

**Appeal No: VA19/5/1699**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**RUSSELL'S SALOON**

**APPELLANT**

**and**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of  
Property No. 1282014, Pub at 28 Park Street, Dundalk, County Louth.**

**B E F O R E**

**Donal Madigan - MRICS, MSCSI**

**Deputy Chairperson**

**Sarah Reid – BL**

**Member**

**Emma Slattery - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 31<sup>ST</sup> DAY OF MAY, 2024**

**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 €49,600.
- 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:

*“How can you value a property and increase its rate value by over 300% when it was assessed over 4 year period 2014-2017, to which the premises was closed for several years until mid 2015, without taking several major factors into consideration,*

*-Brexit and it's (sic) unknown effect it will have on a border town*

*- Footfall, this is ever decreasing in our business, with a massive increase in off sales throughout the country*

*-trade decreasing -Pubs 7 Day license nationally decreased from 8,617 in 2005 to 7,072 in 2018, a decline of almost 18% or 1545 pubs. (Dublin pubs 786 in 2005, 776 in 2018).*

*-we do not open all day as we don't have any TVs on our premises, the high cost of showing sport is not sustainable. We only have a small time frame to make money in the bar game which is only on the weekend nights and even that is really only coming down to a few hours on a Saturday night.*

*-Drink driving laws have changed since the revaluation timeframe, this has seriously impacted our trade with people leaving earlier on their nights out because of their fear of being stopped the next day for being over the limit.*

*-Costs are all on the increase, suppliers have all increased their prices, As have the electric/gas fuel etc.*

*- Dundalk being a border town has massive problems and with the Brexit uncertainty it is detrimental putting a 300% rise on this property. I feel we are being treated like we are a Pub in Dublin's Temple Bar area. We don't see any tourists around these parts unfortunately.*

*The fair amount would be the same as previous if not less. €3,627.76p/a”*

- 1.3 The Appellant in their Notice of Appeal considered that the valuation of the Property ought to have been determined in the sum of €3,627.76.

## **2. REVALUATION HISTORY**

- 2.1 This is a Revaluation appeal arising from the Louth County Council revaluation which was undertaken as a result of the Louth County Council Valuation Order 2017 that was signed by the Commissioner of Valuation on 6<sup>th</sup> October 2017 and is for the Valuation List published on 17<sup>th</sup> September 2019.
- 2.2 The functions of the Commissioner of Valuation are now performed by Tailte Éireann with effect from 1<sup>st</sup> March, 2023 (S.I. No. 58/2023 - Tailte Act 2022 (Commencement) Order 2023).
- 2.3 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 €55,900.
- 2.4 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 €49,600.

- 2.5 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September 2019 stating a valuation of €49,600.
- 2.6 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 2017.

### 3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held remotely on the 7<sup>th</sup> day of March 2024. At the hearing the Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) M.R.I.C.S., M.S.C.S.I. of Eamonn Halpin & Co. Ltd and the Respondent was represented by Ms. Claire Callan, BSc (Surveying), MSc (Planning & Development), 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 remote hearing, each witness, having taken the oath, adopted their précis as their evidence-in-chief in addition to giving oral evidence.
- 3.3 Both Valuers provided a standard Declaration and Statement of Truth in their written summaries of evidence in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019.

### 4. FACTS

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

- 4.1 The Property is situated on Park Street in the centre of Dundalk along with several other licensed premises. Dundalk is the county town of County Louth and has a population of 43,112 persons (2022 Census).
- 4.2 The Property comprises the ground floor only of a three-storey building fronting Park Street (the upper floors are semi-derelict and were formerly residential) which spreads out to the rear with further space to a laneway leading to Mulholland Avenue. It consists of an open plan bar area with seating and a small snug area to the front. To the rear there is a large open plan smoking area which is heated with seating for an area of c. 60 persons. There is an additional bar area which was recently renovated by the owner as a ‘speak easy cocktail bar’ which is predominantly used for private parties only.

- 4.3 The floor areas of the Property are agreed as follows:

|           |                           |
|-----------|---------------------------|
| Bar       | 118.00m <sup>2</sup>      |
| Extension | <u>77.61m<sup>2</sup></u> |
|           | 195.61m <sup>2</sup>      |

- 4.4 The Property was purchased in 2014 for €80,000 and renovated to open for trade from 1<sup>st</sup> May 2015. The Property engages in drinks only trade with business centred on evenings and at weekends.

- 4.5 Trading information was put before the Tribunal and is included separately in the Appendix to this Determination (N/A to public).
- 4.6 The Property is freehold.
- 4.7 The parties' Valuers are agreed on the method of valuation to be used in this appeal which is the shortened version of the Receipts & Expenditure method where unit rates (expressed as percentages) are applied to streams of income (being categorised as fair maintainable trade or FMT) for each component part (be that drink, food, accommodation etc) from a business to derive the net annual value (NAV). This is the established method for the valuation of pubs for rating being that type of property that is valued having regard to the earning capacity. In this case there is only one stream of income (FMT) which is drink-on sales.

## 5. ISSUES

- 5.1 Both the Valuer for the Appellant and the Valuer for the Respondent are agreed upon the floor areas of the Property; the method of valuation; the rate at which to convert the FMT for drink to net annual value at 8% ( 9% less 1% for entertainment costs) but disagree on the appropriate level of FMT to adopt for the valuation with the Appellant proposing a figure of FMT €350,000 as against the Respondent at FMT €620,000. This results in their difference in valuation with the Appellant Valuer contending for an NAV of €28,000 at the hearing and the Respondent contending for a NAV of €49,600.

## 6. RELEVANT STATUTORY PROVISIONS

- 6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified, or re-enacted by the Valuation (Amendment) Act, 2015 and /or other statutes.
- 6.2 In Revaluation appeals, as in this appeal, section 37 of the Act provides that the Valuation Tribunal must reach a determination having regard to the provisions of section 19(5) inserted by section 7 of the of the Valuation (Amendment) Act 2015 as follows:

*"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 The Net Annual Value (the NAV) of the Property must be determined in accordance with the provisions of section 48 (1) of the Act, as amended, 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.”*

- 6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015, provides for the basis 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 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.”*

- 6.5 Section 63(1) of the Act states:

*“The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.”*

## **7. APPELLANT’S CASE**

- 7.1 The Appellant was represented by Mr. Halpin, who adopted his précis as evidence. After describing the Property’s location and number of pubs trading in Dundalk town, Mr. Halpin gave evidence of the Appellant’s trading history as well as the internal accommodation in the Property and business of the Appellant whose family had long standing presence as publicans in the town.

- 7.2 Mr. Halpin set out ten ‘tone of the list’ comparison examples, all being pubs in Dundalk. These were as follows:

|   | Property Number | NAV     | NAV drink sales      |
|---|-----------------|---------|----------------------|
| 1 | PN 1280953      | €26,000 | €325,000 (Estimated) |

|    |            |         |   |
|----|------------|---------|---|
|    |            |         |   |
| 2  | PN 2214994 | €19,800 | €247,500 (Estimated)                                |
| 3  | PN 1282168 | €28,000 | €350,000 (Estimated)                                |
| 4  | PN 1282001 | €15,200 | €190,000 (Estimated)                                |
| 5  | PN 1281935 | €21,600 | €270,000 (Estimated)                                |
| 6  | PN1281941  | €18,000 | €225,000 (Estimated)                                |
| 7  | PN 1281950 | €21,600 | €270,000<br>(Food sales <€100,000 so<br>discounted) |
| 8  | PN 1282441 | €5,000  | €70,000   |
| 9  | PN 1282705 | €27,800 | €347,500 (Estimated)                                |
| 10 | PN 1281817 | €25,500 | (Not provided)                                      |

- 7.3 Mr. Halpin argued that the Subject Property though centrally located is in an inferior position to its competitors offering only a drinks trade and having an unremarkable exterior unlike many of the competitor pubs in the town which enjoy a higher profile. The Property is fitted out to a high standard, but Mr. Halpin argued that so are its competitors and it was the Appellant's case that pubs, and the Subject Property in particular, can benefit from the good will attached to the operator and in the present case the Appellant benefited from a high level of personalised goodwill as he and his father had traded in Park Street for two generations.
- 7.4 Mr. Halpin argued that an averagely competent proprietor in the Property would consider a turnover of €350,000 (net of VAT) in a drinks only pub of this type to be trading very successfully. He argued this was borne out by the comparisons (outlined above in paragraph 7.2) none of which exceed a turnover of €350,000. It was Mr. Halpin's case that to justify a NAV in excess of €30,000 the Property would have to operate a different type of licenced premises, almost certainly with food and drink. Further, he argued it was unsustainable for the Respondent to suggest that the subject could be assessed at €49,600 NAV irrespective of its turnover, given the type and nature of the property and how its competitors are assessed by the Respondent.
- 7.5 It was the Appellant's case that the evidence from similarly circumstanced properties in Dundalk was that a Sustainable FMT Drink Sales level for the Property was €350,000. On that basis, and applying the Respondent's scheme rate of 8% (outlined below), the appropriate NAV for the Property was €28,000 and he asked that the Tribunal amend the valuation accordingly.
- 7.6 Under cross examination Mr. Halpin confirmed that in regard to the reduced more recent trading figures, post Covid, he did not believe this was universal as some of his clients had experienced uplift and that others had depressed trade. He submitted that it

was the ones who had outside space that did better and, even though in this case the Property had the benefit of outside space, the trade had contracted but notwithstanding that, he believes that the reason it has contracted is that it was over trading to begin with. This, he explained, was due to the honeymoon period (that period following refurbishment when a pub experiences an increase in trade). He disagreed that 4 years is a long honeymoon period as he considered that the refurbishment had been a good job and that the proprietor had much personalised goodwill and had managed to bring trade with him to this pub from Punters and bring along a younger clientele, but that the problem with these younger customers is that, whilst they may buy more cocktails and be more profitable, they are more fickle and prone to move to any new opening too.

7.7 When asked by the Respondent to confirm which of his ten comparisons had the benefit of a heated smoking area, function room and high level of entertainment he summarised these as follows:

- The Viper Room: This is known as a music venue but he cannot say if it has an outside space as he was unable to inspect it internally.
- The Punters: This has a limited outside space at the back but does have entertainment.
- The Phoenix: He could not inspect as it is for sale so cannot confirm.
- Toales: This is renowned for its music and has an outside space both covered and tented and is right in the centre of the town.
- The Nest: He could not inspect this as it is currently closed but he understands it does have some outside space at the back and is a large bar.
- The Century: This has the full potential of the subject Property as it has the bar on the ground floor and on the first floor it has a dining/lounge area and an extensive beer garden as well as a full commercial kitchen.
- Harry's Bar: This does not have anything outside it is a much more modest property.
- Byrnes: This has everything, entertainment, party room, huge outside beer garden and caters for weddings, communions etc.
- The Market Bar: At the time of the Revaluation it had the bar, the commercial kitchen and the first floor party room.

7.8 It was put to Mr. Halpin that he had not looked at properties close by with similar turnover and floorplate, and when asked why this was so, he said he had tried to keep the comparables to the town and not outside the town and said that, for example, he had excluded Brubaker's close by, as that is in a different class of establishment with not only a bar, but also a nightclub and dining venue with a valuation of €130,000. When asked about the turnover of Punters, he said he could not obtain that information as the property had been sold. It was put to him that Byrnes had been referenced as being a 5<sup>th</sup> generation of that family business and that even taking account of that, no allowance

had been granted by the Commissioner for goodwill for that valuation and so did not that suggest that it would be inequitable to grant a goodwill allowance for the subject Property. He responded by saying there must have been some allowance if this is only valued at €27,800 as he would have expected it to have a much higher valuation and consequently he does not see that as the anomaly but it appears that the valuation of the subject Property is, in that Byrnes is in the Valuation List at €27,800 whereas the subject is in the List at €49,600. He clarified for the Tribunal that at the valuation date the bar was exactly as is, that the party room at the back had been developed, without planning, but has subsequently been granted retention permission and that the most significant change was the upgrade to the beer garden which was done during the Covid period with a canopy removed and replaced by timber and Perspex but that it was in use as a beer garden before. He agreed that Courtneys could be comparable number 11 as it was mentioned in the main body of his evidence but not specified as a numbered comparison (like the other ten provided) which is at 44 Park Street with an NAV of €34,800 but he stated that he had not put this forward with the others as he regarded this as not comparable with the subject, as he considered it as being a “super pub”, and is surprised that it is valued at only €34,800 being, in his view, superior to the subject.

- 7.9 Mr. Halpin also clarified for the Tribunal that the 8% used to value the FMT was agreed but that it was only the level of FMT that was in dispute and elaborated on this by saying that if one slavishly follows the scheme and applies the 8%, then you get to the Respondent’s figure, but if one looks at the range of comparables, all within a few hundred metres of the subject, then the range in net annual values is from €15,000 to €28,000 for similar businesses and that, therefore, one has to look at a different category, such as Courtneys, being a super pub, to get to the level of even €34,800.
- 7.10 Mr. Halpin was asked about the large number of pubs situated in Park Street and he explained that the street was a popular retailing street at one time with plenty of day trade and footfall but since the advent of the shopping centres most retailers including Dunnes Stores had pulled out and the busy day trade is now gone and trade is concentrated in the evenings and at weekends. He believed that the grouping of pubs in the street was more complementary than competitive when queried on this point.
- 7.11 At the conclusion of his evidence Mr. Halpin summarised his case by stating that all the comparable information (rents, sales etc) will have been assessed as part of the Revaluation exercise and if the aim of the Commissioner is to achieve equity and uniformity, which he believes it is, then he must not seek to tax the Client’s acumen but only the property, weighed against other rents and net annual values. He says that slavish regard to turnover and the valuation scheme produce the Respondent’s valuation but that is not enough, as the Appellant is entitled to be weighed against the assessments of his comparisons. There is nothing in the Valuation Act to confine the Commissioner to a scheme of valuation. If proper regard is had to the nearby truly comparable properties the range of net annual values is from €15,200 to €28,000 and it is only if a super pub like Courtneys is considered that a value as high as €34,800 is reached. He requests the Tribunal to moderate the valuation accordingly.

## **8. RESPONDENT’S CASE**

- 8.1 The Respondent was represented by Ms. Callan who adopted her précis as evidence and described the Commissioner’s approach to valuing pubs in County Louth. In



particular, Ms. Callan gave evidence that the Respondent adopted a scheme in relation to the valuation of public houses in County Louth and this scheme provided as follows:

A valuation scheme of between 6% and 9% of the estimate of Fair Maintainable Trade (FMT) for Drink On Sales is applied to all licensed pubs in Co Louth:

- Pubs with a FMT below €100,000 are valued at 6%. A minimum NAV of €2,600 applies.
- Pubs located outside of Drogheda, Dundalk and Carlingford with a FMT above €100,000 are valued at 7% if gross profit is below 56%, and at 8% if gross profit is above 56%.
- Pubs within Drogheda, Dundalk and Carlingford with a FMT above €100,000 are valued at 8%, if gross profit is below 56%, and at 9% if gross profit is above 56%.
- An entertainment allowance can be applied where entertainment costs are above 5% of total drink on sales. This allowance of 1% is applied to total drink on sales.
- Food sales are valued at 5% with the first €100,000 of turnover being excluded from the calculation.
- Off Sales are valued at 3%.

8.2 Ms. Callan gave evidence that the estimated FMT for drink on sales in the Subject Property had been valued at 9% in line with the above scheme and a 1% discount had been applied to the drink on sales to reflect its high entertainment costs.

8.3 In support of her valuation, Ms. Callan for the Respondent provided two key rental transactions (KRT's) from County Louth as follows:

**KRT 1:**

|                    |                  |
|--------------------|------------------|
| Property Number    | redacted         |
| Lease commencement | 01.05.2018       |
| Lease term         | 4 years 9 months |
| Rent per annum     | €24,000          |
| NAV                | €28,800          |

**KRT 2:**

|                    |                  |
|--------------------|------------------|
| Property Number    | redacted         |
| Lease commencement | January 2017     |
| Lease term         | 4 years 9 months |
| Rent per annum     | €219,200         |
| NAV                | €18,000          |

8.4 In addition, the Respondent relied on five NAV comps as follows:

|   | Property Number | FMT Drink | FMT Food | Off sales | NAV     |
|---|-----------------|-----------|----------|-----------|---------|
| 1 | PN 1281999      | €600,000  | -        | -         | €48,000 |
| 2 | PN 2150142      | €355,000  | €845,000 | €5,000    | €74,300 |
| 3 | PN 1282096      | €598,000  | -        | -         | €47,800 |
| 4 | PN 1282594      | €600,000  | €25,000  | -         | €55,200 |
| 5 | PN 1284122      | €720,000  | -        | -         | €57,600 |

8.5 Under cross examination by Mr. Halpin, Ms Callan confirmed that in regard to her NAV comparable Number 2 (PN 2150142) she did not regard this as being superior to the subject property but admitted that it had a large food offering with restaurant, large bar and car park and although drink on sales were only €355,000, that it was a draw for the food that benefited the trade it being open daily from noon. She disagreed with Mr. Halpin when he put it to her that with drinks FMT at only €355,000 did this not indicate his Client's FMT by contrast demonstrated exceptional trade and did not discount it as a comparison because of the large food offer but considered it relevant to inform the Tribunal. She agreed with Mr. Halpin that it lacked the locational attributes of the subject property being around 900 metres from it.

8.6 Mr. Halpin then asked Ms Callan about her NAV number 3 (PN 1282096), The Spirit Store, which he contended was a late night venue and she responded by saying it is open variously from 12, 2 or 4:00 pm with closing at 11:30 but admitted it can have live music outside unlike the subject property which cannot, owing to a condition in the 2019 retention permission. With regard to her NAV comparison number 4 (PN 1282594) Kennedys, she confirmed that the FMT component (before the food allowance deduction under the valuation scheme of the first €100,000 of turnover/FMT) is €125,000 and agreed this is significant but not as significant as McGeough's (NAV No. 2). She agreed with Mr. Halpin that although it is 950 metres from the subject that it was not an ideal comparison because of the food offer, but that it nevertheless is relevant. It was put to Ms Callan that, in regard to her NAV number 5, The Avenue Inn that this was originally intended to be a super bar as part of a large complex with Centra etc but never got planning consent and the Avenue Inn secured the licence and that it was sold in 2011 for €700,000 when the country was (in economic terms) on its knees, and thus compared to the subject which was sold for only €80,000 in 2014 did this not show that they are not comparable. She did not know the history of the comparable but indicated that from speaking to Mr. Halpin's Client that he had told her that the subject property, when purchased, was in very poor condition with floors and ceilings falling in, with huge refurbishment to be done, but agreed there was no comparison between the two sales prices.

- 8.7 With regard to her first NAV comparable, Kennedys, it was put to Ms Callan that the Proprietor had been ill in hospital at the time the valuation certificates issued but she responded by saying the proprietor does not need to be there to deal with these as his Accountant could easily do so. It was put to her that this assessment (PN 1281999) when looked at in the context of the others in the street is the anomaly she disagreed stating that the objective is to value like with like and what she has done is to value a pub on Park Street in line with other pubs on the street of similar floor area, similar turnover and that offer similar facilities such as entertainment to their clientele. She did not consider that Mr. Halpin had done the same. Mr. Halpin asked about her KRT Number 2 but she could not confirm the floor area as Mr. Halpin maintained that it was at least the same size as the subject, had been rented at €19,200 per annum and assessed at the NAV of €18,000. (It was closed hence not inspected.)
- 8.8 Mr. Halpin then directed Ms Callan to her comments on his own comparables, and starting with Oscars (PN 1280953) which is on a corner location some 80 metres from the subject property, he asked Ms Callan why did she not think this was a good comparable to the subject she responded that she did not feel it had the same facilities as the subject such as private function room, large heated beer garden, and snug area to the front. She confirmed that as regards the basis of the valuation of that, at NAV €26,000, they did not have either a rent or trading figures and so it had been assessed by reference to similar comparable properties. Mr. Halpin asked her if his Client had not submitted accounts would his property been assessed at €26,000 to which she said it would not, because it was not the same “animal” notwithstanding Oscars has been well fitted out too but it does not have entertainment. She agreed with Mr. Halpin that the entertainment in the outside area in the subject could only be used up to 11:00 pm as a planning condition. She clarified this by saying Russells has two venues which can be separately operated, one for the saloon the other for Shaky Bills, with access to the rear being through the toilet block and she disagreed that it could not operate the two simultaneously.
- 8.9 Ms Callan was asked about the Market Bar (PN 1281817) which has entertainment but is only assessed at NAV €25,500 which she said is correct. Turning to The Viper (PN 2214994), Mr. Halpin asked her to confirm the basis of the NAV, at €19,800, to which she replied that it had been assessed in the same way as Oscars because they had no trade figures. She confirmed that where they did not have data this was the basis followed, i.e. like for like for other pubs in the town. It was put to her that the only reason the NAV of Russells is €49,600 is that the scheme has been slavishly followed, and nothing to do with equity and uniformity, which he contended is proven from the comparisons to which Ms Callan responded by stating that in an ideal world if they had returns for 156 pubs in Dundalk that would be preferable but they do not have that amount of information. It was put to her that with the expertise available in the Valuation Office that if his Client had not supplied trading figures would it not have been possible for the Valuer to make an estimate and on that basis would the figure have been more likely €21,000, €24,000 or €28,000 to which she said she did not know but that his Client had submitted accounts. It was put to her that relying on the accounts alone is not wise as per the decision in the Keith Kirwan case and applying the scheme is not supported by the tone of the valuation list, especially by reference to Punters (PN 1282168) it is inequitable which she disagreed with. She clarified for the Tribunal that in cases where they do not have trading data that the FMT is estimated but that for her comparables and for the subject property she had turnover figures to rely upon and in

the case of the Mr. Halpin's devaluation of the NAV in those cases where no data was supplied, she agreed she was not in a position to disagree with those analyses. She outlined for the Tribunal that the standard rate to apply to the FMT (drink on sales) for pubs in Dundalk is 9% but that an allowance of 1% would be made for entertainment if the amount for this was in excess of 10% of the total turnover. It was put to Ms. Callan that Section 63 of the Valuation is often cited as proof that a value on the List must be taken as correct however there can be anomalies in a List. In response the witness confirmed that she had checked all comparables to ensure the List NAV was correct and her investigations confirmed they were all calculated at either 9% or 8% in accordance with the Respondent's scheme.

8.10 At the conclusion of her evidence Ms. Callan outlined that the crux of the Appellant Valuer's case is the personal goodwill and exceptional acumen of his Client and she said it would be inappropriate for the Commissioner to apply an allowance for supposed goodwill as that would be in contravention of sec.19(5) of the Act and would be unfair to other pubs in Dundalk. The second point is whether the operator is considered exceptional which she said is not the case as he is, in fact, the norm. The Respondent, she submitted, has provided five NAV comparables in support with NAV Number 1 being almost identical to the subject property in terms of turnover and also on level of NAV (€48,000) and comparables numbers 3,4 & 5 have also similar turnover to the subject and there is nothing exceptional about these, and all are usual and typical. The Respondent therefore asks the Tribunal to uphold the valuation of €49,600.

8.11 In response to the Appellant's claim that the Property benefited from the Appellant's personal goodwill and exceptional acumen, the Respondent relied on the Tribunal decision Aishling McMahon T/A The Wishing Well Gastro Pub, in Kingscourt, Co Cavan, VA19/5/0480 in which it was held:

*"9.10 There is no doubt that the Appellant has regularly achieved high turnovers in the property and has established considerable goodwill, but this is not the answer to the question whether the Appellant is an exceptional operator... It is to be assumed that the letting takes place in an open market. The open market includes prospective tenants who would recognise the advantages of The Wishing Well and no evidence has been put before the Tribunal to suggest that prospective tenants could not operate the premises just as successfully as the Appellant."*

8.12 In addition the Respondent referred to the Tribunal decision of Solazzi Ltd T/A The Courtyard on Main Street, Ferns, Enniscorthy, Co Wexford, VA/19/5/0376 where it was held:

*"10.4 The issue for determination by the Tribunal is whether the FMT of the subject property is attributable to the exceptional skill of the chef and / or the business acumen and / or long trading hours of the occupiers of the subject property and that an allowance should be made in respect of the same calculation of the NAV of the subject property, as contended by the Appellant, or whether the FMT is attributable to the location and condition of the subject property itself, not the business conducted therein, as contended by the Respondent."*

*10.10 No evidence was adduced by the Appellant to show that the level of the FMT of the subject property is attributable to the skill of the chef employed by, or the goodwill or business acumen or long trading hours of, the operator of the subject property.”*

*10.11 The onus of proof lies on the Appellant. The Tribunal finds that the Appellant has failed to prove that the hypothetical tenant could not generate similar revenues.”*

- 8.13 Based on the above, the Respondent argues that the present appeal is sufficiently similar to the aforementioned Tribunal decisions insofar as the Appellant had consistently achieved high turnovers in the property and that a prospective tenant could operate the premises just as successfully.

## **9. SUBMISSIONS**

There were no legal submissions in this case.

## **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, equitable and uniform 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 Louth County Council.

### *Onus of proof*

- 10.2 The Tribunal has found on several occasions that the onus of proof rests with the Appellant in an appeal (See *Proudlane Ltd. t/a Plaza Hotel* (VA00/2/032) and *AIB Group PLC v Commissioner for Valuation* (VA20/4/0053)). The position was expanded on in Tribunal decision *FGM Properties v Commissioner for Valuation* (VA19/5/1091) wherein it was held: *“The onus of proof rests on the Appellant to demonstrate, through cogent evidence that the Respondent has erred.”*
- 10.3 Arising from these decisions, in order to succeed in their appeal, an Appellant must demonstrate, through cogent evidence, that the Respondent has erred in their valuation of the property under appeal. In that respect, the Appellant was obliged to satisfy the Tribunal, through evidence, that the Respondent’s valuation was incorrect and the Commissioner’s approach to valuation resulted in an incorrect valuation of the Property.

### *Respondent’s scheme*

- 10.4 Insofar as this appeal concerns a licenced public house with entertainment facilities, it is accepted that hospitality properties, are valued by reference to their earning capacity (Fair Maintainable Trade / ‘FMT’) and that same requires a consideration of the accounts and trade figures showing the for a property. In that regard, the Tribunal recognises the difficulty for Appellants and/or their agents in obtaining a

breakdown/analysis of comparable properties to benchmark their appeal, because the information displayed on the Tailte Éireann (TE) map for the relevant valuation list, deliberately omits this information on the grounds that it relates to trading details that are deemed to be confidential.

- 10.5 The Tribunal notes that this gives rise to the inevitable (albeit, unintentional) consequence that Appellants are placed at a disadvantage in the presentation of their case, unless they have alternative sources to obtain this information, for example, by being provided with relevant details by the Ratepayers of other comparable properties, or, if an Agent has available to them information on trade as would verify the basis of those other valuations were made. This is unlike the case of other properties valued by reference to a unit value rate per square metre (the comparable method) where such information is displayed on the TE website map and readily accessible to all enquiring parties, including Appellant's advancing an appeal. Accordingly, for this category of property, namely public houses and/or licensed premises, the visual indication of the valuation breakdown, and even floor areas to indicate basic information, such as the size of the property, is specifically opaque.
- 10.6 Notwithstanding the above limitations that an Appellant may encounter in an appeal such as the present one, the Tribunal finds that the onus of proof nonetheless rests with the Appellant to show, in evidence, that the valuation applied by the Respondent was incorrect and the valuation ought to be amended in the terms they contend. In the present appeal, the Appellant's agent argued that the Respondent ought to have applied a discount on the FMT applied by virtue of the fact that the operator in the Property conducted exceptional trade and he relied on Tribunal decision of VA14/5/959 *Keith Kirwan* in support of this point.

*'Taxing' an operator's goodwill*

- 10.7 It was the Appellant's case that only a property can be taxed whereas in the present case, their business acumen and personalised goodwill were effectively being taxed. The Appellant argued that this principle was dealt with at length in the decision VA14/5/959 *Keith Kirwan* where the Tribunal noted that the occupier's business is already taxed by the Revenue on its profits and that there is a danger in slavishly following an occupier's actual turnover to arrive at the NAV without making appropriate adjustments and allowances to reflect the broader tone of comparable properties, including publicans with lesser abilities.
- 10.8 In the *Keith Kirwan* case, the Tribunal found the Appellant to be a particularly established and successful trader having regard to the business and its performance in a distinctly rural setting. The Tribunal held:

*"It seems reasonable to conclude from the data as furnished and from the evidence as adduced and largely uncontested, that the Applicant has derived significant benefit in terms of value of the drink sold from having the guile or acumen to put in place the infrastructure and thereafter importantly the unique commercial arrangement with an individual who, from the evidence, time and again and consistently over a period of in or about four years, has produced*

*food of sufficient quality and value to sustain a modest enterprise in difficult times economically and in a small rural village.*

*In addition to the food and the on-sales, the subject property boasts a relatively small (structurally) off-licence. The turnover figures for this particular enterprise, run as it is from a confined space which is no larger than the proverbial shoe-box, are frankly surprising. Given that the core client base is in or around at most 281 and given the relatively speaking rural location, the achieving of such a relatively significant level of off-sales must, and in the circumstances, be attributed to an appreciable degree to the individual guile and acumen of the operator, this Appellant.*

...

*Mr. Halpin has argued and Mr. Hazel appears to accept that this Respondent, when assessing rates, must and as a matter of principal, exclude from consideration features of the property/use which are on balance attributable to what is referred to as "business acumen". The rationale for this is readily understood. The individual whose business acumen pushes a business into healthy turnover and in turn into healthy profit drives himself and the business into extended arms of another branch of revenue, that is to say, the Collector General, with such turnover and/or profit scrutinised and with appropriate tax lawfully deducted and paid.*

*It would and in the circumstances be palpably unfair for such profit, driven as it is by business acumen and endeavour, to be taken into account on the one hand when assessing liability for Corporation and/or Income Tax and at the same time taken into account when striking the appropriate measure of rates to be borne by the same individual. Such collateral intrusion on an already stretched tax base demands extreme caution."*

- 10.9 The Tribunal has considered the *Keith Kirwan* decision as well as the Tribunal decisions VA.19.5.0480 *Aishling McMahon t/a The Wishing Well Gastro Pub* and VA.19.5.0376 *Solazzi Limited* noted above. The Tribunal notes that in the *Kirwan* case, the Appellant in that case had proven in evidence a distinct and unique business case regarding their enterprise when compared to neighbouring properties in line with whom their property had been valued. Having regard to the particular facts of the *Keith Kirwan* case, the Tribunal does not find the Appellant in this appeal to be of similar standing.
- 10.10 The Tribunal finds that the Appellant's argument that their business is being valued excessively and their business acumen is being taxed, is not made out. It was the Respondent's case that the Subject Property benefits from beneficial attributes that neighbouring pubs in Dundalk town do not have (for example a large, covered and heated smoking area and private function room) and the valuation had regard to these distinguishing features.

**DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent to enter the Property on the List at €49,600

**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.