

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr H Palin agent for Mrs S Scott-Davies

Appellant's Address: Bod Erw, The Roe, St Asaph, LL17 0LA

Appeal number: 683030980051/285NV17/29

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 26th November 2019

Appearances:

Mr H Palin - Agent for the appellant

Mr Darren Byrne – for respondent Valuation Officer

Date of Decision: 16th January 2019

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr D Rh Prytherch(Chairperson)
Mr A Jones-Parry
Mr W P Bagnall

Tribunal Clerk: Mr LI ap Glyn

Summary of the Case

1. This appeal arose from a proposal which the Valuation Officer (VO) received on 2nd October 2018. The appellant proposal maker sought an alteration to an entry in the 2017 Non-Domestic Rating List regarding Bod Erw, The Roe, St Asaph, and proposed a reduction in the Rating List Entry from the current Rateable Value of £26,500 to £12,500 with effect from the 01/04/17.
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. Mr Palin introduced himself as a representative of Mrs S Scott-Davies, the owner-occupier of the Bod Erw.
5. He provided a background to the appeal, and explained that this property was valued on a 'rentals' method. Due to the fact that this was a bar/restaurant in a rural area, he believed that it was challenging to obtain rental evidence on similar properties.
6. He provided the Tribunal with some information on the scheme of valuation, and explained that licenced properties were usually valued on a 'turnover basis'. He felt that public houses that did not serve food were practically non-existent outside of towns, and that smaller licenced properties would struggle if they did not serve food. Generally, rents in the area were being reduced.
7. He also provided the Tribunal with some information on the licenced trade in the local area. He believed that national companies did occasionally invest in properties/businesses, which would be refurbished as food-led businesses.
8. In respect of the method of valuing public houses he did not feel that the Fair Maintainable Trade (FMT) method was an adequate approach for establishing a Rateable Value. He felt that applying a percentage figure based on turnover as at the 1st April 2015 was neither a fair nor maintainable method. This approach to valuation was based on assessing the skills of the business-person, rather than the value of the premises.
9. In terms of property's locality, he questioned whether or not the Valuation Officer was fully aware of the area, and the challenges facing public houses operating in the area. He believed that it was common for public houses to be closed at the beginning of the week, i.e. Mondays, Tuesdays and Wednesdays.
10. Mr Palin explained that Bod Erw's valuation was based on a rental (£/m²) method. He could not understand how a decision was made to use a FMT or a rental approach. He believed that the Rateable Value of a property should be broadly the same, whatever method was used.
11. He provided the historical Rateable Values for the Bod Erw:
 - i. 2005 Valuation List: £9,500
 - ii. 2010 Valuation List: £12,500
 - iii. 2017 Valuation List: £26,500
12. He felt that the 110% increase in the Rateable Value between 2010 and 2017 was excessive. He believed that the inflation rate for this period had been 17.5% which he felt clearly demonstrated that the increase in Rateable Value was excessive.

13. It was explained that the property had suffered from flooding in 2012, this badly affected the premises and led to the business being closed for 6 months. The Rateable Value was reduced to £0 for the period of refurbishment. When the property re-opened, and entered back onto the Rating List, the Rateable Value doubled. This was not challenged by the current owner. Looking retrospectively, the owner believed that the Rateable Value should have been challenged at that time.
14. The comparable properties listed in the valuation scheme included properties in Rhyl, Rhuddlan, Denbigh, Corwen and Llangollen. Mr Palin believed that all of these areas were very different to the St Asaph area. He felt that Llangollen benefited from tourism and that Rhyl was far bigger than St Asaph. The out of town location of Bod Erw with commercial and industrial properties in close proximity made it less attractive than other similar properties.
15. Having considered the 85/m² figure applied to the Bod Erw, Mr Palin did not feel that this could be justified. The range of values for similar properties were between 45/m² and 120/m², with 60/m² seen as the most common figure. He could not accept that the Bod Erw should be 40% higher than the most common figure.
16. He went on to refer to the VO's comparables. He believed that the Con Amici (Alafowlia House) was located in a residential area, with a car park, and benefited from having a takeaway business, it was larger than the Bod Erw and was generally a better property. This was rated at £60/m². Another property, Meg's Café was also used as a comparison, but he felt that this should not be used as this one was significantly different to the Bod Erw, it was a worker's café as opposed to a restaurant.
17. He also referred to the White House, Rhualt which opened in 2013 following a complete refurbishment. This property was rated at £80/m² which was lower than the Bod Erw.
18. He did not feel that the Sleepy Panda was comparable to the appeal property either. The fact that this property was a newer build than the Bod Erw, along with being located in the retail and commercial town of Wrexham would suggest this to be a more desirable property than the Bod Erw.
19. Mr Palin also referred to the measurements used, and the fact that the first floor of the Bod Erw was described as a restaurant. He explained that the first floor was predominantly used as a function room. He believed that this fact should be taken into consideration in the valuation, and lead to a lower £/m² for this part of the property.
20. When questioned on the method of valuation, the appellant indicated that he was happy with the rentals method used, and believed this to be the correct approach to value the Bod Erw.

21. Mr Darren Byrne appeared for the respondent VO as both advocate and expert witness. He distributed a pack of evidence to support his case and provided the tribunal with a brief history of the appeal.

22. In his 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.*

23. In his expert witness statement, Mr Byrne referred to a description of the appeal hereditament, a plan showing the location of the property and a floor plan.

24. He explained to the Tribunal that the appeal property was valued as a restaurant and premises, and provided the opening hours as follows:

*Closed Mon & Tue
Wed 12:30-2:30, 5.30-7.30pm
Thu & Fri 12:30-3, 5.30-9.00pm
Sat; 5.30-9.00pm
Sun 12:30-3.00pm*

25. He believed that the opening hours along with the provision of food and seating areas indicated that the premises should be valued on a rental basis, and not on a receipt basis as was the case with public houses.

26. In terms of the rent agreed on the property, he believed that the rent in place was between connected parties therefore held little weight.

27. He provided the Alafowlia Farm, Rhyl Road, Denbigh as a comparable restaurant. There was an agreed rent from the 1st April 2011 which analysed to £93.81/m². He felt that this was a higher value, but reflected

the fact that this was a newer build with £40,000 expenditure and refurbishment.

28. The Radhuni Indian Restaurant, 30 High Street Denbigh was also presented as a comparable. It had an adjusted rent of £77.61/m² agreed on 1 May 2015. This was a first floor restaurant, and he believed that this therefore justified a lower price per m² than the appeal property due to the access issues.
29. Although the appellant had provided The White House as a comparable, no rental evidence was available, therefore he believed that less weight should be placed on this comparable.
30. He proposed that the rateable value remain in the 2017 rating list at a value of £26,500.

Decision of the Tribunal

31. 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 –
32. 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.
33. 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.
34. 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.
35. Based on the evidence presented by the Valuation Officer, these being details of opening hours, and the style & layout of the premises, it believed

that the scheme of valuation, based on the 'rental method' was correct. Although the appellant's submissions suggested he may have believed that a 'Fair Maintainable Trade' method should have been used, he did not object to the rental method being used when questioned.

36. The analysed rent on the Alafowlia Farm at £93.81/m² some four years prior to the 1st April 2015 was considered to be too remote from the Antecedent Valuation Date (AVD) to be a reliable indicator.
37. The rental evidence on the The Radhuni Indian Restaurant was more reliable, as this was closer to the AVD. Although this rent per m² was lower than the Rateable Value of the Bod Erw, it was accepted that a first-floor restaurant's rental value would be reduced due to the access difficulties.
38. The Tribunal did not believe that it had been presented with any substantive evidence to support a reduction in the Rateable Value of the Bod Erw.
39. 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.
40. The Tribunal therefore decided to dismiss the appeal.

Certified a true copy on 16th January 2019