

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Gengard Ltd

Appeal property: Newgale House, Newgale, Haverfordwest

Appeal number: 684530455242/541NV17

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 3rd September 2019

Appearances: Mr M Carter (for Gengard Ltd) & Mrs S Harris (for respondent Valuation Officer)

Date of Decision: 30th September 2019

Decision of Tribunal: Allowed (in part) Rateable Value £14,500 with effect from 1st April 2017

Members of the Tribunal: Mrs C A Green (Chairperson), Mr N R J Edwards & Mrs B C Martin

Tribunal Clerk: Mr J Evans

Introduction

1. On 31st January 2018, the Valuation Officer (VO) received a proposal which challenged the alteration that was made to the Rating List in respect of the appeal property Newgale House, Newgale. The proposal was made by Mr M Carter for the appellant company "Gengard Ltd" who occupied the property that was the subject of this appeal.
2. In making the proposal for Gengard Ltd, Mr Carter sought a reduction in the revised Rateable Value of £17,250 with effect from 1st April 2017 to Rateable Value £7,500.
3. Since the VO did not agree to alter the list to the extent Mr Carter sought for in the proposal, the matter was remitted to the Valuation Tribunal for Wales according to Regulation of the Non-Domestic Rating (Alteration of List and Appeals) (Wales) Regulations 2005, as amended.
4. This is a summary of the case 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.

Summary of the Case

5. As is customary in cases of this nature where the proposal challenged the Valuation Officer's Notice, Mrs Harris was invited to present the Valuation Officer's case first.
6. In her opening statement, Mrs Harris pointed out that she represented the Valuation Officer for Wales in a dual role of advocate and expert witness.
7. In her role as advocate, Mrs Harris explained how the proposal came to be made and, with reference to its Parts B (details of the Proposed List Alteration) and C (Grounds for your proposed alteration), she set out the parameters and scope of the issues that were under appeal.
8. Mrs Harris then referred to Paragraph 2 (1), Schedule 6 of the Local Government Finance Act 1988 (the Act) which set out the definition of Rateable Value for these purposes. The extract Mrs Harris referred to stated –

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 on these three assumptions;

- a. *the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
 - b. *the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
 - c. *the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.*
9. With reference to the Rating Lists (Valuation Date) (Wales) Order 2014 [the Valuation Date], Mrs Harris pointed out that 1st April 2015 was the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of the local and central non-domestic rating lists which are compiled for Wales on 1st April 2017.
10. In considering the appellant's case, Mrs Harris had regard to the principles established in *Lotus and Delta v Culverwell (VO)* [1976] an extract of which was referred to earlier in her submission. She said that these principles suggested that the weight to be given to a rent depended on how closely it complied with the statutory definition of Rateable Value.

11. In her expert witness statement, Mrs Harris described the appeal property and with the aid of maps and plans she identified its location and amenities. The property comprised a ground floor shop with residential accommodation to the upper floor and had a total non-domestic area of 322.43m². An inspection of the property was undertaken on 11th December 2017. Her schedule of evidence included a location plan, a layout plan of the appeal property; images of the appeal property; rental evidence; assessment evidence and her valuation of the property under consideration.
12. Mrs Harris explained that Newgale House was entered into the compiled 2017 Rating List at Rateable Value £18,750 with effect from 1st April 2017. This was amended to £17,250 based on a revised measurement of its area with effect from 1st April 2017.
13. In reviewing the rateable value for Newgale House, Mrs Harris had regard to agreements reached in respect of two other properties in the area: "Newsurf" and "Sands Café".
14. Mrs Harris said that Newsurf was a surfing retail outlet that offered both new and used surf equipment, on site surf hire, surfboard repairs and surfing instruction.
15. The property resembled a house in built appearance and like Newgale House it has a non-standard frontage. It is occupied as a shop with stores. It comprised a total area of 251.88 m² but in terms of its main space (ITMRS), it had an area of 211.44m². Mrs Harris explained that the rateable value on Newsurf had been appealed and agreed with the ratepayer. Its valuation was set out as follows –

Floor	Description	Area m2/unit	£ per m2/unit	Value
Ground	Ground floor sales	32.48	70.00	2274
Ground	Ground floor sales	40.54	70.00	2838
Ground	Ground floor sales	28.96	70.00	2027
Ground	Internal Storage	66.74	35.00	2336
Ground	Shower Block	14.14	35.00	495
Ground	Ground floor sales	69.02	70.00	4831
Valuation sub-total				14801
RV Say				£14,750

16. Sands Café is situated adjacent to Newgale House. A reduction in its 2017 rating assessment was agreed with the ratepayer following an appeal. Mrs Harris explained that the property was rented at £14,400 per annum with effect from 1st November 2014. The property had a total area of 69.3 m² and 66.78m² in terms of its main space. The rent equated to £215.63/m². Mrs Harris said that details of this rent were forwarded to Mr Carter by way

of a Notice of Information to be Used in Evidence. A copy of this notice was included in her Appendix 2.

Floor	Description	Area m2/unit	£ per m2/unit	Value
Ground	Retail ZA	45.14	172.50	7787
Ground	Retail ZB	15.76	172.50	2719
Ground	Kitchen	8.40	120.75	1014

Valuation sub-total 11520

RV Say £11,500

17. Mrs Harris's third comparable property related to "Pebbles", Chapel Farm Shop, Newgale. It was situated at the other end of the beach from Newgale House. Its 2017 rateable value of £5,000 was based on a total area of 88.7m² which was based on a total area of and 50.99 m² in terMrs of its main space. Her valuation of this property was set out as follows –

Floor	Description	Area m2/unit	£ per m2/unit	Value
Ground	Ground Floor Sales	46.80	100.00	4680
Ground	Kitchen	27.90	10.00	279
Ground	Internal Storage	14.00	10.00	140

Valuation sub-total 5099

RV Say £5,000

18. Mrs Harris explained that the agreements made on these properties with the respective ratepayers underpinned her revised valuation for the appeal property. As a corollary she advanced an underlying level of value of £55.00/m² which she considered reflected its size and age; she applied an end allowance for structural walls and a staircase which were located at the front of the property. Her revised valuation for the subject property was Rateable Value £14,500 with effect from 1st April 2017 which she said was offered to Mr Carter in advance of the hearing.

19. Mrs Harris said that during the course of preparing and serving the requisite documents on Mr Carter, she received an email from Mr Sanderson who was the appellant ratepayer of two of the three properties

she cited in her submission. Mr Sanderson informed her that he wished to make subsequent proposals because he felt the rateable value was too high. Mr Sanderson also pointed out that he did not wish Gengard's appeal to be "distorted by false facts" and maintained that he remained unhappy with the valuation he had been given. In her response, Mrs Harris explained that Mr Sanderson had formally settled his rating appeal with the VO on 28th April 2019. However, in light of comments Mr Sanderson had made more recently, Mrs Harris pointed out that the rating regime did not permit one to make a second proposal on the same grounds as the first. In support of this, she referred to Regulation 4 (3) (b) (i) of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 -

(3) No proposal may be made —

(b) by an interested person, where —

(i) that person (or a person having a qualifying connection with that person) has made a proposal to alter the same list in relation to the same hereditament on the same ground and arising from the same event;

20. In response to questions from Mr Carter, Mrs Harris said that the circumstances he had referred to in his case about matters affecting the integrity of the coastline in Newgale had occurred prior to the Antecedent Valuation date of 1st April 2015. Consequently, such matter would have been taken into account during the course of the 2017 Rating revaluation.

21. Mrs Harris acknowledged that the RV for the 2017 Rating List was considerably higher than that attributed to the 2010 list entry. However, she pointed out that the two lists were underpinned by different underlying levels of values which were brought about by differing economic circumstances: 1st April 2008 for the 2010 Rating Revaluation and 1st April 2015 in respect of the one currently in force.

22. Mrs Harris' valuation of the appeal property was set out as follows –

Floor	Description	Area m ² /Unit	£/m ²	Value (£)	Remarks
Ground	Ground Floor Sales	235.01	55	12926	
Ground	Internal Storage	87.42	27.5	2404	
Total area		322.43			
					15330
					15330
	Layout		-5%		-767
	Total Value				14563
	Adopted Rateable Value				£14,500

23. In her appendices, Mrs Harris referred to a “Notice of Information to Be Used in Evidence” document in respect of Sands Café, Newgale.
24. In view of the foregoing, Mrs Harris asked the Tribunal to confirm her revised valuation of the subject property of £14,500 with effect from 1st April 2017.
25. In his opening remarks, Mr Carter referred to a report which was presented at a valuation tribunal hearing in which he contended that the RV attributed to his 2010 rating appeal was excessive. The same report was used by the appellant in the matter now under consideration. The author of this report, Mr Andrew Parr, was a chartered surveyor with extensive experience of some 35 years in the letting of commercial property in the Haverfordwest area. Unfortunately, Mr Parr was unable to accompany Mr Carter to the hearing of his 2017 rating appeal. Nevertheless, this report was placed before the Tribunal for its consideration.
26. Mr Carter referred to the substantial increase in the appeal property’s valuation that came about as a result of the 2017 Non-Domestic Revaluation. He said that despite the substantial increase in the Valuation Officer’s valuation of the appeal property, no explanation had been received.
27. Mr Carter explained that for the past ten years, Newgale had featured in the Shoreline Management Plan and was a designated “managed retreat area”. It was also situated in a C2 and C3 flood risk area. In January 2014 a freak wave hit a bus as it drove through Newgale along the A487. The A487 trunk road runs through Newgale and past the subject property. Mr Carter explained that the bus sustained significant damage having been swept from the road as a result of the severity of the wave. As a corollary, Pembrokeshire County Council (PCC) conducted a thorough study of the shingle bank in Newgale where its conclusions about the foregoing were made public on 23rd February 2015.
28. As a result of its findings, PCC cast considerable doubt upon continued maintenance of the shingle bank that had protected the road for more than ten years. As there would be an impact to the position of the road the authority planned to divert the A487 and allow the sea to come inland. Although a number of options about how this should be done were explored, the preferred outcome was to take the road away from Newgale which left a dead end outside the appeal property. Other choices involved making a new road that went straight through the position on which the appeal property was situated and led to the creation of a causeway over the headland. Mr Carter had not been persuaded that the VOA had taken factors such as this into account which he believed would have influenced rental values during the course of the 2017 Non-Domestic Revaluation.

29. With regard to the appeal property, Mr Carter said that he and a consortium of others (Mr D M Carter and Mr G James) purchased the appeal property in 1995. The occupier and trading company was Gengard Ltd. Upon the death of Mr D Carter, Mr Carter's (appellant) share in the property was increased from 39% to 83%. A rental arrangement was introduced which involved the lease of the downstairs building to Gengard Ltd for £7,500 per annum. On 1st December 2017, a long-term rental agreement came into force for the same amount which was assumed under advisement from Mr Parr. Gengard is owned by Mark, David, Amy and Meryl Carter and Mr James. Messrs Carter (Mark and David) are employed by Gengard Ltd. Mr Carter explained that the VO was fully aware of this arrangement but had chosen not to mention this at the previous hearing. The upstairs accommodation was used as domestic accommodation and subject to council tax.
30. Mr Carter said that the "Carter" family owned and operated the 'Sands' Café from approximately 1988. It was initially leased to a local family and then to the current owner. The Café fronted the sea and has wide picture windows on three sides. Newgale House has limited windows and no sea view. In 2014, an opportunity arose to lease the Café and its equipment for ten years at an exceptionally good rent. However, shortly after the rental agreement was implemented the current owner started negotiations to purchase the Café. In the spring of 2015, Mr Carter sold the property and the lease ceased to operate. In light of the foregoing, Mr Carter contended that the unrealistic lease value, the fact that the lease effectively expired within months of it starting and the total difference in use, style and desirability indicated that the Valuation Officer was wrong to use it as a comparable with Newgale House.
31. Mr Carter referred to Mrs Harris' use of 'Pebbles Café' as a comparable property despite the fact that it was situated at the other end of Newgale Beach from the appeal property. He asserted that Pebbles Café had some similarities with Sands Café in that they were of a similar size to each other and both benefited from a beach side location. They both had large windows and a car park was situated opposite. Despite a reduction in its RV, Sands Café has an RV 130% greater than that of Pebbles Café for no apparent reason. He said that "Newsurf" was hopelessly overpriced in terms of its RV given the history of wave damage, road closures and cannot be insured for flood damage. Mr Carter said that the owners of Newsurf and Sands Café still maintain that their RV's are excessive.
32. Mr Carter gave details regarding the fact that different caseworkers had been assigned to deal with his case and that Mrs Harris had refused to inspect the premises. During his discussions with the VO, the offer of RV £14,500 with effect from 1st April 2017 had been advanced. As a corollary, Mr Carter felt that the matter had to progress to a tribunal hearing.
33. In his summary, Mr Carter pointed out that a lease had been offered to Gengard in respect of a property of 2000 sq ft in size and in a prime location in Bridge Street, Haverfordwest for £10,400. It was close to a

number of well-known retail outlets such as Greggs, Specsavers and a post office. Haverfordwest is a town that comprised a population of some 11,000 people and Bridge Street enjoyed a good level of footfall. By contrast Newgale House which comprised some 3,000 sq ft was on a road which might only be in existence for another six years and which suffered from numerous closures during the winter. The area was supported by a population of approximately 43 people. He added that the only viable businesses in the area were those in the tourism industry. He referred to conclusions drawn by Mr Parr on the same matter who opined that the property would be hard to let at a value above £7,500. He said that the uncertainty of the area's continued existence would militate against anyone starting a business in the area. He did not accept that the 2017 level of value should be greater than that of the 2010 level of value and sought a value of RV £8,500 with effect from 1st April 2017.

34. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

35. Having considered all of the evidence placed before it, the tribunal decided to allow the appeal but only to the extent Mrs Harris conceded in her valuation.
36. In making its decision, the Tribunal was mindful of Schedule 6 of the Local Government Finance Act 1988, as amended which defined Rateable Value and to which Mrs Harris spoke to in her advocate's evidence. As a consequence of this, the Tribunal understood that in the context of a rating valuation one had to consider and determine what rent the appeal property could reasonably have been expected to realise had it been let on the open market as at the 1 April 2015 - that being the antecedent valuation date for the purposes of all entries in the 2017 Rating List. The Tribunal was also required to bear in mind the statutory assumption one must make regarding the terms of the presumed letting and the date at which various, mainly physical factors relevant to the property and its locality, must be considered. In this case the day on which physical matters must be contemplated (the 'material day') was 1st April 2017.
37. The judgment in Lotus and Delta Ltd which Mrs Harris advanced in her evidence, provided guidance on the weight to be attached to rental and assessment evidence. This case also maintained that one would consider the rent on the subject property as the correct starting point in such an exercise. In addition, it was held that the passing rents on similar properties could be examined where they were available as were the assessments on comparable properties.
38. The Tribunal considered that the 1st December 2017 rent on the appeal property was tainted as a result of an in-house connected party arrangement and therefore carried no weight. Moreover, it transpired some two and a half years from the AVD and this did little to inform the Tribunal

as to how reflective it was of open market values that prevailed at that time. As a consequence, the Tribunal was not convinced by the appellant's rationale for using a rent such as this in these proceedings.

39. The Tribunal was not persuaded that the November 2014 rent of Sands Café should be regarded as unrealistic as Mr Carter had described it in his evidence. The reason for this was because the rental value for this property was struck between unconnected parties some 5 months prior to the AVD. The Tribunal did not consider the fact that the property was subsequently sold in 2015 invalidated the usefulness of this piece of evidence.
40. The Tribunal attached little weight to the evidence contained in Mr Parr's February 2017 letter because it related to an earlier appeal that Mr Carter had made in respect of the appeal property's 2010 Rating List valuation. Mr Carter had not persuaded the Tribunal that the relevance of particulars of properties situated elsewhere in Haverfordwest and its environs and cited in this schedule of evidence bore any relevance to the issues now under consideration.
41. The Tribunal observed that Sands café and Pebbles at Chapel Farm had certain physical characteristics that were arguably superior to those at Newgale House. Both comparable properties benefitted from larger windows, car park and beach side access. However, the Tribunal had noted during the cross-examination of evidence, that Sands enjoyed an A3 class of use which the Tribunal deduced may have made the property more desirable. Moreover, the appeal property's underlying level of value of £55/m² was considerably lower than these properties and, in the absence of more compelling evidence, it was difficult for the Tribunal to conclude that the Valuation Officer's revised valuation of the subject property was unreasonable.
42. Mr Carter contended that owing to ecological factors, commercial viability in Newgale could only be sustained for a finite period of time. The Tribunal understood that the local authority had made proposals about how to manage the effects of the sea on Newgale but apart from some exploratory works which were undertaken after the 2017 list came into force, nothing physical had taken place in the area. With this in mind, one had to take account of the physical nature of the appeal property and of the area in which it was situated on the material day, which in this case was 1st April 2017. Should the area be subject to a future material change in circumstances then such matters could be reflected in a separate proposal, but this appeal could not reflect circumstances that had yet to take place.
43. The Tribunal appreciated Mr Carter's obvious frustration that several different caseworkers had been assigned to this case. However, this was not a matter that fell into the Tribunal's jurisdiction, nor did it feel that comments about this would be appropriate to make within the scope of this appeal.

44. Although the Tribunal understood that Mr Sanderson remained concerned with the level of value he had agreed with the Valuation Officer in respect of Sands Café and Newsurf, there was no avenue, for the reasons Mrs Harris spoke to in her case, for redress here. Even if the motivation for him saying this was to assist the appellant in his case, such comments were without foundation and therefore attracted little weight.
45. Whilst the Tribunal accepted that the circumstances at Newgale were unique, one must also reflect on the fact that this area is renowned as an area of outstanding natural beauty as well as highly regarded by water sport/leisure enthusiasts. Mr Carter maintained the view of his appointed representative that no one would pay more than £7,500 per annum in rent, yet the Tribunal had observed that the operator of Sands Café had done precisely that only a matter of months prior to the AVD. There was no evidence before the Tribunal which suggested that if vacant and to let at the AVD, the appeal property being significantly larger property would command a rent less than that actually achieved for Sands Café. Mr Carter suggested the underlying level should be half that proposed by the Valuation Officer. However, he had not, in the Tribunal's opinion produced evidence of sufficient strength that supported that contention. As a corollary, the Tribunal was not prepared to revise the compiled list entry beyond that conceded by the Valuation Officer in this case.
46. The parties are entitled to appeal to the Upper Chamber of the Lands Tribunal within 28 days of the date of this decision. In making its decision, the Tribunal orders the Valuation Officer to amend the 2017 Rating List to accord with this decision.

Certified a true copy on 30th September 2019