Appeal No. VA12/1/014

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Quilpic Ltd **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 843624, Hotel at Lot No. 7bc, Shelbourne Road, Pembroke West B, Pembroke West, County Borough of Dublin.

B E F O R E

John O'Donnell - Senior Counsel **Deputy Chairperson**

Patrick Riney - FSCSI, FRICS, ACI Arb **Member**

James Browne - BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF JULY, 2012

By Notice of Appeal received on the 21st day of February, 2012, the appellant appealed against the determination of the Commissioner of Valuation that no material change of circumstances occurred in relation to the subject property.

The grounds of appeal as set out in the Notice of Appeal and attached schedule are attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 5th day of June, 2012. At the hearing, the appellant was represented by Mr. Aidan Reynolds MSCSI MRICS of Savills and Mr. Owen Hickey SC instructed by Matheson Ormsby Prentice Solicitors. The respondent was represented by Mr. Alan Sweeney, BSc Property Valuation & Management, a Valuer in the Valuation Office and Mr. Karl Dowling BL, counsel instructed by the Chief State Solicitor's Office.

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. From the evidence presented, the following emerged as being the facts relevant and material to this appeal.

Valuation History

The appeal by the appellant relates to the appellant's property known as The D4 Berkeley Court Hotel with an address at Shelbourne Road, Ballsbridge, Dublin 4. The premises is a well-known Dublin hotel. The current rateable valuation of the subject property is €7,339.09 (£5,780). The assessment carried out in 1999 was the subject of a first appeal to the Commissioner of Valuation; on appeal the valuation of €7339.09 was agreed with GVA Donal O Buachalla, agents for the appellant.

The subject property had a jewellery shop on-site (property number 2111123), a gents hair salon (property number 2111124) and a ladies hair salon (property number 2164270). In the 1999 valuation, the valuation did not reduce the overall area of the hotel property by the areas of the jewellery shop and the gents hair salon, even though those two properties had already been valued separately to the hotel as, in effect, stand-alone properties; it is contended, however, that the ladies hair salon, although valued separately, was then deducted from the overall area of the subject hotel property.

The failure to allow for the areas of the jewellery shop and gents hair salon came to light in June of 2010 following an application for revision of valuation having been lodged by the appellant. However, the Revision Officer (Mr. Frank Twomey) appointed to consider this

application was of the view that, while there was a material change of circumstances in accordance with the definition of Section 3(1)(f) of the Valuation Act, 2001, the exercise of his powers to carry out an actual revision under Section 28(4) of the Act would not be "*warranted*". Mr. Twomey took the view that the addition of the area of the two rooms in question would be marginal and would have no effect on the overall NAV/RV.

This decision was appealed and an Appeal Officer was appointed; however, by decision dated the 24th January 2012, the Appeal Officer, Mr. Paschal Conboy rejected the appeal. Mr. Conboy concurred with the approach adopted by the Revision Officer and expressed the view that any adjustment made to the existing valuation of the hotel in consequence of the properties being subsumed into the hotel would be "*de minimis*".

In essence, what has occurred is that the three on-site properties formerly occupied by the jewellery shop, the gents salon and the ladies salon have been subsumed into the hotel property and are now valued as part of the hotel property. A material change of circumstances is admitted by the respondent to have occurred within the meaning of Sections 3 and 28(4) of the Act. However what must now be decided, as a preliminary issue, is whether in the circumstances the exercise by the Revision Officer of his powers under Section 28(4) was "*warranted*", the appellant having appealed to this Tribunal the Appeal Officer's decision that the exercise of the powers under the section was not so warranted.

Preliminary Matters

While the Division was not being asked to determine the issue relating to quantum at this stage, the appellant made it clear that if successful on the preliminary issue, it would wish to argue that the quantum of the rateable valuation of the hotel was excessive on any subsequent occasion. The respondent did not accept the quantum in question was excessive, but agreed the appellant would at least be entitled to present such an argument on some future date if the appellant was successful on the preliminary issue.

The parties also agreed that while it may be necessary if the Valuation Tribunal so directed for Mr. Conboy to give evidence as to his state of mind at the time of the appeal, at present this matter did not arise.

The Appellant's Evidence

On behalf of the appellant, Mr. Aidan Reynolds, Valuer, attached to Savills, 32 Molesworth Street, Dublin 2 gave evidence. He adopted his précis of evidence subject to certain typographical errors and also to certain amendments to floor areas; in this regard, he provided us with extracts to replace the existing précis. Unsurprisingly, given that he has been in practice only since 2001, Mr. Reynolds was not involved in the 1999 valuation.

However, it is clear that plans were recently drawn up and measurements taken of the subject hotel property premises for the purposes of having the premises licensed. It appears the floor area arrived at in the course of those most recent measurements differ from the floor area arrived at in 1999, although Mr. Reynolds had been informed that no changes had taken place to the property of the hotel since 1999 apart from the three units we will refer to as the "*shop properties*" having since been subsumed into the hotel. The 1999 floor area measured 14,971 sq. metres; there are also 118 surface car park spaces and 38 basement car park spaces. However, the measurements undertaken in 2012 for the purposes of the licence application suggest that the area was 14,014.88 sq. metres (which floor area included the three now subsumed properties) together with 90 surface car park spaces and 27 basement spaces.

Mr. Reynolds pointed out that this constituted a difference between 1999 and 2012 of 956 sq. metres. He indicated that while the floor areas had not been agreed, they were not formally in dispute at this stage. As he understood it, the first issue to be decided was the preliminary legal issue, the subject matter of this hearing, although he expressed the view that the difference between the previous and current measurement is undoubtedly "material" to any valuation.

Mr. Reynolds gave evidence of what he understood was the history of the manner in which three shop properties had been dealt with in relation to the hotel property. Mr. Reynolds indicated that he had not been present at the 2010 application for revision but understood that the three shop properties had been struck off the valuation list because they were no longer being valued as separate properties. He understood the ladies hair salon property had been added back to the floor area of the hotel, but the gents salon and the jewellery shop had not been added back apparently because they had never been deducted from the hotel in the first place. Thus, the position existed (as he understood it) in 1999 whereby the jewellery shop and

the gents hair salon had been added at revision stage to the hotel property but had not been deducted and remained. In 1999, it appears the ladies hair salon was added to the hotel – at appeal stage - but was later deducted.

The area of the jewellery shop was 35.2 sq. metres. The area of the gents hair salon was 22.8 sq. metres. Thus, a combined area of 58 sq. metres had been included within the floor area of the hotel, and the hotel had been paying rates in respect of this floor area, notwithstanding that the jewellery shop and the gents hair salon were themselves also separately paying rates. Mr. Reynolds contended that if in 2010 the correct deduction had been made, the RV of the combined properties of €107.92 would have been lost to the local rating authority though they would have been yielding back to the rating authority (since the shops in question were now used within the hotel as meeting rooms) an RV of €42.36; i.e. a difference in RV of €65.00. In cash terms, this meant the difference between €6,603 and €2,500 i.e. a difference of €4,103, which was now "*lost*" to the local rates authority.

In cross-examination he indicated he wasn't sure exactly at what point the separate valuation in respect of the jewellery shop was struck out. He was asked to accept that the area of the hair salon of 24.5 sq. metres represented .13% of the total property area of the hotel; Mr. Reynolds indicated he could not comment, though he was prepared to assume this percentage figure was correct. He was unable to confirm when the jewellery shop was struck off the list and was also unable to confirm exactly how the ladies hair salon had been dealt with in 2010.

The Respondent's Evidence

On behalf of the respondent, Mr. Alan Sweeney, Valuer, Valuation Office gave evidence. He adopted his précis. He indicated that Mr. Frank Twomey, the Revision Officer had retired.

In his view, it appeared the Revision Officer felt that it was not necessary to exercise his power to carry out a revision even though there was a material change of circumstances; it appeared also that the add-back in question was of no consequence having regard to the overall area of the hotel.

Mr. Sweeney referred to Appendix I of his report and contended that at the time of the revision in 2010, only the ladies hair salon needed to be added back. He contended an area of 24.5 sq. metres in an overall area of the hotel of 14,971 sq. metres. Like Mr. Reynolds, he

indicated that he was not present at the valuation in 1999 and could not comment on what had occurred on that occasion. He did, however, point out that the valuation of the property in 1999 had been agreed by both parties, and referred to a letter at Appendix B from GVA O Buachalla agreeing the rateable valuation of the 7th December 2001. In Mr. Sweeney's view, the decision of the Revision Officer and on appeal, the Appeal Officer, not to exercise the powers under the Act to carry out a revision was correct in all the circumstances.

In cross-examination, he indicated he wasn't sure whether it was a decision of the Revision Officer or that of the Appeal Officer which was being appealed. He referred to both decisions, which were set out in Appendix 4 of Mr. Reynold's précis.

Mr. Sweeney accepted the three shop properties had subsequently been struck out of the valuation list, being no longer separately rated properties, but expressed the view this did not mean the relevant Revision Officer had already embarked on a revision of the subject hotel property, since he was entitled to treat the hotel property separately to the three shop properties. In his view, even though the three shop properties had been struck out, the areas in question had not actually disappeared.

Mr. Sweeney confirmed there was no definition of what the word "*warranted*" in Section 28(4) meant; nor were there any guidelines or other informal statements in the Valuation Office which would indicate that this term should be interpreted. He suggested the criteria which would be applied by a Revision Officer before deciding whether or not the exercise of his powers were warranted under Section 28(4) would vary from property to property and indeed from valuer to valuer. Likewise he expressed the view that the phrase "*de minimis*" was difficult to quantify and likewise varied from case to case, although he acknowledged he had not personally decided any case based on the "*de minimis*" principle. In his view, however, the initial area at the time of the revision of 24.5 sq. metres would be a very small increase in the rateable valuation having regard to the overall size of the hotel.

It was put to Mr. Sweeney that the translation of the full Latin maxim from which the phrase "*de minimis*" was drawn means "*the law does not concern itself with trifles*"; he was asked whether a loss to the rate payer of in excess of €4,000 was a "trifle". He responded that the rates bill for the hotel was almost €450,000, though he accepted that the sum of €6,600 is not and would not be regarded as a trifle, particularly in these times. He contended that at the

time of the revision the only property in issue was the ladies hair salon though he accepted that the jewellery shop had subsequently been struck out as a separate valuation, having been listed for revision by the Commissioner. Certainly it was clear from the Appeal Officer's ruling that no adjustment had been made to the existing floor area to take account of the jewellery shop or the gents hair salon.

There was some discussion as to whether or not the fact that the hotel had been regraded allowed the hotel to be the subject of a revision. Mr. Sweeney suggested that a previous application for revision based on a refurbishment had been turned down in another hotel, and on that basis, he did not believe that regrading would automatically constitute grounds for revision. In his view, the Revision Officer and Appeal Officer were entitled to conclude that no changes had occurred which justified the exercise of their powers under the Act to carry out a revision.

While there was initially some suggestion that the three separate shop properties had been amalgamated, Mr. Sweeney confirmed that three separate valuations for the three shops had been struck out.

Both parties then made brief oral submissions to supplement the written submissions previously (and helpfully) made by them, for which the Tribunal is grateful.

The Law

1. It may be helpful to set out the relevant sections of the Valuation Act, 2001.

Section 3(1) of the Act provides that:
"material change of circumstances" means a change of circumstances which consists of–

(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;

Section 28 of the Act (which deals with the revision of valuation lists) provides:

28.—(1) In this section "property concerned" means a property in relation to which a person, by virtue of his or her appointment under this section, is entitled to exercise the powers conferred by this section.

(2) The Commissioner may of his or her own volition appoint an officer of the Commissioner to exercise, in relation to such one or more properties as the Commissioner considers appropriate, the powers expressed by this section to be exercisable by a revision officer, and such an officer who is so appointed is referred to in this Act as a "revision officer".

(3) If an application under section 27 is made to the Commissioner, the Commissioner shall appoint an officer of the Commissioner to exercise, in relation to the property or properties to which the application relates, the powers expressed by this section to be exercisable by a revision officer, and such an officer who is so appointed is also referred to in this Act as a "revision officer".

(4) 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.

(5) 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.

(6) If a revision officer exercises, in relation to the property concerned, any of the powers under subparagraph (i) or (iii) of paragraph (a), or paragraph (b) of subsection (4), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a new valuation certificate or, as the case may be, a valuation certificate in relation to the property.

(7) If a revision officer exercises, in relation to the property concerned, the powers under subsection (4)(a)(ii), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a notice indicating the manner in which those powers have been exercised in relation to that property.

(8) A certificate under subsection (6) or a notice under subsection (7) shall be issued no later than 7 days before the relevant amendment to the valuation list under subsection (10) is made.

(9) 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.

(10) The revision officer concerned shall amend the relevant valuation list in the appropriate manner to take account of the exercise by him or her of the powers under subsection (4) in relation to a property.

(11) Without prejudice to the preceding provisions of this section, the Commissioner may, at any time, amend a valuation list so as to—

(a) correct any clerical error therein, or

(b) amend any other detail appearing on the list that in the opinion of the Commissioner is inaccurate (other than the valuation of any property).

(12) The Commissioner may also, at any time, amend a valuation list so as to take account of any alteration in a boundary that is made under or by virtue of any enactment.

(13) If the Commissioner exercises any of the powers under subsection (11) or (12) he or she shall, as soon as may be after the occasion concerned of their being exercised, issue to each occupier of a property that is affected by such exercise and to the rating authority in whose area that property is situate a new valuation certificate in relation to that property.

(14) An amendment of a valuation list made under subsection (10), (11) or (12) shall have full force, from the date of its making, for the purposes of the rating authority concerned making a rate in relation to the property concerned by reference to that list as so amended.

(15) Where—

(a) an amount of monies is paid on account of a rate made in respect of a property, and

(b) it appears, consequent on an amendment of the value of the property made pursuant to an exercise of the powers under this section, that that payment involved an overpayment or an underpayment of the amount due in respect of such a rate,

then the balance owing or owed, as the case may be, to or by the person concerned may be paid or recovered, as appropriate—

(i) in the case of an overpayment, by making a refund to the person concerned of an amount equal to that balance or allowing an amount equal to that balance as a credit against the amount owed by the person concerned on account of a rate made in respect of that or any other property, and

(ii) in the case of an underpayment, by recovering from the person concerned an amount equal to that balance as arrears of the rate concerned (and, accordingly, any of the means provided under any enactment for the recovery of a rate may be employed for that purpose).

The judgment of the High Court in **Commissioner of Valuation –v– Birchfox Taverns Ltd** [2008] IEHC 110 (23 April 2008, McMahon J) is laudably clear. The judgment states (at page 89):

> *"The powers referred to in Section 28(1) are the powers to end the valuation of that property, exclude the property from the list, amend any material particular in relation to the property, and if the property is not on the valuation list, to value it and include it on the list (Section 28(4)(a) and (b)).*

Section 28(4) provides as follows:

> *"A Revision Officer, if he or she considers that a material change of circumstances which has occurred since [the last relevant valuation] warrants the doing of such, may in respect of that property ...."*

This is the introductory paragraph which clearly sets of the conditions which must be met before the Revision Officer is entitled to exercise the powers in question. A reading of this paragraph makes it clear that to exercise any of the powers referred to in Section 28(4)(a) and (b) the Revision Officer must first consider:

(i) That a material change of circumstances has occurred (since the last relevant valuation, if any), and

(ii) Such a material change warrants the exercise of these powers.

These are pre-conditions (not powers in themselves as the appellant argued) which must be met before the Revision Officer is entitled to exercise the powers."

In the instant case, there is no issue as to whether or not a material change of circumstances has occurred, since the Commissioner of Valuation quite properly accepts that such a material change of circumstances has occurred under sub-section (f) of Section 3(1). In **Birchfox Taverns Ltd** McMahon J concluded that there had been no material change of circumstances

within the meaning of Section 28 so the powers set out in Section 28(4) could not be exercised by the Revision Officer.

While not forming part of the *ratio decidendi* of the judgment, McMahon J appears implicitly to approve the suggestion that in deciding whether or not the exercise of his powers were warranted under the Act, the Revision Officer should consider whether a revision would materially affect the ratepayer's position. This is not suggested as being the only, or indeed even the most important, consideration which a Revision Officer must give thought to when deciding whether or not the exercise of his powers are warranted. However, McMahon J notes that the previously liberal regime whereby revisions were easily available has been curtailed by the Valuation Act, 2001 which enacted the intentional policy of the Oireachtas to reverse the easy availability of such revisions.

We are referred to other determinations of the Valuation Tribunal which while not necessarily binding, are of assistance to some degree. In **VA11/2/002 - Declan Taite**, the part-letting of the ground floor area of a hotel to bookmakers (of an area of 51 sq metres, representing 0.6% of the total floor area of the hotel) was suggested by the Commissioner of Valuation to be "*essentially de minimis"* in rating terms compared to the valuation of the hotel (the floor area of which was agreed at 8,688 sq metres). In the course of its determination the Tribunal expressed the view that *"*[*t*]*he reduction of the floor area in percentage terms may be considered de minimis in rating parlance, but from a tax liability perspective, it should not be ignored."* The Tribunal proceeded to reduce by a factor equivalent to 0.6% the valuation of the hotel in question.

In **VA11/2/044 – MMEM Public Houses Ltd.**, the addition of some 28 sq. metres (representing some 4.5% of the previous total area of the rateable premises) was in the particular circumstances regarded as being a material change of circumstances which warranted the exercising by the Revision Officer of his powers to revise the valuation of the premises pursuant to Section 28(4) of the Act. It should be said, however, there was agreement between both parties in that case that if a material change of circumstances was held to exist the value of the property should be revised. The said Determination also made it clear it was not to be read as a "*charter"* for occupiers of licensed premises to make minor internal or external alterations and then claim that there had been a material change of

circumstances. The determination also made it clear that not every material change in circumstances would necessarily warrant the exercise by the Revision Officer of his powers under Section 28(4), but because of the unusual features of that case a material change of circumstances warranting the exercise by the Revision Officer of his powers had been established to the satisfaction of the Tribunal.

In the course of the determination in **MMEM Public Houses Ltd.**, the Tribunal noted:

> "*31. We are mindful of the conclusions of McMahon J in Birchfox, in which he indicated that a mere material change in circumstances was insufficient; the Revision Officer had also to form the conclusion that the change in question "warranted" the exercise by him/her of the power to revise the valuation in question. McMahon J did not address the issue of when the exercise of that power would or would not be warranted where the material change in circumstances came within the rubric of Section 3(a) or Section 3(b) of the definition as set out above.*
>
> *32. It seems to us, however, that where there is a material change in circumstances which changes the value of the property in any way other than 'de minimis', it would be perverse for a Revision Officer to refuse to exercise his power to revise the valuation. In our view, if an MCC occurs which changes the value of the property in anything more than a minor or inconsequential manner, the legislature cannot have intended the Revision Officer to have had an effective veto in respect of any possible revision. It therefore seems to us that where there is a material change in circumstances which alters the value of the property to any appreciable degree, this will almost always warrant the exercise by the Revision Officer of his/her power of revision. We note that in the instant case, both parties are agreed that if there is a material change in circumstances found to exist, the value of the property should be revised, and therefore to some extent our observations on this point may be regarded as* obiter *but in deference to the views expressed by McMahon J in Birchfox we felt it appropriate nonetheless to deal with this issue."*

In the instant case it is clear that three previously separately valued properties had now been subsumed into the hotel to be used as meeting rooms. The combined area of the three units is not insubstantial at 107 sq. metres. To put it another way, a unit of this size on the high street would not be ignored by the rating authority or regarded as being "*de minimis"* for the purposes of rateability. We note also the comment made in **Declan Taite**, that a reduction of the floor area in percentage terms may be considered *de minimis* in rating parlance, but should not be ignored from a tax liability perspective. While analysing the subsumed floor area as a percentage of the overall floor area as a factor to which the Revision Officer (and on appeal the Appeal Officer) is entitled to have regard, it is by no means the only or the determining factor to be considered in deciding whether or not the change in question is "*de minimis"*. For example, in a case such as the instant one, the conversion back from commercial retail outlets (jewellery store/hair salons) to meeting rooms may have an effect on the footfall through the hotel property and the overall revenue into the property in question. Obviously no evidence was given before the Tribunal on this issue but it seems to us a matter that might at least have been considered.

We note also the calculation which suggests that the subsuming back of the relevant properties into the hotel property and their new user as meeting rooms leads to a reduction in income to the rating authority - being the local authority - and thus might be said to materially affect the rating authority. In **Birchfox Taverns Ltd**, McMahon J did not expressly indicate whether a material change of circumstances had to be material only to the ratepayer, rather than material to the relevant local authority; indeed it is clear the Act makes no distinction and expresses no view in this regard. Again it seems to us that these are matters which it would be appropriate for the Revision Officer and the Appeal Officer to consider.

Instead, however, the Revision Officer and, on appeal, the Appeal Officer, appear to have concluded that the addition of the other two rating units would only have had a marginal effect on the area of the hotel, and no effect on the overall NAV/RV. As a matter of fact, it is incorrect to state the addition of the rooms in question would have no effect on the overall NAV/RV. However, the Revision Officer appears to have focused exclusively on the effect on the overall area of the hotel of the subsuming of the two (later three) rooms back into the hotel property.

It seems to us this approach takes an unduly narrow focus, though we have no doubt it was an exercise carried out in the utmost good faith by the Revision Officer and in turn by the Appeal Officer. We are of the view that if appropriate consideration had been given to the various matters set out above by the Revision Officer and the Appeal Officer, they would have concluded the exercise of their powers to carry out a revision under Section 28(4) as warranted in all the circumstances.

It therefore seems to us appropriate that the matter be sent back to allow the exercise by the respondent of its powers under Section 28(4)(a) of the Act. We note in this regard the admission of the respondent that if the Tribunal decides a material change of circumstances has occurred which warrants the exercise of the Revision Officer's powers under Section 28(4) the case should be referred back to the Commissioner of Valuation in order to allow the revision sought to be carried out.

In coming to this conclusion we reiterate the warning given in the **MMEM Public Houses Ltd.** determination that Section 28(4) cannot and should not be read as a "*charter"* to occupiers of property to seek revisions of valuation simply by making minor amendments to the property in question. We note also the argument made by Mr. Dowling that the policy of the Oireachtas in the 2001 Act was to make revisions more difficult to obtain. We agree that there cannot be a law that every alteration, no matter how small, is held to constitute a material change of circumstances which therefore warrants the exercise of the powers of Section 28(4) being exercised.

However, in the instant case, having regard to the unusual background to the case and the various matters set out above, we are of the view that the material change of circumstances here warranted the exercise by the respondent of the powers provided under Section 28(4).

Determination

The Tribunal determines that the material change of circumstances in the instant case (the existence of which is accepted by the respondent) warranted the exercise by the respondent of the powers of revision set out under Section 28(4) of the Valuation Act, 2001.

And the Tribunal so determines.