

Appeal No: VA22/1/0036

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

HOME APPLIANCES T/A DID ELECTRICAL

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 1153275, Property Type: Retail (Warehouse), Address of Property: 6AB/1E
Terryland Retail Park, Headford Road, Galway City, County Galway.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF JUNE, 2025**

BEFORE

Martin Connolly – MAgrSc., M.Sc., MSCSI, FCInstArb

Tribunal Member

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 15th day of March, 2022 the Appellant appealed against the determination of the Respondent pursuant to which the rateable value of the above relevant property (the Property) was reaffirmed in the sum of €450.
- 1.2 The valuation of the Property falls to be determined from a decision made by the revision manager under section 28(4) of the Valuation Act 2001 as amended ('the Act')

that no material change of circumstance (MCC) as defined in section 3 of the Act occurred since a valuation under section 19 of the Act was carried out or the last previous exercise of powers under section 28(4) or of comparable powers under the enactments repealed by the Act in relation to the Property.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:

“625.35sqm at first floor level is not usable as per Structural Engineers confirmations (submitted to the VO) As outlined to Mr Devlin in the VO, the space was acquired with the knowledge that the then entire FF of the building was unsafe for use and the section that it was economical viable to remove and replace (c.200sqm) is now safe to use and my clients are happy to pay the applied rate at FF and the applied rate on the GF.”

- 1.4 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €378.92.

2. VALUATION HISTORY

- 2.1 On the 10th day of April 2018 a Valuation Certificate under Section 29 of the Act issued in relation to the Property showing an valuation of €450.
- 2.2 On the 20th day of January 2020 an application was made by the Appellant to the Respondent under section 27 of the Act for the appointment of a revision manager to exercise the powers under section 28(4) of the Act in relation to the Property on the basis that an MCC had occurred since the last previous exercise of the powers under section 28(4) or of comparable powers under the enactments repealed by the Act in relation to the Property.
- 2.3 On the 17th day of February, 2022 pursuant to Section 29 of the Act the revision manager issued a notice to the Appellant stating he had decided not to exercise his statutory powers in relation to the revision application as no MCC as defined by Section 3 of the Act occurred.
- 2.4 The rateable valuation stated on the Revision Manager’s notice that issued on 17th day of February, 2022 was €450.

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 The Appellant was represented by James Dunphy MSc BSc Dip (Arb Law) MSCSI MRICS, McNally Handy and the Respondent was represented by Terry Devlin Tailte Eireann
- 3.3 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.
- 3.4 The Appellant did not submit a response to the Respondent's précis.

4. FACTS

- 4.1 There is no evidence of any facts having been agreed formally by the parties.
- 4.2 From a perusal of the respective précis the Tribunal finds that it is agreed that the Property is located in Terryland Retail Park, Headford Road, Galway, H91VY27 and that it is in retail use.
- 4.3 The floor areas as Mr Devlin's précis at page 8 are set out in the table below.

Floor	Use	Area (M²)
0	Retail	6126.9
0	Store	153.6
1	Store	820.5
Total		1,591

5. ISSUE(S)

- 5.1 The issue to be determined is whether there has been an MCC as defined in section 3 of the Act and if the revision manager exercised his powers correctly in accordance with section 28 of the Act.

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 MCC 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 relevant 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 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 or another rating authority (other than in accordance with the Local Government Act 2019), or

(h) relevant property or any part of relevant property becoming licenced or ceasing to be licenced under the Licencing Acts 1833 to 2011;

6.3 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.

6.4 Section 28(1) of the Act defines ‘*property concerned*’ as ‘... *a property in relation to which a person, by virtue of his or her appointment under this section, is entitled to exercise the powers conferred by this section.*’

6.5 Section 28(3) provides that the Commissioner shall appoint an officer to exercise the powers under that section in relation to the property to which the application relates

6.6 Section 28(4) describes what the revision manager may do if he or she considers that an MCC occurred since a valuation was last carried out under section 19 of the Act or

the previous exercise of the powers section 28 (4) of the Act or under comparable powers under repealed enactments. If the property is on the valuation list the valuation may be amended, the property may be excluded from the list or any material particular in relation to the property as it appears on the list may be amended. If the property is not on the valuation list and is relevant property not excluded under Schedule 4 or to which an order under section 53 exists, the revision officer shall carry out a valuation and include the property and its valuation on the valuation list.

6.7 Section 28(9) provides:

If a revision manager decides that the circumstances referred to in subsection 4 [MCC] 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.

6.8 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 situated 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 In his précis Mr Dunphy set out the basis on which the revision manager's decision was being appealed, a floor plan of the first floor space, photographs, location maps, a structural engineer's letter and his opinion of value.
- 7.2 Mr Dunphy contended that: *The first floor area as delineated on the floorplan in appendix 1 is unfit for use by the occupier.* He further contended that space was not safe could not be used by the occupier because of this.
- 7.3 Mr Dunphy cited *Building Regulations & Design Loading for Buildings Retail Warehousing* in support of his case.
- 7.4 Mr Dunphy enclosed a copy of a letter date 14 January 2020 from Roger Cagney, Chartered Engineer to Mr John Houlihan, Tanger Ltd., Terryland Retail Park, Headford Road Galway. Mr Cagney confirmed that:

...the area shown and outlined in "Green" "Retail Warehouse -625.35 sq metres comprises of a reused mezzanine floor area, has not been designed or constructed in accordance with the recommendations for the "Design loading for Buildings- Retail Warehousing"

Mr Cagney attached a floor plan of the area in question outlined in green.

- 7.5 At page 5 of his précis, entitled Closing Note Mr Dunphy, referring to 625.35 m², noted that this space had been declared unfit for occupation by a *Chartered Structural Surveyor (Appendix 2)*. Mr Dunphy contended that NAV applied to all of the first floor area should only be applied to 262.73 m², not the entire, and thus the valuation of the Property should be reduced from €95,700 on the valuation list to €84,200.

8. RESPONDENT'S CASE

- 8.1 Mr Devlin 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 and his estimate of the value of the Property. Mr Devlin also included a legal submission by Mr David Dodd BL
- 8.2 Mr Devlin described the Property as a two storey retail unit in use as an electrical goods shop on the ground floor with storage on the first floor. It is located in Terryland Retail Park, a busy commercial area within Galway City.

- 8.3 The Property is described as being in good condition throughout. Specifically, it is stated that the flooring on the first floor is similar throughout regardless of whether it was being used for storage or not
- 8.4 Mr Devlin put forward details of three comparable properties, including the Property, to assist the Tribunal

Comparable No 1

Property No: 1153275
 Address: Terryland Retail Park, Headford Road, Galway
 Total Floor Area: 1,591 m²
 RV €450.00

Description	Area (m ²)	NAV €/m ²	NAV €
Retail	616.9	€82.00	€50,585.80
Store	153.6	€34.17	€5,248.51
Store	820.5	€20.50	€16,820.25
		Total NAV	€72,654.56
		NAV @ 0.63%	€457.72
		RV	€450.00

This is the Property as it was revised in 2018

Comparable No 2

Property No: 1153272
 Address: Terryland Retail Park, Headford Road, Galway
 Total Floor Area: 162.75 m²
 RV €99.04

Description	Area (m ²)	NAV €/m ²	NAV €
Retail	162.75	€96.74	€15,744.44
		Total NAV	€15,744.44
		NAV @ 0.63%	€99.19
			€99.04

This is a retail property in the same centre as the Property.

Comparable No 3

Property No: 1153247
 Address: Terryland Retail Park, Headford Road, Galway
 Total Floor Area: 236.89 m²
 RV €80.00

Description	Area (m ²)	NAV €/m ²	NAV €
Retail	139.74	€82.00	€11,458.68
Retail	97.15	€13.676	€1,328.04
		Total NAV	€12,786.72
		NAV @ 0.63%	€80.56
			€80.00

This described as a retail property located adjacent to the Property.

8.5 Mr Devlin contended that no MCC had occurred. Consequently, the statutory powers under section 28 (4) of the Act, correctly, were not exercised. In Mr Devlin's opinion the entire of the Property is a relevant property in accordance with Schedule 3 of the Act, as amended.

8.6 Mr Devlin contended for an NAV of €450.00 calculated as follows:

Description	Area (m ²)	NAV €/m ²	NAV €
Retail	616.9	€82.00	€50,585.80
Store	153.6	€34.17	€5,248.51
Store	820.5	€20.50	€16,820.25
		Total NAV	€72,654.56
		NAV @ 0.63%	€457.72
		RV	€450.00

9. Submissions

- 9.1 Legal submissions on behalf of the respondent were made by Mr David Dodd BL.
- 9.2 Mr Dodd submitted that the issue in this case was whether an MCC as defined by section 3 of the Act happened or not and that the decision under appeal was that of the revision manger on 22 February 2022 that no MCC as defined by the Act occurred to the Property. The only issue in this appeal concerned first floor storage of which the appellant claims 625.35 m² are unsafe and should be discounted. It was submitted that in the notice of appeal the appellant had not identified any factual or evidential basis that would support an assertion that an MCC occurred in respect of the Property since the last revision in 2018 and that the Appellant's précis did not address this issue.
- 9.3 Counsel submitted that the engineering evidence was totally unsatisfactory. It was a six line letter dated 14 January 2020. There was no evidence that the Property was subject to the Building Control Act of Regulations nor that it had been built in breach of the Building Control Act or the Regulations. Mr Dodd submitted that the evidence was unsatisfactory and should be dismissed.
- 9.4 Mr Dodd's submission dealt at length with the provisions of the Act which govern the issue of MCC and he set out six criteria, listed at Paragraph 6.2 above, that could give rise to an MCC. Counsel cited the High Court judgement in the case of *Commissioner of Valuation v Birchfox Taverns* [2008] IEHC 110, which interpreted section 28 of the Act. Section 28(1) defines *property concerned*, i.e. a property in relation to which a revision officer is entitled to exercise his or her powers. Section 28(4) sets out two preconditions which must be met before the revision officer may exercise these powers: there must be a material change of circumstances and the change in circumstances must be such as to warrant the exercise of the powers.
- 9.5 It was Mr Dodd's submission that there was no evidence of an MCC occurring. Therefore, the preconditions required in section 28(4) of the Act have not been met and the Property cannot be *property concerned*. Counsel submitted, therefore, that the decision of the Commissioner should be affirmed.

10. FINDINGS AND CONCLUSIONS

- 10.1 This is an appeal against the decision of the revision manager on 17th February 2022 not to exercise his statutory powers in relation to a revision application as there was no MCC in the Property.

- 10.2 On this appeal the Tribunal has to determine whether the revision manager was correct in determining that no MCC had occurred in relation to the Property.
- 10.3 Mr Dunphy for the appellant at page 5 of his précis contended that 625.3 m² of the first floor storage space ... *had been declared unfit for occupation/use by a Chartered Structural Surveyor (Appendix 2)* At Paragraph 23 of his submission Mr Dodd questioned the term *Chartered Structural Surveyor*. The Tribunal finds, on the balance of probability, that the term *Chartered Structural Surveyor* is a typographical error and should read Chartered Structural Engineer. The evidence Mr Cagney, the Structural Engineer is, in fact, at Appendix 2.
- 10.4 On the basis of Structural Engineer Mr Cagney's advice at Appendix 2, page 7 of his précis, that 625.35 m² of the mezzanine space ... *had not been designed or constructed in accordance with the recommendations for the Design Loading for Buildings – Retail Warehousing*, Mr Dunphy contended that this space was unusable and therefore the NAV of the Property should be reduced accordingly to reflect this.
- 10.5 Mr Dodd in his submission at paragraph 20 stated that the engineering evidence was ...*totally unsatisfactory*. The Tribunal agrees. The letter dated 14 January 2020 from Mr Cagney, Engineer, to Mr Houlihan of Tanger Ltd is of little assistance. There was no evidence of structural surveys, no drawings and no description of how floor in question may be deficient. The mere assertion that the floor did not meet the recommendations for the design of retail warehouses does not discharge the onus on the Appellant to prove its case.
- 10.6 The sole issue to be determined in this case is: did an MCC, as defined in section 3 of the Act, occur between the previous revision on 10th April 2018 and the date of the revision manager's decision that no MCC occurred, 17th February 2022?
- 10.7 Mr Dumphy for the appellant contended that the 625.35 m² of the first floor had been declared unfit for occupation/use and therefore should not be included in the calculation of the rateable value. In support of his case he enclosed a letter from a structural Engineer, Mr Cagney, which stated that the first floor area had not been constructed to the required standards for retail warehouses. However, neither Mr Dumphy nor Mr Cagney provided any evidence to show that the alleged deficiency in part of the first floor arose between the previous revision and the date of this appeal. Indeed Mr Cagney's letter dated 14 January 2020 would suggest the contrary. He stated that the floor in question had ... *not been designed or constructed in accordance with the recommendations* ...

- 10.8 Mr Devlin, at page 23 of his précis expressed the opinion that no MCC had occurred and as a result the statutory powers under section 28 of the Act were correctly exercised by the revision manager.
- 10.9 The Tribunal accepts Mr Devlin's evidence and finds that the revision manager was correct in deciding not to exercise his statutory powers in relation to the Property as no MCC occurred since the last exercise of the powers under section 28(4) of the Act, on the 10th April 2018

DETERMINATION:

For the foregoing 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.