Appeal No: VA24/1/0006

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

ASHURST SUPPLIES LIMITED T/A GERARD'S DELI **APPELLANT**

and

TAILTE ÉIREANN **RESPONDENT**

In relation to the valuation of
Property No. 2135261, Retail (Shops) Restaurant ground floor, Gerards Unit 5, Busáras, Store Street, Dublin 1

B E F O R E
DONAL MADIGAN - MRICS, MSCSI **Deputy Chairperson**
CAROLINE MURPHY - BL **Member**
SUZY QUIRKE - MSCSI, MRICS, Dip. Arb. Law. **Deputy Chairperson**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF APRIL, 2026

1. THE APPEAL

1.1 By Notice of Appeal received on the 16th day of January 2024 the Appellant appealed against the determination of the Respondent pursuant to which a notice of No Material Change of Circumstances was issued in which the net annual value (the 'NAV') of the above relevant property was recorded in the sum of €101,600**.**

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: "*The subject property has experienced a*

material change in circumstances under definition (e) subdivision. The occupiers ceded part back to the landlord.

Even if deemed materially changed, there remains a larger issue that the basis of the valuation is incorrect and inequitable."

1.3 The Appellant considers that the valuation of the property ought to have been determined in the sum of €36,500.

2. VALUATION HISTORY

2.1 At the Dublin City Revaluation a Final Valuation Certificate issued on the 16th day of December, 2013 stating a valuation of €101,600.

2.2 The date by reference to which the value of the property, the subject of this appeal, was determined is the 7th day of April, 2011.

2.3 On the 6th day of May, 2022 a Revision request was submitted.

2.4 The functions of the Commissioner of Valuation are now performed under the authority of Tailte Éireann with effect from 1st March, 2023 (S.I. No.58/2023 - Tailte Act 2022 (Commencement) Order 2023).

2.5 On the 21st day of December, 2023 a "No Material Change of Circumstances" notice was issued re-stating the valuation at €101,600.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 18th day of November 2025. At the hearing the Appellant was represented by Mr. David Halpin M.Sc., BA and the Respondent was represented by Mr. Ian Power of Tailte Éireann.

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.

3.3 At the hearing, Mr. Halpin applied to strike out the Respondent's précis as he said it was filed outside of the time allowed. An extension was given to the Respondent to file the précis when a settlement proposal was pending before the Technical Review Group. In addition to this issue, he said it is a factual case with a yes/no answer and a second valuer for the Respondent answered "yes" whilst Mr. Power answered "no". He said he could deal with this issue by way of questions, but it is for Mr. Power to deal with it as his précis did not deal with any contrary evidence and the second valuer was not in attendance to give evidence.

3.4 In response, Mr. Power said he was assigned to the appeal and he had made a finding of no material change of circumstances. Due to workload, a second valuer was assigned who was of the view that there was an error in terms of the floor area etc and that a proposal "without prejudice" was put together to the relevant authorities within the organisation. They were of the view there was no material change of circumstances and that the points of appeal were made entirely on material change of circumstances. The appeal was assigned back to him, as the original valuer, as he found no material change of circumstances. He also stated that a second extension to file his précis was granted to 10th October 2025, but that he had been on leave that week for personal reasons and that, in any event, that the Appellant had his précis, to review, for over a month.

3.5 Having heard the parties and also listened to the recording of the Call Over on 30th September 2025, the Tribunal denied the Appellant's application to strike out the Respondent's précis where the second extension to deliver the précis was granted to Friday 10th October 2025 and the précis was actually delivered on Tuesday 14th October 2025, and has been with the Appellant for over a month and, accordingly, that the Appellant was not unduly prejudiced by the late delivery of same.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts:

4.2 The property is situated within Busáras Bus Depot on Store Street in Dublin City Centre.

4.3 The property is a retail unit located on the ground floor of the Bus Depot currently in use as a café/restaurant.

4.4 The property is held under licence from CIE at an abated passing rent of €55,000 per annum.

5. ISSUES

5.1 The issue to be determined is whether there has been a material change of circumstances 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 The Section 3(1) of the Act 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 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,

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

7. APPELLANT'S CASE

7.1 Mr. Halpin described the property which is a café/restaurant located in Busáras. The Appellant provided a plan and schedule as was required to list the property for Revision in 2022. He referred to the Respondent's plan which did not include a schedule but he included the Appellant's base measurements on that plan and indicated the following changes; on the right hand side of the property the doors are flush with the wall on the Respondent's plan and not on the Appellant's; there is a further structural isolation of the column to the back corner which is boxed off and cannot be accessed, there is a doorway blocked off and cannot be accessed; there is a passage with no right of access to the ATM with the occupiers; they have boxed off the third column on the far left and stuck a cold room in front of it which, he accepts, is the Appellant's decision but that the Appellant cannot access that space and has put in an office there.

The Floor areas are set out in his précis:

Retail Zone A	45.6005m2
Retail Zone B	35.1075m2
Retail Zone C	0.6600m2

Ancillary	50.3125m2
Total	131.68m2

7.2 Regarding the area no longer demised, which is the main point dealt with in his précis, Mr. Halpin stated there is an area of minimum 4m2 which was handed back to the landlord to install disabled lift access which did not occur and is marked on the plan in green. There may be additional areas in the landlord's control depending on what was originally assessed to the Appellant. Despite this, the Respondent declared the property not materially changed in December 2023 at a size of 154.57m2 in contrast to the Appellant who states the area as 131.68m^2 The difference (being 22.89m^2) between the parties is substantial and to date, no plan has been provided to the Appellant by the Respondent to outline why the Respondent feels the property is not materially changed.

7.3 Mr. Halpin argued that, nonetheless, where the issue concerns matters of fact alone, there are only three possibilities:

(a) The Appellant is mistaken in regards to their measurements. Whilst the Appellant took due care and attention to prepare the plan, they are still human and hence there may be a mistake obvious to the Respondent which is not obvious to them. In this case, it will be demonstrable and no material change accepted.

(b) The Respondent is mistaken in regards to their measurements. Again, this should be demonstrable and the Appellant would hope that a material change would be accepted. However, given that the Appellant supplied a plan and schedule, the Respondent would have considered this and would have to reach a different conclusion on review than he clearly did on inspection.

(c) The Respondent made a mistake in measurement at the outset. It is theoretically possible that the property was assessed on day one at 154.57m2 incorrectly, but that it is accepted now by the Respondent that the property is actually a different size. In the simplest terms, if the Respondent was assessing a square unit of 5m x 5m but it was recorded by him as 6m x 6m and this was confirmed by certificate, the fact that he was incorrect in the first place is not a material change on Revision. In the case of the subject, if the Respondent's Revaluation (2013 or earlier) plan but the measurements recorded are incorrect, then what

it means in practice is that the Appellant is paying for 22.89m2 that does not exist but that in itself would not be a material change. Whilst this would be demonstrably unfair, the Appellant would still accept that a material change had not occurred.

7.4 Mr. Halpin contends that the property is also over assessed but that this is not for decision of the Tribunal in this appeal and the only matter that can be determined is whether or not the property is materially changed.

7.5 Mr. Halpin argued that the property is materially changed under definition (e) subdivision. Simply put, the Appellant occupies 131.68m2 and the Respondent has assessed 154.57m2. The Appellant has concluded from this that the remaining space can only be in the occupation of CIE, the landlord, and not the Appellant. Nonetheless, there are three possibilities, as stated previously in this case: 1) The Appellant is incorrect about the measurement and there is no material change. 2) The Respondent is incorrect about the measurement and there is a material change. 3) The Respondent is incorrect about the measurement but there is no material change. The Appellant advocates for option (2) and leaves the matter in the hands of the Tribunal.

Cross Examination

7.6 Mr. Halpin confirmed he did not have any documentary evidence to say that CIE had taken anything back from the Appellant as it happened a long time ago and he couldn't get anything from the Appellant who suggested it occurred in 2015. He accepted if the mistake was made at the outset the mistake is not a material change under the Act. He confirmed he did not have any photographic evidence that CIE are in occupation of part of the property, and said CIE took it back to put in a disabled lift that never came to pass, he thought they decided to put it somewhere else.

7.7 In answering questions from the Tribunal as to whether there was an attempt to jointly measure the property, Mr. Halpin said there was not as he was in Kerry at the time it was offered by the other valuer for the Respondent. He confirmed the only matter for the Tribunal to determine is whether there has been a material change in circumstances. When

asked whether the area in question remains a dumbwaiter, he said the area was no longer in the demise. He confirmed the tenant was in occupation at the time of the Revaluation and is still in occupation. He confirmed there was no map attached to the licence nor an area defined. He was asked whether the unit had been licensed since before the Revaluation or whether it is a renewed lease, he said that there had been what he wouldn't call deeds of variation but rather letters of variation where the rent is going to be "x" but he didn't believe there had been another licence since the original in 2010/2011. He was unable to say when the area in the basement was relinquished and suggested pre Revaluation in 2011/2012.

8. RESPONDENT'S CASE

8.1 Mr. Power said the property benefits from direct access from the bus depot concourse. The property is finished to a modern specification throughout and encompasses retail use with a service counter, and perimeter seating. Ancillary accommodation including preparation and staff areas are located to the rear of the premises. The area is finished to a modern specification. The retail area has fitted laminated timber floors, smooth plastered walls. There is LED lighting throughout the store also. The space highlighted in green on the Appellant's plan is the area the Appellant suggests has been removed from the demise, causing a material change of circumstances. It is a dumbwaiter which previously served the basement. The basement is no longer within the demise and was removed from the valuation pre -Revaluation.

8.2 Mr. Power provided Floor Areas in his précis as follows:

Retail Zone A	51.55m2
Retail Zone B	63.45m2
Retail Zone C	33.23m2
Remainder	6.34m2
Total	154.57m2

8.3 Mr. Power stated the Appellant's opinion is that the property is materially changed under definition (e). 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: (e)

property previously valued as single relevant property becoming liable to be valued as two or more relevant properties. Prior to the Revision request the property was last valued under the Dublin City Revaluation. A final certificate issued in December 2013, with a Valuation Date of 7th April 2011. Mr. Power confirmed that there were no representations at Revaluation. It was subject to a third-party Revision listing. It was listed on the grounds of a material change of circumstances had occurred with an additional statement from the agent stating their belief that it was zoned incorrectly at Revaluation. When inspected in October 2023 Mr. Power said he found no evidence of a material change of circumstances which would warrant the exercise of Revision powers of the Chief Operating Officer (Tailte Éireann -Valuation) under Section 28(4) of the Act since the property was last valued as part of the Revaluation of Dublin City Council rating authority area.

8.4 Mr. Power stated he found the demise in terms of the map as outlined by Mr. Halpin still there for the property, the broad outline of the property in terms of the red marks on the outside are all still in the demise of the property, and for that reason he was of the view that there was no material change of circumstances. The Appellant's précis states there is disabled lift access but in his opinion there is no other occupier that occupies this particular area and as it's in the demise, that it just seems to be cornered off. He was unsure what's out there but didn't think it was beyond the possibility it could be taken out, it doesn't seem to have access to any area and if anyone has access to the area, it's the Appellant occupier.

8.5 Mr. Power said there was no photographic evidence or correspondence between the landlord and occupier to show sections of the property have been handed back. He referred to the plan which he said shows there has been no change to the overall since it was last valued, no evidence to show subdivision of the properties has occurred and the onus of proof is on the Appellant that a material change of circumstances has occurred.

8.6 Mr. Power referred to **VA11/04/004**- Janet Doyle and **VA13/04/001**- Amber Springs where similar arguments were heard and to comparison properties in the development.

Cross Examination

8.7 Mr. Power confirmed the property was measured on a retail basis on "day one" as part of the Revaluation. When referred to the common plan, he agreed it was a possibility that the property was valued on a gross internal basis in 2013. He disagreed that there is no evidence from the plans that the columns were deducted by the original surveyor in 2013 as there is no evidence they were or were not included. Asked whether he deducted those structural columns in 2023, he said it hadn't changed and there was no material change of circumstances, so he didn't carry out a full survey of the development. He agreed someone else inspected the property in between and came to a different conclusion, and said that they measured it, found it was incorrect but if there was a mistake made as to area there is no material change of circumstances. When asked if it was an error not to deduct the structural columns, he said they have no evidence either way as to whether they were or were not included, a mistake may have been made but it doesn't deem a material change of circumstances to have occurred; the areas, dimensions or some of them are on the map.

8.8 In answering questions from the Tribunal, Mr. Power confirmed he didn't remeasure the property when he inspected it as he said the overall envelope of the property hadn't changed. He said there was a Revision in 2009 that took out the basement area. When asked if the area occupied by the dumbwaiter could still be used, he said he didn't believe it has been handed back to the landlord as it is still in the confines of the occupier's demise and there was no contrary evidence to show this from his experience at the property. He was unsure but thought the yellow shaped area on the map refers to a right of access to the ATM machine.

9. SUBMISSIONS & SUMMING UP

9.1 There were no legal submissions.

9.2 In summing up, Mr. Halpin made the following points. The Appellant has identified a number of changes to the property which are the area that has double doors which are indented more than the plan indicates, an area to the rear which has been completely boxed off, the passage to the back of the ATM which was originally a right of access is now boxed off, the third column has been boxed off which is just the Appellant's decision and the

dumbwaiter area that the Appellant exercises no control over. Those errors have occurred and there is a difference in measurement of 23m2. Mr. Power says the property looked the same to him, the second valuer carried out a survey and a proposal went forward on that basis, that valuer was then discontinued. A different opinion from the valuer was proffered as to the facts of the property which is material to this case particularly as Mr. Power made no reference to that in his submission, did not do a survey himself and there is a significant difference in the area and between the plans to which the Respondent has not produced any evidence to controvert the Appellant's measurements.

9.3 In summing up, Mr. Power made the following points. There is no photographic evidence, evidence of documentation as to what was handed back between the occupier to the landlord, no photographic evidence to the points Mr. Halpin brought up at the hearing and if they are being brought up at the hearing, they are all supplementary material changes. The fact remains that they are all in the confines of the envelope of the property which has not changed since the last Revaluation. The dispute Mr. Halpin brought to the Respondent's attention was the area on the plan marked in green. Another valuer looked at the case at Revision stage, "no material change of circumstances" issued and an appeal issued based on that. There is no satisfactory evidence to show a material change of circumstances has occurred. There may have been mistakes made in the overall calculation of the area at Revaluation but it is not a material change of circumstances. In considering whether subdivision has occurred in the areas suggested, they have not been handed back and there is no landlord in occupation of any of those areas. The Appellant has not discharged the onus of proof to show a material change of circumstances has occurred.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine if a material change of circumstances has occurred since a valuation under section 19 was last carried out in the rating authority area of Dublin City Council in relation to the property. Further in this as in all appeals before the Tribunal, the onus of proof in appeals rests with the Appellant. This has been stated and affirmed on multiple occasions and remains the guiding principle for the Tribunal's determination.

10.2 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: "*The subject property has experienced a material change in circumstances under definition (e) subdivision. The occupiers ceded part back to the landlord. Even if deemed materially changed, there remains a larger issue that the basis of the valuation is incorrect and inequitable."* As agreed by the parties, the Appeal is confined to a consideration of whether a material change of circumstances has occurred in respect of the property. The Tribunal is bound to have regard to the statutory definition of "material change of circumstances". The Tribunal must determine whether the property has had a material change of circumstances under (e) that it has become liable to be valued as two or more relevant properties.

10.3 The Appellant's case is that they as occupiers ceded back part of the property to the landlord. In addition, there is a dispute between the parties as to the measurement of the floor areas. The witness for the Appellant, Mr. Halpin measured and provided floor areas of the property. The witness for the Respondent, Mr. Power did not measure the property when he carried out his inspection and gave evidence that he found the property the same as the Respondent's map/plan which included floor areas from when the Revaluation was carried out in 2013, which was not appealed. Whilst it is unfortunate that the parties didn't carry out a joint inspection, or that the witness for the Respondent did not measure the property, both witnesses accept there is a mistake in the areas but a mistake cannot be considered a material change in circumstances. The Tribunal finds it is plausible an error occurred at Revaluation as Mr. Halpin measured the property for the purposes of this Revision application which was to a certain degree accepted by the witness for the Respondent but that in itself does not constitute a material change of circumstances.

10.4 The Tribunal finds that although Mr. Halpin says the occupiers ceded back part of the property to the landlord, no further evidence was given in that regard. The Tribunal does not therefore accept the Appellant's evidence to the effect that the property was sufficiently subdivided and/or became liable to be valued as two properties within the meaning of

Section (e) on the relevant date. The Tribunal finds that the Appellant has not discharged the onus of proof that the property has materially changed under (e).

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.