

Appeal No. VA13/1/001

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

Churchtown School of Motoring Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 1544789 Office, Top Floor, 9 Braemor Road, Churchtown, County Dublin

B E F O R E

Fred Devlin - FSCSI, FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Fiona Gallagher - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF MAY, 2013

By Notice of Appeal received on the 2nd day of January, 2013 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €4,840 on the above described relevant property.

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

"Floored attic space with Velux roof windows, disused following condemnation as unfit and a fire hazard by landlord's architect in 2010".

"The rated area's condemned status makes it uninsurable for occupancy & consequently unuseable & unlettable".

The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 27th day of March 2013. At the hearing, the appellant was represented by Mr Paul Barrett, its managing director and the respondent was represented by Ms. Theresa O'Sullivan, BSc, MIAVI, Assoc RICS, a valuer at the Valuation Office and Mr. David Dodd, BL, instructed by the Chief State Solicitor's Office.

Location

The subject property is located at 9 Braemor Road, Churchtown, Dublin 14.

The Property Concerned

The subject property consists of converted attic space, comprising 3 rooms. Total accommodation amounts to 24.20 sq. metres.

Tenure

Leasehold.

Rating History

The subject property was initially revised in 1998 following conversion from a domestic dwelling to a commercial property. A Rateable Valuation (RV) of €13.97 was fixed on the property. In 2009/2010 the property was revalued as part of the revaluation of all commercial properties in the Dun Laoghaire Rathdown rating authority area and on 10th December 2010 a Valuation Certificate was issued fixing a Net Annual Value (NAV) of €4,840 on the property.

The appellant requested a revision of the property on 29th August 2011 and Ms. O'Sullivan was appointed as Revision Officer. A certificate of No Material Change of Circumstances issued on 27th January 2012, which decision the appellant appealed to the Commissioner of Valuation by Notice of Appeal dated 1st March 2012. The appeal was disallowed and the decision that there was No Material Change of Circumstances was affirmed. The appellant appealed against that decision to the Tribunal by Notice of Appeal dated 21st December 2012.

The Issue

Whether or not there has been a material change of circumstances to the subject property.

The Appellant's Evidence

Mr. Paul Barrett, the Managing Director of the appellant Churchtown School of Motoring, having taken the oath, adopted his written précis and valuation as his evidence-in-chief. He gave evidence that he took an assignment of the lease of the first floor and attic of the premises in September 2009. Although there was a prohibition in the lease against subletting, he said, the previous tenant had sublet the attic space. However, when Mr. Barrett took over the lease, it was on the basis that the attic would be vacated. He stated that the landlord issued a directive that the attic had to be vacated due to advice from the architects that it was a fire hazard and that the underwriters would not provide insurance. Mr. Barrett further stated that his landlord went into receivership and the current landlord on the premises was Musgraves.

Mr. Barrett acknowledged that he was in occupation of the premises at the time of the revaluation. He stated that he was unaware whether or not he was notified that there were two separate entries on the Valuation List for the first floor and the attic of the property. He stated that he was never billed for, nor never paid rates on the attic and could not understand how, if it was deemed to be a fire hazard, he could be liable for rates. It was accepted by Mr. Barrett that there had been no physical change to the premises since September 2009. Access to the property was through the ground floor and via staircases to the attic.

Cross-Examination

It was accepted by Mr. Barrett under cross-examination that the structure of the subject property had remained the same and that neither the floor area nor the footprint had changed. It was put to him that the previous occupant of the attic was paying rent of €7,200 per annum, but Mr. Barrett stated that he had no knowledge of this, as such rent was not paid to him. It was further put to Mr. Barrett that when Ms. O'Sullivan inspected the property, there were toilet rolls, paint and other items belonging to the School of Motoring in the attic space. He responded that he had put some magazines and books there prior to disposing of them.

Mr. Barrett accepted that he was asked by Ms. O'Sullivan to submit documentation in relation to the attic allegedly being a fire hazard. He stated however that he had difficulty getting this information from the original landlord and finally got the documentation via the new landlord in February 2013, which he then submitted. Mr. Barrett was also questioned about an email he sent to Ms. O'Sullivan in August 2012 indicating that he proposed to use

the attic space as personal accommodation. He confirmed that he was not currently using it as such.

In response to questioning from the Tribunal, Mr. Barrett admitted that the rent on the premises was €850 per month, which included the first floor and the attic space, and that when this was agreed he had understood the attic was not usable and not to be let. He admitted that on account of this the landlord made a concession on the rent, so that the rent he is paying is reflective only of the first floor accommodation. Mr. Barrett further acknowledged that the landlord insures the building but that he has his own employer's and public liability insurance policies.

Respondent's Evidence

Ms. Theresa O'Sullivan, having taken the oath, adopted her written précis and valuation as her evidence-in-chief. Ms. O'Sullivan stated that when she inspected the subject property it was a vacant office space with a few books in the centre of the floor. She stated that her colleague had previously inspected the premises as part of the revaluation of Dun Laoghaire Rathdown in September 2009 and that it was exactly the same upon her inspection. Accordingly, she stated that she found that there had been no material change of circumstances since that time. Ms. O'Sullivan stated that as part of the revaluation exercise, the occupiers of the attic space had confirmed that they were paying rent of €7,200 per annum under a two-year lease.

Cross-Examination

Ms. O'Sullivan accepted that the previous occupiers of the attic had moved out by the time of her inspection. She did not accept that the leaflets she saw on the floor of the premises belonged to the previous occupier, but rather contended that they belonged to Mr. Barrett. She acknowledged, however, that the premises were vacant.

Submissions

Mr. Dodd BL, on behalf of the respondent, submitted written legal submissions, outlining the law with regard to material change of circumstances. In his submissions, he relied in particular on the case of **Commissioner of Valuation v. Birchfox Taverns Limited [2008] IEHC 110**, where McMahon J. held that in order for a revision officer to exercise his powers under Section 28(4)(a) and (b) of the Valuation Act 2001 he/she must first consider,

“(1) That a material change of circumstances has occurred (since the last relevant valuation if any)

and

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

These are the preconditions (not powers in themselves as the appellant argued) which must be met before the Revision Officer is entitled to exercise the powers. (This interpretation is supported by the wording of s. 28(5)(a) and s. 28(b)). Clearly, if they were not met, the Revision Officer has no entitlement to act and the property in question cannot be “property concerned”.”

In respect of point (2) above, McMahon J. went on to state that this meant that, *“when a material change of circumstances is established, the Revision Officer can only exercise the power given to him in that section if he considers that the changes are such that they warrant action by him.”*

Mr. Dodd submitted that there had been no significant changes to the premises since its revaluation and that the Revision Officer was provided with no credible basis to conclude that there had been a material change of circumstances since the property was last valued that warranted the exercise of her powers as Revision Officer.

Findings

1. Section 3 of the Valuation Act 2001 defines 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 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. In evidence, Mr. Barrett accepted that there had been no physical changes to the subject property since he had taken over the lease in September 2009 and that the structure, the floor area and the footprint had remained the same. Therefore paragraph (b) of the definition above does not apply. Paragraphs (a), (d) (e) and (f) are also inapplicable on the facts of the case.
3. With regard to paragraph (d) of the definition of material change of circumstances, the alleged uninsurability of the subject property due to its being a fire hazard does not mean it ceases to be relevant property. The subject property is capable of rateable occupation and is therefore relevant property in accordance with Schedule 3 of the 2001 Act. In any event, the only evidence submitted by the appellant that the subject property is a fire hazard is an undated letter from Mr. Jim Treacy, the former landlord of the premises, stating that he was the owner of the property in 2009 and was made aware of the fire risk attached to the attic of the premises. He stated that he then asked the tenant, Mr. Murphy, to desist from sub-letting the attic, which he did as of 2009/2010.
4. As the appellant has not established that it comes within the terms of the definition of material change of circumstances in Section 3 of the Valuation Act 2001, the Revision Officer was correct in not exercising her powers to revise the property under Section 28(4) of the Valuation Act 2001.

Determination

Having regard to the foregoing the Tribunal determines that there is no material change of circumstances and that the appellant's appeal is hereby dismissed.

And the Tribunal so determines.