

Appeal No. VA17/2/009

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

SD Entertainments Ltd

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In relation to whether a Material Change of Circumstances had occurred in respect of:

Property No. 462722, Hospitality at Belgard Complex, Belgard Road, Tallaght, County Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF FEBRUARY, 2018**

BEFORE:

Majella Twomey – BL

Deputy Chairperson

Gráinne Duggan – BL

Member

David Gill – FSCSI, FRICS, FCI Arb, Dip Arb Law

Member

By Notice of Appeal received on the 24th day of May, 2017 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €400,000 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

"The subject property is materially changed under the definition of the Valuation Act, 2001. The subject property is a licenced premises over three floors, 2 of which are vacant and to let. In addition, the double basement level is in extremely poor condition with large areas of water

ingress. As such, the property requires subdivision (clause e) and may also qualify under clause b (structural alterations)."

The Appeal was heard on 28th September 2017 at the offices of the Valuation Tribunal, Holbrook House, Holles Street, Dublin 2

Appearances:

Mr. Eamonn Halpin B. Sc., MRICS, MSCSI appeared for the Appellant SD Entertainments Ltd.

Mr. David Dodd BL instructed by the Chief State Solicitor appeared for the Commissioner of Valuation.

Mr. James Costelloe B.Sc. MRICS, MSCSI of the Valuation Office was called as a witness for the Respondent.

Valuation History

On 8th August 2014 the Appellant requested a Revision.

On 24th April 2015 the Valuation Office issued a No Material Change of Circumstances Notice.

On 3rd June 2015 the Appellant lodged an Appeal against a Decision that No Material Change of Circumstances had occurred

On 2nd May 2017 the Commissioner issued a Notice of Decision to Disallow the Appeal.

On 24th May 2017 the Appellant lodged an Appeal to the Valuation Tribunal.

Grounds of Appeal:

The Appellant's case is that it is entitled to a revision on foot of a 'material change in circumstances' on the grounds of (b) structural alterations and (e) subdivision.

Furthermore, the Appellant's representative contends that the Revision Officer erred in refusing to accept that a material change had occurred and that in turn the Commissioner was incorrect in refusing the Appeal lodged against that decision.

Issues for determination by the Valuation Tribunal

The question before the Tribunal for its determination is:

Whether there has been "a material change of circumstances" within the meaning of S. 3 of the Valuation Act 2001, under either paragraph (b) or paragraph (e)?

Request for Inspection by Tribunal

On 1st September 2017 Mr. Eamonn Halpin on behalf of the Appellant wrote to the Tribunal Registrar requesting that the Tribunal members carry out an inspection of the subject property in order to view at first hand the grounds being contended for by the Appellant.

At the commencement of the Hearing the Chair of the Tribunal acknowledged the request and indicated that the Tribunal would decide, in light of submissions and evidence, whether an inspection was required.

Having reviewed the material before the Tribunal including evidence of inspections by Mr. Halpin and Mr. Costelloe, together with photographs put into evidence by both valuers and floor plans of the property, the Tribunal concluded that sufficient evidence had been provided to enable the Tribunal determine the Appeal and that an inspection was not required.

The Subject Property

The property the subject of this appeal is known as The Belgard Inn is located at the junction of the Belgard Road and Cookstown Road, Tallaght, Dublin 24. It consists of an extensive bar with ancillary areas and an off licence at ground floor level, nightclub at upper basement level and snooker hall and bar stores at lower basement.

Floor plans of the property provided by Mr. Halpin at Appendix I of his submission show the internal layout of the three floors of the building. Photographs provided by Mr. Halpin and Mr. Costelloe show the general condition and decor of the premises both internally and externally. The lower two levels, being the night club and snooker hall, were described by Mr.

Halpin as having been disused for a number of years and, from the photographs, appear to be in a dilapidated condition with no evidence of being in active use. The ground floor is fitted and laid out as a working bar with tables and seating and the off licence area is shown as having shelving, free standing fridges and boxes/crates of beer stacked around the floor.

Accommodation

The floor areas of the Belgard Inn were noted by Mr. Costelloe as follows:

Level	Description	Area
Ground floor	Bar, Lounge, public areas, off licence	1096.5 m ²
Mid basement	Former disco - disused	670.0 m ²
Lower basement	Disused snooker hall, stores etc	725.0 m ²
Total		2,491.5m ²

Mr. Halpin did not provide floor areas in his report but he did not disagree with the areas provided by Mr. Costelloe of the VO.

The Appellant's case

In his opening address to the Tribunal Mr. Halpin referred to the definition set out in S 3 of the Valuation Act 2001 as follows:

“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:-

(i) the making of structural alterations to that relevant property, or

(ii) the total or partial destruction of any building or other erection which forms part of that relevant property 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,

(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;

On page 7 of his submission Mr. Halpin asserted with reference to para (b) above that:

- i. the off licence area had been relocated within the building and the area allocated to that is now much larger (98 m²) than in 2007 (26.5 m²). It was also argued that because the VO values off licences on a different basis to pubs, the Appellant is entitled to a revision because of the change in floor area.
- ii. The double basement is in a compromised state with water ingress and would require more than simple repair to bring into economic use.
- iii. And with reference to para (e) above that:

Only the ground floor bar and off licence together with the keg room/store at lower basement level are in use by the current occupier which had been in possession of those areas since 2013; that, in effect, these now constitute a separate hereditament within the building, such that the Appellant is entitled to have a separate RV assessed for these parts of the property

The Respondent's case:

Mr. Dodd for the Commissioner contended that no material change of circumstances had occurred in this case, or any which would warrant the exercise of revision powers and he requested that the decision of the Commissioner should be affirmed. He cited four authorities, namely Judgements of the Valuation Tribunal in 1) O'Leary International VA 10/1/029, 2) Keane Auctioneers VA 14/4/028, 3) Amber Springs VA 13/4/001 together with 4) Judgement of the High Court in Commissioner of Valuation v Birchfox Taverns Ltd [2008] IEHC 110

Mr. Dodd called Mr. Costelloe, of the valuation office, to give evidence of his inspections and Mr. Costelloe confirmed he had inspected the property together with Mr. Halpin on 3rd February 2017 and subsequently on 7th April 2017. Mr. Costelloe gave evidence that in the course of his inspection he was able to move freely from one part of the property to the other,

that there were connecting corridors and lobbies, and that there was no evidence of structural divisions (apart from appropriate fire separation) separating the ground floor from the lower floors. Mr. Costelloe said that he understood the Appellant, S D Entertainments occupied the premises on a licence and that there was no formal lease in place. This was confirmed by Mr. Halpin. As regards the off licence, Mr. Costelloe said, that based on his inspections he did not believe that there were structural divisions between this area and the remainder of the ground floor. He believed that the walls were merely partition walls and not part of the structure.

Additional matters:

When questioned by members of the Tribunal regarding the manner in which the new off licence area was created and, in particular, whether the walls dividing the off licence were of solid construction (ie concrete blockwork) Mr. Halpin was unable to indicate how these were constructed or whether they were mere partition walls formed of timber stud and plasterboard.

With regard to the keg room and storage area at lower basement level, Mr. Halpin said he did not consider that there needed to be a distinct physical separation from other parts of the lower basement for the keg room to be considered part of a separate holding, such that it should be valued as a unit with the ground floor, with the remaining basement areas valued separately.

The Tribunal's conclusions and reasons:

Based on the evidence of Mr. Costelloe and Mr. Halpin, the Tribunal concluded that:

- 1) Whilst the off licence was moved to a different location in the building and occupied a larger area than before there was no evidence of the making of structural alterations such that a material change of circumstances within the meaning of the Valuation Act 2001 was proven to have occurred; This would have required the Appellant to show that a change in the value had occurred as a result of such alterations and no evidence to this effect was offered.

- 2) The Appellant, S D Entertainment Ltd, had effective control of the entire of the subject property. Furthermore, that whilst parts of the property had been disused for a number of years and allowed to fall into disrepair, the Appellant failed to show that “property previously valued as a single relevant property had now become liable to be valued as 2 or more relevant properties”

For these reasons the Tribunal concluded that the Appellant did not discharge the requisite burden of proof as regards the grounds claimed for a material change of circumstances and the Appeal therefore fails

Accordingly, the Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence on the 28th day of September 2017 adduced before us by Mr. Eamonn Halpin on behalf of the Appellant, who contended for a rateable valuation of €176,000 and €224,000, and Mr. James Costello on behalf of the Respondent to the appeal:

DETERMINES

That the rateable valuation of the subject property be affirmed as set out below:

€400,000 - Unchanged

And the Tribunal so determines.