

Appeal No. VA08/4/002

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Thomas Mullane**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2176466, Licensed Shop, Garage/Filling Station, Shop at Lot No 4D/2, Knockdown, Kilmoylan, Glin, County Limerick

**B E F O R E**

**Maurice Ahern - Valuer**

**Deputy Chairperson**

**Mairéad Hughes - Hotelier**

**Member**

**Michael F. Lyng - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 11TH DAY OF MARCH, 2009**

By Notice of Appeal dated the 29th day of September, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €125.00 on the above-described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal, are:

"Two storey building with upper storey closed for past 20 years. Remote Property. Rural shops not surviving."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 28<sup>th</sup> day of January, 2009. The appellant, Mr. Thomas Mullane, represented himself. Mr. David Molony, BSc, MRICS, a District Valuer in the Valuation Office, represented the respondent. At the oral hearing both parties, having taken the oath, adopted their précis as being their evidence-in-chief.

### **Location**

The subject property is located in a rural area at Knockdown, Athea on the Glin/Newcastle West Road, Co. Limerick.

### **Description**

The subject property is a detached, single storey bar and lounge, shop/hardware and petrol station.

### **Appellant's Case**

Mr. Thomas Mullane, having taken the oath, outlined to the Tribunal that the subject property was located in a rural area where very little development had taken place. He stated that shops, pubs and filling stations in the villages in his area were closing. He said that he applied to Limerick County Council for planning permission to knock down the filling station and build apartments, a small shop and 12 small houses on the site, but they refused his application. He said that the pub at present is let on a month-to-month basis at a reduced rent and that the shop is also leased at the moment but he feels that the lease which is due for renewal in July, 2009 will not be renewed. He said that at present he has to cover the cost of the rates himself and that he will not be able to continue paying the existing rates bill of €7,000 and, if it is not possible to revert to the 2005 rates demand, he will have to sell the licence and knock down the shop.

### **Respondent's Case**

Mr. David Molony stated that the subject property is a detached single-storey bar, lounge, shop/hardware store and petrol filling station with forecourt and canopy.

In relation to the grounds of appeal, Mr. Molony referred the Tribunal to the following precedents:

- Tribunal Appeal ref. **VA07/3/016 - Michael Butler.**

- Tribunal Appeal ref. **VA7/4/003 - Dr. Patrick McDermott.**
- Tribunal Appeal ref. **VA08/1/002 - NSCDA (Operations) Limited.**
- A recent High Court decision by Mr. Justice Bryan McMahon dated 23<sup>rd</sup> day of April, 2008 in the case between the **Commissioner of Valuation and Birchfox Taverns Ltd.** (2006 No. 890 SS).

Mr. Molony agreed with the appellant that the subject property was located in a rural area with very little passing traffic. The property was last valued in February, 2005. Following an application for revision by Mr. Mullane in 2007 he, Mr. Molony, was appointed Revision Officer. He visited the property on 7<sup>th</sup> November, 2007 to carry out the revision. It transpired that there were no physical alterations to the property since 2005 that would constitute a “material change of circumstances” that would allow him to revise the valuation.

### **Cross examination**

Mr. Mullane agreed with Mr. Molony that there was no material change of circumstances since the property was revised in 2005.

### **The Law**

1. Material change of circumstances is defined in Section 3 of the Valuation Act and in the context of this appeal, paragraph (b) of the definition set out below is particularly relevant  
*“material change of circumstances” means a change of circumstances which consists of -*  
*(b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause,”*
2. Section 28 (4) states, *“A revision officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property—*  
*(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—*  
*(i) amend the valuation of that property as it appears on the list,*

- (ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,
- (iii) amend any other material particular in relation to that property as it appears on the list,
- (b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—
- (i) carry out a valuation of that property, and
- (ii) include that property on the list together with its value as determined on foot of that valuation.”
3. Section 28(5) states, “A revision officer shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—
- (a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,
- (b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.”
4. Section 28(9) states, “If a revision officer decides that the circumstances referred to in subsection (4) do not exist for the exercise of the powers under that subsection in relation to a property referred to in subsection (5) he or she shall, forthwith after the making of that decision, issue to the person or as the case may be, each person who applied for his or her appointment under subsection (3) in respect of the property a notice of the decision.”
5. Accordingly therefore where the Revision Officer appointed pursuant to Section 28(2) finds that no material change of circumstances has taken place in relation to a property which has been listed for revision since the property was last valued, he or she shall issue a notice to that effect and make no change to the rateable valuation of the property as it currently appears in the valuation list.

## **Findings**

The material change of circumstances provision as contained in the Valuation Act, 2001 is quite specific and unambiguous and the appellant seeking a revision must clearly demonstrate

that a material change of circumstances has taken place. If no material change of circumstances has occurred the Revision Officer has no alternative but to issue a Notice of Decision to that effect and to make no change to the rateable valuation of the property concerned as it appears on the Valuation List.

**Determination**

Having regard to the foregoing the Tribunal finds that the Revision Officer was correct in arriving at his decision that no material change of circumstances had occurred. Accordingly therefore the appeal is dismissed and the valuation as currently appearing in the Valuation List is affirmed.

And the Tribunal so determines.