

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellants: Mr G Bond (Owner) & Mr S Roberts (Occupier)

Appellant's Address: HSBC Bank, 34 Bethcar Street, Ebbw Vale NP23 6HQ

Appeal number: 691030299514/541NV17/2

The Matter Appealed against: 2017 Rating List

Date of Hearing: 24 September 2019

Appearances: Mr Bond & Mr Roberts
Mr M Pearson for the respondent Valuation Officer (VO)

Date of Decision: 22 October 2019

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mrs C Uzzell (Chair), Mrs K Thomas & Mr J C Alexander

Tribunal Clerk: Mrs S Gwilliam

Introduction:

1. Mr Bond contended, in a proposal to alter an entry in the 2017 Rating List received by the VO on 3 January 2018, that the Rateable Value (RV) of the appeal hereditament was inaccurate and should be reduced from £12,250 to £8,000 RV with effect from the 1 April 2017, for the following reasons:

"The property has been renovated Air Conditioning now removed and classification as Bank and Premises has now changed to Shop Retail Restaurant Premises".

2. Upon the request of the Appellants and with the agreement of the Tribunal, Mr Pearson presented his case first.
3. 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 or reference to any statement, or evidence, should not be construed as being overlooked.

Summary of the Case

4. Mr Pearson described the subject property as a two-storey former bank premises currently operating as a shop on the ground floor and storage in the basement. As the property was previously occupied by HSBC, he described the property as a purpose built bank construction as opposed to a traditional shop. It is in the popular high street location of Bethcar Street

in Ebbw Vale which adjoins Market Street, the other main high street in the area.

5. The VO explained that the following issues had been agreed between the parties prior to the hearing:

- the total net internal area (NIA) of 149.51m²;
- the removal of HSBC from the name of the hereditament;
- the mode or category of use as Shop and Premises;
- the removal of air conditioning units;
- £6,000 pa headline rent for the appeal property effective from the 1 February 2018.

6. Therefore, the only issue in dispute was the rate per metre (£m²) applied to the valuation at £140m².

7. The VO explained that the basis of valuation for the appeal property is defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (LGFA 1988) as –

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from non-domestic rating] 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.*

8. The Antecedent Valuation Date (AVD) is specified as the 1st April 2015 under Paragraph 2(3)(b) of Schedule 6 of the LGFA 1988, as the day by reference to which the rateable value of non-domestic hereditaments are to be determined for the purposes of the local and central non-domestic rating lists which were compiled for Wales on the 1st April 2017.

9. In accordance with the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council (1976)*, the VO clarified that the headline rent of £6,000 pa, which analysed to circa £74m², was effective on the 1 February 2018, nearly three years after the AVD and had no defined tenure or terms. As a result, he was of the view that this rental evidence held little weight.

10. Consequently, Mr Pearson informed the Tribunal that he considered the basket of rents from comparable properties within Bethcar Street was the best evidence to ascertain the hypothetical rent at 1 April 2015. In support, the VO provided the Members with the following rental evidence and analysis.

<u>Address</u>	<u>Description</u>	<u>Actual area m2</u>	<u>Area ITMS m2</u>	<u>Effective date of rent</u>	<u>Rent</u>	<u>Adjusted Rent</u>	<u>Analysed Rent</u>	<u>Adopted Value £m2</u>	<u>RV</u>
34 Bethcar St	Shop & Premises	149.51	80.96						
<i>Remarks-appeal property</i>									
10/12 Bethcar St	Bank & Premises	206.25	76.81	20.08.15	£8,562	£8,262	£107.58	£160	£12,250
<i>Remarks - a bank and premises with a shop frontage situated within a parade of shops on the same side of the street as the subject property. It was of a similar size to the subject property especially IN Terms of Main Space (ITMS). The rent was set via a rent review in 2015.</i>									
41 Bethcar St	Shop & Premises	62.8	43.7	01.06.14	£5,040	£4,612	£105.54	£160	£7,300
<i>Remarks- a traditional shop in a parade of shops with a shop frontage. It was of a similar size to the subject property especially ITMS. It is situated opposite the appeal property so is in close proximity. The rent was a new letting rent in June 2014.</i>									
54 Bethcar St	Shop & Premises	98.72	44.9	20.05.14	£5,200	£5,018	£110.09	£100	£4,650
<i>Remarks- a traditional shop in a parade of shops with a shop frontage. It was of similar size to the subject property especially ITMS. It is situated on the same side of the street as the appeal property. the rent was a new letting in May 2014.</i>									

55 Bethcar St	Shop & Premises	493.07	150.31	31.10.13	£10,000	£12,827	£85.33	£86	£12,750
Remarks- traditional shop in a parade of shops with a shop frontage. Situated opposite the subject property. This property was significantly bigger. A new letting rent in October 2013 required significant adjustment as it was just a shell unit and for rent free period given. Rent also reflective of quantum for a larger unit.									
65 Bethcar St	Shop & Premises	79.19	30.05	04.09.13	£4,200	£3,633	£120.89	£125	£3,750
Remarks-traditional shop in a parade of shops with shop frontage. Situated opposite side of road to appeal property. New rent letting in September 2013.									
77 Bethcar St	Shop & Premises	343.22	85.26	01.10.14	£10,368	£8,969	£105.20	£100	£8,500
Remarks-traditional shop in a parade with shop frontage. Situated on the opposite side of the road to the subject property and is in reasonably close proximity. A rent lease renewal was agreed in October 2014.									

11. In addition, Mr Pearson also referred the Tribunal to settlement evidence for other cited comparable properties situated in Bethcar Street:

<u>Address</u>	<u>Description</u>	<u>Rate</u>	<u>Settlement Type</u>	<u>RV</u>	<u>Agent</u>	<u>Remarks</u>
77 Bethcar Street	Shop & Premises	£100m2	Dismissed	£8,500	Ratepayer	Dismissed by VT – no change
32 Bethcar Street	Shop & Premises	£80m2	Withdrawn	£19,500	Ratepayer	Withdrawn-no change
55 Bethcar Street	Shop & Premises	£86m2	Withdrawn	£12,750	Gerald Eve LLP	Withdrawn – no change

26 Market Street	Shop & Premises	£180m2	Withdrawn	£15,250	Gerald Eve LLP	Withdrawn – no change
10/12 Bethcar Street	Bank & Premises	£160m2	Agreed	£11,500	CBRE Ltd	Agreement to keep rate at £160m2

12. Based on the evidence he had provided, Mr Pearson considered that the best rental evidence was that which most closely matches the definition of RV. From the information available, he considered that a rate of £105m2 is the most appropriate. In addition, he maintained that settlement evidence also supported a rate of £105m2 being ascribed, particularly as there were settlements at higher rates nearby.
13. In relation to the Appellants' argument concerning the rate per £m2 adopted for 55 Bethcar Street at £86m2 and 32 Bethcar Street at £80m2, the VO explained that these properties were both significantly larger than the appeal property and therefore less comparable. He clarified that the subject property had a total area of 149m2 and ITMS 80m2; 32 Bethcar Street had a total area of 1349.2m2 and ITMS 199.41m2 and 55 Bethcar Street had a total area of 493m2 and ITMS 150m2. Therefore, the valuations applied to these larger units reflected the size differential as lower rental bids are expected in the market for larger properties.
14. He also maintained that whilst 55 Bethcar Street had been valued in line with its subject rent, that rent was further from the AVD than other rental evidence and had to be significantly adjusted as it was let as a shell unit only and received a significant rent free period.
15. As the rents reflected those shops with standard shop frontages, the VO stated a non-standard frontage allowance was required as the subject property has a traditional bank frontage. A comparable bank with a non-standard frontage allowance of 10% was ascribed to 14/15 Market Street, Ebbw Vale and this allowance was in line with the allowances recommended by the Inter Banking Forum for this frontage type. Therefore, Mr Pearson considered a 10% frontage allowance was appropriate for the subject property as opposed to 7.5% previously ascribed.
16. Based upon the rental and settlement evidence, the VO considered that a rate of £105m2 was justified which resulted in a valuation of £8,500 RV. Consequently, Mr Pearson requested that the Tribunal allow the appeal in part and confirm £8,500 RV for 34 Bethcar Street, Ebbw Vale with effect from the 1 April 2017.
17. In response to questions, the VO stated:

- The term ITMS stands for In Terms of Main Space. Zone A is the most valuable area valued at 100%, Zone B at 50% and the

basement as a storage area at 10%. The toilets appear within the valuation they are valued at £0;

- The property was measured on NIA (Net Internal Area) and in accordance with the RICS Measuring Practice, non-structural walls are measured through, therefore the ornate porch area was included within the valuation;
 - For the 2017 Rating List, the value per £m2 is based on annual rental values from the AVD of 1 April 2015;
 - In relation to the frontage he valued the property – ‘rebus sic stantibus’ - as it stands and the property is currently used as a shop. As the property does not have a typical shop frontage, Mr Pearson considered that the previous allowance was insufficient and increased it to 10%;
 - A national rating agent did not question the £m2 attributed to 10/12 Bethcar Street at £160m2 but sought an allowance for layout and frontage. Mr Pearson considered that this property was located in a better position.
18. Mr Roberts clarified that the shop is his wife’s business and for several years she operated a market stall throughout the Gwent area. In the past, the market in Ebbw Vale was very popular with limited plots available, however nowadays you are now able to choose your plot.
19. Mrs Roberts originally rented another property, 14 Bethcar Street, but as the rent was high she vacated this property and rented the appeal hereditament.
20. Mr Roberts provided the Tribunal with a copy of his presentation which included several internal and external photographs of the subject property and a written submission, extracts of which are below:
21. Mr Roberts explained that he believed the £m2 should be reduced to £80m2, or less, in line with 32 Bethcar Street, a shop located adjacent to the subject property and which has the benefit of a traditional shop frontage. This, he stated would equate to £6,400 RV.
22. In addition, the Appellant argued that as Mrs Roberts is paying a rent of £6,000 pa to Mr Bond, the comparable RV should be circa £6,000.
23. Mr Roberts informed the Tribunal that Blaenau Gwent and Ebbw Vale is at the top of the list for WIMD (Welsh Index of Multiple Deprivation) and has been since this index/measure was introduced. He explained that this has led to any retail businesses trying to survive, not only having to deal with the decline of bricks and mortar retail due to the popularity and ease of online shopping, but also the economic decline of the area which successive governments have failed to address spanning back over 40 years.

24. Mr Bond and Mr Roberts itemised other contributory factors which they felt supported their case for a reduction in the RV ascribed to the subject property:
25. Shop frontage – the property, a former HSBC bank, does not have the traditional shop frontage which impacts upon attracting customers;
26. Council/Walk signage screens – one side of the property is obscured by signage screens which block the general public viewing the one side of the shop;
27. Market fast food outlet – during market days the one side of the shop is obscured by a fast food outlet which has an impact on customers and therefore trade;
28. Car parking multi storey – a multi storey car park is located at the bottom end of the town which does not benefit businesses located at the top of the town. There are also problems with the lift which is regularly out of service;
29. Car parking town centre – there is limited town centre parking available and as parking wardens now regularly patrol the area there is the increased risk of a parking fine;
30. Since there is no back entrance to the subject property and as the Council has marked the town centre with yellow lines, the Appellant runs the risk of parking fines during loading/unloading goods to the appeal property;
31. Car parking at The Walk – situated opposite the subject property, The Walk has changed ownership and is now chargeable;
32. Public transport – since 2018 Stagecoach has cut its bus services into Ebbw Vale which has led to a decline in footfall of 60% and resulted in a number of retail businesses struggling to survive. The Appellant had contacted a number of organisations concerning this issue and was in the process of running a petition;
33. Town centre regeneration – years of poor town centre planning and refurbishment have resulted in Ebbw Vale town centre becoming a difficult place for shoppers to visit and has resulted in a steady decline in footfall. The Appellant had contacted his MP, AM's and the Federation of Small Businesses raising his concerns. He had also found out that a number of groups/working parties involved in regeneration have not delivered any coherent strategy to help with the economic situation within Blaenau Gwent;
34. Public toilets - situated some 300 metres away and having only recently re-opened, Mrs Roberts allowed visitors to the town to use the WC facilities in the shop.
35. In addition, Mr Roberts and Mr Bond were also aware that a number of national retailers will also be vacating their premises within the town in the near future.

36. Store 21 was vacant for a considerable period, so has now been divided into smaller units. Mr Bond clarified that he has been offering shops at £50 per week but there has been no uptake.
37. To conclude, Mr Roberts reiterated that the appeal property does not lend itself to a retail premises as the windows are high and narrow.
38. In response to questions, Mr Bond and Mr Roberts stated:
- As owner, Mr Bond does not want the ornamental porch area in the property removed as it is very decorative and in-keeping with the property. Mr Roberts stated that the double doors also help with keeping the heat in. They did initially use this area to display goods but these were stolen.
39. Both parties were given the opportunity to summarise their cases:
40. Mr Pearson informed the Tribunal that he had fully considered the Appellants arguments. The subject property had been re-measured and he had considered a basket of rents and settlements from Bethcar Street which supported £105m2 being ascribed. In addition, he had taken into account the non-traditional frontage and increased the allowance from 7.5% to 10% in line with a similar allowance ascribed to a comparable bank in Market Street. Any physical changes to the locality after the 1 April 2017, the compilation date of the 2017 Rating List, would need to be addressed by submitting a further proposal to the VOA. He requested that the Tribunal confirm a revised RV of £8,500 with effect from the 1 April 2017.
41. Mr Roberts thanked the Tribunal for listening to his case and explained that he strongly believes that town centres should be re-generated as they form part of a community. He requested confirmation of £80m2 in line with other properties within Bethcar Street. Whilst he appreciated that the rent payable may sound low, it is the amount that town centre traders can afford.
42. Mr Bond stated that he did not consider that non-domestic rates should be payable whilst a property is being renovated.
43. At this point, Mr Pearson clarified that when a property is being renovated, the taxpayer can approach the VOA to establish whether that property is capable of beneficial occupation.
44. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Reasons for Decision

45. Having considered all the evidence placed before it the Tribunal decided as follows:
46. In his proposal Mr Bond contended that the Rating List was inaccurate and that the appeal property's assessment should be reduced from £12,250 RV to £8,000 RV with effect from the 1st April 2017. However, at the hearing,

the Appellants considered that the RV should be reduced to circa £6,000 RV in line with the rent that Mr and Mrs Roberts are paying Mr Bond.

47. Mr Bond also maintained that the classification as a bank and premises should be changed to a shop and premises, which the VO had agreed to prior to the hearing.
48. Therefore, the only issue in dispute for the Tribunal to consider was the price per m² as applied by the VO to the property. The VO had considered the Appellants' contentions and agreed that a reduction in the £m² was warranted from £140m² to £105m² and the non-standard frontage allowance should be increased from 7.5% to 10% which equated to a revised Rateable Value of £8,500 effective from the 1 April 2017.
49. However, the Appellants argued that the property should be valued in line with larger shops located within close proximity to the subject property, 55 Bethcar Street at £85m² and 32 Bethcar Street at £80m². They also referred to a number of issues which they stated currently blight Ebbw Vale town centre.
50. The Tribunal was aware that in accordance with relevant legislation the appeal hereditament must be valued by having regard to values achieved as at the Antecedent Valuation Date, the 1 April 2015, whilst looking at the physical circumstances of the property as at the Material Day, the Compiled List entry date of the 1 April 2017.
51. Whilst the Tribunal appreciated the current issues concerning Ebbw Vale Town Centre as conveyed by Mr Bond and Mr Roberts, in relation to the subject appeal it cannot have regard to any issues that have occurred after the 1 April 2017. The Members are aware that physical changes within a locality may have an impact on the RV of a property and a proposal for a reduction in assessment because of a "material change of circumstances"(MCC) can submitted to the VOA in accordance with the Non Domestic Rates (Alteration of Lists and Appeals)(Wales) Regulations 2005 SI 758(W.63). However, the issue of an MCC fell outside of the scope of this particular appeal.
52. In accordance with principles outlined in *Lotus and Delta v Culverwell (VO) & Leicester City Council* the rental evidence on the appeal property should be taken as a starting point for the RV. However, the Tribunal was mindful that the passing rent was effective from the 1 February 2018, nearly three years after the Antecedent Valuation Date, and had no defined tenure or terms. Accordingly, the Tribunal attached little weight to this evidence.
53. The Tribunal considered a basket of rents and settlements from similarly sized shops, ITMS, located on Bethcar Street in order to establish the hypothetical rent for the appeal property as at the 1 April 2015.
54. The Members noted that the closest new letting to the AVD occurred on the 20 May 2014. 54 Bethcar Street, a traditional shop amongst a parade

situated further along Bethcar Street, analysed to £110.09m². The VO adopted £100m².

55. Some two weeks later on the 1 June 2014, a further new letting was agreed on another traditional shop and premises, 41 Bethcar Street. This rent analysed at £105.54m² with the VO having adopted £160m².
56. In addition, a rent review was agreed on 10/12 Bethcar Street, a bank and premises with shop frontage, on the 20 August 2015, just under five months after the AVD. This rent analysed at £107.58m². It was noted that an appeal submitted by a national firm of rating agents, CBRE, agreed a 10% allowance for layout and frontage but the rate of £160m² was not challenged thereby appearing to suggest that the agent did not consider it to be excessive.
57. With relation to those properties cited as comparable by the Appellants namely, 55 Bethcar Street and 32 Bethcar Street, the Members agreed with the VO that these properties were considerably larger than the subject property, and as such, were not as comparable as the smaller properties within Bethcar Street.
58. Therefore, whilst the Members sympathised with the Appellants regarding the issues they raised concerning the current retail climate in Ebbw Vale, from the evidence provided, they did not consider that the revised rate of £105m² proposed by the VO was excessive as it appeared to be in line with other similar properties within Bethcar Street.
59. Consequently, in view of the above, the Tribunal determined that the £105m² adopted by Mr Pearson in his valuation of the appeal property was fair and reasonable. With this in mind, the Tribunal confirmed the VO's revised assessment of £8,500 RV with effect from the 1 April 2017 for Shop and Premises 34 Bethcar Street, Ebbw Vale NP23 6HQ and allowed the appeal in part.

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