

Appeal No. VA12/2/015

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

**Durrington Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No.911453, Shop at Lot No. Unit 8 (The Square), Market Cross  
Shopping CTN, Kilkenny No. 1 Urban, Kilkenny Borough, County Kilkenny

**B E F O R E**

**Fred Devlin - FSCSI, FRICS**

**Deputy Chairperson**

**Frank Walsh - QFA, Valuer**

**Member**

**Michael Connellan Jr - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF NOVEMBER, 2012**

By Notice of Appeal received on the 22nd day of May, 2012, the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €314.90 on the above described relevant property.

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

*“The Commissioner was incorrect in disallowing our clients appeal. The unit is altered since 1st revised.”*

*“The Commissioner should have revised the property in line with the established tone. The changes to the unit satisfy the test in the MCC Definition point 3(b) Structural Alterations.”*

This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, 3<sup>rd</sup> Floor, Holbrook House, Holles Street, Dublin 2 on the 9<sup>th</sup> day of August 2012. At the hearing the appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying), MRICS, MIAVI of Eamonn Halpin & Co. Ltd. Chartered Valuation Surveyors and Estate Agents. On this occasion Mr. Halpin appeared in the dual capacity of advocate and valuer. Mr. James Flynn, the Managing Director of the appellant company, was in attendance but was not called upon to give evidence. Ms. Grainne O'Neill, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Neil Corkery BSc, ASCSI, a Valuer in the Valuation Office gave evidence of his appointment as the Revision Officer by the Commissioner of Valuation pursuant to Section 27 of the Valuation Act.

In accordance with the rules of the Tribunal each party submitted and exchanged a copy of the evidence and submissions they proposed to adduce at the oral hearing. From the evidence contained in the written précis and supplemental evidence received at the oral hearing the following facts relevant to and material to the dispute were agreed or are so found.

1. The property concerned is a retail unit at upper ground level in the Market Square Shopping Centre, Kilkenny.
2. The units in the centre were first valued at the 1995/4 revision when the rateable valuation of the property concerned was entered onto the valuation list in the sum of £248 i.e. €314.90.
3. The valuation at that time was made in accordance with Section 5 of the Valuation Act 1986 (since repealed) which provided as follows:  
*“5. —(1) Notwithstanding section 11 of the Act of 1852, in making or revising a valuation of a tenement or rateable hereditament, the amount of the valuation which, apart from this section, would be made may be reduced by such amount as is necessary to ensure, in so far as is reasonably practicable, that the amount of the valuation bears the same relationship to the valuations of other tenements and rateable hereditaments as the net annual value of the tenement or rateable hereditament bears to the net annual values of the other tenements and rateable hereditaments.*

*(2) Without prejudice to the foregoing, for the purpose of ensuring such a relationship regard shall be had, in so far as is reasonably practicable, to the valuations of tenements and rateable hereditaments which are comparable and of similar function and whose valuations have been made or revised within a recent period.”*

4. At the 1995/4 revision the property concerned and other similar retail units within the Shopping Centre were measured and valued on a gross internal area basis and the area of the property concerned so determined according to the valuation records was 390 sq. metres.
5. No appeal was lodged against the determination of £248 (€314.90).
6. On the 31<sup>st</sup> January, 2011 the appellant pursuant to the provisions of Section 27 of the Valuation Act, 2001 applied for a revision of valuation and in due course Mr. Neil Corkery was the officer appointed by the Commissioner of Valuation to carry out the said revision.
7. Having inspected the property Mr. Corkery came to the conclusion that “*a material change of circumstances*” as defined in the Valuation Act, 2001 had not occurred since the property was last revised in 1995 and on the 1<sup>st</sup> September, 2011 a certificate to this effect was issued to the appellant.
8. The appellant made an appeal to the Commissioner of Valuation under Section 30 of the Valuation Act 2001 and having considered the matter the Commissioner disallowed the appeal.
9. The appellant being dissatisfied with the decision of the Commissioner of Valuation lodged a full appeal to this Tribunal in accordance with Section 34 of the Act.
10. The property is occupied under the terms and conditions of a 35-year lease from the 1<sup>st</sup> January 1994 at an initial yearly rent of £62,000 (€78,724) subject to review at 5-yearly intervals. According to Mr. Halpin, and not disputed by the respondent, the initial rent included an additional rent of £17,000 (€21,586) per annum payable for the first 10 years of the term in respect of monies made available by the lessor to the lessee to meet the costs of fitting out the property concerned for restaurant use.

11. It is agreed that the physical boundaries of the property are the same now as those at the time of the 1995 revision.

### **The Issue**

It is common case that the Tribunal is not being asked to determine the valuation of property concerned but to determine on the evidence presented if “*a material change of circumstances*” has occurred since the property was last valued at the 1995/4 revision.

### **Appellant’s Evidence**

Mr. Halpin in his evidence described the property as a shop unit currently in restaurant/café use with associated ancillary space providing the following accommodation measured on a net internal area basis:

Restaurant/Café – 293.89 sq. metres

Kitchen/Kitchen Prep – 41.95 sq. metres

Stores/Office/Staff – 17.12 sq. metres

Fire Exit/Part Store – 7.2 sq. metres

Mezz. Store – 7.2 sq. metres

The above areas were not disputed by the respondent.

Mr. Halpin contended that since the passing rents were a factor in arriving at the individual valuations of the units in the centre it was possible that the additional rent of £17,000 was not disregarded – as it ought to have been in his opinion – in arriving at the valuation of the property concerned. If this was the case then the rateable valuation of £248 as determined at that time was incorrect.

In relation to the above, Mr. Halpin submitted that the following matters had not been referred to in the Valuation Report prepared by the Valuation Office at the time of the 1995/4 revision.

**“Changes to the building not shown on the original Valuation Office Plan”**

- a) *The separation of the rear fire door by a solid concrete wall (Block 12 – Appendix I) and the moving of the fire exit door. This area would not now be lettable space.*
- b) *The erection of concrete separation walls separating the kitchen, stores and ancillary areas from the balance.*
- c) *The raising of the floor level of the rear section (block 5).”*

Furthermore the following changes were made since the property was last made in 1995:

**“Additional more recent changes since last revised in 1995**

- d) *The 1<sup>st</sup> floor area over the aforementioned Block 12 was developed in 1997.*
- e) *The rear section of the seating area for the restaurant (Block 5) was separated by a wall with the central opening section being capable of folding back when required. Since these works were completed, this section of the restaurant (Block 5) only opens at very busy times but can serve as an occasional meeting room for business meetings. Prior to these works, neither of these options were available, which directly impacts upon the value of the unit to the hypothetical tenant. The works were completed in February 2008 at a total cost €50,000.*
- f) *One WC has been converted into a store.”*

In the circumstances, Mr. Halpin contended that a number of changes had taken place since the 1995/4 revision and that the nature of these changes amounted to structural alterations within sub-paragraph (b) of the definition of “material change of circumstances” as set out in Section 3 of the Valuation Act, 2001. Accordingly, therefore, the respondent was incorrect in arriving at the conclusion that no material change of circumstances had occurred and in fact and in law ought to have exercised his powers under the provisions of Section 28(4) and carried out a revision of valuation.

In support of his contention Mr. Halpin referred the Tribunal to a number of previous cases determined by this Tribunal dealing with material change of circumstances.

### **Respondent's Evidence**

Mr. Corkery in his evidence said he was the revision officer appointed by the Commissioner of Valuation to exercise his powers in accordance with Section 28 of the Act. Having inspected the property he observed that the footprint of the building "*remained the same*" as found at the time of the last revision i.e. 1995/4. In the circumstances, he concluded "*there had been no material change of circumstances since the property was last revised in 1995 that warranted the exercise of my power as revision officer.*"

### **Respondent's Submissions**

Ms. O'Neill, BL made comprehensive written and oral submissions on behalf of the respondent. In her submissions Ms. O'Neill referred the Tribunal to a number of authorities dealing with material change of circumstances. Whilst the respondent acknowledged that the appellant had made changes to the property since the 1995 revision "*none of the changes amount to structural changes which would amount to a material change of circumstances warranting the exercise of the revision officer's powers. The footprint of the property has not changed since originally valued. The trading of the property has not changed.*"

Ms. O'Neill referred the Tribunal to a number of authorities and in particular the Birchfox case which is **Commissioner of Valuation v Birchfox Taverns Ltd.** [2008] IEHC110 Wherein McMahon J. stated:

*"As has been seen, strict restrictions apply as to when such a revision is allowed. This was an intentional policy of the Oireachtas to reverse the previous position where revisions were easily available...Since the 2001 Act was passed, however, apart from the mechanisms provided for in Section 27 & 28, there are no other circumstances where a revision can be ordered by the Tribunal. If a revision is not allowed under Section 27 & 28, the Tribunal has no residual power to order one."*

It is clear from the facts in this appeal, Ms. O'Neill said, that the changes made by the appellant did not result in a change in the value of the property nor were they of a nature sufficient to warrant the Revision Officer to exercise his powers.

## **Findings**

The Tribunal has carefully considered all the evidence introduced and submissions made on behalf of the appellant and the respondent and finds as follows:

1. The sole Act dealing with the valuation of property for rating purposes is the Valuation Act 2001.
2. Section 27 of the Act enables the occupier of a property or other interested parties to make an application to the Commissioner of Valuation for a revision of valuation in respect of the property concerned.
3. On foot of an application made under Section 27 the Commissioner shall appoint an officer of the Commissioner known as the Revision Officer to exercise his powers in accordance with Section 28 of the Act which provides at subsection 4 as follows:

*(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.*

4. A “material change of circumstances” is defined in Section 3 of the Act as set out below:

*“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 party 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;”*

5. In the context of this appeal if the requirements set down in sub paragraph (b) are met the appellant is entitled to have a revision of valuation carried out and the value of the property determined in accordance with Section 49 of the 2001 Act. That said, however, the appellant must produce evidence of sufficient weight to show that a change in the value of the property concerned has been caused by the making of structural alterations.



6. During the course of the hearing, the appellant's witness accepted that the "changes" annotated a), b) and c) in his evidence were in fact *in situ* at the 1995/4 revision and included in the valuation of the property concerned at that time though not specifically referred to in the valuer's report prepared at that time. In relation to changes annotated d) and f), the appellant's valuer agreed that the latter was merely a change of use and not a structural alteration within the normal meaning of that expression. It was also agreed that the change annotated e) is in the nature of a change of fit-out and once again was not a structural alteration.
7. In the final analysis therefore the only item to be considered is the mezzanine space in the fire exit area. It is common case that the mezzanine is of timber construction and provides approximately 7 sq. metres of storage space with a headroom of approximately 1.5 metres and is accessed by way of a fixed ladder.
8. Since there is no definition of "*structural alterations*" in the Act, the expression must be examined in the light of its commonly accepted usage. In this regard the relevant words which are material to this examination are defined in the Oxford English Dictionary as follows:

***Construction:*** *The action of framing, devising, or forming, either putting together of parts; erection building.*

***Structure:*** *The action, practice, or process of building or construction.*

***Manner of building or construction:*** *The way in which an edifice, machine, implement etc. is made or put together.*

*The mutual relation of the constituent parts or elements of a whole as determining its peculiar nature or character; make or frame.*

***Structural:*** *of or pertaining to structure.*

*Of or pertaining to the structure of a building as distinguished from its decoration or fittings.*

*Of or pertaining to the arrangement and mutual relation of the part of any complex unity.*

9. Having regard to the above and to the nature and method of construction of the mezzanine the Tribunal finds that it is not a structural alteration in accordance with sub-paragraph (b) of the definition of “material change of circumstances”. The mezzanine is in fact a construction of little consequence which could be easily removed without causing any damage to the fabric of the property concerned or causing any threat to its structural integrity. Accordingly, therefore, the alterations made by the appellant do not meet the requirements set down under sub-paragraph (b) which states as follows:

*“(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 [...]”*

10. Having regard to the above finding it is not within the remit of the Tribunal to consider the correctness or otherwise of the valuation of the property concerned as determined at the 1995/4 revision.

### **Determination**

The Tribunal determines that the changes carried out by the appellant since the 1995/4 revision do not constitute a material change of circumstances and that the respondent was correct in so finding.

And the Tribunal so determines.

### **Cases opened to the Tribunal**

1. Commissioner of Valuation –v– Birchfox Taverns Ltd. [2008] IEHC 110
2. VA08/4/002 - Thomas Mullane
3. VA07/4/003 - Dr. Patrick McDermott
4. VA07/3/016 - Michael Butler
5. VA11/2/008 - CB Pub Management
6. VA11/2/044 - MMEM Public Houses Ltd.
7. VA04/3/038 - Classical Décor Ltd.