

Appeal No: VA18/1/0020

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

DEIRDRE BLACKWELL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 880199, Factory At 35b, Emmet Street, Clonmel, Sundry Townland, Clonmel East Urban, Clonmel Borough, Tipperary County Council, County Tipperary.

B E F O R E

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Fergus Keogh – MSCSI, MRICS

Member

Sarah Reid - BL

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 28TH DAY OF AUGUST, 2019

1. THE APPEAL

1.1 By Notice of Appeal received on the 22nd day of February 2018 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €57.14.

1.2 The grounds of appeal set out by the Appellant state that the determination of the valuation of the property is incorrect for the following reasons:

- A) The description of the property is incorrect and is no longer a printing works;

- B) The property should have been part of the revaluation of the Market Place (which is situated next to the property in question) where it is alleged all properties received a reduction in rates and revised valuation;
- C) The entire property has been valued at one level however a large portion has no natural light and therefore should be valued at a lesser level;
- D) The property is capable of sub-division into two commercial units and as such two rate numbers should be applied to the property;
- E) Insofar as a ‘Material Change of Circumstances’ has occurred, the property has been internally altered resulting in no ventilation in certain areas, no natural light and restricted access which is in breach of Health & Safety requirements.
- F) There has been a reduction in footfall in the area due to the closure of the neighbouring anchor tenant in the Market Place and the Appellant’s business has been reduced as a result.

2. REVISION HISTORY

2.1 The property was subject to a revision of valuation in 1995 at which time a proposed Valuation Certificate issued with a valuation of £50 / €63.50. Following an appeal, the Valuation Certificate issued with a reduced rate of £45 / €57.14

2.2 In March 2017 the Appellant submitted an application for revision to the Commissioner of Valuation which indicated ‘Material Change of Circumstances’ as the basis for her application. In particular, the Appellant stated that the property had been divided into two or more separate properties and there had been a change in the rateable status of an existing property.

2.3 The property was inspected by Ms. Gillian Beale on behalf of the Respondent on the 28th May 2017 and no relevant structural changes were found to have taken place that would support a claim of Material Change of Circumstances. Thereafter a Notice of ‘No Material Change of Circumstances’ issued on behalf of the Commissioner on 29th January 2018 and that decision was appealed to the Valuation Tribunal on the 21st February 2018.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 1st day of August 2019. At the hearing the Appellant appeared in person and the Respondent was represented by Ms. Gillian Beale BSc. (Hons), MSCSI, MRICS of the Valuation Office and Mr. Robbie O’Neill BL.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted her précis as their evidence-in-chief in addition to giving oral evidence.

4. APPELLANT’S CASE

4.1 The Appellant represented herself at the hearing and relied on a précis which included the following: a copy of the notice of appeal with the grounds outlined above, a copy of the application to the Respondent seeking a Revision of Valuation, a scaled drawing of the property in question (though the windows and doors were not marked on same), a document entitled ‘Rates Charges Invoice’ dated 14th April 2014 in relation to the property showing commercial rates in the sum of €1,260 and a proposed Valuation Certificate dated 15th March 2019 with rates calculated as €9260.

4.2 At the commencement of her evidence the Appellant sought to introduce evidence as to rate reductions afforded to neighbouring properties. The Tribunal indicated this was outside the scope of its considerations in circumstances where the Appellant had not included these grounds before the Respondent but now sought to raise them before the Tribunal. The matters before the Tribunal were therefore confined to the grounds provided in Section 28(4) of the Act and a consideration of whether the Appellant’s case fell within one or more of those grounds thereby constituting a ‘Material Change of Circumstances’.

4.3 The Appellant was invited to consult the permissible grounds under Section 28(4) and nominate which she was relying on. In reply she stated that her case fell under Section 28(4)(e) as the property was compromised of two units. In support of this the Appellant stated the second ‘unit’ had been listed for rent with an auctioneer. However, the Appellant had since ceased her occupancy of the property and no evidence was provided to the effect that the proposed sub-division had ever transpired.

4.4 In addition to the foregoing, the Appellant stated that the property was incapable of beneficial occupation as a section of it had no natural light, was not adequately ventilated to health and safety standards and as a result should not be included in the valuation of the property.

5. RESPONDENT’S CASE

5.1 The Respondent was represented by Ms. Gillian Beale and attended by Mr. Robbie O’Neill BL as legal counsel. In addition to her précis into evidence, Ms. Beale submitted detailed legal submissions and case law in relation to the ‘Material Change of Circumstances’ criteria. In addressing the Tribunal, Mr. O’Neill noted that the Appellant had used the phrase ‘incapable of beneficial occupation’ in her evidence which carries with it a distinct and precise legal definition that had not been met in the present case.

5.2 The Respondent further argued that the situation described by the Appellant (being the reduction in staff and footfall to her business) was a change in personal circumstances and not the type of change envisaged or catered for within the Act.

6. ISSUES

6.1 The revision application submitted by the Appellant to the Respondent cited a Material Change of Circumstances (MCC) as the grounds for consideration and an accompanying declaration of MCC was included with the application. The Appellant further completed and signed an Occupier’s Declaration of MCC as a distinct section within the revision application submitted. Having received the grounds nominated by the Appellant, the Respondent then considered the application on those terms and came to a determination accordingly.

6.2 The core issue before the Tribunal is whether the Appellant is correct in her assertion that a Material Change of Circumstances (as described in Section 28(4) of the Valuation Act 2001) has occurred in respect of the subject property. The Respondent denies that the circumstances described by the Appellant and evidenced before the Tribunal come within the statutory definition of same.

7. SUBMISSIONS

7.1 The Appellant provided a précis of evidence but made no formal submissions beyond her oral evidence before the Tribunal. The Respondent submitted a précis of evidence along with

legal submissions in respect of the application of Section 28(4) in the context of a Material Change of Circumstances together with caselaw to support the view that the Appellant is obliged to make their case before the Tribunal.

8. RELEVANT STATUTORY PROVISIONS:

8.1 Section 28(4) of the Valuation Act 2001 (as amended) provides that a revision of the valuation may only be carried out in cases where there has been a Material Change of Circumstances since the property was last valued.

8.2 ‘Material Change of Circumstances’ is defined in Section 3 of the Valuation Act 2001 and as amended by the Valuation (Amendment) Act 2015 as 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 -
 - (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,
- (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 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, or
- (g) the fact that relevant property has been moved or transferred from the jurisdiction of one rating authority to another rating authority, or
- (h) relevant property or part of any relevant property becoming licensed or ceasing to be licensed under the Licensing Acts 1833 to 2011;”

9. FINDINGS AND CONCLUSIONS

9.1 In circumstances where the appeal is confined to a consideration of whether a Material Change of Circumstances has occurred in respect of the property in question, the Tribunal is bound to interpret and apply the statutory definition as determinative of the issue. Further, it is clear from the decision of MacMenamin J in *Nangles v Commissioner* (Unreported High Court 15th August 2008) that the Tribunal is precluded from applying a flexible interpretation of these provisions.

9.2 The issue of Material Change of Circumstances has been considered on several occasions by the Tribunal, specifically *McDermott v Commissioner of Valuation* (VA07/4/003) wherein the Tribunal found:

“The Material Change of Circumstance provision as contained in the Valuation Act, 2001, is quite specific and unambiguous and the appellant seeking revision must clearly demonstrate a Material Change of Circumstances has taken place. If no Material Change of Circumstances has occurred, then the Revision Officer has no alternative but to issue a “Notice of Decision” to that effect and to make no change to the rateable valuation of the property concerned as it appears on the valuation list. On appeal the Commission has no alternative but to uphold the Revision Officer’s decision”.

9.3 On this appeal the Tribunal must determine if a material change of use has occurred in relation to the subject property and by extension whether the valuation that was applied by the Respondent is correct and equitable in the circumstances. Further in this as in all cases before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal’s determination.

9.4 The Appellant submits that her situation constitutes a Material Change of Circumstances insofar as the property, being previously occupied as an industrial printing works, is now a commercial / retail office and same was not taken into account by the Respondent. The Appellant further contends that the property is capable of subdivision into two distinct units with separate access to each and that the potential for two units therefore comes within the meaning of Section 28(4)(e).

9.5 The Tribunal finds that although the Appellant stated she had listed a second office for rent with an auctioneer, no further evidence was given in that regard and the Appellant confirmed she is no longer in occupation of the property as of February 2019. The Tribunal does not therefore accept the Appellants evidence to the effect that the property was sufficiently subdivided and/or became liable to be valued as two properties within the meaning of Section 28(4)(e) on the relevant date.

9.6 Insofar as the Appellant claims a portion of the property is incapable of beneficial occupation, it is well established that in order for a property to be come within this description, the Appellant must prove on the balance of probabilities that the property is of no use to any party or is “*struck with sterility in any and everybody’s hands*” (See London County Council v. Erith Churchwardens [1893] AC 562, Mary McGrath v. Commissioner of Valuation VA 11/2/029, Fabian Doyle v. Commissioner of Valuation VA 14/2/001). In the present case the Appellant has done no more than show that the property is not ideal as a modern commercial office and in a state of repair that requires upgrading works, possibly planning permission and/or a fire certificate. However, no expert evidence was adduced to this effect, no health and safety grounds were particularised or provided in evidence and the Appellant relied on her own view of the requirements as determinative of the point.

9.7 As a matter of law, and taking the Appellant’s case at its highest, such a proposition does not render the subject property incapable of beneficial occupation and this ground is therefore dismissed.

10. DETERMINATION:

The Tribunal disallows the appeal and confirms the decision of the Respondent that the valuation of the Property, as stated in the valuation certificate, is €57.14.

And the Tribunal so determines.