

Appeal No: VA23/5/0609

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

**KENMARE NURSING HOME LIMITED T/A
KENMARE NURSING HOME**

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

In relation to the valuation of

Property No. 230760, Nursing Home at Killaha East, Kenmare, County Kerry.

B E F O R E

Margaret Nerney SC

Chairperson

Caroline Murphy BL

Member

Killian O' Higgins FSCSI, FRICS

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 14th 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 (“the Property”) was fixed in the sum of €65,000.

1.2 The sole ground of appeal, as set out in the Notice of Appeal of the 14th day of October 2023, is that the determination of the valuation of the Property is incorrect as it is not a determination of

its value that accords with that required to be achieved by section 19(5) of the Valuation Act 2001, as amended, (“the Act”) on the following grounds:-

(1) The subject property's assessment is excessive and inequitable.

(2) With only 26 beds, the subject property like many others with a small number of beds in the sector is not commercially viable and would not be attractive to commercial nursing home operators.

(3) It can however survive if key personnel take a modest salary below nursing home norms. However, this would not be an option for the hypothetical tenant who would have to employ staff at the going commercial rate.

(4) All around the country, these smaller nursing homes are closing due to their inability to generate a sufficient commercial return when all care services and associated costs are discharged.

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €39,000, increased to €45,500 at the hearing.

2. REVALUATION HISTORY

2.1 On the 23rd day of February 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 €65,000.

2.2 The functions of the Commissioner of Valuation are now performed by Tailte Éireann with effect from 1st March 2023 pursuant to the Tailte Éireann Act 2022 (Commencement) Order 2023 (S.I. No. 58/2023).

2.3 A Final Valuation Certificate issued on the 15th day of September 2023 stating a valuation of €65,000.

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 5th day of November 2025. At the hearing the Appellant was represented by Eamonn Halpin B.Sc. MRICS, MSCSI and the Respondent was represented by Herbert Mulligan, MRICS, MSCSI 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. FACTS

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

4.2 The Property is a 26-bed nursing home, having six twin rooms and 14 single rooms. It was originally a private residence but converted to a 16 bed-space nursing home in 1995 with 10 rooms added in 2015.

4.3 The property is located in a rural location, approximately 3km west of Kenmare, County Kerry.

5. ISSUES

5.1 Quantum is the only matter at issue.

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, as follows:

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

7. APPELLANT’S CASE

7.1 As outlined in his précis, Mr Halpin sought a remedy whereby “the NAVs be reduced in line with its actual potential rental value and the emerging tone of the list.”

7.2 In his oral evidence, Mr Halpin stated that the case was reasonably straightforward and that it was the Appellant’s point of contention that while the Respondent has developed a scheme for nursing homes, in the context of very small nursing homes, this scheme should not apply as such small nursing homes have become virtually uneconomic to run. Many such small nursing homes had “given up the ghost” and either returned to private housing use or been leased to the State to provide emergency accommodation for refugees or immigrants. Smaller nursing homes do not have the ability to scale up and the three years of accounts in Mr Halpin’s précis indicated the challenge.

7.3 The accounts show that the minimum value that the Respondent proposes under the scheme at €2,500 per bed is not appropriate for this particular property at this location. The Respondent

has developed a scheme with the lowest value at €2,500 and will not value below that level, despite evidence that such an approach does not reflect the challenges of small nursing homes.

7.4 The Property is located at Killaha East, a few kilometres outside Kenmare - a nice scenic, but rural, location. There is no other commercial activity in the area which is mainly farmland. The property is currently a 26-bed nursing home and began life as a domestic house. It was extended in 1995 into a 16-bed nursing home but, when it became uneconomic at 16-beds, a further 10-beds were added in 2015. Mr Halpin understood that the property was held freehold.

7.5 The business, including the Property, was sold as a going concern to the Appellant in October 2022 for the figure outlined in Appendix 1 (N/A to public).

7.6 The accommodation comprised 6 doubles and 14 singles, making a total of 26 bed spaces (doubles refer to two single beds in one room). Mr Halpin stated that the preference for operators now is all single en-suite bedrooms, with double rooms becoming less and less popular. Mr Halpin believed a standard operator would prefer 65 plus beds to avail of economies of scale.

7.7 Mr Halpin pointed to photographs taken in 2024 in his précis which demonstrated the phases of development at the Property. He also pointed to a layout plan. Mr Halpin contended that the Property was one of the smallest nursing homes in County Kerry and amongst the smallest in the country.

7.8 Mr Halpin asserted that the underlying methodology for assessing the valuation of nursing homes in the context of the Act was the receipts and expenditure (R&E) method. He said that the Respondent's approach to valuations was to carry out a sample exercise across nursing homes and then to interpret the remainder, based on National Treatment Purchase Fund (NTPF) rates, to arrive at a rate per bed. The Appellant took no issue with the rate per bed approach, but where the interpreted rate per bed result and that of the R&E method differ, it was its contention that it was the R&E approach which should apply as it was more reliable. In this case, the Respondent had assessed NAV at €2,500 per bed space on the basis of 26 occupants, but the R&E approach, based on the average of three years' accounts, determines at €1,750 per bed space. Mr Halpin said that whilst the Appellant understood that €2,500 per bed space is the lowest rate currently applied in

County Kerry under the Respondent's new scheme, the difficulty with this approach is the size of the nursing home at 26 beds, and the lack of economies of scale involved in such an enterprise.

7.9 Mr Halpin noted that the previous owners, as the occupiers during the relevant period, took no salary and divided the net profit between them as their pay. According to Mr Halpin, in the normal course, and as per previous decisions of the Tribunal, the parties attempt to discern the proportion of the director's pay, bonus and pension which should be added back to the accounts to reflect the situation from the hypothetical tenant's perspective. In this instance, the hypothetical tenant must add in the cost for such an employee, rather than subtracting cost. The hypothetical tenant would be obliged to employ someone as a Director of Nursing to run the business and hence would need at least €65,000 per year to cover this expense.

7.10 In presenting his comparisons, Mr Halpin stated that there was no real information available, just a NAV which provided no detail about the property, and this was how most nursing homes appeared on the list. There was no reference to the valuation method applied or the number of bed spaces. Only the NAV was provided, and the Appellant cannot rely on a "tone of the list" as no such tone can be established given the paucity of information on the list.

7.11 Mr Halpin offered the following comparisons from the County Kerry list:

	Address	Property No.	NAV
1.	St. Louis Nursing Home, Tralee, Co. Kerry	71063	€62,500
	Mr Halpin said that the property was valued at €2,500 per bed space, the lowest level, but given its urban location should have a substantially higher value if compared to the Property at €2,500 per bed space.		
2.	Heather Lee Nursing Home, Killarney, Co. Kerry	28696	€55,000
	Mr Halpin said that the property was valued at €2,500 per bed space but that the underlying site is a significantly superior site in Killarney. It should have a substantially higher value if compared to the Property at €2,500 per bed space.		

7.12 Mr Halpin outlined his R&E valuation approach (Appendix 2, N/A to public), using the Accountant's Report supplied as the primary basis to establish the actual turnover and the running costs. Mr Halpin said that he added a cost for a director for each of the accounting years, then

added back items such as rent, depreciation and rates in the standard way. Arriving at net profit, Mr Halpin then adjusted for rates liability. In arriving at an average, Mr Halpin adopted a “tenant’s share” of 45%, which has previously been used in some of the assessments. Mr Halpin understood that, in this last regard, the Respondent’s practice now might be to adopt as high as 50% in respect of the tenant’s share but he claimed that, for the purpose of historic consistency, he was retaining 45% as the tenant's share. After deducting the tenant’s share, this provided an NAV of €1,762 per bed space, say an NAV of €1,750 per bed space or €45,500 in respect of the total property. Mr Halpin stated that using the R&E approach was more appropriate in this instance, compared to using the minimum scheme rate per bed space, and the former provided the fairest reflection of NAV under section 19(5) and section 48 of the Act.

7.13 Mr Halpin referenced two Tribunal nursing home decisions VA 10/5/080 and VA 17/5/180 in support of his case. He also provided the “full financial accounts,” pointing out that these were the accounts of the former occupier, as they were the only figures that were available to assist pre-valuation.

Cross-examination

7.14 Mr Halpin confirmed to Mr Mulligan that he had added €65,000 to administrative costs in revising the accounts to cover a director.

7.15 Mr Mulligan stated that when he was shown around the property by a named individual, that person had identified themselves as the Director of Nursing and stated that they had been in post for the previous nine years. Mr Halpin advised that that person’s salary was in the administrative costs before any adjustment was made. The additional cost was for a director as neither of the two directors (previous owners) took a salary. Mr Halpin stated that it was a coincidence that the figures he mentioned for a Director of Nursing and a single director’s costs were the same at €65,000 per annum but noted that the figure added back in 2020 for a director was €87,950.

7.16 In response to Mr Mulligan's queries on the accounts provided, Mr Halpin stated that these were the only accounts available to him, the accounts of the previous operator, and he could not answer for them – his client was the Appellant, and the figures were from the previous owners.

7.17 Mr Halpin referenced, and provided a copy of, the Tribunal's decisions VA17/5/180 *Eochiall Enterprise Limited and Commissioner of Valuation* and VA10/5/080 *Dundas Ltd. and Commissioner of Valuation*, in support of his contention that the R&E valuation approach should be adopted.

7.18 In response to queries from the Tribunal, Mr Halpin stated:

7.18.1 One of the previous proprietors of the nursing home, he believed, was a nurse but he had no evidence that this was the case. In Mr Halpin's experience of these small nursing homes around the country, invariably one of the proprietors would be a nurse because that was how a business avoided having to pay a Director of Nursing as one of the owners was a qualified person. However, Mr Halpin accepted that, on his inspection, the party who showed him around the nursing home, though possibly a nurse, was not the Director of Nursing (who had shown Mr Mulligan around at the time of his inspection) or the person responsible for the nursing home under HIQA regulations.

7.18.2 Mr Halpin agreed that the normal practice for an individual proprietor operating a nursing home was that the remuneration for the individual proprietor should come out of the tenant's share. Mr Halpin said that individuals would probably share the net profit. Normally there would be a figure for directors' remuneration and that would be added back, but there was no directors' remuneration in the accounts available to him. Some proportion or all of the directors' remuneration would be added back but, in this instance, the previous directors and owners were taking the profit at the end instead.

7.18.3 Mr Halpin stated that in his opinion 45% was the precedent for tenant's share although he believed that in the past few days the Respondent may have advanced the figure to 50%.

7.18.4 Mr Halpin accepted that “resident reimbursement” (2020 Accountants Report - €14,452) was, in effect, part of overall income sales. Mr Halpin could not indicate why Employer’s NI/PRSI contributions were separately accounted for in 2021 but were at nil in 2020. Mr Halpin could not confirm if such State taxes were included in the Wages & Salaries line in the 2020 accounts. Also, he noted that there was no separate line in the 2019 accounts for the taxes. Government grants in the accounts referred to COVID-19 supports.

8. RESPONDENT’S CASE

8.1 Mr Mulligan stated that the property is 3.5km from Kenmare Town, on the R571 (part of the Wild Atlantic Way) in a rural area, overlooking Kenmare Bay. He provided a map and photographs for context.

8.2 Mr Mulligan said that the property was originally a single-story bungalow which was converted and extended into a nursing home, the latest extension constructed in 2015 and comprising 10 single bedrooms. The Property provides a total of 26 beds – 14 single rooms and 6 twin rooms. Other accommodation includes a dining room, sitting room, kitchen, laundry room, shower rooms, bathrooms, visitors room, office, and plant room together with an enclosed rear garden.

8.3 Mr Mulligan said that the Director of Nursing at the property had been there for nine years and advised him that the Property complies with Health Information and Quality Authority (HIQA) standards. He was advised of the then current National Treatment Purchase Fund (NTPF) rate and that there was a separate activity charge of €40 per week per person. The private rate was the same as the NTPF rate. The majority of patients are availing of the State’s Fair Deal (Nursing Home Support) scheme.

8.4 Mr Mulligan provided photographs and a block plan outlining accommodation and emphasising the attractiveness of the location.

8.5 Mr Mulligan understood the property was held freehold and had been acquired for the figure outlined in Appendix 1 in October 2022 (N/A to public). Accordingly, in Mr Mulligan’s

view, this undermined the Appellant's claim of difficulties associated with smaller nursing homes as his client acquired the property. Clarification regarding the trading information on the property had been requested but not received.

8.6 Mr Mulligan referred to the Tribunal decision in VA17/5/180 *Eochiall Enterprise Limited v Commissioner of Valuation* and pointed out that, at the time, 14 of 20 nursing homes in County Kildare had been appealed. He stated that whilst Mr Halpin had focussed on section 48(3) of the Act, he failed to consider the requirements of s.19.5(b) - equity and uniformity between properties on the list. In the circumstances in Kildare at the time there was no "emerging tone" of the list. In contrast to Kildare, the Property was the only outstanding Nursing Home appeal in County Kerry, 93.33% of the occupiers having accepted their valuations as correct.

8.7 Mr Mulligan also referenced the High Court (O'Malley J.) judgment in *Commissioner of Valuation v. Carlton Hotel Dublin Airport Ltd and others* [2013] IEHC 170 ("*Carlton*"). He said that O'Malley J. emphasised the importance of equity and uniformity and quoted from her judgment as follows: -

"the fact, if established, that other occupiers and their professional advisers have accepted or agreed a certain level of assessment is always going to carry weight in deciding whether assessments in that line of business are being done correctly."

8.8 Mr Mulligan said the question at issue is if an NAV of €65,000 is fair and equitable based on the available evidence. The NAV is determined in accordance with section 48(1) and (3) and section 19(5) of the Act. He stated that the Property was valued relative to the value of other properties to the Property on the valuation list in County Kerry rating authority area in accordance with correctness of value, equity, and uniformity. Mr Mulligan emphasised that properties which are similarly circumstanced are considered comparable. This means that they share similar characteristics such as use, size, location, and/or construction.

8.9 Mr Mulligan advised that 46.6% of nursing home occupiers in County Kerry supplied financial information thereby providing an extensive database of evidence to compare nursing homes and ensure equity and uniformity of NAV assessments. The Respondent evaluated nursing

homes on rates per bed space, taking into account several factors including *inter alia* occupancy levels, age, and location of the property, the NTPF rates, accounts and trading information and construction and redevelopment works. No rental transactions were available to assess NAV.

8.10 Of 15 nursing homes valued in the County Kerry revaluation, the Respondent received no representations, illustrating, in Mr. Mulligan’s opinion, that the NAVs as assessed had been fair and appropriate to individual circumstances. A total of 14 out of 15 nursing homes accepted the assessed NAVs which was a total acceptance rate of 93.33%, albeit one other nursing home had appealed to the Tribunal. That appeal was subsequently withdrawn.

8.11 Mr Mulligan provided the following three comparisons highlighting that each comparison had no more than 30 bed spaces, were valued at €2,500 per bed space and therefore comparable to the 26 bed spaces at the Property.

	Address	Property No.	NAV	Bed Spaces
1.	St. Louis Nursing Home, Tralee, Co. Kerry	71063	€62,500	25
	Although listed in his précis at a NAV of €65,000, Mr Mulligan amended the figure to €62,500 or €2,500 per bed space. Converted house in urban location. This is the same comparison used by Mr Halpin.		€2,500 per bed space	15 single and 5 twin rooms
2.	Heather Lee Nursing Home, Killarney, Co. Kerry	28696	€55,000	22
	Mr Mulligan said that the property was valued at €2,500 per bed space but was now closed. Converted house in rural location. This is the same comparison used by Mr Halpin.		€2,500 per bed space	6 single and 8 twin rooms
3.	Riverside Nursing Home, Milltown, Abbeydorney, Co. Kerry.	49831	€67,500	27
	Mr Mulligan said that the property was valued at €2,500 per bed space. Converted house in rural location.		€2,500 per bed space	3 single and 12 twin rooms

8.12 Mr Mulligan maintained that the emerging tone of the list was clear and the Respondent’s approach to the valuation of the Property was correct, fair, and equitable. Mr Mulligan noted that the Appellant had not formally responded to the Respondent’s written request (dated 23rd September 2025), attached at Appendix 2 (N/A to public), for information, albeit that Mr Halpin had addressed some of the queries in his précis.

8.13 In concluding his direct evidence, Mr Mulligan referred again to the *Carlton* judgment in which the Court had concluded that the Tribunal was within its jurisdiction to consider evidence in relation to competing valuation methodologies and to adopt a method of determining NAV that it felt was best suited to the properties in question, especially in specialised sectors like hospitality and healthcare where hotels and nursing homes rarely come onto the rental market, making NAV difficult to determine.

8.14 Mr Mulligan affirmed his valuation at €65,000 or €2,500 per bed space.

Cross Examination

8.14 Mr Mulligan accepted that there had been closure of a variety of nursing homes across the country, predominantly smaller nursing homes. Mr Halpin asked if it was the lack of economies of scale, but Mr Mulligan believed it was the inability to deal with the regulatory requirements of HIQA. Mr Halpin referred to overhead costs versus the ability of small nursing homes to generate sufficient income. Mr Mulligan countered that the sale of the property at the level indicated in Appendix 1 (N/A to public) suggested value to the Appellant.

8.15 Mr Mulligan agreed that property was not homogenous, and Mr Halpin put it to him that, in that context, location was the key determinant in value. Mr Halpin responded that location would be one consideration. Mr Halpin asked Mr Mulligan if Tralee and Killarney were better locations for a nursing home, compared to the Property in rural Kenmare. Mr Mulligan stated that the evidence of the occupancy, for the different comparisons he had supplied, suggested that the location in Kenmare was a good location for a nursing home.

8.16 Turning to the nursing home scheme adopted by the Respondent, Mr Halpin asked Mr Mulligan if it was simply a tool, and that the parties were charged with finding the correct NAV for individual properties. Mr Mulligan responded that the NAV must comply with the provisions of sections 48 and 19(5) of the Act. Mr Halpin argued that equity and uniformity come afterwards but that, firstly, the correct NAV or rental value for the property must be achieved. Mr Mulligan stated that where financial information was supplied, individual R&E assessments were undertaken, and such assessments informed the development of the scheme. He also reiterated that

the scheme considers several factors, which includes occupancy, age, location of the property, NTPF rates, accounts, trading information and construction and redevelopment works amongst others.

8.17 Mr Mulligan confirmed that the common comparisons in Tralee and Kilcummin (near Killarney) provided accounts and informed the creation of the scheme for nursing homes in County Kerry. Mr Halpin asked, given that it had closed since the NAV was assessed, what sort of analysis was carried out on the Kilcummin accounts and what did it show? Mr Halpin put it to Mr Mulligan that closure suggested that the occupier could not make a living, to which he, Mr Mulligan, responded that he did not have the information before him.

8.18 Mr Mulligan said that all evidence was considered in arriving at a scheme, in response to Mr Halpin's query as to whether Kilcummin would have been discarded, if the analysis of the actual accounts hypothetically demonstrated €1,000 per bed space as the appropriate NAV.

8.19 Mr Mulligan confirmed that the property at Abbeydorney had not provided accounts and that, apart from the comparisons he provided, all other nursing homes in County Kerry were larger than 30 bed spaces.

8.20 Mr Mulligan did not undertake an R&E valuation of the property as the information he requested (his Appendix 2) was not provided. Mr Halpin asked Mr Mulligan if he considered himself bound by the scheme, regardless of Mr Halpin's R&E valuation approach. Mr Mulligan responded that his evidence was that, for the purpose of equity and uniformity, the three comparables provided were smaller nursing homes with less than 30 bed spaces, each valued at €2,500 per bed space, as was the Property. Each occupier of the three comparisons supplied accepted their NAV at €2,500 per bed space.

8.21 Referring to Mr Mulligan's mention of *Carlton*, Mr Halpin said he was paraphrasing in saying that O'Malley J. said in her judgment that the application of a universal mistake does not make it correct. Mr Halpin put it to Mr Mulligan that the application of €2,500 per bed space was a universal mistake, because it conflicts with the R&E valuation of the Property. Mr Mulligan restated that information requested had not been provided and, accordingly, he could not undertake

an R&E approach to the NAV. However, he was satisfied that his comparative properties supported his NAV assessment.

8.22 The Tribunal questioned Mr. Mulligan on R&E valuations and section 19(3) of the Act, pointing out that s.19(3) is very often quoted but more often it is about equity and uniformity which is referenced in s.19(3)(b) and rarely is s.19(3)(a), which is correctness, mentioned. Mr Mulligan confirmed that traditionally nursing homes were all assessed on an R&E basis, provided financial information was supplied by the occupier. In developing a scheme, the aggregated individual R&E valuations would have significantly informed the scheme. Mr Mulligan said that the level of NTPF funding per bed space would also have been taken into consideration as most of the income for most of the occupiers was from this source.

8.23 Mr Mulligan said that nursing homes were bracketed into smaller and larger nursing homes. Properties for which occupiers did not provide trading information were examined for the level of NPTF funding per bed space to provide context for the assessment of the NAV.

8.24 In relation to the treatment of directors' fees in the context of an R&E assessed tenant share and NAV, Mr Mulligan said that different occupiers have different approaches to the treatment of wages. BDO Accountants suggested a 60% of turnover ratio as average for staff costs relative to turnover. The Respondent had adopted a figure of 61%. Mr Mulligan accepted that the Respondent had simply applied a figure of 61% of turnover as general wages regardless of what appeared in the accounts.

8.25 Mr Mulligan said that the Respondent's approach was to exclude directors' remuneration before the assessment of the divisible balance but to review wages and increase them to 61% of turnover if that action resulted in general wages falling below 61% of turnover. In relation to the Property, financial information requested was not supplied so Mr Mulligan said that he was unable to comment specifically in relation to the treatment of directors' remuneration at the Property.

8.26 Mr Mulligan agreed that equity and uniformity is best achieved through correctness but that there was a balance to be struck to reflect equity and uniformity. He acknowledged *Carlton* raised by Mr Halpin and accepted that the Judge in that instance indicated that when you have

items on the list that have not been appealed or have been agreed with agents, that adds weight to evidence as opposed to being a determining factor.

8.27 Invited by the Chairperson to comment on any issues which arose from the Tribunal's questioning of Mr Mulligan, Mr Halpin stated that there were only four small nursing homes, two of which provided information, one of which is now closed. In response to Mr Halpin, Mr Mulligan stated that 44% of all nursing homes in County Kerry had provided financial information. Mr Mulligan had only taken over the case at appeal stage so he could not comment further on how the scheme was established other than to say that a rate per bed space approach was the scheme adopted, following the evaluation of all the data available.

9. SUMMARIES

9.1 In summing up his position, Mr Halpin stated that correctness of value is the first item to be considered under the revaluation. Equity and uniformity come later, he stated, but, without correctness of value, it results in the application of a universal mistake, and in this regard, he referenced the *Carlton* judgment.

9.2 By common agreement, stated Mr Halpin, there are only four nursing homes in the under 30 bed space category in the entire of County Kerry, two of which gave accounts, and he had presented a third set of accounts from the Property which illustrates that one in three cannot meet the €2,500 per bed space test. Accounts for the Property demonstrate that the business cannot support a NAV of €2,500 per bed space. His fear was that of the other two nursing homes which submitted accounts, if they were analysed, perhaps one or more of them fell below the €2,500 per bed space level.

9.3 Mr Halpin believed that the scheme was a tool, but the parties are charged with finding out how to establish a NAV for the property and a R&E valuation provides that NAV very succinctly and does not support €2,500 per bed space.

9.4 Mr Halpin requested that the Tribunal, based on the facts of the case, establish the correct NAV and to do that in line with the R&E approach he put forward.

9.5 The Tribunal invited Mr Mulligan to provide his summary and to address any issues which he might want to address following Mr Halpin's submission after questions raised by the Tribunal, addressed to Mr Mulligan. Mr Mulligan confirmed that he did not wish to address any matters raised by Mr Halpin.

9.6 Mr Mulligan said that Mr Halpin was relying on the R&E approach and Mr Mulligan was relying on the fact that the Property is valued at €2,500 per bed space aligned with the NAV comparisons for nursing homes, under 30 bed spaces with similar NTPF rates, which were also valued at a NAV of €2,500 per bed space. Equally each of the comparisons and the Property were residences converted to nursing homes. Two of the NAV comparisons were also located in rural areas, similar to the Property.

9.7 Mr Mulligan stated that Mr Halpin relied on an R&E valuation, but the trading information and details regarding occupancy restrictions had been requested but not supplied to the Respondent, following a request to provide such information.

10. LEGAL SUBMISSIONS

10.1 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 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 Kerry.

10.2 The parties were agreed as to the location, size, construction, and bed capacity of the Property.

10.3 Mr Halpin, for the Appellant, is relying on the R&E approach to establish the NAV of the Property and contending that the comparisons (two of which are common to both Appellant and Respondent) are superior to the Property in terms of location. He further submits that the fact that one of his comparisons, having closed since the Final Certificate issued, supports his contention that small nursing homes are uneconomic. He maintains that the NAVs for small nursing homes should be lower but claims that the scheme of valuation for nursing homes in County Kerry is too rigid to accommodate the smaller nursing home. Mr Halpin believed that equity and uniformity have sacrificed correctness.

10.4 Mr Mulligan relied on the emerging tone of the list on the basis that the Property was the only nursing home appealed to the Tribunal and that the other 14 nursing homes, representing 93.33% of nursing homes in County Kerry, accepted the NAVs in the Final Certificate. He stated that no representations were received from any nursing home occupier.

10.5 Between the parties, only three properties were advanced as comparable or relative. Two of the three were common to both parties. The three comparisons were of assistance to the Tribunal, although less weight was attributed to the property at Killarney (PN28696), as it had since closed.

10.6 Mr Mulligan stated that each comparison had no more than 30 bed spaces, were valued at €2,500 per bed space and therefore comparable to the 26 bed spaces at the Property.

10.7 Mr Halpin's contention was that the Killarney nursing home and, particularly the Tralee nursing home, were in better locations and would be expected to have higher NAVs than the Property. He also emphasised that the approach to assessing the NAV should be based on a R&E valuation and should follow his approach, as outlined in Appendix 2 to this determination (N/A to public).

10.8 Mr Mulligan did not address or critique Mr Halpin's R&E approach, relying on his, Mr Mulligan's, assertion that information requested had not been provided by the Appellant and that he was therefore relying on what he considered to be the then clearly emerging tone of the list for nursing homes in County Kerry.

10.9 Mr Halpin, although vigorously pursuing his approach, was operating at a significant disadvantage as the Appellant had only purchased the property in October 2022, according to Mr Mulligan, and Mr Halpin had to therefore rely on the accounts of the previous owner in producing the R&E valuation. The Tribunal noted Mr Halpin's candour in saying that he had no evidence to offer on the nature of the work undertaken by either of the two directors or their qualification relative to work involved at the Property, however he was of the opinion that a small nursing home needed significant owner engagement and he had reflected that in adding a €65,000 salary for a single director to the Administration Costs heading in his R&E calculation.

10.10 The Tribunal makes no critique of Mr Halpin's approach in adding a salary cost for a director although questions if an allowance should have been made for the fact that, as a director, there may be supervisory or policy-making services, more appropriate to a landlord expense as opposed to any executive role, which would be a tenant expense. However, as precise information on the nature of the previous director roles was not available to Mr Halpin, he simply elected to include a salary for one director in administrative expenses.

10.11 In making its determination in this appeal the Tribunal has had regard to the judgment of O'Malley J. in *Carlton*.

10.12 The uncontested evidence of Mr Mulligan, for the Respondent, was that 93.33% of occupiers had accepted the NAV in the Final Certificates and indeed that no representations were received from any nursing home occupier in County Kerry. His evidence was that other nursing home occupiers with less than 30 bed spaces had accepted a NAV of €2,500 per bed space.

10.13 "Stand back and look" is a valuation principle on foot of which, having calculated a property's NAV, an experienced valuer reviews it against comparable properties to ensure fairness. If the valuation seems unreasonable relative to similar properties or businesses, it is often adjusted, which could result in an increase or reduction in the NAV. A "stand back and look" approach, following Mr Halpin's assessment of NAV on completion of the R&E approach which he advocates, would suggest that the R&E result is out of line with the emerging tone of the list following the issuing of the Final Certificates. Despite Mr Halpin's correct claim that there is little

formal detail on the list in relation to nursing homes, Mr Halpin put forward the correct NAV per bed space analysis of €2,500 in providing his comparisons.

10.14 The onus of proof is on the Appellant and in this appeal the Appellant has not discharged the burden of proof. The Tribunal attaches most weight to the evidence of properties on the list which it considers as similarly circumstanced i.e. those under 30 bed spaces. The absence of representations and a 93.33% acceptance rate in respect of NAV nursing home assessments in County Kerry demonstrate that most occupiers, apart from the Appellant, believe that the Respondent has achieved correctness together with uniformity and equity in the NAV assessments.

DETERMINATION

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

RIGHT OF APPEAL

In accordance with section 39 of the Valuation Act 2001, as amended, 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.