

Appeal No. VA14/3/003

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

O' Halloran's Bar Cobh Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2190201, Licensed Shop at Lot No. 12A, Casement Square, Ballyvoloon, Cobh Urban, Cobh UD, County Borough of Cork.

B E F O R E

Rory Lavelle – FRICS, FSCSI, ACI Arb

Deputy Chairperson

Patricia O'Connor – Solicitor

Member

Rory Hanniffy – BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF JANUARY, 2015

By Notice of Appeal received on the 29th day of July 2014 the Appellant appealed against the decision of the Commissioner of Valuation that no material change of circumstances had occurred in respect of the property the subject of the appeal.

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

"The revision officer has amalgamated two properties previously valued separately thereby acknowledging an MCC (under s.3(f) of MCC def.). It was thus inappropriate to issue MCC notice under s.28(9) as a proposed valuation cert. should have been issued under s.28(6).

"Incorrect occupier shown on cert. should be O'Halloran's (sic) Bar Cobh Ltd.

"The Appellants seek a direction to have the notice set aside and the revision sought carried out by way of a proposed valuation cert."

The appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 8th October 2014. Mr Eamonn Halpin of Eamonn Halpin & Co Limited, Chartered Valuation Surveyors & Estate Agents, appeared on behalf of the Appellant and Mr Anthony McBride BL, instructed by the Chief State Solicitor, together with Ms Deirdre McGennis BSc (Hons) Real Estate Management and MSc (Hons) Local & Regional Development, valuer at the Valuation Office, appeared for the Respondent.

The Issues

The singular issue for determination by the Tribunal is whether the Respondent erred in determining that no material change of circumstances had occurred in relation to the subject property, thereby disallowing the appeal. The Tribunal is not concerned with the issue of valuation.

The Property

The property, which is located at Casement Square, Cobh in the County of Cork, consists of the ground floor, basement/cellar and first floor return of a four-storey over basement mid-terraced property. The property is a licensed premises trading as 'Ryans' with a ground floor bar and lounge, ground floor men's toilets, first floor ladies toilets, first-floor office and store and basement cellar. The upper floors of the property are in domestic use.

Valuation History

2007 Property number 865017 was listed for revision at the request of the Appellant who indicated that the property had been totally refurbished with, among other things, new ladies toilets on the first floor return.

Property number 865017 was subdivided to take account of the domestic and commercial split in the property. Property number 2190201 (hereinafter referred to as the "relevant property" was created for the commercial element with Property number 865017 remaining as the domestic property.

Following inspection, the relevant property was valued at RV €90.

2010 The relevant property was listed for revision at the request of the Appellant on the basis of the downturn in value and in light of comparisons with adjoining public houses of a

similar size with a much less rateable valuation. A 'No Material Change of Circumstances Notice' issued on the 6th day of December 2010.

The decision was appealed by the Appellant and the outcome was that a 'Notice of Decision to Disallow the Appeal' was issued on the 13th day of July 2011.

A Notice of Appeal to the Valuation Tribunal (VA11/3/027) was lodged on behalf of the Appellant, which was subsequently withdrawn by the Appellant on the 2nd day of December 2011.

2012 24th August - the relevant property and Property number 865017 were listed for revision by the Appellant on the basis that part of Property number 865017 required to be amalgamated into the relevant property.

2013 29th January - Following inspection by Ms McGennis a 'No Material Change of Circumstances Notice' issued.

In completing the Standard Valuation Report Ms McGennis amended the Schedule of Areas of Property number 2190201 to include the ladies WC and store situate on the first floor return.

7th March - the Appellant lodged an appeal with the Commissioner of Valuation.

3rd July - the appeal to the Commissioner is disallowed.

26th July - the Appellant lodged an appeal with the Tribunal.

The Evidence

In accordance with practice, prior to the commencement of the hearing, the parties exchanged their respective précis of evidence and submitted same to this Tribunal. Mr Halpin on behalf of the Appellant and Ms Deirdre McGennis on behalf of the Respondent, having taken the oath, adopted their respective précis as being and as constituting their evidence in chief.

Both Mr Halpin and Ms McGennis's evidence was supplemented by additional oral evidence obtained directly and upon cross-examination. The Tribunal also had the benefit of detailed written and oral submissions submitted by and on behalf of the Respondent.

Mr Halpin initially outlined the valuation history as contained at page 3 of his précis of evidence. He stated that the appeal hinged on the actions of the Revision Officer in taking part of Property number 865017 and including it within the relevant property. He stated that the Appellant was relying heavily upon the comments of the Revision Officer and particularly those contained at pages 2 and 3 of the 2012 Valuation Report in respect of Property number 865017 which stated, *"this property was listed for revision, portion of first-floor WC and store taken out of this valuation and added to p.n. 2190201."*

Mr Halpin argued that it was quite clear that the part of the property which was amalgamated into the subject property was previously part of Property number 865017.

Mr Halpin submitted that this alleged amalgamation fulfilled the definition of "material change of circumstances" as laid out at Section 3(f) of the Valuation Act, 2001:

"property previously valued as two or more relevant properties to be valued as a single relevant property;

Mr Halpin also submitted that the Revision Officer exercised her powers under Section 28 (4)(iii) which permits a Revision Officer to:

"amend any other material particular in relation to that property as it appears on the list".

Mr Halpin submitted that in light of the foregoing, it was erroneous for the Commissioner to issue to the Appellant a certificate of no material change, since a revision had already been carried out.

Mr Halpin referred the Tribunal to Appendix VIII of the Appellant's précis of evidence, "Consideration of Appeal Report", wherein the Revision Officer is recorded as having commented as follows:

"This property was revised in 2007 and it is my opinion that the first-floor WC and stores appear to have been in existence, when the subject property was valued in 2007. While the 2007 report does not make any reference to the first-floor WC and storage

areas, I felt it necessary to correct this omission and included a reference to the WC and store on the first floor in the schedule of areas.”

Mr Halpin submitted that there was no reference in the 2007 report to the first-floor WC and store areas precisely because those areas formed part of a different property, namely Property number 865017.

In cross-examination, Mr Halpin accepted that while he did not inspect the property in 2007, the bar premises was the same today as it was in 2007. While it was put to Mr Halpin by Mr McBride that the 2007 Revision Application Form specifically referred to the installation of the ladies WC on the first-floor, Mr Halpin responded that one had to rely upon the Revision Officer's report, which outlines the areas which were removed from the original single entity into a new commercial entity. In this regard he outlined that the Revision Officer's report did not include the ladies WC and store area in the schedule of areas. Finally, Mr Halpin rejected the proposition that the new report, which includes reference to the ladies WC and store area was a “fuller description” of the property.

Ms McGennis commenced by adopting her précis of evidence as her evidence in chief. She outlined that in late 2012 she carried out an inspection on foot of a revision request by the Appellant. She stated that it was her belief that the ladies WC and store area had always been part of the commercial end of the property.

Ms McGennis stated that she did not exercise her powers of revision as there had been no material change of circumstances. She stated that she had made reference to the ladies WC and storage area as she wished to correct what she believed to be the case since 2007 and that there was a shortcoming in the description of the property which she wished to remedy. She stated that her reference in her report to the ladies WC on the first floor return not forming part of the “trading area of the pub” was merely stating a fact. She submitted that her description of the property in her report was simply more robust than heretofore.

Under cross-examination, Ms McGennis stated that she had updated the schedule of areas so as to give the property a more robust description. She stated that she had come to the conclusion that the ladies WC and store area had been included in the commercial area of the property (the subject property) as it was already in existence in 2007 when the subject property came into

existence. She further submitted that the 2007 report would have outlined that the property did not have a ladies WC and would have applied a reduction had that been the case. Ms McGennis accepted however that the Schedule of Areas had been amended in her most recent report.

Under questioning from the Tribunal, Ms McGennis stated that the failure to include the ladies WC in the 2007 Schedule of Areas was a “clerical error”. Furthermore, she submitted that the ladies WC and storage areas had been included in both Property number 865017 and the subject property following the 2007 revision.

The Appellant’s Submissions

On behalf of the Appellant, Mr Halpin submitted that the Appellant had discharged the burden required under section 3(f) of the Valuation Act, 2001 by establishing a material change of circumstances.

He submitted that the Respondent had simply come to the wrong conclusion when considering the first stage appeal.

He submitted that the changes to the Schedule of Areas contained within the 2012 Valuation Report in respect of the subject property could not be considered *de minimis*.

Finally, he submitted that the Revision Officer who had carried out the revision in 2007 had outlined in detail the steps which he had taken and the areas which he was including in the subject property and that it would be a dangerous precedent for the Tribunal to allow the Respondent to ignore the provisions of the Valuation Act 2001.

The Respondent’s Submissions

On behalf of the Respondent, Mr McBride contended that the Tribunal can take notice that pubs have ladies toilets and stores. He highlighted that the physical actuality is that the pub in 2007 is one and same as that found today. He suggested that the Revision Officer would have had to be hard of sight to miss the ladies toilets. While accepting that the description contained within the 2007 Revision Report could have been better, Mr McBride submitted that it cannot be assumed that no account was taken of the ladies WC and storage area merely from the failure of the Revision Officer to refer to same in his report.

Mr McBride suggested that Mr Halpin was asking the Tribunal to find a material change of circumstances on the basis of a mis-description.

Addressing what he described as Mr Halpin's estoppel argument, namely, that the Respondent is stuck with the contents of the previous reports, Mr McBride argued that were such an approach to be adopted from now on, any deviation in description will result in a material change of circumstances application. Mr McBride submitted that this would be a dangerous precedent for the Tribunal to set.

In conclusion, Mr McBride stated that the burden of showing the existence of a material change in circumstances rests upon the Appellant and he submitted that the burden had not been discharged.

Findings

The Valuation Tribunal has considered the Appellant's and Respondent's précis of evidence, the oral evidence and the submissions prepared on behalf of the parties.

Mr McBride has in his written submissions helpfully referred the Tribunal to the decision of McMahon J in *Commissioner of Valuation v. Birchfox Taverns Ltd [2008] IEHC 110* in support of the Respondent's contention that the presence or absence of a material change of circumstances went, as a condition precedent, to the powers of a Revision Officer to revise the list for a particular property. He also referred the Tribunal to previous Tribunal decisions in **VA11/2/044 – MMEM Public Houses Limited, VA07/4/003 - Patrick McDermott, VA07/3/016 – Michael Butler** and **VA08/4/002 – Thomas Mullane** in support of the principle espoused by McMahon J above and the fact that the burden of proof with regard to the existence of material change of circumstances rests with the rate payer.

It appears to the Tribunal that the parties were *ad idem* in respect of the principles espoused in the aforementioned case law.

The Appellant asserts that the Respondent erred in law in issuing a certificate of no material change of circumstances in respect of the subject property. The Appellant seeks to establish the existence of a material change of circumstances pursuant to Section 3(f) of the Valuation Act, 2001 which provides:

“material change of circumstances means a change of circumstances which consists of:

...

(f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property;”

The Appellant submits that the ladies WC and storage area remained part of Property number 865017 when the subject property was created in 2007 as a separate commercial property.

The Appellant submits that this is evidenced by the absence of the said ladies WC and storage area from the Schedule of Areas contained within the Standard Valuation Report prepared by Revision Officer Peter Conroy in respect of the subject property in 2007. Mr Halpin also referred the Tribunal to (i) the contents of the 2012 Valuation Report in respect of the subject property wherein it is stated that the ladies WC was not part of the trading area of the pub, and (ii) the contents of the 2012 Valuation Report in respect of Property Number 865017 wherein it is stated *“this property was listed for revision. Portion of first-floor WC and store taken out of this valuation and added to p.n. 2190201”*.

Ms McGennis on behalf of the Respondent has contended that the ladies WC and storage space was included in the relevant property from the date of its creation in 2007. However, the Tribunal notes that Ms McGennis later stated that the ladies WC and storage space were included in both the subject property and Property number 865017 following the 2007 revision. Ms McGennis also submitted that the failure to include the ladies WC and storage area in the Schedule of Areas in the 2007 Valuation Report prepared by Revision Officer Peter Conroy was a “clerical error”.

While it is accepted by the parties that the pub premises is as it was in 2007, the Tribunal finds that the absence of the ladies WC and storage space from the Schedule of Areas included in the 2007 Valuation Report goes beyond a typographical error.

The Tribunal finds that whether erroneously or not, the ladies WC and storage space remained part of Property number 865017 when the relevant property came into existence in 2007. This finding is supported by the 2012 Valuation Report prepared in respect of Property number 865017, wherein it is stated that *“portion of first-floor WC and store taken out of this valuation and added to p.n. 2190201”*.

Mr McBride argued in his written submissions that the Appellant was attempting to rely upon the principle of estoppel so as to contend for entitlement to a revision of the subject property. Mr McBride suggested that the Appellant was seeking to rely upon estoppel on the basis of “*a mere difference in the written description of what is exactly the same property (with perhaps de minimis variations) as between the Valuation Reports in 2007 and 2012*”.

The Tribunal is of the view that the omission of the ladies WC and storage space from the 2007 Valuation Report was more than “a mere difference in the written description”, particularly in circumstances where an area measuring 13.32 sq. metres, which represents 16% of the pub premises (were it to be included) was omitted from the Schedule of Areas. Such an omission from the “Location/Property/observations“ section of the report is one matter, however an omission from the more specific Schedule of Areas section is more significant. Furthermore, the Tribunal notes that aside from omitting the ladies WC and storage area from the 2007 Valuation Report, the said areas actually remained part of Property number 865017.

The Tribunal finds that the relevant property includes a portion, namely the ladies WC and storage area, which previously formed part of Property number 865017. As such, the Tribunal finds that a material change of circumstances pursuant to Section 3(f) of the Valuation Act, 2001 has occurred.

Accordingly, the Tribunal upholds the appeal and duly determines that a material change of circumstances has occurred in relation to the subject property. In the circumstances, the Tribunal remits the matter of the revision of valuation of the subject property, pursuant to the Appellant's revision application, to the Respondent.