

Appellant: Mr J Garner

Appellant's Address: Hotel and Premises, Maesmawr Hall, Maesmawr, Caersws, SY17 5SF

The Matter Appealed against: 2017 Non-Domestic Rating List entry

Date of Hearing: 12 September 2019

Appearances: Appellant - Mr J Garner (Owner) and Mrs V Upton (General Manager) and for the Valuation Officer (VO) - Mrs T S Davies

Date of Decision: 23 September 2019

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mr D C Subacchi (Chair), Mr W G Lewis and Mr L H Robinson

Tribunal Clerk: Mr R Williams

Introduction:

1. The subject proposal was made on the 31 May 2017 challenging the Compiled List entry of the Hotel and Premises, Maesmawr Hall, Maesmawr, Caersws, SY17 5SF, in the 2017 Non-Domestic Rating List at £46,750 Rateable Value (RV) with effect from the 1 April 2017.
2. The grounds of appeal as contained in the subject proposal were as follows:

"The RV altered to maximum of 5% increase effect from 01/04/2017.

The RV was inaccurate when the property was revalued in April 2017.

Excessive increase in our small business (20 room, 3-star hotel). We are based in Mid Wales in rural area. An increase of over £5,000 per annum is extremely difficult."
3. At the request of Mr Garner and with the agreement of the Tribunal, the representative for the VO presented her evidence first.
4. The following is a summary of the cases presented and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

The VO's Case

5. Mrs Davies reported that the basis of valuation for the appeal hereditament was defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of The Rating (Valuation) Act.
6. She explained that the rateable value (RV) of a hereditament was an estimate of the rental value at the Antecedent Valuation Date (AVD), which for the 2017 Non-Domestic Rating List was the 1 April 2015, whilst having regard to the physical factors and

physical setting as they were at the Material Day, which in respect of a Compiled List appeal was the 1 April 2017. She also confirmed that in respect of the former 2010 Non-Domestic Rating List, the AVD was the 1 April 2008 and the Material Day was the 1 April 2010.

7. The VO reported that the accepted method of valuation for licensed premises was the profits method, which was agreed following joint discussions between the VO and Gerald Eve, the rating adviser to the British Hospitality Association. The profits method was considered appropriate as it was based on analysis of trading accounts and other relevant information with the application of a rental percentage to the Fair Maintainable Trade (FMT).
8. The FMT represents the annual trade considered to be maintainable at the 1 April 2015, having regard to the physical nature of a property and its location whilst assuming the business will be carried out proficiently by responding to the normal trading practices and competition of the locality. The percentages to be applied in respect of 3 & 4 standard service hotels vary between 5.25% - 7.25%.
9. For the 2010 Rating List the adopted trade figure was £475,000 which was determined from trade information provided. Upon receipt of trade information in respect of the 2017 Rating List, the adopted and now agreed FMT figure was £750,000. From records provided by a colleague, she noted that an offer in reduction had been made to £45,000 RV at a rental of 6%, reflecting the nature of the property and the ongoing maintenance costs of a Grade II listed building. She also highlighted the fact of a reduction of 2% in the rental bid between the lives of the 2010 & 2017 Rating Lists.
10. Mrs Davies also informed the Tribunal that Mr Garner was paying a rent of £60,000 per annum, which suggested that the current RV of £46,750 was too low. However, the property was occupied as a hotel and therefore due to the limited comparable evidence available it should be valued having regard to trade. She also added that there was also a suggestion that the passing rent was not a true open market rent as there was a potential conflict with connected parties.
11. In conclusion whilst having regard to the type of hotel and the appeal hereditament's level of trade, the VO opined that the revised assessment offered to Mr Garner was fair and reasonable. Accordingly, she requested that the Tribunal confirm a revised assessment in respect of the appeal hereditament of £45,000 RV, with effect from 1 April 2017.
12. Following an invitation from the Chair to question the VO on the evidence she had presented, Mr Garner declined the offer as he could not disagree with the evidence presented. However, he commented that was unhappy with the criteria and structure within which the VO worked under.
13. In response to questions from the Chair and the Clerk, the VO confirmed that a median 6% rental bid was applied to the appeal hereditament as it was a small 3-star country hotel offering wedding, conference facilities with a good trade.
14. The lowest figure of 5.25% would apply to a rural 'Travelodge' type hotel with very limited facilities.

The Appellant's Case

15. Mr Garner informed the Tribunal that he purchased the Grade II listed property's freehold in 2008. As the property was basically in a poor state of repair and on its

knees, it required complete refurbishment and was upgraded at a massive cost. Consequently, he applied for a commercial mortgage, a mortgage designed for purchasing or re-mortgaging a property which was to be used as a business premises. At present, he owes approximately a half a million pounds for the improvement costs let alone the mortgage he still has left to pay.

16. Whilst he understands the criteria and structure within which the VO must operate, he questioned how it was applied? At no stage had the VO requested a breakdown of his accounts as it would detail expenses and would show that the business is not making a profit. The VO only looks at the turnover but not the actual cost of the turnover with no consideration for the fact that the costs of the business have gone up in line with the turnover.
17. He explained that an element of those costs were wages and pensions. The business employs 32 people who receive the minimum wage. However, having regard to the nature of his business and the travelling back and forth to work, he believed it was unreasonable to ask staff to work a minimum couple of hours and therefore he has to employ the staff for more hours than they are actually required.
18. The appellant explained that one day the rateable value of the property was £38,000 and the next it was £46,875. In monetary terms, he was one day paying £18,000 per annum, the next it had increased by £5,000 to £23,000 per annum. He challenged how could the current criteria be fair when he must plan for weddings 18 months in advance and then the VO can drop a bombshell of a 30% upsurge in costs.
19. In conclusion, Mr Garner made a plea for help in that any future notification of increases in the rateable value was advertised more and that any such increases were phased in over a period of time.
20. In the absence of questions, the VO commented that the draft list for the current 2017 Rating List was available to be viewed in September/October 2016 and only the property's rateable value would have been available to view and not the makeup of the valuation. The draft list to the next Revaluation in 2021 will be available to view in late 2020.
21. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

22. Having considered all the evidence placed before it, the Tribunal decided as follows:-
23. The definition of Rateable Value and the basis of valuation for the appeal hereditament, was contained within paragraph 2 (1) of Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999.
24. The definition determines that the Rateable Value of a non-domestic hereditament shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and other expenses, if any, necessary to maintain the hereditament in a state to command that rent.
25. The Tribunal was also mindful of The Rating Lists (Valuation Date)(Wales) Order 2014, SI No.2917 (W297) which signifies that the Antecedent Valuation Date, the 1 April

2015, as the day to which Rateable Values of Non-Domestic hereditaments were to be determined for the purpose of local and central Non-Domestic Rating Lists, compiled for Wales on the 1 April 2017.

26. Consequently, in accordance with relevant legislation, the Tribunal must value the appeal hereditament by reference to values pertaining at the 1 April 2015 and cannot consider economic factors other than they were on that day; whilst having regard to the locality that existed as at 1 April 2017.
27. The valuation method in respect of licensed premises is an accepted method that has been agreed and which has resulted in a scheme of valuation being approved and an appropriate guide published, based on the application of differential percentages to the Fair Maintainable Trade and this shortened profits method has formed the primary valuation approach for all licensed premises.
28. The Fair Maintainable Trade represents the annual trade considered to be maintainable at the 1 April 2015, having regard to the physical nature of the property and its location on the assumption that the business would be carried out proficiently, by responding to the normal trading practices and competition in the locality. The percentages to be applied would vary according to the physical characteristics of the premises and the nature of the trade.
29. From the trading information provided, the Tribunal was persuaded that the level of Fair Maintainable Trade agreed between the parties and adopted by the Valuation Officer fairly reflected the trade that the hypothetical tenant would reasonably have been expected to have achieved at the appeal hereditament at the Antecedent Valuation Date of the 1 April 2015.
30. The Tribunal believed the evidence provided by Mr Garner was in effect a protest at the Valuation Office Agency regarding the criteria and structure it worked within and the implementation of taxation following revaluations. Whilst Mr Garner was entitled to challenge the rateable value against his property by way of an appeal to the Tribunal, any grievances in respect of the implementation of Non-Domestic Rating taxation lay elsewhere and was not within the Tribunal's remit.
31. Having regard to relevant legislation and considering the evidence overall, the Members believed the Valuation Officer was correct in her assertion that the revised assessment of £45,000 Rateable Value was fair and reasonable having regard to the Fair Maintainable Trade of £750,000 at a rental bid of 6%.
32. In conclusion, the Tribunal allowed the appeal in part in respect of the Hotel and Premises, Maesmawr Hall, Maesmawr, Caersws, SY17 5SF, and Ordered that the revised assessment of £45,000 Rateable Value be entered in the 2017 Rating List, with effect from the 1 April 2017.

Certified a true copy on 23 September 2019