Appeal No: VA23/5/0098

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA 2001 - 2015
VALUATION ACTS 2001 - 2015

PAUL REGAN T/A DILLONS RESTAURANT

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of

Property No. 1347661, Dillons Bar & Restaurant, Dillon Terrace, Ballina, County Mayo ("**the Property**").

BEFORE

Margaret Nerney - SC	**Chairperson**
Barra McCabe - BL, MRICS, MSCSI	**Deputy Chairperson**
Suzy Quirke - MSCSI, MRICS, Dip. Arb. Law	**Member**

DETERMINATION OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF APRIL 2026

1. THE APPEAL

1.1 By Notice of Appeal received on the 5th 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 **€72,000**.

1.2 The sole ground of appeal, as set out in the Notice of Appeal, is that the valuation is incorrect on the basis 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, ("the Act") because:

"*1. The valuation is excessive and inequitable owing to the actual rent of the subject property. The subject property is let on a 3 year 9 month lease from 30th November 2018 at €41,600 IRI per annum. This rent is fully in line with the rent of PN 1349270 (Cot and Cobble) and the failure of PN 1348054 (The Broken Jug) at an inflated rent.*

2. The divergence between the lease rent and the figure arrived at by analysis of the turnover firmly illustrates the presence of exceptional operation.

3. This is further emphasised by the valuation of PN 1347657 which is the same function as the subject property but without a seven day licence. The reality is that the subject property would have exactly the same turnover if it had a special restaurant licence instead of a seven day licence. As such, the Commissioner's turnover method penalises the subject as a restaurant which happens to have a seven day licence rather than a pub that happens to serve food."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €39,500.

1.4 In the Appellant's précis submitted in advance of the hearing, the valuation of the Property sought on appeal was amended to a NAV that could not exceed €41,000.

2. REVALUATION HISTORY

2.1 On the 13th day of April 2023, a copy of a valuation certificate proposed to be issued under section 24(1) of the Act in relation to the Property was sent to the Appellant indicating a valuation of €75,000.

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 Property was reduced to €72,000.

2.3 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €72,000.

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 on the 28th day of January 2025. At the hearing the Appellant was represented by Mr David ES Halpin M.Sc. (Real Estate) Ba. (Mod) and the Respondent was represented by Mr David Colhoun MSc.

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.

3.3 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. FACTS

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

4.1 The Property is a licensed premises located off Dillon Terrace, Ballina, County Mayo.

4.2 Access is via an archway and a laneway leading to an open cobbled courtyard where the Property is situated.

4.3 The ground floor trading area comprises bar and dining area, customer toilets, stores, and a kitchen.

4.4 The Property was let on a 3-year 9-month lease from 30th November 2018 at a passing rent of €41,600 per annum.

4.5 In May 2024, a new 4-year lease was agreed at a passing rent of €46,800.

4.6 The turnover figures are contained in the Appendix 1 hereto (N/A to public).

4.7 The agreed accommodation areas are as follows:

USE	**Floor Area M^2**
Bar/restaurant	212.5
Kitchen	53.6
WCs	23.74

5. ISSUES

5.1 The issue that arises in this Appeal is the quantum of value.

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 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 average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant*."

7. APPELLANT'S CASE

7.1 After adopting his précis of evidence, Mr Halpin described the Property and submitted general commentary in relation to the prevailing restaurant and pub market in Ballina, and the fact that the Property was located in a courtyard that was through an arch and up a laneway, which was a distance from the main retail areas in the town centre. In referring to his précis, Mr Halpin submitted that the Property was let on a 4-year lease from the 1st of May 2024 at a rent of €46,800 per annum and that this level of rent was radically different to the valuation proposed by the Respondent. He said that the Property benefitted from a long-standing and very stable business model that drove food trade, which had been built up over many years by the former operator and the current operator, the latter of whom recently took over the business after being head chef there for the previous fourteen years. Mr Halpin said that there was a relationship between food and drink that was particular to the business and submitted that the Respondent gave little consideration to this factor and to the comparative rental values of other similar properties in the town. He also raised the issue of the Publican's Licence (7-day Ordinary) attached to the premises and posited that there was no relationship between this licence and the food trade because, if there was greater than 50% food trade then this was effectively what makes the Property, by implication, a restaurant and not a pub. Mr Halpin stated that the Respondent was incorrectly considering the Property solely as a pub business with food and not a business trading primarily in food. He further submitted that it was not possible to achieve a NAV of €72,000 per annum other than based solely on the turnover figures provided by the Appellant and that these figures did not take proper account of the drink sales, the tertiary location of the Property and the exceptional running of the business by the operator. He said that the strong turnover figures were down to the operator's goodwill and the property had no profile for passing trade at its current location. Local people, he claimed, are aware of the business because the operator is well known and liked.

7.2 The Appellant objects to the R&E method employed in isolation by the Commissioner when valuing the subject property on the basis that there is a sole focus on drink sales as being the main driver of business at the property, based on the 7-day Ordinary pub licence. Mr Halpin expressed a view that the Property should not necessarily be valued as a pub but that, owing to the fact that it had many of the attributes of a restaurant in terms both of its operation and sales profile, the method employed should be akin to that of a restaurant rather than a pub that serves food. When asked by the Tribunal how he would value the property, Mr Halpin responded that the sole use of the R&E method, using turnover only, by the Respondent was not the correct method because it omitted a number of other factors including, but not limited to, comparative rental values, location, the operator's good will and business acumen. He said that one might, as an example, normally (subject to Covid adjustments) consider starting with a 20% discount on food from 2019 to 2021 and a 10% discount on drink for the same period but then consider other factors which would affect the final valuation. Mr Halpin emphasised that it was very important not to rely solely on a single R&E calculation, but to also take into account a series of other factors.

7.3 After Mr Halpin took the Tribunal through some images of the outside courtyard, laneway and inside of the Property included in his précis, he made further submissions in relation to the rental value of the Property. The passing rent under the previous lease that was relevant on the statutory valuation date was €41,600 per annum, under a new lease that commenced in May 2024 this increased to €46,800 per annum and Mr Halpin contended that the Respondent should have placed much more emphasis on the passing rent when he applied the R&E method. At a later point in his submissions Mr Halpin supplemented this by stating that the Respondent's proposed NAV was more than twice that of both the average and the median pub value in Ballina. He added that the Respondent also did not take into account the goodwill of the operator of the business and that the levels of trade achieved would be hard to replicate (by the hypothetical tenant). Mr Halpin also posited that even if there was no 7-day pub licence at the Property, the operator would still achieve the same food sales.

7.4 As an example of how an alternative method of valuation might apply, the Appellant proposed a NAV of €38,200 based on a combination of the comparative method using ITZA ("Area in Terms of Zone A") and a value of €10,000 applied to the 7-day pub license. The value of €10,000 is based on the retail value that Mr Halpin claimed the Respondent applies to an "Off Licence', which the Tribunal understands is derived from the capital value of 5% of turnover up to a maximum value of €10,000. The Appellant further submitted that if the Respondent valued the subject property as a restaurant with a "Special Restaurant Licence", rather than a pub with a 7-day pub licence, then there would be no value attributable to the 7-day licence. It was Mr Halpin's view that, so far as the Property is concerned, a 7-day pub licence has the same value as a retail "Off Licence".

7.5 The Appellant provided an analysis of the NAV of 27 pubs in Ballina, as well as two restaurant premises in the town, but he relied primarily on five pubs with commercial kitchens capable of serving food. A full analysis of the five pubs with commercial kitchens is included in Appendix 2 (N/A to public) and the list of 27 pubs are detailed below:

PN	Occupier	Location	NAV
1348209	Vacant (Fmr. Corcoran's)	Casement Street	€7,500
1347724	O'Dowd's American Bar	Tone St.	€7,500
1347972	VJ Doherty	Tolan St.	€9,450
1348859	Vincy's	James Connolly St.	€11,400
1347780	Hughes'	Tone St.	€12,000
1347973	An Bolg Bui	Tolan St.	€12,000
1349200	D. Breathnach's	Abbey St.	€12,000
1347980	Moclair's	Tolan St.	€15,050
1348062	Cupan Ceoil (Fmr. Peacock's)	O'Rahilly St.	€17,500
1348067	Vacant (Fmr. Gaughan's)	O'Rahilly St.	€17,500
1347742	Thornton's	Tone St.	€17,500

1347778	Harrison's	Tone St.	€21,200
1347963	Howard's (Fmr. Regan's)	Tolan St.	€24,500
1349237	Vacant (Fmr. Jimmy's)	Clare St.	€24,500
1349111	Vacant (Fmr. Salman's Lounge)	Abbey St.	€30,000
1349117	Katie's Corner	Abbey St.	€30,000
1349198	An Sean Sibin	Abbey St.	€30,600
1348266	Vacant (Fmr. The Snug)	James Connolly St.	€35,000
1348033	Hogan's	O'Rahilly St.	€35,000
1347923	Rouses'	Pearse St.	€35,000
1348227	Lillies Bar (Fmr. Emmet Moloney's)	James Connolly St.	€40,000
1347774	Brennan's Lane (Fmr. Tarbh 47)	Tone St.	€45,500
1347827	The Loft	Pearse St.	€46,200
1347661	Dillon's (**the Property**)	Dillon Tr.	€72,000
1348891	Vacant (Fmr. Paddy Jordan's)	Station Road	€75,000
1348182	Vacant (Fmr. The Broken Jug)	O'Rahilly St.	€75,000
1349270	The Cot and Cobble	Clare St.	€84,500

7.6 With regard to the five pubs listed in Appendix 2 (N/A to public) that serve food, Mr Halpin estimated that the Property has three times the food trade of comparable 5, even though the Appellant's property is approximately 1/3rd the size of this property. This he attributed to the goodwill of the operator which, in his opinion, has created substantial extra value. It is the Appellant's submission that the Respondent has calculated the NAV of the Property based solely on turnover in circumstances where a significant proportion of the NAVs of the other licensed premises in Ballina have been estimated without the provision of turnover figures. Mr Halpin therefore submitted that the Appellant has been penalised by providing its turnover figures to the Commissioner. Mr Halpin also pointed out that the Commissioner in some other licensed premises applied an additional 1% discount to the FMT for entertainment costs when using the R&E method. He also stated that comparable 4 is under appeal. With regard to the two restaurant premises that Mr Halpin cited in his précis, he referenced Luskin's Bistro which is located in the same courtyard as the Property and stated that the Commissioner applied a discount due to the poor location of this restaurant property, however Mr Halpin argues that the same discount was not applied to the Property. Mr Halpin also submitted that the value of comparable 1 is estimated by the Commissioner and, in contrast to the Property, is based on comparable rental value and not on turnover. Concerning comparable 3, Mr Halpin believes that the NAV of this property was also estimated because no figures were supplied. Of the five comparables that serve food and have been analysed by the Appellant, Mr Halpin stated that comparable 4 was the primary example of what occurs when the Commissioner incorrectly values a property based on turnover only. In the specific case of comparable 4, Mr Halpin submitted that the Respondent overvalued the property based on strong turnover attributable to the operators at the time. When those operators could not agree terms with the Landlord, they vacated that property and subsequently agreed terms with, and continue to operate very successfully from, comparable 5. However, owing to the exceptionally high rent the comparable 4 Landlord was seeking, which in turn was based on the high turnover achieved by the former operators and on which the Commissioner based the NAV, two subsequent tenants of comparable 4 failed to successfully trade from that location and the property is now closed. In those circumstances Mr Halpin said that it was clearly a mistake by the Commissioner to value the NAV of a pub by blindly relying on the turnover of a property at a particular time, without stepping back and taking into account a number of other factors at play when using the R&E method.

7.7 Under cross-examination by Mr Colhoun for the Respondent, Mr Halpin agreed that the Property was one of the larger pubs in Ballina but said that it was not the largest pub in the town. He confirmed that the former head chef had taken over the operation of the business. It was agreed between the parties that the pre-Covid drink to food sales ratio in the Appellant's précis should be amended to 1:3.5 from 1:4. It was acknowledged that the Property was not the farthest from the town centre and that, in fact, comparable 5 was further away. When Mr Colhoun contended for the floor area of the kitchen to be included in the "trading area" calculation, Mr Halpin responded that that was not his normal experience so that the "trading area" measurement in the Appellant's précis did not include the kitchen area. Mr Halpin also posited, based on the foregoing, that in his view increased drink sales do not necessarily result in increased food sales but that food sales do affect drink sales.

7.8 In his summary, Mr Halpin said that the substantially lower valuation of Brennan's Lane pub, a similarly sized pub in arguably a better location, should illustrate to the Tribunal that the Appellant was being penalised by the Respondent for providing its turnover figures to the Commissioner. He said that while Mr Colhoun did not agree that the trading figures of the Property were exceptional, nevertheless the Commissioner's own metric indicated something contrary to this. In this regard, Mr Halpin submitted that under the scheme of valuation adopted by the Commissioner, an additional 1% discount was given for food sales over 75% of total sales. He said that just 2.5% of pubs in County Mayo, including the subject Property, benefitted from this additional 1% discount, thereby indicating that food sales at the subject Property were in fact exceptional. It was Mr Halpin's submission that based on this metric, the Property trades at an exceptional level. Mr Halpin also submitted that while smaller and larger pubs seemed to suffer in the town, somehow the Appellant's property seemed to hit a "sweet spot" whereby it was valued disproportionately to other pubs in the town of a similar size. He said he was struggling with the proposition that there were pubs in the town of Ballina that were too small to function and too large to function, but that the subject Property just happened to be in a middle range where everything just worked. He said that it was simply not true that an operator of a pub starts operating from the property and immediately makes €1.5 million. This very high level of trade results from goodwill built up from trading over a long period of time. He believed that there was no way a hypothetical tenant would pay a passing rent of €72,000, as contended by the Respondent. Mr Halpin said Mr Colhoun's own map, contained in the Respondent's précis, illustrated the fact that the Property was not located in a central area and that the Commissioner was overreaching by applying the R&E method in the way that he has.

8. RESPONDENT'S CASE

8.1 Mr Colhoun adopted his précis, the details of which he opened to the Tribunal. He emphasised at the outset that the aim of the Commissioner was to achieve correctness of value, equity and uniformity when valuing a particular class of property. He pointed out that the turnover figures, available in Appendix 1 hereto (N/A to public), were provided by the Appellant at representation stage, but that the Appellant failed to provide updated trading figures or the costs of sales or operating costs, which then had to be estimated. While the normal method is to take an average of three years' turnover leading up to the statutory date of the valuation, owing to the effect that Covid had on businesses, in 2020 and 2021 especially, the Respondent relied on turnover figures provided over a longer period of time from 2018 to 2021 and for nine months of 2022. The standard percentage applied by the Commissioner to drink sales Fair Maintainable Trade (FMT) in pubs in Ballina is 8% and the Property has had 7% applied because it is standard procedure to apply a 1% lower rate to drinks sales FMT where 75% or more of sales are food rather than drink, i.e. to apply 7% instead of 8% to drink sales FMT. The allowance has been applied to the Property in line with the scheme parameters. The figures for 2020 and 2021 were treated with caution for the aforementioned reason and thereafter the Respondent applied a discount of 7% to drink sales FMT and, after deduction of the first €100,000 of food sales, a discount of 5% was then applied to arrive at the proposed NAV figure. This, the Respondent submitted, was the starting point of the valuation of the Property. He said that the FMT of the Property had not been treated in isolation, but instead other factors had been taken into account by the Commissioner before applying a final NAV to the Property.

8.2 The Respondent's profile of pub sizes and locations in Ballina included details of three additional pubs to that of the Appellant. Mr Colhoun highlighted the fact that details of the largest pub in the town had been omitted entirely by the Appellant. The Respondent provided the following schedule of properties with their respective NAVs:

PN	**Name**	**Location**	**NAV**	**Trading Area(m^2)**
1347661	***Dillon's Bar & Restaurant***	***Dillon Terrace***	***€72,000***	***266.1***
1347777	Bar Square & Paddy Macs	Tone Street	€137,500	428.7
1357913	Crocket's Quay Bistro	The Quay	€110,000	358.5
1349270	The Cot & Cobble	Clare Street	€84,500	634.3
1348182	Former Broken Jug	O'Rahilly Street	€75,000	368.5
1348891	Former Paddy Jordan's	Station Road	€75,000	282.3
1347827	The Loft (+Rooms)	Pearse Street	€46,200*	145.2
1347774	Brennan's Lane	Tone Street	€45,500	235.2
1348227	Lillies Bar	James Connolly St.	€40,000	110.4

1347923	Rouses	Pearse Street	€35,000	136.5
1348033	Hogan's	O'Rahilly Street	€35,000	76.0
1348266	Former Snug	James Connolly St.	€35,000	107.0
1349198	An Sean Sibín	Abbey Street	€30,600	108.2
1349117	Kate's Corner	Abbey Street	€30,000	103.4
1349111	Former Salmans Lounge	Abbey Street	€30,000	205.1
1349237	Jimmys Bar	Clare Street	€24,500	68.9
1347963	Howards	Tolan Street	€24,500	91.8
1436319	Keane's	The Quay	€24,000	70.0
1347778	Harrison's	Tone Street	€21,200	40.0
1347742	Thorntons	Tone Street	€17,500	43.3
1348067	Former Gaughans	O'Rahilly Street	€17,500	65.0
1348062	Cupan Ceoil	O'Rahilly Street	€17,500	49.9
1347980	Moclairs	Tolan Street	€15,050	122.0
1349200	Breathnach's	Abbey Street	€12,000	47.6
1347973	An Bolg Buí	Tolan Street	€12,000	48.0
1347780	Hughes'	Tone Street	€12,000	40.8
1348859	Vincy's	James Connolly St.	€11,400	56.0
1347972	VJ Doherty	Tolan Street	€9,450	87.5
1347724	O'Dowds American Bar	Tone Street	€7,500	35.6
1348209	Former Corcorans	Casement Street	€7,500	42.6

Average Trading Area 149.1 m^2

Average NAV €36,852

Appeal Rate 20%

Scheme Acceptance 80%

8.3 The Property is the sixth largest licensed premises in Ballina, being almost twice the size of the average in terms of trading area, and approximately twice the NAV. While Mr Colhoun accepted that food sales at the Property were higher than drinks sales, he did not accept in any way that the turnover for the Property was exceptional or that it was brought about as a result of the goodwill or business acumen of the operator of the business. He was of the view that the hypothetical tenant could operate the Property in the same manner as the Appellant. In his expert opinion, the Property trades as it does due to a number of factors such as the excellent fit-out, including the stone flag floor originally from Kilmainham Gaol, the inviting ambience of the pub and its particular location in a cobblestone courtyard, not far from the centre of the town, with substantial and safe outdoor seating, but which also benefits from a quiet and pleasant setting. In support of this Mr Colhoun cited the fact that there was no evidence to suggest an increase or decrease in turnover when there was a change in the operator of the business. This was notwithstanding that the former head chef at the Property, who had worked there for fourteen years, had relatively recently taken over the business from its former operator. Mr Colhoun submitted that pubs, unlike retail premises, are generally not always centred in the one area in a provincial town and are often spread out or located differently to the main retail area. He disagreed with the Appellant's description of the location of the Property as tertiary retail and did not accept the Appellant's analysis that trade at the Property was dependent primarily on food trade. In this regard, Mr Colhoun noted that drink sales accounted for 23-24% of revenue in most years, which was higher than the total drink sales in other pubs in the town which did not serve food. Mr Colhoun also disagreed with the description of the Property as a restaurant and submitted that valuing the property as a retail property worked against correctness of value, equity and uniformity, something that would have an adverse effect on establishing the tone of the list.

8.4 Mr Colhoun said he did not believe that food trade at the Property was exceptional and submitted that the Appellant provided no evidence for its view that a larger discount should be applied. Equally, while larger discounts may have been determined by the Tribunal on appeal, there were also many appeals where no increased discounts were awarded. The Respondent submitted that it is incorrect to say that the Property does not or has not qualified for any allowances under the scheme.

8.5 The Respondent also disagreed with the Appellant's description of the location of the Property as tertiary and argued that pubs, unlike retail premises, are generally not always centred in the one area in a provincial town and are often spread out or located differently to the main retail offer.

8.6 When asked by the Tribunal whether the Commissioner could impose sanctions on those who did not provide full trading accounts via the S45/LP1 process, Mr Colhoun confirmed that there were sanctions available to the Respondent, but he was not aware of party ever being prosecuted for not supplying full trading accounts. He also posited that often, in a pub industry that was in decline, many smaller operations would not have an accountant to provide full trading accounts.

8.7 Under cross-examination, Mr Colhoun said he did not believe the food sales at the Property were exceptional. When put to him that, by Mr. Halpin's estimate, just 2.5% of licensed premises in County Mayo had food sales in excess of 70% of total sales, Mr Colhoun replied that the percentage of food sales at the Property was different but not exceptional. When put to him that the Commissioner had not given full weight to the comparative rental value of Breathnach's pub in valuing that property, Mr Colhoun replied that some weight was given to the comparative rent. He said that the rent fluctuates so that not as much weight could be given to rent as one might consider. He added that no premium based on retail value was added to "Cupan Ceoil" pub. In reply to Mr Halpin's comment that the smaller pubs in Ballina were suffering, Mr Colhoun said that the Property is amongst the larger pubs in the town. He said that he thought that any disadvantage from the laneway access to the Property and "off-central" location was off-set by the ambience of the pub and the area and the courtyard where the Property is located. Mr Colhoun said that he had eaten at the Property, but he acknowledged that if the Property served bad food he would not eat there. His view was that the fit-out and the internal condition of the Property was better than "The Cot & Cobble", something with which Mr Halpin did not agree. Mr Colhoun did, however, agree with the proposition that if "The Cot & Cobble" was refitted then the NAV of that property would increase. There was some discussion about the inclusion or exclusion of kitchen areas within the trading areas of pubs where there was a divergence in approach as between Mr Halpin and Mr Colhoun, with Mr Colhoun conceding that he may have made a mistake in this regard in relation to the Property.

8.8 In reply to a question from the Tribunal, Mr Colhoun explained that the towns of Westport and Castlebar were viewed by the Commissioner as "Tier 1" towns that attracted a higher percentage of 9% to drinks sales, with 1% deducted for the percentage applied to food sales where they exceeded 75% of total sales, after the first €100,000 of food sales were deducted. He said that the percentage applied in Ballina to drinks sales was 8% because it was not a "Tier 1" town like Westport or Castlebar. He added that the appeal rate was 10%. Mr Colhoun stated that the prime retail location in the town was Market Street, but that most of the pubs in the town were in sub-prime locations such as Tolan Street and O'Rahilly Street. When asked where the "sweet spot" was in terms of the type of successful pub operation in Ballina, Mr Colhoun replied that the market was in a state of flux. He cited the substantial Queens pub in Dalkey which was a substantial gastro pub that had just shut down, which Mr Colhoun speculated had substantial imbedded running costs making it just as easy to shut the pub down as to try and keep it open. In terms of the market in Ballina, Mr Colhoun gave the example, in particular, of "The Cot and Cobble" pub where there was formerly a nightclub area to the rear which, in more recent times, had been used as an occasional "teen disco", but which was a separate area that could be closed so as to minimise or negate entirely the cost of operating it when not in use. Mr Colhoun agreed that there was a "sweet spot" in terms of the size and type of pub operation, and that going forward it was likely that small one-room only wet pubs, unless they were in an exceptional location frequented by tourists on an ongoing basis, were going to find it difficult to survive. In this regard, there was some discussion about Brennan's Lane pub on Tone Street which, while under appeal, is a similar size to the Property but is valued at 63% of the NAV that the Commissioner contends should be applied here. Finally, in reply to a question from the Tribunal, Mr Colhoun said that, of the list of pubs provided by him, less than 50% had provided turnover figures when requested by the Commissioner under the S45/LP1 process.

8.9 In summing up, Mr Colhoun said that the Property was one of the largest in Ballina with unique features. He said that the primary operator changed with no effect on trade and that any goodwill therefore goes with the property and not the operator.

9. SUBMISSIONS

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

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practicable, 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 Mayo.

10.2 The Tribunal is of the view that it is long established in practice that the appropriate method of valuation of a licensed premises is by the application of a percentage to the Fair Maintainable Trade (FMT). However, in considering what the FMT may be, and what factors affect it, consideration has to be given to more than just the turnover and a determination has to be made as to whether a premises is under or over trading and what level of FMT the reasonably competent operator or hypothetical tenant could achieve or maintain. There is also the question of equity and fairness between ratepayers, and it must be borne in mind that what is being valued is the building and not the business. The Tribunal is conscious of not straying from an established method of valuation, but information on comparable rents, location, floor area and the description of the property assists in considering whether or not the level of turnover or FMT is realistic and whether or not a reasonably competent operator/the hypothetical tenant, could improve or maintain that level. These are essential factors and need to be given due weight when applying the R&E method to derive the NAV of a licensed property.

10.3 The Appellant provided the NAV for 27 licensed premises in the town while the Respondent provided details of 30 licensed premises in the town. As the Tribunal is of the view that the Property is a pub and should be valued as such, contextual information provided by the Appellant on restaurants in the town and discounts applied to turnover of pubs in other rating areas has not been considered as central to this determination. In contrast, considerable consideration has been given by the Tribunal to the comparable pub properties in County Mayo submitted by both parties. It is noted in this regard that while the Appellant submitted details of five pubs in the town of Ballina, two of the three "Key Rental Transactions" provided by the Respondent were not located in Ballina, one being located in Westport and the other on

Achill Island. In those circumstances, greater consideration will be given to comparable properties that are in the same town and closer to the Property as being the most relevant.

10.4 It is apparent from the figures provided that the subject property is trading at a level in excess of its competitors. Many of those comparisons are in a similar or arguably better location in Ballina to the Appellant's property. The Property appears well appointed and is maintained to a good standard, with a high-quality fit-out. The outdoor courtyard area is well presented, and the overall ambience appears to be one of charm, character and comfort.

10.5 The Tribunal finds that the Appellant has given convincing evidence that the business acumen of the occupier and the market rent needs to be given greater weight when arriving at a figure for the NAV of the Property. The Tribunal is also persuaded by the Appellant's proposition that where a licensed premises such as the Property is concerned, increased food trade is more likely to increase drinks sales rather than vice versa. While it does appear to be an accurate conclusion that trade did not increase or decrease when there was a change of operator, it is clear that the head chef, who worked at the Property for the previous fourteen years before taking over the operation of the business, provided the continuity necessary for the business to thrive based on the goodwill built up over a number of years by both the head chef and the former operator working together.

10.6 While the Tribunal confirms its agreement with the calculation of the initial FMT figure based on the turnover figures provided by the Appellant, the Respondent did not provide sufficient evidence to support a NAV that is significantly in excess of the recently agreed market rent for the Property and comparable licensed premises of similar size. The Tribunal understands that there are always ongoing GDPR and confidentiality issues to take into account when providing submissions to the Tribunal but, in the absence of robust comparable evidence to suggest otherwise, it could be viewed that the Appellant is being penalised for providing trading accounts to the Commissioner, which is patently unfair and inequitable and an issue that must have a material effect on the emerging tone of the list.

10.7The Tribunal finds that the rates of 7% for drink and 5% for food have been established from the evidence adduced.

10.8 The Tribunal finds that the Respondent has failed to take a sufficient “stand back and look” approach to the FMT of the Property and has not provided sufficient reason why the NAV of the Property should be substantially higher than the recently agreed market rent of the Property and other licensed premises in Ballina of a similar size. Therefore, in this appeal the Tribunal believes that it is appropriate to apply a discount of 30% to the food and drink sales to give due weight to both the business acumen of the occupier and the market rent of the Property in order to arrive at a fair figure.

DETERMINATION

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €50,000.

USE	TYPE OF SALES	EST FMT	RATE %	NAV
Licensed premises	Drink	€ 220,500	7%	€15,400
	Food	€ 700,000	5%	€35,000
			Say	€50,400 €50,000

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.