

Appeal No. VA11/2/008

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

CB Pub Management

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 748462, Licensed Shop at Lot No. 57 (incl.4-7 Yarnhall St.), Inns Quay C, Inns Quay, County Borough of Dublin.

B E F O R E

John F Kerr - BBS, FSCSI, FRICS, ACI Arb

Deputy Chairperson

Brian Larkin - Barrister

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF OCTOBER, 2011

By Notice of Appeal dated the 22nd April , 2011, the appellant appealed against the decision of the Commissioner of Valuation that "no material change of circumstances has occurred" in relation to the subject property.

The grounds of appeal are set out in the Notice of Appeal, a copy of which is attached at Appendix I to this judgment.

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, initially on the 11th day of July, 2011, and resumed on the 19th day of July, 2011. The appellant was represented by Mr. Proinsias Ó Maolchalain, BL, instructed by Ms. Pauline Kennedy of Pauline Kennedy & Co. Solicitors. Mr. Eamonn Halpin, BSc (Surveying) ASCS, MSCSI, MRICS, and Mr. Colm Bodkin, Director, CB Pub Management Ltd. gave evidence. The respondent was represented by Ms. Rosemary Healy-Rae, BL, instructed by the Chief State Solicitor's Office, and Ms. Angelina Scanlan BSc, MIAVI, a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation.

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 at/or between the hearings 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 whether legally a "material change of circumstances" had occurred on the subject property since a previous valuation determined in 1988 when revised for rating purposes.

The Property

The subject relevant property forms part of a four-storey building and comprises a licensed premises with ancillary toilet and kitchen areas on the ground floor and ancillary storage in the basement area. The upper floors are not the subject of this appeal.

Location

The subject property is located in Dublin city centre on the corner of Bolton Street and Yarnhall Street, opposite DIT Bolton Street College.

Services

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

Tenure

Understood to be leasehold.

Floor Areas

The agreed floor areas, measured on a Gross External Area (GEA) basis, are as follows:-

Bar Area:	196.05 sq. metres
Toilets:	23.40 sq. metres
Kitchen:	16.12 sq. metres
Basement:	<u>106.08 sq. metres</u>
Total:	341.65 sq. metres

Valuation History

1988 Revision:	Property Revised with an RV of €253.95 (IR£200).
1992 Revision:	No change.
1993 Revision:	No change.
21 st September 2010:	Issue of Notice of Decision of No Material Change of Circumstances – RV €253.95.
4 th October 2010:	The appellant appealed to the Commissioner of Valuation against the Decision of “No Material Change of Circumstances has occurred”.
1 st April 2011:	The Commissioner of Valuation, having considered the case, disallowed the appeal and the RV remained unchanged at €253.95.
22 nd April 2011:	The appellant appealed the decision to the Valuation Tribunal by Notice of Appeal dated 22 nd April, 2011.

Appellant’s Case

Mr. Ó Maolchalain indicated that the net issue between the parties was whether a material change of circumstances (MCC) had arisen in accordance with the provisions of Section 3 and Section 28(4) of the Valuation Act 2001, since the valuation of the property in 1988. He explained that the layout of the subject premises had changed following the foregoing

valuation, with the integration of a passageway which had previously separated a bar to the front of the premises and a lounge to the rear. He also explained that the passageway of approximately 16 sq. metres had been previously treated on the Valuation List as part of another property, namely a warehouse which extends over another part of the ground floor area of the premises and upstairs, above the bar and lounge. Counsel for the appellant summarised various structural works which had been carried out on foot of a by-law approval granted by Dublin Corporation on 30th May, 1989 to the occupier of the subject relevant property, which included the removal of a stairs and lift, the blocking-up of a window and the installation of a door opening. He explained that his client is of the opinion that an MCC has arisen by reason of the foregoing works conforming with the definition provided in Part 1 Section 3, “material change of circumstances” (b) and (f) of the Valuation Act 2001, the latter satisfied on the basis that property previously valued as two relevant properties becoming liable to be valued as a single relevant property.

Ms. Healy-Rae, representing the respondent, replied by indicating that the Appeal Officer accepted that structural changes had occurred, but was of the view that no MCC had arisen as the structural changes were not sufficient to effect a change to the value of the subject relevant property. Ms. Healy-Rae also took issue with the introduction by the appellant of Section 3 “material change of circumstances (f) at the hearing, stating that it had not been specified as a matter for prior consideration at either Representations or First Appeal stage.

Counsel for the appellant rebutted by indicating that both Sections 3 “material change of circumstances” (b) and (f) must be considered insofar as all subsections relating to “material change of circumstances” in Section 3, namely (a) to (f) inclusive, were addressed in the Consideration of Appeal Report, Appendix 2 of the respondent’s précis of evidence, the latter attached herewith as Appendix II. Counsel also noted that the aforementioned passageway was addressed and a value computed thereon by the Commissioner as part of the warehouse premises in the 1988 Revision, again as evidenced in the respondent’s précis.

Mr. Eamonn Halpin took the oath, adopted his précis as his evidence-in-chief, copy attached herewith as Appendix III,¹ and provided the Tribunal with a review of his submission.

¹ The copy of the appellant’s précis attached herewith has been redacted to exclude confidential financial statements in Appendices VII(a) and VII(b) therein.

He outlined a number of structural and layout changes which had occurred to the ground floor of the subject property some time following the issue of a Notice of Approval of Plans under Building By-Laws by Dublin Corporation on 30th May, 1989, copy attached herewith as Appendix IV. Such approval was granted for the proposed “*removal of lift and stairs at ground floor to allow public and lounge bar counter to be joined*”. Mr. Halpin referred to his précis of evidence, which set out the request for the current revision based on his client’s view that a “material change of circumstances” (MCC), in accordance with the provisions of Sections 3 and 28(4) of the Valuation Act, 2001, had arisen as a result of certain structural works having been carried out and an increase in the floor area resulting from same, which he contended produced a change in the value of the subject relevant property.

Mr. Halpin noted the circulation of an e-mail memorandum dated 1st July, 2011 to the Tribunal and the respondent, providing a substitute page 8 for his précis of evidence, which also included copy correspondence dated 17th November, 2004 from the Valuation Tribunal to his firm and a copy of a Valuation Tribunal determination in relation to **VA04/3/038 - Classical Decor Ltd.**

Mr. Halpin then summarised the changes to the floor plan of the ground floor of the subject premises which he repeated had been carried out on foot of the aforementioned Dublin Corporation approval of March 1989, some time in the early 1990s. He explained that the former passageway of circa 16 sq. metres had been removed, together with a staircase within and a lift shaft. He pointed out that the Valuation Office identified the passageway as an “entrance” in their 1988 Revision records. He noted Mr. Ó Maolchalain’s earlier explanation that the former passageway, treated as part of the warehouse in the 1988 Revision, is now part of the trading area of the combined bar and lounge delineated within the subject relevant property. Mr. Halpin explained the scope of the works which resulted in the removal of a lift shaft from the former rear bar area and various other works including the installation of a new internal double door open from the extended lounge at the front to the public bar at the rear.

The appellant’s valuer clarified the nature and outcome of revisions which were carried out on the premises post the 1988 valuation, which resulted in “no change” to the NAV and consequently to the RV on the subject relevant ground floor and basement property. Mr. Halpin argued that the Commissioner of Valuation had erred in not recognising a change in the value of the property, which he argued resulted from the increase in floor area, which

followed the integration of the passageway into the licensed trading area. Mr. Halpin contended that:-

- a. the combination of the increase in floor area with the addition of c. 16 sq. metres producing an increase in the value of the property,
- b. the various related and additional structural works having been undertaken and completed, including the removal of a lift and stairs, certain walls being demolished and attendant works carried out,
- c. the merging of property previously valued as two but now as a single rateable property,

all taken together or separately, conform to the definition of an MCC in Section 3 of the Valuation Act, 2001.

Mr. Colm Bodkin took the oath and sought to clarify the nature and scope of the structural changes which had been carried out linking the bar to the lounge within the subject property in the early 1990s. A lengthy discussion ensued between the parties which concluded with an adjournment of the hearing pending the submission by the parties of a mutually agreed floor plan, which would outline the layout of the ground floor prior to the foregoing structural works attended to, i.e. the 1988 Valuation.

Resumed hearing of 19th July, 2011.

Prior to the resumed hearing, Mr. Halpin circulated to the respondent and the Valuation Tribunal a copy floor plan obtained by him from Dublin City Council which indicated the location of a staircase within the aforementioned passageway and a lift shaft situate within the former rear bar. This plan also outlined the position of a second staircase sited within the lounge area providing exclusive ingress and egress to the warehouse overhead. A second copy floor plan was also provided by the appellant with the outlines of the same passageway and lift shaft superimposed on to a current layout plan of the premises. Mr. Halpin explained that the passage and the lift have been removed and that the former stairs within the passage, which linked the basement below to the warehouse overhead, has also been removed. This plan also identifies the location of the stairwell within the lounge area which now serves the basement and warehouse areas but does not provide an opening or access to, or exit from, the

subject relevant property. The above plans are attached herewith, together with covering e-mail memorandum dated 18th July, 2011, issued at 18:49, as Appendix V.

Cross-examination of the appellant

In reply to questions raised by Ms. Healy-Rae, Mr. Halpin acknowledged that the Valuation Office (VO) records suggest that the trading area of the relevant property at revision in 1988 was 195 sq. metres, and that the trading area of the current premises is 196.05 sq. metres, i.e. a mere increase of 1.05 sq. metres. Mr. Halpin suggested that the VO's historical record denoting a trading floor area of 195 sq. metres was suspect from his perspective. Mr. Halpin also declared that the VO record notes did not designate the passageway, but alternatively labelled the area as an "entrance" in the 1988 revision. He advised that the structural works approved by Dublin Corporation in 1989 were likely carried out in the early 1990s but that the aforementioned VO record notebook, page 104, suggested that there may not have been any works carried out to the premises of a structural nature prior to a 1993 revision. Mr. Halpin expressed the view that the Commissioner of Valuation first took account of the above structural changes when Ms. Scanlan visited the subject property on foot of a revision request in 2010. Mr. Halpin would not accept a time limitation on his client which might restrict his right to seek a revision on the grounds that a material change of circumstances had arisen, notwithstanding that about 20 years had elapsed since the subject valuation of IR£200 was established. Mr. Halpin endeavoured to explain the difference of only 1.05 sq. metres of trading area within the premises since the 1988 revision, following which the respondent confirmed and acknowledged that the gross internal floor area of the subject passageway, with the former internal stairs within removed, is circa 16 sq. metres.

Respondent's Case

Ms. Angelina Scanlan took the oath and adopted her précis as her evidence-in-chief. She provided the appellant and members of the Tribunal with a copy of a manuscript record which demonstrated that the property identified as Nos. 4 - 7 Yarnhall Street, described as a licensed house, was valued at IR£200 on foot of a revision carried out in 1988, which remained unchanged pursuant to revisions subsequently carried out in 1992 and 1993.

Ms. Scanlan, referring to her précis and in particular appendix 5 thereto, contended that the floor area of the subject relevant property was not increased by 16 sq. metres post-1988 as claimed by the appellant, but by more in the order of 12 sq. metres. The respondent's witness

acknowledged that structural works had been carried out, quite possibly in the early 1990s, but in her view these works were not of a nature and scope to effect a change in the value of the subject property for rating purposes. She also argued that the passageway had been valued in the 1988 Revision, albeit as part of the warehouse, and in any event, she concluded that paragraph (f) of the definition of material change of circumstances in Section 3 of the 2001 Act did not contemplate amalgamation of parts of relevant properties. The respondent explained that she had not been furnished with copy maps or floor plans to establish the floor layout details of the bar, passageway, lounge, staircases and lift prior to grant of approval of works by Dublin Corporation in 1989, as noted earlier, and as a consequence, was obliged to refer exclusively to the VO records and in particular those contained in the record notebook, page 104, i.e. appendix 5 in her précis of evidence.

Both Ms. Scanlan and Ms. Healy-Rae stated that there were no suggestions made, proof or any form of evidence made available to challenge or refute the details contained within notebook record page 104 held by the VO, which contains hand written notes confirming that a revision carried out in 1993 of the subject ground floor premises resulted in “no change” to the RV, which had been established on foot of the 1988 revision at a figure of IR£200 on the licensed house.

Cross-examination of the Respondent

Responding to various questions asked by Mr. Ó Maolchalain, Ms. Scanlan agreed that:-

- a) Structural changes had occurred to the premises since 1988, but she was not informed when those works were completed by the appellant.
- b) The above works included removal of a lift and a concrete stairs in accordance with the Dublin Corporation by-law determination report, and as such she considered those alterations to be structural in nature.
- c) The net increase in the floor trading area between 1988 and 2010, based on the records of the VO is circa 1.05 sq. metres, but Ms Scanlan acknowledged that the gross internal area resulting from execution of the structural works had increased following the merger of the bar with the lounge and passageway and the removal of a lift shaft from the area to the rear of the passage, by circa 16 sq. metres.

- d) The 1988 Revision may have included the area of the eastern stairwell serving the warehouse above as a possible entrance to the subject premises and accordingly the VO record may possibly have overstated the gross internal area of the licensed house then by circa 8.75 sq. metres.

Legal Submissions by the Appellant

Mr. Ó Maolchalain then drew the attention of the parties to the written outline legal submissions made by him on behalf of the appellant, copy attached hereto as Appendix VI. He pointed out the following:

1. the nature, history and scope of the structural changes made to the premises since 1988;
2. the history of events since the subject relevant property was listed for revision on 14th April, 2010;
3. the outcome of Representations and First appeal,
4. the determination by the Commissioner that “no material change of circumstance has occurred”

and concluded that all of the evidence adduced and submitted on behalf of the appellant, in his view, supported his argument that the Commissioner in the circumstance, had erred in his decision that no MCC has arisen.

Mr. Ó Maolchalain referred to previous decisions of the Valuation Tribunal cited by the respondent, which he argued were of little value to the subject case, as the ratepayer had either accepted that no MCC had occurred or that no structural alterations had been carried out. His submission concluded that a MCC to the subject property within the meaning of paragraphs (b) and (f) of the definition in Section 3 of the Valuation Act, 2001 had arisen in this case.

Legal Submissions by the respondent

Ms. Healy-Rae, referring to her written legal submissions on behalf of the respondent, attached hereto as Appendix VII, reviewed the background to this case and the pertinent legislation including the definition of a “material change of circumstances” in Section 3 and

the powers of the Revision Officer in Section 28, sub-sections (2), (3), (4), (5) and (9) of the Valuation Act, 2001.

Ms. Healy-Rae also referred to a determination of the Valuation Tribunal, **VA07/3/016 - Michael Butler** and a McMahon J. High Court decision in **Commissioner of Valuation v Birchfox Taverns Ltd., [2008] IEHC 110**. She contended that structural alterations per se may not necessarily lead to a change in value of a relevant property and, accordingly, that a material change of circumstances may not arise merely by the execution of such works. She also added that the definition of 'material' is a term meaning 'significant' or 'important' and that even when a MCC is identified, the change must be such as to warrant the exercise of the powers granted to the Revision Officer in Section 28 of the 2001 Act. She concluded that the structural alterations which took place in the instant case, were minor in nature and did not give rise to a change in the value of the relevant property for rating purposes.

Ms. Healy-Rae also provided a respondent's list of authorities which are attached herewith as Appendix VIII.

Findings

The Valuation Tribunal thanks the parties for their efforts, their written submissions, arguments and contributions at both hearings.

The Tribunal finds that:-

1. The parties were unable to concur with any certainty as to the specific layout of the ground floor of the subject premises including the passageway, stairwells and lift shaft locations and dimensions prior to works carried out on foot of the approval granted by Dublin Corporation in May 1989.
2. The respondent was unable to provide any additional mapping details to clarify the layout of the premises prior to the completion of the aforementioned works, other than a hand sketch plan contained in a VO manuscript record, copied in Appendix 5 of the respondent's précis of evidence.
3. The lengthy debate between the parties with respect to the trading floor area of the premises, pre and post the valuation of 1988, demonstrated that the respondent was

not in a position to provide underlying or supporting details of the calculations of same made at 1988, other than to refer the Tribunal to the manuscript notes contained on record page 104 in appendix 5 of the respondent's précis.

4. The VO sketch plan on page 104 as noted above was not adequately labelled and accordingly may have resulted in confusion, if not possible error, with the inclusion of at least one area treated as an entrance to the bar, when it was acknowledged at the hearings that the said stairwell to the front of the former passway, exclusively serves the upper floor warehouse areas and basement below, and not the subject relevant property.
5. The respondent failed to establish that the definition of a MCC as provided in paragraph (f) of Section 3 of the 2001 Act, does not contemplate amalgamation of parts of two or more properties as it did not provide evidence, legal submissions or authorities to support the proposition.
6. The respondent argued that the change in the floor area resulting from the structural alterations or works was *de minimis* but did not provide an explanation as to what might be reasonably considered as a measure of same and declined to offer appropriate limits or parameters to govern or guide such an opinion.
7. The respondent did not adequately support its arguments that the area formerly demised as the passageway on the ground floor at the Revision in 1988, would not warrant a change in value of the subject relevant property when the said area was incorporated into the subject relevant property, following execution of the structural works.
8. Though the respondent acknowledged that the VO had attributed a value for rating purposes to the circa 16 sq. metres subject passageway at 1988 Revision as part of the warehouse, the respondent's witness failed to provide cogent reasons why the value would not have changed when the same area was ultimately integrated into and formed part of the linked ground floor licensed premises comprising of a joined up bar and lounge.
9. The integration of that passageway which created a revised floor plan layout and facilitated the utilisation of a single bar counter rather than two separate counters, as had been the case in the past, resulted in a change in value of the subject relevant property.

10. The removal of the lift shaft and stairwell, together with the incorporation of the passageway, as noted in 9 above, and the change of use of the resulting floor areas, all taken together, represent a change in value to the subject relevant property.

11. The change in the floor area in this circumstance for the reasons cited above is not considered *de minimis*.

Determination

Having regard to all of the foregoing, the Tribunal determines that a material change of circumstances, pursuant to the definition provided in Section 3 of the Valuation Act, 2001, has occurred in relation to the subject property.

And the Tribunal so determines.