

Appeal No: VA20/4/0010

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

CAFÉ RUBIS

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 853071, Property Type: Retail (Shops), Address of Property: 9 Parliament Street, Dublin 2, County Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29th DAY OF JANUARY 2024

BEFORE

Martin Connolly - MAgRSc, MSc, MSCSI, FCInstArb

Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 12th day of November, 2020 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant Property was confirmed in the sum of €41,400.
- 1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(9) of the Valuation Act 2001 as amended ('the Act') that a material change of circumstance did not occur since a valuation under section 19 of the Act was last carried out in relation to the rating authority area in which the

Property is situate. Accordingly, the value of the Property must be ascertained by reference to values, as appearing on the valuation list for the rating authority area wherein the Property is situated of other properties comparable to the Property.

- 1.3 The sole ground of appeal as set out in the Notice of Appeal is that the valuation of the Property is incorrect as it does not accord with that required to be achieved by section 49 of the Act because:

"The Valuation is incorrect. The valuation is based on three floors being used for commercial purposes, however only one floor is used, and the other 2 floors are used for residential purposes."

- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €7,200.

2. VALUATION HISTORY

- 2.1 The valuation history set out hereunder is based on the limited documentation available to the Tribunal, for the most part provided at Paragraph 3 of Ms Harris' précis.
- 2.2
- | | |
|---------------------|--|
| 15 January 2020 | The case was assigned to a valuer. |
| 19 February 2020 | An appointment was made to inspect the Property, but the Appellant did not attend. |
| February-July 2020. | Several [unsuccessful] attempts were made on behalf of the Commissioner to contact the Appellant. |
| 28 October 2020 | The Notice pursuant to s 28 of the Act issued indicating that there was no material change of circumstances in relation to the Property and indicating a valuation of €41,200 ¹ . |
- 2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 7th day of April, 2011.

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,

¹ This is stated at Paragraph 3.1 of Ms Harris' précis. No copy of the notice was provided to the Tribunal either in the Appellant's submission or the précis submitted on behalf of the Respondent.

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 Derek McCauley, the Appellant, made submissions on his own behalf.
- 3.4 Ms Rita Harris, Valuer Tailte Éireann, submitted a précis of her evidence on behalf of the Respondent.
- 3.5 The Appellant was given the opportunity to reply to the précis submitted on behalf of the Respondent but did not do so.

4. FACTS

- 4.1 It is agreed by the parties that the Property is located at 9 Parliament Street, Dublin 2 and that the ground floor is in retail use, a café.

5. ISSUE(S)

- 5.1 The issues are quantum and the nature of the Property,
- 5.2 The Appellant contended for a valuation of €7,200 while Ms Harris on behalf of the Respondent contended that the valuation on the list, €41,400 should be upheld.
- 5.3 In the Notice of Appeal the Appellant described the property concerned as:

Ground floor Café called Café Rubis.

In the Grounds of Appeal, he stated that:

The valuation is based on three floors being used for commercial purposes, however only one floor is used, and the others 2 floors are used for residential purposes.

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 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:
 - (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 any 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 a 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 the 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 1833-2011.*

6.3 If a revision manager is satisfied that a material change of circumstances as defined by section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the Property is situated, the revision manager may under section 28(4)(a) of the Act:

- (i) *amend the valuation of that property as it appears on the list,*
- (ii) *exclude the property from the list on the ground that the property is no longer a relevant property...*
- (iii) *amend any other material particular in relation to that property as it appears on the list.*

6.4 If the revision manager decides that the circumstances referred to in s 28(4) do not exist, he or she, in accordance with s 28(9) of the Act, shall forthwith after making the decision issue the occupier who made the application under s 27(1) in respect of the property a notice of that decision.

6.5 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

- (1) *If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose*

of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

- (2) *For purposes of subsection (1), if there are no properties comparable to the first-mentioned property situated in the same rating authority area as it is situated in then-*
- (a) *In case a valuation list is in force in relation to that area, the determination referred to in subsection (1) in respect of the first-mentioned property shall be made by the means specified in section 48(1), but the amount estimated by those means to be the property's net annual value shall, in so far as is reasonably practicable, be adjusted so that amount determined to be the property's value is the amount that would have been determined to be its value if the determination had been made by reference to the date specified in the relevant valuation order for the purposes of section 20,*

7. APPELLANT'S CASE

- 7.1 The Appellant, in the Notice of Appeal, described the Property as a ground floor café.
- 7.2 In the Notice of Appeal it was also stated that the valuation was incorrect. It was based on three floors being used for commercial purposes whereas the Appellant contended that two were used for residential purposes and only one for commercial use.
- 7.3 In email correspondence with the Tribunal dated 27th May 2022 the Appellant stated that he had a small café with basement, ground floor and first floor but that he was using the first floor for residential purposes. In a subsequent email to the Tribunal, he provided two undated and untitled photographs that purported to show a residential area on the first floor as part of an apartment.

8. RESPONDENT'S CASE

- 8.1 Ms Harris provided a summary of her case, her response to the Appellant's case, the valuation history of the Property, a location map, and two untitled and undated external photographs in support of her case.

- 8.2 Ms Harris was unable to inspect the Property, as set out at Paragraph 2.2. She described it as a mid-terrace five storey over basement building located on Parliament Street, Dublin 2. The ground floor was in retail space. She provided two external photographs, undated and unlabelled, which showed four floors over the ground floor cafe, in support of her description.
- 8.3 Ms Harris pointed out that the Appellant put forward no comparable evidence in support of his contention for a NAV of €7,2000. Furthermore, there was an inconsistency between his description of the Property as comprising three floors and Tailte Éireann’s records which have the Property on the list as five storeys over basement.
- 8.4 Ms Harris contended that the onus of proof was on the Appellant to demonstrate that the entry on the list is incorrect, and she cited three Tribunal judgements in support of that contention: VA00/2/032, Proudlane; VA07/03/054, William Savage Construction; VA09/1/018, O’Sullivan’s Marine. In Ms Harris’ opinion the Appellant had not met the required threshold of proof.

9. FINDINGS AND CONCLUSIONS

- 9.1 There is no direct evidence before the Tribunal on the basis of the application under s 27 of the Act to have the valuation revised. Neither is there a copy of the notification received from the revision manager of the decision that is being appealed. Nonetheless, 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 As outlined in Paragraph 7 the Appellant contended that the NAV should be reduced to €7,2000 and that two of the three floors were no longer in commercial use. They were now in residential use. However, he provided none of the particulars required under Paragraph 39 of Valuation Tribunal (Appeals) Rules, 2019 in support of his case. There was no accurate description of the Property, no floor plans or schedule of areas and no evidence of planning permission to change the user from retail to residential use. Neither was there any evidence of the values of other properties on the Dublin City Council rating area, comparable to the Property put forward to support the Appellant’s estimate of value.
- 9.3 Ms Harris stated in her précis that the Property was assessed as five storeys over basement with an NAV of €41,400 and contended that this value should be affirmed.

9.4 There is a direct conflict of evidence on the description of the Property. The Appellant contended that it comprised three floors, a café and two floors in residential use. Ms Harris' evidence was that the Property was valued on the list as comprising five floors and a basement, all in commercial use.

9.5 Section 63(1) of the Act provides that:

The statement of the value of a property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act.

9.6 Tribunal finds that in this appeal, and in all appeals before the Tribunal, the onus of proof rests with the Appellant. This has been stated and affirmed on multiple occasions, including in the three Tribunal judgements cited by Ms Harris at Paragraph 8.4. This remains the guiding principle for Tribunal's determination.

9.7 The Tribunal finds that the Appellant has not been able to meet the threshold of proof necessary to demonstrate that the Respondent's decision was incorrect.

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.