

Appeal No. VA04/1/005

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Birchfox Taverns Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed Shop at Lot No. 1, 10 Edward Street, Tralee, County Kerry

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF AUGUST, 2004

By Notice of Appeal dated 12th day of February, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €60.95 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"The present NAV of €60.95 is excessive by reason of A, B & C as set out in this enclosure herewith." ((A) NAV basis of Valuation, (B) Profits Method of Valuation & (C) Comparison with similar licensed premises - attached to Notice of Appeal).

1. This appeal proceeded by way of an oral hearing held on the 5th May 2004 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. At the hearing the appellant was represented by Mr. J.D. Wynne a director of Birchfox Taverns Limited and Mr. Kevin Wynne. Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent together with Mr. Shay Aylward, Staff Valuer in the Valuation Office. At the hearing, both parties, having taken the oath, adopted their précis as being evidence in chief.
2. At the hearing the following relevant facts emerged:
 - a. The property known as Lot No.1 Edward Street, Tralee is a three-storey terrace building. The ground floor is a public house and the first floor accommodation is used in conjunction therewith. The second floor is now a bar manager's flat and has the benefit of a separate pavement access. Access to the staircase leading to the second floor is also possible from the first floor accommodation.
 - b. Birchfox Taverns Ltd. occupy the entire property under a lease arrangement and the rent paid in 2002 was €7800. The landlord Mr. J.D. Wynne is also a director of Birchfox.
 - c. In 1998 the premises were listed for revision and as a result the then existing rateable valuation of IR£19 was increased to £56. In due course this decision was the subject matter of an appeal to this Tribunal (VA99/3/001) which reduced the rateable valuation to £48 based on a Net Annual Value of £9621 calculated at as set out below:

Ground Floor -Bar/Lounge	660sqft @ £14	=£9240
-Door	37sqft @ £3	= £111
First Floor -Toilets & Office	270sqft @ £1	= <u>£270</u>
Net Annual Value		= £9621

Rateable Valuation at 0.5%= £48 (~~€60.95~~).

No valuation was attributed to the accommodation on second floor level nor indeed was there any reference to it in the written judgment of the Tribunal dated 12th September 2000. In the Valuation List the property is described as "Licenced Shop".

- d. On the 11th of December 2002 Birchfox made an application for a revision of valuation in accordance with section 27(1) of the Valuation Act, 2001. In the application the revision was sought on the grounds that *“the entire second floor together with the hallway from a street level providing access thereto has been altered to residential accommodation since the valuation of the 9/11/1998. This structural alteration constitutes a material change of circumstances and entitles the applicant to seek the revaluation and “rebus sic stantibus”.*
- e. In response to the above application the revision officer appointed by the Commissioner of Valuation pursuant to section 28(3) of the 2001 Act, Mr. Shay Aylward, issued a letter headed “Notice of Decision, No Material Change of Circumstances” dated the 6th of August 2003 saying inter alia *“I wish to notify you that I have decided that no material change of circumstances has occurred in relation to this property and that I will therefore not exercise my powers in relation to the revision application”.* In other words no revision of valuation would be carried out in accordance with section 28(9) of the 2001 Act.
- f. On the 6th of August 2003 Birchfox lodged an appeal against the revision officer’s decision on the following grounds;
- “I contend that the conversion into a residential apartment of the third floor, which was hitherto unoccupied and un-rated constitutes a material change of circumstances.*
- S3 of the Valuation Act 2001 being the interpretation section states inter alia that material change of circumstances means a change of circumstances which consists of (c) “the happening of an event whereby any property or part of any property becomes or ceases to be treated as relevant property, (d) the happening of any event whereby any relevant property being or ceases to be treated as property falling within Schedule 4.”*
- The property is relevant property for the purposes of (c) above by virtue of S1 and S2(b) of Schedule 3 Valuation Act 2001 insofar as it ceased to be treated as relevant property subsequent to the conversion. The property, on completion of the conversion, became relevant property not rateable within Schedule 4 for the purposes of (d) above.*

Therefore a material change of circumstances has occurred and the provisions of S27 and S28 of the Valuation Act 2001 should be applied.”

- g. On the 9th of February 2004 the Commissioner of Valuation wrote to Birchfox as follows *“having considered your appeal I have decided that your property as detailed in the above Certificate should be entered in the Valuation List”*. The effect of this letter was to make no change to the existing valuation of €60.95. No reasons for arriving at this decision were given.
 - h. On the 12th of February 2004 Birchfox lodged an appeal to the Valuation Tribunal against the Commissioner of Valuation’s decision. The grounds of appeal stated at paragraph 6(a)(i) of the Notice of Appeal were as follows: *“The present NAV of €60.95 is excessive by reason of a), b) and c) as set out in the enclosure herewith.”*
3. At the oral hearing the parties agreed that the first issue to be decided was whether or not a “material change of circumstances” in relation to the subject property had occurred. If the answer is no, as contended by the respondent that is the end of the matter. On the other hand if the answer is yes, a revision will have to be carried out and the matter of quantum and any other relevant matter addressed.
 4. At the hearing each party made a brief submission in relation to the primary issue and it was agreed that both parties would forward written submissions to the Tribunal setting out their contentions thereon.

Findings

The Tribunal has carefully considered all the evidence adduced and legal submissions filed and makes the following findings:

1. The Valuation Act, 2001 which came into effect on the 2nd of May, 2002 repealed (with one minor exception) all the then existing statutory provisions relating to the valuation of property for rating purposes. The 2001 Act sets down the statutory basis of valuation and the procedures for carrying out valuations and revisions.
2. The sections of the 2001 Act which are particularly relevant to this appeal are as follows:
 - (i) Material change of circumstances is defined in section 3 as follows:

“(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 the making of structural alterations or by the total or partial destruction of any building or other erection 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.”

(ii) Property concerned is defined at section 28(1) as follows:

“In this section "property concerned" means 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.”

3. Section 27 of the Valuation Act, 2001 confers a right to a number of persons to make an application for a revision under section 28(3). The Act does not provide for the applicant to state the reasons for which the revision is sought although the form R2A issued by the Valuation Office contains a paragraph headed “Nature of Revision” which presumably is a request for reasons.
4. The Tribunal accepts as a matter of fact that the property occupied by Birchfox comprises the three-storey building known as Lot No. 1 Edward Street. Equally the Tribunal accepts as a matter of fact that the valuation of €60.95 appearing in the current Valuation List under Lot No.1 comprises only the ground and first floor and therein lies the difficulty.
5. It is common case that the second floor accommodation has the benefit of a separate pavement access and is therefore, theoretically if not in fact, capable of occupation independent from the licenced premises at the ground and first floor levels notwithstanding the fact that there is access to the staircase leading to the second floor at first floor level.
6. The fact that the 1998 valuation did not specifically make reference to the accommodation at second floor level does not alter the actuality that Lot No.1 Edward Street is and was at the time of the 1998 revision a three-storey building. That being the case the second floor accommodation ought to have been included in the valuation

of the licensed premises in some way or another. Alternatively the second floor could have been the subject of a separate valuation.

7. At the hearing the respondent did not refute the claim that substantial works had been carried out since 1998 to the second floor accommodation so as to render it capable of occupation as a bar manager's flat.

Determination

Having regard to the established facts in this case the Tribunal concludes as follows:

- a. Birchfox as occupier of the entire building was entitled to seek a revision under section 27 of the 2001 Act.
- b. The property appearing in the Valuation List under the entry of Lot No.1 Edward Street comprises the ground and first floor only. Birchfox as occupier of the entire was equally entitled seek a revision under section 27.
- c. Under section 27(1) an occupier of a property may apply to the Commissioner of Valuation for the appointment of a revision officer. Whilst a property is not defined in the Act it would appear that following the appointment of a revision officer (section 28(2)) it becomes a "property concerned" as defined at section 28(1).
- d. In the circumstances of this appeal the key issue is whether or not the "property concerned" is the entire of Lot No.1 Edward Street or merely that part of it which was valued at the 1998 revision i.e. the ground and first floor only without any reference being made to the remainder of the property.
- e. It is well established in Irish Law that "*when a word or expression is used in a statute creating a penal or taxation liability, and if there is a looseness or ambiguity attaching to it, it should be construed strictly so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language.*" (**Inspector of Taxation B. Kiernan[1982] ILRM 13.**) The Valuation Act 2001 is not of course a penal statute nor can it be said that the decision of the Commissioner of Valuation imposed "the fresh imposition of liability". Nonetheless the refusal by the Commissioner of Valuation to carry out the revision requested by Birchfox denied the appellant the opportunity of pursuing a claim for a reduction of valuation and thereby a possible lessening in the amount of rates payable.
- f. Having regard to the foregoing the Tribunal has come to the conclusion that the appellant as the occupier of Lot No.1 Edward Street was entitled to the revision sought and that the "property concerned" in this instance was the entire of Lot No.1

and not just the ground and first floor thereof. Whether or not the revision will materially affect the appellant's position is not relevant. What is relevant is that the procedures set down in the Act of 2001 are strictly followed.