

Appeal No. VA14/4/028

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

Keane Auctioneers

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to whether a Material Change of Circumstances has occurred

Property No: 2179211, Retails (Shops) at Unit 9, Key West Custom Hse Quay, Wexford,
Sundry Townlands, Wexford No 1 Urban, Wexford Borough, County Wexford.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF MARCH, 2017**

Sasha Gayer – Senior Counsel

Chairperson

Aidan McNulty – Solicitor

Member

Frank Walsh – QFA, Valuer

Member

1. THE NOTICE OF APPEAL

1.1 By Notice of Appeal dated the 22nd day of December, 2014, the Appellant appealed against the Respondent's decision that no material change of circumstances had occurred, within the meaning of Section 3 of the Valuation Act, 2001, which would entitle the Appellant to a revision of the Respondent's valuation of the relevant property.

2. THE HEARING:

- 2.1 An oral hearing in relation to this Appeal was held in the offices of the Valuation Tribunal on the 13th day of April, 2015, at Third Floor, Holbrook House, Holles Street, Dublin 2.
- 2.2 At the hearing the Appellant was represented by Eamonn Halpin of Eamonn Halpin & Company Limited, Chartered Valuation Surveyors and Estate Agents. David Dodd B.L. was instructed by Michael Collins of the Chief State Solicitor's Office, on behalf of the Respondent. Evidence was given on the Respondent's behalf by Gillian Beale, Valuer of the Respondent's office.

3. THE PROPERTY:

- 3.1 The Subject Property is a ground floor retail unit in a mixed use development comprising of retail, offices and apartments, which appears to have been constructed in 2005.
- 3.2 The Subject Property was entered into the Valuation List as a new entry in October, 2006. On that date, it was under the occupation of Brown Sugar Coffee House Limited and the final Certificate of Valuation was issued at RV €105. On the 16th of July, 2013, the occupiers submitted a revision request to the Respondent on the grounds that the Property required separate assessment on the grounds that it was occupied by two separate occupiers – Ms. Edel Keane trading as Keane Auctioneers, the Appellant, and Mr. John Keane. On foot of this notice the Property was inspected by a Revision Officer on the 17th of December, 2013. On the 1st of May, 2014 a Notice of Decision of No Material Change of Circumstances issued. An Appeal against this Decision was made on the 3rd of June, 2014. The Respondent then issued a Notice of Decision to Disallow Appeal on the 4th of December, 2012, at which point this Appeal was brought to the Tribunal.

4. THE RELEVANT LEGISLATIVE PROVISIONS:

- 4.1 Section 3 of the 2001 Act defines many of the terms found in the Act. Of relevance here is the definition of "*material change of circumstances*" which is stated to mean –

“A change of circumstances which consists of

...

- (e) property previously valued as a single relevant property becoming liable to be valued as two or more relevant properties ...”*

4.2 Section 28(4) of the 2001 Act provides that a revision manager, 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, or of comparable powers under the repealed enactments, 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 grounds 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 valuation as determined on foot of that valuation.”*

of Office at Unit No. 9, Key West, Custom House Quay, Wexford". This document is undated, but, is signed by Edel Keane (on behalf of Keane Auctioneers, Lessor) and John Keane. It states at paragraph 1 that the "Lease" is to commence on the 22nd of August, 2011 for twenty-five years. At paragraph 3 it states that rent has been agreed at €150 per week payable monthly in advance and that there will be a rent review every five years. A deposit of €650 was payable. Paragraph 5 provides that the Lessees are responsible for internal and "*external repairs*" and refuse charges, the cost of utilities in respect of the office, insurance of own stock, own belongings, rates, water rates, etc. At paragraph 6 it confirms that the Lessors are responsible for the insurance of the building.

5.5 Mr. Halpin indicated that Mr. Keane operated as a property consultant or expert from that office. Under cross-examination, Mr. Halpin maintained that the office was a self-contained unit despite the fact that there was no separate address, separate post box, separate branding, no electricity meter or separate/independent means of access to the office. It was conceded that when leaving the office one had to cross through the rest of the unit to reach the front door. Mr. Halpin was unable to say if Mr. Keane had separate insurance in respect of the office. In cross-examination, Mr. Halpin was also asked about paragraph 6.23 of the Lease, which contained the usual tenant's covenants preventing the tenant from assigning, transferring, "*underletting*" or otherwise disposing of their interest in the demised property without the consent of the landlord. Mr. Halpin indicated that it was unlikely that it had got to the stage where Ms. Keane, the tenant of the Lease, had acquired consent from her landlord, Shellcara Traders Limited, for this subletting of part of the premises to her father.

5.6 In submissions, Mr. Halpin argued that this division of the property was a simple matter of fact and that, accordingly, there was no reason, legal or otherwise, as to why the application for revision should be denied as the circumstances envisaged by Clause (e) of the definition of "*material change of circumstances*" were clearly met.

6. THE RESPONDENT'S EVIDENCE AND SUBMISSIONS:

6.1 Ms. Gillian Beale, of the Respondent's office, who was the Revision Officer dealing with the Subject Property, gave evidence of her inspection of same and confirmed her observation that there was no separate entrance, post box, address, etc., in respect of the

office said to be exclusively occupied by Mr. Keane. Accordingly, she had found no evidence that the Property was occupied in separate units and had therefore refused the application for revision. Ms. Beale also relied upon screenshots from the website of Keane Auctioneers which had been printed by her when she was preparing her precis of evidence on the 30th of March, 2015. These screenshots confirm that the website, as of that date, indicated that John Keane was part of Keane Auctioneers and the same landline telephone number is given for him as that given for his daughter, Ms. Edel Keane. Ms. Beale stated that in her view, this supported the conclusion that Mr. Keane did not run a separate business from the office at the back of the unit and that the entirety of the Subject Property was occupied by the Appellant and, in the circumstances, there were no grounds for revising the valuation assigned to it.

6.2 Mr. Dodd B.L., in his legal submission, argued that to prove an MCC has occurred on the ground relied upon by the Appellant, the Tribunal had to be satisfied that the Subject Property is comprised of two separate properties. Instead, Mr. Dodd B.L. indicated that the office at the back of the Subject Property was occupied by a member of the Appellant's team. Mr. Dodd B.L. referred to the Valuation Tribunal decision in *O'Leary International Limited* [VA10/1/029] and, in particular, page 9 of same where the Tribunal found, *inter alia*, that “*in the absence of a clear physical division that would be required to facilitate subdivision*” the Tribunal believed it appropriate to value the Subject Property as a single unit. Further, Mr. Dodd B.L. emphasised that there was no evidence of a Lease Agreement between Edel Keane and John Keane. No evidence in respect of that issue had been adduced by either of these individuals.

7. FINDINGS:

The Tribunal, having carefully considered all of the evidence adduced by the parties and legal argument made by both sides in respect of same, makes the following findings:

- (i) To allow an Appeal against a decision that no material change of circumstances had occurred, on the grounds that the relevant Property was now liable to be valued as two or more properties, the Tribunal has to be satisfied that there are two (or more) units which would be able to operate as separate entities, within the Property which

had originally been valued, thereby creating a basis upon which to carry out a revision.

- (ii) The Tribunal is satisfied that in the instant Appeal there is no evidence of a clear physical division between the office at the back of the subject property and the rest of same. In particular, the Tribunal has had regard to the fact that there is no separate address for the office in question, no separate post box, electricity meter or independent means of accessing same. The evidence suggests that this office could not operate as a separate independent unit.
- (iii) The information contained on the Appellant's website indicates that Mr. John Keane is a fully active, leading, member of the Appellant's team. No evidence was adduced to support the contention that Mr. Keane operated his own consultancy practice from the office.
- (iv) The evidence adduced, on behalf of the Appellant, to support the contention that the office in question had been sublet by Edel Keane to John Keane was unsatisfactory. The Lease, which Edel Keane had entered into as tenant of the entire Subject Property was unsigned, undated and had been amended by simply crossing out "John" and writing in "Edel". This amendment was not initialled or verified in any way. The document described as being "*Re: letting of office at Unit No. 9*" etc., is also undated and, in the Tribunal's view, does not in itself establish that such a subletting arrangement has been entered into by Edel Keane and her father. The Tribunal notes that neither Mr. nor Ms. Keane gave evidence in respect of this matter in circumstances where it would, in the Tribunal's view, have been appropriate to do as the factual basis for the Appeal brought before the Tribunal was strongly contested by the Respondent.
- (v) The Tribunal is satisfied that the Subject Property is occupied by the Appellant as one unit and that there are no grounds for suggesting a material change of circumstance has occurred.

8. DETERMINATION:

Having regard to the foregoing, the Tribunal dismisses the Appeal.

And the Tribunal so determines.