

**Appeal No: VA19/5/0793**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**David Cullen t/a Seafield Hotel**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of**

Property No. 2192872, Hospitality at Local No/Map Ref: 1AABC2/1 Seafield Hotel,  
Seafield, Ballymoney, Gorey, County Wexford.

**B E F O R E**

**Donal Madigan - MRICS, MSCSI**

**Liam Daly - FSCSI, FRICS**

**Rowena Mulcahy – Solicitor, C.Arb., FCIArb.**

**Deputy Chairperson**

**Member**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 23<sup>RD</sup> DAY OF MAY, 2023**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11<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 (the “Subject Property”) was fixed in the sum of **€805,000.**

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Subject Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because:  
*"The valuation is excessive and inequitable".*

1.3 The Appellant considers that the valuation of the Subject Property ought to have been determined in the sum of **€400,000.**

## **2. REVALUATION HISTORY**

2.1 On the 29<sup>th</sup> day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Subject Property was sent to the Appellant indicating a valuation of € **1,023,000**.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Subject Property was reduced to € **805,000**.

2.3 A Final Valuation Certificate issued on the 10<sup>th</sup> day of September, 2019 stating a valuation of €805,000.

2.4 The date by reference to which the value of the Subject 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 a remote hearing held by zoom on the 8<sup>th</sup> day of July, 2022. At the hearing the Appellant was represented by the Mr. Donal O’Donoghue, MRICS, MSCSI, Registered Valuer, Director of OMK Property Advisors, and the Respondent was represented by Mr. Michael Vallely, BL, instructed by Mr. Michael Collins of the Chief State Solicitor’s Office, and 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.

3.3 Each Expert Witness provided in their respective precis a Declaration and Statement of Truth in the standard form in compliance 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 Subject Property is located approximately 7 kms East of Gorey and approximately 9 kms from the Gorey exit (Junction 23) of the M11, within walking distance of Ballymoney beach, in the north of County Wexford.

4.2 The Subject Property comprises a modern hotel, spa and leisure facility which has been operated by the present owners since around 2007 and was first valued in 2009. The hotel is graded four star and has 102 main hotel bedrooms. It is a substantial building being four storeys over basement and facilities include lounge, Bar, restaurants, and spa leisure facility. The leisure facility comprises indoor hydrotherapy pool, outdoor vitality pool, 14 treatment rooms, thermal suites, gym, café area. Outside of the main hotel building there are 31 apartments, 4 houses and a 2-storey former golf clubhouse and marquee. The Subject Property benefits from approx. 104 car spaces and a function room with a capacity of 250 .

4.3 Trading details for the years 2016, 2017 & 2018 are provided in the Appendix which are not disclosed here so as to preserve confidentiality.

4.4 In addition to the 102 bedrooms in the main hotel building, the revenue of the Subject Property is augmented by the income from a combination of self-catering apartments and other units which for ease of reference can be designated “Self-Catering Accommodation” for the purpose of this Determination. The total of income yielding rooms/units, both in the main building and elsewhere on what the Appellant referred to as the “Seafield Estate”, is therefore calculated to be 137.

4.5 The Subject Property is held freehold by Mr. David Cullen.

## **5. ISSUES**

(a) At the hearing on 8<sup>th</sup> July, 2022, a request was made by Mr. Michael Vallely BL for the Respondent that a preliminary issue be addressed, namely, the attempt by the Appellant to include additional grounds of appeal which it was submitted by the Respondent were not specified in the original Notice of Appeal and should therefore not be considered.

The Tribunal considered that request and decided that:

- (i) as this appeal had been listed for hearing before on 27<sup>th</sup> May, 2022, and that brief hearing having had to be adjourned because of the late submission of information by the parties;
  - (ii) as both Surveyors were already in attendance on 8<sup>th</sup> July, 2022;
  - (iii) on the grounds of fair procedures to both parties;
  - (iv) for effective case management and prudent use of the resources of the Tribunal; and
  - (v) to mitigate the consequent costs for the parties,
- all matters should be heard together on that one day.

(b) The quantum of the valuation of the Subject Property is in dispute.

(c) The Surveyors acting on behalf of the Appellant and the Respondent respectively adopted the shortened form of the Receipts and Expenditure (R & E) Method of valuation to ascertain the Fair Maintainable Trade (abbreviated hereinafter as FMT) that a Reasonably Efficient Operator (REO) would expect to achieve at the Subject Property. The Surveyor for the Appellant augmented this with a “full” R & E calculation. In regard to the full R & E exercise, it is noted that the Respondent disputed some of the items included in that calculation.

## **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.

6.2 In Revaluation type appeals, as in this appeal, sec. 37 provides that the Valuation Tribunal must reach a determination having regard to the provisions of sec. 19 (5) of the Valuation Act, 2001, that 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 of the Subject Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

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

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 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. O’Donoghue, having taken the oath, adopted his precis as his evidence in chief. He outlined to the Tribunal that the Subject Property is a modern hotel located in an attractive coastal location within easy reach of Gorey and Courtown. The Subject Property was originally launched as part of a golf club and spa resort. The golf course subsequently closed following the financial crisis of 2008 and has remained closed. The Subject Property is located approximately 9 km from the Gorey exit (Junction 23) on the M11, 7km from Gorey town and a 15-minute walk from the popular Ballymoney beach. Gorey, Courtown and Wexford generally are popular holiday destinations in Ireland with excellent beaches, hotels, holiday homes and tourist attractions and amenities readily available throughout the county.

The Hotel has 102 bedrooms, including Deluxe rooms. Standard rooms feature TVs, free Wi-Fi, and tea and coffee making equipment. • State-of-the-art spa, pool and fitness centre • 500 sq. metre conference centre and meeting space with capacity to host 25 to 250 attendees. • Ample car parking is available on site. The Subject Property is a 4-star Hotel. He regarded the Subject Property as being situated in a rural coastal location.

7.2 He outlined the main factors affecting rental value as being that the Subject Property is a 102-bedroom Hotel with Restaurants. Bars, Conference facilities, banqueting room and leisure centre, spa and pool situated just off the N11 in a rural location with the benefit of sea views and within easy walking distance of Ballymoney beach. He confirmed that the Subject Property has been owned and operated by the Cullen family, trading under the Seafield Hotel brand, since 2007 when it was constructed.

7.3 He contended that the Commissioner of Valuation erred in including income from the letting of Self-Catering Accommodation (which Mr O'Donoghue described as "self-catering properties" or "domestic properties" or "residential properties") located in the "Seafield Estate" in the assessment of Net Annual Value. He maintains that there are numerous precedent decisions dealing with this matter and he referred to *Kasterlee v Commissioner of Valuation* VA07/3/009 as one example. He excluded receipts (€500,000 est.) from the Self-Catering Accommodation in his assessment of NAV of the Subject Property. He submitted that visitors booking through the Hotel may avail of the hotel amenities but are not classified as residents within the meaning of the Liquor Licensing Acts. He stated that they may also avail of the hotel services at a cost. He clarified that the Appellant maintains the Self-Catering Accommodation and makes them ready for incoming visitors on a routine basis. The Appellant provides bed linen and towels to visitors but not day to day service and cleaning facilities. He calculates that there are 31 self-catering apartments, out of the original 89 constructed, which are currently available for letting by the Hotel. These self-catering apartments are owned by Mary Cullen, a related party.

7.4 Taking the expert valuation evidence first, Mr. O'Donoghue, submitted a valuation of € 655,000/656,000 as being his opinion of the Net Annual Value of the Subject Property as at 15<sup>th</sup> September, 2017.

7.5 He calculated this by reference to a full Receipts and Expenditure valuation in addition to a shortened form of valuation using various metrics outlined further below.

7.6 Mr. O'Donoghue relied on the following six comparable properties in County Wexford to guide his opinion, all of which were also relied upon, in turn, by the Respondent's Valuer, Mr. O'Brien. Full details including FMT estimates are provided under section 8 below.

#### **Comparable No.1**

Property No. 2067956

Address: Amber Springs Hotel, Wexford Street, Gorey, Co. Wexford

Net Annual Value: €726,000

Number of Bedrooms: 127

**Comparable No.2**

Property No. 2166274

Address: Ashdown Park Hotel, The Coach Road, Gorey, Co. Wexford. Net Annual Value: €405,000

Number of Bedrooms: 79

**Comparable No.3**

Property No. 2116301

Address: Riverside Park Hotel, The Promenade, Enniscorthy, Co. Wexford

Net Annual Value: €521,000

Number of Bedrooms: 100

[At the hearing the Tribunal considered that it should not have regard to this comparable as the valuation of this property was under appeal.]

**Comparable No.4**

Property No. 2009339

Address: Ferrycarrig Hotel, Ferrycarrig, Co. Wexford

Net Annual Value: €534,000

Number of Bedrooms: 102

**Comparable No.5**

Property No. 2102963

Address: The Talbot Hotel, 11/12 Paul Quay, Wexford, Co. Wexford

Net Annual Value: €552,000

Number of Bedrooms: 107

**Comparable No. 6**

Property No. 2104654

Address: Whites Hotel, Abbey Street, Wexford, Co. Wexford

Net Annual Value: €776,000

Number of Bedrooms: 160

7.7 (a) Mr. O'Donoghue based his valuation rationale on the use of various hospitality and property metrics to derive the Net Annual Value, being RevPar (revenue per available bedroom calculated as available days by multiplying the number of bedrooms by days in the year and dividing the bedroom revenue FMT by this figure), TrevPar (total property hotel revenue (FMT) divided by the number of bedrooms), NAV per bedroom and NAV as a percentage of total FMT.

(b) In regard to the Subject Property, this gave him the following analysis of the existing NAV assessment, based on using **102 bedrooms**, of € 805,000.

No. of  
Bedrooms 102  
Available  
days 37230

	Revenue	NAV%	NAV	% of NAV
Accommodation	€3,400,000		10%	€340,000
Food	€2,950,000	5%	€147,500	20%
Beverage	€1,550,000	7%	€108,500	14%
Spa / Leisure	€1,350,000	15%	€202,500	27%
Sundry	€ 45,000	15%	€ 6,750	1%
	€9,295,000		€805,250	

RevPar € 91.32

TrevPar € 91,127

(c) In regard to the Subject Property if he reduces the Accommodation Rooms income by € 500,000 (mentioned in 7.3 above) this brings the Accommodation FMT down from € 3.4m to € 2.9m and this gives him the following analysis of the existing NAV assessment of € 805,000.

No. of Bedrooms 102 Available days 37230

	Revenue	NAV%	NAV	% of NAV
Accommodation	€2,900,000		10%	€290,000
Food	€2,950,000	5%	€147,500	20%
Beverage	€1,550,000	7%	€108,500	14%
Spa / Leisure	€1,350,000	15%	€202,500	27%
Sundry	€ 45,000	15%	€ 6,750	1%
	€8,800,000		€754,500	

RevPar € 77.89

TrevPar € 86,275

NAV as % of Total FMT (from analysis in (c) above) 8.57%

NAV per bedroom € 7,892.

7.8 In regard to each of the comparable properties cited this gave, according to Mr. O'Donoghue's initial analysis, the following results:

**(a) RevPar**

Subject Property	€ 77.89 per night
The Amber Springs Hotel, Gorey	No information available
▪ Ashdown Park Hotel, Gorey	€51.50 per night
▪ Riverside Park Hotel, Enniscorthy	€50.68 per night
▪ The Ferrycarrig Hotel	€62.85 per night
▪ The Talbot Hotel, Wexford	€68.11 per night
▪ Whites Hotel, Wexford	€61.64 per night

He says that this puts the Seafield Hotel 51% ahead of its nearest competitor.

**(b) TrevPar**

Subject Property	€ 86,275
The Amber Springs Hotel, Gorey	No information available
o Ashdown Park Hotel, Gorey	€67,848 per room
o Riverside Park Hotel, Enniscorthy	€71,500 per room
o The Ferrycarrig Hotel	€65,833 per room
o The Talbot Hotel, Wexford	€66,028 per room
o Whites Hotel, Wexford	€56,438 per room

He says that the Seafield Hotel is 20.66% more than the next highest hotel and that, if you exclude Whites as it is a low outlier, the average Trev PAR of the other 4 hotels is €67,800. The Trev PAR of these hotels only deviates +/- >5.4% from the average. Therefore, Seafield Hotel has an implied Trev PAR which is 27.25% higher than this average.

**(c) NAV per bedroom**

Subject Property	€ 7,892 per room
The Amber Springs Hotel, Gorey	€5,716 per room
▪ Ashdown Park Hotel, Gorey	€5,126 per room
▪ Riverside Park Hotel, Enniscorthy	€3,870 per room
▪ The Ferrycarrig Hotel	€5,235 per room
▪ The Talbot Hotel, Wexford	€5,158 per room
▪ Whites Hotel, Wexford	€4,850 per room

Mr O'Donoghue commented on these comparative figures by stating that each of the six comparisons are 4-star hotels and each one of the hotels has a swimming pool, leisure centre and/or spa facilities in addition to comparable, if not superior, conference / banqueting facilities. He stated that it was evident to him that a discernible trend had emerged when analysing the comparisons on a NAV per room basis and that the Subject Property does not conform with this trend and is an outlier.



#### (d) Treatment of Leisure Income FMT

Mr O'Donoghue considered that the percentage of Leisure income as a proportion of the NAV calculation would appear to be overstated when compared to the comparison properties, because Subject Property had been assessed as having Leisure income which makes up 27% of the Subject Property's NAV. This, he asserted, contrasted with the comparable properties whose Leisure income as a proportion of NAV are as follows:

	Leisure as % of NAV
o The Amber Springs Hotel, Gorey	No information available
o Ashdown Park Hotel, Gorey	13%
o Riverside Park Hotel, Enniscorthy	6%
o The Ferrycarrig Hotel	15%
o The Talbot Hotel, Wexford	7%
o Whites Hotel, Wexford	16%

He commented that each of the comparator hotels have broadly similar leisure and spa amenities; each has an indoor heated swimming pool, together with Sauna and steam rooms with gymnasiums and spa facilities.

7.9 He concluded from the various analyses he had undertaken that the Subject Property has outperformed all of these other hotels owing to the skill and expertise of the operators.

7.10 Mr. O'Donoghue submitted his valuation of € 655,000/656,000 as being his opinion of the Net Annual Value of the Subject Property as at 15<sup>th</sup> September, 2017 which he calculated as follows:

	FMT		NAV		% of NAV
Accommodation	€2,700,000		10%	€270,000	36%
Food	€2,800,000	5%	€140,000	19%	
Beverage	€1,500,000	7%	€105,000	14%	
Spa / Leisure	€ 900,000	15%	€135,000	18%	
Conference	€ 30,000	10%	€ 3,000	0%	
Sundry	€ 20,000	15%	€ 3,000	0%	
	€7,950,000		€656,000		

Say, NAV €656,000

This may, subsequently, be devalued, according to his analysis, on a per room basis, €656,000 / 102 = €6,430 per room, and by reference to the other metrics as follows:

RevPAR €72.52  
Trev PAR €77,941  
Leisure as % of NAV 18%  
NAV as % of FMT 8.25%

As stated earlier in this Determination, this was supplemented by a full R & E exercise.

## 8. RESPONDENT'S CASE

8.1 Mr. David O'Brien, for the Respondent, having taken the oath, adopted his precis as his evidence in chief. He confirmed much of the factual information already relayed by Mr. O'Donoghue earlier; there appeared to be little, if any, difference between the witnesses for the two parties on the material points concerning the location and description of the Subject Property. Mr O'Brien confirmed that the total gross floor area of the Subject Property is 13,468.11m<sup>2</sup> but that this does not include the floor area of 4 stand-alone houses within the complex, although the revenue from those houses is included in the FMT estimates that were used to calculate the valuation. He clarified that, in regard to turnover figures, he had analysed the 2016, 2017 and 2018 accounts and preference was given to the 2017 year with trends taken from the 2018 figures to yield the Respondent's total FMT estimate of € 9.3m. He did not agree with the Appellant that the hypothetical Tenant could not achieve such a level as he felt that the Hypothetical Tenant envisaged by the statutory basis could be the actual Tenant, and in fact that the first question such a Tenant would ask is "what are the levels of turnover being generated by his/her predecessor in the building in order to calculate his/her estimate of FMT and consequently, the Net Annual Value". He felt that there was no evidence forthcoming from the Appellant to suggest the Hypothetical Tenant, or the reasonably efficient operator (REO) could not achieve the levels being obtained by the actual operator in this case.

8.2 In regard to the comparables (ignoring No. 3) he stated that these were in more urban settings, and he considered the Subject Property to have a more rural location with amenities that would yield the higher FMT. In regard to the FMT for Leisure in respect of the Subject Property, he considered there was no reason to move away from his figure of € 1.35m as this was justified from a consideration of the accounts. He stated that the Subject Property benefits from guests and day visitors and that as it has a tranquil environment, it provides an ideal setting for a spa operation, relative to the other hotels.

8.3 He confirmed that the designation of part of the Subject Property as aparthotels had been the subject of correspondence with the Appellant in 2020 and that this was discussed with the Appellant's previous Agent and was brought up again in February 2022 with Mr. O'Donoghue. He was satisfied that the Self-Catering Accommodation met the definition of both apartments and aparthotels and that is why the element of income from the Self-Catering Accommodation had not been excluded from the valuation of the Subject Property. The Self-Catering Accommodation could be booked directly from the Hotel or indeed online using any hotel search engine. He stated that when an occupant arrives to take up Self-Catering Accommodation, they collect the key from the Hotel's reception but do not attend the Hotel itself thereafter. He confirmed that the bed linen was changed once a week and that the Self-Catering Accommodation does not have ovens but only a hob and microwave. He believed that the Self-Catering Accommodation is used for guests attending weddings and is very much integral to the Hotel. His understanding was that an occupant of the Self-Catering Accommodation could avail of the spa facility by paying a charge of € 10. He considered that the Self-Catering Accommodation, club house and Hotel were all part of the same "Seafield" offer.

8.4 He referred to his Precis and page 57 therein where the basis of the valuation scheme adopted by the Commissioner of Valuation is set out. He confirmed that from the total of 38 Hotels in Wexford, the Subject Property is one of 12 hotel properties in Wexford whose valuation had been appealed to the Valuation Tribunal and that 10 of that 12 had been appealed on the level of Fair Maintainable Trade only, with the Scheme of Valuation (i.e. rates adopted) not being an issue.

8.5 With regard to the full R & E calculation submitted by Mr. O'Donoghue, he said that a high degree of subjectivity applied to this because clarifications had been sought from the Appellant on items within this which had not been fully responded to., He considered that less weight should attach to this exercise as both Surveyors were agreed on using the shortened method of the valuation scheme, the only difference between them being in the levels of FMT adopted by each within that scheme.

8.6 Mr. O'Brien relied on the same comparables as Mr. O'Donoghue but had one further (seventh comparable) in addition and thus he relied on the following:  
[As the Valuation Office holds the most information on the breakdown of valuations this is supplied here to avoid repetition in the previous section 7.]

The Comparables are rearranged here in the order adopted by the Appellant to avoid confusion with numbering.

#### **Comparable No.1**

Property No. 2067956

Address: Amber Springs Hotel, Wexford Street , Gorey, Co. Wexford

Net Annual Value: €726,000

Number of Rooms: 127

#### Analysis

	€		€
	FMT Applied	NAV %	NAV
Accommodation	€3,800,000	10%	€380,000
Beverage	€1,550,000	7%	€108,500
Food	€3,100,000	5%	€155,000
Leisure	€ 450,000	15%	€ 67,500
Sundry	€ 60,000	15%	€ 9,000
Conference	€ 64,000	10%	€ 6,400
Total FMT	€9,024,000		Total NAV €726,400
			Rounded to €726,000

4 Star

Floor Area: 15,662m<sup>2</sup>

RevPAR of €81.97

Nav as % of Total FMT: 8.04%

Representations made by Avison Young

No Appeal lodged with Valuation Tribunal

**Comparable No.2**

Property No. 2166274

Address: Ashdown Park Hotel, The Coach Road, Gorey, Co. Wexford

Net Annual Value: €405,000

Number of Rooms: 79

Analysis

	€		€
	FMT Applied	NAV %	NAV
Accommodation	€1,485,000	10%	€148,500
Beverage	€1,085,000	7%	€ 75,950
Food	€2,350,000	5%	€117,500
Leisure	€ 340,000	15%	€ 51,000
Sundry	€ 50,000	15%	€ 7,500
Conference	€ 50,000	10%	€ 5,000
Total FMT	€5,360,000		Total NAV € 405,450
			Rounded to €405,000

4 Star

Floor Area: 8,015m<sup>2</sup>

TRevPAR of € 67,848

Nav as % of Total FMT: 7.56%

Representations made by Avison Young. No Appeal lodged with Valuation Tribunal

**Comparable No.3**

Property No. 2116301

Address: Riverside Park Hotel, The Promenade, Enniscorthy, Co. Wexford

Net Annual Value: €521,000

Number of Rooms: 100 [ At the hearing, the Tribunal considered that regard should not be had to this comparable as the Valuation of this property was under appeal.]

**Comparable No.4**

Property No. 2009339

Address: Ferrycarrig Hotel, Ferrycarrig, Co. Wexford

Net Annual Value: €534,000

Number of Rooms: 102

Analysis

	€		€
	FMT Applied	NAV %	NAV
Accommodation	€2,340,000	10%	€234,000
Beverage	€1,290,000	7%	€ 90,300
Food	€2,520,000	5%	€126,000
Leisure	€ 525,000	15%	€ 78,750
Conference	€ 20,000	10%	€ 2,000
Sundry	€ 20,000	15%	€ 3,000
Total FMT	€6,715,000		Total NAV €534,050
			Rounded to €534,000

Ferrycarrig continued.....

4 Star

Floor Area: 9,812m<sup>2</sup>

Nav as % of Total FMT: 7.95%

Representations made by Avison Young. No Appeal lodged with Valuation Tribunal

### **Comparable No.5**

Property No. 2102963

Address: The Talbot Hotel, 11/12 Paul Quay, Wexford, Co. Wexford

Net Annual Value: €552,000

Number of Rooms: 107

#### Analysis

	€		€
	FMT Applied	NAV %	NAV
Accommodation	€2,660,000	10%	€266,000
Beverage	€1,250,000	7%	€ 87,500
Food	€2,700,000	5%	€135,000
Leisure	€ 240,000	15%	€ 36,000
Conference	€ 85,000	10%	€ 8,500
Sundry	€ 130,000	15%	€ 19,500
Total FMT	€7,065,000		Total NAV € 552,500
			Rounded to €552,000

4 Star

Floor Area: not available

Nav as % of Total FMT: 7.81%

Representations made by Hennigan & Co. No Appeal lodged with Valuation Tribunal

### **Comparable No. 6**

Property No. 2104654

Address: Whites Hotel, Abbey Street, Wexford, Co. Wexford

Net Annual Value: €776,000

Number of Rooms: 160

#### Analysis

	€		€
	FMT Applied	NAV %	NAV
Accommodation	€3,600,000	10%	€360,000
Beverage	€1,650,000	7%	€115,500
Food	€2,600,000	5%	€130,000
Leisure	€ 835,000	15%	€ 125,250
Conference	€ 130,000	10%	€ 13,000
Sundry	€ 40,000	15%	€ 6,000
Car Park	€ 175,000	15%	€ 26,250
Total FMT	€9,030,000		Total NAV € 776,000
			Rounded to € 776,000

4 Star

Floor Area: 16,387m<sup>2</sup>

Nav as % of Total FMT: 8.59%

Representations made by Avison Young & Co. No Appeal lodged with Valuation Tribunal.

### Comparable No.7

Property Number 5008269

Address: Oyster Lane Limited, Paul Quay, Wexford Town, Wexford

Net Annual Value: € 179,000

Number of Rooms: 73 units (Apart Hotel)

#### Analysis

	FMT Applied	NAV %	NAV
Accommodation	€1,550,000	10%	€155,000
Sundry	€ 160,000	15%	€ 24,000
Total FMT	€1,710,000		Total NAV €179,000

4 Star apartments

Floor Area: 6,658m<sup>2</sup>

Nav as % of Total FMT: 10.46%

Representations made by Hennigan & Co. No Appeal lodged with Valuation Tribunal.

8.7 Mr. David O'Brien submitted a valuation of € 805,000 (the figure appearing in the Valuation List) as being his opinion of the Net Annual Value of the Subject Property as at 15<sup>th</sup> September, 2017 which he calculated as follows:

Use	FMT	% applied	Total NAV €
Accommodation	€3,400,000	10%	€ 340,000
Beverage	€1,550,000	7%	€108,500
Food	€2,950,000	5%	€147,500
Leisure / Spa	€1,350,000	15%	€202,500
Sundry	€ 45,000	15%	€ 6,750
Total FMT	€9,300,000		NAV €805,000

## 9. SUBMISSIONS

9.1 The Appellant was not represented by Counsel but Mr. O'Donoghue was given the opportunity at the hearing to make an oral submission in order to provide an equal presentation of the Appellant's case in the interests of fair procedures and commonality of access to justice. He had advanced one authority prior to the hearing and stated that it was one of many on the subject of rateability of additional accommodation at hotel properties being the case of **Kasterlee V Commissioner of Valuation VA 07/3/009** which related to a development of 52 houses at Mariner's Bay south of Youghal. This decision of the Valuation Tribunal was made on 20<sup>th</sup> May, 2008 and, in the circumstances and facts of that case, the Tribunal held that the additional accommodation concerned fell outside the statutory definition of an apart-hotel thus qualifying for a domestic premises exemption in accordance with Paragraph 6 of Schedule 4 of the Valuation Act 2001.

9.2 Mr. O'Donoghue made several points concerning the nature of the Subject Property and the classification of the additional units (as between houses, apartments and duplexes) as well as their ownership.

9.3 The Tribunal does not consider it is required or necessary to outline those arguments in detail here as the Tribunal has determined that the grounds of appeal should not be extended for the reasons addressed below in section 10.

9.4 Mr Vallely BL for the Respondent, made a written submission in which he cited the following cases to the Tribunal:

1. McGarry (Inspector of Taxes) v Harding (Lord Edward Street) Properties Ltd. (Unreported, Laffoy J., High Court, 27th July, 2004);
2. Kerry County Council v Kerins [1996] 3IR 394;
3. Breannagh Catering Limited v Commissioner of Valuation 2021 IEHC 663; and
4. Valuation Tribunal decisions in the following cases: SENO VA 07/3/121; Killerig Golf Club VA 07/3/036; Doonbeg 07/3/078 and Kasterlee VA 07/3/009.

9.5 In his submissions, Mr. Vallely BL referenced parts of the Valuation Act and the definitions of domestic premises, apartments, aparthotels, but similarly, it is not proposed to recite the submissions made on behalf of the Respondent as the Tribunal has determined that the grounds of appeal should not be extended for the reasons addressed in Section 10. below.

## **10. FINDINGS AND CONCLUSIONS**

10.1 In this appeal the Tribunal must determine the value of the Subject Property so as to achieve, insofar as is reasonably practical, a valuation that is both (a) correct and (b) equitable and uniform, so that the valuation of the Subject Property as determined by the Tribunal is relative to the value of other comparable properties on the Valuation List in the rating authority area of Wexford County Council.

10.2 The Surveyors for the Appellant and the Respondent respectively provided very detailed precis of evidence to assist in this Determination for which the Tribunal is grateful.

10.3 It was decided for reasons set out at section 5 of this Determination to hear submissions on the legal issue as well as evidence on quantum. In this section we will deal with our findings on both, starting with the legal issues.

### **(A) Legal Issues**

10.4 The Notice of Appeal received on the 11<sup>th</sup> October, 2019 stated, under the Grounds of Appeal that "The valuation is excessive and inequitable". No other grounds were cited even though space is set aside on the appeal form for any such to be claimed. The only other pertinent insertion by the Appellant on that form is the alternative valuation proposed to be relied upon which is given as a figure of € 400,000. It was established that the Appellant had been professionally represented before submission of the appeal as that former Agent had submitted Representations on behalf of the Appellant previously, but for reasons that are not known, the Appellant chose to submit the appeal himself rather than engage that Agent or any other Agent, which he is entitled to do. It was also established that Mr. O'Donoghue,

who now acts for the Appellant, was instructed in this matter after the appeal had been submitted. In Mr. O'Donoghue's own words at the hearing, he came late to the task.

10.5 The case set out in the Precis by Mr. O'Donoghue for the Appellant sought to challenge the correct description of the Subject Property in the Valuation Certificate so as to exclude the income derived from the Self-Catering Accommodation that he submitted was exempt from the assessment of Net Annual Value of the Subject Property. Mr O'Donoghue contended that, consequently, the calculations on which the NAV of the Subject Property was based by the Respondent, were out of line with comparable assessments, both in the estimate of FMT for each component of trade and on the basis of accepted hospitality and property valuation metrics such as TrevPar, RevPar, NAV per bedroom and NAV as a proportion (percentage) of total FMT. He cited latterly the decision in **Kasterlee** as being one of many cases that can be relied upon for supporting his contention that some of the units included in the valuation are in fact domestic and should be exempt and thereby excluded under Schedule 4 of the Act.

10.6 No application to amend the Notice of Appeal to add an additional ground or grounds of appeal was received by the Valuation Tribunal from the Appellant or his Agent.

10.7 The Valuation Tribunal finds in this appeal that the Appellant, through his agent, sought at a late date to effectively extend the grounds on which he wished to appeal the Respondent's decision on the valuation of the Subject Property from the sole issue of quantum specified in the Notice of Appeal, by indirectly incorporating, in his appeal, a legal issue as to whether or not part of the Subject Property is exempt. The Appellant sought to effectively extend the grounds of his appeal without making any formal application to amend the Notice of Appeal, thereby depriving the Respondent of the opportunity to object to the amendment of the Notice of Appeal prior to the hearing. To permit the Appellant to effectively extend his ground of appeal during the hearing in this manner would place the Respondent at a disadvantage in opposing the appeal and would not, in the view of the Tribunal, constitute fair procedure. Furthermore, it would contravene Sec.34. (1) (b) and Sec.35.(b) of the Valuation Act 2001. In addition, it would not comply with Rule 23 or Rules 55-59 inclusive of the Valuation Tribunal (Appeals) Rules 2019. To permit such a breach of statutory direction and the Tribunal rules would set an undesirable precedent.

10.8 Having made a Determination on that fundamental issue in 10.7 above, the Tribunal considers that it is not required to examine the points flowing from that, that were made by the Appellant's Agent which encompass the description of the Subject Property in the Valuation Certificate and the reference to the possibility of the application of domestic exemption nor to deal in depth with the corresponding counter arguments by Counsel for the Respondent.



## **(B) Valuation Issues**

10.9 Notwithstanding the findings in (A) Legal Issues above, the valuation aspects of the case were investigated because these were still relevant as having been grounded in the Notice of Appeal, and it became apparent, through cross examination, that there were two principal areas of difference in the approaches between the Surveyors for the Appellant and the Respondent respectively. Firstly, Mr. O'Donoghue had taken smaller amounts for some of the FMT components, for example, in respect of the spa & leisure income which he asserted was higher (in the actual accounts) than the usual because of the skill and expertise of the operator (in other words, more than might be reasonably expected to be achieved by a hypothetical tenant).

Secondly, he analysed the various measures by dividing each by a denominator of 102, being the number of bedrooms in the main hotel building. The comparability of the metrics used by Mr. O'Donoghue were shown at the hearing to be deficient because the FMT income from the Subject Property had been analysed by him throughout on the basis of a denominator of 102, which gave rise to significantly higher figures than were warranted when, in fact, the denominator that should have been adopted was 137, being the total accommodation in the Subject Property namely, 102 bedrooms in the main hotel building together with the Self-Catering Accommodation which comprises 31 self-catering apartments and 4 stand-alone houses. Indeed, there might have been an argument to take a higher number than 137 but for the purposes of this Determination it is sufficient to state that the minimum number of rooms is 137. The Tribunal finds that when the correct denominator is applied, the Subject Property, considering all its characteristics, has been assessed directly in line with the comparable hotels and consequently, was not over-valued.

10.10 No compelling information was forthcoming from the Appellant to prove the exceptional expertise of the operator of the Subject Property and no adequate reasons were given for the reduction of the FMT for the various income streams. The levels of FMT adopted by the Respondent appeared to be reasonable to the Tribunal.

10.11 It emerged at the hearing that the income streams accruing to the Subject Property comprised not only the 102 main bedrooms in the main hotel building but also 31 self-catering apartments and 4 stand-alone houses in the "Seaford Estate" and thus there was no basis to exclude these from the normal operation of hotel keeping.

10.12 No evidence was advanced by the Appellant to show that the Self-Catering Accommodation did not form part of the normal commercial income of a hotel operation.

10.13 In answer to a question from the Tribunal, Mr. O'Donoghue stated that he accepted the basis of the valuation scheme adopted by the Commissioner of Valuation, being the rates used to value each component of FMT income to derive the NAV, as set out in Mr. O'Brien's Precis, which are set out hereunder, as follows:

Accommodation	10%
Conference/Room Hire	10%
Food	5%
Beverage	7%
Leisure & Spa	15%
Sundry	15%

10.14 When the various metrics are properly analysed, using a denominator of 137 rather than the 102 as proposed by the Appellant's Agent, and

- (i) based on the Respondent's estimates of FMT for the various income streams, which the Tribunal deem reasonable estimates;
- (ii) because contrary evidence is not forthcoming to dislodge these estimates, and
- (iii) no contrary conclusion can be gained from the actual trading figures; the correct figures can be restated as follows:

(a) TrevPar	€ 67.99
(b) RevPar	€ 67,883.00
(c) Nav per bedroom/unit	€ 5,876.00
(d) NAV as percentage of total FMT	8.66%

10.15 Although this is a Revaluation type appeal, no rental evidence was advanced by either party. Accordingly, in the absence of rental evidence the ascertainment of the net annual value was made by reference to the NAVs of comparable hotels in accordance with the scheme for the valuation of this category of properties in Wexford as devised by the Respondent. The primary analysis advanced by the Agent for the Appellant did not take full account of the number of income streams supporting the correct total FMT for the Subject Property.

10.16 The Tribunal favours the common comparables 1,2,4,5, and 6 but do not consider no. 3 or no. 7 wholly relevant, because No. 3 was under appeal at the relevant time and No. 7 is a different type of property in several respects but chiefly because it is not a 4 star hotel.

10.17 In answer to a question at the hearing from the Tribunal, Mr O'Brien confirmed that the levels of FMT adopted for the comparable hotels were not materially adjusted away from the actual trading levels in line with the approach taken with the Subject Property. Therefore, there would seem no case, in either equity or uniformity, to alter the levels of FMT applied by the Respondent in the valuation.

10.18 Proceeding from the stance that the levels of FMT for the various sources of income are correct, as applied by the Respondent, this takes the exercise to the next point of analysis to ascertain if the Subject Property has been correctly valued according to the other metrics involved. Leaving out of account Comparables No. 3 and No. 7, the restatement of the key measures of the Subject Property with the other comparable hotels yields the following:

Subject Property (re-stated using 137 as denominator)		Range from Comparables
TrevPar	€ 67.99	€ 51.50 to € 68.11 per night
RevPar	€ 67,883	€ 56,438 to € 67,848 per room
NAV per bedroom/unit	€ 5,876	€ 4,850 to € 5,716 per room
NAV as percentage of total FMT	8.66%	7.56% to 8.59%

10.19 Taking account of the location, age, amenities, and other characteristics, including estimates of FMT for the various income streams, the Tribunal considers that the Subject Property has been fairly assessed, when compared with other hotels in Wexford, and is in line with the valuation scheme. In Wexford the valuation scheme has been tested, in that regard by representations having been made on these other comparable hotels and thus the scheme as applied can claim to be accepted by other recognised Rating Surveyors.

#### **DETERMINATION:**

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.

### **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.