

Appeal No: VA17/2/001

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Artisan Traditional Bakery Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No. 2178537, Retail (Shops) at Unit 3/11, Dundrum Town Centre, Dundrum, Dublin 14. (“the Property”).

B E F O R E

Dairine Mac Fadden - Solicitor

Deputy Chairperson

Orla Coyne - Solicitor

Member

Gerard O'Callaghan - MRICS, MSCSI

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 30TH DAY OF JANUARY, 2024

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of April, 2017, the Appellant appealed against the determination of the Respondent not to pursue its statutory powers in relation to the Appellant’s Revision Application as no material change in circumstances within the meaning of Section 3 of the Valuation Act 2001, as amended by Section 2 of the Valuation (Amendment) Act 2015 has occurred. The Rateable Valuation as stated in Valuation Certificate is €141,400. pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €141,400.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because: “*Valuation is incorrect. Uses are incorrect*”

1.3 The Appellant in the Notice of Appeal did not state the valuation which it considered ought to have been determined for the Property.

2. VALUATION HISTORY

2.1 On the 31st March 2017 an application was made to the Respondent for the appointment of a revision manager to exercise powers under section 28(4) of the Act in relation to the Property on the basis that by reason 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 Dun Laoghaire Rathdown County Council, the valuation of the Property ought to be amended. A No Material Change of Circumstances Notice issued on the 8th March 2017. The Valuation Date as set out on the subject property is September 30th 2005. This is the subject of the appeal now before the Tribunal.

3. THE HEARING

3.1 The Appeal proceeded by way of a zoom hearing held on the 3rd day of July, 2023. At the hearing the Appellant was represented by Mr. Gabriel Matei of Artisan Traditional Bakery Ltd and the Respondent was represented by Mr. Sean Donnellan MSCSI, MRIS, B.Sc. in Property Valuation & Management of the Valuation Office.

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 his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following fact

4.2 The Property is situated on level 3 in the Dundrum Town Centre opposite Tesco Supermarket. It is a mid-terrace retail unit. It has a floor area of 52.40 M2.

4.3 The premises is occupied by Artisan Traditional Bakery Ltd trading as Baked Dundrum and comprises a sales and display area to the front and a food preparation and bakery to the rear. The unit is divided by a fireproof wall to separate the kitchen from the front sales area

of the shop. This fireproof wall can be removed as it is not structural and was placed there because of the food preparation to the rear of the unit.

5. ISSUES

5.1 The Appellant states the “valuation is incorrect”

6. RELEVANT STATUTORY PROVISIONS:

The relevant provisions are those relating to material change of circumstances as set out in the Valuation Act, 2001 as amended by the Valuation Act 2015.

Section 3 of the Valuation defines “Material Change of Circumstances as follows”-

- (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 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;

7. APPELLANT’S CASE

7.1 Mr. Matei representing the Appellant stated that he was not the person who had submitted the appeal it was his predecessor. However he had been involved in the business at all times initially as the production manager and now as a director of the company. He had bought the other person’s shares who had been involved in the business. He claimed he was not aware of exactly what was going on between 2013-2016/17 before he took over the business.

7.2 The Tribunal pointed out to the Appellant that what was to be decided was whether there had been a material change of circumstance to the Property. This case was not an appeal to the revaluation notice issued by the Valuation Office.

7.3 Mr Matei continued to give evidence that there was a fire partition wall erected in the unit. It had been erected to divide the sale area of the unit from the production/storage area to the rear. He accepted that this was the only matter of change in the unit.

7.4 When asked by the Tribunal how did he regard the partition wall constituted a change, he replied that it divided the unit between selling and production. He also was aware with regard to other units in the Dundrum Centre, that rates are calculated on square metres and the usage of same. He stated that in his view the production part of the unit should not be rated similarly to the sales part of the unit.

7.5 Under cross-examination, Mr Donnellan for the Respondent, asked Mr Matei did he accept that there had to be a material change in the premises. The partition wall did not constitute a material change and that if the shop was vacant and to let, the partition wall could be taken down as it was not structural and the unit as a whole could be used as retail. Mr Matei agreed with Mr Donnellan.

8. RESPONDENT'S CASE

8.1 Mr Donnellan submitted a precis of evidence to the Tribunal. He explained that the appeal was in relation to the No Material Change of Circumstance Notice issued by the Valuation Office. It is a Revision Appeal between a Revaluation in 2005 dated the 30th September 2005, the second Revaluation is currently in progress and the second Revaluation Certificates are in train.

8.2 Mr Donnellan went through his Precis, pointing out the central location of the unit in the Dundrum Centre. He confirmed that the area of the unit was not in dispute.

8.3 In his evidence Mr Donnellan stated that the unit was always open plan. It was the Appellant who chose to put in the partition wall to facilitate his business.

8.4 He contended that the Appellant had not addressed a material change of use. In order for him to do so he had to satisfy at least one of the matters as set out in the definition of

material change of circumstance as set out within the meaning of S3 Valuation Act 2001 as amended by S2 of the Valuation Amendment Act 2015.

8.5 Mr Donnellan cited VA 17/5/135 N J Kelly Ltd t/a Kelly's Newsagents amongst other cases in his Precis to support his argument that in this case no material change of circumstance had taken place since its last revaluation. The onus of proof is on the Appellant that such a change had occurred. Where the Tribunal in the Kelly case stated,

"The Tribunal considers that if, as postulated by Section 48 of the Valuation Act 2001, as amended, the unit is to be considered vacant and to let, that the hypothetical Tenant would consider the unit as a retail unit overall and not feel fettered by the presence or otherwise of a dividing wall to suit the needs of one occupier. To do otherwise would be to take the principle of 'rebus sic stantibus' too far."

8.6 Mr Donnellan further went on to state that both the Valuation Office in its Code of Measuring Practice for Rating Purposes and the Chartered Surveyors in its SCSi Measuring Practice Guidance both use the same method when measuring the Net Internal Area of a building to include

"areas severed by internal non-structural walls, demountable partitions, whether or not permanent, and the like, where the purpose of the division is partition of use, not support, provided the area beyond is not used in common."

8.7 Under cross-examination, Mr Mathai questioned Mr Donnellan on whether there is any difference between manufacturing and selling in a shop. Mr Donnellan explained there is, and that there can be different zones within a retail unit and different rateable valuations apply where this occurs. But because the unit is a retail unit and could be opened up again, it did not apply in this instance.

8.8 Mr Mathei in his summation believed his understanding was incorrect, namely if the retail unit was not used as a whole the rates would be lower. In this instance he realised that this is not the situation.

8.9 Mr Donnellan stated the Appellant had not proved his case. The Appellant had accepted that the wall could come down. He explained that this case was a revision not a revaluation. But that the second revaluation was currently taking place in the Dunlaoire Rathdown Co Co area.

9. SUBMISSIONS

9.1 None.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine whether or not the Respondent was correct in issuing the No Material Change of Circumstances Notice on the 8th March 2017.

10.2 The Appellant in cross examination by the Respondent accepted that the wall could be taken down as it was not structural and the unit could be let as an open plan unit. There was no structural change in the Property. It is clear therefore that there was no material change of circumstances within the meaning of that term as defined in the Act.

DETERMINATION:

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

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.