

Appeal No. VA07/3/016

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

Michael Butler

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Marina at Lot No. 5M.5N.5B, Attirory, Carrick-on-Shannon, Carrick on Shannon 1,
County Leitrim

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 16TH DAY OF NOVEMBER, 2007

By Notice of Appeal dated the 17th day of July, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €370.00 on the above-described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, and in a letter attached thereto, a copy of which is at the Appendix to this Judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 16th day of October, 2007. At the hearing the appellant appeared on his own behalf and Mr. James Devlin, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Don Donovan, the Revision Officer appointed under Section 28 of the Valuation Act, 2001, was in attendance but did not give evidence.

Material Facts

2. The property concerned was listed for revision in 2004 and in due course a Valuation Certificate was issued on the 6th December, 2004 to the effect that the rateable valuation of the property had been assessed at €402.00.
3. No change in the assessment was made on foot of an appeal made to the Commissioner of Valuation under section 30 of the 2001 Act.
4. Following an appeal to the Valuation Tribunal made under Section 34 of the Act the rateable valuation of the property concerned was reduced to €370.00 in accordance with the judgment of the Tribunal issued on the 5th December, 2005.
5. By letter dated the 7th December, 2005 addressed to the Registrar of the Tribunal Mr. Butler expressed formal dissatisfaction with the said judgment of the Tribunal.
6. On the 15th December the Registrar wrote to Mr. Butler acknowledging receipt of his letter dated the 7th December, 2005 and advising him that a request for the Tribunal to state and sign a case for the opinion of the High Court must be accompanied by the requisite fee of €375.00 and furthermore that both the request and the fee must be received within the time limit specified in the Valuation Act, 2001, i.e. "*within 28 days from the date of the said determination*" (section 39(2)). On 16th December, 2005 Mr. Butler replied to the Registrar's letter of the previous day saying that he would have difficulty in complying with the statutory requirements as he was seeking information from the Freedom of Information Officer in the Valuation Office which would not be to hand until the 6th January, 2006 at the earliest. On 21st December, 2005 the Registrar wrote to Mr. Butler (by fax and landmail) acknowledging receipt of his letter of 16th December and stating that it was the Tribunal's view that the fact of his request under the Freedom of Information Acts did not prevent him from invoking Section 39 of the Valuation Act within the statutory time limit.
7. No further communication took place in relation to the 2004 revision and appeal process.

8. Following a request for a revision of the valuation of the property concerned made by Mr. Butler under Section 27, Mr. Don Donovan, the Revision Officer appointed by the Commissioner of Valuation, inspected the property concerned in November, 2006 and met Mr. Butler at the property.
9. Then on the 15th November, 2006 the Revision Officer issued a document headed Notice of Decision stating at paragraph 1 thereof *“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 not therefore exercise my power in relation to this revision application.”*
In other words there would be no change in the rateable valuation of the property concerned.
10. Mr. Butler appealed against this decision and when the Commissioner of Valuation disallowed the appeal the matter again came before this Tribunal for determination.

The Law

11. “Material change of circumstances” is defined in Section 3 of the Valuation Act and in the context of this appeal paragraph (b) of the definition as set out below is particularly relevant. “Material change of circumstances” means a change of circumstances which consists of—
 - (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,”*
12. Section 28(4) states:

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

 - (a) *if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—*
 - (i) *amend the valuation of that property as it appears on the list,*
 - (ii) *exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*

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

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

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

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

13. Section 28(5) states:

“(5) A revision officer shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—

(a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,

(b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.”

14. Section 28(9) states:

“(9) If a revision officer decides that the circumstances referred to in subsection (4) 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 to the person or as the case may be, each person who applied for his or her appointment under subsection (3) in respect of the property a notice of the decision.”

16. Accordingly therefore where the Revision Officer appointed pursuant to Section 28(2) finds that no “material change of circumstances” has taken place in relation to a property which has been listed for revision since the property was last valued, he or she shall issue a notice to that effect and make no change to the rateable valuation of the property as it currently appears on the Valuation List.

The Oral Hearing

17. Prior to the oral hearing Mr. Butler submitted to the Tribunal a comprehensive bundle of documents dealing with the 2004 revision and 2006 revision application and the various applications he had made under the Freedom of Information Acts. At the hearing Mr.

Butler made a lengthy submission expressing his general dissatisfaction with the valuation process in relation to the property concerned and pointed out that to the best of his knowledge it was the highest valued marina in the country.

18. The Tribunal said that it noted his comments but pointed out to Mr. Butler that it could deal only with matters arising out of the 2006 appeal.
19. In response to a question from the Tribunal Mr. Butler accepted the fact that no alteration to the property concerned had been carried out since the property was last valued for revision purposes in 2004.

Findings

The material change of circumstances provisions as contained in the Valuation Act, 2001 are quite specific and unambiguous and the applicant seeking a revision must clearly demonstrate that a material change of circumstances has taken place. If no material change of circumstances has occurred the Revision Officer has no alternative but to issue a Notice of Decision to that effect and to make no change to the rateable valuation of the property concerned as it appears on the valuation list.

Determination

Having regard to the foregoing the Tribunal finds that the Revision Officer was correct in arriving at his decision that no material change of circumstances had occurred. Accordingly therefore the appeal is dismissed and the valuation as currently appearing in the Valuation List is affirmed.

And the Tribunal so determines.