

Appeal No: VA21/4/0005

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

Locater

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No: 5010159, Store at Donode, Ballymore Eustace, County Kildare.

B E F O R E

Dolores Power MSCSI, MRICS

Sarah Reid BL

Gerard O'Callaghan MRICS, MSCSI

Deputy Chairperson

Member

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 3RD DAY OF MAY, 2023

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 19th day of October, 2021 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 €33,200
- 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 :
 - 1) *The subject property is materially changed under definition (b) structural alterations. The Commissioner of Valuation is assessing a first floor in the property that does not exist. The subject property has a mezzanine only and therefore must be assessed on that basis.*
 - 2) *In the alternative, the Commissioner has powers under Section 29(a) to amend the valuation of the subject property wherein an issue of equity or uniformity arises. In this instance, the Commissioner could amend the error of classifying a mezzanine as a first floor.*
- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €21,074.

2. VALUATION HISTORY

- 2.1 On the 22 June 2017, a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €33,200. A Final Valuation Certificate issued on the 7 September 2017, stating a valuation of €33,200.
- 2.2 No appeal was lodged against the Respondent’s Final Valuation. However, by letter dated 20 July 2020 the Appellant’s agent, Mr. Halpin, wrote to the Respondent requesting that the Commissioner exercise his discretion pursuant to Section 29A of the 2001 Act (as amended) to direct the Revision Manager to amend the List.
- 2.3 The Respondent considered the Appellant’s request as a request for Revision and inspected the property finding there to have been no material change of circumstances. Arising from this, the Respondent issued a Notice confirming their position on 23 September 2021 and the present Appeal, is the Appellant’s appeal from that decision.
- 2.4 To the extent that it applies, the date by reference to which the value of the property, was determined is the 7th day of September 2017.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held via remotely through the Zoom platform on the 25th day of April, 2023. At the hearing the Appellant was represented by Mr. David Halpin of Halpin & Co. Associates, and the Respondent was represented by Ms Andria Sloan of the Valuation Office and Mr Keith Rooney B.L. along with Mr. Adam Wickham from the Chief State Solicitors office.
- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis’ of evidence, including a supplemental précis on the part of the Appellant, prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their précis as their evidence-in-chief prior to giving oral evidence.
- 3.3 In circumstances where the Respondent raised a preliminary objection to the proceedings, legal submissions were heard in that regard, prior to opening the evidence in the case. For reasons set out below, the Appeal was struck out following those submissions, and arguments by both parties, and the substantive evidence in relation to the property’s valuation was not required.
- 3.4 Having heard submissions from both parties, and having risen to consider the arguments presented, the Tribunal directed that the Appeal be struck out and advised the parties of their ruling at the conclusion of the preliminary application.

4. FACTS

- 4.1 Save as set out in Section 10 hereunder, the Tribunal makes no findings as to facts in circumstances where the Appeal was heard by way of preliminary application, the result of which concluded the Appeal.

5. ISSUES

- 5.1 This Appeal arises from, and is borne out of, the Respondent's refusal to grant the Appellant's request that the valuation certificate in respect of the subject property be amended to reflect what they claim are inaccuracies that underpin the original (2017) valuation.
- 5.2 Subsequent to the Appellant's request for reconsideration of valuation under Section 29A of the Act, the Respondent undertook a revision exercise, pursuant to Section 28(4) and concluded that the subject property did not meet the threshold of material change of circumstances. On that basis the Respondent determined that the prior valuation should stand and the Appellant now asks the Tribunal to consider the merits of the Respondent's decision in circumstances where they claim the property has a mezzanine not a first floor and should be assessed on that basis.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 **Section 28(4)** of the Valuation Act 2001 (as amended) provides as follows:

“A revision manager, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection, or of comparable powers under the repealed enactments, in relation to the property warrants the doing of such, may, in respect of that property—

(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—

(i) amend the valuation of that property as it appears on the list,

(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,

(iii) amend any other material particular in relation to that property as it appears on the list,

(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—

(i) carry out a valuation of that property, and

(ii) include that property on the list together with its value as determined on foot of that valuation.”

6.2 **‘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;”,

6.3 **Section 29A** provides:

“(1) Where a revision manager decides not to—

(a) amend the valuation of a relevant property under section 28, or

(b) amend any other material particular in relation to that property as it appears on a valuation list,

the Commissioner may, exceptionally and provided he or she is of opinion that it is necessary to do so in the interests of equity and uniformity of value or, in a case falling under paragraph (b), in the interests of maintaining the valuation list in as accurate a state as practicable, direct the revision manager, as appropriate, to amend—

(i) the valuation of that relevant property, or

(ii) the material particular that, in the opinion of the Commissioner, is inaccurate, and to issue or cause to be issued a new valuation certificate in relation to the property concerned.

(2) For the purpose of complying with a direction under subsection (1)(i), the revision manager shall determine the valuation in accordance with section 49 as if the valuation were being determined for the purpose of section 28(4). Following that determination, the revision manager shall issue or cause to be issued in relation to the property concerned—

(a) in accordance with section 29, a copy of the new valuation certificate proposed to be issued under subsection (6) of section 28, and

(b) in accordance with that subsection (6), the new valuation certificate (in the terms as originally proposed under section 29 or, as the case may be, as amended under subsection (3) of that section).”

7. APPELLANT’S CASE

- 7.1 The Appellant was represented by Mr. Halpin who stated they were unaware of the Respondent’s reasoning and grounds for refusing to cede their Section 29A request. Mr. Halpin noted there was no other, or obvious forum in which to raise this issue and so the Appeal before the Tribunal was brought to question the basis and fairness of the Respondent’s process in refusing to reconsider the valuation of the subject property, in light of what he claimed were obvious deficiencies in the original (2017) valuation.
- 7.2 Mr. Halpin confirmed that he was not asking the Tribunal to direct the Respondent towards a course of action and denied that he was requesting any such direction pursuant to Section 29A of the Act. His case was more properly concerned with the fact that the Appellant was unaware of the Respondent’s reasoning and his client had no way to question it or set it aside.
- 7.3 In answer to a question from the Tribunal, Mr. Halpin confirmed that no structural changes had been made to the property since 2017. However, he suggested that insofar as ancillary elements of the property had either been not valued or incorrectly valued (EG mezzanine for first floor) then these errors might constitute material changes. No formal submissions were made in that regard, and no substantive arguments were advanced by Mr. Halpin in support of that position.

8. RESPONDENT’S CASE

- 8.1 The Respondent was represented by Ms. Sloan and Mr. Rooney BL. No evidence was heard from the Respondent’s valuer as the preliminary legal application was determinative of the issue.

9. SUBMISSIONS

- 9.1 The Respondent submitted formal legal submissions which took issue with the Appellant's case on two grounds. In the first instance, it was contended that the Appellant's Notice of Appeal was un-stateable given they conceded that there has been no material change of circumstances. On that basis the Respondent asked that the Tribunal deem the Appellant estopped from raising the issue. Secondly, the Respondent argued that the Appellant's second ground of appeal (set out above) invited the Tribunal to act *ultra vires* by considering, directing or otherwise engaging in the wholly reserved powers conferred upon the Commissioner under Section 29A of the 2001 Act (as amended). The Respondent argued the Tribunal had no power to engage with the Respondent's powers under Section 29A and as such the Appellant's claim was beyond the scope of the Appeal, and the Tribunal's powers.
- 9.2 Insofar as Mr. Halpin sought to argue that the alleged deficiencies in the Respondent's 2017 valuation could constitute material changes, Mr. Rooney argued that this was a departure from the Appellant's previous position and should not be entertained when their evidence to date, had not indicated or advanced this position. In response, Mr. Halpin said his supplemental précis, which had been disclosed to the Respondent, indicated the possibility of that argument but did not put the point further.
- 9.3 Mr. Halpin was invited by the Tribunal to comment on the Respondent's legal submissions, as filed, and he accepted that Section 29A creates and provides for discretionary powers which the Tribunal has no role in interfering with. However, he maintained that his client was in the dark as to how Section 29A is (and was) used by the Respondent and stated the present Appeal was the only forum in which to ascertain that information. Further he noted that the Appellant was obliged to exhaust all possible avenues of complaint. In reply, Mr. Rooney noted that it was entirely inappropriate to use the present forum as a 'cloak' for further complaints against the Respondent in other forums and asked the Tribunal to dismiss the Appeal.

10. FINDINGS AND CONCLUSIONS

- 10.1 The Appeal before the Tribunal is an Appeal under Section 28(4) contesting the decision of the Respondent which found no material change of circumstance had occurred in respect of the Subject Property. The grounds of Appeal before it, state the property was materially changed (having a mezzanine rather than a 1st floor as described in the Final Valuation) and further that the Respondent had within its powers, per Section 29A of the Act, the ability to revisit the 2017 Valuation in the particular circumstances of the present case.
- 10.2 The Tribunal finds that the Appellant conceded the subject property had not undergone structural changes since 2017 meaning the test for material change of circumstances had not been met. Notwithstanding the fact that Mr. Halpin claimed alleged deficiencies in the Respondent's valuation could constitute 'material changes', no substantive arguments were advanced by him in that regard. The Tribunal therefore finds that the

subject property was not materially changed, for the purposes of the Act, as required to succeed in this Appeal.

- 10.3 Insofar as Section 29A of the Act fell to be considered, the Tribunal finds that the Respondent unfairly presented the Appellant's case. Mr. Halpin's grounds of Appeal did not seek a direction from the Tribunal compelling the Commissioner to revisit their Section 29A discretion and same was confirmed by Mr. Halpin in oral evidence at the Hearing. In that regard the Respondent's legal submissions misdescribed the case being advanced by the Appellant. Notwithstanding same, the Tribunal, finds (and the parties agree) that no such direction can be made by the Tribunal. The parties are agreed that the Commissioner holds discretion under Section 29A which is not subject to Appeal before the Tribunal. Nothing further arises in that respect for the purposes of this Appeal.
- 10.4 Based on the evidence before the Tribunal that no material change of circumstances arose in the subject property, and further where the Appellant stated they were pursuing the present Appeal in order to gain answers and information as to the procedures and reasons employed by the Respondent in their Section 29A deliberations, the Tribunal finds that the Appeal is without merit and justification.
- 10.5 The Tribunal finds that the Appellant's complaint is one that falls outside the statutory remit and framework of the Valuation Act, 2001, as it applies to Appeals before the Tribunal. Further, it is clear from the evidence that the Appellant feels they have been denied information and/or answers in relation to why their original request for Section 29A re-consideration by the Commissioner was refused. The Tribunal finds that that decision, and the reason behind it, are not matters the Tribunal has power to hear, or fall to be considered in the context of the present Appeal, the grounds of which are set out above.
- 10.6 In this, as in all Appeals, the Tribunal is confined to its statutory remit. Specifically, and as recently confirmed by Mrs. Justice Hyland in *Honeybridge Ltd and Rory Burgess and the Commissioner of Valuation* (VQA 14/4/021), the Tribunal can only proceed based on the powers afforded to it under the Valuation Act and it is a matter for the Appellant to ascertain what additional procedures and forums are open to them as regards complaints against the Respondent.
- 10.7 For all of the above reasons, the Tribunal directs that the Appeal be struck out.

Costs

- 10.8 Having concluded that the Appeal should be struck out, the Tribunal invited submissions in relation to costs. The Respondent sought their costs and noted that subsequent to delivering their legal submissions to the Appellant, which they said firmly showed the case was bound to fail, the Appellant responded by filing a supplemental precis and drove the case on maintaining a position, subsequently confirmed as incorrect before the Tribunal. In the circumstances, the Respondent claimed they had no choice but to seek their costs. In response, the Appellant

maintained they had no other means to ascertain information or guidance as to why the Respondent refused their Section 29A request and said the Appellant was in a very difficult position with no answers and it would be unusual to direct costs against an Appellant.

- 10.9 Having heard both parties' submissions, the Tribunal ordered the Appellant to pay the Respondent's costs. Pursuant to Rule 162(e) of the Valuation Tribunal (Appeals) Rules, 2019, the Tribunal directs that the Appellant pay the Respondent's costs for attendance before the Tribunal on 25th of April, 2023.

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.