

Appeal No. VA11/2/012

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

Cinetex Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 748500, Licensed Shop, Apartment at Lot No. 1-2, Chancery Place, 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

James Browne - BL

Member

Niall O'Hanlon - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF NOVEMBER, 2011

By Notice of Appeal dated the 4th day of May, 2011, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €317.43 on the above described relevant property.

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

"The portion of the premises referred to as 'kitchen' and 'bedroom' is offices. The premises should be revalued."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 23rd day of June, 2011. At the hearing Mr. Colm Sexton represented himself. Ms. Rosemary Healy-Rae BL, instructed by the Chief State Solicitor appeared on behalf of the respondent and Ms. Jacqui McKinnell BSc, MSCSI, MRICS, a District Valuer in the Valuation Office was also present. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

Issue

Whether or not a '*material change of circumstances*' had occurred on the subject property concerning two rooms, namely a living room and bedroom, situated on the second floor of the subject property.

The Property

The property was described as a licensed shop and apartment located in Dublin City Centre on Chancery Place, close to Ormond Quay Upper and directly across from the Four Courts.

It is a four-storey period building, raised over basement, ground and two upper floors. There are public entrances on both Chancery Place and Charles Street West. Approximate gross frontages were provided as follows:

Chancery Place 10.3 sq. metres

Charles Street West 5.2 sq. meters

The subject property comprises a ground floor bar, a first floor function room, a kitchen, a number of WCs, and on the second floor a bathroom and three rooms identified at revision in 1999 as office, bedroom and living room. There is also a basement.

Location

The property is located in Dublin City Centre in Chancery Place, close to Ormond Quay Upper and directly across from the Four Courts. Chancery Place is a one way street, with vehicular traffic operating in the direction of Chancery Street. There is a taxi rank situated

directly outside the subject property, and the Luas Four Courts stop is situated on Chancery Street. The subject is bound by Charles Street West to its rear.

Valuation History

In December 1999 the property was revised, with an RV amended to €317.43 (to include an RV of €15.24 domestic). On the 10th of February, 2010 an application from the occupier for a revision of valuation was made, stating the nature of request as being '*material change of use*'. On the 2nd of June, 2010 a Notice of Decision of No Material Change of Circumstances issued confirming the RV of €317.43. On the 13th of July, 2010 an appeal against the decision that no material change of circumstances had occurred was received on the basis that '*...the upper floor on these premises is no longer in use for residential but are now in use for office used in conjunction with the running of a licensed premises*'. On the 12th day of April, 2011 an Appeal Officer considered the case and a decision was made by the Commissioner of Valuation disallowing the appeal and retaining the RV at €317.43. This decision was then appealed to the Valuation Tribunal.

Appellant's Case

The proceedings opened with Mr. Colm Sexton representing the appellant. He applied to the Tribunal to have the grounds of appeal as set out in paragraph 6(e) of the Notice of Appeal to be included also under 6(b)(1). There was no objection from the respondent to this application and the Tribunal approved the necessary amendment.

The appellant then set out his grounds of appeal as follows:

That the two rooms of the top floor are described in the 1998 revision as an apartment and that was wrong. He stated that it has never been an apartment and furthermore that it was misdescribed. He stated that if it was changed to an apartment it would lead to a material change of circumstances.

The appellant then provided original letters, copies of which had previously been provided to the Tribunal. The respondent did not object to these letters being handed in but did object to them being considered as admissible evidence as they were hearsay.

The appellant then took the oath and went through his précis of evidence. He stated that there was no material change of circumstances and no material changes since 1999 according to the

Commissioner of Valuation. He stated that it was necessary to establish whether there was a material change of circumstances and whether the 1999 decision was erroneous. The 1999 decision referred to a revision of the subject relevant property that was carried out in that year. He stated that there was no evidence that the property was ever used as an apartment, that it was used as an office when he took over the property in the year 2000, and that it has been used as an office since then.

Mr. Sexton stated that the subject property was revised in 1999 and that part of it was described as an apartment. He said that an apartment means a self-contained unit which would necessarily include its own kitchen and bathroom. He said that this was not the case for this premises. He stated that there is a kitchen but that it is on a separate floor and that it serves as a commercial kitchen as part of the licensed premises and was not available to the part of the subject property described as an apartment. He also stated that the rooms referred to as an apartment could only be accessed through the licensed premises which were secured at nighttime by way of a shutter and padlock.

The appellant was then cross-examined by Ms. Rosemary Healy-Rae, Counsel for the respondent. Under cross-examination the appellant accepted that he purchased the premises in December 2000 and that he had no idea of the state of the premises in 1999 when the valuation was carried out. He accepted the assertion that a commercial kitchen was located on the first floor but said that it was separate to the area referred to as '*the apartment*' on the valuation of the property and that it was not used as a private kitchen. He agreed that in 1998 and 1999 at the time of the revision of the property, he had not seen the inside of the premises where the area that was alleged to be an apartment was located.

Respondent's Case

Ms. Jacqui McKinnell took the oath and adopted her précis as her evidence-in-chief. She went through the salient points of her précis. In response to questions put by the Tribunal, Ms. McKinnell agreed that there was no evidence of a kitchen on the second floor, but argued that it was not unusual in older licensed premises for this to be the situation as often in older premises the domestic part of the premises would have the use of the commercial kitchen for the preparation of food. She stated that she referred to it as an apartment for identification purposes.

The Tribunal then questioned Ms. McKinnell as to whether she still considered it as an apartment today. In her reply she stated that there was no evidence of domestic use. The Tribunal then asked Ms. McKinnell whether she believed that the area under consideration was suitable for residential accommodation. Ms. McKinnell replied that there was a toilet but that there was no kitchen available. She agreed that it did not constitute an apartment within the definition of the term '*apartment*' under the 2001 Valuation Act. She added that there was no evidence of any structural change.

Under cross-examination Ms. McKinnell accepted that the premises were locked up at night and that this was done with a steel shutter. She also accepted that the living room was used as an office and that there was not a domestic kitchen available. However, she considered the premises to be a domestic premises. It was put to Ms. McKinnell by the Tribunal that as the premises was rated as an apartment under the revision of 1999, and as she now appeared to accept that it is not an apartment as defined under the 2001 Act, this means a material change of circumstances must have occurred. The reason being that if the apartment was a domestic property, it would fall under Schedule 4 of the Valuation Act, 2001. However, as it is not now an apartment and if it is accepted by the Tribunal that it is not a domestic premises, it would fall outside Schedule 4 of the 2001 Act and that this would amount to a material change of circumstances.

Ms. McKinnell responded that the area concerned could not be removed from Schedule 4 of the Valuation Act 2001 as it was rated before the 2001 Act was commenced and therefore was never within Schedule 4 to be taken out of it.

The Law

Pursuant to Section 28(4) of the 2001 Act, before carrying out a revision, the Revision Officer must firstly establish that a material change to circumstances has occurred since the property was previously revised.

'*A material change of circumstances*' is defined in Section 3 of the Valuation Act 2001 as meaning a change of circumstances which consist 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 being, 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.”*

The powers of the Revision Officer in relation to the revision of valuation lists are set out in Section 28 of the 2001 Act. Section 28(4) states:

“A Revision Officer, if he or she considers that a material change of circumstances which has occurred since the 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 the 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 a 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 appears on the list,*

(b) If that property does not appear on the said valuation, then 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 the valuation.”

Section 28(5) states 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) exists whether exercised by him or her of the powers under the subsection relating to that property,*
- (b) If he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.”*

Section 28(9) states that – *“If a Revision Officer decides that the circumstances referred to in subsection (4) do not exist where the exercise of the powers under the subsection in relation to a property referred to in subsection (5), he or she shall, forthwith after making 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.”*

Findings

Having carefully considered all of the evidence, written and oral, together with all the arguments or 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 Tribunal is bound by Section 43(1) of the Valuation Act 2001 which states *“Notwithstanding the repeal by section 8 of the enactments specified in Schedule 1, an existing valuation list for a rating authority’s area and the value of each property appearing thereon shall, subject to any amendment thereof made in accordance with the provisions of this Act, as applied by section 44, and any apportionment of the value under subsection (3), continue in force in relation to that area for all purposes until the date on which a valuation list is caused to be published under section 23 in relation to that area.”*

2. That on the commencement of the Valuation Act, 2001, the subject property was a “mixed premises” as defined by the Valuation Act, 2001, that is, a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.
3. That the subject property was not a domestic premises on the commencement of the Valuation Act, 2001, as defined by the Valuation Act, 2001, as the definition of a domestic premises excludes a mixed premises.
4. That, at the time of the hearing of the appeal, the premises were in the same condition as on the day of commencement of the Valuation Act, 2001, as accepted by the appellant.
5. 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) since the commencement of the Act.

And the Tribunal so determines.