

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mrs Y Uka

Appeal property: The Lounge 2, St Georges Street, Tenby, SA70 7JB

Appeal number: 684530587625/541NV17

The Matter Appealed against: Non-domestic rating appeal

Date of Hearing: 19th September 2019

Appearances: Mrs Y Uka (Appellant) & Mrs S Harris (for respondent Valuation Officer)

Date of Decision: 25th October 2019

Decision of Tribunal: Allowed in part

Members of the Tribunal: Mr J O Peake (Chairperson), Mr J Griffiths & J Edwards

Tribunal Clerk: Mr J Evans

Reason for Decision

1. This appeal followed a proposal which sought an alteration to an entry which appeared in the 2017 Non-Domestic Rating List. The entry in question was described as a Café and Premises and traded under the name "Lounge 2". The Valuation Officer had ascribed a Rateable Value (RV) of £17,500 which was effective from 1st April 2017.
2. On 5th March 2018, the Valuation Officer for Wales (VO) received a proposal from Mrs Uka in which she sought a reduction in RV with effect from 5th January 2018 due to the disruption caused by road works.
3. Since the VO had not "well-founded" the proposal, the matter was remitted to the Valuation Tribunal for Wales as an appeal.
4. This document does not intend to be an exhaustive record of the proceedings, but the parties can be assured that the Tribunal fully considered all of the evidence before it arrived at its decision. Consequently, the absence of reference to any statement, or evidence in this record should not be construed as being overlooked.

Summary of the case

5. In her evidence, Mrs Uka gave details of the nature of the disruption outside her premises and from when it commenced. In support of this statement Mrs Uka presented photographs which depicted the scale of the works. Mrs Uka did not consider that the VO had given adequate consideration to traders who were situated in the vicinity of the works. This was aggravated further by promises made by the local authority to ensure that access to shops was still possible and that plant and machinery was removed from the area at the weekends. However, the latter was not followed up and Mrs Uka pointed out that on two occasions her business had to close because contractors had cut through electricity cabling in the street.
6. In her discussions with representatives of the VO, Mrs Uka said she was told that the work would subsist for a period of 13 weeks although the council had admitted that the same works would be completed in four.
7. Mrs Uka explained that the works had disrupted her businesses performance in the lead up to some of her of busiest periods: The Half Term break, Easter and May Day bank holidays. Moreover, the obstruction caused by the works and the appeal property's position in relation to the "Five Arches" and public car parks combined to exacerbate the problem. This had a consequential affect and ensured that existing and potential passing trade was dramatically impeded as a result of the works and all it entailed which continued up to the Whitsun break.
8. In November 2018, the cobble street was dug up and removed to allow Western Power to install a three-phase power supply to the side entrance of premises formerly used by the Nat West bank. Access from Tudor Square into St. George's Street was inaccessible for the duration of the works.
9. Mrs Uka had queried with the VO why it was deemed necessary to compare the takings of the previous year with those of the period in dispute. She did not see the relevance for this because trading performance might vary from year to year. Moreover, she understood that the RV represented the open market rental value of a business which appeared to contradict the VO's justification for examining trading figures. Mrs Uka acknowledged that the VO applied the same end allowance to properties within the same proximity of the works but suggested that greater consideration should be given to the fact that she traded as a "café and premises".
10. Mrs Uka said that her landlord did not suffer from the disruption caused by the works and any loss that her business incurred as a result should be attributed to her. She also sought an answer as to why she was given a reduction in RV for a period of six months in respect of disruption that lasted for six weeks in 2012-13.

11. In her conclusion, Mrs Uka referred to a tribunal hearing which took place on 17th January 2019. At that hearing, her appeal was adjourned because the attending VO was unable to deal with this case. Mrs Uka considered that any financial impediment caused to her as a result of the appeal being adjourned should be covered by the VO.
12. In response to questions, Mrs Uka confirmed that she sought a reduction of 15% rather than the 10% the VO had conceded in the revised valuation.
13. Mrs Uka confirmed that she paid £2,083 in rates per month. Her landlord did not reduce her rent for the duration of the disruption.
14. Mrs Uka confirmed that her business received regular customers but also confirmed that she had lost some during the period of the works. She also pointed out that her clientele differed from that of her neighbours.
15. In her opening remarks, Mrs Harris confirmed the capacity in which she would present the respondent's case.
16. In her role as advocate, Mrs Harris brought to the Tribunal's attention the circumstances and grounds which gave rise to the appellant making the proposal –

"No access route from Tudor Square due to roadworks, Plant and machinery blocking entrance to business. Operational need of the business severely affected regarding customers and deliveries"

17. Mrs Harris explained that the statutory basis on which a rating valuation was made was established by Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended. This paragraph provided the definition of Rateable Value as was set out as follows –

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.*

18. With reference to the Rating Lists (Valuation Date) (Wales) Order 2014 [the Valuation Date], Ms 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.
19. In considering the appellant's case, Ms 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.
20. In her expert witness evidence, Mrs Harris spoke to the appeal property's location within Tenby, its description and dimensions. The property comprised a ground floor café with a total area of 110.35m². In terms of Zone A value, it had an area of 45.83m². Mrs Harris confirmed that the Valuation Office Agency inspected the property in March 2018.
21. In her schedule of evidence, Mrs Harris referred to a plan of Tenby which indicated the location of the appeal and comparable properties ("Serendipity Games" and "Cybabet"). Mrs Harris also produced photographs of the appeal and comparable properties and referred to the end allowances that had been granted to them as a result of the disturbance caused by the roadworks. She presented photographs taken from opposite ends of St Georges' Street which reflected the works' nature and proximity to the subject property.
22. With regard to her two comparable properties, Mrs Harris explained that the ratepayers of these two premises had accepted a 10% reduction in their respective RVs. Their revised RV were set as follows –

Address	Description	2017 RV	Less for Road works	2017 RV with allowance	Remarks
Serendipity Games Centre, Cresswell Street	Shop & premises	£43,000	-10%	£38,500	Roadworks appeal agreed
Cybabet 1, St George's Street (Now occupied by Pembroke Pastry & Pie Co)	Shop & premises	£8,900	-10%	£8,000	Roadworks appeal agreed

23. Mrs Harris explained that the rateable value of a retail property was based on the rental value for the property. Irrespective as to the nature of its occupation, the property had to be valued as if it were vacant and to let. The subject property is described as a café and premises and valued on a

shop basis by reference to the zoning method of valuation. Mrs Harris said that this was the standard method of measuring retail premises to calculate and compare their value.

24. Mrs Harris said that in order to determine the impact of the roadworks the VO took into account the severity and duration of the disturbance as well as trading information provided by ratepayer. She explained that two identical properties in the same location would have had the same rent when available to let although one business may suffer a greater loss due to the disturbance of roadworks even though the rent for that property is the same as that for the other. Mrs Harris said that an analysis of trade on properties affected by the disturbance helped one determine what level of allowance should be given. With reference to appeals which were made by the ratepayers of neighbouring properties and following an inspection of the area on 22nd March, the VO concluded that the works that affected the properties in this location subsisted for approximately 13 weeks.
25. The roadworks completely closed the road junction and some pavements around Church Street, Cresswell Street and St Georges Street from 2nd January. The road outside properties in this vicinity were dug up by Western Power up to 9th February 2018. After this, Pembrokeshire County Council re-laid the whole surface moving along St George's Street towards Lower Frog Street and The Arches. The works consisted of two contiguous schemes and were directly outside the property for approximately 13 weeks. The bulk of the work was completed in the third week of March 2018. Some work was re-done and machines were parked outside the appeal property whilst the works moved up the road towards Lower Frog Street. With reference to photographs taken on 22nd March 2018, Mrs Harris pointed out that the works had been completed at that point. Another photograph taken on the same day depicted the works moving along St George Street and away from the appeal property.
26. Mrs Harris said that a rent of £25,000 pa was paid on the property and that the landlord had not offered the tenant a concession during the duration of the works. However, she reminded the Tribunal that the VO must assume a hypothetical situation in which a reasonable landlord would be prepared to accept part of any loss rather than lose a tenant. In such a scenario the hypothetical landlord would reduce the rent in order to reflect the disturbance caused by roadworks.
27. With reference to her Appendix 2; these contained details of the appellant's trade for the period 7th January 2018 to 25th March 2018 which, if compared with the corresponding period in 2017, showed that trade had diminished by some 9.45%. Mrs Harris said that if one accepted that the landlord might be prepared to accept part of any loss, she estimated a reduction in RV would equate to 5%. However, the VO had to give a considered view of the impact of disruption to all affected occupiers rather than to just the appellant ratepayer by virtue of the use she had put to the premises. In the case under consideration, Mrs Harris proposed an end allowance, which was accepted by other neighbouring ratepayers, of 10%.

28. Since the nature of the road works was temporary, Mrs Harris asked the Tribunal to make an order in under Regulation 34 (6) of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005, as amended. In this regulation stated –

Where it appears that circumstances giving rise to an alteration ordered by a valuation tribunal have at the date of the decision ceased to exist, the order may require the alteration to be made in respect of such period as appears to the tribunal to be commensurate with the duration of those circumstances.

29. In light of this Mrs Harris asked the Tribunal to confirm a revised list entry of RV £16,000 with effect from 2nd January 2018 until 1st April 2018.

30. At the conclusion of the evidence the Tribunal decided to reserve its decision.

Decision of the Tribunal

31. Having considered all of the evidence placed before it, the Tribunal decided to allow the appeal to the extent Mrs Harris had conceded in her evidence. The reasons for this were set out as follows -

32. When arriving at its decision, the Tribunal was governed by the rating legislation laid down by Parliament. Section 1(2) of the Rating (Valuation) Act 1999 which amends paragraph 2(1) of Schedule 6 of The Local Government Finance Act 1988 required that the rateable value of a property is the amount that the hypothetical tenant coming fresh to the scene would pay in rent on an annual basis assuming that the tenancy began on the material day and that the property was put into reasonable repair prior to the tenancy beginning, excluding any repairs that the hypothetical landlord would consider uneconomic. It is assumed that the tenancy would have a reasonable prospect of continuance and that the tenant would be responsible for all repairs and insuring the property. Moreover, in rating, all hereditaments must be assumed to be vacant and available to let on the statutory terms of the hypothetical tenancy.

33. The property and its locality must be considered as they physically existed at the material day but at the level of rental values and in the economic climate that existed as at the antecedent valuation date (AVD). The AVD was set by the Rating Lists (Valuation Date) (Wales) Order 2014 –

1st April 2015 is specified as the day by reference to which the rateable values of nondomestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists which are compiled for Wales on 1st April 2017.

34. The scope of this proposal only addressed the disruption caused by roadworks situated within the vicinity of the subject property for the period

2nd January 2018 to 1st April 2018. The scope of the proposal could not be extended to consider matters that subsequently occurred later in the year. Whilst Mrs Harris had accepted that the road works had lasted long enough and were sufficiently severe that the hypothetical landlord would accept a lower annual rent, the question the Tribunal had to address was had the appellant justified a further reduction beyond that conceded by Mrs Harris in her revised valuation.

35. The Tribunal found nothing inherently wrong with Mrs Harris' process which involved looking at the scheme of works, considering its duration and severity and, with reference to other forms of evidence such as the previous year's trade for the corresponding period, deduced that an end allowance of 10% was fair and reasonable. This level of end allowance was offered to and accepted by other occupiers in the vicinity, irrespective as to whether they traded or not. The fact that a company did not trade during the works did not mean that traders who did gained more of an end allowance. Whilst the Tribunal also appreciated that trade gained from regular customers might be lost, it considered that the reduction offered in Mrs Harris' valuation adequately reflected the temporary loss in trade. There could be no compensation to reflect lost custom per se or to reflect the time for that trade to return.
36. The Tribunal did not consider that the council's failure to remove plant and machinery away from the street at weekends added to the appellant's contention for a further reduction in her property's RV. If the local authority had promised to move equipment on the weekends but did not, then redress for this, if there was any, lay elsewhere.
37. Whilst the Tribunal understood that works prevailed throughout parts of the town, it was evident from the photographs supplied by Mrs Harris that there were no works outside the appeal property by 22nd March. The photographs showed that the works had gradually progressed along St Georges Street towards the junction with Lower Frog Street.
38. The Tribunal attached no weight to the fact that a different end allowance was given for a longer period in respect of disruption caused to business in 2012- 13. The appeal under consideration was made against an entry in the 2017 Rating List whereas the issues referred to by Mrs Uka above reflected circumstances which occurred during the life of the 2010 list.
39. The Tribunal noted that this case had been adjourned from a hearing scheduled earlier in 2019 and understood Mrs Uka's frustration of having to attend a subsequent hearing at her own expense. However, the Tribunal was not empowered to award costs to a party either by way of compensation or in the event of their success at the hearing.
40. In its conclusion, the Tribunal did not believe that Mrs Uka's case for a reduction beyond that offered by Mrs Harris was justified for the reasons given above. As a corollary, the Tribunal found by the facts presented that the appeal property's Rateable Value should be reduced to £16,0000 with

effect from 2nd January 2018 until 1st April 2018 and orders the Valuation Officer for Wales to alter the Rating List to accord with its decision.

Certified a true copy on 25th October 2019