

Appeal No: VA19/5/0380

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

AISLING MALONE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1989345 Hospitality 19/11 Church Street, Kingscourt, County Cavan

B E F O R E

Carol O'Farrell - B.L.

Liam Daly - MSCSI, MRICS

Patricia O'Connor - Solicitor

Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16th DAY OF JUNE 2022**

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th October 2019 the Appellant appealed against the net annual value '(the NAV)' of the above relevant Property determined by the Respondent in the sum of €33,700.
- 1.2 The grounds of appeal as briefly summarised below contend that the Respondent's determination incorrect because it does not accord with that required to be achieved by section 19(5) of the Valuation Act 2001 as amended ('the Act') because:
- i. The NAV is not in line with its potential rental value as illustrated by the tone of the list for comparable property.
 - ii. The Property is located at the poorer end of Main Street, away from general footfall.
 - iii. The property has to serve free finger food to maintain trade. There is a level of exceptional goodwill and acumen here which should not be taxed.
 - iv. The off sales turnover is contracting and cannot compete with SuperValu.
 - v. The FMT of the two income streams would not exceed €250,000 per annum. Since the re-opening of Murtaghs, pub business has been dramatically affected since October 2018 by the enforcement of new drink driving legislation.

- vi. There is 30% vacancy among commercial properties on Main Street and this trend is deepening as owner-occupiers cease trading or retire. This is before the negative effects of Brexit have even become apparent.

1.3 The amount the Appellant considered ought to have been determined as the valuation of the Property was revised from €17,500 as stated in the Notice of Appeal to €16,450 at the hearing

2. REVALUATION HISTORY

2.1 On the 15th of March 2019 a copy valuation certificate proposing a valuation of €33,700 was issued to the Appellant under section 24(1) of the Act in respect of the Property. On the 2nd of May 2019 representations were made on behalf of the Appellant to the valuation manager seeking a reducing in the assessment. Those representations proved unsuccessful as the final valuation certificate issued on the 17th day of September 2019 stated an unchanged valuation of €33,700.

2.2 The date by reference to which the value of the Property, was determined is the 15th of September 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing, held remotely, on the 18th of February 2022. The Appellant was represented by Mr. Eamonn Halpin M.Sc. (Real Estate) Ba. (Mod) of Eamonn Halpin & Co. Ltd. and the Respondent by Mr. David Colhoun MSc BA HDip Business of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties filed and exchanged their respective reports and précis of evidence prior to the commencement of the hearing and 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. RELEVANT STATUTORY PROVISIONS

4.1 The NAV of the Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

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

Section 48(3) of the Act provides for the factors to be considered 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 average 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.”

5. ISSUES

5.1 The dispute related to the fair maintainable trade ('FMT') attributed to the Property by the Respondent and the resulting valuation. The Appellant contended that the FMT adopted by the Respondent is excessive and adopting the same percentage split (i.e., 7% for drink sales and 3% for off-licence sales) proposed that the NAV be reduced to €16,450 based on a drinks FMT of €135,000 and an off-licence FMT of €250,000.

6. FACTS

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

6.2 The Property is a ground floor licenced premises and off-licence in a two-storey stone faced building situate on Church Street, approximately 40m south of the junction with Hall Rd (R164) and Station Rd (R165), in Kingscourt, County Cavan.

6.3 The Appellant is the occupier and the Property trades as 'Malone's'. The Property is held freehold. The accommodation includes a bar, bar lounge, lounge pool room, a substantial smoking area at the rear and a separate retail unit in use as an off-licence and is in good condition throughout.

6.4 The trading areas of the Property are agreed as set out in the Table below.

Bar	14.85 m ²
Bar/Lounge	74.50 m ²
Lounge	17.48 m ²
Lounge/Pool Room	23.50 m ²
Off Licence	55.97 m ²
Total	186.30 m ²

6.5 Main Street/Church Street are the main trading streets in Kingscourt, Church Street being a continuation of Main Street. There are seven other public houses situated on Main Street and one other on Church Street all within 300 metres of the Property and all of which are accessible to the same customer base. Kingscourt has a population of 2,499 per the 2016 census. Only two of the public houses on Main Street are occupied by tenants, namely Murtaghs and The Wishing Well. All nine pubs submitted trading information to the Respondent pursuant to requests made under section 45 of the Act

6.6 The Respondent devised a valuation scheme for all 199 licensed premises in the rating authority area of County Cavan. Pursuant to that scheme licenced premise were valued at between 6% and 8% of estimated Fair Maintainable Trade (FMT), 6% was applied to premises with an FMT below €100,000, 7% applied to premises situated outside Cavan

Town having an FMT above €100,000 or a gross profit below 56% and 8% applied to premises having a gross profit above 56%.

- 6.7 The rental percentage applied to drink on-sales is agreed at 7% and the rental percentage to be applied to off-licence sales is agreed at 3%.
- 6.8 The Property is the only public house in the Kingscourt with a retail off-licence. The FMT attributed to the Property at the valuation date by the Respondent is derived from trading data for the financial year end in 2017.
- 6.9 By reference to FMT figures provided by the Respondent the four most profitable licensed premises in the centre of Kingscourt are the subject Property, Willow's, The Wishing Well and Murtaghs.

7. APPELLANT'S CASE

- 7.1 Mr Halpin based his valuation from his knowledge of the Property, its location, information provided to him by the Appellant and by some local publicans.
- 7.2 The turnover figures submitted by Mr Halpin in respect of the Property are appended to this Judgment.
- 7.3 Mr Halpin described the Property as a second generation family run pub. He said that the trade was driven by two main factors, the longstanding goodwill of the operator and the business acumen and arduous work of the operator who works 80 hours per week.
- 7.4 He was informed by several publicans in Kingscourt that Murtaghs is the best pub in Kingscourt. Murtaghs was let for €44,200 per annum on a 4-year 9-month lease from 24th December 2017 but has been assessed by the Respondent at €17,500 NAV. He said the Appellant is seeking to have Malone's valued in line with the approach taken to Murtagh's. Mr Halpin said that if that were done, the NAV of the subject could not possibly exceed €17,500.
- 7.5 Mr Halpin did not accept that €395,000 (drink on-sales) and €335,000 (off-sales) adopted by the Respondent represented FMT. He characterised the Respondent's approach as only paying regard to the occupier's accounts for a period of years and equating turnover and FMT as a taxation of the business. He said that while the Respondent was in receipt of the trading information from all the licensed premises in Kingscourt, neither the Appellant nor the Tribunal was privy to it. He said that even though the Respondent requested accounts to be furnished for several years, FMT is generally based on the turnover for the year immediately prior to the valuation date. In estimating the NAV of the Property, he said regard had to be given to other information which would inform FMT such as the turnovers of comparable premises to establish whether a premises is over performing or under- performing as the Act requires the NAV to be estimated by reference to what the hypothetical tenant might be able to achieve, not what the actual occupier is achieving. Mr Halpin stated that the Appellant is an exceptional operator who is a second-generation

publican who has worked behind the bar her whole adult life since the late 1980s and manages both the pub and the off-licence for up to 80 hours a week to maintain her personalised trade. He said that the hypothetical tenant would simply not do that and as the Appellant's actual turnover is far greater than that which would be expected of the reasonably competent hypothetical tenant, the FMT should be adjusted downwards to reflect this difference when valuing the Property.

7.6 Mr Halpin provided the details in the Table below of the licensed premises on Main Street and Church Street. The estimated FMT of those premises (none of which were challenged) are set out in Table 1 of the Appendix (N/A public).

Licensed Premises	List Valuation	Estimated Trading Area m ²	Distance from Property
Murtaghs	€17,500	230.00	110 metres
The Court Inn	€8,050	97.75	130 metres
Clarke's Corner Bar	€8,050	70.00	75 metres
M & F's Bar	€6,600	50.00	140 metres
Gartlan's Bar	€8,400	152.80	300 metres
Paddy's Bar	€9,450	198.00	40 metres
The Wishing Well	€32,600*	211.41	200 metres
Willow's	€26,600*	170.75	95

*under appeal

7.7 He referenced a few Tribunal decisions on the subject of the relationship between turnover and FMT (VA17/5/145, VA17/5/078 and VA17/5/666). He specifically drew attention to paragraph 10.2 of the Judgment in VA17/5/666 PJ Lanigan v Commissioner of Valuation (19 October 2020) which states:

10.2 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 affect 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."

7.8 In terms of the off-licence sales, Mr Halpin said it was increasingly difficult at the valuation date to make retail off-licences sales due to competition from the major supermarket. The Property's off-sales were contracting by reason of the presence of SuperValu which is

about 500m from the Property. He referred to the Tribunal's decision in *VA17/5/248 Joe Brennan v Commissioner of Valuation (10 January 2019)* where at paragraph 9.5 the Tribunal was persuaded on the facts of that case that the proprietor's business acumen was at play in the very substantial (and disproportionate vis á vis the level of on sales) off-licence turnover and on that basis made a one third adjustment to that turnover.

- 7.9 Mr Halpin pointed out that valuers appearing before the Tribunal on behalf of the Respondent do not provide any information regarding the sizes of licenced premises. He clarified that the area measurements he had provided are estimated based on physical inspection (with the aid of a measuring device), visual inspection (without the aid of a measuring device), planning records, OSI and land registry records, letting/sale brochures and as disclosed in records held in the Valuation Office.
- 7.10 The Court Inn was remodelled in 2017 and was described by Mr Halpin as a "standard" pub in the town and though the trading area of the subject is almost twice as large, he considered it unlikely that the rental value of the Property would exceed double that of this comparison. Clarke's Corner Bar, at the junction of Main Street and Kells Road, was described as much smaller than the subject and Mr Halpin considered that the Property's rental value would not be quadruple that of this comparison. Based just on a comparison with Clarke's Corner Bar, the NAV should be no more than €20,000. M & F's Bar was accepted as the smallest public house. He said it was assessed by the Respondent as the least valuable pub in Kingscourt. Gartlan's Bar is of comparable size to the Property with a small kitchen, but like the Property is too small to provide a full food service. Mr Halpin described Paddy's Bar, next door to the subject, as an extensive pub premises larger than the appeal Property even if the off-licence area were to be included. He said it was hard to understand how the NAV of the Property was assessed at €33,700 when that of the pub next door was assessed at just €9,450. He said that the valuation of The Wishing Well, which unlike the subject has a significant food trade, is under appeal as is the that of the Willows.
- 7.11 Mr Halpin stated that the Respondent appears to have been '*blindsided*' by the turnover information provided by the Appellant and paid no heed to the objective facts that the occupier is a second generation publican who works long hours, that the Property is the only licensed premises in Kingscourt with a separate retail off-licence and that the licenced premises reputed to be 'the best pub in town' with a commercial kitchen is let at passing rent much higher than the valuation of any other licence premises and which has been assessed at €17,500 NAV with no addition for food. He contended that it is not correct to simply convert turnover to FMT without taking account of goodwill and other relevant factors. He pointed out that the Property has the highest valuation of the 'drink only' premises and had been valued at three times the average FMT of the six other drink premises. He said The Wishing Well was under appeal to the Tribunal and in any event, unlike the subject, had a significant food income stream. He pointed out that Murtaghs has an extensive commercial kitchen (larger than the subject's) and that food sales had not been assessed. More significantly, the annual rent of €44,200 of that premises significantly exceeds the valuation determined by the Respondent. He considered Murtagh's provided an example of a public house to which significant goodwill is attached given the difference between the €17,500 NAV determined by the

Respondent and its passing rent. In his view Malones could not possibly be let at a rent exceeding €16,450 p.a. For the purpose of his valuation, he took the FMT of Paddy's Bar on the basis that he could see no reason why drinks sales by a competent hypothetical tenant would be any higher than those achieved in the public house next door. He valued the Property at €16,450 as follows:

FMT (drink on-sales) €135,000 @ 7% = €9,450

FMT (off-licence sales) €250,000 @ 3% = €7,500

- 7.12 Under cross-examination Mr Halpin accepted that many licensed premises in County Cavan are owner occupied and that Murtaghs and The Wishing Well were the only two licensed premises in Kingscourt held under leases. He accepted that Supervalue is 550 metres from the Property and accepting that the FMT adopted by the Respondent for off-licence sales was for the most part lower than the turnover achieved between 2016 and 2019, he pointed out that the off-licence turnover was in constant decline.

8. RESPONDENT'S CASE

- 8.1 Mr Colhoun provided a summary of his case, his response to the Appellant's grounds of appeal, the Property's valuation history, a location map, and a floor plan. He gave evidence that the NAV of the Property had been established by reference to actual drinks and food turnover figures supplied by the Appellant. The NAV has been calculated at 7% of the estimated FMT for drink sales in line with comparable properties in the immediate vicinity. He considered the actual drinks and off-licence turnover to be representative of FMT and in his view there was nothing to suggest that the figure required any adjustment as the assessment looked reasonable when considered with those of comparable properties. Accordingly, he contended that the certificate value which had been arrived at by adopting 7% of FMT in respect of drink sales and 3% in respect of off-licence sales was correct.

- 8.2 He stated that the nine public houses on Main Street fell into three categories:

A: Premium Pubs with high Drinks Trade/No or Low Turnover Food –

- Willow's
- Malone's
- Murtaghs

B: Premium Pub with Food offering

- The Wishing Well

C. All remaining pubs

- The Court Inn
- Clarke's Corner Bar
- Gartlan's
- Paddy's Bar
- M & F's Bar

- 8.3 Mr Colhoun said Mr Halpin's estimated trade areas were of limited use, and reliance on areas as a basis of valuation or for comparison contradicted his analysis of the trading information provided by all pubs in Kingscourt.
- 8.4 Mr Colhoun made the following observations about the Appellant's comparisons. While Murtaghs is slightly larger than the subject, he said its drinks trade is substantially less and consistently so, and that the internal fit out, TV facilities, smoking areas are also inferior. The Court Inn is a quiet and significantly smaller public house 120 metres north of the subject with less than a third of the drinks trade of the subject. It is also situated further from the junction of Main Street and Hall Road with less visibility from that junction than the subject. Clarke's Corner Bar is in a similar location to the subject being just 65 metres north on the same side of street but is not as attractive or as large which is reflected in a substantially lower drinks trade. He said that any benefit gained from its slightly better location at the junction of Main Street and Hall Road is more than outweighed by its inferior size, fit out, smoking and TV/Entertainment facilities. He said that unlike the subject Property, Clarke's Corner Bar does not offer food. M & F's Bar is located 140 metres north of the subject further away from the Main Street/Hall Road junction and is a substantially smaller basic pub, which is reflected in the lower drinks trade and unlike the subject does not offer food. Gartlan's is a thatched period property, and a listed building located with technological and alteration limitations located some 300 metres north of the subject at the quieter end of Main Street. Despite recent refurbishment works the trading area remains substantially smaller than the subject. He questioned Mr Halpin's description of the rear area of Gartlan's as a "function room" given its size and use. He said it is a 46 sq. m. extension of the bar seating area. He said the main building comprises a series of small rooms with thick structural walls that restrict capacity.
- 8.5 Mr Colhoun identified five Key Rental Transactions ('KRT').
- KRT 1 is a small public house (45.27 sq. m.) situated in a small rural town equivalent in size and population to Kingscourt. The lease was agreed on the 20 January 2017 for a term of 3 years at an annual rent of €11,700. The net effective rent at the valuation date was €10,700. approximately 8 months prior to the valuation date.
- KRT 2 is situated on Main Street, Kingscourt. The Lease was agreed on the 24 December 2017 for a term of 4 years and 9 months at an annual rent of €44,200. The net effective rent at the valuation date was €42,445.26.
- KRT 3 is situated on Main Street, Kingscourt. The Lease was agreed on the 1 April 2017 for a term of 5 years at an annual rent of €36,400. The net effective rent at the valuation date was € €35,672.
- KRT 4 is a public house in a small rural town equivalent in size and population to Kingscourt. The Lease was agreed on the 10th of September 2018 for a term of 4 years at an annual rent of €12,000. The net effective rent at the valuation date was €12,000.
- KRT 5 is a public house situated in a small rural town equivalent in size and population to Kingscourt. The Lease was agreed on the 1st of March 2019 for a term of 4 years and 9 months at an annual rent of €18,200.

8.6 Mr Colhoun relied upon the following three comparable properties:

Licensed Premises	Scheme	NAV	Total
Willows	0,07% (drink)	€26,600	€26,600
The Court Inn	0,07% (drink)	€8,050	€8,050
The Wishing Well	0.07% (drink) 0.05% (food)	€10,150 €22,500	€32,600

The FMT of the above properties are set out in Table 2 of the Appendix (N/A public).

8.7 Mr Colhoun said that the Willow's is similar to the subject in terms of drink trade and fit out. He described The Court Inn as a quiet pub with less than a third of the drink trade enjoyed by subject and, unlike the subject, does not offer food. He pointed out that it is significantly smaller than the subject and is further from the junction of Main Street and Hall Road. The Wishing Well, he said, is also similar in terms of size and fit out but has a smaller drink trade than the subject as the primary driver of the trade of this premises is food as opposed to drink.

8.8 He said that the other public houses on Main Street are to varying degrees, primarily of inferior quality being akin to traditional pubs and based on his analysis of their trading figures he said they were not comparable to the Property. Mr Colhoun said that the Appellant had not provided any evidence to establish that the occupier displays exceptional business acumen. He said the KRTs and his three comparables highlight the emerging tone of the list which support the valuation of €33,700. The FMT adopted by the Respondent reflected the sustained trade in the Property and its relative trading position in contrast with other pubs in Kingscourt. He acknowledged that Willow's and The Wishing Well are under appeal but considered that this fact did not exclude them from comparative analysis based on trading information provided.

9. FINDINGS AND CONCLUSIONS

9.1 The long-established method for valuing public houses involves determining the FMT that the premises could achieve at the valuation date in the hands of the hypothetical tenant who is assumed to be competent and willing to take the tenancy from year to year. Broadly speaking, under this valuation method the valuer ascertains the FMT of the drinks trade, the FMT of food trade (if any) and the FMT of any other income stream and then decides the percentage of FMT that might reasonably be expected to be the rent that would be agreed by the hypothetical landlord and tenant.

9.2 On this appeal, the rental percentage (7%) applied to the FMT of the Property is not disputed. The size or capacity of a premises is not a determining factor as there is no direct proportional relationship between the floor area and the turnover of a licensed premises. Nonetheless location, floor area, fittings and fixtures, facilities and ambience are all factors that contribute to the turnover of a public house.

9.3 The FMT should represent the annual trade considered to be maintainable at the valuation date having regard to the location and physical characteristic of the premises on the assumption that the business is carried out by a reasonably competent publican. The hypothetical tenant is assumed to be a reasonably competent publican aware of the actual trade in the Property, which is the starting point of the valuation. When estimating the rental bid of the hypothetical tenant a valuer should disregard any impact on turnover that is attributed solely to the personal skill, reputation and expertise of the existing operator.

9.4 In *Watney Mann Ltd v Frederick George Langley* (1963) 3 All ER 967 Mr Justice Thompson stated that the hypothetical tenant would

"Endeavour to estimate what trade could reasonably be expected to be done by the ordinary tenant if he were the licensee in the particular premises as they now are, in the area in which they are located. While I do not doubt that such a prospective tenant would consider in his mind whether he could make as great or a greater success of the house than his predecessor, the base from which he would ponder on his prospects would, I have no doubt whatever, be the actual trade his predecessor had in fact done."

9.5 Mr Halpin contended that the Appellant traded at a greater volume than the other public houses on Main Street and so this 'excessive' trade fell to be adjusted to the level of trade the hypothetical tenant would achieve, namely an FMT of €135,000. To succeed on the appeal the Appellant has to clearly demonstrate that the list value is patently out of line and inconsistent with the assessments of comparable public houses on Main Street.

9.6 In order to demonstrate that the Property's list value is patently out of line and inconsistent with the assessments of comparable public houses in Kingscourt, Mr Halpin sought to prove that the Appellant was over performing by comparing the actual turnover achieved by the Appellant with the turnover that a reasonably efficient operator would expect to achieve. The trading figures of the Property for the years 2016 to 2019 are set out in the Appendix (N/A public). It is reasonable to assume that the FMT adopted by the Respondent for drink on sales is based on the actual turnover in 2017 as the turnover for year 2015 and 2016 were more than 10% higher than that achieved in 2017. While there were eight public houses on Main Street and Church Street from which to establish the level of trade that a reasonably competent operator might expect to achieve, the most cogent evidence is provided by the actual turnover of premises that are comparable. While FMT figures rather than actual turnover figures were provided by Mr Colhoun in respect of three premises identified by him as comparable (The Court Inn, The Wishing Well and Willow's) and FMT estimates were provided (and not challenged) by Mr Halpin in respect of the remaining five premises, Mr Colhoun did not take issue with Mr Halpin's evidence that FMTs are generally based on the turnover for the financial year end immediately prior to the valuation date.

9.7 Though the eight other pubs are comparable in terms of location and have access to the same customer base those factors alone do not render them directly comparable. There are a range of physical factors that affect the value of public house, and they include

attractiveness of the property, prominence, size, trading style and ambience. The Tribunal accepts that the appeal Property is superior to some of the other public houses on Main Street in terms of its distinct size and style of operation.

- 9.8 Mr Halpin presented an analysis of the eight other public houses in terms of their values in the list. The NAV values of those public houses ranged from €6,600 to €33,700. In relation to the comparisons introduced by Mr Halpin, the Tribunal considers the Property as superior by reason of size, modernity and higher trading level to The Court Inn, Clarke's Corner Bar and M & F's. The Court Inn is a traditional country type drinking establishment and has a much lower drink FMT than the subject. Clarke's Corner Bar despite its prominent corner location at the junction of Main Street and Kells Road as it is smaller less attractive public house with a substantially lower drinks trade. Both valuers accept M & F's Bar to be the smallest public house on Main Street with a low drinks trade and the Tribunal does not consider it comparable to the Property. The Property presents much better than these other premises and as such this comparative evidence is of little assistance other than identifying the lower value public houses in Kingscourt. Gartlan's is a very different building to that of the subject and though a larger property its trade would appear to be consistent with that of The Court Inn, Clarke's Corner Bar and M & F's. The Wishing Well is comparable to the subject in terms of size and modernity but almost 76% of its trade is attributable to food and its drinks receipts are substantially lower than the subject. Paddy's Bar, being the nearest in proximity to the subject, is comparable in terms of size but has an estimated drink FMT that is only marginally above one third of that of the subject which is slightly lower than that of the drink FMT of the Wishing Well premises. The Willows and Murtaghs are broadly comparable to the subject in terms of physical characteristics, but the Willows is under appeal and the FMT of Murtaghs is substantially lower than that of the subject.
- 9.9 For his part, Mr Colhoun gave evidence that premises which are 'similarly circumstanced' are considered comparable. In the Tribunal's view a 'similarly circumstanced' public house is one that shares characteristics such as location, use, size, construction type, ambience, clientele and style of business. For example, it would be inappropriate to estimate FMT for a large new licensed premises by reference to the trade achieved by an older smaller traditional premises. Mr Colhoun's first comparable is Willows, a newly opened premises, which had high drink sales for the 8 month period from May to December 2017. The trading area of Willow's is approximately 25% larger than the trading area of the subject (excluding the off-licence area) but otherwise is broadly comparable to the subject, with similar physical features, and characteristics. This comparison provides context with regard to the Respondent's assessment of the subject but is of limited assistance as it was newly opened, had no historic trading accounts as it had only been trading for six months prior to the valuation date and is, in any event, under appeal to the Tribunal. As stated above, Comparison 2 (The Court Inn) is of little relevance. Mr Colhoun's Comparison 3 (The Wishing Well) has a trading area approximately 20% larger than the subject and is primarily a bistro pub with its drink trade accounting for approximately 34% of its overall turnover, the Tribunal does not consider the Wishing Well to be directly comparable to the subject. While Mr Colhoun sought to distinguish several of the public houses from the subject Property on the basis that they did not have any food trade, no evidence was adduced of any food trade in the

Property and there was no apportionment of the FMT between food and drink which would suggest that even if there was bar food sales, same were below the level of €100,000 and did not fall to be assessed.

- 9.10 When compared with the eight public houses, the Property undoubtedly traded much better than all of the other licensed premises in 2017 excepting perhaps the newly opened Willows. It is reasonable to infer that had the Willows not opened in 2017, the Appellant would have traded as well as or even better than she did in 2015 and 2016. What the Tribunal has to consider is whether the Appellant has clearly demonstrated that the Property's valuation is patently out of line with comparable properties that were valued on disclosed trading information for a number of years prior to the valuation date. As already mentioned, the hypothetical tenant is assumed to be reasonably competent, and the hypothetical parties are assumed to base the agreed rent on the performance which the reasonably competent tenant would be capable of achieving. It follows that the turnover to be considered is not that of the actual occupier but that of a reasonably efficient hypothetical tenant i.e., the FMT.
- 9.11 Having weighed all the evidence in the round, the Tribunal finds that the trading figures achieved by the Appellant in the Property are consistently higher than those achieved by publicans trading in the other public houses, albeit of variable quality, at this location and which are asserted by the parties' valuers to be broadly comparable. In the Tribunal's view these high annual turnovers are not due to the fact that the Property is in a better trading location than the other licensed premises or by reason that its physical attributes are superior to those of its competitors. The Tribunal finds that the Property achieves high turnovers because the Appellant has above average ability and due to her particular skills, expertise, energy, motivation, level of commitment and business acumen performs better than a reasonably efficient operator. Accordingly, the Tribunal finds that the FMT adopted by the Respondent in respect of the Property is out of line with the turnovers achieved in the other established licensed premises as it exceeds that which is to be expected from a reasonably competent operator.
- 9.12 The Tribunal finds that the turnover achieved at the Property reflects that of an exceptional operator and requires to be adjusted. However, the Tribunal is not persuaded by the argument that the FMT of Paddy's Bar represents the drinks sales achievable by a competent hypothetical tenant given that its turnover is only marginally better than the smaller traditional public houses in Kingscourt and accordingly does not accept the substantial FMT adjustment proposed by Mr Halpin. The Tribunal considers that the drink trade FMT adopted by the Respondent in respect of the Property should be reduced by 30%.
- 9.13 The Tribunal was provided with the Appellants turnover figures for off-licence sales for the period 2015 to 2019 (see Appendix (N/A public)). On the whole this trade information demonstrates that sales were on the decline. There was an 18% drop in turnover between 2016 and 2017. Mr Colhoun pointed out that sales improved in 2018 but that was only a 3% improvement and did not return to 2015 or 2016 levels. In 2019, there was a drop of 9% on the 2018 sales. There is no other off-licence business in Kingscourt, and no evidence was adduced in respect of any other off-licence property in the rating authority

area by which the off-licence at the Property could be compared. The newly refurbished Supervalu store that opened in 2016 is its only competitor. In its determination of FMT the Respondent simply rounded down the turnover of the financial year end in 2017 to the nearest thousand. The turnover figures disclosed to the Tribunal show a general downward trend in off-license sales since 2015. The fact that such sales had fallen between 2015 and 2017 by 18% should have been taken into account when forming an opinion as to the appropriate FMT. Consideration has to be given to more than just the actual turnover in 2017 as it must always be borne in mind that what is being valued is the premises and not the business. The Tribunal considers that the FMT figure adopted by the Respondent for off-licence sales should be adjusted to reflect the fluctuations in the yearly level of trading receipts prior to the valuation date which can be reasonably attributed to the competition from the Supervalu premises as turnover performed less well following the redevelopment of that supermarket. The Tribunal concludes that the hypothetical tenant would have anticipated at the valuation date a continued fall off in off-licence turnover at the Property due to the reopening of Supervalu and would have reduce his rental bid. The Tribunal considers that it is reasonable to reduce the off-licence FMT by 9%.

- 9.14 No evidence was adduced by the Appellant upon which the Tribunal could be satisfied that there is an acute oversupply of public houses in Kingscourt or that since the re-opening of Murtaghs, the pub business on Main Street has been dramatically affected. The contention that trade had fallen off since October 2018 due to stricter enforcement of amended drink driving legislation was not pursued at the hearing and rightly so. Furthermore, no evidence was presented to the Tribunal to support the contention that there was a 30% vacancy rate in commercial properties on Main Street in or around the valuation date.

10. DETERMINATION

- 10.1 For the foregoing reasons, the Tribunal allows the appeal in part and reduces the NAV of the Property to €25,700 assessed as follows:

FMT	Drink on-sales (€395,000 less 30%) = €276,500 @ 7%	€19,355
	Less Entertainment Allowance @ 1% = (€2,765)	
FMT	Off Sales (335,000 less 9%) = €304,850 @ 3%	€9,146
		(rounded)

Total NAV €25,736

SAY €25,700