

**THE HIGH COURT**

[2024] IEHC 223

[2022 No. 1569 SS]

**IN THE MATTER OF SECTION 39 OF THE VALUATION ACTS 2001 – 2015  
AND IN THE MATTER OF APPEAL VA17/5/148  
AND IN THE MATTER OF PROPERTY 1988703, HOSPITALITY AT LOCAL  
NO./MAP REF:2B BANGHILL, ARDAGH EAST, LONGFORD, COUNTY  
LONGFORD**

**BETWEEN**

**PASCAL LYONS**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

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[2022 No. 1570 SS]

**IN THE MATTER OF SECTION 39 OF THE VALUATION ACTS 2001 – 2015  
AND IN THE MATTER OF APPEAL VA17/5/144  
AND IN THE MATTER OF PROPERTY 1988704, HOSPITALITY AT LOCAL  
NO./MAP REF:2A BANGHILL, ARDAGH EAST, LONGFORD, COUNTY  
LONGFORD**

**BETWEEN**

**LYONS PUB ARDAGH LIMITED**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

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[2022 No. 1571 SS]

**IN THE MATTER OF SECTION 39 OF THE VALUATION ACTS 2001 – 2015  
AND IN THE MATTER OF APPEAL VA17/5/050  
AND IN THE MATTER OF PROPERTY 1514057, HOSPITALITY AT 5  
MONEYGALL IN THE COUNTY OF OFFALY**

**BETWEEN**

**OLLIE HAYES**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 18th day of April, 2024.**

**INTRODUCTION**

1. This is a single judgment addressing three cases stated to this court by the Valuation Tribunal (“*the Tribunal*”) pursuant to the provisions of section 39 of the Valuation Act, 2001, as amended by the Valuation (Amendment) Act, 2015, and for the purposes of this judgment I will refer to the amended statute as the “*Act of 2001*”. The three cases were heard together and involve similar issues. In each case, the relevant property owner was the appellant before the Tribunal, and the respondent to the appeals was the Commissioner of Valuation (“*the Commissioner*”). The request to state the cases to this court was made on behalf of the Commissioner. For the purposes of this judgment and to ensure clarity I will refer to each party by their names.

2. The three cases concern valuation certificates in respect of public houses. Two of the properties are in County Longford, and the third is in County Offaly. As required by the legislation, the Commissioner followed a process to establish a Net Annual Valuation (“NAV”) for each property. The NAVs proposed by the Commissioner were reached by using the valuation concept of Fair Maintainable Trade (“FMT”), which will be discussed in more detail below. Very briefly, the FMT is ascertained by determining a figure related to real turnover with adjustments referable to certain characteristics of the property and to discount the extent to which the turnover reflects the particular expertise of the business owner. The valuer then applies a percentage to that figure, which produces the amount that is set out in the valuation certificate. The percentage figure is chosen to produce a notional rent that a hypothetical tenant would pay as a yearly rent for the property.

3. In each case the property owners disputed the NAVs and commenced appeals before the Tribunal. The Tribunal decreased the valuations in two cases and appears to have increased the valuation in the third case. The issues raised by the Commissioner relate, in the first instance, to the extent to which the decisions of the Tribunal in each case are adequately reasoned. There are further arguments made to the effect that the Tribunal erred in law in reaching its decisions. In this judgment, I will begin by setting out the statutory structure and general legal principles governing the issues that arise in the cases. I will then address in detail the case involving Paschal Lyons. Having addressed the Paschal Lyons case, it will be possible to address the two other cases more briefly.

4. In summary, the court has decided that the Commissioner is correct in asserting that there has been a failure on the part of the Tribunals in the cases to provide adequate reasons.

Specifically, the Tribunals explained why they considered the Commissioner's valuations were too high, but they did not provide a satisfactory explanation as to how they reached the alternative figures. In addition, there was no explanation as to how the Tribunal addressed issues of market data and comparable properties in reaching its conclusions, as required by section 19(5) of the Act of 2001.

5. In the Lyons of Ardagh case, there was a further significant error in that the Tribunal appeared to intend to decrease the valuation, but in its determination identified a valuation that in fact amounted to an increase. That error in and of itself was sufficient to require the case to be remitted. As a result of those findings, the cases will have to be remitted to the Tribunal, and, therefore, I have not considered it necessary or appropriate to address the other questions posed in those cases stated. However, at the level of principle, I do not consider that the Commissioner is correct in asserting that the Tribunal is not entitled to reduce a NAV ascertained by the FMT method, whether by reducing the FMT figure itself or by reducing the percentage applied to that FMT figure, or both. That course appears to be contemplated by the provisions governing the way the Tribunal approaches its tasks, so long as it is supported by the evidence and directed to achieving, insofar as practicable, the objectives identified in section 19(5) of the Act of 2001.

## **STATUTORY STRUCTURE**

6. One of the central objectives of the Act of 2001 is to determine a relevant property's value, and this brings in the concept of NAV. Part 2 of the 2001 Act sets out the method to be adopted in determining a property's value, and, in that regard, section 48 provides: -

*“48. - (1) 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.*

...

*(3) 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. The relevant initial steps to be taken and the objectives to be met are provided for in section 19 of the Act of 2001. First, the Commissioner makes a “valuation order” and appoints a person to carry out a valuation of every relevant property on the valuation list in a rating authority. Thereafter, the valuation manager must arrange for the carrying out of valuation of each property concerned by one or more officers of the Commissioner and the drawing up and compilation of a valuation list for the rating authority area concerned. Section 19(5) is of particular relevance to these cases as it sets out what the Oireachtas seeks to achieve:

*“(5) The valuation list referred to in this section shall be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates concerned, and shall achieve both (insofar as is reasonably practicable) –*

*(a) correctness of value, and*

*(b) equity and uniformity of value between properties on that valuation list,*

*and so that (as regards the matters referred to in para. (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, it is relative to the value of other properties on that valuation list in that rating authority area.” [emphasis added]*

**8.** Section 24 of the Act of 2001 obliges the valuation manager to issue a valuation certificate to each occupier of a relevant property setting out the value of the property as determined, and this must occur no later than seven days before the Commissioner causes the section 23 valuation list to be published.

**9.** Section 25 of the Act of 2001 requires the Commissioner to exercise the powers under section 19(1) and (2) from time to time in relation to each rating area; and that power is to be exercised so that a period of not less than five years and not more than ten years elapses between the date on which any valuation list in relation to the area concerned is published and the date on which the next subsequent valuation list in relation to that area is caused to be so published.

**10.** The occupier of each property affected by the carrying out of the valuation concerned is informed of the proposed valuation certificate in relation to that property and has an entitlement to make representations, which may be considered by the valuation manager, and if appropriate the valuation manager may amend the terms for the valuation certificate. Section 26(7) provides, *inter alia*, that the amendments can include either an increase or a decrease in the value of the relevant property.

**11.** Section 34 of the 2001 Act provides for appeals to the Valuation Tribunal. Appeals must be in written form and may be brought by a “*specified person*”. That term is defined as meaning “(a) *an occupier of property, in respect of that property, (b) an occupier of relevant property, in respect of any other property, situate in the same rating authority area as that relevant property is situate, (c) a rating authority, in respect of any property situate in its area, and (d) a person, in respect of any property in relation to which he or she is an interest holder.*”

**12.** Where an appeal is brought, (as occurred in this case) section 37(1) requires that:

*“37.(1) ... the Tribunal shall achieve a determination of the value of the property concerned that accords –*

*(a) with that required to be achieved by section 19(5)... ”*

**13.** It is to be recalled that by section 19(5), on the basis of relevant market data and other relevant data available on or before the date of issue of the valuation certificate concerned, the valuation list is to achieve both (insofar as is reasonably practicable); (a) correctness of value; and (b) equity and uniformity of value between properties on that valuation list. That objective is to be achieved so that the value of each property on the valuation list, *inter alia*, is relative to the value of other properties comparable to that property on the valuation list in the rating area concerned.

**14.** Returning to the appeals, section 37 provides (as relevant to these cases stated) that the Tribunal is entitled to disallow or allow the appeal. Where the appeal is allowed, the Tribunal may increase or decrease the valuation. Importantly, the Oireachtas makes clear by section 37 that the Tribunal is not bound to determine value by reference to any particular method of

valuation and may arrive at its determination “*by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate*”.

**15.** Following a determination of an appeal by the Tribunal, if any party to the appeal is dissatisfied with the determination “*as being erroneous in point of law*”, section 39 provides for an entitlement to require the Tribunal to state a case for the opinion of the High Court. In that regard, section 39(5) and (6) provide: -

*“39.(5) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has being stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or may make such other order in relation to the matter as the Court thinks fit.*

*(6) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and the judgement shall be delivered after it has been amended.”*

**16.** Finally, there is an express statutory obligation for the Tribunal to set out its reasons for any determination. The manner in which the Tribunal conducts its business is set out in Schedule 2 to the 2001 Act, and para. 4.(3) of Schedule 2 provides:-

*“(3) The Tribunal shall issue a written judgement setting forth the reasons for its determination in each appeal.”*



## **TERMINOLOGY AND GENERAL PRINCIPLES**

**17.** It may be helpful at this point to describe certain concepts which were material to the valuation issues in the cases. Certain terms are in common use in valuation cases, some of which are not defined or described in the legislation.

### *Net Annual Value*

**18.** As noted above, the concept of Net Annual Value is a notional concept described in section 48(3) of the Act of 2001. The concept entails an estimate of the rent which might reasonably be expected to be achieved on a hypothetical letting of the property. That letting should be a periodic yearly tenancy where the tenant is responsible for repairs, insurance, rates, and other taxes. The tenancy is hypothesised to commence on the valuation date specified in the order. The property is assumed to be let in its actual state.

**19.** For the purposes of the issues in these cases stated, the Act of 2001 is largely silent on the methodology utilised by the Commissioner in determining the NAV. Importantly, by section 37(4) of the Act of 2001, the Oireachtas leaves it to the Tribunal to achieve a determination of value “*by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate*”.

### *Fair Maintainable Trade*

**20.** In all three cases, and it appears in almost all valuations of public house premises in the State, the Commissioner used the Fair Maintainable Trade (“*FMT*”) method of valuation. The concept of FMT was accepted by the parties as a long-established method for valuing public houses. The process was described by the Valuation Tribunal in its judgment of *Arrow Bay Limited v. Commissioner of Valuation* Appeal Number VA19/5/0372 at para. 9 as follows: -

*“9.3 The FMT should represent the annual trade considered to be maintainable at the valuation date having regard to the location and physical characteristic of a public house on the assumption that the business is carried out by a competent publican. The hypothetical tenant is assumed to be a reasonably competent publican who is aware of the actual trade...up to the valuation date, which is the starting point of the valuation. When estimating the hypothetical tenant’s rental bid a valuer should disregard any impact on turnover that is attributed solely to the personal skill, reputation and expertise of the existing operator.*

...

*9.5 The best evidence of a reasonably competent operator has as its starting point the last three years’ trade accounts of the actual operator.”*

**21.** Under the method, the valuer ascertains the FMT of the drinks trade, the FMT of the food trade (if any) and the FMT of any other income stream, and then decides the percentage of FMT that might reasonably be expected to be the rent that would be agreed by the hypothetical landlord and tenant. Hence, the actual turnover of the property in question, up to the date of the valuation, is a relevant starting point for the analysis, but it requires to be approached with some caution. There is a need to approach the analysis on the basis that the hypothetical tenant is reasonably competent but that the actual turnover figures may have to be adjusted to take account of the extent to which those figures can be attributed solely to the personal skill, reputation and expertise of the existing operator.

*Correctness, uniformity and equity*

**22.** The case law establishes that section 19(5) of the 2001 Act gives statutory expression to principles that already operated in valuation scenarios. It requires that there must be an

individual assessment of the rateable property. Correctness cannot be sacrificed to achieve an artificial uniformity, per *Hibernian & Wind Power Limited v. Commissioner of Valuation* [2023] IECA 121 at para. 62 to 68. In that judgment, the Court of Appeal noted with approval the observations of O'Malley J. in *Commissioner of Valuation v. Carlton Hotel Dublin Limited* [2016] 2 IR 385 (which predated the enactment of section 19(5)): -

*“[61] The Commissioner is certainly correct in saying that uniformity and equity are essential to the administration of the rating system, as they are in relation to any tax. Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake.”*

*The emerging tone of the list*

**23.** As found by the Court of Appeal in *Stanberry Investments Limited v. Commissioner of Valuation* [2020] IECA 33, the “*tone of the list*” is important and relevant in the context of section 19 of the Act of 2001. The tone of the list is not a method of valuation *per se*; it is a method of comparison. It enables valuation by reference to the values as they appear in the list of properties comparable to the property in issue. It operates in a context in which quality of rating is a fundamental principle of the law (*Poplar Assessment Committee v. Roberts* [1922] 2 AC 93 at pp. 108, 119). Depending on the circumstances, the concept of the tone of the list assists in achieving the equity and uniformity objectives by permitting comparisons between the proposed value of the property under consideration with the values of other comparable properties.

**24.** In *Stanberry*, the Court of Appeal considered a decision of the Valuation Tribunal in *Marks & Spencer (Ireland) Limited v. Commissioner of Valuation* (9th April, 2009

VA08/5/125). In that decision, the Tribunal identified three separate phrases – the “*preliminary tone*”, the “*emerging tone*” and finally the “*established tone*” of the list. There is a spectrum, with little weight being afforded to entries at the preliminary phase, while the list at the final stage is at a point where, because the tone of the list cannot be challenged, rental evidence is of lesser importance in the assessment process. The *emerging tone* lies between those two ends of the spectrum: -

*“After the 40-day appeal period, as provided for under section 30, the situation changes somewhat, in that there is then in the list a substantial number of entries whose assessments have been accepted (or perhaps in some cases agreed at the representation stage under section 29) or otherwise unchallenged.*

*At the time of the appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the Valuation List and attach such weight to this evidence as is considered appropriate. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play.” [emphasis as added]*

25. As set out below, in all three cases stated there was an *emerging tone* of the list. The process of preparing valuation lists for the rating authority areas of County Offaly and County Longford was at a very advanced stage and the evidence was that approximately 90% of the valuations had been fixed with only a small number of cases being appealed to the Tribunal.

## **REASONS**

26. As noted above, the Commissioner has sought to impugn all three decisions under consideration in this judgment on the basis of a failure to give proper reasons for the decision to reduce the valuations. There is no uniform rule regarding the need to provide reasons for an administrative decision. The requirement will vary depending on factors, including the statutory structure within which the decision was reached, the stage in the overall decision-making process in which a particular decision was made, the extent to which the rights of the parties seeking to challenge the decision are affected by the decision, and the extent to which the reasons for a decision can be ascertained by the parties or the court can be discerned from extrinsic materials (such as, for instance, submissions, statements, evidence or appended materials).

27. As explained in many judgments in the context of a statutory right of appeal, the requirement to give reasons – which is an express statutory obligation in the case of the Tribunal - is directed to three main purposes. First, the person affected by a decision ought to be able to understand why that decision was reached. Secondly, the person affected by a decision should be able to give proper consideration to the question of whether or not they have grounds to appeal the decision. Third, the court in a case such as this should be able to engage properly in such an appeal.

28. In *Connelly v. An Bord Pleanála* [2021] 2 IR 752, Clarke C.J. engaged in a detailed consideration of the duty to give reasons. From para. 50 of his judgment (p.770) he considered the question of identifying the materials which may be considered appropriate or acceptable in determining the reasons for a decision. Clarke C.J. noted: -

*“[54] Therefore, it is possible that the reasons for a decision may be derived in a variety of ways, either from a range of documents or from the context of the decision, or in some other fashion. However, as is clear from the above analysis, this is always subject to the requirement that the reasons must actually be ascertainable and capable of being determined. In this regard, I refer to my judgment in EMI Records v. Data Protection Commissioner [2013] IESC 34, ...where I stated at p. 250:*

*“6.8 While the comments made in [Christian v. Dublin City Council [2012] IEHC 163...related to the specific circumstances of that case and derived from the context of a development plan, it seems to me that there is a more general principle at play. Legal certainty requires, as was pointed out in [Christian v. Dublin City Council], that it must be possible to accurately determine what the reasons were. There should not be doubt as to where the reasons can be found. Clearly, an express reference in the decision itself to some other source outside of the decision document meets that test. Where, however, it is suggested that the reasons can be found in materials outside both of the decision itself together with materials expressly referred to in the decision, then care needs to be taken to ensure that any person affected by the decision in question can readily determine what the reasons are notwithstanding the fact that those reasons do not appear in the decision itself or in materials expressly referred to in the decision.’*

[55] Again, it is worth emphasising the point made above. The range of persons who are able to challenge a particular decision will vary from case to case, as will the extent of their involvement in the process. Thus, as a consequence of the above analysis, the requirement that reasons given for a decision must be adequate necessitates that, where the reasons are not included in the text of the decision itself, they must be capable of being readily determined by any person affected by the decision. Clearly, the ability of a person who was not involved in the process, but who is nonetheless entitled to challenge the decision, to identify the reasons for a decision, where those reasons are to be derived from a diffuse range of sources, will differ greatly from the ability of a person who was involved in the process to do so.”

29. In *Y.Y. v. Minister for Justice and Equality* [2017] IESC 61, [2018] 1 ILRM 109, the Supreme Court considered the reasons requirement in the context of a deportation decision involving a question of refoulement. The Supreme Court makes clear that the court does not make its own decision in relation to the material in the case:-

*“55... It is a review of the decision by the national decision maker by the Court. It is important in that regard to be aware that the purpose of rigorous and searching scrutiny of the evidence is to assess the risk of conduct breaching Article 3 if the individual is returned, deported or expelled. That is not the same as a minute and unforgiving analysis of the decision itself. A decision made by decision makers such as the Minister in conjunction with his or her officials, must necessarily consider and apply legal tests. However, such a decision is not to be condemned for failing to achieve the standard of refined logical reasoning and precision of expression to which judgments of the Superior Courts aspire, but do not always achieve. Rigorous scrutiny does not involve a search for any error, or for some doubt about the language*

*used. Rather it should involve an attempt to understand fairly what the decision maker has decided in that regard, and to consider then whether the decision that there is or is not a real risk on substantial grounds of a breach of Article 3, was lawfully and properly grounded in a rigorous assessment of the evidence.” [emphasis added]*

**30.** In that case, in finding that the Minister had not provided adequate reasons for the deportation decision, the Court observed:

*“80. ... In requiring more by way of reasons, I consider that a court should be astute to avoid the type of over-refined scrutiny which seeks to hold civil servants preparing decisions to the more exacting standards sometimes, although not always, achieved by judgments of the Superior Courts. All that is necessary is that a party, and in due course a reviewing court, can genuinely understand the reasoning process. ...” [emphasis added]*

**31.** Between the conclusion of the hearings and the finalisation of this judgment, the Court of Appeal delivered a judgment in *Breanagh Catering Limited v. Commissioner of Valuation* [2024] IECA 53. As the decision of the Court of Appeal was relevant to the matters before this court, the parties were invited to make supplemental submissions if they chose regarding the potential implications of that judgment. As a result, the court was furnished with short supplemental written submissions on 12 April 2024. In those submissions, the Commissioner expressed the view that the judgment of the Court of Appeal supported its approach to these cases stated. In particular, the submissions asserted that the approach of the Court of Appeal to the question of how the Tribunal explained an alteration to the percentage applied to FMT from that identified by the Commissioner warranted a similar approach in these cases. On the other



hand, the appellants reiterated their strong views that the reasoning of the Tribunal in these cases was adequate and that the situation that arose in *Breanagh Catering* verged on the unique.

**32.** In my view, the judgment in *Breanagh Catering* clearly is relevant to these cases stated. The judgment is a very recent binding authority from the Court of Appeal, it addresses a case stated from the Tribunal concerning the requirement to give reasons in a valuation case involving a dispute about the percentage to be applied to an FMT value.

**33.** *Breanagh* concerned, *inter alia*, the approach to the valuation of door and cloakroom receipts of a nightclub element within a hotel premises in Dublin. There had been considerable differences before the Tribunal about the proper approach to be adopted. The Commissioner had requested the Tribunal to state a case. The FMT method had been adopted and a central issue related to the percentages to be applied to the door and cloakroom receipts. In the High Court, Heslin J. had found that it was not possible to discern from the decision why a particular percentage figure was identified or considered appropriate by the Tribunal, and also noted that there was no reference in the decision to evidence which was given with regard to comparators or to the tone of the list. Three important findings can be highlighted.

**34.** First, in respect of reasons, Haughton J. noted the express statutory obligation on the Tribunal to issue a written judgment setting forth the reasons for its determination. The Court of Appeal, in *Breanagh Catering*, approved the treatment of that provision in *Boland v. Commissioner for Valuation & Anor* [2017] IEHC 660, and found that Tribunal decisions must generally be able to stand on their own two feet, without the need to draw on other materials to fill in any gaps in the reasons. Haughton J. drew on the observations of Clarke C.J. in *Connelly* where the Supreme Court noted that the requirement of reasonable certainty as to the reasons

necessitated that any documentation said to represent the reasons must be either expressly referred to in the development plan or, by necessary implication, be clearly adopted by those voting in favour of the development plan as part of the reasoning concerned. The finding of the Court of Appeal, is set out in paragraph 50 of the judgment: -

*“50. Accordingly evidence given before the Tribunal, and referenced in the Case Stated - whether directly, or by incorporation - can only be regarded as part of the reasoning of the Tribunal if and to the extent that it is carried into or clearly incorporated into the Tribunal Decision and can be said, with “reasonable certainty” to represent the reasons for the decision.”*

**35.** The Court of Appeal found that it was not possible to discern the reasoning of the Tribunal for opting for the particular percentage figure chosen in that case; as Haughton J. put it, *“the outcome is clear, but the reasoning is not.”* The Court found that a reader would be left wondering why different approaches were rejected were either regarded as relevant or otherwise or indeed rejected.

**36.** Secondly, the property owner sought to argue that the application of the principles of equity and uniformity constituted a reason or explanation for the decision of the Tribunal. The Court of Appeal noted:-

*“64. This, in my view, is asking the court as the intelligent participant to read far more into the Tribunal Decision than is actually there. If the Tribunal by this shorthand was applying the principles of “equity and uniformity” it should have said so, and gone on to identify the comparable properties whose income streams, percentages or valuations informed its decision and explained how this led to the 11% figure. The only reference to comparables in the Tribunal Decision itself is to the Russell Court Hotel in*

*paragraph 4 in a different context - the End Allowance deduction for an operator with exceptional acumen for the trade. Moreover, as the trial judge points out, there is no reference in the Tribunal Decision to the tone of the list.”*

**37.** Finally, the Court of Appeal also noted that a decision must show that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration, and it should, paraphrasing Clarke C.J. in *Connelly*, “*clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met.*”

**38.** In addition to the general need for an affected person to be able to understand why a decision was reached, the framework within which reasons need to be considered may need to take account of the nature of any available appeal process and the standard to be applied. Accordingly, as noted by Simons J. in *Powercon Wind Energy Limited v. Commissioner of Valuation* [2023] IEHC 542 at para. 33, “[t]here is an organic link between the provision of reasons and the preparation of grounds of appeal.”

## **STANDARD OF REVIEW**

**39.** The role of the High Court, pursuant to section 39(5) of the 2001 Act is to “*hear and determine any question or questions of law arising on the case.*” The proper approach to be adopted in such a situation is described by Murray J. in the Court of Appeal in *Stanberry Investments Limited v. Commissioner of Valuation* [2020] IECA 33, at para. 37 as follows: -

*“37. The legal principles governing the jurisdiction of the High Court in an appeal on a point of law were considered most recently in Attorney General v. Davis [2018] IESC 27 [2018] 2 IR 357 at paras. 54 to 55. There, the specific issue presented itself as to*

*whether an appeal on a point of law under s. 29(5) of the Extradition Act 1965 included an appeal against error of fact. In giving the decision of the Court in that case McKechnie J. explained that a statutory appeal on a point of law will (unless the wording of the provision conferring that power provides otherwise) enable the Court to interfere with a decision appealed against in four – overlapping – circumstances. The non-exhaustive description of these grounds identified by the Court comprised:*

- (a) errors of law as generally understood;*
- (b) errors such as would give rise to judicial review including illegality; irrationality, defective or absence of reasoning, and procedural errors of some significance;*
- (c) errors which may arise in the exercise of discretion which are plainly wrong;*  
*and*
- (d) certain errors of fact.*

*38. The errors of fact which will constitute an error of law for the purposes of appeals of this kind, were reduced by McKechnie J. to three categories:*

- (a) findings of primary fact where there is no evidence to support them;*
- (b) findings of primary fact which no reasonable decision-making body could make; and*
- (c) inferences or conclusions.*

*Inferences or conclusions are thus appealable as an error of law, where they are unsustainable by reason of an underlying error of fact of the kind described by the Court, which could not follow or be deducible from the primary findings as made or which were based on an incorrect interpretation of documents.”*

**40.** A further point of guidance emerges from the *Stanberry* decision, which was reiterated by the Court of Appeal in the *Hibernian Wind* case, and operates in connection with the application of what is described as “*curial deference*”. As noted by the Court of Appeal, the concept was intended to do no more than reflect the commonsense consideration that in relation to certain types of appeals from certain statutory decision-making bodies the Court should not assume the function of redetermining *de novo* issues which have been consigned by the Oireachtas to certain subordinate expert decisionmakers. However, the Court of Appeal reiterated that administrative tribunals, regardless of their expertise, are owed no deference on pure issues of law. As noted by Kelly J. in *Premier Periclase Limited v. Commissioner of Valuation* [1999] IEHC 8, quoting Hamilton C.J. in *Henry Denny and Sons (Ireland) Limited v. Minister for Social Welfare* [1998] 1 IR 34, errors of fact do not necessarily raise any issue of curial deference “[w]hen conclusions are based on an identifiable error of law or an unsustainable finding of fact by a tribunal, such conclusions must be corrected.”

**41.** The principle of curial deference may take on greater significance where the factual issues in contention are matters of judgement or opinion particularly within the range of expertise deployed by the Tribunal. As noted by Murray J. in *Stanberry*, and re-iterated by Collins J. in *Hibernian Wind*,:-

“51. None of this is to deny any role for the sentiment underlying ‘*curial deference*’ in an appeal of a decision of the Tribunal ... when the Oireachtas prescribed an appeal on a point of law from a decision of the Valuation Tribunal, it must be assumed that that process would operate cognisant of the fact that issues will arise in the course of a valuation appeal which are peculiarly suited to the expert determination of the specialist body. These include considerations such as the reliability of comparators, the appropriate method of valuation, and the correct approach to application of

*particular valuation concepts such as the tenant's share or divisible balance. In those cases, where an appeal on a point of law presents an issue of underlying fact or inference in relation to matters within those zones of expertise, the Courts should certainly afford very significant weight to the decision of the expert body.”*

**42.** The Court of Appeal went on to explain that such an approach does not arise where a finding of the Tribunal is ambiguous or uncertain; and the comments of the Court of Appeal are of equal relevance to how the reasons given by the Tribunal are to be considered: -

*“52. ...Deference means that in those areas touching on the Tribunal's expertise, the Court should be slow to interfere with the Tribunal's reasoning. It does not mean that where the Tribunal's reasoning is unclear so that there are differing possible interpretations of its decision the Court must simply assume that it was correct in the conclusion it reached. As Charlton J. said in *EMI Records v. Data Protection Commissioner* at para. 22, “curial deference cannot possibly arise whereby statute reasons for a decision are required but none are given.” ‘Curial deference’ is thus properly understood as depending on the Tribunal having provided a properly reasoned decision, not as affording a mechanism for compensating where the decision is not so reasoned.” [emphasis added]*

## **APPROACH OF THE COURT**

**43.** In light of the above principles, and particularly the approach adopted in the *Breanagh* judgment, I consider that these are cases in which a relatively stringent approach should be adopted when considering if a decision is adequately reasoned. While some of the case law frames the obligation to give reasons as a need to ensure that an affected party understands “the gist” of the decision, something more is required in these types of cases. This, it seems to me,

flows from the following features – which are non-exhaustive and in no particular order of importance - that can be identified from the legislation and caselaw: -

- Quality of rating is a fundamental principle of law.
- Valuation is a form of taxation, and therefore certainty about the basis upon which a person is to pay a valuation is important.
- The Tribunal is a quasi-judicial body that affects rights and obligations enforceable by law and that touches on property rights.
- There is an express statutory obligation on the Tribunal to provide reasons *in* its written judgment.
- There is a statutory obligation on the Tribunal to achieve a determination on the basis of relevant market data and other relevant data. The data relied upon should be clear, along with its relationship to the final decision.
- There is a statutory obligation, insofar as practicable, on the Tribunal to achieve a valuation of a property that is relative to the values of other comparable properties on the valuation list. Again, that suggests a need to demonstrate how that process of comparison relates to the final decision.
- There is no need to address or respond to submissions made by the parties on a point-by-point basis, but the parties should be able to understand generally why their submissions were not accepted (if that is the case).
- There is a right of appeal from the Tribunal to the High Court. In that context the affected parties – which can include appellants to the Tribunal who are occupiers of *other* properties on the list – are entitled to be able to form a clear view as to whether there is a basis for an appeal; and the High Court is entitled to understand clearly how and why an appeal was determined in order to be in a position properly to carry out the task allocated to the High Court in the legislation.

- As a matter of sound policy, the Commissioner is entitled to know not just why a particular valuation is being adjusted by the Tribunal, but also whether the reasons given will prompt a consequent need for the Commissioner to adjust or reconsider its general approach to valuations of particular classes of rateable properties.

**44.** None of the above is to hold that the Tribunal's judgments are required *to achieve the standard of refined logical reasoning and precision of expression to which judgments of the Superior Courts aspire but do not always achieve*. However, it should be possible to subject the judgment to a relatively rigorous scrutiny to ensure that the statutory objectives have been achieved in the decision. In addition, the court should not substitute its views for that of the Tribunal on the substantive factual matters that have to be determined. The Oireachtas has identified the Tribunal as the body with primary responsibility for dealing with appeals about valuation. The court must afford significant weight to the decisions of the Tribunal when it is addressing factual matters that fall within the scope of its particular expertise.

#### **THE PASCHAL LYONS CASE**

**45.** The background to the matter is set out in the body of the case stated. The court also had access to the judgment of the Tribunal which issued on the 7 November 2018, together with the précis of evidence given by the valuers for Mr. Lyons and the Commissioner. The valuation under consideration concerned a licensed premises in Ardagh, County Longford. The Commissioner had issued a valuation certificate pursuant to section 24 of the Act of 2001 on the 7 September 2017, and Mr. Lyons appealed by way of a Notice of Appeal on the 25 September 2017. It was accepted by the parties that, in an appeal to the Tribunal of the type under consideration here, the appellant bears the burden of proving that the valuation does not accord with what is required by section 19(5) of the Act of 2001.



**46.** The core point made by Mr. Lyons in the Notice of Appeal was that the valuation of the property was excessive and inequitable. In that regard the Notice of Appeal recorded that:

- a. the property was located in a rural village with a population of less than 150 residents;
- b. it was one of only two commercial properties in the village, the other being a village shop with an attached pub owned by the appellant's brother;
- c. Mr. Lyons had a very significant amount of goodwill when compared with other properties in the list in Longford;
- d. the subject property had a trading area of less than 50m<sup>2</sup>.

**47.** Mr. Lyons, through his valuer Mr. Halpin, sought to agitate a broader point in relation to the overall approach of the Commissioner to the concept of FMT. To paraphrase, it was argued by Mr. Lyons that particular care was required when using the FMT concept. There was a need to ensure that in the case of public houses in small rural towns and villages the formula does not distort the objective NAV of the property by over-emphasising the effect of the occupier's personal business efforts. The thesis was that operators in small rural areas tend to have a much higher level of goodwill as they have built up the trade over a very significant period, and that they tend to be well respected members of the community. The operators tend to work 70 to 80 hours a week and live on site. In that trade it is much more difficult to achieve a turnover of €100,000 than in an urban location. Accordingly, so the argument went, a flat percentage of turnover "*will discriminate against a rural operator*". Mr. Halpin argued that the "*system either needs to discount the level of turnover to discount goodwill and reach an appropriate level of FMT, or discount the percentage of FMT, or both, in order to arrive at a fair level of value for a rural pub.*"

**48.** Hence, while the valuation certificate recorded a valuation of €14,000, Mr. Lyons argued that the valuation of property ought to be €4,800.

**49.** The appeal before the Tribunal took place on the 20 March 2018. There was an oral hearing at which Mr. Halpin and Mr. Robinson, the Commissioner's valuer, gave evidence by adopting their précis of evidence and proffering additional oral evidence. As noted in the case stated document, the only issue in question in the appeal was one of the quantum of the Net Annual Value ("NAV") of the property.

**50.** On behalf of Mr. Lyons, Mr. Halpin set out the turnover figures for the pub for the years 2013, 2014, and 2015, which varied between circa €203,000 to €207,000. The property was 50m<sup>2</sup> and was one of two commercial properties in the village, which itself had approximately 150 residents. The second property was a pub and post office operated by a company owned by Mr. Lyons' brother. Mr. Halpin noted that there was an arrangement between the two commercial enterprises whereby Mr. Lyons' premises only opened on Saturdays and Sundays. Mr. Halpin suggested that the relevant data for a valuation in 2015 supported the view that the market for small public houses in rural areas and particularly in the Midlands was slower than the rest of the country. Mr. Halpin contended that the good turnover figures for the property were attributable to Mr. Lyons' goodwill and skill as a second-generation publican. It was argued that a notional tenant would acknowledge those factors in formulating any bid for the property.

**51.** In addressing the FMT reached by the Commissioner, Mr. Halpin made two main points:

- a. First, his view was that the Commissioner had not had sufficient regard to information other than the business's turnover, such as comparable properties, in order properly to discount the actual turnover to reflect the business owner's particular acumen. In that regard, Mr. Halpin referred to the rents of eight comparable public house properties in Longford and – where turnover figures for those premises are not generally available – provided estimates of NAVs for those properties. Relying on those data Mr. Halpin suggested that the FMT for Mr. Lyons' premises should not exceed €80,000.
- b. Second, Mr. Halpin argued that the uniform application of the 7% multiplier was not sustainable. Mr. Halpin argued that it was harder for publicans to achieve turnover in small rural areas. He suggested that the percentage applied to FMT should be banded to reflect the size of local population: with 4 to 5% being applied in cases where the population was under 500, 5 to 6% being applied where the population was between 500 and 1000, and 6+% being applied to populations of over 1000. He suggested that his approach was fairer and would be consistent with the emerging tone of the list.

**52.** Applying his proposed methodology Mr. Halpin presented two alternatives for the October 2015 valuation: either €80,000 x 7%, or €140,000 x 4%, each of which produced a valuation of €5,600.

**53.** The Commissioner adduced evidence from its valuer, Mr. Robinson. The précis from Mr. Robinson noted that the valuation process for Longford had resulted in 1,399 valuation certificates, of which 38 were the subject of appeals to the Tribunal. In respect of public houses, 93 valuations had been made, 7 of which were appealed to the Tribunal (6 of which involved

Mr. Halpin). In all of the valuations of public houses a percentage of 7% had been applied to the FMT to produce the valuation. Hence, 92.5% of the properties had been valued and those valuations had been finalised; and all valuations were conducted by reference to the same approach.

**54.** Mr. Robinson noted that while Ardagh had a small population it was a heritage village. He set out the trading information for the subject premises. He then set out information that he considered established the correctness of the valuation. That information related to a number of matters, principally rental and financial information in respect of what were stated to be four key rental transactions involving comparable properties. In terms of uniformity and equity, Mr. Robinson first reiterated that circa 90% of the valuations of public houses in Longford had been finalised at that point. Second, he provided detailed “*tone of the list*” information in relation to four further comparable properties in Longford where valuation certificates had issued and not been the subject of any appeals.

**55.** The Tribunal issued its written judgment on the 7 November 2018. The judgment sets out the grounds of appeal, the valuation history, and the evidence at the hearing on the 20 March 2018. In that regard, the Tribunal referred to reports and précis that had been received from Mr. Halpin and Mr. Robinson. It noted that both witnesses adopted their reports or précis as their evidence in chief, and also gave oral evidence.

**56.** The judgment records that Mr. Halpin had given evidence that the premises was “*out-trading the average pub in almost every large town in the County*” and that this was on the basis of two days trading per week. He used that information to highlight what he considered the exceptional skill and acumen of Mr. Lyons, which in turn meant that the turnover figures

needed to be discounted. Under cross-examination, Mr. Halpin had accepted that (a) in none of the comparisons had there been an adjustment of 60% from turnover to FMT (which was the effect of his suggestion that FMT for the premises should be €80,000), and (b) none of the comparisons showed a percentage of 4% being applied to FMT (which was his alternative suggestion). Mr. Halpin had considered that while the premises was only operating two days per week, a hypothetical tenant could seek to operate more extensively. In that regard, it seems to have been suggested that the hypothetical tenant would also anticipate that the only other public house in the village may well then operate on weekends. Nevertheless, he noted that the comparable FMTs were in the range of €75,000 to €100,000 which suggested that another trader would find it difficult to maintain the current turnover.

**57.** Mr. Robinson set out the information contained in his précis. Under cross-examination he accepted that in carrying out the valuation exercise, 48% of the respondents had not provided financial information and that estimates were made by the Commissioner. In relation to the key rental transactions he noted that in three of the four cases the NAV was approximately two-thirds to half of the rent.

**58.** As recorded in the case stated, the findings and determination of the Valuation Tribunal were summarised as follows:-

*“(i) The onus was on the Appellant to provide the Tribunal with evidence as to why it should disturb the valuation placed on the property by the Respondent.*

*(ii) Ardagh is a very small village, although depending on where it is decided the environs of the village are, population might not be quite as small as claimed by the Appellant’s Valuer.*

- (iii) *Ardagh is not a commercial centre and there are only two commercial properties, namely the Property and an adjoining licenced premises that opens on Mondays to Fridays with shop and ancillary accommodation, that is run by the same family and apparently in cooperation as regards trading hours.*
- (iv) *Though trading only on Saturdays and Sundays, the Property achieves a strong turnover. In comparison with the FMT figures derived from NAVs in the range of comparisons provided the turnover is clearly an exceptional figure and must reflect some personal acumen and/or goodwill or family loyalty of the current operator which could not necessarily be guaranteed in the mind of the hypothetical tenant.*
- (v) *The hypothetical tenant could not rely on the immediately adjacent licenced premises not opening on Saturdays and Sundays and, if it were to do so, the probability is that the existing Saturday and Sunday trade would be reduced. Equally, the hypothetical tenant could consider opening the Property on Monday to Fridays, taking some of the trade from the immediately adjacent pub house which opens on those weekdays but not at the weekend. The hypothetical tenant has no knowledge of the turnover of the adjoining public house and can only its FMT (sic) and the likely portion of that FMT that could be taken by the Property being opened on a seven day a week basis but must also consider the likely drop in weekend trade as result of the other pub house opening at the weekend. The existing co-operation on opening hours between the two pubs cannot be guaranteed to the hypothetical tenant.*
- (vi) *In a village the size of Ardagh, in this type of rural location there is a finite level of FMT that could be achieved between the two public houses or licensed premises.*

- (vii) *The percentage to be applied to the FMT must be open for consideration because based on the evidence, the valuation based on 7% of estimated FMT seemed high and not to reflect the risks attached to the other public house opening at weekends and to the very rural location of the Property.*
- (viii) *The Tribunal concluded that the hypothetical tenant would be concerned that competition from the other public house might eat into the weekend turnover of the Property and that whatever turnover could be picked up by the Property trading during the week would be small and therefore the reduction in the FMT proposed by the Respondent was appropriate and that sufficient evidence was presented to indicate that a reduction in the percentage applied to the FMT was also appropriate.*
- (ix) *The Tribunal allowed the appeal and decreased the valuation of the Property as stated in the Valuation Certificate to €7,200 calculated as follows:*  
*Estimate of Fair Maintainable Trade €120,000 @ 6% = €7,200.*  
*The agreed turnover figures of the Property for the years 2013 to 2015 were annexed to the Judgment.”*

**59.** It can be seen then that the Tribunal made two changes to the basis for the valuation: (a) the FMT was reduced from €200,000 to €120,000, and (b) the percentage applied to that FMT was reduced from 7% to 6%.

**60.** At the request of the Commissioner, the Tribunal stated four questions for determination by this court. At the hearing of the action, the parties were agreed that in fact, because of issues being resolved in cases in the period since the case stated was drafted, only three questions were required to be answered. The revised questions were as follows: -

- (i) Having regard to the evidence before it, did the Tribunal err in law in applying 6% to the estimated FMT of sales, all other figures having been accepted?
- (ii) Did the Tribunal err in law in failing to give a reason for its determination, having regard to paragraph 4(3) of Schedule 2 to the Valuation Act, 2001 as amended?
- (iii) In applying 6% rather than 7% to the estimated FMT of the property to determine the NAV, did the Tribunal err in law by failing to comply with section 37(1) of the Act, as amended, which requires a determination of value that accords with that required to be achieved by section 19(5) (insofar as it is reasonably practicable) namely:-
  - (a) correctness, and
  - (b) equity and uniformity of values between properties on that valuation list?

## **ARGUMENTS**

**61.** On behalf of the Commissioner, the overarching issue was the adequacy of the reasons given by the Tribunal for adjusting the valuation. In respect of the reasons argument, the central issue for the Commissioner was that, on their argument, it was difficult to identify the evidence that the Tribunal relied on and therefore difficult to say if it was sufficient. The Commissioner in that regard highlighted that the Tribunal did not address arguments directed towards equity and uniformity in the context of the schemes that were already in place. The Commissioner highlighted in connection with that argument that the schemes for Longford and Offaly at that point had been accepted by approximately 90% of other occupiers.



**62.** As an alternative, it was argued that the approach of the Tribunal was flawed and that the matter should be remitted. The Commissioner accepted at a level of principle that the Tribunal can reduce the FMT and the percentage applied to FMT, if that was supported by the evidence. The central issue was said to be whether on the evidence in this case the Tribunal was entitled to calculate the NAV by reference to 6% of FMT as opposed to 7%. The Commissioner noted that the 7% figure was used for the valuation schemes for both Offaly and Longford and was specifically directed towards achieving the statutory objectives of equity and uniformity in the valuation of properties. There was no evidence of any other percentage being applied.

**63.** On behalf of Mr. Lyons, the argument started with the proposition that the Tribunal is not bound to adopt any particular methodology in reaching a valuation, and the Tribunal is free to depart from the approach adopted by the Commissioner. Mr. Lyons argued that viewed properly the request for the case stated was because the Commissioner disagreed with the determination of facts in this case and there was no real issue of law; essentially, the court was being asked to review the merits of the decision. Mr. Lyons highlighted the observations of O'Malley J. in the *Carlton Hotel* case referred to above, to the effect that the issue, logically prior to a consideration of uniformity and equity, must be correctness. In this case, Mr. Lyons argued that the approach adopted by the Tribunal was directed to achieving the correct valuation. Mr. Lyons contended that the application of a single percentage multiplier to all FMT figures for public houses in Longford in fact offended against the obligation to achieve individual assessments.

**64.** With regard to reasons, Mr. Lyons sought to persuade the court that the reasoning here was clear and straightforward. Some emphasis was placed on the requirement that the parties

are not required to agree with the reasons, but only to be able to understand the reasons. It was argued that there was no need for a detailed analytical decision.

## **DISCUSSION**

**65.** At the level of principle, the Tribunal was entitled to reduce the valuation here. In deciding to reduce a valuation reached by the Commissioner, the Tribunal had a discretion to adopt the methodology that it considered best suited to achieving the statutory objectives of correctness, uniformity and equity. This is not a case in which a party asserts that the Tribunal erred in interpreting the applicable law. The issues in this case arise from the manner in which the Tribunal assessed the available evidence and came to a determination as to the correct NAV. This is a finding of fact, and a finding of fact that involves the application of the specialised expertise of the Tribunal to the evidence. The case law referred to above is clear that errors of fact will constitute errors of law in three circumstances: -

- (i) findings of primary facts where there is no evidence to support them,
- (ii) findings of primary facts that no reasonable decision making body could make, and
- (iii) inferences or conclusions,
  - (a) where they are unsustainable by reason of an underlying error of fact,
  - (b) which could not follow or be deducible from the primary facts, or
  - (c) which were based on an incorrect interpretation of documents.

**66.** As noted in *Stanberry*, where the asserted error revolves around issues of fact that are peculiarly suited to the expert determination of the Tribunal - which include considerations such as the reliability of comparators, the appropriate method of valuation, and the correct approach to the application of particular valuation concepts - the court should afford *very significant weight* to the decision of the expert body.

67. In deciding on the proper disposal of this case stated, the court must consider the interplay between the questions posed. On the one hand, the Commissioner asserts that the Tribunal erred in law in deciding to apply 6% to the FMT, and on the other hand the Tribunal erred in law by failing to provide adequate reasons for its decision. In my view, if the court is persuaded that the Tribunal has not provided proper or adequate reasons to explain its decision it should not proceed to consider the other questions posed. Those questions relate to matters of fact – the state of the evidence, the emerging tone of the list, whether the NAV for Mr. Lyons’ premises was correct, and whether the NAV accords as far as practicable with the objectives of equity and uniformity.

#### **THE ADEQUACY OF THE REASONS GIVEN BY THE TRIBUNAL**

68. The Tribunal sets out the evidence and arguments that were the subject of consideration, and identifies matters that were elaborated in more detail in papers that were available to the parties and the court. The Tribunal described its task as that of determining a value that was correct and equitable so that the valuation of the property was relative to the value of comparable properties on the relevant valuation list. The Tribunal also operated on the basis that the onus was on Mr. Lyons to provide evidence explaining why the Commissioner’s valuation should be disturbed. The Tribunal determined the value by reducing both the FMT and the percentage applied to the FMT that had been set out by the Commissioner in the valuation certificate. Hence, by reference to the way in which it described its task, the Tribunal was satisfied that Mr. Lyons had provided sufficient evidence to disturb the Commissioner’s valuation. The questions are what was that evidence and how was the Tribunal so satisfied?

**69.** The findings and conclusions are set out in just over a page of text. As noted above, the Tribunal seems to have made the following findings:

- a. Ardagh was a small village,
- b. Ardagh is not a commercial centre,
- c. there are only two commercial properties in the village,
- d. by reference to the FMT figures derived from the NAVs in the various comparisons, the turnover achieved by the premises is exceptional,
- e. the turnover must reflect some personal acumen and goodwill on the part of Mr. Lyons which could not be guaranteed in the mind of the hypothetical tenant,
- f. there is a finite level of FMT that can be achieved between the two public houses in the village,
- g. a hypothetical tenant would take account of the fact the current operating arrangements between the two public houses may not be maintained, hence the weekend turnover could be reduced, or, if the premises operated on weekdays, the weekday turnover could increase.

**70.** Having made those findings, the Tribunal reached two conclusions. First, in respect of the FMT figure, the Tribunal states:-

*“Therefore, the Tribunal concludes that the hypothetical tenant would be concerned about competition from the other premises, that it might eat into the weekend turnover and that what can be picked up by trading during the week would be small and therefore a reduction in the FMT proposed by the Commissioner is appropriate.”*

**71.** Second, in relation to the percentage to be applied to FMT the Tribunal states:

*“The percentage to be applied to the FMT must also be open for consideration and to the Tribunal, based on the evidence, the 7% applied seems high and not to reflect the risks attached to both the other pub opening at weekends and to the very rural location of the subject premises. ... Sufficient evidence was presented to indicate that a reduction in the percentage applied to the FMT is also appropriate.”*

**72.** The decision of the court in this case is that the Tribunal erred in law, in the sense that the decision was not adequately reasoned. The court has taken into account that the decision of the Tribunal does not require it to be closely reasoned or very detailed, but there is a need for clear explanations for the decision for the reasons set out above. The court is not seeking to disagree with the conclusion of the Tribunal or substitute its own views on the ultimate valuation. As noted, the Oireachtas has made clear that the Tribunal is fully entitled to adjust the Commissioner’s valuation and is entitled to adjust the particular methodology adopted by the Commissioner if it forms the view that this will lead to a valuation that accords with the objectives set out in section 19(5) of the Act of 2001.

**73.** Mr. Halpin urged the Tribunal to adopt either of two alternatives: to reduce the FMT because the actual turnover figures reflected a level of expertise, hard work and goodwill on the part of Mr. Lyons; or to reduce the percentage applied to the FMT to reflect that the hypothetical tenant would be concerned about factors such as the rural location of the premises and the role of the other commercial premises. In that regard, Mr. Halpin had asked the Tribunal to adopt something in the nature of a policy approach to the percentage figure that was referable to the population of the place in which the premises is found.

**74.** Having considered the decision and background papers in detail, the court is not satisfied that the conclusions have been explained properly. In this case it was clear that the valuation process underway was close to finalisation, there was an emerging tone of the list. In respect of public houses in Longford the list had been prepared by the application of a 7% figure to the established FMT. That approach had been accepted by the overwhelming number of operators. Of course, in each instance, a property owner is entitled to argue that the valuation certificate in their case was not correct. However, there is no real evidence that the Tribunal engaged with the data and other matters identified in section 19(5) of the Act of 2001. There was no considered analysis of the comparable properties or market data or any analysis of how such an analysis impacted on the conclusions.

**75.** Even if the Tribunal considered that its primary focus was on the correctness of the particular valuation, this was not expressed and, in any event, I consider that there remains a need to engage with the market data and comparisons to show that consideration has been given to the issue of uniformity. The Tribunal expressly is required to consider market data and comparables. The decision referred to the fact that market data and some comparisons had been set out in evidence, but this was not addressed in any or any sufficient detail in the reasons given by the Tribunal. Accordingly, it is not possible to understand how it was considered by the Tribunal and by what process of reasoning the differing arguments were resolved.

**76.** While the overall state of the valuation list may not be of special importance to an individual property owner, it is important to the Commissioner. As noted, the Commissioner is tasked with a variety of statutory functions that are of real importance to the rating system. In discharging those functions the Commissioner is entitled to understand both in a specific case and for its broader activities how and why the Tribunal considers that it may need to adjust

an approach. This achieves a public policy objective of increasing certainty and decreasing the need for appeals and applications to this court.

**77.** Moreover, so far as they go, the findings of fact are reasonably clear, but there is very little analysis or explanation as how the conclusions flowed from those findings. Here, the Tribunal discounted the FMT by 40%. It is not clear *how* that figure was arrived at, albeit that there is an explanation as to *why* a discount was considered necessary. The alternative figures proposed by Mr. Halpin were directed to achieving a NAV of €5,600. In that regard, he had suggested as an alternative that the FMT should be reduced from €200,000 to €140,000. However, that figure appears to have been selected simply because the application of a 4% figure would produce a value of €5,600. Likewise, the court is unable to ascertain *how* the figure of 6% was reached as opposed to any other percentage. It seems reasonably clear that the Tribunal was not adopting the more general proposal suggested by Mr. Halpin, as this would have resulted in the application of 4% to the FMT. In reaching its decision, the Tribunal did not analyse any of the comparators that had been referred to by either of the expert witnesses, it made no reference to how the conclusion it reached placed Mr. Lyons' premises into the overall valuation list relative to other comparators, and it did not explain how it had chosen the figures set out in the conclusion.

**78.** At the risk of unnecessary repetition, the court is not finding that the Tribunal cannot adjust either the Commissioner's calculation of FMT or the percentage that the Commissioner decides to apply to the FMT figure. At the level of generality, both of those courses appear to be squarely within the jurisdiction of the Tribunal if properly supported by the evidence. The court is finding that where that course of action is adopted the Tribunal is obliged to provide a

clear and cogent explanation not just of what factual findings are made and its conclusions, but also an explanation as to how the findings are applied to reach the conclusion.

**79.** In the premises, I am proposing to answer the second remaining question in the case stated related to Paschal Lyons in the affirmative: the Tribunal erred in law in failing to give reasons for its determination. I am not proposing to express a view on the remaining questions as I consider the matter should be remitted to the Tribunal. In the premises, expressing a view on the remaining questions – which are very fact specific – would be premature.

#### **THE LYONS PUB ARDAGH CASE**

**80.** The premises in this case was in Ardagh, County Longford, and was the other commercial property in that village which had been referred to in the Paschal Lyons matter discussed above. The premises comprised a licensed premises, which at that time was operating only on weekdays, a shop and fuel pump service, together with storage areas.

**81.** Following the representation process, a final valuation certificate issued on the 7 September 2017, in the overall amount of €15,770. That figure was reached by bringing together different amounts of NAVs for the different trades conducted on the property. The date by reference to which the value of the property was determined was the 30 October 2015.

**82.** When the matter came before the Tribunal the only matters in dispute related to the quantum of the valuation for the public house and off-sales elements in the property, the remaining matters having been agreed. The Notice of Appeal was dated the 4 October 2017. An oral hearing took place before the Tribunal on the 10 May 2018. The Tribunal was made up of the same members that gave the judgment in the Paschal Lyons case, and the judgment



was given on the same day, the 7 November 2018. The case stated here was also dated the 18 November 2022. The case stated document appended the Notice of Appeal, the appellant's précis of evidence with attached documents, the respondent's précis of evidence, and the judgment of the Tribunal.

**83.** By the time the matter came for hearing before this court, several of the questions posed in the case stated did not need to be addressed because of developments in the caselaw between the time the case was stated to the date of hearing. Using the numbering in the case stated the following questions remained before the court: -

*“(1) Having regard to the evidence, did the Tribunal err in law in applying 6% rather than 7% to the FM T for on-sales, all other figures been accepted?”*

*“(2) In applying 6% rather than 7% to the estimated FM T of the Property to determine its NAV, did the Tribunal err in law by failing to comply with the requirements of section 37(1) of the Act as amended which requires a determination of value that accords with that required to be achieved by section 19(5) of the Act (insofar as it is reasonably practicable), namely:*

*(a) correctness, and*

*(b) equity and uniformity of value between properties on that valuation list?*

*[...]*

*“(4) Did the Tribunal err in law in failing to give a reason for its determination, having regard to paragraph 4(3) of Schedule 2 to the Valuation Act 2001, as amended?”*

*[...]*

*“(6) Did the Tribunal err in law and or err in fact by stating that it had “allowed the appeal and decreased the valuation of the property as stated in the Valuation certificate*

*to €16,700”, when in fact it had increased the valuation on the Property (which was originally valued at €15,770)? [It is common case that the answer to this is “yes”]*

*(7) Did the Tribunal err in law by allowing the appeal brought by the Appellant on the ground that the valuation was “excessive and inequitable” and, at the same time, increasing the valuation of the Property from €15,770 as stated in the valuation certificate, to €16,700?”*

**84.** In this case, the Commissioner’s valuation was in the sum of €15,770. The Notice of Appeal closely mirrored the Notice of Appeal in the Paschal Lyons case. Mr. Halpin asserted that the Commissioner’s valuation was excessive and inequitable, and that the proper NAV of the property should have been €8,600. Similar arguments were made regarding the size and commercial potential of the village, and the same general point was made that the percentage applied to the FMT of licensed premises in Longford should not be a uniform 7%, but instead adjusted down by reference to population levels. There was an oral hearing at the offices of the Tribunal where Mr. Halpin gave evidence on behalf of Lyons Pubs and Mr. Robinson gave evidence on behalf of the Commissioner.

**85.** The appeal before the Tribunal involved some elements that had been agreed between the parties. There was agreement that the NAV for the retail element attached to the property was €4,611 and the NAV concerning the fuel sales was agreed at €1,000. The Commissioner had contended that the licensed premises part of the property should be valued on the basis of an FMT of €140,000 per annum at 7%, and €7000 per annum on or off sales at 3%, leading to a total figure of €10,010.

**86.** The Tribunal determined that, for the licensed premises element, the FMT figure should be reduced to €120,000 at 6%, leading to a figure of €7,200. For the off-sales element, the FMT should remain at €7,000, but the percentage reduced from 4% to 3% totalling €210. The Tribunal's judgment contains a clear clerical error, in that the off-sales FMT figure is recorded as €700; however, but the calculations clarify that the figure ought to have been €7,000. That error is not material to the case stated.

**87.** The Tribunal's judgment set out a series of findings and conclusions which structurally were very similar (save as to the precise figures) to the findings and conclusions in the Paschal Lyons case. I do not consider it necessary to go through the findings and conclusions by reference to the evidence in considerable detail, having regard to the very close similarity between this case and the case previously dealt with in this judgment. The judgment is clear insofar as the Tribunal considered that the FMT figure for the licensed premises should be reduced and that the percentage applied should be reduced from 7% to 6%. However, there is no clear and cogent explanation as to how the revised figures were decided upon. Accordingly, it follows that the judgment is problematic in that it does not provide a sufficient account or explanation of how the findings that were made led precisely to the conclusions that were made, and there was no direct engagement with market data and comparables.

**88.** There is a more substantial difficulty with the judgment. As noted above, the valuation certificate was in the amount of €15,770. During its analysis, the Tribunal seem to proceed on the basis that it was intent on reducing the overall valuation. This emerges from three separate aspects of the judgment:

- a. First, although this is not entirely clear, the Tribunal appeared to take the view that the FMT proposed by Mr. Halpin (€65,000) was too low and that a

hypothetical tenant would anticipate an FMT in excess of that applied by Mr. Halpin. However, for reasons to do with the existing arrangement around the trading hours operated by the pub (which is described in more detail in the Paschal Lyons part of this judgment) and the finding of the Tribunal that there was “*a finite level of FMT that could be achieved between the two public houses*”, it appeared to be of the view that the FMT proposed by the Commissioner (€140,000) was too high.

- b. Second, and more clearly, the Tribunal considered that the percentage applied by the Commissioner to the FMT (7%) was too high and should be reduced.
- c. Third, in the concluding portion of the judgment under the heading “DETERMINATION” the Tribunal stated, “*for the above reasons the Tribunal allows the appeal and decreases the valuation of the property as stated in the Valuation certificate to €16,700 calculated as follows ...*” [emphasis added]

**89.** Both parties agreed that the final figure determined by the Tribunal was in fact an increase of just under €1,000 in the amount on the valuation certificate issued by the Commissioner.

**90.** Lyons Pub argued that in this case the Tribunal did not have jurisdiction to increase a valuation. While the answer to that question appears to be reasonably clear from the legislation, I do not consider that it needs to be addressed in this judgment. The structure for decision-making and appeals in the Act of 2001 clearly contemplates that parties have an entitlement to address legal arguments of that nature in two stages: first, before the Tribunal, and second, when necessary, before the High Court. Where an issue has not been ventilated before the Tribunal, this court generally should not deprive a party of the opportunity of addressing that

issue at first instance. That approach is all the more important where, as here, it is not at all clear that the Tribunal intended to increase the valuation, and there was no argument about that issue before the Tribunal. In fact, all the signals are that the Tribunal intended to reduce the valuation in this case.

**91.** The question, then, is how should this error be treated by the court?

**92.** One of the issues that arose in *Stanberry* was that the text of the Tribunal's decision contained a clear error. In that case, which concerned the valuation of car parks in Dublin City Centre, the Tribunal in part of its decision described one of the comparators of the appellant as having contract parking when it did not. That error arose in a context in which the valuation of the comparators was key to the ultimate valuation. As described by the Court of Appeal, the starting point was that the Tribunal "*has erred in a material finding of fact and thus its decision is affected by an error of law (see E v. Home Secretary at para. 66).*"

**93.** In responding to an argument on the part of the Commissioner that the error in that decision was clearly an erroneous recital and was not a sufficient basis for interfering in the determination of the Tribunal, the Court of Appeal said the following: -

*"43. This brings into focus an issue of more general application. The decision the subject of this appeal was reached in the context of a statutory process which mandates the Tribunal to give reasons for its decisions. Specific provision is made to this effect in para. 4(3) of the Second Schedule to the Act, which requires that the Tribunal issue "a written judgment setting forth the reasons for its determination in each appeal". That, of course, requires reasons which meet the applicable legal test, which is to communicate sufficient information to enable the parties to the decision to consider*

*whether they have a reasonable chance of succeeding in appealing the decision (see Christian v. Dublin City Council [2012] IEHC 163 [2012] 2 IR 506 at paras. 7 to 8). The same logic dictates that where a party identifies an error of fact or law in a decision the subject of a statutory appeal, and where that error relates to an issue that is prima facie material to that decision, the correct approach is to allow the appeal unless the reasoning of the decision maker, taken as a whole, allows the Court to conclude that the decision maker reached its conclusions independently of the error. This follows from the general principle that “where it is uncertain what the outcome of the decision-making would be in the absence of the bad reason or reasons, then the decision should be quashed since otherwise the court becomes the effective decision maker” (De Blacam, “Judicial Review” 3<sup>rd</sup> Ed. (London, 2017) at para. 17.39.)”*

**94.** As noted by the Court of Appeal, this court is not charged with any exercise of rewriting the decision of the Tribunal with a view to sustaining its validity. Where there is some very real ambiguity in the decision, or an absence of reasons, to the extent that it is not possible to determine precisely either what the Tribunal was deciding or how or why it made its decision the court is not entitled to speculate as to what the meaning was.

**95.** I am satisfied that in this case the Tribunal has erred, not in its treatment of a material fact *per se*, but in providing a determination that appears to contradict its findings, conclusions and stated intentions. It is not relevant whether this is more an error of fact or more a failure to provide reasons, the effect is that the parties and the court cannot treat the Tribunal’s determination as in any sense reliable. The court cannot substitute its views for the Tribunal, and there is no way for the court to discover what figures the Tribunal actually

intended to reach, assuming there was an intention to reduce the valuation. In the premises, there is no alternative to answering questions (4) and (6) in the case stated in the affirmative, the Tribunal erred by failing to give reasons for its determination, and erred in purporting to increase the valuation when it stated that it was allowing the appeal and decreasing the valuation. The matter will have to be remitted to the Tribunal, and, in the circumstances, it is not necessary to answer the questions regarding the application of 6% rather than 7% to the FMT.

### **THE OLLIE HAYES CASE**

**96.** This case stated concerns a licensed premises in Moneygall, County Offaly. The valuation certificate issued on 7 September 2017, in the amount of €19,600. The Notice of Appeal issued on 25 September 2017, and an oral hearing was held in the offices of the Tribunal on the 6 April 2018. This Tribunal was made up of different members to the Tribunal that dealt with the two cases addressed above. At the hearing, the only issue before the Tribunal was that of quantum. Mr. Hayes was represented by his valuer, Mr. Halpin, and the Commissioner was represented by its valuer, Mr. Mulvey. The judgment issued on the 14 May 2018, and the Tribunal determined to allow the appeal and decreased the valuation of the property to €15,000. In June 2018, the Commissioner requested that a case be stated to this court, and the case stated issued on the 18 November 2022.

**97.** Originally, the case stated posed five questions, but at the hearing of the appeal the revised questions were presented following agreement between the parties as follows (adopting the numbering in the case stated):

*“(iii) did the Tribunal fail to give a reason for the application of 6% of FMT and therefore err in law, having regard to paragraph 4(3) of Schedule 2 of the Valuation Act, 2001?*

*(iv) if, as contended for by the Respondent, the Tribunal applied a percentage rate of 6% based solely on a rural/urban divide, did the Tribunal thereby err in law?*

*And*

*(v) in applying 6% rather than 7% to the estimated FMT of the Property to determine its NAV, did the Tribunal err in law by failing to comply with the requirements of section 37(1) of the Act as amended which requires a determination of value that accords with that required to be achieved by section 19(5) (insofar as it is reasonably practicable), namely:*

*(a) correctness; and*

*(b) equity and uniformity of values between properties on that valuation list?”*

**98.** On behalf of Mr. Hayes, Mr. Halpin had argued that the valuation of the property was excessive and inequitable. That argument was grounded in five propositions:

- a. The property’s turnover had been declining year-on-year since 2011, and showed no sign of levelling off.
- b. The property is only one of two surviving pubs in the village. The other public house was operated by a relative of Mr. Hayes and had been valued at an NAV of €4,200 which would suggest that Mr. Hayes’ pub was valued at more than 500% than the only other pub in the village.
- c. Mr. Halpin emphasised Mr. Hayes’s established goodwill, being a fourth generation publican who had been in occupation over 30 years.



- d. Mr. Halpin argued that the village had had a once off benefit from a 2011 visit by former US President Obama, but that benefit has been ebbing away ever since.
- e. Mr. Halpin argued (a point made in the previous cases) that the Commissioner's system in respect of FMT discriminated against rural operators generally and that there was a need either to discount goodwill to reach an appropriate level of FMT, or discount the percentage applied to the FMT, or both, in order to arrive at a fair level of value for a rural pub.

**99.** In his précis of evidence, Mr. Halpin made the point that the NAV in this case should be reduced in line with its actual potential rental value and the emerging tone of the list. The turnover figures for 2014, 2015 and 2016 were circa €322,000, €288,000 and €283,000 respectively. They contrasted with a turnover in 2012 and 2013 (17 months) of approximately €495,000. Mr. Halpin asserted that the evidence showed that the state of the rental market commercially showed a significant urban/rural divide. Mr. Halpin suggested that for the purposes of considering the Midlands pub market, they had the lowest tourism numbers and lowest tourism revenue of any region of the country. Mr. Halpin noted that the population of the village was 313 people, and there were two pubs and one shop operating at the time.

**100.** Mr. Halpin took issue with the figure of FMT of €280,000 determined by the Commissioner. He considered that the actual turnover should be discounted to reflect Mr. Hayes' business acumen that a hypothetical tenant was unlikely to pay more than €12,600 for the property. Mr. Halpin made the general point made in other similar cases that the uniform application of 7% of FMT was unsustainable. He noted that the property's turnover was significantly higher than comparable premises in Shinrone, the nearest town of scale in County

Offaly, which had a range of NAV values from €9,100-€11,900. He also pointed to Birr, the nearest regional centre. Birr had a population of over 4,000 people and 16 pubs, but still the average rental value was in those cases €13,430. He suggested that this indicated that the Commissioner's approach to the property was out of line with the tone of the list. Mr. Halpin highlighted 9 comparator properties (all of which had valuations which were reached by the application of 7% to FMT) which he stated supported the contention that the turnover from Mr. Hayes's property had to be discounted. Ultimately, Mr. Halpin proposed €12,600 as an appropriate NAV. This figure could be calculated by two alternative methods: first by reducing FMT to a level reflective of the premises without goodwill and the diminishing President Obama effect, which should be €180,000, to which a percentage of 7% should be applied; or alternatively by taking the €250,000 FMT and applying 5%, which gave a value of €12,500.

**101.** In his précis, Mr. Mulvey noted the general geographical location of the premises and its proximity to the M7 motorway and the extensive and high quality standard of the premises itself, together with its public profile as having been visited by a President of the United States in recent times. The trading information was largely similar to that highlighted by Mr. Halpin.

**102.** Mr. Mulvey noted that valuation certificates had issued in respect of 139 licensed premises properties in Offaly, and that 9 appeals had been lodged with the Valuation Tribunal. As such, valuations had been fixed for approximately 93% of the list. Mr. Mulvey commented on the issues raised by Mr. Halpin and noted that for the purposes of providing evidence of correctness, equity and uniformity, the Commissioner analysed rental transactions for pubs in County Offaly and attempted to identify the net effective rent in each case. He noted that rental and financial information had been requested on all licensed premises in County Offaly, and

financial information had been received in 61% of cases. That analysis led to the production of a valuation scheme of 7% of the estimate of FMT for on-sales on all licensed premises.

**103.** With regard to Mr. Hayes’s bar, Mr. Mulvey noted that the visit of the President of the United States had made the bar a “landmark pub”. The point made here was that the Tribunal in other cases had found that certain premises may be so long established as landmark pubs that their turnover was less affected by the particular skill or ability of the proprietor than might be the case otherwise.

**104.** In terms of key rental transactions, Mr. Mulvey identified three comparators, and also provided six comparators by way of evidence of equity and uniformity. Those public houses each had provided financial information for the property, and there had been no appeal to the Tribunal. Mr. Mulvey contended that the premises were suitable comparators to Mr. Hayes’ premises in terms of turnover, location and relative local population.

**105.** In its judgment, the Tribunal noted the evidence given by Mr. Halpin and Mr. Mulvey. The operative part of the judgment was divided between a section setting out findings and conclusions, and a separate section setting out the determination of the tribunal. The relevant findings and conclusions sections are set out below: -

*“10.2 The property is situated in the village of Moneygall, approx... 1 km west of the M7 motorway at Junction 23, some 15 km south of Birr. In 2010 the construction of the M7 motorway saw the village bypassed and it was no longer on the main Dublin – Limerick route. In 2011 the visit by then President Barack Obama brought prominence and fame to the village with much fanfare and commercial activity. In 2014 the opening of the Barack Obama Plaza at*

*Junction 23 removed most of the commercial activity from the village and the closure of all but 3 businesses, two pubs and a shop.*

*10.3 The comparitors (sic) offered by both parties give a general view of the licensed trade in Co. Offaly and clearly shows the urban/rural divide from a population and trade standpoint.*

*10.4 The appellant has made the case for a review of the formulae used by the Valuation Office in assessing turnover (FMT) only and some consideration has to be made to recognise the rural/urban divide and the business acumen of the occupier.*

*10.5 The Tribunal is aware of the Kirwan case (VA 14/5/959) and the effect on turnover of occupier's business acumen and is tended to make allowance for same in this instance.*

*10.6 The appellant has shown that the larger centres of population i.e. Birr and Tullamore offer a more attractive business proposition in the pub trade than smaller village pubs with longer working hours. On the evidence, the ratio between turnover and rent/NAV favours the larger urban centres.*

*10.7 From the evidence produced it is noted that in villages/population centres of circa 600 i.e. Shinrone and Walshes Island with FMT (€170,000-€225,000), the NAV's are in the order of €12,000-€15,750 and these comparisons, together with The Pull Inn and The Hoppers Bar, both with small populations and located in isolated locations and about 60 km from the subject are of some assistance to the Tribunal in this case.*

*10.8 The Tribunal has taken into consideration, inter alia, the evidence adduced on the Shinrone pubs and the Dunkerrin Arms, the ebbing effect of the Obama visit, together with the recent bypass of the village and the opening of the*

*Obama Plaza. It concurs with the appellant that they have had, and will continue to have, a depressing effect on turnover in the subject premises.”*

**106.** The Tribunal determined that the FMT should be reduced from €280,000 to €250,000 and that a percentage of 6% should be applied, leading to a valuation of €15,000. The Tribunal appended a summary of Mr. Hayes’ and the Commissioner’s NAV and rental comparisons to its decision.

**107.** As in the two other cases addressed in this judgment, the Commissioner offered two main arguments. First, that the Tribunal’s reasons were inadequate, and second that the Tribunal erred in law in reducing the percentage applied to the FMT figure from 7% to 6%. That aspect of the submission was reinforced, as far as the Commissioner was concerned, by the approach adopted by the Court of Appeal in *Breanagh Catering*. Mr. Hayes argued that the Tribunal was entitled to take the course adopted and that the reasoning was adequate, and this contention was not altered by reference to *Breanagh Catering*.

**108.** In considering the judgment, the Tribunal in this instance here appears to have engaged with the evidence in a more considered way than in the other cases. In that regard, while I have found that the reasoning was inadequate it must be said that this case was more finely balanced than the previous two cases. Particularly, there was more engagement with the market data and evidence of comparators in reaching its decision. The Tribunal seems to have been persuaded that the market data showed a rural/urban divide. The Tribunal seems also to have been persuaded that the turnover figures, while increasing year on year in the three most recent sets of accounts, had not reached the earlier levels achieved in the immediate aftermath of the visit of President Obama. The Tribunal seems to have been persuaded that, in part, the turnover

figures were achieved by reason of the particular business acumen of Mr. Hayes. Likewise, the Tribunal seems to have accepted the evidence that the bypass of the village and the effect of the Obama Plaza were matters that affected the potential turnover of the business. In those premises, the need to reduce the FMT figure seems to be reasonably explicable.

**109.** On the other hand, the Tribunal did not engage at all with the arguments around the question of whether the premises was a “landmark pub”. This issue was argued by the Commissioner and clearly was relevant to the question of whether the FMT should be discounted and to the question of what percentage figure that would represent the rent to be paid by the hypothetical tenant. Significantly, the Tribunal did not explain how it reached the figure of €30,000, which was the reduction from turnover to reach the FMT.

**110.** In relation to the decision to reduce the percentage figure, and bearing mind that the percentage represents the rent that might be agreed between the hypothetical tenant and landlord, the Tribunal decision provides more insight into the reasoning process than in the previous cases. The Tribunal considered briefly some market data and evidence of comparable properties and found that a hypothetical tenant would seek to agree a rent for this property based on a lower percentage of FMT than would be the case in a larger population centre, given the need to commit to longer working hours to achieve a reasonable turnover. Nevertheless, there was no clear explanation as to how 6%, rather than another percentage figure, was decided. The Tribunal did not make a finding that it accepted the policy argument made by Mr. Halpin to the effect that percentage figures should be reduced by reference to population numbers in the locality of the public houses. The Tribunal did not engage with the fact that the emerging tone of the list had emerged clearly, or that the Commissioner had fixed those values by applying a 7% percentage figure to FMT. It was not possible to identify that the Tribunal

had engaged with the exercise provided for in section 19(5) of the 2001 Act, to explain how the value of Mr. Hayes' property on the list was relative to the values of other comparable properties on the list. From my perspective, this has introduced a level of error of the type identified by the Court of Appeal in *Breanagh Catering* as warranting the remittal of the decision.

**111.** Overall, in this case stated, I am persuaded that the Tribunal erred in the manner proposed by the Commissioner in respect of adequacy of reasons. Accordingly in the Ollie Hayes case, I propose to answer question (3) in the affirmative. As the matter will have to be remitted to the Tribunal for re-consideration, I, subject to my general observations expressed earlier in this judgment on the general powers of the Tribunal, do not propose to answer the remaining questions.

**112.** As this judgment is being delivered electronically, I will list the matters for final arguments on the form of orders and the issue of costs at 10.30 am on Friday the 26th April 2024. In advance of that listing I would invite the parties' legal representatives to endeavour to reach an agreement insofar as possible on the final form of the orders to be made.