

**Appeal No: VA18/4/0005**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015  
VALUATION ACTS, 2001 - 2015**

**LIAM RICKARD**

**APPELLANT**

**AND**

**COMMISSIONER OF VALUATION**

**RESPONDENT**

**In relation to the valuation of**

Property No. 434776, Property Type: Retail (Shops), Twin Oaks, Saint Catherines, Rush, County Dublin

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 2<sup>ND</sup> DAY OF NOVEMBER, 2023**

**BEFORE**

**Martin Connolly - MAgrSc, MSc, MSCSI, FCInstArb**

**Tribunal Member**

**1. THE APPEAL**

- 1.1 By Notice of Appeal received on the 8<sup>th</sup> of October, 2018 the Appellant appealed against the determination of the Respondent pursuant to an application in writing from the occupier under section 27 of the Valuation Act 2001 ('the Act') which determined that no

material change in circumstances as defined in section 3 of the Act existed in the above relevant Property and reaffirmed the rateable value in the sum of €28,900.

- 1.2 The sole ground of appeal as set out at Par 7(d) in the Notice of Appeal is that the property concerned ought to have been excluded in the relevant Valuation List. The premises had been changed to residential and were no longer a commercial property.
- 1.3 The Appellant considered that the property concerned should be removed from the valuation list of the rating area of Fingal County Council.

## **2. VALUATION HISTORY**

- 2.1 Prior to the application for a revision under section 27 of the Act the subject property was entered in the valuation list of the rating area of Fingal County Council as a retail premises with a rateable value of €28,900.
- 2.2 On the 18<sup>th</sup> of April 2018 an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(3) of the Act in relation to the Property on the basis that a material change of circumstances had occurred since a valuation under section 19 was last carried out in relation to the rating authority area of Fingal County Council in which the property concerned is situate. The Property ought to be excluded from the list as it is now a residential property, i.e., it falls within Schedule 4.
- 2.3 On the 17<sup>th</sup> of September 2018 a notice entitled Revision Application pursuant to section 29 of the Act was sent by the revision manager to the Appellant indicating No Material Change of Circumstances and a Proposed Valuation of €28,900.
- 2.4 Being dissatisfied with the determination of the revision manager the Appellant submitted a notice of appeal on the 8<sup>th</sup> October 2018.
- 2.5 On 10<sup>th</sup> September 2019 the subject property was entered on the valuation list for Fingal County Council rating authority with a rateable value of €18,250 following the Revaluation of the Fingal County Council rating area. There were no representations made regarding that valuation<sup>1</sup>.
- 2.6 On 2<sup>nd</sup> August 2022 a revision request under section 27(2) of the Act was lodged by Fingal County Council Authority seeking the removal of the subject property from valuation list<sup>2</sup>.

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<sup>1</sup> Paragraph 3.7 of Mr John Shaughnessy's precis.

<sup>2</sup> Paragraph 3.7 of Mr John Shaughnessy's precis

- 2.7 On 23 December 2022 Tailte Éireann removed the subject property, PN 43776, from the valuation list<sup>3</sup>.
- 2.8 The date by reference to which the decision of the revision manager in respect of the Property the subject of this appeal was made is 18<sup>th</sup> April 2018.

### **3. DOCUMENT BASED APPEAL**

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.
- 3.3 Mr Liam Rickard submitted a precis of evidence on behalf of the Appellant and a response to the precis submitted on behalf of the Respondent.
- 3.4 Mr John Shaughnessy, valuer Tailte Éireann, submitted a précis of evidence on behalf of the Respondent.

### **4. FACTS**

- 4.1 From the uncontroverted evidence adduced by the parties the Tribunal finds the following facts.
- 4.2 The Property is situated at 47 St Catherine's Drive, Rush, Co Dublin.
- 4.3 The Property is a ground floor unit, which functioned as an estate shop until the business closed in December 2016. The upper floor was used for residential purposes.
- 4.4 The floor area, as set out in the précis for the respondent, was 129.61 m<sup>2</sup>; 87.52 m<sup>2</sup> retail and 42.09 m<sup>2</sup> storage.
- 4.4 The Appellant applied to Fingal County Council for planning permission to alter and extend the premises and for a change of use from retail to two residential apartments. Permission was granted for the proposed development subject to conditions on 28<sup>th</sup> August 2017.
- 4.5 The Property was subsequently sold to a developer and has been converted to residential use.

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<sup>3</sup> Paragraph 3.7 of Mr John Shaughnessy's precis

## 5. ISSUE

- 5.1 The issue in this case is whether the revision manager was correct in deciding that a material change in circumstances that would result in the subject property being treated as a property within Schedule 4 did not exist.

## 6. RELEVANT STATUTORY PROVISIONS:

- 6.1 All references to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.
- 6.2 By virtue of section 3 of the Act, "*relevant property*" must be construed in accordance with Schedule 3 which, in material part, provides:

1. *Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act:*
  - (a) *buildings,*
2. *The condition mentioned in paragraph 1 of Schedule 3 is that the property concerned –*
  - (a) *is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was prerequisite for the making of a rate in respect of occupied property, or*
  - (b) *Is unoccupied but capable of being subject of rateable occupation by the owner of that property*

- 6.3 Schedule 4 to the Act defines the classes of relevant property that are not rateable including at paragraph 6:

*"Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain circumstances)).*

The section 59(4) exception is not relevant to the present case.

- 6.4 Section 3(1) of the Act, so far as material to this appeal, defines "*material change of circumstances*" as meaning a change of circumstances that consists of:

*(d) the happening of an event whereby any relevant property begins, or ceases to be treated as a property falling within Schedule 4.*

- 6.5 Under section 27 of the Act an occupier of a property may apply in writing to the Commissioner for the appointment of a person under section 28(3) to exercise the powers under that section in relation to that property.
- 6.6 Section 28(3) provides that the Commissioner shall appoint a revision manager to exercise the powers under that section in relation to the property to which the application relates.
- 6.7 Section 28(4) describes what the revision manager may do if he or she considers that a material change of circumstances occurred since a valuation was last carried out under section 19 of the Act or under comparable powers under repealed enactments.
- 6.8 Section 28(5)(a) requires the revision manager within six months to make a decision as whether the circumstances described in section 28(4), i.e., a material change in circumstances, exist for the exercise by him or her of the powers under that sub section.
- 6.9 Section 28(9) provides:

*If a revision manger decides that the circumstances referred to in subsection 4 [material change of circumstances] do not exist for the exercise of the powers under that subsection in relation to a property referred to in subsection (5) he or she shall, forthwith after the making of that decision, issue the occupier who applied under section 27(1) in respect of the property, a notice of that decision.*

## **7. APPELLANT'S CASE**

- 7.1 Mr Rickard in his submission set out the history of the Property. From 1998 to December 2016, it was run as an "Estate Shop" at St Catherine's, Rush. It served the nearby estates and had no passing trade. Following the arrival of Tesco in the vicinity in 2012 the business declined, ultimately becoming unprofitable and was forced to close in December 2016. Documentation from Friels and Company, the appellant's accountants was submitted to confirm this.
- 7.2 Following the closure of the shop the fixtures and fittings were removed leaving the property "*reduced to 4 bare walls*".
- 7.3 On 6<sup>th</sup> December 2016 the Appellant applied by email to Fingal County Council to have the Property removed from the list of rateable properties on the grounds that it was closed permanently. This request was refused. Subsequently, a formal written application for a

refund of rates on vacant premises was submitted for the period 1<sup>st</sup> July 2019 to 31<sup>st</sup> December 2019. This was also refused.

- 7.4 Planning permission for the conversion of the retail space to two apartments and a change of use from retail to residential was granted in August 2017.
- 7.5 The Appellant contended that grant of planning permission for the change of use from retail to residential precluded the Property from being used for retail purposes. It was now a residential property and as such should be removed from the valuation list.
- 7.6 In his response to the précis submitted on behalf of the respondent the Appellant conceded that prior to the grant of planning permission for a change of use in August 2017 the Property was a retail unit even while it was closed. However, he rejected the position taken at paragraph 5.1 in Mr Shaughnessy's précis that at the date of his inspection, 1<sup>st</sup> August 2018, the Property should be classified as retail. He held that this contention was irreconcilable with the fact that planning permission for a change of use from retail to residential had been granted in August 2017. He stated specifically:

*“... This [the grant of planning permission] changed the status of the building under the planning laws of the State, the building was now a residential building. I was not entitled to carry out any commercial activity on this premises thereafter as it would have contravened the planning laws. If I wanted to do so I would've had to apply for permission to return it to commercial use.”*

## **8. RESPONDENT'S CASE**

- 8.1 Mr Shaughnessy provided a summary of the revision procedures in the Act, a summary of his case, his response to the Appellant's case, the valuation history of the subject property, a location map, floor plans and photographs in support of his description of the Property.
- 8.2 The Property was described as “*mixed use*” with retail units on the ground floor and residential apartments on the first floor. External and internal photographs of the Property at paragraphs 3.5 and 3.6 respectively were provided to supplement the description.
- 8.3 Mr Shaughnessy contended that at the date of inspection 1<sup>st</sup> August 2018 the works carried out did not give rise to a material change of circumstances. There was neither a change in area, nor any amalgamation of areas, nor subdivision of the existing area.

- 8.4 Mr Shaughnessy contended that the removal of the fittings and fixtures had no effect on the value of the subject property. No value is attributed to these items in assessing the rateable value of retail property. Photographs of other commercial property in a shell and core condition which were rateable were provided at paragraph 4.3 of the precis.
- 8.5 In summing up Mr Shaughnessy stated that there had been no material change of circumstances. The subject property was a retail unit in a vacant and to let state and the absence of fittings and fixtures had no effect on the rateable value.

## **9. FINDINGS AND CONCLUSIONS**

- 9.1 On this appeal the Tribunal has to determine whether the revision manager was correct in deciding that no material change of circumstances as defined in section 3 of the Act existed in relation to the Property.
- 9.2 The Property had been used for retail purposes from 1998 until it was closed by the Appellant in December 2016. It remained on the valuation list of Fingal County Council until it was removed by Tailte Éireann following a request under section 27(2) of the Act on 23<sup>rd</sup> December 2022.
- 9.3 It is assumed, in the absence of any evidence to the contrary, that the retail user of the Property by the Appellant was compliant with the planning legislation.
- 9.4 On 28<sup>th</sup> August 2017 Fingal County Council granted permission for the:  
*“Alteration of the premises and the change of use of said premises from ground floor retail shop to two residential apartments and for alteration to front boundary and car parking area to the front of the premises”.*
- 9.5 The difference between the parties in this case is that the Appellant contends that the granting of planning permission to make alterations to the Property and to change its use from retail to residential precluded the Property from being used for retail purposes. On the other hand, Mr Shaughnessy for the Respondent contends that on the date of inspection the subject property was a retail unit in a shell and core condition that met the rating hypothesis of being vacant and to let.
- 9.6 The Tribunal prefers Mr Shaughnessy’s contention. His written evidence was of a retail unit in shell and core condition suitable to let. Thus, the Property comes within the definition of “*relevant property*” in accordance with paragraph 1(a) and meets the

condition set out in paragraph 2(b) of Schedule 3 to the Act. The accompanying photographs confirmed this and clearly showed that at the time of inspection the subject property was not capable of residential use.

- 9.7 The Tribunal does not accept that the grant of planning permission for carrying out alterations and changing the use of the premises from retail to residential use precludes the continuing use of the Property of its long-established retail user. The grant of itself does not amount to a material change of circumstances. It is not “...*the happening of an event whereby any relevant property begins, or ceases to be treated as a property falling within Schedule 4*” as provided at (d) in the definition of a material change of circumstances in section 3 of the Act. Rather, it gives permission over the five-year life of the grant to alter the premises and change the user from retail to residential. Until such time as these physical changes are made there is no material change of circumstances as defined in the Act.

## **10. DETERMINATION:**

- 10.1 Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent.