

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: John Playstead

Appeal property: 57 Plymouth Street, Swansea, SA1 3QQ

Appeal number: 685529993398/541NV17/13

Date of Appeal: N/A

The Matter Appealed against: Disputes accuracy of entry in 2017 Rating List

Date of Hearing: 3rd October 2019

Appearances: Mrs Tina Suzanne Davies

Date of Decision: 28th October 2019

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr H Patrick (Chairperson), Mrs L M Thomas & Mr N R J Edwards

Tribunal Clerk: Mr J Evans

Introduction

1. This appeal arose from a proposal which the Valuation Officer (VO) received on 1st November 2018. The appellant proposal maker, Mr J Playstead sought an alteration to an entry in the 2017 Non-Domestic Rating List (the "list"). The list entry was 57 Plymouth Street, Swansea with a Rateable Value of £15,250 which was effective from 1st April 2017.
2. In making his proposal, Mr Playstead sought a reduction to £15,000 RV on the following grounds –

The absence of natural light has not been considered. The majority of the building has no natural light

3. Since the VO had not agreed to alter the list to the extent the appellant had sought for in his proposal, the matter was remitted to the Valuation Tribunal for Wales as prescribed in 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 appellant's case

5. The appellant did not attend the hearing but informed the clerk to the Tribunal that he wished his case to be dealt with in his absence by way of a written submission.
6. In his submission, Mr Playstead stated that the property had a split level ("up step" aspect) which, despite adequate signage, brought into play hazards for his customers. He reported that two customers had brought legal proceedings against him because they had fallen in his shop. This resulted in an increase in his insurance premiums.
7. Mr Playstead referred to the low level of natural light in the retail area which meant that he had to use lights which were more effective than average ones. He said that the use of better quality light bulbs had a consequential effect on his energy bills.
8. Mr Playstead said that during his tenancy, which had subsisted for some thirty years, the landlord had reflected the property's demotion from a prime retail location, evidenced by a lack of footfall in the area, by not increasing his rent.
9. Mr Playstead had asked for a reduction to £15,000 RV with effect from 1st April 2017.
10. In her introduction, Mrs Davies said that she was a Member of the Royal Institution of Chartered Surveyors (RICS); was employed by the Valuation Office Agency as a valuer with experience of some fifteen years in Non-Domestic Rating cases. Mrs Davies said that she was authorised to act in a dual role as advocate and expert witness before the tribunal.
11. In her role as advocate, Mrs Davies referred to the statutory basis of valuation which was contained in Paragraph 2(1), Schedule 6 of the Local Government Finance Act 1988, as amended. This 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.*

12. With reference to the Rating Lists (Valuation Date) (Wales) Order 2014 [the Valuation Date], Mrs Davies 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.
13. Mrs Davies also referred to the Upper Tribunal judgment of *Vines Ltd v de Mauny (Valuation Officer) (2010)* which maintained that it was for the appellant to demonstrate that the existing assessment was incorrect and not for the Valuation Officer to prove that it was right. She also referred to the judgment of *Ladies Hoisery and Underwear v West Middlesex AC (1932)* which found that that the correctness of an assessment should not be sacrificed for the sake of uniformity.
14. With regard to her appeal history on page 5 of her submission, Mrs Davies said that the property under consideration was described as a shop and premises. The rental details which Mr Playstead had provided in his form of return documents revealed a passing rent of £15,000 per annum with effect from 1st June 1997.
15. In her expert witness evidence, Mrs Davies said that the appeal property's valuation had been derived from an underlying level of value of £400/m². Her valuation of the property was set out as follows –

Floor	Description	Area m ² /Unit	Line factor	£/m2	Value	Remarks
Ground	Retail Zone A	20.56	1.000	400.00	8224	
Ground	Retail Zone B	18.18	0.500	200.00	3636	
Ground	Retail Zone C	19.20	0.250	100.00	1920	
Ground	Remaining Retail Zone	12.25	0.125	50.00	613	
Ground	Internal Storage	27.42	0.100	40.00	1097	
First	Internal Storage	39.06	0.050	20.00	781	
First	Staff toilets	N/A	0.000	0.00	0	
Total Area		151.67				16271
Layout				-5.00%		-814

Total Value						15457

Adopted Rateable Value (RV)

£15,250

16. In support of her valuation, Mrs Davies referred to a table which highlighted, amongst other particulars the underlying level of value of the following comparable properties: number 8 Nelson Street, Unit 2 6/7 Plymouth Street, Gnd Fl 29 Union Street, 12 Union Street, 231 Oxford Street and Unit 11 The Quadrant. Their underlying values were £450, £125, £450, £600, £350, and £700, respectively. Mrs Davies said that with the exception of Gnd Fl, 29 Union Street, whose proposal to alter the rating list had been well founded, the appeals on the other properties had either been withdrawn or agreed with either the ratepayer or their representatives.
17. In her analysis of the passing rent, Mrs Davies had derived a value of £389.65/ m². With this in mind she did not consider that the underlying value for the appeal property at £400/m² was excessive and asked the Tribunal to dismiss the appeal.
18. At the conclusion of the hearing the Tribunal decided to reserve its decision.

Decision of the Tribunal

19. Having considered all of the evidence placed before it, the Tribunal decided the appellant had provided insufficient evidence to disturb the Valuation Officer's valuation Mrs Davies had defended. In arriving at its decision, the Tribunal gave the following reasons –
20. The Tribunal was governed by the rating legislation laid down by Parliament. Section 1(2) of the Rating (Valuation) Act 1999 which amended 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 and 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 had to be assumed to be vacant and available to let on the statutory terms of the hypothetical tenancy.
21. 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 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 non-domestic 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

22. Case law had established two aspects to the burden of proof: the persuasive or legal burden, which was general and surmised in the maxim he who asserts must prove: and the evidential burden which was specific and required a party wishing to put a fact before the tribunal to prove it, usually by evidence. As Mrs Davies had established with her reference to *Vines Ltd v de Mauny*, the persuasive burden in this appeal was placed on the ratepayer as appellant and not the Valuation Officer by virtue of a statutory duty to prepare and alter the Rating List.
23. In his case, Mr Playstead had highlighted the split level in the shop which had proved on occasion to be problematic to some of his customers. The Tribunal had observed from Mrs Davies' evidence that an allowance of 5% had been allocated to reflect its layout. There was no other evidence submitted by the appellant to support a greater end allowance amount.
24. In this appeal the appellant had contended that the list was inaccurate when it came into force on 1st April 2017. In view of the provisions referred to above, there was nothing in the appellant's case which suggested that the issues Mr Playstead had referred to such as footfall had not been taken into account when this list came into force on 1st April 2017.
25. Whilst the Tribunal appreciated the poor light in the property, it considered that such matters were reflected in the passing rent. The underlying level of values used to derive the RV of other properties referred to by Mrs Davies did not suggest to the Tribunal that the list entry of £15,250 appeared unfair.
26. In its conclusion, the Tribunal was not persuaded by Mr Playstead's submission that the existing level of £15,250 RV should be reduced to £15,000. As a corollary the appeal is dismissed.

Certified a true copy on 28th October 2019