

Appeal No: VA23/5/0266

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

RAILWAY BAR

APPELLANT

-and-

COMMISSIONER OF VALUATION

RESPONDENT

**In relation to the valuation of
Property No.1105676, Railway Bar at Main Street, Bundoran, County Donegal**

B E F O R E

**Hugh Markey, FSCSI, FRICS
Brian Meldon, FSCSI, FRICS, Reg Val, Arb
Fiona McLafferty, Solicitor**

**Deputy Chairperson
Member
Member**

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF MAY, 2025**

1. THE APPEAL

1.1 By Notice of Appeal received on 11th October, 2023, the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('NAV') of the above relevant Property was fixed in the sum of €27,200.

1.2 The grounds 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 Valuation Act 2001 (as amended) because:

“1. The valuation of the subject property is incorrect owing to rental evidence adjacent. PN 1105671 is let at €29,250 on a 4 year lease from 22nd February 2022. This property is three times the size of the subject property and has two bars.

2. As such, the value of the subject can only be a taxation of the occupier rather than the property. This is further evidenced by PNs 1105670 and 1105632. These premises are less than 50m from the subject property and are similar or superior. The subject property has a trading area of less than 100m² and is by no means one of the best pubs in the town.

3. The subject property has no parking, unlike many of the better pubs in the town.

4. The subject's value can be resolved by discounting the FMT or discounting the % on FMT.”

1.3 The Appellant considers that the NAV of the Property ought to have been determined in the sum of €15,600.

2. REVALUATION HISTORY

2.1 On 23rd September, 2022, a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (as amended) in relation to the Property was sent to the Appellant indicating a valuation of €27,200.

2.2 A final Valuation Certificate issued on 15th September, 2023 stating a valuation of €27,200.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is 1st February, 2022 (‘the valuation date’).

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on 29th November, 2024. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate) BA (Mod), of Eamonn Halpin & Co. Limited and the Respondent was represented Mr. David Colhoun BA, HDip, MSc, of Tailte Éireann.

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 made an affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. ISSUES

4.1 The issue in the appeal is the quantum of the valuation of the Property. The Appellant requests the Tribunal to determine the NAV in the sum of €17,500. The Respondent requests the Tribunal to affirm the NAV in the sum of €27,200.

4.2 The Appellant contends that the fair maintainable trade of the Property should be €250,000 and the relevant valuation scheme percentage should be 8%. The Respondent determined the NAV on the basis that the fair maintainable trade of the Property is €340,000 and the relevant valuation scheme percentage is 9%. The Appellant and Respondent agree that a 1% allowance for entertainment costs should be applied to the relevant scheme percentage.

5. FACTS

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

5.2 The Property is a licensed premises situated at the corner of Station Road and Main Street, Bundoran, County Donegal. The Property is held freehold.

5.3 The Property comprises a ground floor public house, which can be accessed from both Station Road and Main Street. The trading floor area has been agreed at 93.1 m². The Property operates a seven-day licence. The turnover of the business is generated from drink sales.

6. RELEVANT STATUTORY PROVISIONS

6.1 All references to a 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 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:

“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.”

6.3 Section 48(3) of the Act provides the following meaning of ‘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.”

6.4 Section 20(1) of the Act provides:

“A valuation order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the order, shall be determined.”

6.5 Section 19(5) of the Act provides:

“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.”

6.6 Section 37(4) of the Act provides:

“For the avoidance of doubt, neither subsection (1) (a) or (2) (b) (ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate.”

7. APPELLANT’S CASE

7.1 Mr Halpin, on behalf of the Appellant, submitted that the NAV determined by the Respondent should be reduced in line with its actual potential rental value and the emerging tone of the list. He submitted that the Respondent appeared to have determined the NAV of the Property by using actual trade in isolation. Mr Halpin submitted that there was over-trading at the Property attributed principally to the goodwill of the occupiers. Mr Halpin acknowledged that actual turnover is an element of fair maintainable trade (‘FMT’), but that relative potential for trade was paramount. He submitted that the Respondent had ignored the following objective facts:

- (A) No public house premises in Bundoran, regardless of its size or facilities, had been let for more than €31,200 in the last five years.
- (B) The subject Property is one of the smallest public houses in the town of Bundoran, with no other revenue potential (commercial kitchen, bedrooms, retail, leisure centre, nightclub etc.).
- (C) The subject Property is valued at the same NAV as many superior competitors, including one that is fifteen times the size of the subject Property.
- (D) The occupiers of the subject Property have operated the public house for almost 20 years and have been involved in the trade in the town of Bundoran for 30 years.

7.2 Mr Halpin submitted that in estimating the FMT, the standard approach would be to examine the turnover of the business for the three years prior to the valuation date. In relation to the Property, this would be 2019, 2020 and 2021. However, there was significant disruption caused to the business in 2020 and 2021 due to the Covid-19 pandemic. Mr Halpin submitted that this raised the question of the weight a hypothetical tenant may attribute to those years. He referred to

the impact of the postponement of the revaluation process due to the pandemic had on the information available, and relied on, by the Respondent to determine the value of public houses. He stated that there was low optimism in the licensed trade at the valuation date. Mr Halpin submitted that a hypothetical tenant could approach estimating the FMT in two ways, either use the years 2019, 2020 and 2021 and apply an uplift, or use the years 2018 and 2019 and apply a reduction. Mr Halpin stated that any such adjustment would be difficult to establish, owing to the lack of a functioning market in the years 2020 and 2021. He provided the following figures for turnover, extrapolated from the ‘Trading Profit & Loss Account’ included in his précis of evidence and reproduced at **Appendix A** (N/A to public):

Period	Drink Sales
1 December 2017 to 30 November 2018	€352,305
1 December 2018 to 30 November 2019	€360,408
1 December 2019 to 30 November 2020	€76,924
1 December 2020 to 30 November 2021	€142,989
1 December 2021 to 30 November 2022	€433,029

7.3 Mr Halpin stated that Bundoran is a popular coastal town in County Donegal. He submitted that there was nothing physically exceptional about the Property. It was below average in trading size compared to other properties in Bundoran. He stated that the occupiers of the Property have traded at the location since 2005 and have been in the licensed trade in Bundoran since 1994. Mr Halpin submitted that the occupiers bring a ‘significant goodwill to the trade’, which he submitted would not be available to a hypothetical tenant. He submitted that the question of relativity and allowance for goodwill was defined by rental evidence, turnover of comparable properties and the valuation list in Bundoran at large. Mr Halpin provided his calculations for the fifteen other public houses in Bundoran for comparison. This information is set out in **Appendix B** (N/A to public). Mr. Halpin also provided details of the letting of public houses in Bundoran, which is set out in **Appendix C** (N/A to public).

7.4 Mr Halpin submitted that, having regard to the information set out in Appendix B and Appendix C (N/A to public), that the subject Property has less than one-third the trading area of the average public house (285 m²) in Bundoran, and two-fifths of the median trading area (250 m²). He submitted that the size of the Property was a good indicator of separating the building

from the business. It is the building that is valued, not the business. The Property is valued at the same NAV as Comparison 1 (Kicking Donkey) which is situated next door to the Property, but the subject Property is under half the trading size. The Kicking Donkey is owned by the same occupiers as the Property. The occupiers first traded in the Kicking Donkey for eleven years and then occupied the subject Property. The Kicking Donkey was subsequently let by the occupiers as it was believed to be substantially more valuable than the subject Property. Mr Halpin maintained that if the Property and the Kicking Donkey were let at the same time, the Property would not have achieved the same rent. Mr Halpin submitted that the largest public houses (which also have commercial kitchens) in Bundoran (Comparison 4 and Comparison 5) have struggled, which he maintained was evidenced by their continual tenant rotation, rent achieved and NAV.

7.5 Mr Halpin submitted that, unlike the majority of locations in Ireland, Bundoran is a very sensitive market owing to its proximity to the border with Northern Ireland. He submitted that when sterling is strong, the market is strong; however, when sterling is weak (which he asserted has been for the past number of years), the market is weak. Mr Halpin submitted that this meant the properties are either left vacant or available at very moderate rents, which he maintained would not be the position if the properties were located elsewhere in Ireland. He stated that five public houses had been let in Bundoran over the past five years and no property had achieved more than €30,000 in rent.

7.6 Mr Halpin submitted that the issues to be considered in this appeal have been the subject of many judgments of the Tribunal, where the question of relatively has been fully explored and demonstrates that turnover should never be considered in isolation. The extent of an adjustment for the goodwill and acumen of the occupier has ranged from zero to fifty percent. He appended the Tribunal judgments in *Doyles Bar Athy Limited* (VA17/5/145) and *Arrow Bay Limited* (VA19/5/0372) to his précis of evidence. Mr Halpin submitted that based on the rental information and the tone of the list, the value applied to the Property by the Respondent could only have been determined at the exclusion of all other relevant information. In his opinion, a fair FMT was €250,000, which he stated reflected a downward adjustment for goodwill of 30% if using the years 2018 and 2019; or an upward adjustment of 30% if using the years 2019, 2020 and 2021.

7.7 Mr Halpin submitted that the NAV of the Property ought to be determined at €17,500 (being different to the Notice of Appeal), computed as follows:

	FMT	% Scheme	NAV
Drink Sales	€250,000	8%	€20,000
Less: Entertainment Costs Allowance		(1%)	(€2,500)
NAV		7%	€17,500

7.8 In cross-examination, Mr Halpin confirmed that the turnover of the Property exceeded the FMT of €340,000 in 2018, 2019 and 2022.

7.9 In response to a question from the Tribunal, Mr Halpin explained that an allowance of 1% for entertainment costs is applied if those costs exceed 5% of turnover. In relation to the turnover generated at a property relative to its size and the rent achievable, given that the Property had an FMT of €340,000, whereas Comparison 4 (Phoenix Tavern) (and acknowledging the differences in the properties) had a lower FMT on drinks sales (€200,000) and achieved a rent of €25,920 and Comparison 12 (Celtic Marine) (and acknowledging the differences in the properties) had a lower FMT on drinks sales (€150,000) and achieved a rent of €20,800, Mr Halpin submitted that the turnover of the Property was built on the bedrock of the goodwill and acumen of the occupiers who have been involved in the licensed trade in Bundoran for over 30 years. Mr Halpin submitted that there must be an adjustment for goodwill and acumen, particularly when comparing to other public houses in Bundoran who may not have operated for a similar period.

7.10 In response to a question from the Tribunal on the date and type of information that may be considered for the purposes of section 19(5) of the Act and any case-law from the Courts, Mr Halpin submitted that the interpretation of that section did not impact this appeal as what the turnover for 2022 demonstrated was that the occupiers are exceptional and supported the position that the actual turnover generated by the Property was a reflection of the goodwill and acumen of the occupiers given that they traded to stronger turnover than before the Covid-19 pandemic. Mr Halpin referenced the *Coillte Teoranta t/a Sliabh Bawn Windfarm* case and stated that he considered that he should have regard to the approach of the Respondent, which has been to consider information up to the valuation date.

7.11 In closing, Mr Halpin submitted that designating Bundoran as a primary licensed trade market in County Donegal appeared to be based on the number of public houses, as, in his opinion, the rental evidence and turnover of the public houses in Bundoran did not indicate a primary market. Mr Halpin submitted that Donegal Town was not designated a primary market, however, the market rental evidence provided by the Respondent in KRT2 was for Donegal Town where a rent of €78,000 was achieved. Mr Halpin submitted that Bundoran is not a primary market. In relation to Bundoran, Mr Halpin submitted that seven of the fifteen public houses (excluding the Property) were valued on an FMT basis with the average FMT of €266,285 for drink sales. Mr Halpin submitted that the question for the Tribunal is whether the Property was better than the average, worse than the average or on the average. Mr Halpin submitted that the Appellant has been penalised for providing trading information as a NAV of €18,000 has been applied to similar sized properties who did not provide information.

8. RESPONDENT'S CASE

8.1 Mr Colhoun, on behalf of the Respondent, set out the background to the revaluation process and the information sought from occupiers in that process. As regards revaluation statistics, the Respondent stated that as at 15th December 2023, the total number of public houses in County Donegal was 359, of which 69 or 19% had made representations to the Respondent. The statistics showed that there were 31 appeals (9%) relating to public houses lodged with the Tribunal.

8.2 Mr Colhoun described the Property as a traditional public house fronting onto two roads in the centre of Bundoran. He stated the Property is the oldest public house in Bundoran, originally constructed in circa 1875, during the period 1866-1957 when Bundoran was served by rail. The building is well maintained externally with attractive traditional signage. He described the Property as being in excellent condition throughout. Mr Colhoun stated that the Property was one of sixteen public houses currently on the valuation list for Bundoran. In response to the assertion by Mr Halpin in his précis of evidence that there is 'nothing physically exceptional' about the Property, Mr Colhoun reiterated that the Property is the oldest public house, and arguably the best known, in Bundoran. Mr Colhoun submitted that the Property was an exceptional property with significant

inherent goodwill attached unconnected to the occupier/operator and available to the hypothetical tenant.

8.3 Mr Colhoun submitted that the valuation of the Property was conducted according to the provisions of the Act. Mr Colhoun submitted that the estimate of the NAV is what a hypothetical tenant would pay in rent on the terms set out in section 48 of the Act, which is not necessarily what any particular tenant is paying. He submitted that the actual rent for any individual property may be material in deriving that estimate but is not in itself conclusive of the NAV in the context of section 48 and section 19(5) of the Act. Mr Colhoun submitted that the onus of proof rests on the Appellant to show that the determination of the NAV by the Respondent is incorrect and does not achieve equity and uniformity of value between comparable properties on the valuation list. He referred to previous judgments of the Tribunal in this regard, namely *Proudlane Limited t/a Plaza Hotel* (VA00/2/032), *William Savage Construction* (VA07/3/054) and *O'Sullivan's Marine Limited* (VA09/1/018).

8.4 Mr Colhoun submitted that the NAV of the Property was determined in accordance with section 48 and section 19(5) of the Act. He submitted that the value of the Property was determined by reference to the values of other properties comparable to the Property appearing on the valuation list in the same rating authority area as the Property, in accordance with correctness of value, equity and uniformity. Furthermore, he submitted that properties which are 'similarly circumstanced' are considered comparable, meaning that the properties share characteristics such as use, size, location and/or construction. He confirmed that the Respondent relied on relevant market data in the form of two key rental transactions and he also produced fifteen comparisons to demonstrate both correctness of value, and equity and uniformity of value between properties on the valuation list. Details of the two key rental transactions produced by the Respondent are set out in **Appendix D** (N/A to public). Details of the fifteen comparisons produced by the Respondent are set out in **Appendix E** (N/A to public). The Respondent's précis of evidence included photographs of the properties and their location relative to the Property. In relation to the comparisons, the Respondent's précis also provided information on the characteristics of the comparable properties.

8.5 Mr Colhoun submitted that the established method of valuation for licensed premises is the application of a percentage to the fair maintainable trade ('FMT'), following an analysis of market and trading information. He identified previous judgments of the Tribunal to support this position, namely *Longstone Investment Limited* (VA14/5/967), *Solazzi Limited* (VA19/5/0376) and *Aishling McMahon t/a The Wishing Well Gastro Pub* (VA19/5/0480), and cited the following "*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. Fair Maintainable Trade represents the annual level of trade that can be achieved by a reasonable efficient operator of the business in the subject property.*"

8.6 Mr Colhoun agreed that the Covid-19 pandemic and the associated postponement of the valuation date to 1st February 2022 had presented issues in assessing trading information for valuation purposes. He stated that, typically, the FMT of a property is assessed by reference to three years' audited accounts prior to the valuation date. However, due to the significant disruptions caused by the Covid-19 pandemic in 2020 and 2021, it was considered prudent, in the unusual circumstances, to examine longer periods of trade in the revaluation process. Mr Colhoun submitted that at the valuation date, the hypothetical landlord and tenant would have been fully aware that the trading figures for 2020 and 2021 were impacted. He recognised that the actual trading information at the valuation date may not in all cases be the best evidence of what is a fair and maintainable level of trade. Mr Colhoun submitted that the hypothetical landlord and tenant would consider 2019 or earlier trading figures which were unaffected by the pandemic as the starting point for negotiations and for the assessment of FMT for the property. He submitted that the figures for 2020 and 2021 should not be ignored but should be treated with caution. He further submitted that to comprehensively understand the impact of the Covid-19 pandemic on properties, a thorough examination of accounts for 2022 and 2023 (where made available) was also deemed prudent before assessing FMT. The Respondent had considered information from the valuation date to the date of issue of the valuation certificates.

8.7 In relation to the letting information provided by the Appellant, Mr Colhoun submitted that the information had limited analytical weight as copies of the relevant leases were not available for examination meaning there was no visibility on whether the leases contained inducements or

were between unconnected parties. As regards the letting of the Kicking Donkey, Mr Colhoun submitted that the position put forward by the Appellant, that it was leased as it was substantially more valuable than the subject Property, seemed illogical. Mr Colhoun offered the view that a more likely explanation was that the Appellant saw an opportunity to achieve a superior trade by operating the oldest and best-known public house in Bundoran, and decided to lease the property (Kicking Donkey) which they considered had lesser potential for trade. As regards the submission that the proximity of Bundoran to Northern Ireland creates a sensitive market due to currency fluctuations, no evidence was proffered to support this submission. In relation to Comparison 4 (Phoenix Tavern), Mr Colhoun submitted that the Respondent had received information regarding the trade of the previous occupier, as well as the current occupier. Parts of the property were in a dilapidated state. Mr Colhoun considered that it could be said that any alleged shortcomings in the revaluation process put forward by the Appellant were not borne out as the NAV of the property was similar to the rent achieved.

8.8 Mr Colhoun submitted that an FMT of €340,000 was a fair and maintainable level of trade for the Property, having regard to the financial information provided by the Appellant. In relation to the FMT of €250,000 put forward by the Appellant and the adjustments applied, Mr Colhoun submitted that no justification was given for a 30% downward adjustment for goodwill, nor any reason why the hypothetical tenant could not generate a similar trade at the Property to generate an FMT of €340,000. The alternative approach of applying a 30% upward adjustment for the impact of the Covid-19 pandemic was equally unsupported as the unique nature of the pandemic, and that the likelihood of a recurrence was very low, meant less analytical weight could be attached to the level of trade in 2020 and 2021. Mr Colhoun submitted that, aside from the impact of the Covid-19 pandemic on 2020 and 2021, trade at the Property has remained healthy and has grown over the period since 2016. A summary of the trading information referenced by Mr Colhoun in his précis of evidence is reproduced in **Appendix F** (N/A to public). Having considered the financial information, he produced the following analysis:

Actual Average (excluding 2020 & 2021)	€352,136
Actual Average (2018, 2019 & 2022)	€381,914
FMT	€340,000

In the circumstances, Mr Colhoun submitted that an FMT of €340,000 represented a fair and maintainable level of trade, and also captures an adjustment for goodwill and acumen.

8.9 Mr Colhoun stated that for public houses located in Letterkenny and Bundoran (as the primary towns/licensed trade markets in County Donegal) and generating gross profit margins in excess of 56%, the valuation scheme applied a 9% rate to FMT. Mr Colhoun submitted that, as only 9% of public houses appealed to the Tribunal, this demonstrated that the valuation scheme has been accepted by 91% of occupiers in the rating authority area. Mr Colhoun submitted that as the Property was in a primary market with gross profit margins in excess of 56%, the Property is subject to 9% on FMT. An allowance for entertainment costs of 1% has been applied to the Property, meaning an effective rate of 8% was applied to the FMT of €340,000. Mr Colhoun stated that the Property is the only public house in Bundoran under appeal to the Tribunal.

8.10 Mr Colhoun submitted that the Respondent had regard to market rental evidence and the tone of the list in determining the valuation of the Property, and did not rely on turnover in isolation. In all the circumstances, Mr Colhoun submitted that a NAV of €27,200 for the Property is correct, computed as follows:

	FMT	% Scheme	NAV
Drink Sales	€340,000	9%	€30,600
<i>Less:</i> Entertainment Costs Allowance		(1%)	(€3,400)
NAV		8%	€27,200

8.11 In cross-examination, Mr Halpin questioned how the Respondent determined Letterkenny and Bundoran as the primary licensed trade markets in County Donegal. Mr Colhoun stated that there would have been a macro-analysis of the County as a whole and then an examination of available information including market rental information and trading information, and also inspections of some of the properties. In relation to rental evidence, the Respondent would seek to ensure that the letting is between unconnected parties and also review the lease. Mr Colhoun confirmed that he had copies of the leases for KRT1 and KRT2.

8.12 In cross-examination, Mr Colhoun confirmed that from the sixteen public houses in Bundoran, an estimated FMT had been applied to eight properties. In relation to Comparison 3, on which an estimated FMT has been applied, the NAV is €18,000. Mr Halpin questioned why this property could not achieve a similar FMT to the subject Property, given that the ground floor is a similar size and in the same location as the Property. Mr Colhoun stated that Comparison 3 is externally and internally inferior to the subject Property and lacks the inherent goodwill attached to the Property unconnected to the occupier. Mr Halpin highlighted that a NAV of €18,000 was also applied to Comparison 13 (Bird's Nest) and Comparison 14 (Rockshore), both of which have an estimated FMT. Mr Colhoun stated that the NAV was determined having regard to available information and the tone of the list.

8.13 In response to a question from the Tribunal on whether there was an impact on an occupier who provided information to the Respondent, in contrast to those occupiers who did not provide any information, Mr Colhoun stated that estimation can give rise to imperfections in that a property with an estimated FMT may be trading in excess of the estimation. In relation to Bundoran being treated as a primary licensed trade market, Mr Colhoun acknowledged that the specific evidence underpinning this designation had not been provided, however, he submitted that the valuation scheme has been accepted by 91% of occupiers of public houses in the rating authority area and those values appearing on the valuation list are taken to be correct.

8.14 In closing, Mr Colhoun submitted that an FMT of €340,000 represented a fair and maintainable level of trade of the Property, and also captures an adjustment for goodwill and acumen.

9. FINDINGS AND CONCLUSIONS

9.1 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 Donegal County Council.

9.2 Section 35 of the Act provides that the appeal from the Appellant must specify the grounds on which the Appellant considers that the NAV determined by the Respondent is incorrect and the value the Appellant considers the Respondent should have determined as the NAV.

9.3 The NAV of the Property means the rent which the Property might, in its actual state, be reasonably expected to let from year to year on the terms set out in section 48(3) of the Act. The rent is measured on a hypothetical tenancy of the Property and not by reference to the actual occupancy circumstances of the existing operator. The actual turnover generated may have to be adjusted to take account of the extent to which the turnover can be attributed solely to the personal skill, reputation and business acumen of the existing operator. There are different methods of valuation designed to assist in determining the NAV.

9.4 It is long established that licensed premises can be valued based on an estimate of the Fair Maintainable Trade ('FMT') that a property can generate. By applying the FMT method, the NAV of a property is determined by applying a given percentage to the estimated FMT to produce a notional rent that a hypothetical tenant would pay as a yearly rent for the property. The FMT is an estimate of the gross annual receipts from each individual revenue stream generated in the property which a reasonably competent operator could be expected to achieve at the property at the valuation date. In estimating the FMT, the factors to be considered include not only the actual turnover but whether the property is under-trading or over-trading having regard to the facts and circumstances pertaining to the Property. The Tribunal accepts that the method of valuation of utilising turnover and estimating FMT is an appropriate method in the valuation of licensed premises to ensure correctness of value, and equity and uniformity of value across comparable properties on the valuation list in a rating authority area.

9.5 The Valuation Certificate issued by the Respondent on 15th September 2023 determined a NAV of €27,200 for the Property calculated on the basis of a FMT of €340,000 and applying an effective rate of 8% (9% less 1% allowance for entertainment costs) to the FMT. The Appellant requests the Tribunal to determine the NAV in the sum of €17,500, on the basis of an FMT of €250,000 and applying a valuation scheme percentage of 8%. The Respondent requests the Tribunal to affirm the NAV in the sum of €27,200, on the basis of an FMT of €340,000 and

applying a valuation scheme percentage of 9%. The Appellant and Respondent agree that a 1% allowance for entertainment costs should be applied to the relevant scheme percentage.

9.6 As regards the valuation scheme percentage, the Respondent stated that Letterkenny and Bundoran were designated as the primary licensed trade markets in County Donegal. If a property was generating gross profit margins in excess of 56%, the valuation scheme applied a 9% rate to the FMT. The Appellant challenged the designation of Bundoran as a primary market. The Respondent did not provide specific evidence underpinning the designation of Bundoran, however, confirmed that of the 359 public houses in the rating authority area of County Donegal, 328 occupiers (91%) had not appealed to the Tribunal and were listed on the valuation list. In those circumstances, the Tribunal considers that the relevant valuation scheme percentage that should be applied to the Property, which has been operated throughout the rating authority area and reflected in the comparisons produced by the Respondent, is 9%. Applying the agreed 1% allowance for entertainment costs, an effective rate of 8% will be applied to the FMT of the Property.

9.7 The Tribunal has considered the key rental transactions and the NAV comparisons submitted by the Appellant and Respondent, in addition to the trading information of the Appellant. The market data and comparators gave a general view of the licensed trade in County Donegal. The market data shows there is rental activity in licensed premises in the area. The comparators show there is a level of trading activity in drink sales in the area in which the Property is located.

9.8 The Appellant contends that there was over-trading at the Property and that the turnover should be adjusted to the level of trade that a hypothetical tenant would achieve, namely an FMT of €250,000. The generally recognised approach in ascertaining the FMT is that the starting point is to examine the trading information in the three years prior to the valuation date. Section 19(5) refers to the valuation list being compiled by reference to relevant market data and other data available on or before the date of issue of the valuation certificate concerned. Given the exceptional nature of the pandemic, and the requirements in section 19(5), the Tribunal considers that greater regard would be had to the trading information in the years in which there was less disruption

caused by the Covid-19 pandemic, namely 2018, 2019 and 2022. The Property generated turnover in those periods as follows - €352,305 in 2018, €360,408 in 2019 and €433,029 in 2022. The average turnover is €381,914.

9.9 The Tribunal notes the conclusion in *Arrow Bay Limited* (VA19/5/0372) that “*Location, floor area, fittings and fixtures, facilities and ambience, however, are all factors that may contribute towards the turnover of a public house*” and that “*There are a range of physical factors that affect the value of public house, and they include attractiveness of the property, prominence, size and ambience*”. The Tribunal finds that the business operated by the Appellant from the Property has a long-established trade. As regards a hypothetical tenant, the Tribunal has considered the evidence that the Property is a well-maintained and known public house which is centrally located with access from both Main Street and Station Road. In relation to market data, Comparison 2 (Kicking Donkey) with an FMT of €350,000 for drink sales was let in 2022 at a yearly rent of €29,250; Comparison 4 (Phoenix Tavern) with an FMT of €200,000 for drink sales was let in 2022 at a yearly rent of €25,920; and Comparison 12 (Celtic Marine) with an FMT of €150,000 for drinks sales was let in 2018 at a yearly rent of €20,800.

9.10 Based on the foregoing and having due regard to the impact on the turnover caused by the Covid-19 pandemic, the Tribunal considers that an FMT of €250,000, and a position that a hypothetical tenant would only be willing to pay a notional yearly rent of €17,500 contended for by the Appellant is less than a reasonably competent hypothetical tenant would expect to achieve at the Property, and is not persuaded by such a claim. Having regard to the comparisons produced by the Appellant and Respondent, the Tribunal considers that an adjustment should be made to take account of the extent to which the turnover is attributed solely to the personal skill, reputation and business acumen of the existing operator. In all the circumstances, the Tribunal considers that a NAV of €23,200 represents the notional yearly rent that a reasonably competent hypothetical tenant would be willing to pay for the Property, based on an FMT of €290,000 and applying an effective rate of 8%.

DETERMINATION

Having examined the particulars of the Property and carefully considered the written and oral evidence of the Appellant and the Respondent, the Tribunal allows the appeal in part and amends the net annual value of the Property to €23,200, determined as follows:

	FMT	% Scheme	NAV
Drink Sales	€290,000	9%	€26,100
<i>Less:</i> Entertainment Costs Allowance		(1%)	(€2,900)
NAV		8%	€23,200

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.