

**Appeal No: VA19/5/0191**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Glenmalure Lodge Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 645510, Hospitality at Ballyboy, Knockrath, Rathdrum, County Wicklow.

**B E F O R E**

**Stephen J. Byrne - BL**

**Claire Hogan - BL**

**Barra McCabe BL, MRICS, MSCSI**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 21ST DAY OF FEBRUARY, 2024**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 3<sup>rd</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 €69,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *“Property is being unfairly assessed on the turnover which is due to the skill of operators. Pub is in a remote area and no direct comparisons for the subject property given the remote location.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €34,900.

## **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 €79,500.

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 €69,000.

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019 stating a valuation of €69,000.

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 17<sup>th</sup> day of February, 2022. At the hearing, the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) BA (Mod) and the Respondent was represented by Mr. David O Brien MSCSI, MRICS, of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

## **4. FACTS**

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

4.2 The subject property is a licensed premises comprising a bar, lounge and restaurant on the ground floor with capacity for approximately 100 patrons in the pub area and a further 35 in the restaurant. There are fourteen guest bedrooms at first floor level and surface parking to the front for about seventy-five cars. The property is accessible via the N11 and R755 and located at Glenmalure, Co. Wicklow, approximately 40 kilometers south-west of Bray, 9 kilometers

from Laragh and 11 kilometers from Glendalough. Situated in close proximity to the Wicklow Way hiking trail and at an elevated location in the Wicklow Hills, there is little by way of competitive commercial hospitality properties in the vicinity of the subject property. The subject property has been maintained to a good standard and is held freehold.

4.3 The agreed accommodation is as follows:

<b>USE</b>	<b>Floor Area M<sup>2</sup></b>
Bar G/F	34.01 NIA
Lounge and Lounge Snug G/F	95.66 NIA
Total gross commercial floor area	954.29

4.4 Turnover figures are available at Appendix 1 (N/A to public)

## **5. ISSUES**

5.1 The sole issue that arises in this Appeal is one of quantum.

## **6. RELEVANT STATUTORY PROVISIONS:**

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

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

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

*“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”*

## **7. APPELLANT'S CASE**

7.1 Mr. Halpin submitted in his precis of evidence to the Tribunal, an opinion of the Net Annual Value of €56,000, which was amended from the figure of €34,900 submitted in the Notice of Appeal.

7.2 After adoption of his précis of evidence, Mr. Halpin described the subject property and submitted commentary in relation to the breakdown of turnover for the subject property the years ending 2015, 2016 and 2017, which had been provided by the Appellant at the request of the Respondent. He said that the property was very isolated and highly dependent on regular trade, which comprised walkers, ramblers and hikers in the main. With nothing within three kilometres of the subject property and no other retail, hospitality or other type of commercial properties within 10 kilometres, and the nearest town being Greenan, located some 6 kilometres away with a population of less than 100 people, Mr. Halpin maintains that the subject property could not easily pivot to service other markets. While the subject property did compete with a number of unrated businesses such as B&B's and hostels, he contended that the Respondent had provided an insufficient discount taking into account the remote location of the property and the amount of goodwill generated by the current operators since they purchased the property in 1992. While the Respondent had discounted the NAV by 15% at Representation stage, the Appellant was of the view that a further discount of 15% should be applied by the Tribunal to the Respondent's valuation.

7.3 In referencing the method of valuation employed by the Respondent, namely Fair Maintainable Trade ("FMT") valuation, Mr Halpin cited a number of the Tribunal's decisions, and in particular the Tribunal's decision in VA17/5/579 wherein the Tribunal provided a view on how the FMT method should be properly applied. The decision made reference to an over reliance on turnover alone, but to also consider whether the premises is over (or under) trading and the level of FMT a reasonably competent operator or hypothetical tenant could achieve or maintain. The same decision referenced equity and fairness between rate payers and noted that it is the building and not the business that is being valued. After submitting there was no true comparison to the subject property, Mr. Halpin provided a number of "tone of the list" comparisons, which are listed below, in order to demonstrate his argument on equity and fairness applying to ratepayers and in particular to the Appellant. He posited that the Respondent had placed too much emphasis on the turnover figures provided by the Appellant in circumstances where there was a converging of value at circa 5,000 NAV per bed in small

hotels and pubs with rooms in County Wicklow, and the Respondent's proposed NAV did not accord with these comparisons. Mr. Halpin argued that it was exceptionally difficult to fully weigh the merits of comparisons without a breakdown of the NAV and without knowing the basis of the valuations of other properties in the list and whether the Respondent has access to certified turnover figures.

Appellant's NAV / 'Tone of the list' comparables:

Comp Number	Premises	Property Number	Valuation	Estimated FMT	No. of Bedrooms	Distance to the subject property
<b>X</b>	<b>The Subject Property</b>	<b>645510</b>	<b>€69,000 (Under appeal)</b>	<b>€500,000 (drink) €400,000 (food) €140,000 (rooms)</b>	<b>14</b>	<b>N/A</b>
1	Bel-Air Hotel	639724	€55,100	Unknown (multiple elements)	10	23km
2	Hunter's Hotel	639428	€69,200	Unknown (multiple elements)	16	24.5km
3	Murphy's Hotel	648352 & 648351	€25,000 & €25,000	Unknown (multiple elements)	10	26.7km
4	Bridge Hotel	651447	€34,200	Unknown (multiple elements)	15	24.9km
5	Roundwood Inn	638886	€26,700	Unknown (multiple elements)	6	18km
6	The Farrier In	644108	€25,000	Unknown (multiple elements)	N/A	13.5km
7	Mickey Finn's	643650 & 643651	€25,000 & €25,000	Unknown (multiple elements)	N/A	20km
8	Corner House	646241	€15,750	€225,000	N/A	10km

7.4 Mr. Halpin informed the Tribunal that turnover figures were not provided for comparison no.1 and that this valuation was estimated by the Respondent. He submitted that comparison no.2 was at a better location and the bedroom accommodation was superior. Turnover figures were not provided for comparison no.3, but Mr. Halpin submitted that it was highly likely that this property trades better than the subject property. He said these first three comparisons benefited from a better adjacency and transport links to Dublin. Notwithstanding that

comparison no.4 was in a large town with high levels of passing trade and other similar properties to compete with, Mr. Halpin contended that this property had a much higher potential for trade than the subject property. The turnover figures were provided for comparison no.5 and it was walkable from the Wicklow Way, albeit this property had less than half the bedrooms of the subject property. Mr. Halpin claimed that while located on the main road to Avoca, comparison no.6 was isolated and was a superior property to the subject property even though it had no bedroom accommodation. Comparison No.7 also had no bedrooms and was the only commercial property in the village of Redcross, and comparison no.8 also had no bedrooms, although it was located in the Wicklow mountains, also just off the Wicklow Way. Comparison No.9 was a “context comparison”, which was located 6km away in the village of Greenan and was included to show the lack of trading potential in this part of the Wicklow mountains.

7.5 Under cross examination by Mr. O’Brien for the Respondent, Mr. Halpin acknowledged that the subject property was adjacent to the Wicklow Way, but said there was no standard passing trade in terms of a town or a village nearby. When put to him by Mr. O’Brien that the subject property benefitted from nearly one million people a year visiting Wicklow Mountains National Park and the tourist attraction at Glendalough, Mr. Halpin replied that on the date of their joint inspection there was not many people around and not any inherent passing trade. He went on to say that while there were a number of B&B’s and hostels close by to the subject property offering accommodation, none of these were commercial properties were rated under the Act and could therefore not be used as a comparisons for the purposes of valuing commercial property. However, he said he accepted that there were people staying in other nearby locations, but that the subject property was paying for this because those properties were not rated. When put to Mr. Halpin that he submitted no evidence for reduction of 30% in the NAV for goodwill, he replied that evidence of business acumen and experience had been provided. In respect of the “tone of the list” comparisons, Mr. Halpin accepted that comparison no.1 was not on the Wicklow Way, it was a hotel that was closer to urban areas and therefore there was more competition. It was also accepted by him that comparison no.2 was not on the Wicklow Way and it too was a hotel and not a pub with accommodation. It was also accepted that comparison no.3 had more competition, was not on the Wicklow Way, and was located in an urban setting with more competition, but with a population of 13,000 people. In response to Mr. O’Brien’s comment that there was no evidence this comparison was under-trading, Mr. Halpin said there was no specific way to say the subject property was under trading or over

trading, but that the subject property was beating trading standards in the rating area, in spite of its isolated location. While Mr. O'Brien maintained the subject property was located adjacent to a well known hiking trail, Mr. Halpin responded by saying that no other operator had any interest in trading from this location. Comparison no.5 was relatively close to the Wicklow Way with a number of other business trading in Roundwood. Mr. Halpin said that this town had a population of 948 people, but was big enough to sustain a reasonable number of shops and businesses. While comparison no. 6 was not on the Wicklow Way and is much closer to civilisation, Mr. Halpin pointed out that Avoca had a population of 776 people, while the village of Glennan closest to the subject property had a population of less than 100 hundred people. The Appellant acknowledged that comparison no.7 was also not on the Wicklow Way and that the FMT for comparison no.8 was at the upper limit of what a hypothetical tenant should expect to achieve. Comparison no.9 is not in fact a comparison at all because it is not on the valuation list.

7.6 In his final summation, Mr. Halpin said that an essential element when valuing the subject property is the lack of competition in the area and the reasons for this. He submitted that the Appellant was operating the subject property more as a lifestyle choice than as a business and pointed out that nobody else has started a business in the location for many years. Where the Respondent claims there is no evidence of under-trading or over-trading of the subject property, Mr. Halpin submitted that that lack of anyone else trading in the area should inform the Respondent when assessing the amount of goodwill built up by the Appellant over many years.

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

8.1 After adopting his précis, Mr. O'Brien directed the Tribunal towards the trading data contained at Appendix 1 herein (N/A to public). He said that the car park was immediately adjacent to the Wicklow Way and that a key driver of the revenue of the subject property was its unique location on the Wicklow Way. He clarified for the Tribunal that the trading accounts returned for the Appellant's comparison no.5 showed that the 6 bedrooms in this property were used for domestic use and not for commercial purposes. Mr. O'Brien said the NAV of a property is relative to the FMT and that this a key indicator. He identified five NAV comparisons, to illustrate that the subject property was comparable with the "tone of the list" for other similar type commercial property of this nature in County Wicklow. The main comparison that the Respondent relies on is comparison no.1, 'Lynam's of Laragh', which has a NAV of €80,000 compared to the NAV of €69,000 being sought by the Respondent for the

subject property. However, Mr. O'Brien maintained that this property has a significantly higher level of passing trade than that of the subject property. He stated that the other four comparisons provided by the Respondent have no commercial accommodation, but are included to illustrate that that pubs in rural areas without bedroom accommodation can trade well. Mr. O'Brien contended that the opinion of value contended for by the Respondent for the subject property is €69,000 because it is unrealistic to say that a hypothetical tenant would trade any worse at this location.

Respondent's NAV / 'Tone of the list' no.1 comparison:

***PN637892, Michael Lynham, t/a Lynham's of Laragh, Laragh, Glendalough, Co. Wicklow.***

Net Annual Value: €80,000 Rounded	
Occupier	Michael Lynham
Total Floor Area (GIA)	2,344sqm
No. of Bedrooms	16
Description	3-star hotel, bar, restaurant
Other details	Registered as a hotel but predominantly generates revenue from Food and Beverage.

The property is located approximately 9 km from Glenmalure. It is located on the R755 at the junction with R756 which leads to Glendalough. Financial information for the years 2016-2017 was supplied. The property was not subject to representations.

8.2 Under cross examination by Mr. Halpin for the Appellant, Mr. O'Brien said that financial information was supplied by 54 out of 146 pubs that were requested to provide this information. Mr. O'Brien confirmed that notwithstanding that it has the legal power to do so, the Respondent is not pursuing businesses for not providing trading figures when requested, but he said that the NAV is relative to other properties. When Mr. Halpin pointed out that 92 properties or 63% of businesses declined to provide trading accounts and the Respondent took no action, Mr O'Brien initially indicated he didn't know about this, but then said it was for policy reasons and that it was fair and reasonable. Mr Halpin put it to Mr O'Brien that the Respondent's comparison no.1, 'Lynhams of Laragh', is its main comparison. He pointed out that Laragh was a village with a population of 342 people with other adjacent commercial properties trading successfully, located on the main road from Dublin to Glendalough, and had an overall floor area of twice the size of the subject property. Mr O'Brien agreed with all of these points except



the trading area. It was also pointed out by Mr Halpin that the valuation of €263,00 of this comparison was discounted by as much as 70%, and recently agreed by the Respondent. When put to Mr O'Brien that the Respondent's comparison no.1 was a three star hotel, he responded that it was open to the subject property to apply for a hotel rating, which it currently did not have. Mr O'Brien said that the subject property was not competing with other properties in terms of food and beverage and that in his view, B&B's, hostels and other unrated accommodation providers nearby were directing their customers to the subject property for food and drink. In response to the Chairperson's comment that it would be manifestly unfair if the subject property is paying rates and is being penalised for providing financial details when other accommodation providers are not paying rates, Mr O'Brien replied that the Respondent does not consider other unrated accommodation providers such as B&B's and hostels when assessing the value of the subject property, and the NAV of €69,000 takes into account the location of the subject property.

## **9. SUBMISSIONS**

9.1 There were no legal submission by either of the Parties.

## **10. FINDINGS AND CONCLUSIONS**

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

10.2 The Tribunal is of the view that it is long established in practice that the appropriate method of Valuation in licenced premises is by the application of a percentage to the Fair Maintainable Trade. However, in considering what the Fair Maintainable Trade may be, and what factors affect it, consideration has to be given to more than just the turnover, and a view has to be taken 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. This 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.

10.3 The tone of the list comparisons provided a general view of the licensed properties both with and without accommodation in County Wicklow, and were of some assistance to the Tribunal however, there was a dearth of robust comparable evidence provided. In this regard it is noteworthy that the Appellant provided eight “tone of the list” comparisons, four of which had guest accommodation. The Respondent with access to the valuation analysis of over 146 licensed premises in County Wicklow, 54 of which provided financial information, relied on a singular tone of the list comparison for a licensed premises with guest accommodation. While the Respondent did provide an analysis of the tone of the list comparisons submitted by the Appellant in order to rebut their evidence, no further robust comparable evidence was provided. While the Tribunal understands that there are always ongoing GDPR and confidentiality issues to take into account, when providing submissions to the Tribunal, in the absence of robust comparable evidence to suggest otherwise, one might be forgiven for taking the view that the Applicant is being penalised for providing trading accounts to the Commissioner, which is patently unfair and inequitable.

10.4 Of the eight tone of the list comparisons of licensed premises submitted by the Appellant, four had guest accommodation with a similar number of bedrooms to the subject property. Comparisons no.2 and no.4 had 16 bedrooms and 15 bedrooms respectively while comparisons no.1 and no.3 had 10 guest bedrooms each. All four of these comparisons were approximately 23 to 27 km distance from the subject property, two of them did not provide financial information, and all four had varying levels of competition locally. All four properties, with the exception potentially of comparison no.4, were superior in the standard of guest accommodation to that of the subject property and two were registered as hotels. All four comparisons benefitted from a higher level of passing trade than the subject property, albeit the Tribunal understands that comparison no.1 has the longest running equestrian centre in Ireland and the UK, and provides packages for horse riding holidays. Comparison no.2 has a similar NAV to that proposed by the Respondent for the subject property. It was argued by the Appellant that comparison no.4 was underperforming substantially given the significant amount of competition of licensed premises in Arklow, something that was disputed by the Respondent. The sole tone of the list comparison submitted by the Respondent, that was a licensed premises with guest accommodation, had a NAV significantly higher than that of the

subject property at €80,000. ‘Lynhams of Laragh’ is a three star registered hotel with a bar and restaurant located 9km from the subject property. Similar to the Appellant’s comparisons no’s1-4, ‘Lynhams of Laragh’ is located on the main Dublin to Glendalough road with substantially higher passing trade than that of the subject property.

10.5 In the Tribunal’s opinion, the Respondent did not provide sufficient evidence to support a NAV proposed for the subject property that was significantly in excess of the Bel-Air Hotel in Ashford. The Respondents comparison in Laragh does not provide sufficient evidence to rebut the Appellant’s submissions and ‘tone of the list’ comparisons.

10.6 The Tribunal is persuaded that a greater amount of business acumen than that which the Respondent has provided, should attach to a business located at the relatively remote location of the subject property, which has been owned and successfully operated by the same people for more than thirty years. Notwithstanding that the subject property is located close to the Wicklow Way, the Tribunal is of the view that there must be substantially less passing trade all year round at the subject property compared to any of the comparisons submitted. It is also likely give the subject property’s location that access is substantially limited in inclement winter months, making it less attractive for passing trade than properties located at less remote locations and on the main roads leading to and from Dublin. The Respondent also observed that while on the one hand the subject property likely benefits from additional food and beverage sales from unrated hostels and B&B’s located nearby, on the other hand he said that this was not taken into account when valuing the subject property. The Tribunal is conscious that the Respondent has already applied an overall discount of 13.2% at representation stage.

**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 €63,000.

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.