

Appeal No: VA19/5/0480

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

AISHLING McMAHON T/A THE WISHING WELL GASTRO PUB

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1989289 (Local No 27) Main Street, Public House, Main Street, Kingscourt, Co. Cavan

B E F O R E

Carol O'Farrell – B.L.

Chairperson

Orla Coyne - Solicitor

Member

Allen Morgan – FRSCI FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF JULY 2022

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th of October 2019 the Appellant appealed against the net annual value ‘(the NAV)’ of the above relevant Property that was determined by the Respondent in the sum of €32,600.
- 1.2 The grounds of appeal as briefly summarised below contend that the Respondent’s 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:
- 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 let on a five month lease from February 2016 at €800 per week with no external repair or insurance obligations on the tenant.
 - iii. Food accounts for 80% of the Appellant’s trade. The food trade is growing whereas the drinks trade continues to decline. The Appellant is a chef and should not be taxed for her skill and business acumen. The FMT of the food trade should be discounted by 30% in a similar manner to the properties in VA14/5/959 and VA17/5/243.

- iv. There is an acute oversupply of public houses in Kingscourt and since the re-opening of Murtaghs, pub business has been dramatically affected which is compounded since October 2018 by the strict enforcement of new drink driving legislation.
- v. 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 €24,400 at the hearing

2. REVALUATION HISTORY

2.1 On the 15th of March 2019 a copy valuation certificate proposing a valuation of €32,600 was issued to the Appellant under section 24(1) of the Valuation Act 2001 (“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 reduction 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 €32,600.

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 6th of May 2022. The Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) M.R.I.C.S. M.S.C.S.I 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 as amended by section 27 of the Valuation (Amendment) Act

2015 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 food trade FMT adopted by the Respondent is excessive and adopting the same percentage split (i.e., 5%) proposed that the NAV be reduced to €24,400.

6. FACTS

- 6.1 From the evidence adduced by the parties, the Tribunal finds the following facts.
- 6.2 The Property (hereinafter 'The Wishing Well') is a licenced premises in a three storey over basement building situate on Main Street, approximately 130 metres north of the junction with Hall Rd (R164) and Station Rd (R165), in Kingscourt, County Cavan. It is one of nine public houses in the centre of Kingscourt, all located on the Main Street. Kingscourt is the closest town in County Cavan to Dublin and is a commuter/dormitory town to the latter, as well as local market town. There are several large industrial concerns in the immediate vicinity. Kingscourt has a population of 2,499 per the 2016 census.
- 6.3 In August 2018 the Appellant informed the Respondent in response to a section 45 notice for information that she occupies 'The Wishing Well' under a five year lease from April 2017 paying a rent of €36,400 per annum with annual rent reviews.
- 6.4 The Appellant occupies the ground floor and basement of the building and trades under the style and title 'The Wishing Well Gastro Pub. The upper floors are in residential use. The Wishing Well was refurbished and extended in the early 2000's. The interior is modern and fitted out to a high standard. The accommodation includes a rear function/dining room, a kitchen and an overflow bar area/function room located in the smaller basement area. It has an extensive outdoor seating area to the rear, and it is in very good condition throughout.
- 6.5 The internal trading areas are agreed by the parties' respective valuers as set out in the table below.

Bar Ground Floor	96.39 m ²
Restaurant	86.64 m ²
Function Room/Basement Bar	69.97 m ²
Total	253 m ²

- 6.6 Main Street/Church Street are the main trading streets in Kingscourt, Church Street being a continuation of Main Street. There are six other public houses situated on Main Street and two others on Church Street within 300 metres of the Property, all of which are accessible to the same customer base. 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 Valuation Act 2001.
- 6.7 The Respondent devised a valuation scheme for all 199 licensed premises in the rating authority area of County Cavan. Pursuant to that scheme the 'wet trade' of licenced premises was 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%.
- 6.8 The rental percentage applied to drink on-sales FMT is agreed at 7% and the rental percentage applied to food trade is agreed at 5%.
- 6.9 There are no restaurant premises in Kingscourt.
- 6.10 The Wishing Well is the only public house in Kingscourt with a seated dining area and a function room and the only licensed premises in Kingscourt to have its food trade assessed.
- 6.11 The FMT attributed to the drink on-sales and food income streams of The Wishing Well at the valuation date by the Respondent is derived the from trading data for the financial year 2017.
- 6.12 By reference to the FMT figures provided by the Respondent the four most profitable licensed premises in the centre of Kingscourt are The Wishing Well, Malone's, Willow's and Murtaghs.

7. APPELLANT'S CASE

- 7.1 Mr Halpin based his valuation from his knowledge of The Wishing Well and from information provided by the Appellant and some of the local publicans.
- 7.2 He said The Wishing Well is the only licensed premises which had its food trade assessed by the Respondent despite the fact that at least two other pubs have commercial kitchens.
- 7.3 The turnover figures for 2016 and 2017 submitted by Mr Halpin and Mr Colhoun in respect of The Wishing well are set out in Table 1 of the Appendix to this Judgment. He agreed that assessed 'wet trade' FMT is consistent with values applied to other premises on Main Street and that he did not dispute the rental percentage applied or the €145,000 assessed as FMT.

- 7.4 Mr Halpin stated that the ‘dry’ trade FMT adopted by the Respondent is not reasonable given that the drink to food to sales ratio is 1:3.8 which is the reverse of what one would expect of a typical public house. He characterised the Respondent’s view of FMT as mostly “*introspective*” as regard is only had to the publican’s accounts for a period of years and FMT is generally equated to the turnover of the year prior to the valuation date. He described the valuation exercise carried out by the Respondent as an impermissible taxation of the Appellant’s business because the Act requires an estimation of what a competent hypothetical tenant might reasonably achieve, not what the actual occupier is actually achieving. He said no sufficient regard was had to other relevant information which would inform FMT such as the turnover of comparable pubs in order to establish whether over-trading, or indeed, under-trading was occurring. He said the Appellant is a chef and not a publican and her significant personal skills would not be transferrable to the hypothetical tenant. The Appellant originally worked in partnership at The Wishing Well with an experienced publican but when he left the business to open the nearby Willow’s she was faced with the dilemma of either taking on a new lease of the premises or losing her livelihood. As a result, he says the Appellant works up to 80 hours a week to drive trade so that she can stay in business and the food is the mainstay of that business.
- 7.5 Mr Halpin provided the details set out in the Table below of the licensed premises on Main Street and Church Street. The estimated FMT of these premises (none of which were challenged) are set out in Table 2 of the Appendix.

Licensed Premises	List Valuation	Estimated Trading Area m ²	Distance from Property
Murtaghs	€17,500	230.00	200 metres
The Court Inn	€8,050	97.75	65 metres
Clarke’s Corner Bar	€8,050	70.00	120 metres
M & F’s Bar	€6,600	50.00	100 metres
Gartlan’s Bar	€8,400	152.80	110 metres
Paddy’s Bar	€9,450	198.00	210 metres
Malones	€33,700*	177.45	200 metres
Willow’s	€26,600*	170.75	90 metres

*denotes under appeal

- 7.6 The Court Inn was remodelled in 2017 and is on the same side of the street as the subject. It was described by Mr Halpin as a “standard” pub in the town approximately half the size of the subject. He said Clarke’s Corner Bar has a prime corner location at the junction of Main Street and Kells Road. Mr Halpin considered this premises as setting the base value for the standard pubs in Kingscourt. He observed that M & F’s Bar is the smallest public house and was valued by the Respondent as the least valuable pub in Kingscourt. Gartlan’s Bar which is famous and is a character pub favoured by musicians. It is of comparable size to the Property with a small kitchen that is too small to provide a full food service. Mr Halpin described Paddy’s Bar as an extensive pub premises with a turnover only slightly better than the significantly smaller pubs in the town. Murtaghs is reputed to be the best pub in Kingscourt with a passing rent of €44,200 per annum. It has a larger commercial kitchen than the subject and its NAV has been assessed at €17,500 NAV based solely on

drink sales. For the sake of completeness, Mr Halpin mentioned Malone's and Willow's even though neither were being relied upon as comparables as both were under appeal. He said Willows is owned since March 2017 by the publican who previously operated the Wishing Well alongside the Appellant and Malones was recently modernised and is the only licensed premises with an attached off-licence.

- 7.7 Mr Halpin relied upon a number of Tribunal decisions which addressed the issue of the relationship between turnover and FMT (VA17/5/145, VA17/5/078 and VA17/5/666) and specifically drew attention our attention to paragraph 10.2 of the Judgment in VA17/5/666 PJ Lanigan v Commissioner of Valuation (19 October 2020) which states:

“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 He also referred to a number of decisions which specifically dealt with publicans with exceptionally good food trade such as VA17/5/118, VA17/5/243 and VA17/5/579.

“The Tribunal has difficulty in accepting the Respondent's submission that if the Appellant had not provided Financial Accounts, the Respondent would have come to the same conclusion as to the volume of food sales at this location. This is borne out by an exceptionally high drink to food ratio, a ratio that is significantly higher than any of the examples provided by either the Appellant or the Respondent. The Tribunal therefore believes the Respondent has given undue weight to the Financial Accounts provided by the Appellant and that the NAV needs to be adjusted to reflect the level of business acumen attributable to the present operator, a level which would not necessarily be reflected by a hypothetical tenant leasing the subject property.”

- 7.9 Mr Halpin considered that the FMT adopted by the Respondent for food sales should be adjusted by 30% to reflect the exceptional skills of the Appellant. He valued the Property at €24,400 as follows:

Agreed FMT (drink on-sales)	€10,150
FMT (food sales less €100,000 and reduced by 30%) €285, 000 @ 5%	€14,250

- 7.10 When it was put to Mr Halpin under cross-examination that The Wishing Well and not Murtagh's is the largest pub in Kingscourt, he replied that The Wishing Well is one third

pub/bar and two thirds restaurant and that the high value part of the property is not to the front but to the rear. He had difficulty accepting the passing rent in term of NAV as the property had not been let in the open market.

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 and that the Wishing Well had been correctly valued by adopting 7% of FMT in respect of drink sales and 5% in respect of food sales. The FMT figures adopted in respect of the Property and NAV computation are set out in Table 3 of the Appendix.

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 He said all nine pubs in Kingscourt submitted trading information in the revaluation process which in conjunction with overall tone and market analysis provided a solid basis for the estimation of FMT. The Wishing Well, Malone's and Willow's are the three busiest pubs in the context of turnover. While all three premises had been appealed to the Tribunal, Mr Colhoun said the trading information provided in respect of those premises was nonetheless relevant in the context of the tone of the list and the comparative analysis.

8.4 He clarified that The Wishing Well was the only licensed premises in Kingscourt with a function room and the only one assessed for food because the 'dry' receipts were in excess of €100,000 per annum. Food trade below that amount is not assessed. He said there are no restaurants in Kingscourt and so The Wishing Well is the only venue offering restaurant style dining. Mr Colhoun commented that the internal layout of The Wishing Well is ideally suited to a large food trade, with two separate bar areas to front and a large restaurant at rear. He said most of the trading area is dedicated to the food side of the business and in his view the hypothetical tenant would reasonably expect to derive a

significant portion of turnover from food sales. He said the basement function room offers the potential for larger dinner gatherings, small weddings and similar events. He said The Wishing Well is supremely suited for use as a “gastro-pub” or pub with adjoining dedicated restaurant.

8.5 The trading information provided to the Respondent confirmed that The Wishing Well has the second highest turnover of the nine licensed premises. Mr Colhoun said the passing rent of the property closely aligns with the NAV assessed by the Respondent. The rent payable in respect of the second year and subsequent years is in fact higher than the assessed NAV.

8.6 Mr Colhoun made the following observations about the Appellant’s comparisons. Murtaghs is 90 metres from The Wishing Well on the opposite side of the street. While it is of similar size, its drinks trade is significantly greater. This premises has a commercial kitchen, but it is unused for more than a decade and needs refurbishment and new equipment. The internal fit out is of lesser quality than that of The Wishing Well and the latter’s total turnover is approximately 2.5 times that of Murtagh’s. He considered the passing of this premises to be an outlier.

The Court Inn is a smaller premises situated 70 metres from The Wishing Well on the same side of the street. Unlike the Wishing Well it does not offer food as it does not have kitchen facilities. While it is a good pub, The Wishing Well achieved a drinks trade comfortably in excess of The Court Inn.

Clarke’s Corner Bar is located 120 metres from the Wishing Well on the opposite side of the street. It is a very small basic pub evidenced by its lower drinks trade. Unlike The Wishing Well it has no food offering. He considered this pub to be vastly inferior in almost every respect in comparison to The Wishing Well.

M & F’s Bar is located 50 metres from The Wishing Well and is a substantially smaller basic pub, which is reflected in its much lower drinks trade. It does not offer food.

Gartlan’s is a thatched period property. It is a listed building subject to the physical and structural constraints that characterise this type of property and is located some 100m north of The Wishing Well at the quieter end of Main Street. Despite recent refurbishment works its trading area is substantially smaller. He said the main building comprises of a series of small rooms with thick structural walls that limit capacity. It has a lower drinks trade than The Wishing Well.

Paddy’s Bar is located 215 metres from The Wishing Well on the opposite side of street. At the valuation date, it had a drinks trade which was slightly below that of The Wishing Well. It does not have a kitchen. It is currently vacant and to let.

Willow’s is located 11 metres from the Wishing Well on the same side of the street and is run by the Appellant’s former business partner. Food sales in this premises were not valued even though it has a small kitchen. Its drinks trade is considerably higher; however, its total turnover is approximately half that of The Wishing Well. It has

numerous TVs to show sports, a pool room and a substantial outdoor area, all of which help drive higher drink sales but with a smaller kitchen it does not have potential for a substantial food trade.

Malones is located 190 metres from The Wishing Well on the opposite side of the street. It has the highest drinks trade in Kingscourt, as well as a retail unit incorporating and off-licence. It has a high quality internal fit out with multiple TVs, a pool table and a good quality covered outdoor seating area but no commercial kitchen.

8.7 There are discrepancies in the evidence given by the valuers on the distances between The Wishing Well and the other public houses in Kingscourt, but nothing turns on these discrepancies as no one premises could be said to be in a poorer location. He said The Wishing Well is in a category of its own as it is the only pub that was assessed for food trade. Based on its trading information, it had the second highest turnover and the NAV as determined by the Respondent aligns closely with the rent payable under the terms of the lease.

8.8 Mr Colhoun identified five Key Rental Transactions ('KRT') in County Cavan. He acknowledged that each KRT premises was not of the same size or quality as The Wishing Well.

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 The Wishing Well 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.

8.9 Mr Colhoun relied upon the following three comparable properties, the FMTs of which are set out in Table 4 of the Appendix:

Licensed Premises	Scheme	NAV	NAV Total
Malone's	0.07% (drink)	€27,650 less €3,950 Entertainment	
	0.03% (off-licence)	€10,050	€33,700
Willow's	0.07% (drink)	€26,600	€26,600
The Court Inn	0,07% (drink)	€8,050	€8,050

8.10 Under cross-examination Mr Colhoun accepted that the food trade in the Property represents a higher percentage of turnover than the drink trade but was not familiar enough with the internal layout to say whether the majority of the trading area in the Property is set aside for restaurant use. He accepted that none of the other licensed premises are comparable to The Wishing Well in terms of food trade.

9. DETERMINATION

9.1 The onus lies on that Appellant to show that the NAV of the Wishing Well as determined by the Respondent is incorrect.

9.2 The Property is a licensed premises and the approach to valuing licensed premises is the “shortened” method. The Joint Rating Forum Guidance Note – The Receipt and Expenditure Method of Valuation for Non-Domestic Rating (‘Guidance Note’) at paragraph 7.3 states:

“The method is based upon the determination of fair maintainable receipts annual receipts which are able to be derived by occupying the property and conducting the undertaking with the skill and expertise which should reasonably be expected from a hypothetical tenant of those premises.”

9.3 Vacant and to let, the hypothetical tenant is assumed to be aware of the actual trade carried out in the property. If the actual trade is lower than that which could be achieved by the hypothetical tenant, then the valuer should adopt an FMT that is considered appropriate and achievable. Mr Halpin, on this appeal, argued that the Appellant’s management and personal skills are exceptional and that it is appropriate to make an overtrading adjustment because her actual turnover is greater than would be expected from a reasonably efficient operator and should be adjusted downwards to reflect the difference.

9.4 The Guidance Note says that care needs to be taken in the examination of any past accounts to ensure that any special failings or successes are discounted and that when guidance is sought from the receipts of other similar properties care must be taken to ensure that like is compared with like. Paragraph 7.5 of the Guidance Notes goes on to state that:

“Having determined the fair maintainable receipts, the relevant percentage is applied to the receipts to determine the rental value. The amount of this return is generally based upon the rental evidence available, either directly where the evidence relates to properties similar in all respects to the property under consideration, or by interpolating that evidence to allow for any differences.”

The three major factors identified by the Guidance Note in applying evidence derived from properties are: age and type of property, location, and type of trade. Finally, the Guidance Note states that where there is not sufficient evidence of rents to arrive at a reliable proportion of gross receipts to determine the rental value, a full R & E valuation may need to be carried out.

9.5 The valuation scheme adopted by the Respondent was not challenged by the Appellant and so the rental percentage (5%) applied to the food trade FMT of the Property is not in dispute.

9.6 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".

9.7 The best evidence of a reasonably competent operator has as its starting point the last three years' trade accounts of the actual operator. Between 2014 and 2017 the Appellant achieved turnovers in food sales well in excess of €100,000 per annum. In each successive year that turnover increased; food sales rose by 17% in 2015, by 10% in 2016, and by 16.5% in 2017. The food-based spending in the Wishing Well far exceeds that spent on drink and in 2015, 2016 and 2017 substantially outstrips the annual drink on-sales achieved by the other pubs operating in Kingscourt during those years. The Appellant is effectively operating in a captive market in the town with no direct competition, a factor which no doubt contributes significantly to the ability of the Appellant to trade very successfully.

9.8 The Tribunal considers that some of the pubs on Main Street Kingscourt could be said to be broadly comparable to The Wishing Well in terms of location and similar physical features and characteristics, but none has adopted the same business model operated by The Wishing Well. The "offer" in The Wishing Well is quite dissimilar to that of the other pub houses which are more in the nature of traditional wet-trade drinking establishments either serving no food or a limited range of food. When valuing licensed premises by reference to trading potential the valuer needs to compare a property's trading profitability with properties of similar type, similar location and style of operation. Murtaghs, Willow's and Malones are so dissimilar in terms of style of business that their value as comparables are severely limited.

9.9 The difficulty the Tribunal has with Mr Halpin's argument that the passing rent ought to be disregarded is that he did not adduce any rental evidence to support his case that it was not an open market letting or any evidence to show that the new rent being paid in respect of the property is far in excess of that paid when the Appellant operated the premises with her former business partner. The rental evidence adduced by the Respondent in respect of Kingscourt was confined to The Wishing Well and to Murtaghs. The Tribunal places no weight on the rent of £44,200 in respect of Murtaghs and accepts Mr Colhoun's evidence that it is an outlier.

9.10 Furthermore, Mr Halpin proffered no evidence to prove that the Appellant is an operator of exceptional ability as to warrant a 30% reduction of the FMT adopted by the

Respondent for the food trade. There is no doubt but that the Appellant has regularly achieved high turnovers in the property and has established considerable goodwill, but this is not the answer to the question whether the Appellant is an exceptional operator. The issue on this appeal is whether The Wishing Well would be let at a lower rent than €32,600 on the statutory hypothesis. It is to be assumed that that letting takes place in an open market. The open market includes prospective tenants who would recognise the advantages of The Wishing Well and no evidence has been put before the Tribunal to suggest that prospective tenants could not operate the premises just as successfully as the Appellant.

- 9.11 After estimating the NAV of a property by the shortened method, it is necessary to 'stand back and look' in order to consider whether or not the result appears reasonable in comparison with the values of properties having a similar type of trade and fits into the broad range and pattern of values assessed in the locality. The Tribunal cannot say whether the Appellant's high turnover is the product of the personal skills, reputation and expertise of the Appellant in the absence of evidence of comparable properties to show that the Respondent's determination is clearly out of line (not just because The Wishing Well is trading well or has the second highest NAV), and inconsistent with the turnovers achieved in gastro style pubs operating in similar town settings which have been valued on the same 'shortened' method basis following disclosure of full trade information. The Appellant has not adduced any evidence of any other licensed premises in County Cavan with a commercial kitchen assessed for food trade so that that a view could be taken as to what level food sales would be achievable by a competent hypothetical tenant. There is therefore no basis for the Tribunal to make any allowance.
- 9.12 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 or that trade had fallen off since October 2018 due to stricter enforcement of amended drink driving legislation. 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.
- 9.13 In conclusion the Tribunal finds that on the grounds of appeal advanced by the Appellant there is nothing in fact or in law to persuade the Tribunal to the conclusion that the Respondent's determination was wrong. The appeal is disallowed, and the NAV of the Property is confirmed at €32,600.