

Appeal No: VA19/5/0478

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Druids Glen Golf club

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 635629, Leisure, at LOCAL NO/MAP REF: 1AABC.3A Woodstock Demesne, Kilcoole, Rathdrum, County Wicklow.

B E F O R E

Hugh Markey FRICS FSCSI

Sarah Reid - BL

Peter Stapleton - FRICS FSCSI Dip Arb

Deputy Chairperson

Member

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF MARCH 2023**

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 14th 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 €151,000.
- 1.2 The grounds of appeal initially cited that the property was exempt under Schedule 4, Section 4(a) of the Valuation Act on the basis that it is a clubhouse with significant areas that would be excluded under the provision. However, the Appellant subsequently applied to the Chair of the Valuation Tribunal, Ms. Carol O’Farrell BL on 8th July 2022 for leave to amend their grounds of appeal and same was granted on 6th September 2022. The updated grounds that fall to be considered in this Appeal contend that the subject property’s valuation does not accord with the requirements of section 19(5) of the Valuation Act 2001 as amended (‘the Act’) Act because:

1) The assessment of the subject property is excessive and inequitable.

2) Owing to its potentiality to generate a private profit and to the fact that the property has a full 7-day licence, the property ought to be valued by reference to its profit-making potential.

3) In the alternative, the areas noted by the Commissioner are incorrect and the level applied on a rate per square metre is excessive in view of the levels applied to equivalent public houses in the rating authority area.

- 1.3 The amount stated in the Notice of Appeal as the figure the Appellant considered ought to have been the determined NAV of the subject property is €51,500.

2. REVALUATION HISTORY

- 2.1 On the 29th of March 2019 a copy valuation certificate proposing a valuation of €151,000 was issued to the Appellant under section 24(1) of the Act. No representations were made on behalf of the Appellant seeking a reduction in the assessment and a final valuation certificate issued on the 10th day of September 2019 stating an unchanged valuation of €151,000.
- 2.2 The Respondent's evidence before the Tribunal was that information was sought from the Appellant pursuant to Section 45 of the Act, but no information was returned. In direct contrast, the Appellant's evidence before the Tribunal was that no such notice or information was sought from them prior to the determining of the final certificate of valuation in this matter.
- 2.3 The date by reference to which the value of the Property, the subject of this appeal was determined, is the 15th September 2017.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing, held remotely, on Tuesday the 15th November 2022. The Appellant was represented by Mr. David Halpin of Eamonn Halpin & Co. Ltd. and the Respondent by Mr. John Diskin of the Valuation Office, Mr. Michael Collins of the Chief State Solicitors Office and Ms. Lisa Dwyer BL, counsel for the Respondent.
- 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. At the oral hearing, each witness, having taken the oath, adopted his Précis as his evidence-in-chief, in addition to giving oral evidence.
- 3.3 During cross examination of Mr. Diskin by Mr. Halpin, information was sought regarding the dates on which Section 45 information was provided for each of the ten comparable NAV properties included in his précis. Mr. Diskin began to look up the information, but the Tribunal felt it was inappropriate and an unfair burden on the

witness to undertake that task, during cross examination, and directed that the said information be provided separately, with directions issuing to that effect after the hearing had closed. A copy of the said directions issued and are attached as Appendix 1 to this determination (n/a to public) along with the information subsequently provided by the Respondent.

4. FACTS

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

- 4.1 The property is located approximately 3km from Kilcoole village in County Wicklow and in the Woodstock Demesne, adjacent to Druids Glen golf course. It is the sole commercial property at the subject's location and is operated under licence as the members' clubhouse to the golf club. The property is not open to the public and serves only members of the club and/or those entitled to be present in the golf club.
- 4.2 The subject property is a late Georgian country house constructed circa 1770 and is entered on the register for protected structures in Wicklow (ref: 13-46) being a building of significant architectural significance.
- 4.3 As a protected structure, the property would be subject to various conservation restrictions commensurate with a property of that vintage, though no evidence was offered in respect of any such conditions. The property was refurbished or otherwise updated in 1995, though full details of same were not provided to the Tribunal. From the photographs before it, the property is taken as being in good condition, offering high quality accommodation to members of the golf club.
- 4.4 The property is owned by Druids Glen Country Club whose constitutional documents permits the use of the building for the enjoyment of certain clubhouse and ancillary facilities, same being permitted by way of a revocable licence. The property was operated as a clubhouse at the effective date and held a 7-day publican's licence permitting alcohol sale and consumption on site.
- 4.5 The property is a substantial one with the following floor areas agreed between the parties:

Basement (pro shop) 55.94m ²
Basement (coffee shop incl. kitchen) 69.66m ²
Basement (ladies changing room defunct) 122.36m ²
Basement (male changing room defunct) 133.45m ²
Basement (remainder - stores, hallways, plant rooms etc) 522.59m ²
Ground floor (trading area - bar, lounge, dining rooms) 401.15m ²
Ground floor (remainder - stores, hallways, plant rooms etc) 317.85m ²
First floor (GIA) 316m ²
Attic (GIA) 187m ²

- 4.6 Although the Appellant contends for a valuation based on FMT, no certified or audited figures were provided to the Tribunal in respect of the trade undertaken in the property at the effective date.
- 4.7 Similarly, although the Respondent contends for a valuation based on the contractor's method, resulting in a figure of €55/m² being applied to the subject property, no breakdown of this figure was available or forthcoming when the matter was pressed by the Appellant at the hearing.

5. ISSUES

- 5.1 The dispute in the present Appeal concerns the appropriate basis on which the subject property should be assessed. The Appellant claims that being a clubhouse with a 7-day publican's licence, the subject is distinguishable from other clubhouses and should be valued in light of the fair maintainable trade ('FMT') attributed to the subject property, this being the accepted approach for licensed properties. The Respondent contended that the property was a clubhouse first and foremost and the existence of a publican's licence did not change the primary use of the property. Given the lack of comparable rental evidence available, the Respondent applied and calculated a valuation on the contractor's basis and maintained same was the best and/or most appropriate method of valuation in the circumstances.
- 5.2 The parties are in fundamental disagreement as to the appropriate method of valuation to apply to the subject property and as a result differing valuations have been put forward. For the Appellant (and based on estimated FMT figures for the subject property), Mr. Halpin contended for a valuation of €51,500. For the Respondent (and based on the contractor's basis with a level adopted and/or altered from a scheme applied in Kildare County Council local authority area), Mr. Diskin contended for a revised valuation of €116,900.
- 5.3 In the circumstances, the Tribunal must consider which is the most appropriate method and approach to valuation of the subject property and whether there are grounds to support the Appellant's claim that FMT ought to apply by virtue of the existence of a 7-day publican's licence for the property.

6. RELEVANT STATUTORY PROVISIONS

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

“(1) 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.

(2) Subsection (1) is without prejudice to section 49.

(3) 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 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.”

6.2 Section 19(5) of the 2001 Act provides as follows:

“(5) The valuation list as referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable)—

(a) correctness of value, and

(b) equity and uniformity of value between properties on that valuation list,

and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.”

6.3 Section 50 provides for Valuation on the contractor’s basis:

(1) If, in determining the net annual value of property or any part of it in accordance with section 48, a method of valuation relying on the notional cost of constructing or providing the property or part is used, then, notwithstanding subsection (3) of that section, the net annual value of the property or part, for the purposes of that section, [shall, subject to subsection (2), be an amount] equal to 5 per cent of the aggregate of the replacement cost, depreciated where appropriate, of the property or part and the site value of the property or, as the case may be, part.

(2) An adjustment shall be made so that the amount arrived at by such means to be the property’s net annual value is (insofar as is reasonably practicable and in accordance with section 19(5) or 49, as appropriate) determined by reference to the values of other properties comparable to that property as appearing on the valuation list.

6.4 In order to obtain necessary information in relation to a property, the Commissioner or a person acting on the Commissioner’s behalf, is entitled under Section 45 of the Valuation Act, to serve a notice seeking information in respect of that property. Section 45 provides as follows:

“An officer of the Commissioner, or a person acting on that person’s behalf, may serve a notice on—

(a) the occupier of any property (whether relevant property or not),

(b) an interest holder, or

(c) such other person who, in the opinion of that officer or person so acting as aforesaid, has information in relation to such property,

requiring him or her to supply, within a period specified in the notice (being a period of not less than 28 days beginning on the date of the service of the notice), and in a manner specified in the notice, to the person who served it such information as is specified in the notice, being information that is necessary, in the opinion of that person, for the purpose of the performance by the foregoing officer, or another officer, of the Commissioner of his or her functions under this Act.

6.5 Section 45(1) of the 2001 Act provides as follows:

“(1) An officer of the Commissioner may serve a notice on a person who is the owner or occupier of any property (whether relevant property or not) requiring him or her to supply, within a period specified in the notice (being a period of not less than 28 days beginning on the date of the service of the notice), and in a manner specified in the notice, to the officer such information as is specified in the notice, being information which is necessary for the purpose of the performance by that or any other officer of the Commissioner of his or her functions under this Act.”

7. APPELLANT’S CASE

7.1 The Appellant was represented by Mr. Halpin and outlined the basis of his case. Mr. Halpin commenced by outlining the three methods of valuation, being the rental basis, the fair maintainable trade method (FMT), and the contractor’s basis of valuation. It was Mr. Halpin’s contention that given the absence of rental evidence, the second two methods fell to be considered and within that, as the subject property held a 7-day publican’s licence, the FMT approach was appropriate in the circumstances. As to the contractor’s method, Mr. Halpin did not dispute its application *per se*, but took issue with the manner in which the Respondent had applied it and questioned the basis and justification for their approach.

7.2 In terms of the correct value to be applied to the property, Mr. Halpin contended that FMT was the most appropriate approach and where that was so, the following would apply to the subject property:

Drink Sales €400,000 @ 8% = €32,000
Food Sales €300,000 @ 5% = €15,000
Sundry (pro-shop) €30,000 @ 15% = €4,500
Total NAV €51,500

Notwithstanding his view that FMT was the most appropriate method to apply to the subject property, Mr. Halpin conceded that if the contractor's basis was to be applied then it would result in the following figures:

Description	Area m2	Rate €/m2	Totals
Clubhouse	2,126	€3,2001	€6,803,200
Site Cost (hectares) 1.00		€50,0002	€50,000
Sub-total €6,853,200			
Less Depreciation – 95%3 - €6,510,540			
Net after depreciation €342,660			
Allow 5% to arrive at			
NAV			
5%€17,133			
Say €17,130			
Equivalent to €/m2 €8.06			

- 7.3 In respect of the above, and the depreciation that would apply when adopting the contractor's method, Mr. Halpin placed great emphasis on the age of the property, being close to 250 years old at the date of the hearing. He stated that an acceptable level of depreciation for a property would be 1% per annum and even if a rate of 0.5% was adopted it would still result in the property 'peaking' (in terms of depreciation) 50 years ago. He conceded that to apply a rate of 100% depreciation would be nonsensical and so contended for 95%, accepting that a level of 90% could also apply. Based on the depreciation, which in turn was based on the property's age, Mr. Halpin's calculations resulted in an equivalent rate of €8.06/m² which was so low, he felt it proved that the contractor's basis was not appropriate in the circumstances.
- 7.4 While Mr. Halpin was unable to provide confirmed and/or audited figures regarding the Appellant's turnover in the subject property, he confirmed that it had been trading previously but the operator had left and was uncontactable, despite efforts on his part. On that basis he provided estimated figures, set out above, and when challenged on this in cross examination, he stated that when adopting a FMT basis it is often the case that financial figures are not provided, and estimated trade is the basis of valuation in those cases. Applying that to the subject, he saw no difficulty or impediment to his providing estimated figures in respect of the subject property.
- 7.5 In support of his contention for FMT, Mr. Halpin stated that the existence of a 7-day publican's licence was a distinguishing feature of the subject property and said very few other golf clubs had this facility. In the relevant local authority, he was aware of only one other property, the Powerscourt Golf Club, and he argued that in circumstances where an existing model of valuation exists and can be applied under Section 48, the Respondent was obliged to consider it rather than dismiss it out of hand. It was Mr. Halpin's case that the Respondent had adopted a scheme of general application based on the contractor's method, which he maintained produced a

valuation that was inappropriate when the age of the subject property was taken into account (the said valuation being set out above in paragraph 7.3).

- 7.6 Given the publican's licence that exists in respect of the subject property Mr. Halpin proffered comparative evidence regarding other licensed premises in the rating authority, all of which are valued by the Commissioner on an FMT basis. He accepted that these comparisons were imperfect but argued that what sets the subject apart from standard clubhouses is its ability to make private profit and this was something the hypothetical tenant would be interested in and motivated by. In that regard, Mr. Halpin provided evidence of seven properties (pubs and hotels) which he felt reflected an appropriate comparative valuation. These are included in Appendix 2 (n/a to public)
- 7.7 In respect of clubhouse comparisons, the Appellant relied on three golf clubhouses in the rating authority all of which were of modern construction and only one of which (PN1035217) had a 7-day publican's licence similar to the subject property.
- 7.8 In cross examination by Ms. Dwyer BL, it was put to Mr. Halpin that if the Commissioner adopted an FMT approach, it would result in large sections of the property being excluded which would not be fair or equitable, thereby providing an inappropriate valuation for this property. Mr. Halpin disagreed and said that while it would result in large areas being excluded, the hypothetical tenant wouldn't want to pay for those (useless) areas as no benefit or profit could be derived from them. By Mr. Halpin's estimation only 25% of the property's area would be considered relevant in an FMT calculation.
- 7.9 In answer to questioning from the Tribunal, Mr. Halpin confirmed that he knew of no express restrictions on the use of the property and indeed the Club's constitution had been drafted in a way that was broad, capturing 'enjoyment' of the clubhouse within the remit of its use. He also confirmed that a 'for profit' operator had been trading from the property, for the benefit of the members, for approximately 15 years on the agreement that he open between certain fixed hours, but that the said operator had since ceased his business in the property and was not contactable at this point.
- 7.10 In addition, and in respect of the difference between various types of licence that could apply to clubhouses, Mr. Halpin confirmed that a 7-day publican's licence was a standard pub licence and operated on a for-profit basis. In contrast, a clubhouse licence was granted under and governed by the Registration of Clubs (Ireland) Act, 1904 which required the applicant firstly to be a 'club' under that Act and further required that the said facility be run by members for the members and was incapable of deriving a profit. This element of potential profit making set the subject property apart from other clubhouses in Mr. Halpin's view and is what would make it an attractive prospect for the hypothetical tenant above and beyond other clubhouses with a licence.
- 7.11 In summing up his case, Mr. Halpin argued that of the three approaches to valuation that were open to the Respondent, the most appropriate one was that of FMT given the unusual circumstances that a 7-day licence applied and because to apply the contractor basis would provide a NAV of €17,130, when depreciation was accounted for on a % per annum basis. In the circumstances and based on the unique features and characteristics of the subject property, the FMT method was the more suitable option

and provided a NAV that was fair and equitable when compared with similar circumstanced properties.

8. RESPONDENT'S CASE

- 8.1 The Respondent was represented by Mr Diskin who outlined the basis of his case. He confirmed that he was contending for a reduced figure of €116,900 from the figure cited in the final certificate of valuation and set out his comparison evidence, a summary of which is provided below. From the properties outlined, he said a range emerges of €45/m² to €55/m². Devlin argued that what appears from the comparisons of golf clubhouses in the Wicklow rating authority area, a tone had emerged of €55/m² which was contended for in respect of the subject property. The Respondent's comparison evidence is included at Appendix 3 to this judgment (n/a to public).
- 8.2 In respect of the properties valued at €50/m² he confirmed that these could be differentiated as being older clubhouses in an urban location and a rate of €45/m² was applied for properties deemed to be older clubhouses in a rural location.
- 8.3 In commenting on the Appellant's comparisons, Mr. Diskin noted they comprised a range of property types and that the hotel examples (comparisons 1 and 2 in the Appellants précis) were from a different category and therefore unreliable and of no use to the present exercise of valuing a clubhouse. In terms of the pub properties relied on by the Appellant (comparisons 3 – 7) he felt that other than the similarity that they too held a publican's licence, these properties were of little use and in fact were significantly different to the subject because with a pub in a town, anyone could walk in and have a drink whereas the subject property was on private grounds and in a comparatively remote location compared to a village pub.
- 8.4 Insofar as the Appellant provided three examples of clubhouses, in commenting on these, Mr. Diskin outlined that the Commissioner had devised a scheme for clubhouses in the Wicklow rating area by reference to figures they had compiled for the Kildare local authority rating area as part of Reval 2017. Mr. Diskin confirmed that in the Kildare exercise, individual assessments of clubhouses had been undertaken based on the contractor's method resulting in a range of €35/m² to €55/m². He confirmed that in the present case, and for Wicklow in general, no individual assessments had been undertaken of clubhouses and instead the Kildare figures from 2017 were adopted and amended for the purpose of the 2019 Wicklow County Council Reval. Arising from this, the Respondent developed a scheme for clubhouses across the board and in Mr. Diskin's view this provided consistent and equitable valuation of the effected properties.
- 8.5 In response to questioning from Mr. Halpin as to the relevance, or otherwise, of the Appellant's publican's licence, Mr. Diskin argued that this factor was not a determinative feature in his calculation of the value. He acknowledged that the Powerscourt golf clubhouse (a shared comparator between the parties) also held a 7-

day licence but he maintained it was not appropriate to apply FMT to this or any other clubhouse with a licence because FMT was a method that applied for a separate set of reasons and to a different category of properties which was simply not appropriate here.

- 8.6 In defending and justifying his proposed rate of €55/m² for the subject property, Mr. Diskin argued that given the lack of rental data, Section 50(2) was applied and the rate per m² arrived at based on the contractor's method which he said was common practice by the Commissioner when a lack of trading data was available for a property. He cited masts and car parks as other properties that suffered the same difficulties with rental data and confirmed this approach enabled a method of valuation to be applied for unusual properties. In those circumstances, the rate per m² method was deemed the most appropriate approach and he felt that to deviate from it for the subject property would be inequitable and inconsistent.
- 8.7 Finally, as regards the figures provided by Mr. Halpin for FMT, Mr. Diskin took issue with these as being unaudited, unverified and incomplete. He argued that when FMT falls to be considered, the party provides multiple years of trading data so as to calculate a fair and reflective FMT and this has not been done here, nor was it being offered as available information in the Appeal. Mr. Diskin also noted that a Section 45 notice was sent to the Appellant (though this was disputed by Mr. Halpin) and no information was received in reply.
- 8.8 In cross examination of Mr. Diskin, Mr. Halpin asked if guidance documents were available and/or relied on by him in regarding the method of valuation to apply to clubhouses, including the subject property. He confirmed that a guidance document did exist, which set out that the contractor's method was the appropriate method to apply. Mr. Halpin criticised Mr. Diskin for not providing or making available that guidance document as a means to assess his calculation and method in arriving at the proposed figure of €55/m² but Mr. Diskin refuted this saying it was an established and historically accepted approach that has been successful to date in respect of other properties and so he did not see the need to provide the guidance document in support of his position. Further, in explaining his approach he said had provided evidence of his opinion of value and was not therefore denying the Appellant and the Tribunal of information or evidence contained in the guidance document.
- 8.9 Insofar as a range was identified between €45/m² and €55/m² for clubhouses, Mr. Halpin questioned how that was equitable given the difference in rates. The Tribunal also sought further explanation from Mr. Diskin as to how the Respondent distinguished the properties for valuation purposes, noting the wide range of values that emerged from the properties relied on before the Tribunal. In response to Mr. Halpin and the Tribunal, Mr. Diskin stated that the range of values reflected the differing characteristics, location, specification of the various property being valued.
- 8.10 In summing up his case, Mr. Diskin confirmed the Respondent's view that the subject property was first and foremost a clubhouse. Notwithstanding the fact it had a publican's licence, it was in no way comparable to a village pub and the application of valuation applied to another category of building (namely pubs and hotels) could not be fairly applied to the subject, in fact to do so would be inconsistent with its stated and accepted use as a clubhouse.

9. LEGAL SUBMISSIONS

- 9.1 The Appellant did not submit formal legal submissions but addressed several issues as part of their evidence. Insofar as the publican's licence fell to be considered, (distinct from the 'standard' clubhouse licence,) Mr. Halpin argued that the addition of potential profit making in the premises distinguished it from all other clubhouses in the rating area and the only other clubhouse to which it could be compared was Powerscourt Golf clubhouse as this also held a 7-day publican's licence. In support of this, the Registration of Clubs (Ireland) Act, 1904 was referenced, though same was not opened before the Tribunal or any particular provisions cited.
- 9.2 Mr. Halpin accepted that the traditional rate per metre method for clubhouses is derived from a contractor's valuation and he referenced Tribunal decision VA17/5/589 (Newlands Golf Club) in that regard. However, given the age of the subject, Mr. Halpin argued the residual contractor's value would be negligible as the property is beyond its natural life. He referenced Tullow RFC (VA17/5/265) in furtherance of this point where the Tribunal applied a 40% depreciation factor to a building constructed in the 1970s and argued that while the subject would undoubtedly have a higher rebuild cost, the depreciation would effectively be 95% placing a substantial question mark over its validity as a correct valuation on the List.
- 9.3 Ms. Dwyer BL for the Respondent submitted formal, written legal submissions in support of the view that the NAV for the subject property had been estimated in accordance with the relevant legislative provisions and achieves, as far as is reasonably practicable, equity and uniformity between properties on the valuation list. Ms. Dwyer further relied on case law to show the Valuation Tribunal is not required to use any particular method of valuation but can come to its determination in whatever way is the most suitable to produce the required result. In this regard, she relied on *Commissioner of Valuation v. Dundalk Gas Company* [1929] I.R. 155, *Roadstone v Commissioner of Valuation* [1961] I.R. 239, *Wynne v. Commissioner of Valuation* (Unreported, High Court, 25 November 2002) and the comments of MacMenamin J. in the Supreme Court in *West Link Toll Bridge Limited v. Commissioner of Valuation* [2013] IESC 42.
- 9.4 Insofar as the contractor's basis of valuation fell to be considered in the present case, Ms. Dwyer argued that the Tribunal determination of *Tullow Rugby Football Club v. Commissioner of Valuation* VA17/5/265 was particularly instructive with the facts being similar to the present case. A contest arose in that case as to whether the clubhouse should have been assessed in accordance with the contractor's method or whether it should have been valued on the basis of the Receipts and Expenditure (R&E) method and it was held by the Tribunal that it was reasonable for the Commissioner to approach the determination of the valuation of the property by way of the contractor's method in that case.
- 9.5 In support of the position that the value achieved was fair and correct, Ms. Dwyer submitted on behalf of the Respondent that given the lack of market information pertaining to the subject property, the most appropriate method of valuation in all the circumstances is the contractor's method. She argued that this method is particularly suitable given the lack of direct rental evidence for clubhouses and has been widely used by the Respondent and has also been accepted by the Valuation Tribunal.

- 9.6 In concluding her submissions, Ms. Dwyer relied on the well-established principle that in this as in all Appeals before the Tribunal, the onus is on the Appellant to prove their case and argued that although the Appellant had provided a number of comparisons only three of these were relevant, as none of the other comparable properties were in similar uses to the subject. She argued that the remaining seven properties relied on by the Appellant should not be used for comparative purposes as they are not ‘similarly circumstanced’. Based on this, the Respondent contended that not only had the Appellant not proved that the NAV of the subject property should be assessed on an FMT basis, they had also failed to prove that the NAV of the subject property is incorrect and thus, had not discharged the onus of proof.

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 Wicklow County Council.
- 10.2 Insofar as there was disagreement between the parties as to the appropriate method of valuation to be adopted, the Tribunal relies on the determination in VA17.5.265 (Tullow Rugby Club) which pertained to a clubhouse and where FMT was proposed by the Appellant. Similar arguments were put forward in that determination as were made in this Appeal and the Tribunal found:

“10.4 The selection of the most appropriate method of valuation to be employed is a matter of valuation judgment. The Tribunal is not obliged to determine the value of the Property by reference to any particular method and may determine the value by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.”

- 10.3 Further, and insofar as the contractor’s method of valuation was raised in the present case, the Tribunal notes and agrees with the comments in VA17.5.265 that:

“10.3 The contractors basis is often described as a method of last resort as it is employed in respect of properties which are not normally let and which by their nature do not lend themselves to valuation by comparison with other properties because no rental evidence exists, and which are not of the type where a valuation by the R & E method would be appropriate.

The assumption underlying the contractors method is that, for certain types of property, a multiplier can be adopted to arrive at an estimated annual rental value based on an assumed relationship to the capital cost of providing the building from scratch. However, in the absence of a proper cost analysis for the particular premises being valued there will inevitably be difficulties in applying average building cost rates based on published sample data.”

- 10.4 The Tribunal finds that the evidence provided by both parties in this Appeal was of limited assistance. The Appellant relied heavily on the FMT method of valuation but failed to support his position with accurate and/or best evidence as to the actual financial turnover in the subject property. Notwithstanding the difficulties Mr. Halpin said he encountered trying to obtain that information, the onus is on the Appellant to prove their case and the Tribunal was not satisfied with the level of evidence provided in support of the claim that FMT ought to be applied to the subject property. In addition, and insofar as the Appellant provided a calculation for the contractor's method of valuation, the figures provided in that regard were wholly unsubstantiated and unreliable in the circumstances.
- 10.5 On the Respondent side, the evidence provided was not convincing and the Tribunal is not satisfied that sufficient regard was had by the Respondent to the unique features of the subject property, namely its age, size and rural location when compared to the other clubhouse comparisons relied on before the Tribunal. The Tribunal also notes that in response to cross examination from the Appellant, the Respondent confirmed that the figures applied to the subject property, and all similarly circumstanced clubhouses in Wicklow, were derived from a rate applied in the County Kildare 2017 Revaluation programme. Mr. Diskin's evidence was that the 2017 clubhouse rates were taken and applied with an uplift to the Wicklow clubhouses as part of the present (2019) exercise.
- 10.6 Based on the above, and because the Tribunal must be satisfied that the valuation on the List is a true and accurate valuation of the property so rated, the Tribunal has considered the evidence before it and finds the following:
- A. The subject property is the largest of any of the parties' comparisons measuring 2,046 m² with the next largest clubhouse (PN 1035217 – Powerscourt Golf clubhouse) measuring 1,474 m². Indeed, in response to a question from Mr. Halpin, Mr. Diskin confirmed that the 'ideal' size for a clubhouse is around 1,500m². In the circumstances, the subject property is approximately 44% larger than the 'ideal' size and 600 m² larger than the next closest comparison in the rating area. In the circumstances the Tribunal is not satisfied that this fact was given adequate consideration by the Respondent in applying the rate of €55 / m² to the subject property.
 - B. The location of the subject property is rural and the evidence before the Tribunal was that the closest populated centre was Kilcoole approx. 3km away from the subject Property. When compared with the other clubhouses relied on by the Respondent, the Tribunal finds that these are in a distinctly different location to the subject and are proximate to urban areas which is not the case in the subject property. In the circumstances the Tribunal is not satisfied that this was given adequate consideration by the Respondent in applying the rate of €55/ m² to the subject property. The Tribunal noted that the Blainroe clubhouse is valued at €45 per sq. m. and it is much closer to an urban area (Wicklow Town) than the subject property.
 - C. The subject property was constructed circa 1770 and is entered on the register for protected structures in Wicklow. As such it has features, restrictions and maintenance requirements commensurate with a property of that age and status.

Having regard to the supplemental Section 45(1) information provided by the Respondent in respect of their other clubhouse NAV comparisons, the Tribunal finds that the subject is not sufficiently similar to these properties.

- 10.7 The Tribunal finds that arising from the comparisons before it, a range emerges for clubhouses in the Wicklow rating area of between €45 & €55/ m². The different rates reflect the Respondent's view of the Rural / Urban location of the properties and the age of the clubhouse. Arising from this, it is clear that €45/m² represents a clubhouse in a rural location and €55/m² is reflective of one in an urban location with €50/m² being applied to older clubhouses in an urban location.

DETERMINATION:

Based on the foregoing, the Tribunal finds that the subject property falls into the category of rural and therefore, should be valued in line with the rate emerging from similarly circumstanced rural clubhouses. In addition, and by virtue of the unusual and distinct features of the subject property, including its age, and where those features do not necessarily apply to other clubhouses (both in the rating area, and more generally), account must be had for these features. The Tribunal finds an appropriate discount to apply to the rate adopted for rural clubhouses of €45 per sq. m. is 20% i.e. €36.00 per sq. m.

Accordingly, the Tribunal allows the appeal and decreases the valuation of the Property, as stated in the valuation certificate, finding that a fair and accurate valuation of the property would be:

2,126 sq. m. @ €36.00 per sq. m = €76,536, say €76,500.

NAV €76,500

And so the Tribunal Determines