

Appeal No. VA11/1/003

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

Brian Murphy

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 651798, Licensed House, at Lot No. 49, Main Street, Arklow, Arklow Urban, Arklow UD, County Wicklow.

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Fiona Gallagher - BL

Member

Frank Walsh - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF JUNE, 2011

By Notice of Appeal dated the 9th day of December, 2010 the appellant appealed against the determination of the Commissioner of Valuation in deciding that no Material Change of Circumstances had occurred at the above described relevant property.

The grounds of appeal are set out in a letter attached to the Notice of Appeal, copies of which are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7 on the 28th March, 2011. The appellant represented himself at the hearing. The respondent was represented by Ms. Rosemary Healy-Rae, BL, instructed by the Chief State Solicitor, and Mr. Viorel Gogu, PhD Economics, MSc Real Estate, MSc Quality Management, a Valuer in the Valuation Office, attended as a witness on behalf of the respondent.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

To establish a legal issue on whether or not a “material change of circumstances” had occurred on the subject property since its previous valuation for rating purposes.

The Property

The property was described as a three-storey licensed premises with one-storey and two-storey sections to the rear, all situate on a large site. The street frontage of the building measures approximately 14.4 metres (c. 47 feet) with a side entrance to the rear. Accommodation comprises a bar, lounge, off-licence, male and female washrooms, kitchen and stores on the ground floor, and a restaurant with seating capacity for 60 patrons, meeting room, kitchen and washrooms on the first floor. Domestic accommodation includes a sitting room and hall on the first floor with three bedrooms and a bathroom on the second floor. The site has rear access from a river walk to a private car park. A patio area is also located to the rear of the subject site.

Location

The property is situated on Main Street in Arklow town, Co. Wicklow.

Services

The subject property is served with mains power, water, telephone, storm and foul sewer.

Tenure

Understood to be Freehold.

Valuation History

1986:	At First Appeal the RV was assessed at IR£135 (Domestic £22).
1996:	The property was revised at the request of the occupier as being excessive. The Revision Valuer in his report was of the opinion that the premises could support a valuation of £150 and made no change to the valuation.
1998:	The property was revised and the valuation was assessed at £218 (Domestic £18). No change was made on First Appeal.
December 2000:	The Valuation Tribunal affirmed the assessment of the Commissioner of Valuation at £218 (VA00/1/021).
July 2009:	The occupier requested revision of valuation.
April 2010:	Notice of Decision that “No Material Change of Circumstances” issued by the Commissioner of Valuation.
May 2010:	Appeal lodged against the decision that “No Material Change of Circumstances” had occurred.
November 2010:	Notice of “Decision to Disallow Appeal” issued by the Commissioner of Valuation.
December 2010:	Appellant appealed this decision to the Valuation Tribunal by Notice of Appeal dated 9th December, 2010.

Floor Areas

The agreed floor areas were as follows:-

Off-Licence:	24.45 sq. metres
FF Restaurant:	134.00 sq. metres
FF Kitchen:	30.00 sq. metres
FF Function Room:	93.40 sq. metres
FF Small Kitchen:	7.00 sq. metres
Domestic:	154.00 sq. metres

Appellant's Case

Proceedings commenced when Mr. Brian Murphy, took the oath, adopted his précis as his evidence-in-chief and provided the Tribunal with a review of his submission. Mr. Murphy summarised the recent trading history and decline of the central business district of Arklow town. He drew attention to a number of businesses in the town, primarily retail, which had closed or relocated in recent times. He expressed the view that Arklow town is undergoing significant change and that ratepayers are struggling to meet their commitments.

Mr. Murphy outlined the nature and reduction in trading activity within the subject property, focusing primarily on the first floor restaurant and meeting room's activities. He recounted a substantial reduction in the level of income generated by the restaurant and meeting rooms in recent years, linked, in his opinion, to the contraction of the economy and crises in the banking sector. He stated that the restaurant was used only on very rare occasions in recent years and that the function rooms were similarly under-utilised and primarily used by a local Bridge Club paying a nominal fee of €75 per week. Mr. Murphy referred to personal financial difficulties and his struggle to maintain sufficient funding to continue with the business, including the licensed premises on the ground floor.

Mr. Murphy referred to principles of natural justice and fair play, which he felt were being overlooked with the imposition of rates on properties such as the subject property without regard for the decline in trading income in recent years and the resultant reduced capacity for taxpayers to meet their obligations. He argued that the imposition of rates on properties which were not being utilised to full capacity is inequitable, harsh and contrary to aspirations to equity which, he contended, are provided for in the Irish taxation code.

Cross-examination

In reply to questions raised by the Tribunal, Mr. Murphy confirmed as follows:

- That there had been no structural change of any nature to the subject property since it was last revised in 1998.
- That there had been no change in terms of any construction or removal of any part of the subject property since 1998.

- That no event had occurred whereby the subject property, or any part of it, either became or ceased to be rateable, or exempt from rates.
- That the subject property remained the same as it was in 1998, i.e. treated as a single property for rating purposes.

Mr. Murphy also confirmed the foregoing under cross-examination conducted by Ms. Healy-Rae.

Respondent's Case

Mr. Viorel Gogu took the oath, adopted his précis as his evidence-in-chief and reviewed his submission. He provided the Tribunal with a summary of the contents of his written précis of evidence, attached herewith as Appendix 2. He confirmed that the Commissioner of Valuation had determined that no material change of circumstances had occurred on the subject property since it had been previously valued, based on an inspection carried out by him in April, 2010, and on discussions the valuer had with the appellant on the inspection date.

Mr Gogu cited the Valuation Act, 2001 and, in particular, the definition offered therein of what constitutes a “material change of circumstances” as set out in Part 1, Section 3 (1), subparagraphs a, b, c, d, e and f of the Act. Mr. Gogu stated that, as none of those foregoing provisions had occurred, prevailed, were complied with and/or existed as at the inspection date, the Commissioner of Valuation, following consideration of all of the facts, concluded that no material change of circumstances had occurred, and that accordingly, Mr. Murphy’s First Appeal was disallowed and as a result, no change was made to the rateable valuation of the property concerned as it appeared on the Valuation List.

Under examination by Ms. Healy-Rae, Mr Gogu stated that there was absolutely no evidence or indication available to him which would suggest that any of the legal tests, as set out in the Valuation Act, 2001, to establish a “material change of circumstances”, which might warrant reconsideration of the net annual value of the subject property, had either prevailed, occurred or been satisfied at the time of the subject appeal made by Mr. Murphy and/or at the inspection date of the subject property in April, 2010.

Cross-examination

In response to questions raised by the Tribunal, Mr. Gogu confirmed that he visited the relevant property and met on-site with the appellant in April of 2010. He confirmed that he carried out a physical inspection of the property from the exterior and internally on the ground floor, but did not actually see the interior of the first or second floors. However, Mr. Gogu stated that he was fully satisfied that no changes or events had occurred on or with the subject since it was previously valued in 1998 based on verbal confirmations given to him by the appellant, which he noted had been repeated by Mr. Murphy earlier in the hearing.

In reply to questions raised by Mr. Murphy, Mr. Gogu again expressed his opinion that the facts as confirmed by the appellant both at the time of inspection and again at this hearing, did not warrant reconsideration of the valuation of the property and that as the officer appointed by the Commissioner, and in accordance with the Valuation Act, 2001, he was not entitled to so do as the decision was made that a material change of circumstances had not occurred.

Legal Submissions

Ms. Healy-Rae, having previously provided copies to the appellant and the Tribunal, reviewed her written legal submissions and referred to the list of Authorities also provided by her, both documents attached hereto as Appendix 3 and 4 respectively.

Ms. Healy-Rae cited Section 28(4) of the 2001 Act, which sets out a requirement on the Revision Officer to first establish if a material change of circumstances has occurred since the property was last revised. She explained that the Revision Officer's decision was governed by Section 28(9) and, consequently, that the appellant had filed an appeal upon the issue of a Notice of Decision that no material change of circumstances had occurred. She stated that the appeal was disallowed by the Commissioner and that the appellant subsequently submitted a Notice of Appeal to the Valuation Tribunal, dated 9th December, 2010, pursuant to Section 34 of the Valuation Act, 2001.

Ms. Healy-Rae cited the definition of "material change of circumstances" in Section 3(1) of the Valuation Act, 2001, and then cited the powers of the Revision Officer as set out in Sections 28(4), (5) and (9) sub-sections of the same Act. She stated that all of the statutory provisions had been followed by her client, that the appellant's submission had been

considered and that the respondent was of the view that no material change of circumstances on the subject property had occurred. She added that accordingly, the Revision Officer was precluded from exercising his powers under Section 28(4) of the Valuation Act, 2001.

She drew the attention of the Tribunal to relevant case law to clarify the issue of whether or not a material change of circumstances had occurred, and referred to various decisions considered by the Valuation Tribunal, including the following cases:-

- **VA05/3/005 - Paddy O'Carroll**
- **VA07/4/003 - Dr. Patrick McDermott**
- **VA07/3/016 - Michael Butler**
- **VA04/2/076 & 078 - Advanced Information Management Consultants Ltd., and Brophy Colton**
- **VA08/4/002 - Thomas Mullane**

Ms. Healy-Rae contended that all of the foregoing decisions supported her client's view that a material change of circumstances in the present case had not occurred.

Counsel for the respondent also adverted to the High Court case, **Commissioner of Valuation -V- Birchfox Taverns Limited** [2008], IEHC 110, 2008, to support her view that where no material change of circumstances has occurred, the Revision Officer is precluded from exercising his powers under Section 28(4) Valuation Act, 2001.

Both Mr. Murphy and Ms. Healy-Rae concluded their evidence with brief statements to the Tribunal, reiterating their respective views and arguments.

Findings

The Tribunal thanks the parties for their efforts, arguments and contributions at hearing and the written submissions that preceded same.

Having carefully considered all of the evidence, written and oral, together with all the arguments and points adduced at hearing, and having reviewed and considered in detail the

written legal submissions and authorities made and submitted by Counsel for the respondent, the Tribunal finds as follows:

1. The Valuation Tribunal is a creature of statute, the functions of which are defined as and limited to those prescribed by the Valuation Act 2001.
2. While the Tribunal empathises with the appellant and the challenges faced by him in the furtherance of his business in very difficult circumstances during a very extended period of decline in the Irish economy and understands the appellant's appeal for natural justice and equity, the Tribunal has no authority or powers to exercise beyond those set out in the Valuation Act, 2001.
3. The Tribunal has reached the conclusion that no "material change of circumstances" has occurred to the subject property within the meaning of the terms as set out in the Valuation Act, 2001 Part 1, Section 3(1).
4. Accordingly, the Tribunal finds there are no grounds for a revision of valuation of the subject property pursuant to Section 28(4) of the said Act.

Determination

Taking account of all of the above, the Tribunal disallows the appeal and affirms the decision of the Commissioner of Valuation.

And the Tribunal so determines.