

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mrs Elaine Temblett

Appellant's Address: 24 – 26 Wind Street, Ammanford, Carmarthenshire

Appeal number: 682830435128/192NV17/24

The Matter Appealed against: Accuracy of 2017 Non-Domestic Rating List

Date of Hearing: 23rd October 2019

Appearances: Mrs S Harris – for respondent Valuation Officer

Date of Decision: 18th November 2019

Decision of Tribunal: Dismissed

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

Tribunal Clerk: Mr J Evans

Summary of the Case

1. This appeal arose from a proposal which the Valuation Officer (VO) received on 19th January 2018. The appellant proposal maker, Elaine Temblett, sought an alteration to an entry in the 2017 Non-Domestic Rating List (the “list”) with regard to 24 – 26 Wind Street, Ammanford with a Rateable Value of £8,100 which was effective from 1st April 2017. In making her proposal, Mrs Temblett sought a reduction to Rateable Value £6,930.
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. The appellant was unable to present her case to the Valuation Tribunal in person. However, she asked that it deal with her contention that the list was inaccurate via a written statement.
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. When Mrs Temblett submitted her proposal, she pointed out that prior to 1985 the appeal property was part of a terraced cottages converted into shops. Three of these units were converted into a public house.
6. At that time, the rates were deemed quite high the VO accounted for this on the grounds that the subject property and its neighbours were considered to be in the town centre. Mrs Temblett considered that this perception was incorrect because due to high overheads she had struggled to let out the units. Consequently, she had found it difficult to keep the premises tenanted even though she had reduced the rents.
7. Having looked at the rating assessments of other shops in the same street, Mrs Temblett found that the underlying level of these units was lower (at £100/m² and £110/m²) than the level the VO had adopted for her property. The properties valued at the £110/m² were – 17, 19/20, 23, 25, 25b, 27 and 34. Many other properties located in the market were valued at £100/m². Other properties on nearby Lloyd Street had been valued at £115/m².
8. In her proposal, Mrs Temblett gave the following valuation of her property based on £110/m² –

Zone A	49.4	£110	£5434
Zone B	5.2	£ 75	£ 286
Office	9.1	£ 11	£ 100
Preparation area	9.1	£ 11	£ 100
			£5920

9. Mrs Temblett said that the main shopping street had been valued at £165/m² - which were closer to the pedestrian zone - whereas the appeal property and nos 20 and 22 Wind Street (also owned by Mrs Temblett) had been valued at £150/m².
10. Mrs Temblett explained that the parking spaces which were once situated outside the appeal property and allowed parking for up to an hour but had been replaced by an infrequently used loading bay. The public house has its own parking bay.
11. In her written submission, Mrs Temblett considered that the underlying level of value (£150/m²) the VO had attributed to her property was excessive and should be reduced. Her written submission referred to a number of shops on the high street and within the market which were all closer to the town centre and valued at £100/m².

12. To support her contention Mrs Temblett referred to a list of properties situated on Wind Street and gave the underlying levels the VO had attributed. None of the other properties had been valued at £150/m². In view of the foregoing, Mrs Temblett asked the Tribunal to uphold her contention that the Rating List entry for her property was excessive.
13. In her introduction, Mrs Harris said that she was authorised to act for the respondent VO in a dual role as advocate and expert witness. She drew to the Tribunal's attention the alteration the appellant had sought in her proposal.
14. In her role as advocate, Mrs Harris 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.*
15. 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.
16. 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.
17. In her opening expert witness statement, Mrs Harris referred to a location plan, a layout plan and her valuation of the subject property.
18. On 3rd October 2019, "A Notice of Information to be Used in Evidence" document was forwarded to Mrs Temblett. The notice was appended as Appendix 2 of her submission. In completing and returning this form to the VO, Mrs Temblett confirmed a passing rent of £9,204 which took effect from 1st October 2015 over a five year term.
19. With regard to the rating assessments of shops situated in Wind Street, Mrs Harris pointed out that numbers 22, 24 – 26 Wind Street and 20 Wind Street were valued for the 2017 Rating List at £150/m². As one moved towards the main shopping street, known as Quay Street, the Zone A level increases to £165/m². The odd numbered units on the opposite side of the road were valued at £110/m² whereas individual units situated within the indoor market were valued at £100/m².
20. In response to a question, Mrs Harris acknowledged that properties situated directly opposite the other side of the street to the subject property had been valued at a lower ZA. She said there was no clear explanation as to why this was the case but suggested that historically they had, for whatever reason, less desirable or valuable than the others and attracted the appropriate levels of value.
21. Mrs Harris said that in reviewing the rateable value of the subject property she had regard to its July 2014 passing rent and that of a rent on 22 Wind Street. The details were set out as follows –

Address	Area ITZA	Rent Date	Rent	Adj Rent	Rent £/m2	ZA Rate	RV	Remarks
22 Wind Street	24.09	1/7/14	£4,160	£4,031	£167.33	£150	£3,600	Landlord Ext & Int repairs & insurance
24 – 26 Wind Street	54.28	1/10/15	£9,204	£8,744	£161.09	£150	£8,100	Landlord External repairs

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

Floor	Description	Area m2/unit	£/ m2/ unit	Value (£)
Ground	Retail ZA	49.40	150.00	7410
Ground	Retail ZB	5.20	75.00	390
Ground	Office	9.10	18.75	171
Ground	Preparation area	9.10	18.75	171
		Valuation Sub total		£8142
		Say Rateable Value		£8,100

23. In view of the foregoing, Mrs Harris requested that the Valuation Tribunal confirm the 2017 rateable value of £8,100 with effect from 1st April 2017.

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

Decision of the Tribunal

25. Having considered the issues placed before it the Tribunal decided to uphold the respondent's case and dismissed this appeal. In arriving at its decision, the Tribunal gave the following reasons –

26. 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 had to be 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.

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 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.

28. In arriving at its decision, the Tribunal had regard to the rental evidence supplied by the VO and found that all of the rents, one of which had been agreed prior to the AVD 1st April 2015 analysed to a price that exceeded the Zone A price adopted for the appeal property of £150/m².

29. The Tribunal appreciated the fact that the Valuation Officer had valued other properties situated near to the subject property at a lower level of value than hers and understood how this might have cast doubt on the accuracy of the valuation the Valuation Officer attributed to the subject property. Whilst the Tribunal recognised that the properties on the other side of the road were valued at £110/m², and there may have been reasons for why this was the case, the Tribunal considered that the most compelling evidence was that of the passing rents on number 22 and of the appeal property. Having analysed these rents, it was apparent that they supported the underlying level of value of £150/m² the Valuation Officer had applied.

30. When the Tribunal observed the plan of the area and scrutinised the Zone A values the Valuation Officer had applied, it was also apparent that other properties on the same side of the road as the appeal property but situated a short distance away and moving towards Quay Street were valued at £165/m². This merely suggested to the Tribunal that values were increasing as one moved towards the prime retail area of Ammanford.

31. The Tribunal saw no merit on drawing comparisons between the level of value used to derive the appeal property's RV and that used for determining the value of units in the market and attracted little weight.

32. The traditional approach to valuing shops is by the "zoning" method. The mantra "as you value so you must devalue" is uppermost in the valuation process. The Zone A part is the most expensive part and subsequent zone - Zone B, is normally half that of ZA. Zone C, if there is one is half that of Zone B and so on. However, as the valuation produced by Mrs Temblett did not appear to conform to this accepted standard of valuation, whereas Mrs Harris' did, the Tribunal gave it little weight.

33. In cases of this nature rating case law had found there to be two aspects to the burden of proof: the persuasive or legal burden, which is general and is surmised in the maxim he who asserts must prove: and the

evidential burden which is specific and requires a party wishing to put a fact before the tribunal to prove it, usually by evidence. The persuasive burden in this appeal is placed on the ratepayer as appellant(s), not the Valuation Officer by virtue of his statutory duty to prepare and alter the Rating List.

34. In light of the foregoing, the Tribunal did not consider that the appellant had demonstrated that the ZA value adopted by the Valuation Officer was excessive or unfair. As a corollary, the appeal is dismissed.

Certified a true copy on 18th November 2019