the Appellant were, in contrast to those of the Respondent, located in the town of Cootehill, they were of limited benefit to the Tribunal in assessing the applicable market rent. Beyond the headline rent, information in regard to both leases were scant and, as Mr Ryan pointed out, there was no substantial verifiable information available as to whether the leases were arms-length transactions, whether they contained break-clauses or rent-free periods, and so on. In the light of this, as well as the rental levels set out in the Respondent's five somewhat more detailed rental comparisons – which included, in some cases, figures for the net effective rents as well as the headline rents – the Tribunal would have reservations about taking the Tir na nOg rent of €5,400 per annum as representative of general values for public house premises in the town. The Appellant's second rental comparison, the Jaiphal Indian



bar, restaurant and takeaway obviously hosts a rather different business to that which is conducted in the subject property and, as Mr Halpin notes, the rent of €20,000 per annum is likely a reflection of the particular business being carried out in that premises.

10.6 Having regard to the Respondent's Key Rental Transactions and comparing the rents with the NAVs in each particular case, the Tribunal notes that the NAVs set by the Commissioner for the various properties, arrived at using the Commissioner's FMT method, are generally commensurable with the rent's payable. In only one case, the Respondent's KRT 4, is there is a substantial difference between the NER and the NAV, which difference the Respondent accounts for by reference to goodwill attached to the property.

10.7 The Appellant has no issue with the FMT method of calculation but rather - and this would appear to be the main plank of his argument - is of the view that the Commissioner has in the context of this appeal taken insufficient account of the goodwill attaching to the Appellant's business. This goodwill says Mr Halpin derives firstly from the Appellant's and his predecessors' long occupation of the property and, secondly, the property's association with the Appellant's other business, that of a funeral director.

10.8 Before turning to the question of goodwill, whether it applies and, if it does, what, if any, reduction in the NAV should be given to take account of it, the Tribunal has examined the tone-of-the-list comparisons.

10.9 In its efforts to compare properties like for like, the Tribunal is hampered somewhat by the lack of information about the floor areas of the comparison properties. The Tribunal notes that Mr Halpin has provided estimates from the sources available to him but, in the absence of actual floor measurements, these cannot be absolutely relied upon. It is accepted that the method to be applied to the subject property (as with all public house properties) is the FMT method and thus, in that context - in terms of arriving at a correct value for any particular property - other factors, such as size, do not come into account. However, in order to assess equity and uniformity of value between properties in the list and whether or to what extent the proprietor of the subject property has brought to the property something unique or exceptional that has increased trading

levels above what a property of that size might otherwise be expected to achieve, it would have been helpful to have more solid information about the sizes of the comparable properties.

10.10 The Appellant presented twelve NAV comparisons, the Respondent, three.

Appellant's 12 NAV:

1. Tir na nOg, 21 Market Street, Cootehill.
2. Jaiphal Indian Cuisine, 49 Market Street, Cootehill
3. The Oakland Arms, 22 Bridge Street, Cootehill
4. Smith, 11 Bridge Street, Cootehill
5. Bannon's, 60-62 Market Street, Cootehill
6. The Bellamont Arms, 43-45 Market Street, Cootehill
7. Hannigan's, 38 Market Street, Cootehill
8. Donohue, 38-40 Market Street, Cootehill
9. Greenan's Bar & Lounge, 7 Market Street, Cootehill
10. Kenny Connolly, 15 Bridge Street, Cootehill
11. Dickey's Bar, 13 Bridge Street, Cootehill
12. The West End, Bridge Street, Cootehill

Respondent's NAV:

1. The Bellamont Arms, 43-45 Market Street, Cootehill
2. Hannigan's, 38 Market Street, Cootehill
3. Donohue, 38-40 Market Street, Cootehill

10.11 All three of the Respondent's comparisons – Hannigan's, the Bellamont Arms, and Donohue's – were included in the Appellant's twelve and the Tribunal regards two of these, Hannigan's and the Bellamont Arms as the best comparisons mainly because, of all the comparables, they are the ones located closest to the subject property, within 25 metres and 40 metres, respectively, according to the Appellant's evidence. It is noted that in his survey of the Appellant's submissions, Mr Ryan agreed these two were good comparisons. Donohue's, 60 metres from the subject property and, like Hannigan's, on the same side of the street as the subject, is also taken into account.

10.12 On the basis of the evidence presented, including the exterior photographs submitted in the two précis of evidence, the Bellamont Arms appears to be of similar quality to the subject property, if a touch the worse for wear, as a result, presumably, of its being closed for the last few years. Mr Halpin estimates the Bellamont Arms to be larger than the subject property and certainly, it is clear from the photographs that this property has significantly more street frontage than the subject. Hannigan's, of all the comparables the one located closest to the subject property, likewise appears from the photographs to have a greater span of street frontage than the subject, although that frontage is interrupted by an archway between what were once, by the looks of it, two separate premises and, moreover, it is unclear as to the internal division between bar and retail. Mr Halpin's estimate puts the trading area of what he calls this "older style bar/grocery" at 65m<sup>2</sup>, about three-quarters the size of the subject and Mr Ryan considers, "based on exterior observation", that this property is slightly inferior to the subject.

10.13 Donohue's, on the basis of the external photographic evidence, is another old-style pub, with much smaller frontage than the subject. Mr Halpin puts the area at 35m<sup>2</sup>.

10.14 In the case of all three of these properties, representations were received and following same, the FMT was assessed at €200,000 resulting in a valuation of €14,000 when the 7% rate was applied. None of the three assessments were appealed.

10.15 The FMT of the subject property was assessed at €240,000 and, obviously, the valuation derived from this assessment has been appealed. If the FMT assessment was based, as it should be, primarily on the levels of turnover disclosed by the accounts then it would appear that the subject property is trading at a somewhat higher level than that of its three closest neighbours. This difference can be accounted for in a number of ways based on the evidence presented: the subject property has advantages over Hannigan's and Donohue's in that – while acknowledging the limitations of the floor area evidence – it is bigger than those two premises. Moreover, compared to these two properties, and to some extent the Bellamont Arms, the subject property has about it a more up-to-date, contemporary appeal. On the other hand, the subject property appears to be smaller than the Bellamont Arms, and certainly has much less street frontage. Notwithstanding this

latter apparent advantage, the Bellamont Arms is no longer doing business while the subject trades successfully.

10.16 Mr Halpin urges the Tribunal to take account of the unique circumstances of the Appellant's business, the fact the Appellant is a second-generation owner-occupier who runs a funeral business nearby which fact, he believes, contributes something to the turnover above and beyond any other factor. Mr Ryan makes the point that "every business has a story" and, while he states that the valuation was reduced at representation stage, he does not say what level of reduction, if any, was attributable to goodwill.

10.17 The Tribunal is of the view that, in the circumstances, some account at least must be taken of the goodwill element. The fact that the publican and the undertaker in a small country town are one and the same person and that his two businesses are located close together and connected by a pedestrian laneway, is likely to be of some advantage to the publican's licenced trade in terms of attracting customers from the funeral home to the pub. That advantage will be small but not negligible and it should be accounted for because it is exceptional; it is an advantage brought to the property by the Appellant's personal circumstances and not something likely to be replicated by the hypothetical tenant. If Mr Ryan took account of goodwill, it is the Tribunal's view that he took insufficient account of it. The Tribunal is of the view that the unique circumstances of the Appellant's co-located complementary business are best taken account of by a reduction of €5,000 in the FMT, making a revised FMT of €235,000.

10.18 In making this assessment the Tribunal has had regard to the NAV of €14,100 which will be derived from this FMT and taken account of where that NAV will place the subject property in the valuation list having regard to equity and uniformity between properties in the list and paying particular attention to the NAVs of the subject property's closest neighbours, The Bellamont Arms, Hannigan's and Donohue's, all of which have been entered in the list at €14,000. The Tribunal is of the view it is appropriate the subject property, which is on balance – having regard to the relative attributes of the various premises – slightly superior to its neighbours, should be entered in the list at a level slightly above them.

**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 **€14,100**. The calculations as follows;

FMT	€ 235,000 @ 7%		€ 16,450
FMT	€ 235,000 @ 1%	less	€ 2,350 (allowance for entertainment)
Total			€ 14,100

Say **€ 14,100**

And the Tribunal so determines.