

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr A Jones

Appeal property: The Mason Arms, Rhyl Road, Denbigh

Appeal number: 683028871176/541NV17

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 9th December 2019

Appearances: Mr A Jones (Appellant) and Mrs S Davies (for respondent Valuation Officer)

Date of Decision: 3rd January 2020

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr R Handy (Chairperson), Mr J Roberts, Mr C Newman.

Tribunal Clerk: Mr J Evans

Introduction

1. This appeal came to the tribunal after the appellant lodged a proposal to alter an entry in the 2017 Rating List. The list entry was a public house and premises known as the Mason Arms. The Valuation Officer (VO) received the proposal on 7th April 2017. Since the proposal was neither withdrawn nor well-founded by the VO, the matter was remitted to the Valuation Tribunal for Wales as an appeal.
2. In his proposal, Mr Jones sought a reduction from the current list entry of £13,000 Rateable Value (RV), to £6,500 RV.
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.
4. Although in cases such as this the appellant presents first, the parties agreed, in this instance that Mrs Davies should present the respondent's case before Mr Jones.

Summary of the Case

5. In her evidence, Mrs Davies pointed out that the expert witness statement was prepared by one of her colleagues, Mr K Sloan. However, Mr Sloan

was unable to attend the hearing in person so Mrs Davies read out the expert witness part of the case. With this in mind the capacity in which she presented the respondent's case was restricted to that of advocate.

6. In her role as advocate, Mrs Davies explained that the appeal property's valuation had been undertaken in accordance with the Rating Lists Valuation of Public Houses Approved Guide. The findings of the approved guide were agreed between the VOA and a number of other bodies involved in the pub licensing trade.
7. On the basis of the trading information that was made available, Mr Sloan considered that the Fair Maintainable Trade or FMT for Liquor Sales was £172,000. As a corollary, he was of the opinion that the property's value should be assessed at its current Rateable Value (RV) of £13,500.
8. This level of RV had been supported by gross trade income for the years 31/01/12 to 31/12/14. Trade for the 31/1/15 had been recently disclosed in February 2019 and depicted an increase in trade at a time very near to the Antecedent Valuation date (AVD) of 1st April 2015.
9. Mr Sloan stated that the appellant's concerns about his property's rateable value had already been considered before the 2017 assessment went live. The VO had also considered costs accrued by the appellant as a result of maintaining a level of trade which were high-lighted in invoices submitted on 2nd February 2017. On 3rd March 2017, the VO informed Mr Jones that costs, which included repairs and maintenance work, team sponsorship, entertainment costs had been reflected in the assessment by amending the percentage cost as per the approved guide. In this case, the adopted percentage was 7.8% which is an amount that sits at the bottom end of the category.
10. Following a review of the category type which, was undertaken in accordance with the approved guide, it was found that the majority of public houses in the immediate area were assessed at category 1. Other properties that were situated further away from the main town centre were also placed in the same category.
11. Mrs Davies referred to the definition of Rateable Value as set down in Paragraph 2(1), Schedule 6 of the Local Government Finance Act 1988, which 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.*

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. Mr Sloan's valuation for the subject property was set out as follows –

Location	Income	Category	Min	Max
Provincial	Liquor	Band 1	7.80%	8.35%
	Food			
	Accommodation			
Receipts	Adopted FMT	Rental %	RV (£)	
Liquor	172,000	7.80%	13,536	
Food				
Accommodation				
Other				
Total			13,536	
		Total	13,536	
		Rateable Value	£13,500	

14. In view of the foregoing, Mr Sloan considered that his valuation was both fair and reasonable. As a corollary, Mrs Davies asked the Tribunal to dismiss the appeal.

15. In response to questions about a reasonably efficient trader, Mrs Davies said that the appeal property had effectively traded well in excess of the level of FMT since 2012 that the VO had used to derive its RV for the 2017 Revaluation.

16. In his evidence, Mr Jones drew to the tribunal's attention the correlation between RV and television companies' pricing structures. It appeared that the higher the RV then the greater these companies charge for being allowed to show non-terrestrial TV programming in the pub.
17. Mr Jones referred to the property's operating costs and levels of its stock for the years ending 2012 – 2014 inclusively and pointed out the running profit margins that were generated. He said that whilst the public houses' turnover could be maintained he pointed out that increases in costs, such as television, were increasing.
18. Mr Jones said that he was different from many operators due to his support of local sports clubs within the local community; particularly the local football and rugby club.
19. In response to a question, Mr Jones said that the costs of providing events at the premises as well as providing free food ?, was a significant annual contribution from his business. He said that his business worked hard to generate revenue as well as provide events for the community.
20. In light of this, Mr Jones considered that he had overtraded, particularly in comparison with other public houses in the area, and with reference to the guide, he suggested that this should be reflected in his property's RV.
21. In his summary, Mr Jones sought a reduction in the property's RV to £8,500 or thereabouts.
22. At the conclusion of the hearing, the tribunal decided to reserve its decision.

Decision

23. Having considered all the evidence placed before it, the tribunal decided to dismiss the appeal. In so doing, it gave the following reasons –
24. In deciding this appeal, the tribunal was governed by rating legislation laid down by Parliament which defined Rateable Value in accordance with Schedule 6 of the Local Government Finance Act 1988 (LGFA 1988), as amended by Section 1(2) of the Rating (Valuation) Act 1999 (see above). For the purposes of the 2017 Rating List the date at which this hypothetical letting is assumed to take place, the antecedent valuation date (AVD), has been set by Parliament was 1st April 2015. The material day for this appeal was 1st April 2017.
25. As in appeals of this nature, case law had established 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. With this in mind, the appellant was required to discharge the persuasive or legal burden of proof and justify his contention for a reduction in RV.

The basis of Rateable Value for a non-domestic hereditament is an estimate of the hypothetical rent it might be expected to achieve in the open market, on a year to year term but with a reasonable degree of continuance. In such cases, it is normal practice to scrutinise rental values to help arrive at a non-domestic property's RV. However, in the case of public houses a consensus was reached between the Valuation Office Agency and the British Beer and Pub Association for a scheme of valuation to be adopted in valuing most public houses. The tribunal understood that under this scheme, the parties determined the property's "fair maintainable trade" and then decide what percentage of this figure might reasonably be expected to be the rent that a hypothetical landlord and tenant would agree upon.

26. The starting point in determining FMT is the consideration of the receipts of the premises in the year ending closest to the AVD and in the immediately preceding years, where such information is available. The FMT is split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income. In the case under consideration only trade that pertained to liquor trade was advanced in evidence. The tribunal noted that the level of FMT was far less than the actual trade which the appeal property had achieved around the AVD and in the preceding years.
27. The percentage to be adopted, in accordance with the scheme, is set having regard to the nature of the public house, its location and the level of FMT. In this case, the tribunal could not criticise the VO for adopting the lowest percentage level applicable at this level of trade at 7.8%.
28. The tribunal recognised that the licensing trade was an extremely competitive industry and that entrepreneurs would have to adopt creative structures in order to ensure that their businesses remained viable. The tribunal accepted that Mr Jones initiatives to attract trade within the local community had significantly increased the level of trade achieved and recognised that Mr Jones' business model was successful, albeit that he faced increased costs on food, equipment and TV sport subscription services. The Tribunal however was not presented with any evidence to show how or to what extent the additional costs of Mr Jones initiatives contributed or related to the actual level of trade achieved or that in the absence of his initiatives together with their associated costs the FMT would be below that adopted by the VO.
29. In the final analysis the tribunal adopted the "stand back and look" approach established in the approved guide. In so doing the tribunal took a careful look at competing properties in the vicinity to see whether the RV on the appeal property stood out of line. All of the properties cited in the VO's evidence referenced properties whose FMT (liquor) was far less than that enjoyed by the appeal property and this was reflected in their resulting RV. The FMT adopted by the VO in respect of the appeal property was also far lower than any actual trade enjoyed at the appeal property during years at or near to the AVD. The level of trade adopted as FMT did not on

the face of it appear unreasonable when compared against other properties in the vicinity.

30. Whilst the tribunal reflected carefully on the appellant's contention that the RV should be reduced to a value at or below £8,500, in order to achieve this the level of FMT adopted would have to be around £120,000. Unfortunately, there was no compelling evidence presented that would enable the tribunal to adopt this level of FMT.
31. In view of the foregoing, the tribunal considered that the VO's valuation at RV £13,500 was not excessive. As a corollary, the tribunal dismissed the appeal.

Certified a true copy on 3rd January 2020