

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr P Jones, The Magnet Club.

Appellant's Address: 30-32, King Street, Wrexham, LL11 1HF

Appeal number: 695533371638/285NV17/7

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 22nd October 2019

Appearances:

Mr P Jones (Steward and Secretary; Magnet Club)- Appellant
Mr J Jones (Treasurer; Magnet Club)
Ms Tina-Suzanne Davies – for respondent Valuation Officer

Date of Decision: 25th November 2019

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr P O Williams (Chairperson)
Mr A Hinchliff
Mrs J Worswick

Tribunal Clerk: Mr Ll ap Glyn

Summary of the Case

1. This appeal arose from a proposal which the Valuation Officer (VO) received on 22nd March 2019. The appellant proposal maker, sought an alteration to an entry in the 2017 Non-Domestic Rating List regarding 30–32 King Street, Wrexham. The appellant had asked for a change in the description, from '*Betting Shop*' to '*Social Club*' effective from 10th March 2019.
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 attended the Tribunal as proposal maker along with another member of the Magnet Club Committee; Mr J Jones who acted as treasurer of the club.
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. Mr P Jones introduced the case and provided the panel with some background information. He explained that the original Magnet Club had been located on the first floor of the centenary buildings for some 35 years. The landlord decided to make alterations to the property and decided to convert the unit into flats. The club was offered a favourable rent on the current unit, immediately below the previous location. Enquiries were made with the Valuation Office Agency (VOA) in order to ascertain what the rate liability would be. In a phone-call to the contact centre of the VOA they were advised that this would be a straightforward procedure and would simply be an administrative task. They made the decision to sign a lease and move the club to the ground floor location based on this information. They were not expecting a drastically increased rating liability.
6. Mr P Jones explained that he was shocked when he was made aware of the fact that the Rateable Value of the new property would be significantly higher than at the previous location. In their initial discussions with the VOA The club felt that they had been misled and were disappointed that they were being faced with business rates that were unaffordable.
7. In evidence, Mr P Jones presented a bundle of documents to support the case, which contained the following:
 - i. Introduction
 - ii. Planning permission: Change of use from bookmakers to licensed social club.
 - iii. Premises licence summary.
 - iv. Employers' liability insurance.
 - v. PPL/PRS music licence.
 - vi. Gaming machine permit.
 - vii. Food standard agency- hygiene rating certificate.
 - viii. Various Photographs of the property, both externally and internally.
 - ix. Copy of appeal proposal.
 - x. Numerous screenshots taken from government websites.
8. The appellants explained that they were shocked to have received an email dated the 03/06/19 from the VOA to explain that they were of the opinion that the property, although having had some alterations made, were not significant, and had not changed the nature of the property. They believed that '*vacant and to let*' it remained in the nature of a retail unit.
9. The appellants felt that the alterations they had made to the property were significant because they had required both planning and building control permission. The following were all altered or constructed as a result of

their decision to move into the unit, and would require major works to revert to its original state:

- i. Cellar
- ii. Prep Room
- iii. Fixed Bar
- iv. Ladies and Gents Toilet
- v. New Signage

10. The appellants also felt that the VOA had provided evidence that was incorrect in terms of the comparable properties. The VOA did not believe that the Wrexham Rail Sports and Social Club and the Wrexham Lager Club were directly comparable as they were *“significantly larger with multiple rooms and facilities and based in buildings which appear to be built as public houses”*.

11. The appellants provided information on what they believed to be comparable properties. They believed the following were all considered to be social clubs, although not located in buildings that were originally built as public houses.

- i. Wrexham Rail Sports and Social Club was newly built to allow for the development of the Island Green Shopping Centre.
- ii. Wrexham Lager Club was initially a private house.
- iii. Wrexham Memorial Club; purpose-built club constructed due to expansion of Tesco.
- iv. Club adj St Mary’s Pro Cathedral, Regent Street, Wrexham (Catholic Club) is a largely Pre-fab building in the grounds of the Catholic Church.
- v. Wrexham Magnet Social Club 1st Flr 29 Centenary Buildings.

12. The appellants believed the appeal property should be rated at £27/m² overall basis as opposed to the £190/m² zoning method as applied by the VOA.

13. In terms of the impact on the club, the appellants explained that the change in the property description had led to a change in their liability from zero to £850 per month. They felt that this was significant as their turnover was less than £90,000. This made it difficult for them to compete with other similar social clubs in the area and would likely lead to them having to close the club. They asked that it be described as a Social Club, as every other authority regarded it as a social club except for the VOA.

14. The appellant explained that looking at the property, it was clear from the frontage that it was a club and premises, which had simply moved from the 1st floor to the ground floor. It was also felt that the statement of the VOA was misleading in terms of the description of the location. The VOA believed that the area was predominantly retail, the appellants described the area as mixed, with both office and retail units.

15. Mrs Tina-Suzanne Davies appeared for the respondent VO as both advocate and expert witness. She distributed a pack of evidence to support her case and provided the tribunal with a brief history of the appeal.
16. She explained that the appeal arose from a proposal seeking a change of use from betting shop to social club with effect from 10th March 2019.
17. 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.*
18. With reference to the Rating Lists (Valuation Date) (Wales) Order 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.
19. In her expert witness statement, Mrs Davies referred to a location plan, a description of the appeal hereditament, the appeal history, the appeal valuation, and rental & comparable evidence.
20. In response to the evidence presented by the appellants, the Valuation Officer provided a detailed explanation of the process which had taken place in arriving at the current rateable value (£16,250) for the appeal property:
21. She explained that the starting point was the actual rent, which stood at £10,500. She went on to explain that she could apply little weight to this rent. It was believed that the rent was agreed 4 years post Antecedent Valuation Date (AVD), and that it did not reflect market condition at that time.

22. She went on to explain that the next stage was to compare the actual rent against rents of comparable properties achieved in 2015. A schedule provided a number of rents of comparable properties. As the rent achieved on the appeal property in 2019 was substantially lower than the actual rents achieved in 2015, she further believed that this demonstrated the unreliability of the 2019 rent as a demonstration of the rental value the hereditament might reasonably have achieved as at AVD.
23. A further schedule provided information on the assessments of what she believed to be comparable properties in the locality. She felt that these clearly demonstrated that the appeal property was rated in line with general values in the locality in terms of the basic £/m² adopted.
24. Having provided evidence on the valuation of the property, she went on to deal with the matter which was a crux of the appellants appeal, that being the 'mode or category of use'.
25. A brief background to the case and decision of *Williams (VO) v Scottish & Newcastle Retail Ltd* was provided, along with clarification of the meaning of the *Rebus sic Stantibus* principle. The two-limb question established in the case was explained as follows:
- a. Physical Limb: The hereditament must always be valued as it stands in its physical state. The question is, what alterations is it permissible to envisage an incoming tenant would reflect in the rental bid?
 - b. Use Limb: Mode and category of occupation means a use for the same general purpose.
26. In response to the points raised by the appellants in respect of comparable properties, the VO explained that while she appreciated that there were other social clubs which the appellants felt should be used as comparables, none were located in a parade of shops, or in predominantly retail areas.
27. In respect of the points raised about the type of properties on the street, Mrs Davis explained that the street was considered a secondary retail location. While accepting that there were some offices as well as retail units in the area, the unit occupied by the appellants was a retail unit.
28. The Valuation Officer provided further information on the case of *Williams (VO) v Scottish & Newcastle Retail Ltd* and explained that while this case did establish the *Rebus* principle, it also considered whether the alterations that had taken place to the original unit were of a minor or substantial nature as to change the mode and category. Mrs Davies was of the opinion that the alterations that had taken place were not substantial, and that it would be possible to trade as a retail unit from the property without major alterations.

29. She also pointed out that there may be reliefs on the business rates available, which were administered by the Local Authority. The VOA did not deal directly with the reliefs, and the Club should contact the Local Authority if they wanted to seek further information on these.
30. In conclusion she asked the Tribunal to dismiss the appeal.
31. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

32. Having considered the issues placed before it the Tribunal decided to dismiss this appeal. In arriving at its decision, the Tribunal gives the following reasons –
33. The Tribunal was governed by the rating legislation which 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.
34. 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 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.*
35. In arriving at its decision, the Tribunal had regard to the evidence presented by both parties. The Tribunal was grateful to both parties for presenting their cases in a professional, and structured manner.
36. The Tribunal appreciated the fact that the Magnet Club was run as a Social Club and was faced with an increased rating liability following the move from the floor directly above the premises currently. Although the Tribunal appreciated that the appellants felt misled by the VOA in the information received in a telephone call, it has a duty to apply the relevant legislation in making its decision.

37. Looking to both the case law and the legislation provided by the VOA, the Tribunal believed that the VOA had looked at the case thoroughly and had applied the correct approach in making its decision. It believed that the correct approach was to consider the rental bid of hypothetical tenant, fresh to the scene.
38. The rental evidence, and comparable rateable values provided in the evidence of the VOA demonstrated that the level of £/m² for retail premises in the locality was accepted and appropriate.
39. The Crux of the appellant's case was the description of the property, and therefore the method of valuation applied to the type of appeal. They were of the opinion that it should be regarded as a Social Club, and that a value of £27/m² would be appropriate. While the tribunal accepted that the property was occupied and used as a Social Club, it believed that it should consider the position of a hypothetical tenant.
40. Taking a stand back and look approach, the Tribunal believed that a new tenant, fresh to the scene would regard the property as a retail unit, and would offer a rental bid based on retail values.
41. The Tribunal also believed that the alterations made by the appellants were minimal and did not change the character of the unit. The bar and cellars were constructed in order to make it practicable to use the unit as a Social Club, but these could easily be removed, and the unit could reasonably be returned to retail use.
42. Taking a step back and look approach, the Tribunal believed that the property remained in the nature of a retail unit. Although Social Club signs had been erected externally, for the reasonable onlooker, the shell of the unit continued to be that of a retail unit.
43. In light of the foregoing, the Tribunal did not consider that the appellant had demonstrated that the Rateable Value adopted by the Valuation Officer was excessive or unfair.
44. The Tribunal therefore decided to dismiss the appeal.

Certified a true copy on 25th November 2019