

**Appeal No: VA19/5/0370**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**The Horse & Hound Ballinaboola Ltd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2168722, Hotel at Local No/ Map Ref: 6A/1, Ballynabola, Old Ross, New Ross,  
County Wexford.

**B E F O R E**

**Barry Smyth - FRICS, FSCSI, MCI Arb**

**Orla Coyne- Solicitor**

**Allen Morgan - FSCSI, FRICS**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 25<sup>th</sup> DAY OF JANUARY, 2023**

**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 €126,500.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *"The subject property is significantly overtrading. The property is a 3\*26 bed hotel in Ballinaboola (native population less than 200 person). The subject property's turn over has been built up by way of goodwill and acumen over the past 30 years. The reality is that the hotel market in general locality is weak and evident by the sale and lettings of equivalent properties. The turnover of the subject property is in retreat, down almost €140,000 in drink alone from 2017- 2018. Drink sales are expected to fall further in 2019 due to the tightening of drink driving legislation in October 2018. As shown the key to the subject properties success is in its food sales. A hotel business which is made up of 65-70% food is very unstable and very susceptible to fluctuation due to the loss of chefs or the loss of clientele. The subject property was developed out of a pub in a piecemeal fashion and is not directly comparable with modern purpose built hotels. It is a roadhouse or Inn and its layout is not efficient. The subject property cannot be superior to Coast Rosslare (PN 2009398), which has been valued by the commissioner at €93,500 NAV."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €81,000.

## **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 indicating a valuation of €160,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €126,500.

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019 stating a valuation of €126,500.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15<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 May, 2022. At the hearing the Appellant was represented by the Mr. Eamonn S. Halpin B.Sc. (Surveying) M.R.I.C.S. M.S.C.S.I. and the Respondent was represented by Mr David O’Brien 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.

The property is situated at Ballinaboola, Old Ross, New Ross, Co. Wexford on the N25 road linking Rosslare with Waterford and Cork, approximately 8 kilometres east of New Ross and 26 kilometres west of Wexford town.

The property comprises a 3 star registered hotel with 26 bedrooms together with lounge, bar, restaurant, and function room.

The agreed floor areas are, gross area 2,526.22 sq. mtrs, excluding domestic; function room 313.38 sq. mtrs, bar 62.80 sq. mtrs, lounge 94.42 sq. mtrs, dining room and linked conservatory 79.44 sq. mtrs.

There are approximately 120 car spaces.

The property is Freehold and is owner occupied.

## **5. ISSUES**

The property has been valued by both parties on the basis of an assessment of the Fair Maintainable Trade and the FMT for bedrooms and room hire is agreed but the FMT for drink sales and for food sales are in dispute.

## **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, on behalf of the Appellant, stated that the Appellant’s case is that the subject property is over trading, down to the goodwill of the occupiers. The subject property has amassed a very substantial food trade through exceptional service over the past 30 years and over 65% of the turnover relates to food which is exceptional in the hotel industry. He acknowledged that the property has the advantage of passing trade, along the N25, but has a very limited local population to draw on. He noted the similarity with the Cedar Lodge Hotel, his comparison number 1, located also on the N25, and comprising a 28 bedroom, 4 star hotel (19 registered bedrooms, 9 unregistered) where the NAV was agreed at €60,000. In his opinion the only apparent advantage of the subject over the Cedar Lodge is a larger function room. On the basis of NAV per bedroom, he noted that the subject was assessed at €4,865 and provided 5 comparisons as follows:

Cedar Lodge, on the basis of 28 bedrooms, €2,143 per bedroom;  
Farmer’s Kitchen, Wexford, 21 bedrooms at €5,161 per bedroom;  
Kennedy Boutique Hotel 16 bedrooms at €3,994 per bedroom;  
Coast Hotel, Rosslare, 32 bedrooms at €2,922 per bedroom;  
Jimmy McGee’s Wexford, 20 bedrooms at €2,810 per bedroom.

He said that to his knowledge there had been no decision of the Tribunal based on exceptional operation of food within an hotel context but that the Tribunal had dealt with the issue on multiple occasions in regard to pubs and referred to the judgement in VA17/5/579, the Johnstown Inn, which noted that the Tribunal 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. He referred to four Tribunal decisions, details of which are in the appendix to this judgement (n/a to public), each providing for a percentage deduction from the proposed FMT, to reach the Tribunal’s decision on FMT, ranging from 25% to 30% x 2, to 50%.

Mr. Halpin provided 5 comparisons of Net Annual Value and the assessment of the trading element on the basis of FMT:

- 1) The Cedar Lodge Hotel, Newbawn, Co. Wexford,
- 2) The Farmer's Kitchen, Rosslare Road, Drinagh Co. Wexford,
- 3) The Kennedy Boutique Hotel, 19 the Quay, New Ross, Co. Wexford,
- 4) The Coast Rosslare Strand Hotel, Strand Road, Rosslare, Co. Wexford and
- 5) Jimmy McGee's Bar and Guesthouse, 18 Lower John Street, Wexford.

The details of these 5 comparisons are set out in the appendix (n/a to public)

Mr. Halpin proposed a NAV of €64,750 calculated as follows:

Drink sales	FMT	€325,000 @ 7%,	€22,750.
Food sales	FMT	€550,000 @ 5%,	€27,500;
Room sales	FMT	€140,000 @ 10%	€14,000
Conference/room hire	FMT	€5,000 @ 10%	€500
Total			€64,750

In conclusion Mr. Halpin noted that, while this is a 26 bedroom hotel, the vast majority of its trade is attributed to its position on the N25. He noted that less than 7% of the trade comes from its rooms and that the Appellants have built up a very substantial goodwill and acumen in food which constitutes over 65% of the business and this has a positive impact on the drink turnover. He urged the Tribunal to adopt the approach that had been applied in pub cases where the food turnover was substantial and to discount the figures to reach a FMT.

In cross examination, he acknowledged that the subject property has the benefit of licences (food and drink), and these allow the hypothetical tenant to generate the trade but stated that he had provided only licenced premises as comparisons. He stated that the actual trade figures are only the best indication of FMT if comparable properties are generating similar FMTs and stressed that it is the property that's being valued and not the trade. He acknowledged the low level of trade for 2016 and '17, in the Cedar Lodge Hotel, in comparison with the actual trade in the subject, and noted that the Cedar Lodge was Vacant and To Let and therefore there had to be estimates of the potential trade and that the hypothetical tenant would ask why the Cedar's figures are so low. Equally the hypothetical tenant would be nervous of maintaining the subject property's turnover which did not stack up when compared with other similar properties. In his opinion the Coast Hotel Rosslare comparison is nearest to the rating hypothesis of the property being vacant and to let. It was not necessarily correct to look only at the trade in the subject property. He accepted that there is no suggestion in the rating hypothesis that the hypothetical tenant is not as efficient as the existing operator but he did not accept that a hypothetical tenant would estimate FMT at the level of turnover in these premises and it was more correct to look at what an average tenant would generate.

He acknowledged that there was traffic calming on the road outside the subject premises but not at the Cedar Court property, yet the Cedar Court property is more prominent and has operated as a hotel for 40 years. In his opinion the Cedar Court Hotel has the same attributes as the subject except for turnover and this would cause the hypothetical tenant to question the ability to maintain the level of turnover. He said he was not disregarding the subject turnover but comparing it with other hotels with similar attributes.

In response to questions from the Tribunal members, Mr. Halpin stated that the subject had originally been valued at €160,000 NAV and the Cedar Lodge at €90,000 NAV, which was a colossal difference. The Cedar Lodge level of trade was not up to expectations and hence the NAV was reduced. The property was for sale at the time of the valuation and its future use is likely to be a nursing home. He further added that in the average pub the food trade and the drink trade matched whereas food trade being double the drink trade would be exceptional.

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

8.1 Mr. O'Brien, on behalf of the Respondent, firstly provided a full R&E assessment of the subject property. He then dealt with the Appellant's evidence and stated that, in his opinion, the Appellant had not provided proof that a hypothetical tenant conducting the undertaking with the skill and expertise expected from a reasonably efficient operator, could not generate revenues similar to those which are currently being generated by the actual occupier. He quoted from the guidance note *The receipts and expenditure method of valuation for non-domestic rating* "that the hypothetical tenant will not be materially different in character from the actual occupier and the nature of the undertaking will be similar."

He stated that the hypothetical tenant would seek information on the trading revenues to date and would consider whether he could make as great or greater success of the subject property when compared with his predecessor and the base would be the actual trade the predecessor achieved. He stated that there is no reason a hypothetical tenant could not sustain similar levels of turnover currently enjoyed by the actual occupier.

He did not accept that the subject property and the Cedar Lodge are equal in all other respects and noted the different number of bedrooms and that the subject property is better located in a traffic calming area.

He stated that the potential to generate the level of revenue will differ from hotel to hotel and that he was not attempting to suggest the revenues are rateable. In his opinion the level of FMT attributed to food service in the subject is not proven to be exceptional when compared with the Appellant's comparisons, particularly comparison number 2. In relation to the Tribunal's decision's in relation to a number of pubs and the reduction of the estimate of FMT, he noted that these reductions were from the initial estimated FMT rather than the actual turnover. He commented on the Appellant's comparisons as follows:

- 1) Cedar Lodge – This is not located in a traffic calming location but with a 100 kilometre per hour speed limit at the entrance and it's a four star registered hotel and the valuation included all 28 bedrooms, and the accommodation comprises lounge bar 102 sq. mtrs, restaurant 90 sq. mtrs, games room/function room, without separate bar, 127 sq. mtrs, 30 car spaces.
- 2) The Farmer's Kitchen – 21 bedrooms with small function room for 60 persons.
- 3) The Kennedy Boutique Hotel, New Ross – This is located in the centre of New Ross with considerable competition.

The Appellant has not provided any evidence to suggest that the food element of the FMT would be expected to be 59% or that any revenue in excess of 59% is to be considered excessive.

He noted that there is an outstanding application under section 27 for a revision of the valuation, in this case, because of the addition of a restaurant.

- 4) The Coast Rosslare – This is located in Rosslare with 10 other properties on the valuation list which are valued within the hospitality category of property. He noted the stepped rent.
- 5) This is a pub and valued by reference to FMT for drink sales only. The valuation on the list does not reflect the 20 bedrooms as outlined in the Appellant's précis.

Mr. O'Brien noted that the issue to be determined in this appeal is whether the level of Fair Maintainable Trade is fair and equitable and in turn whether the Net Annual Value of €126,500 is fair and equitable.

He noted the information sought from the occupiers when carrying out the Wexford County Council revaluation and that financial information was supplied prior to the issuing of the proposed valuation certificate in 14 out of a total of 38 hotels in Wexford and was received on a further 15 hotels during the representative period. Based on the information supplied, and the analysis of same, the commissioner adopted the shortened method of valuation applying percentages to various income streams to arrive at the Net Annual Value and the following valuation scheme is applicable to all hotels in Wexford: rooms 10%, conference/room hire 10%, food 5%, beverage 7%, leisure and spa 15% , sundry 15%. It is noted that the Appellant is not disputing these percentages and the appeal relates solely to the estimate of Fair Maintainable Trade.

Mr. O'Brien provided 6 NAV comparisons, the details of which are set out in the appendix to this judgement (n/a to public)

**Comparison 1** - Hotel Curracloe – 3 star, 28 bedroom hotel - Bar, restaurant, and function room. NAV €98,200.

**Comparison 2** - Upton Court Hotel, Kilmuckridge – 20 bedroom, 3 star hotel. NAV €90,100.

**Comparison 3** – Cedar Lodge Hotel – 28 bedroom hotel, 19 registered – Lounge/bar, 102 sq. mtrs restaurant, 90 sq. mtrs games room/function room, without separate bar, 127 sq. mtrs, 30 car spaces. Agreed NAV €60,000.

**Comparison 4** – Kennedy Boutique Hotel, New Ross – 16 bedrooms. NAV €63,900. Outstanding application for revision.

**Comparison 5** - H&H Collection Coast Hotel, Kilmore Quay – 3 star, 10 bedroom hotel. NAV €51,100.

**Comparison 6** - The Coast, Rosslare – 3 star, 32 bedroom hotel. NAV €93,500. Vacant in the immediate years before the Lease signed in 2017.

His summary of these comparisons and the relativity of NAV to FMT is in an appendix to this judgment (n/a to public)

Mr O'Brien's estimate of NAV was €126,500 calculated as follows:

Use	FMT	% Applied	Total NAV €
Conference Room/Hire	€5,000	10%	€500
Food Sales	€1,400,000	5%	€70,000
Drink Sales	€600,000	7%	€42,000
Room Sales	€140,000	10%	€14,000
<b>Total FMT</b>	<b>€2,145,000</b>		<b>€126,500</b>

In conclusion Mr. O'Brien put it that the Appellant does not contest the approach and the only items in dispute are the estimates of Fair Maintainable Trade for food and drink.

The Fair Maintainable Trade estimated by the Commissioner on the subject property is reasonable.

The valuation of €126,500 equates to 5.8% of the Commissioner's estimate of FMT on an overall basis.

The hypothetical tenant would consider whether he could make as great or a greater success of the subject property when compared with his predecessor. The basis on which the hypothetical tenant would consider such prospects would be from the actual trade his predecessor achieved. The Appellant's valuation of €64,750 is only 3% of the Commissioner's estimate of FMT.

In cross examination Mr. O'Brien said he used Cedar Lodge as a comparison as it was indicative of the relationship between the FMT and the NAV. He accepted that the total areas are similar in size to the subject property under appeal.

He could not explain why, with Cedar Lodge being of a similar size and similar location to the subject, 4 star and with two more bedrooms, the valuation was reduced from €90,000 to €60,000 as opposed to the proposed €126,500 on the subject.

He stated that despite the turning lane for access, from the Wexford side approach to Cedar Lodge, with the speed of the traffic it is not attractive to turn in. He accepted that Cedar Lodge was long established although, in his opinion, not well known. He stated that the turnover had a function as a starting point in assessing the valuation. He said that prior to inspection the initial figures had been calculated and it was obvious when inspected that it was not trading at the level that was expected. In his opinion the asking price for Cedar Lodge when for sale at €1,250,000 was an unrealistic expectation and the top offer at the time of agreeing the NAV at €60,000 was considerably less and the offeror did not intend the property to continue as an hotel.

He acknowledged that to reach an NAV of €60,000 he had to put himself in the shoes of the hypothetical tenant and that Mr. Halpin's FMT on the subject was €550,000, based on the FMT for the Cedar Lodge comparison of €500,000. Equally Mr. Halpin's FMT on drink was €325,000 as opposed to €300,000 on the Cedar Lodge.

He confirmed that at the time of his inspection of the subject property, the staff numbers in the were approximately 40 and that family members involved were, father, son and wife, and daughter and son in law.

Responding to questions from the Tribunal in relation to how quickly goodwill can be lost, Mr. O'Brien said that it takes 3 years to build up goodwill but, in this instance, he did not see what the operators brought to the trade and that there was nothing personal that would be lost, therefore no adjustment was appropriate.

## **9. SUBMISSIONS**

9.1 Mr. Halpin, in summing up, said that the hard work and business acumen of the proprietor family were relevant. There were 3 generations of the family involved and two actually live on site. It was inconceivable that without knowledge of the actual turnover that the Commissioner would have valued the property at €126,500, when he valued Cedar Lodge on an estimated basis at €60,000, and these are very similar properties.

He referenced the Valuation Tribunal decision VA 17/5/579 wherein the Tribunal stated that undue weight was given to the accounts.

9.2 Mr O'Brien said that there are certain and controlled licenced opening hours and therefore there should be no allowance for exceptional operators as they cannot operate outside these hours which would apply equally to the hypothetical tenant in relation to the FMT. The licence is attached to the building and allows for generation of a level of trade. In assessing FMT, the starting point is the actual accounts. The turnover of the subject business is level and stable. He was not valuing the business but the right to occupy and create the trade. Cedar Lodge Hotel is a different property with no turnover and not as similar to the subject as is suggested. Equity and uniformity through the valuation scheme implies that €126,500 is correct.

9.3 There were no legal submissions.

## **10. FINDINGS AND CONCLUSIONS**

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

10.2 Both parties valued the property by the shortened method in accordance with the Commissioner's scheme for hotels in County Wexford and as the parties were agreed on this the Tribunal also follows that method.

10.3 The relative percentages to be applied to the Fair Maintainable Trade under each heading, drink sales, food sales, bedroom sales, conference room/room hire is agreed.

10.4 The FMT for room sales and conference/room hire is agreed and therefore the resultant NAV of €14,000 and €500 respectively is also agreed.

10.5 What remains for this Tribunal to determine is whether the estimated FMTs for drink sales and food sales is reasonable or correct.

10.6 The Appellant argues that the property is overtrading down to the goodwill of the proprietors and there is a substantial food trade due to the exceptional service provided by the proprietors and that 65% of the turnover relates to food. Mr. Halpin also noted that there was only a very small local population, and the vast majority of the trade is from the property's position on the N25.

10.7 The Respondent argues that the hypothetical tenant is not materially different in character from the actual occupier and the nature of the undertaking will be similar and is of the view that the hypothetical tenant would approach the matter to see whether he would maintain or improve the trade. In relation to the Cedar Lodge Hotel NAV he said that the initial estimate of FMT was too high as on inspection it was obvious that it was not trading at the level that was expected but this is not consistent with the Respondent's argument that the hypothetical tenant would consider whether he could maintain or improve the trade. It must also be remembered that it is a property that is being valued and not a business.

10.8 In relation to the comparisons, provided by both parties, it is clear that the FMT on the subject property for both drink sales and food sales is considerably in excess of the other properties and the question that must be answered is why. The Appellant argues that it is down to the goodwill and acumen of the current proprietors but also stated that the vast majority of the property's trade comes from its position on the N25. There is, therefore, some locational goodwill.

10.9 The respondent stated that the rating hypothesis is that the hypothetical tenant will consider whether or not they can maintain or improve the level of trade. In the Tribunal's view the hypothetical tenant will also consider whether they can maintain the trade or whether it might reduce.



10.10 The property compares physically with many of the comparisons and the Tribunal therefore concludes that the level of turnover and FMT reflects both its location and the business acumen of the current proprietors. The hypothetical tenant will acknowledge the locational advantage of the property but will query his ability to maintain the turnover particularly as so much of it is related to food sales arising from the current proprietors business acumen.

10.11 It is important that the valuation is of the property and not of the business, although it is acknowledged that the property's value is dependent on its ability to generate business. In the Tribunal's opinion there is a risk that the turnover of the current proprietors might not be continued, the risk in maintaining the food sales in particular being significant. However, the Appellant's reduction of the FMT to reflect the Proprietors' business acumen and goodwill is excessive.

10.12 The Tribunal therefore reduces the estimated FMTs on both the drink and food sales by 25% to reflect the element that is attributable to the business acumen of the current proprietors and the risk a hypothetical tenant would see in maintaining this level of turnover or FMT.

#### **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 €98,500.

This is calculated as follows:

Drink Sales FMT	€450,000	at 7%,	€31,500
Food Sales	€1,050,000	at 5%	€52,500
Room Sales	€140,000	at 10%	€14,000
Conference/Room hire	€5,000	at 10%	€500
	Total		€98,500

And the Tribunal so determines.

#### **RIGHT OF APPEAL**

**In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court**

**This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.**