

Appeal No: VA24/2/0002

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

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

MANDERS COATINGS AND INKS IRELAND LTD

APPELLANT

and

TAILTE ÉIREANN

RESPONDENT

**In relation to the valuation of
Property PN 300426, Warehouse/Yard at Dunsinea Works Scribblestown, Dublin 15.**

B E F O R E

Donal Madigan-MRICS, MSCSI

Deputy Chairperson

Frank O’Grady- MA, FSCSI, FRICS

Member

Ken Enright-Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 22ND DAY OF APRIL 2026

1. THE APPEAL

1.1 By Notice of Appeal received on the 10th day of April 2024 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 **€86,400**.

1.2 The grounds of appeal as set out in the Notice of Appeal are 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 revaluation in 2019 shows the value at € 86,400 an increase of € 3400 from previous years. Fingal Co Council have reduced the rates bill in each and every year since 2019 by at least 30%. They did this reduction on the basis of derelict buildings and un-occupying. We made a claim backed up with documentation and signed by local solicitors”

“I wish to appeal the valuation tribunal decision which left the valuation unchanged – a steep revaluation upwards occurred in 2019. In looking at own appeal I would ask you to consider the following facts: -

- 1) following your revaluation in 2019 our company have made submissions to Fingal Co Co for a reduction in the excessive rate demands for each year since and have been successful in achieving approx. reduction for each and every year. These submissions were based on occupancy mainly due to derelict buildings. Our site is occupied far as possible with rents of (45,000 circa per annum. We cannot afford rates of circa €18,000 per annum.*
- 2) On 31st July 2016 our company sold its trading company selling inks when this business closed, we immediately let out all available spaces to enable the company to continue”*

1.3 The Appellant considered, in the Notice of Appeal, that the valuation of the Property ought to have been determined in the sum of **€83,000**.

2. VALUATION HISTORY

2.1 At the last Fingal County Council Revaluation in 2019, a Final Valuation Certificate was issued for this Property on the 10th day of September 2019, stating a valuation of **€ 86,400**.

2.2 On the 18th day of November 2022 an application was made by the Appellant 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 of a material change of circumstances had occurred, since a valuation under section 19 was last carried out to the rating authority area of Fingal County Council in relation to the Property, and that the valuation of the Property ought to be amended.

2.3 On the 13th day of March 2024 a “No Material Change of Circumstances Notice” was issued stating a valuation of € 86,400.

2.4 The appeal to this Notice was received by the Tribunal on 10th April, 2024 as set out in section 1 of this Determination.

3. THE HEARING

3.1 This appeal was originally part heard on 27th November, 2025 but some short time into that hearing it was adjourned by the Tribunal, under Rule 88, as it transpired that the Appellant had not received the précis of the Valuer from Tailte Éireann and also to facilitate the lodgement of legal submission by Counsel for the Respondent, Mr Keith Rooney, by 19th December, to be copied to the Appellant.

3.2 The Appeal was scheduled for the afternoon of 11th February, 2026 but owing to circumstances was rescheduled for the afternoon of 12th February.

3.3 The Appeal then proceeded by way of a full hearing held remotely on the afternoon of the 12th day of February 2026. At the hearing, the Appellant was represented by Mr. Alexander Smith, with Mr. Richard Kennedy (the present owner of the Property in attendance to observe only) and the Respondent was represented Mr. Keith Rooney, BL who called evidence from Mr. Jonathan Sharkey Assoc SCSi B.Sc.(Hons) Property Studies B.Sc. Real Estate, Valuer, of Tailte Éireann, and also in attendance was Mr. Adam Wickham of the Chief State Solicitors Office.

3.4 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 affirmation, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following as being the agreed or undisputed facts:

4.1 The Property is situated on Dunsinea Lane in Scribblestown which is an area between Finglas and Blanchardstown, north of the Tolka River.

4.2 The Property comprises a small gated industrial estate of 12 older style units on a site of 1.9 acres (0.769 hectares) Units 1, 6 and 10 are industrial offices. Units, 2, 3, 4, 8, 9 and 11 are industrial stores/workshops and unit 12 is a warehouse. Units 5 and 7 are also industrial stores/workshops and were found to be vacant on the date of inspection; these are the specific units under dispute in this appeal.

4.3 The total gross floor area of the Property is 2,135.07m².

4.4 Most of the units were let out to tenants on informal monthly tenancies as at the time of the notice issued by the Respondent in March 2024, but it is understood short term leases are now in place as at the date of the second hearing. A schedule of lettings from 2024 indicates that tenants have been in occupation for various durations from 18 months to over seven years. Several of the units are in use and occupied by separate mechanics and car dealerships, being P Walsh Auto Services and Rathbourne Motors Ltd. Other units are in use as offices and stores by separate occupiers and the stores are in use for storing such goods as painting supplies and filing cabinets.

4.4 The Appellant is the former owner under what is understood to be freehold title, the entire Property having been sold in October 2025.

5. ISSUES

The appeal was made on grounds related to valuation; a discount for Blocks 5 and 7, owing to condition and also, consequently, on the amount of rates levied, although the appeal was made in response to a Notice of No Material Change of Circumstances issued by the Respondent on 13th March, 2024 under section 28(9) of the Valuation Act 2001, as amended.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references in this Determination 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 and other Acts.

6.2 This is a post Revaluation Revision appeal and the event giving rise to this appeal is the notice issued by the Respondent under section 28 (9) of the Act, that, in his opinion, no material change of circumstances (abbreviated to **MCC**) has occurred since the last Revaluation undertaken in this rating authority area.

6.3 The last Revaluation in the rating authority area of Fingal County Council was made in 2019 and the Property, in this appeal, was entered on the Valuation List at a valuation of € 86,400 at that time. That remains the valuation currently appearing on the Valuation List.

6.4 Section 3(1) of the Act, defines "material change of circumstances" (**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 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 (other than in accordance with the Local Government Act 2019), or

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

6.5 The material change of circumstances, as claimed by the Appellant in **this appeal**, as submitted in evidence, but rejected by the Respondent, is:

(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,

6.6 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 has power under section 28(4) of the Act to undertake a revision valuation.

6.7 Where the value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015), then, in accordance with the provisions of section 49 (1) of the Act, it 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.”

6.8 As the Revision Manager chose, in this appeal, not to declare that an **MCC** had occurred, no change or new valuation was proposed, and no new valuation certificate was issued for the Property. Instead, the Respondent issued a notice stating that, in his opinion, no material change of circumstances had occurred.

6.9 The power of the Tribunal in these appeals is governed primarily by section 37 (1) and (2) of the Act which provides:

(1) The Tribunal shall consider an appeal made to it under section 34; in considering the appeal, unless the issues in the appeal do not relate to the value of property, the Tribunal shall achieve a determination of the value of the property concerned that accords—

(a) with that required to be achieved by section 19(5), or

(b) in the case of an appeal from a valuation made under section 28, with that required to be achieved by section 49.

(2) Having considered the appeal, the Tribunal may, as it thinks appropriate—

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, valuation manager or revision manager, as appropriate, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate—

- (i) decide that the circumstances referred to in section 28(4) existed for the exercise of the powers under that section,*
- (ii) in accordance with the matters set out in section 19(5) or 49, as appropriate, increase or decrease the valuation as stated in the valuation certificate,*
- (iii) decide that the property ought to be included in the relevant valuation list, and determine the valuation in accordance with the matters set out in section 49,*
- (iv) decide that the property, ought to be excluded from the relevant valuation list,*
- (v) decide to amalgamate relevant properties, the subject of 2 or more appeals, and determine the valuation of the amalgamated property, in accordance with the matters set out in section 49,*
- (vi) decide that the property ought to be subdivided into 2 or more relevant properties, and determine the valuation of each such subdivided property in accordance with the matters set out in section 49.*
- (vii) amend any detail, other than the valuation, as stated in the valuation certificate,*
- (viii) amend any detail stated in the notification made under section 28(7).*

7. APPELLANT'S CASE

7.1 Mr Alexander Smith, on behalf of the Appellant, submitted a detailed précis of evidence to the Tribunal supplemented by photographs, maps/plans and other information. He included copies of correspondence with the rating authority confirming rates payment concessions that had been granted, along with letters from estate agents confirming use and occupancy; a rates statement of account for the period 1st January, 2019 to 23rd September, 2025; a rates bill pre-dating the Revaluation from January 2016 indicating the previous net annual value (€ 83,000); and a table of tenancies and rental income from 2024.

7.2 In his précis Mr. Smith submitted that the location of the property is Dunsinea Works, Dunsinea Lane, Scribblestown, Dublin D15A9YW with Property Number 300426 being land and yard on the site of former factory comprising offices, with some derelict single- and two-storey buildings on a site of 7689.03m² (1.9 acres). The site is currently rented to a number of tenants who use the property for uses including auto repair, car storage and sales, and some workshop space. It was

previously a factory in the 1970s, 1980s and through to 2004, when it ceased manufacturing. He stated that a significant proportion of the site is derelict and unfit for use; and he enclosed photos taken in November 2022 by way of clarification.

7.3 In his oral testimony Mr Smith stated, in summary, that:

- (a) his case was based on the valuation being too high for several years;
- (b) he had given affidavits each year to Fingal County Council to obtain vacancy relief and this had been a rather arduous task and he had concluded that it would be better if the valuation could be reduced, on which the rates are based, rather than rely on these yearly submissions to the rating authority, hence the reason for the appeal;
- (c) Fingal County Council have backed up what he has been contending all along by granting relief on payments;
- (d) he has done his best to rent out most of the site, as much as they could;
- (e) on occasions tenants would be given a rental concession if there was, for example, a roof leak;
- (f) his company did not have the funds to spend much on the buildings as they are so old, by way of repairs nor would it have been justified in his period as joint owner over 26 years;
- (g) to expend money on the buildings would have been good money after bad and any tenant taking a tenancy was made aware of the company's position on this;
- (h) the original company associated with the site selling inks had folded and since 2016 he had let out the various buildings on the site to various tenants ending up with around 14 very small tenants;
- (i) and that every cost mattered and the rates bill was a heavy burden to face each year.

7.4 Under cross examination, Mr. Smith confirmed the following:

- (a) that units 5 and 7 were vacant at the time of the revision and that at the earlier time of the revaluation that some units had also been vacant then too, being most probably these two units.

7.5 In taking questions from the Tribunal, Mr Smith confirmed that:

- (a) Fingal County Council waived rates for portion of the Property on a regular basis each year which entailed him sending a map to them outlining those areas, occupied and unoccupied, counter signed by a solicitor;
- (b) income from the site in 2023 was in around € 43-46,000 and, excluding the concession granted the rates would have been about € 15,000, but they settled on a rates payment of € 10,000;
- (c) the company owed money to the bank and were under pressure to sell the Property;
- (d) that the two unoccupied units were not extensively advertised for letting it was more by word of mouth through the estate agents because advertising can have a negative effect on the other tenants in the estate;
- (e) he considered that the estate agents had been very effective in securing up to 14 tenants by this more muted approach and had even gotten occupiers for areas he did not reckon could be let;
- (f) the company was not prepared to spend money on the buildings nor would anybody else;
- (g) in comparing units 5 and 7 to the other units on the estate that in his view these were not lettable at all as there were too many issues with them;
- (h) in regard to the table of tenancies [Manders Monthly Rents 2024] set out in his precis that some had been in occupation for some considerable time (some for 12-13 years) but were not on formal leases when that table was drawn up but that, subsequently, for the purposes of the sale, leases were put in place, being for 4 years and 9 months for each tenancy;
- (i) the sale completed at the end of October 2025 although he said that he shook hands on the deal with the purchaser in September;
- (j) the valuation prior to the Revaluation was € 83,000 but he thought it had been lower before that;
- (k) the units share use of two toilets on the site and they are not separately metered for electricity;
- (l) rents are inclusive of rates and water rates and that the company, as landlords, paid for public liability insurance; and
- (m) access and parking for cars and vans was satisfactory as there was adequate space between the buildings.

8. RESPONDENT'S CASE

8.1 Mr Jonathan Sharkey, Valuer for the Respondent, submitted a detailed précis of evidence to the Tribunal in which he outlined the information he obtained from his inspection of the Property on 13th September, 2023 and he confirmed his opinion that as, in his view, no material change of circumstances had occurred, that, consequently, the valuation of the Property should remain at the existing valuation of € 86,400.

8.2 In respect of the material change of circumstances, he contended, in his précis, that at the date of his inspection, the areas, specifically units 5 and 7, which the Appellant is contesting, were found to be vacant and although in need of modernisation, were capable of beneficial occupation. He was informed by the Appellant that these areas were previously used as a factory for the supply and distribution of coating inks, and that they have been vacant for a number of years. Although these areas are vacant and in need of modernisation, that, in his opinion, they are still capable of beneficial occupation. It is his opinion that the entire of the subject property, including the areas under dispute, meet the conditions as set out in Schedule 3 of the Valuation Acts 2001 to 2020 to constitute Relevant Property. He noted that several of the units were found to be in use and occupied by separate mechanics and car dealerships, being P Walsh Auto Services and Rathbourne Motors Ltd. Other units were in use as offices and stores by separate occupiers; the stores were found to be in use for storing such goods as painting supplies and filing cabinets. The industrial warehouse was also in use by Rathbourne Motors to store motor cars. He noted that the areas of the property which the Appellant is contesting, and which he was advised by the Appellant were previously used as a factory for the supply and distribution of coating inks, are vacant and have been so for a number of years. Accordingly, that due to these areas being vacant for this amount of time, the fact that they now require modernisation, does not, in his view, deem these areas as being incapable of beneficial occupation. Furthermore, he states that the Appellant has not provided any evidence to support their view that the property qualifies as Relevant Property not Rateable under Schedule 4 of the Valuation Act 2001, as amended.

8.3 Mr Sharkey outlined how the valuation appearing in the Valuation List had been calculated (rearranged here slightly for ease of reading) as follows:

Industrial/Offices/Warehouse	2,135.07m ² @ € 45.00	€ 96,078.15
<u>Deduct</u> 10% end allowance for poor site layout		€ <u>9,607.81</u>
		€ 86,470,34 rounded to
		NAV € 86,400.

8.4 In support of his valuation he referred to the following three comparables:

Respondent NAV Comparable Number 1

PN 567554

Laraghcon, Co. Dublin

NAV € 208,000

Total Floor Area (Buildings) 3,810.70m²

This property is situated 11 kilometres from the subject and the majority of it is in similar use and condition. It is valued at unit value rates of € 45.00 per m² on the main space with lesser rates on ancillary areas and yard.

This valuation was not subject to either representations or appeal.

Respondent NAV Comparable Number 2

PN 347746

Feltrim, Co. Dublin

NAV € 123,300

Total Floor Area (Buildings) 2,173.00m²

This property is located 19 kilometres from the subject and is in similar use to the subject.

It is valued at unit value rates of € 45.00 per m² with a rate of € 4.50 per m² applied to a yard.

This valuation was not subject to either representations or appeal.

Respondent NAV Comparable Number 3

PN 567555

Laraghcon, Co. Dublin

NAV € 186,500

Total Floor Area (Building) 4,048.00m²

This property is located 11 kilometres from the subject and is in a similar use. It is valued at unit value rate of € 45.00 per m² on the warehouse with a rate of € 9.00 per m² being applied to a mezzanine store;

This valuation was not subject to either representations or appeal.

8.5 In his oral testimony, Mr Sharkey, stated, in summary:

- (a) following the revision request he had inspected the Property on 13th September 2023 at which time he undertook both measuring and photographs of the buildings and site;
- (b) that specifically units 5 and 7 were capable of beneficial occupation from the perspective of the assumed hypothetical letting, notwithstanding that they were in need of modernisation, including, in one case, a deep industrial clean, and repair;
- (c) he subsequently issued the notice stating that, in his opinion, No Material Change in Circumstances had occurred;
- (d) he was then contacted by Mr. Smith asking him about an appeal and that he had talked through the process of appeal with Mr. Smith to enable him to lodge an appeal;
- (e) that once the appeal was assigned to him he had the benefit of having already seen the Property in September 2023 and had a large amount of evidence available to him, such as photographs, in order to compile the precis of evidence in order to respond to the appeal;
- (f) with regard to the revision application, more especially the cover letter with that application from Mr. Smith, in which he referred to the fact that he had not been able to lodge an appeal at the Revaluation stage, owing to medical reasons, and wanted to revisit the valuation retrospectively, he confirmed that he had not approached the valuation from that perspective (i.e. Revaluation) but as part **only** of a revision process;

(g) with regard to the photographs in his précis, those regarding units 5 and 7, that what is visible from them is the roof of the unit and that some of the internal cladding is in need of repair but that the external cladding is still intact and the unit is in need of a good deep clean; the two units were vacant at the time of inspection with noticeable ink stains on floors and walls but that cleaned up, with minor internal repair and modernisation, that they were capable of beneficial occupation; and (h) that when he is assessing a property he takes it in its existing condition at the time of inspection and in this case he considered both these particular units, though vacant, to be capable of beneficial occupation.

8.6 Mr. Smith did not put any questions directly to Mr. Sharkey by way of cross examination.

8.7 In taking questions from the Tribunal, Mr Sharkey confirmed that:

- (a) no information was provided to him by the Appellant, such as an Engineering opinion, or another view from a Valuer, as to whether the units were capable of beneficial occupation;
- (b) the valuation was arrived at by looking at the Property itself and the comparables, taking account of its condition but that he had considered the prior question and had concluded no material change of circumstances had taken place;
- (c) the major part of his comparable number 1 is in similar condition to the subject Property;
- (d) the breakdown of his valuation is to apply a unit value rate of € 45.00 per m² and that it includes an end allowance of 10%, being a deduction overall from the value of all the units combined which is for poor site layout, shared toilets and access;
- (e) the units are not separately assessed but are grouped together in one single assessment because the units share toilets and are not separately metered for electricity which could be reflected when letting them out as units;
- (f) there is no allowance for voids but one could be made where this is considered appropriate;
- (g) notwithstanding what he said previously, that the 10% allowance does include for management;
- (h) it was put to him that although the property was originally valued as a factory but is now an investment property, does this not constitute a material change of circumstances, to which he replied that he considers it otherwise (grouped units in one assessment of NAV) and that this change does not constitute a material change of circumstances.

9. SUBMISSIONS

9.1 There was no legal submission made on behalf of the Appellant.

9.2 Mr Keith Rooney, BL, on behalf of the Respondent, made a written legal submission on the applicable law as regard the material change of circumstances. In this he indicated that in the letter requesting revision from the Appellant had identified the basis of the request. That letter suggests that parts of the relevant property are no longer occupied or in use and, on that basis, a revision was sought. It states that there were 8 tenants within the Property at that time. At the end of that letter the Appellant states:

“For these reasons, I am requesting the valuation of the site be revised retrospectively. I was unable to appeal the most recent revaluation in 2019, as I was unavailable at the time due to medical reasons”

At the time of the Valuer’s inspection in 2023 he says that ten of the units were in use and two were vacant. He submits that from this it is obvious that between the Revaluation in 2019 and the request for revision in November 2022, the Property continued in use for the same purposes as before with a similar level of occupancy.

9.3 In his submission he further commented that the only question for the Tribunal to determine was whether there had been a material change of circumstances. In this regard made reference to the principles applicable to the interpretation of the provisions of the Valuation Act 2001 were summarised in **Nangles Nurseries v. Commissioner of Valuation [2008] IEHC 73** as follows:

“(1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;

(2) the Act is to be strictly interpreted;

(3) impositions are to be construed strictly in favour of the ratepayer;

(4) exemptions or relieving provisions are to be interpreted strictly against the ratepayer;

(5) ambiguities, if they are to be found in an exemption are to be interpreted against the ratepayer;

(6) if, however, there is a new imposition of liability, looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;

(7) in the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.”

He submitted therefore that when the Tribunal considers what constitutes a material change of circumstances that it should consider the state of the relevant property as of the last revaluation date and then assess, by reference to the criteria in s.3(1) set out above, whether a change has occurred within that period. He drew attention to the fact that the Appellant had admitted that the reason for seeking the revision was that he had failed to appeal the revaluation figure in 2019. He stated that in the absence of the identification of a material change of circumstances, that there is no power provided to the revision manager to alter the valuation for the Property. He contended that in this appeal the Appellant’s own correspondence demonstrated that no material change has occurred. He outlined that it is the Appellant’s case that two of the units in the Property are not capable of beneficial occupation. However, he submits that when the Revision Manager inspected the units in question, he formed the view that the units are capable of beneficial occupation despite requiring some modernisation. In his opinion the appeal therefore turns on the question of whether or not a portion of the Property not being occupied is sufficient to bring it within the definition of a material change. He rejects this and states that there was no change with the Property being used and occupied, it being used and occupied the same as before. Furthermore, he submits that no evidence has been given to Tailte Eireann to demonstrate that the property meets any one of the relevant criteria to constitute a material change of circumstances. Accordingly, he contends that the only decision available to the Revision Manager, and by extension, to the Tribunal is to make a finding of No Material Change.

9.4 In his oral argument, Mr Rooney, contended, in summary, that there is only one question in this appeal being whether there has been a material change of circumstances or not. In this case, Mr, Rooney argued that the evidence of both Mr. Smith and Mr Sharkey is that at the time of the Revaluation in 2019 that this was an industrial estate containing 12 units ten of which were occupied and that in 2023 when Mr Sharkey inspected and made his assessment that, it was still an industrial estate with ten of the units occupied. Thus there was no material change in circumstances.. The only evidence regarding whether the two unoccupied units were capable of beneficial occupation was the opinion of the Respondent Valuer but, said Mr. Rooney, nothing of substance turned on this as the question for the Tribunal is whether there has been a substantive change between 2019 and 2023 to warrant it being a material change of circumstances. In his view no case emerges from the definition of it as forming any of the categories that amount to a material change of circumstances as set out in section 3(1) of the Valuation Act 2001, as amended.

9.5 Some questions were raised by the Tribunal concerning the valuation and how it was arrived at, a question which Mr. Rooney respectfully said was not open to the Tribunal in this appeal by reference to the case of **Commissioner of Valuation and Birchfox Taverns Limited [2008] IEHC 110** wherein said Mr. Rooney, it was held that, where the issue before the Tribunal is whether or not there is a material change of circumstances, that that was the only issue it could consider; it was not open for the Tribunal to consider the underlying valuation. He stated that the Appellant had conceded that, firstly, the two vacant units could be occupied, but he did not have the funds to make them lettable and, secondly, if a hypothetical party owned the Property, that they could do so, which Mr Rooney submitted satisfied the test in these cases. He submitted that as there has been no material change of circumstances, that the Tribunal should dismiss the appeal.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine, firstly, if a material change of circumstances has occurred and if it has, then, secondly, to determine the value of the Property in order to achieve, insofar as is reasonably practical, a valuation that is correct, equitable and uniform so that the valuation of the Property, as determined by the Tribunal, is relative to the value of other comparable properties on the valuation list in the rating authority area of Fingal County Council.

10.2 A close examination of the Appellant's case and grounds of appeal indicate that, through his personal circumstances, the Appellant was not in a position to lodge an appeal at the time of the Revaluation. This is most unfortunate for him and the Tribunal is sympathetic to his predicament at that time. Appeals at the time of Revaluation must be made within 28 days of the publication date of the Valuation List. The publication date specified in the Valuation Order was 17th September, 2019 and thus it can be seen that an appeal made in April 2024 would be considered vastly out of time to challenge that original valuation. In between Revaluations, a change in the valuation emanating from a revision request can only transpire if there has been a material change of circumstances (MCC) as mandated by the Valuation Act 2001. However, in the meantime, it is noted that the Appellant has received concessions from the local authority on part of the actual payment of rates. The rating authority have used their discretion in making concessions to him but the power of the Tribunal is restricted by the Valuation Act 2001, as amended, to determine if a material change of circumstances has occurred and, if an MCC has occurred, to determine the valuation. Furthermore, the Appellant based his case for a material change of circumstances partly on the fact that the local authority had granted him concessions for the payment of rates amounting, as he said in evidence, to approximately 33% over the years, on average. Whilst this is a notable fact it cannot be used to usurp the rating principles for the correct ascertainment of whether an MCC has in fact occurred and if it has, the determination of the net annual value in accordance with section 49(1) of the Act.. The levying and payment of rates is separate from the aspects of the valuation and the Tribunal's only concern is with this valuation.

10.3 As is the case in many rating appeals before the Valuation Tribunal mounted by lay Appellants, confusion can arise in the understanding of the role of the Tribunal and its scope of power. A rates bill is comprised of two parts. The first is the **valuation (Net Annual Value)** and the second is the **ARV, the annual rate on valuation**. The total rates payable is a factor of one component multiplied by the other. The jurisdiction of the Tribunal is solely concerned with the correct and equitable determination of the first of these, the **valuation**. The second of these, the **ARV** is fixed annually by the local rating authority and the Tribunal has no function on the determination of this figure. The **ARV** will vary from local authority to local authority and the amount of this will also vary greatly depending on whether the local authority area has been

revalued or not. As stated in section 6. of this Determination above, the basis of the **valuation** is by reference to section 49(1) of the Act at the valuation date specified in the Valuation Order for the last Fingal County Council Revaluation, which in this case is as at 15th September, 2017.

10.4 The Valuation Tribunal is independent of both Tailte Éireann and the rating authority, in this case, Fingal County Council and the scope of its powers is limited by section 37 of the Valuation Act 2001, as amended.

10.5 Notwithstanding what has been said in paragraph 10.3 above, the Tribunal is well aware that what will ultimately concern any Ratepayer after a Revaluation is the change in his/her monetary liability from the previous position which, understandably, may be the definitive rationale for an appeal. Whilst the Tribunal notes that a significant portion of the rates payable was reduced by the local authority, this discretionary power does not act to prevent the application of normal rating valuation principles to the designation of whether or not an MCC has occurred. What the evidence clearly pointed to is that this Property was previously valued as one small industrial estate of units and remained as such when the notice was issued by the Respondent. Specifically in regard to Blocks 5 and 7 at the Property, no evidence was advanced to indicate that these were not capable of beneficial occupation to counter the sworn testimony of the Respondent Valuer's opinion.

10.6 The evidence elicited from the precis of both parties, coupled with their oral testimony and responses to questions at the hearing, together with the legal submission by Counsel for the Respondent, persuade the Tribunal that no material change of circumstances has occurred.

10.6 The reasons for this determination are as follows:

10.7 Vacancy, in itself, as might be applied in the case of Units 5 and 7, is not a ground for denial of rateability, because as regards Relevant Property, paragraphs 1 and 2 of Schedule 3 of the Valuation Act 2001, as amended, provide that:

1.—Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act

(a) buildings.....etc

2.—The condition mentioned in paragraph 1 of this Schedule is that the property concerned—

(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

(b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.

10.8 As regards the condition of units 5 and 7, no engineer's or other evidence was advanced by the Appellant to demonstrate a significant lack of repair, and taking account of the nature and probable use of the buildings, the threshold of acceptability of their physical condition might be considered much lower for use as workshops for motor trade and allied businesses, than might be the case for other categories of property such as factories, warehouses, offices or retail;

10.9 The grounds of appeal focused on changing the valuation derived from the Revaluation when the time for appealing that valuation had long since elapsed and at the later stage of the application for revision in November 2022, the necessary prerequisite for a new valuation is the happening of an event giving rise to what is a material change of circumstances as defined in the Act;

10.10 The grant of concessions by the local authority, though providing much needed relief to the Appellant, cannot be aligned precisely with the application of the Valuation Act framework to the determination of this appeal, because the criteria for rates payment and the criteria for the ascertainment of an MCC or valuation for rates purposes are different

10.11 No change in the nature of the Property was evident from the information laid before the Tribunal to convince it that a material change in circumstances had occurred to warrant the production of a new valuation.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the decision of the Respondent that no material change of circumstances has occurred on this occasion.

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.