

Appeal No. VA11/4/004

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

Janet Doyle

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2150174, Lot No. 2 (Sauls Court), Cows Lane, Royal Exchange A, Royal Exchange A Temple Bar, County Borough of Dublin.

B E F O R E

Maurice Ahern - Valuer, IPAV

Deputy Chairperson

Frank O'Donnell - FRICS, B Agr Sc, MIREF

Member

Patricia O'Connor - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF MAY, 2012

By Notice of Appeal dated the 10th day of October, 2011 the appellant appealed against the determination of the Commissioner of Valuation that no material change of circumstances had occurred in relation to the subject property.

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

The appeal proceeded by way of an oral hearing which took place at the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 14th day of February 2012. At the hearing the appellant appeared on her own behalf. The respondent was represented by Mr. Liam B. Murphy BSc Property Valuation and Management, a Valuer in the Valuation Office. Mr. Murphy was the Revision Officer appointed under Section 28 of the Valuation Act 2001. Mr. Murphy did not give evidence at the hearing. Both parties had previously furnished their written submissions which had been exchanged between them and submitted to the Tribunal.

The Property/Location

The subject property is a retail unit in a mid terrace four storey building which is located at Unit 2, Sauls Court, Cows Lane, Temple Bar, Dublin 8. Cows Lane is situated between Essex Street West and Lord Edward Street. The Cows Lane area was redeveloped and completed in 2000. The area of the unit has been agreed at 49 sq. metres.

Tenure

The property is held on foot of a 25 year lease from the 1st day of October 2004 at an annual rent of €18,000 subject to 5 yearly rent reviews. Rent has been reduced to €15,000 per annum for one year commencing February 2010.

Floor Area

The floor area has been agreed at 49 sq. metres.

Valuation History

The rating authority is Dublin City Council. The appellant requested a revision of the valuation pursuant to Section 28 (4) in the Valuation Act 2001. Mr. Murphy was appointed as a Revision Officer and following an inspection of the subject property a Notice of Decision of No Material Change of Circumstances was issued by the respondent on the 7th February 2011. A first appeal was lodged by the appellant on the 15th March 2011 against the decision of no material change of circumstances. This appeal was disallowed on the grounds that no material change of circumstances had taken place and a Notice to Disallow issued on the 15th September 2011. It is against this decision that the appeal to the Tribunal lies.

The grounds of Appeal set out in the Notice of Appeal are as follows

1. Valuation is excessive based on two Tribunal appeals already taken.

The Appellant's Case

Ms. Doyle, having taken the oath, adopted her written précis which had previously been received by the Tribunal as being her evidence in chief.

In response to questioning from the Tribunal as to whether there had been a material change to the property, the appellant admitted that there had not been any such change. The appellant went on to say that she was appealing the respondent's decision on the basis that the valuation was excessive, inequitable and poor location. She stated that it had been her understanding that, following the determination of valuation appeals **VA02/4/010 - John Weldon** and **VA02/4/011 - Gerrard P. Crosbie** whereby the rateable valuation of those properties situated in the Cows Lane area were reduced by 50%, a 50% discount would apply to all premises on the street and therefore also to her property when she became liable for rates. Referring to the cited appeals, the appellant pointed out that the Valuation Tribunal had found in those appeals that the Cows Lane development was unique and entitled to a special status. The appellant added that very little had changed on Cows Lane since the appeals already cited were heard before the Valuation Tribunal and that a number of businesses had failed, resulting in closures. The appellant stated that it was inequitable that all shops in Cows Lane were not treated equally, given that one side of the street was designated as having rates remission while the other side was not.

The appellant also cited Section 42(1) of the Valuation Act 2001 pointing out that where a public body becomes aware of any information which leads it to believe that a valuation list should be amended, there is a duty on that body to provide that information to the Commissioner. The appellant was of the opinion pursuant to Section 42(1) that it was incumbent upon her Landlord, Temple Bar Properties, or Dublin City Council to advise the Commissioner of the reduction in rates which had been allowed by the Valuation Tribunal in respect of properties the subject of valuation appeals VA02/4/10 and VA02/4/11 so that the Commissioner could exercise his powers under Section 40 of the Valuation Tribunal Act 2001 in respect of amending the valuation lists in relation to similarly circumstanced properties, including her own.

Oral Determination Handed Down on 14th February, 2012

At this point the Tribunal rose to consider the matter and following discussion it was felt that the appellant's evidence formed the basis of legal argument which had not been submitted in her précis. Furthermore, the Tribunal felt that consideration of this aspect of the appellant's argument was outside the Tribunal's powers to consider vis-a-vis the appeal of the Notice to Disallow Material Change of Circumstances and it would be *ultra vires* the Tribunal's powers under the Valuation Act 2001 for the Tribunal to consider any aspect of the appeal, other than whether a material change of circumstances as defined by Section 3 of the Valuation Act had occurred.

The Tribunal resumed the hearing and explained the position to the appellant. The Tribunal further advised the appellant that as she had already confirmed that no material change of circumstances had occurred, the Tribunal had no alternative but to dismiss the appellant's appeal.

The Law

1. Section 3 of the Valuation Act 2001 defines a "*material change of circumstances*" as

—

- a) *the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*
- 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, or*
- c) *the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or*
- d) *the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or*
- e) *property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*

- f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property;*
2. Section 28(4) states that *“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) provides that *“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) provides that *“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. Section 40(1) of the Valuation Act 2001 provides that *“If the Commissioner amends under section 38 a valuation list in relation to a particular property, he or she may also amend, in a manner consonant with the relevant decision, that or any other valuation list in relation to each other property appearing on that list that he or she considers is similarly circumstanced to the said property.”*
6. Section 42(1) provides that *“If, in the course of performing any of its functions, any information comes to the notice of a public body which leads it to suppose that a valuation list requires to be amended under this Act in relation to a particular property, it shall be the duty of that body, as soon as may be after that information comes to its notice, to supply that information to the Commissioner.”*

Findings

1. The Tribunal has considered the précis submitted by both the appellant and the respondent and in particular has taken note of the precedent decisions of the Valuation Tribunal cited therein, most notably **VA02/4/010 - John Weldon**, **VA02/4/011 - Gerrard P Crosbie** and **VA07/03/016 - Michael Butler**.

2. The definition of material change of circumstances, as set out in Section 3 of the Valuation Act, 2001, is 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 appointed pursuant to Section 28 (2) has no alternative but to issue a Notice of Decision to that effect and make no change to the rateable valuation of the property concerned as it appears on the valuation list.
3. The Tribunal notes the comments of the appellant in respect of valuation appeals **VA02/4/010 - John Weldon, VA02/4/011 Gerrard P. Crosbie**, Section 40(1) and Section 42 of the Valuation Act 2001. However, the Tribunal can only deal with matters arising out of the Appeal against the Notice to Disallow the Appeal based on material change of circumstances. While the Tribunal has sympathy for the appellant's position, the Tribunal cannot consider any matter or take any actions pursuant to an appeal which would be clearly *ultra vires* the powers ascribed to it pursuant to the Valuation Act, 2001.

Determination

Having regard to the foregoing, the Tribunal finds that the respondent 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 on the valuation list is affirmed.

And the Tribunal so determines.