

Appeal No: VA23/5/0214

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MORONEYS BAR

APPELLANT

and

Tailte Éireann

RESPONDENT

In relation to the valuation of

Property No. 1209768, Public House at Market Street, Ennis, County Clare.

B E F O R E

Donal Madigan - MRICS, MSCSI

Ken Enright – Solicitor

Raymond Finlay - FIPAV, MMIL, ACI Arb, TRV, MCEPL, PC

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF MARCH 2026

1. THE APPEAL

1.1 By Notice of Appeal received on the 9th day of October, 2023 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 **€24,500**.

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: *“1. The subject property's valuation is excessive and inequitable owing to its actual rent. The subject property is held on a 4 year 9 month lease from 1st July 2022 at €300/week (€15,600 per annum). Any assessment above the rent is a taxation of the business and not the property.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €15,400.

2. REVALUATION HISTORY

2.1 On the 15th day of September, 2022 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 €24,500.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 15th day of September, 2023 stating a valuation of €24,500.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined is the 1st day of February, 2022.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely via Zoom, on the 21st day of July, 2025. At the hearing the Appellant was represented by Mr. Eamonn S. Halpin B.Sc.(Surveying) M.R.I.C.S. M.S.C.S.I. and the Respondent was represented by Mr. Sean Donnellan MSCSI, MRICS, BSc Hons in Property Valuation and Management of the Valuation Office.

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

4. FACTS

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

4.2 The subject property is located on the north side of Lower Market Street, off O'Connell Street in Ennis town centre.

4.3 The subject property is a well-maintained, mid-terrace traditional pub of a 2-storey property with the benefit of a courtyard beer garden. It is predominantly residential on the first floor.

4.4 Its total floor area is 111.10m². Its trading area, if one excludes an area behind the stairs that is partitioned off, is 52.52m². If that area is included, the trading area is 63.7m².

4.5 It is held under a lease dated 14 July 2022 with a rent reserved of €15,600.

5. ISSUES

5.1 Quantum.

6. RELEVANT STATUTORY PROVISIONS:

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

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

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

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

7. APPELLANT’S CASE

7.1 Mr. Halpin described the appeal as a relatively straightforward quantum matter. He said that the property was the subject of an open-market lease and argued that the Respondent had placed too much reliance on its own scheme of valuation and insufficient account of the rent in the lease.

7.2 The property was, he said, located in the centre of Ennis, off the prime thoroughfare of O’Connell Street in a central but secondary location. He presented internal and external photos of the premises and said its trading area was 52m² with an outside smoking area of 17m². Mr. Donnellan, in his précis, had the “bar” area at 63.70m². It emerged in the cross-examination of Mr. Halpin that he had excluded from his calculation – and Mr. Donnellan had included in his – an area behind a stairs which led up to a domestic premises on the first floor that had been partitioned off.

7.3 Mr. Halpin said the 2023 turnover for drink sales was [see Item 1, Appendix II, N/A to public]. He presented in an appendix to his précis accounts for the financial period ending 31 May 2023

7.4 Included in Mr. Halpin’s précis was a copy of the lease dated 14 July 2022 between (1) John and Marian Moroney and (2) the Appellant company, under which the premises was held by the Appellant tenant for a term of 4 years and 9 months from 1 July 2022 at a rent of €300 per week, equivalent to €15,600 per year, or €15,504 when an initial three-month rent-free period was factored in. The lease contained provisions for yearly rent reviews based on the CPI. Mr. Halpin confirmed however that the rent remained as initially set.

7.5 Given that the commencement date of the lease post-dated by 5 months the valuation date of 1 February 2022, Mr. Halpin said that there was an issue with what he identified as the Respondent’s usual approach whereby it would derive a figure of Fair Maintainable Trade (FMT) from the accounts for three years prior to the valuation date. In circumstances where these accounts were not those of the Appellant, Mr. Halpin argued that the rent in the lease was even more important and by far the best evidence of the NAV.

7.6 Mr. Halpin compared the subject to four other pubs in Ennis which he identified on a map in his précis and summarised their details as taken from the valuation list in the table presented below. He said that the Respondent’s representatives could not provide him with floor areas for the comparisons so his figures in that regard were estimates based on OSI and Land Registry records. His figures for FMTs were also estimates.

	Premises	Property Number	Valuation	Estimated FMT	Estimated Trading Area
	Subject Property	1209768	€24,500	€350,000 (drink)	52.52m ²
1	O’Dea’s	1210805	€16,000	€200,000 (drink)	60m ²

2	Michael Fawls	1210788	€15,000	Estimated FMT	80m ²
3	Paddy Quinn's Bar	1209769	€19,500	Unknown (multiple elements)	50m ²
4	The Copper Jug	1208557	€16,000	€200,000 (drink)	175m ²

7.7 Mr. Halpin said that his first comparison, O'Deas in Upper O'Connell Street, was a traditional bar in a similar secondary location to that of the subject and with a similarly-sized trading area.

7.8 Mr. Halpin's second comparison, Fawl's, was situated in what he described as a higher value part of O'Connell Street. At 80m², it had a larger trading area than the subject.

7.9 Mr. Halpin's third comparison, Paddy Quinn's, was two doors down from the subject with, Mr. Halpin said, a similarly-sized trading area. This premises was also presented by Mr. Donnellan as one of his comparisons, the only comparison common to the parties and the one located closest to the subject.

7.10 The Copper Jug, said Mr. Halpin, was a pub and restaurant with a commercial kitchen and a large trading area. This premises was in a tertiary location away from retail footfall.

7.11 Mr. Halpin argued that the rent of the subject at €15,504 was not out of line with the valuation of the comparisons. He said that this evidence showed that a hypothetical tenant could rent a variety of properties of similar size and similar location to the subject property in the range from €15,000 to €19,500.

7.12 Mr. Donnellan asked Mr. Halpin to confirm that there had been two previous leases of the subject property going back almost ten years with the same rent of €15,600. Mr. Halpin said he did not know about these leases as his client had not been involved with them.

7.13 Mr. Halpin was asked whether the landlord employed a property professional to negotiate the lease and whether the property had been advertised on the open market. Mr. Halpin said he couldn't answer this as he wasn't involved at that stage. Mr. Halpin was able to say that the Landlord had wanted an experienced operator, preferably someone with an established track record and he had found this in the Appellant tenant. Mr. Halpin confirmed there was no connection between the landlord and the tenant.

7.14 Mr. Halpin was asked by the Tribunal about a number of unusual conditions in the lease and whether these might have affected the rent. Special Condition 5 of the lease required the tenant to employ a named individual two days per week. Mr. Halpin acknowledged that this was unusual but said that the individual was a long-standing member of staff who knew all the customers so that the provision was probably "net neutral" or even a positive, given that the person brought with him an element of goodwill. There was also a provision that the "Wednesday Trad Night" was to continue during the summer months, subject to review with the landlord. Mr. Halpin said the premises was known for its traditional music sessions and that this obligation was, likewise, a positive.

7.15 In Mr. Halpin's opinion, a fair FMT was €195,000 for "drink on sales", which taken at 8% per the TE scheme represented an NAV of €15,600, commensurate with the rent in the lease.

7.16 Mr. Halpin said that if one followed the Respondent's scheme one would inexorably arrive at the Respondent's figure but, he argued, it was important to stand back and look at the actual rent and at the similarly-circumstances properties in Ennis he had put forward as his comparisons. If this was done, he said, one would be drawn to the Appellant's view that its valuation was fair and equitable and in accordance with the tone of the list.

8. RESPONDENT'S CASE

8.1 Mr. Donnellan's description of the subject property, its location and condition accorded by and large with Mr. Halpin's except for the floor area issue dealt with in paragraph 7.2 herein.

8.2 Mr. Donnellan presented plans and photographs of the property and put the total floor area as follows:

	Floor	M²
Bar	0	63.70
Customer Toilets	0	16
Courtyard Beer Garden	0	16.90
Store and Customer Toilets	1	14.50
Total	-	111.10

8.3 Mr. Donnellan said that the long-established method of valuation for licensed premises was by the application of a percentage to the Fair Maintainable Trade (FMT), following the analysis of market and trading information.

8.4 Typically, said Mr. Donnellan, a property's FMT 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, the Respondent felt it prudent, in the unusual circumstances of Revaluation 2023, to examine longer periods of trade. Mr. Donnellan stated that at the valuation date of 1 February 2022, landlords and tenants were aware that 2020 and 2021 trading figures would have been impacted by Covid. He said that while it was well established in any R&E or shortened approach assessment that the actual accounts of the subject property are the starting point, it should be recognized, at the same time, that actual trade at the valuation date may not in all cases be the best evidence of what is a fair and maintainable level of FMT. It was the view of T E that the hypothetical parties would consider 2019 or earlier trading figures which were unaffected by the pandemic as the starting point for negotiations and for the consequent assessment of FMT.

8.5 An additional complexity in the current appeal was that the Appellant only took occupation of the property in July 2022 and therefore, Mr. Donnellan noted, figures for 2020, 2021 and the first half of 2022 were not provided. Mr. Donnellan included in an appendix to his pr ecis a 2019 LP1 Revaluation Form of the previous occupier of the property under a lease commencing on 1 September 2016 which gave figures for drink sales for the calendar years 2016, 2017, 2018 and projections for 2019. The Appellant had provided accounts for the financial years ending 31 May 2023 and 2024. Mr. Donnellan provided a summary and analysis of these figures which is reproduced in Appendix I to this decision (N/A to public). The available figures for all years were in excess of the FMT set by T E at  350,000 with the most recent figures being somewhat stronger. Mr. Donnellan took the view that, in the light of this, the FMT of  350,000 was

reasonable.

8.6 Mr. Donnellan explained that under the scheme, 8% is applied to the FMT giving a valuation of €28,000. Then, a 1% allowance is given for TV and entertainment expenses, resulting in a deduction of €3,500 to give an NAV €24,500.

8.7 Mr. Donnellan outlined some of the letting history of the premises. He said that in the lease of 1 September 2016 (to a different tenant), renewed on 16 August 2021, the rent was the same as it was in the present lease, €15,600.

8.8 Mr. Donnellan presented three Key Rental Transaction (KRT) comparisons and three NAV comparisons, as follows.

8.9 KRT 1 Patrick's Bar

Property Number	1209563
Occupier	Patrick's Bar
Address	Market Place, Ennis, Co. Clare
Trading Area	118.95sq.m
Lease Commencement Date	16/03/22
Lease Term	5 year
Rent per annum	€27,300
NER @ Valuation Date	€27,300
NAV	€26,400

Fair Maintainable Trade	% applied as per scheme	NAV €
Drink sales €330,000	9 %	€29,700
Less Entertainment Costs Allowance €330,000	1%	-€3,300
		NAV €26,400

By direction of the Tribunal, Mr. Donnellan provided to the Tribunal and Mr. Halpin a letter confirming that the overall area of this comparison was 185.97m².

8.10 Mr. Donnellan said this property was not as well located as the subject but had a larger trading area. Representations had been received from the occupier but the assessment was not appealed to the Tribunal.

8.11 In cross-examination, Mr. Halpin put it to Mr. Donnellan that, given that this premises was twice the size of the subject, it made the Appellant's valuation of the subject at €15,600 seem

reasonable. Mr. Donnellan replied that the subject had the advantage of a better location and that this comparison was much further removed from the town centre.

8.12 Mr. Halpin put it to Mr. Donnellan that as a 9% rate had been applied to the FMT on this property, it meant that it had a higher gross margin than the subject and was therefore more profitable. Mr. Donnellan acknowledged by reference to the County Clare valuation scheme on page 49 of his précis that this comparison was a Type 1 property meaning it had a gross margin of 56% or more, whereas the subject was a Type 2 property with a margin of less than 56%. Mr. Donnellan said that the comparison was appropriately valued higher than the subject property and account was taken of its relatively peripheral location.

8.13 KRT 2 John Foudy

Property Number	1442878
Occupier	John Foudy
Address	Parliament Street, Ennistymon, Co. Clare
Trading Area	53.40sq.m
Lease Commencement Date	06/12/21
Lease Term	4 years 9 months
Rent per annum	€10,400
NER @ Valuation Date	€9,528
NAV	€10,500

Fair Maintainable Trade	% applied as per scheme	NAV, €
Drink sales €150,000	7 %	€10,500

By direction of the Tribunal, Mr. Donnellan provided to the Tribunal and Mr. Halpin a letter confirming that the overall area of this comparison was 100.40 m².

8.14 Mr. Donnellan said this property was situated on a side street in Ennistymon. It had a smaller trading area than the subject property. Representations had been received from the occupier but the assessment was not appealed to the Tribunal.

8.15 KRT 3 The Central Bar

Property Number	1443438
Occupier	DSC Central Bar Ltd t/a Central Bar
Address	O'Curry Street, Kilkee, Co. Clare
Trading Area	103.29sq.m
Lease Commencement Date	01/11/2019

Lease Term	10 years
Rent per annum	€30,000
NER @ Valuation Date	€30,000
NAV	€35,000

Fair Maintainable Trade	% applied as per scheme	NAV, €
Drink sales €500,000	7 %	€35,000

By direction of the Tribunal, Mr. Donnellan provided to the Tribunal and Mr. Halpin a letter confirming that the overall area of this comparison was 119.99 m².

8.16 This property is located in Kilkee. It had a larger trading area than the subject. Again, representations had been received from the occupier but the assessment was not appealed to the Tribunal.

8.17 NAV Comparison 1 Brian Kelly Bar

Property Number	1209038
Occupier	Brian Kelly Bar
Address	Chapel Lane, Ennis, Co. Clare
Trading Area	55.70 m ²
NAV	€22,500

Fair Maintainable Trade	% applied as per scheme	NAV
Drink Sales €250,000	9%	€22,500

In his oral evidence, Mr. Donnellan confirmed that the total area of this property was 73.9m².

8.18 This comparison was located in Chapel Lane, very close to the subject, just around the corner from it, but in a tertiary lane location. Mr. Donnellan said it had similar construction characteristics to that of the subject. Representations had been received but there had been no appeal.

8.19 NAV Comparison 2 Paddy Quinn Bar

Property Number	1209769
Occupier	Paddy Quinn Bar
Address	7 Lower Market Street, Ennis, Co. Clare
Trading Area	71.66 m ²
NAV	€19,500

Fair Maintainable Trade	% applied as per scheme	NAV
Drink Sales €240,000	8%	€19,200
Off Sales €10,000	3%	€ 300
	Total	€19,500

In his oral evidence, Mr. Donnellan confirmed that the total area of this property was 95.7m².

8.20 This was the only common comparison. It is situated two doors away from the subject but, said Mr. Donnellan, it had a narrow frontage and was not as prominent as the subject. As with the other comparisons, representations had been received but the valuation was not appealed.

8.21 Mr. Halpin put it to Mr. Donnellan in cross-examination that this comparison supported the Appellant's position. Mr. Donnellan said that the subject property was a better property because in addition to its greater prominence on the street it had a better internal layout that included an internal beer garden.

8.22 NAV Comparison 3 The Diamond Bar

Property Number	1210738
Occupier	The Diamond Bar
Address	O'Connell Street, Ennis, Co. Clare
Trading Area	55.20 m ²
NAV	€23,000

Fair Maintainable Trade	% applied as per scheme	NAV
Drink Sales €320,000	8%	€25,600
Less entertainment costs allowance -€320,000	-1%	-€3,200
Off Sales €20,000	3%	€ 600
	Total	€23,000

In his oral evidence, Mr. Donnellan confirmed that the total area of this property was 112.5 m².

8.23 Mr. Donnellan said that this property was situated close to the subject property but, like Paddy Quinn's, it had a narrow frontage and was not as prominent as the subject.

8.24 Mr. Donnellan agreed with Mr. Halpin that the purpose of the revaluation was to determine rental values as at the valuation date and that where there was ample rental evidence – in the case of shops, for example – the rents determine the scheme. Mr. Donnellan said, however, that for licensed premises, the appropriate and long-established method was the FMT method. He said that TÉ analyses the rents from the available KRTs and then applies the scheme to particular properties in line with the rents achieved for similar properties in order to find an objective

market rent from year to year.

8.25 Mr. Donnellan agreed with Mr. Halpin that there was nothing in the Act about “schemes” or percentages of turnover but said that it is accounting information that, in practice, informs to a large extent what a prospective tenant publican would be willing to pay.

8.26 Mr. Halpin asked Mr. Donnellan if the parties here would not have used accounting information to inform them. Mr. Donnellan took the view that the rent for this property was a “concessionary rent”. He said the landlord was happy to get the same rent as he had got from the previous tenant and was happy with the specific tenant and the terms of the lease to which the tenant agreed. Mr. Halpin put it to Mr. Donnellan that the landlord had been looking for a “sustainable rent” from a tenant with experience and a good track record. Mr. Donnellan stated his view that the landlord could have got €24,000 on the valuation date based on the trading data.

8.27 Mr. Halpin asked why Mr. Donnellan had provided two KRT comparisons from outside Ennis when there was the lease of the subject property available with a rent agreed very close to the valuation date. Mr. Donnellan said there were question marks over that rent, particularly in view of the fact that it was the same rent dating right back to 2016.

8.28 Mr. Donnellan said that Mr. Halpin’s comparisons were not the best comparisons in terms of location in that three of the four of them were far removed from the subject. He said that his own NAV comparisons were the best ones in that they were nearest to the subject and shared similar characteristics. He said Brian Kelly’s bar was located closest to the subject but in a tertiary location and was valued at €22,500 compared to the subject’s valuation of €24,500. His other two comparisons were similar to the subject in terms of value, at €19,500 and €23,000.

8.29 Mr. Halpin took Mr. Donnellan up on his view that the subject had a wider frontage and better configuration than the comparisons and put it to him, by reference to the photographs, that the window and the door to the left were part of the residential property and had nothing to do with the pub. Mr. Donnellan acknowledged this point but said that the subject was still wider than the comparisons by, he estimated, 50%.

8.30 Mr. Donnellan confirmed that where he gave measurements for the comparisons in his précis he was referring “purely to trading areas” and did not include toilets, stores or other non-trading areas. As stated above, he confirmed overall areas for his NAV comparisons in his oral evidence and, by direction of the Tribunal, he confirmed overall areas for his KRT comparisons in a letter to the Tribunal and Mr. Halpin following the hearing.

8.31 Mr. Donnellan also confirmed to the Tribunal that because all the occupiers of his NAV comparison properties made representations, TÉ had actual trading figures to inform its assessments.

8.32 Mr. Donnellan in his summing up said that the Appellant was proposing that the subject property should be valued lower than all the NAV comparisons he provided. He argued that, on the basis of the subject’s physical configuration, it was the most attractive of the premises mentioned. He said that Paddy Quinn’s was longer and narrower than the subject and for that

reason not as attractive to a potential tenant. He said that the other three of the Appellant's comparisons were removed from the subject property. He referred to his own KRTs and said that the rent in the lease of the subject property dated from 2016 and the valuation date was 2022 and this supported his view that the rent was "concessionary", and not a market rent on the valuation date. He said that he had the trading figures and the valuation was based on the actual FMT. He reminded the Tribunal that the onus of proof was on the Appellant and that in his view Mr. Halpin had not proven that the valuation was incorrect.

9. SUBMISSIONS

9.1 There were no legal submissions.

10. FINDINGS AND CONCLUSIONS

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

10.2 The "net annual value" of a property, which per Section 48 of the Act is to be a property's valuation in the list, means "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" bearing in mind certain specified assumptions (Section 48(3)). Taking account of the provisions of Section 19(5) of the Act, the valuation of the property in a revaluation under Section 19 should achieve correctness of value, equity and uniformity with other properties on the same valuation list.

10.3 Mr Halpin places great emphasis on the rent in the lease and argues that that should be the best evidence of the net annual value of the property, if not, indeed, identical with it. Mr Donnellan, on the other hand, emphasizes the long established and universally accepted scheme for the valuation of licensed premises whereby the valuation is derived from the FMT of the relevant property. Mr Donnellan doubts that the rent in the lease is the actual market rent applicable on the valuation date of 1 February 2022, pointing out that the same rent was reserved in two previous leases dating back to 2016. He suggests that, based on the strength of the trading figures, the landlord could have got more for the property but was, for whatever reason – perhaps because he was happy with the tenant and the terms on which the tenant was prepared to agree to take the property – content to leave the rent at the level achieved in 2016.

10.4 The NAV of a property is identical to the rent that property would achieve on the open market or, in other words, the rent a hypothetical landlord would be prepared to accept and a hypothetical tenant prepared to pay. That rent is not necessarily the same as the rent that might be reserved in any particular lease. The Tribunal should, accordingly, have regard to all the circumstances. In the valuation of licensed premises, the Tribunal accepts Mr Donnellan's view as to the applicability of the FMT method. It has been applied by TÉ (and the Commissioner for Valuation before it), accepted by ratepayers (including the occupiers of the six pubs in County Clare set out in the Respondent's précis who have not appealed their valuations), and endorsed

by the Tribunal in numerous appeals. Based on the KRT comparisons provided by Mr. Donnellan, the NAVs as assessed by T  are commensurate with rents. One of the reasons the method is used is that, because it is based on trading data, it provides a good indication of what a hypothetical tenant would be prepared to pay on the open market. The FMT adopted should represent the annual trade considered to be maintainable at the valuation date having regard to the physical nature of the relevant property and its location, on the assumption that the business will be carried out by a reasonably efficient operator.

10.5 The trading figures provided to the Tribunal and set out in the Appendix (N/A to public) cover the years 2017, 2018, 2023 (a part year only given the change in the year end), and 2024, as well as a projection for 2019 provided in the course of that year by the then tenant. While there are no figures available for 2020 or 2021 (which would both, in any case have been distorted by Covid), or the year of the valuation date, 2022, it is clear that the turnover in all the years mentioned – when the property was operated by the previous tenant as well as the Appellant – was at a consistent level and always above the FMT level set by the Respondent. It could not have informed the parties’ thinking in 2022 but it is worth noting that the 2024 figures are somewhat stronger than any other year so the passage of time has confirmed the maintainability of the level of trade.

10.6 On the basis of these figures, the Tribunal is satisfied that, *prima facie*, the FMT set by the Respondent fairly represents the annual trade maintainable at the premises.

10.7 The Tribunal should consider then whether the Appellant has shown any reason to modify the Respondent’s assessment of the NAV based on the FMT method.

10.8 The Tribunal has considered the rent in the lease. As aforesaid, the rent in any particular lease (even of the particular property in question) is not determinative of an NAV. The Tribunal has heard evidence that the rent reserved in the current lease is the same as that reserved in the lease of 2016. Having regard to this, and having regard to the turnover figures, Mr Donnellan believes the rent is concessionary. The lease, moreover, contains a couple of unusual provisions. Mr Halpin, instructed by the tenant, suggested that it was the landlord’s wish to obtain an experienced operator that led him to take on his client. Taking these matters into account and, most importantly, comparing the rent to the turnover – bearing in mind that the turnover is, in most cases, the weightiest factor in the calculations of the hypothetical tenant – the Tribunal takes the view that rent in the lease is substantially below the rent the subject property would achieve on the open market.

10.9 The Tribunal has considered the NAV comparisons provided by the parties.

10.10 Mr Halpin presented O’Dea’s on Upper O’Connell Street, Michael Fawl’s on O’Connell Street and Paddy Quinn’s on Upper Market Street. Mr Donnellan also presented Paddy Quinn’s as well as The Diamond Bar on O’Connell Street and Brian Kelly’s on Chapel Lane. Lower Market Street (where the subject is located) leads onto O’Connell Street, a main thoroughfare and a prime retail location. Thus, for context, the subject property is in a central location but slightly removed from prime retail. It was not clear from the evidence whether the subject, as a licensed premises, was to any great extent better or worse located than any of the O’Connell

Street comparison public houses referred to in the hearing. The Tribunal in this judgement places greatest reliance on the comparisons located closest to the subject property.

10.11 Paddy Quinn's, the single common comparison, is located only two doors down from the subject. This property has an FMT of €240,000 with a rate of 8% applied to it along with another €10,000 for off-sales at 3%, giving an NAV of €19,500. The subject's FMT is significantly higher. Mr Donnellan distinguishes Paddy Quinn's from the subject by way of its physical characteristics. He says that while it is larger than the subject, it does not have the same prominence on the street and, being long and narrow, its internal configuration is not as good as the subject. Mr. Halpin pointed out that behind part of the subject's façade was a residential property. Nevertheless, it is clear from the photographs that the subject has a much greater street prominence than its near neighbour so it is, in that respect at least, a better property.

10.12 Mr. Halpin's two comparisons on O'Connell Street were located to the south of the O'Connell Street/Lower Market Street junction and were close to each other. O'Dea's had an NAV of €16,000 (based on an FMT, estimated by Mr. Halpin, of €200,000) with an estimated trading area similar to that of the subject. Fawl's had an NAV of €15,000 with a trading area estimated by Mr Halpin at 80m².

10.13 Mr Halpin's fourth NAV comparison, The Copper Jug, comprises a restaurant as well as a pub and is situate in a tertiary location so it does not shed much light on matters.

10.14 Mr Donnellan's comparison on O'Connell Street, The Diamond Bar, located to the north of the O'Connell Street/Lower Market Street junction, and closer to the subject than Mr. Halpin's comparisons, had an NAV of €23,000 based on an FMT of €320,000, with off-sales of €20,000, making it almost the same in terms of overall FMT as that of the subject. This property, also like the subject, had the benefit of an entertainment allowance.

10.15 Mr. Donnellan's NAV Comparison 1, Brian Kelly's, is located just around the corner from the subject, further away from O'Connell Street, on Chapel Lane. The FMT of this property was set at €250,000, with a rate of 9% applied to it, indicating a higher gross profit margin, resulting in an NAV of €22,500. The valuation of this property, similar in size to the subject, and close to it, though in a somewhat inferior location, is commensurate with the valuation of the subject, taking into account the higher percentage rate applied to a lower FMT.

10.16 Thus, a reasonably wide range of comparisons was presented to the Tribunal showing various, broadly similar, properties located quite near each other with different FMTs. The subject property's FMT – and consequent NAV – was at the upper end of the range. The only comparison with an NAV higher than that of the subject was Mr. Donnellan's KRT 1, a significantly larger property but somewhat removed from the town centre. The subject's NAV was significantly higher than Mr Halpin's comparisons and similar to, though somewhat higher, than the NAV of The Diamond Bar, based on a similar FMT. It's NAV was likewise similar to, though again, somewhat higher than Brian Kelly's. Based on the evidence, it looks like the Appellant is doing rather better in terms of turnover than its nearest neighbour, Paddy Quinn's.

10.17 The Tribunal has already stated its views (in paragraph 10.4) as regards the applicability of the FMT method in the valuation of licensed premises. It has also considered if there is any reason why this long-established practice should be departed from or adjusted in the present appeal to deal with the particular circumstances of the Appellant, or the subject property or whether the method as applied by the Respondent in some way departs from the requirements of Section 19(5) of the Act to achieve equity and uniformity between all the properties on the list.

10.18 The Tribunal is, for reasons outlined in paragraph 10.8, disinclined to place much reliance on the rent reserved in the lease, upon which point, it is fair to say, rested the main plank of Mr. Halpin's argument.

10.19 Mr Halpin did not, in the hearing, suggest that the Appellant was in some way an exceptional publican, nor did he seek to distinguish the Appellant's way of doing business at his property from those of his nearest neighbours, or indeed from that of the previous tenant in the same property, whose turnover was similar to that achieved by the Appellant. Certainly, no evidence was brought forward to show that the relatively higher FMT of the subject compared to The Diamond Bar, Brian Kelly's or Paddy Quinn's was as a result of the Appellant being exceptional in some way. Other than the provision of entertainment – which, in the form of traditional music on Wednesday nights has long been associated with the property (and for which an allowance is given) – there was no suggestion of the Appellant doing anything at his premises that was different from what was being done at Paddy Quinn's; and, the Tribunal notes, entertainment is also provided by The Diamond Bar. The difference between the subject's FMT and that of Paddy Quinn's might be accounted for, to some extent at least, by the former's greater prominence on the street, a fact which is clear from the photos, and/or, in the opinion of Mr. Donnellan at least, its better internal layout. Be that as it may, no evidence has been presented to show that the Appellant's business is, as it were, out-performing the property in which it is situate; indeed, Paddy Quinn's could just as easily be under-performing. The burden of proof is on the Appellant who has not, in the view of the Tribunal, provided evidence sufficient to cause the Tribunal to have concerns about the application of the scheme or the calculation of the FMT – which, as noted in paragraph 10.5 is lower than the turnover in the accounts – or the consequent NAV.

10.20 In these circumstances and for the aforesaid reasons and bearing in mind the requirement for equity and uniformity with all the other licensed premises on the County Clare valuation list to which the FMT method has been applied, the Tribunal disallows the appeal.

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.