

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Peter Owen Jones

Appeal property: 26 Thomas Street, Llanelli

Appeal number: 682929524780/541NV17/22

The Matter Appealed against: 2017 Non-Domestic Rating Appeal

Date of Hearing: 23rd October 2019

Appearances: Mr & Mrs Jones (Appellants) & Mrs S Harris (for respondent Valuation Officer)

Date of Decision: 18th November 2019

Decision of Tribunal: Allowed in part

Members of the Tribunal: Mrs C A Green (Chairperson), Mr D G Sullivan & Mr J K Lewis

Tribunal Clerk: Mr J Evans

Introduction

1. This appeal followed a proposal made by Mr Jones in which he sought a reduction in his property's Rateable Value (RV). The Valuation Officer (VO) received the proposal on 7th August 2017. In making the proposal, Mr Jones sought a reduction from the existing RV of £9,100 to RV £3,900 with effect from 1st April 2017, *inter alia* on the grounds that the increased RV was excessive compared to the previous RV. The changed road scheme outside the property resulted in the air quality pollution levels measured as being one of the highest in Llanelli.
2. 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.
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 of reference to any statement, or evidence, should not be construed as being overlooked.

Summary of the Case

4. Mrs Jones presented the appellants' case. In her opening statement, Mrs Jones said that the appellant company was a family owned business which had been in existence for over 70 years but which operated out of the subject property for over 30 years. The appeal property was owner occupied.
5. Mrs Jones said no dispute existed with the VO on factual matters contained within the location plan, location layout and images. The appellants were aggrieved at the underlying level of value the VO had adopted for properties on Thomas Street which were derived from the rents of two neighbouring properties.
6. The first of these rents which Mr and Mrs Jones rejected belonged to 41-43 Thomas Street. They regarded this rent as an unsuitable comparable because it was not used as shop and premises but as a physiotherapy clinic and advertised as such. Visits made to the property by its clientele was by appointment only. The other property relied upon by the VO, which they also rejected, related to 18 Thomas Street. They understood that the VO had relied on this piece of rental evidence because it served to reflect the negative affect of the changes to the road scheme. Mrs Thomas explained that the landlord of 18 Thomas Street had reduced the rent from £9,000 per annum to £6,600 per annum to reflect this.
7. Mrs Jones confirmed that the road scheme effected levels of footfall, saw an increase in fast flowing traffic which in turn combined to adversely impact on existing businesses in the area.
8. Mrs Jones said that in 2008, the listing of Summary Valuation (appended in her evidence) identified the location in which the appeal was situated as being part of the town centre. As a corollary, the property benefitted from a 10% allowance in rates although this was not carried over as a result of the subsequent 2017 non-Domestic Rating Revaluation.
9. Mrs Jones referred to a list of rents for the following town centre properties - 10, 12, 16 & Stepney Street; 5/7 John Street; 17/21 Cowell Street, and Cowell Street Precinct and Joly's Market Street. She drew to the Tribunal's attention their rent which were all greater than those relied upon by the VO in the valuation of Thomas Street. In light of this, the appellants then drew attention to the fact that the underlying levels of value for these properties were £110/m² which was significantly greater than the £200/m² the VO had used in respect of their property & those others on Thomas Street.
10. Mrs Jones said she was also concerned that the increase in their RV - which came about as a result of the revaluation - was set at the top of the valuation scheme range. This contrasted dramatically with the RVs of entrepreneurs of competing properties in the town centre who saw their RV decrease.

11. Mrs Jones referred to the VO's "Valuation scheme description:309369" which advised on the range of values (£25.00 – £200.00) that would be allocated to properties in Station Road, Murray Street, Upper Park Street, Park Street, Market Street, Bridge Street, Hall Street and Thomas Street. With continued reference to the scheme, Mrs Jones said that the most commonly applied level of value was £200.00/m².
12. Mrs Jones subsequently referred to "Valuation Scheme description: 413419" which was applied to shops within Llanelli Town Centre, Stepney Street, Vaughan Street, St Elli Centre, Cowell Street, John Street, Cowell Precinct and Market Precinct. For these properties, the VO had adopted a valuation scheme range of £80.00 - £15,000.00. The most commonly applied value within this scheme was £110.00/m².
13. However, Mrs Jones addressed a potential anomaly in the valuation scheme 309369 in which Park and Market Streets were valued on a basis of £200/m² whereas a number of properties on Park Street (16, 4, 6, 12-14, 18, 8 as well as others) were valued at £110/m². Properties on Market Street were valued at £55/m² - £110/m².
14. In her summary, Mrs Jones considered that the RV of the appeal property should not have been derived from only two rents. She felt that an underlying level of value of £200/m² was excessive and asked the Tribunal to reduce the RV on the basis of £110/m².
15. Mrs Harris said that she would be acting in the dual role of advocate and expert witness. She introduced the appeal property and with reference to the proposal established its scope and what had been contended for.
16. Mrs Harris referred to the statutory basis of valuation for rating purposes which was derived from the definition of Rateable Value as prescribed by 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.

17. Mrs Harris also referred 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.
18. In considering the appellant's case, Mrs Harris had regard to the principles established in *Lotus and Delta v Culverwell (VO)* [1976]. Mrs Harris summarised the main points as follows –
 - a. Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point.
 - b. The more closely the circumstances under which the rent is agreed as to time, subject matter and conditions related to the statutory requirements contained in the definition of rateable value the more weight should be attached to it.
 - c. Where rents of similar properties are available they, too, are properly to be looked at through the eye of the Valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject hereditament.
 - d. Assessments of other comparable properties are also relevant. When a rating list is prepared these assessments are to be taken as indicating comparative values as estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
 - e. In the light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the different types of evidence depending on the one hand the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
 - f. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent.
19. In her expert witness statement, Mrs Harris confirmed that the appeal property, 26 Thomas Street, was situated on a main road on the outskirts of Llanelli. It comprised a ground floor shop for use as a photographic studio with ancillary areas to the rear and first floor. The property was entered into the 2017 Rating List at £9,100 with effect from 1st April 2017.

20. In her schedule of evidence, Mrs Harris referred to a location plan, layout plan, images of the property and rental evidence. Her rental summary for 18 and 41- 43 Thomas Street was set out as follows –

Address	Description	Total Area m ²	Eff Date of rent	Rent (£)	Adjusted rent (£)	RV (£)	Analysed rent £/m ²	Assessment unit value £/m ²	Remarks
18	Shop & premises	89.8	3/11/14	6,600	6270	6400	£194.06	£200.00	Rent adjusted for external repair
41-41	Shop & premises	96.6	1/2/15	7920	6851	6600	£206.98	£200.00	Rent adjusted as includes all repairs & insurance

21. Mrs Harris said as a result of an inspection of the property which took place on 21st November 2018, its RV was reduced to £7,800 with effect from 1st April 2017 although the Zone A value of £200/m², which had been applied throughout Thomas Street was maintained.

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

Floor	Description	Area m ² /units	Line factor	£/m ²	Value	Remarks
Ground	Retail ZA	25.90	1.000	200.00	5180	
Ground	Masked ZA	7.80	0.500	100.00	780	
Ground	Masked ZB	9.90	0.250	50.00	490	
Ground	Workshop	40.20	0.100	20.00	804	
First	Workshop	20.60	0.050	10.00	206	
First	Workshop	38.20	0.050	10.00	383	
Total Area		142.60				
Sub-total						£7,843
Total value						£7,843
Adopted RV						£7,800

23. Mrs Harris said that the changes to the road scheme were in situ at the time of the AVD and alleged increase in air pollution which the appellants had referenced in their proposal, would have been reflected in the rents paid at that location. As a corollary, Mrs Harris considered that the revised assessment was fair and reasonable and asked the Tribunal to confirm her revised valuation of RV £7,800 for the appeal property with effect from 1st April 2017.

24. The Tribunal's decision was reserved. However, before retiring to consider its decision, the Tribunal congratulated Mrs Jones for the clear and concise way in which she presented the appellant's case.

Decision of the Tribunal

25. Having considered all of the evidence presented before it, the Tribunal decided to allow the appeal but only to the extent that the Valuation Officer had been prepared to concede in her valuation. The reasons for this are set out below.
26. 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.
27. 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.*
28. In the case law referred to by Mrs Harris, the established facet of rating law was that where the rent on the subject property was available, then that ought to be the starting point. Where the circumstances under which the rent was agreed more closely related to time, subject matter and conditions akin to the statutory requirements contained in the definition of rateable value, then the more weight should be attached to it. In this case, the appeal property was owner occupied and it was necessary to reference the passing rents of comparable properties situated nearby in order for it to determine whether the level of value the VO had derived for the appeal property was fair and reasonable.
29. With this in mind, the Tribunal attached greater weight to the two rents advanced by Mrs Harris because they had been agreed a matter of months prior to the AVD and reflected the road alterations and matters associated with air pollutants which the appellants.
30. The Tribunal understood that a 10% “Town Centre” allowance had been given in respect of the 2010 Rating List (for the subject property) but not carried over for the appeal property in respect of its appearance in the

2017 Rating List. Whilst the appellants had questioned why the VO had not carried this allowance over as part of the 2017 Revaluation, there appeared little justification to support a view that this be reapplied.

31. The Tribunal noted that the 2010 Rating list valuation for 26 Thomas Street was based on a value of £120.00/m². However, this in itself had no relevance to the valuation that was undertaken for the current rating list because different the criteria upon which revaluations are undertaken were different for the respective lists.
32. Whilst the Tribunal noted that Thomas Street was valued at a higher rate than other parts of the town and town centre, this in itself did not mean that the value the Valuation Officer had arrived at for Thomas Street was incorrect. Since it appeared to the Tribunal that the rents on Thomas Street supported the ZA value of £200/m², and as no other rents on Thomas Street had been placed before the Tribunal which cast doubt on the veracity of the Valuation Officer's case, there appeared little basis to disturb the underlying level of value advanced by the Valuation Officer in her evidence.
33. In view of the foregoing, the Tribunal did not consider that the lower underlying levels of value on the properties in the valuation schemes 309369 and 413419, whilst appearing anomalous, went any way to undermining the Valuation Officer's valuation of the subject property which were based on reliable rents. The Tribunal attached little weight to them. Whilst the appellants had sought answers to why there were differences between by valuations which appeared in the 2010 and 2017 rating lists, it was not persuaded by the strength of their argument that they had shown that the revised assessment based on £200/m² was excessive.
34. In view of the foregoing, the Tribunal decided to confirm the VO's revised valuation of £7,800 with effect from 1st April 2017. As a corollary, the Valuation Tribunal for Wales orders the Valuation Officer to amend the Local Rating List to accord with its decision.

Certified a true copy on 18th November 2019