

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Afzal

Appeal property: 21 Canon Street, Aberdare, CF44 7AP

Appeal number: 694033659118/285NV17/28

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 29th January 2020

Appearances: Mr Afzal & Mrs S Walters

Date of Decision: 26th February 2020

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr J Bowen (Chairperson), Mr J G Edwards & Mr D G Sullivan

Tribunal Clerk: Mr J Evans

Introduction

1. This appeal came to the Valuation Tribunal for Wales following a proposal made by Mr Afzal in which he sought an alteration to an entry in the 2017 Non-Domestic Rating List (the "List"). The subject of the proposal was 21 Canon Street, Aberdare.
2. In making his proposal, Mr Afzal asked the Valuation Officer to delete the assessment from the Rating List with effect from 1st April 2017.
3. 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.
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. In his evidence, Mr Afzal said that he had dedicated his entire working life to the retail trade. This amounted to some 62 years in the clothes shop businesses. In the 1980's the local authority had given consent for retail operations like Tesco to develop a profile from outside of the town despite the fact that this company and others like Kwik Save, were already visible on the high street. Mr Afzal added that once Tesco secured an out of town

presence the high street was badly affected. Kwik Save also vacated its position in the high street. He said that as a result of this type of pressure only one other independent clothing shop remained in the street.

6. In addition to the competition created by the supermarkets, in more recent times internet shopping had also had a detrimental effect on the high street.
7. Mr Afzal explained that he had endeavoured to let the appeal property over the course of the last ten years or so although each of his attempts to secure a lease for the property with the help of local and Cardiff based estate agents had proven unsuccessful. Over the course of the last year during a period when the property was vacant, he had also tried to sell the property, again without any success. He said that one of the offers he received for the property was vastly beneath the mortgaged value. In response to a question, Mr Afzal said that the property had been empty for eight years. Mr Afzal confirmed that he had received an offer to sell the property for £55,000.
8. In addition to the state of the property's poor repair, Mr Afzal explained that the appeal property was wide at the front but narrowed as one proceeded through towards its rear. In light of this he did not consider that the shop's shape meant that it was suitable for modern retailers.
9. Mr Afzal said that the property was dilapidated and required a great deal of work. Although he had contemplated the prospect of spending money on the property, he had decided against doing this because it was not economic for him to do so. He was concerned that the level of expenditure necessary to put the property into a reasonable state of repair meant that he would struggle to get a return on the money he might have invested. In response to questions about this, Mr Afzal said that an investment of some £100,000 would be necessary to bring the property into the required standard of repair.
10. In view of the forgoing, Mr Afzal asked the Tribunal to allow the appeal.
11. Mrs Walters provided details of her qualifications, experience and expertise in dealing with rating appeals. She said that she was authorised to appear before the Tribunal for the respondent Valuation Officer and acted as both advocate and expert witness.
12. In her capacity as advocate, Mrs Walters explained that the issues before the Tribunal were –
 - a. Whether the hereditament should be deleted from the rating list with effect from 1st April 2017.
 - b. Whether the state of its repair at the material day fell short of the standard envisaged under the assumptions in the definition of Rateable Value, i.e. 'state of reasonable repair'.

- c. Whether the works required to the hereditament up to the assumed standard could be considered as works of repair and if these could be deemed 'economic' for a reasonable landlord to carry out.

13. Mrs Walters referred to Paragraph 2(1), Schedule 6 of the Local Government Finance Act 1988 (the Act), as amended which provided the definition for Rateable Value –

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.*

14. Mrs Walters also referred to the Rating Lists (Valuation Date) (Wales) Order 2014 [the Valuation Date], which established 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.

15. In her evidence, Mrs Walters referred to a number of higher court judgments, the first of which related to an extract of N J Rose' summary in respect of the Lands Chamber judgment of *Vines Ltd v De Mauney (VO)* which established that the appellant was required to prove their case having first assumed that the proposal was made because the appellant had evidence to prove that the assessment was incorrect.

16. Mrs Walters referred to the detailed reasons that Mr Afzal gave in his proposal for an alteration to the list entry. She referred to the fact that Mr Afzal had endeavoured to sell the property; that it had been empty for nearly ten years; that he was unable to sell it at an auction for a price of £50,000 and referred to the fact that parts of the property were collapsing.

17. With regard to issues of disrepair, Mrs Walters referred to the fact that in rating a property must be valued "*Rebus sic stantibus*" or as it stands at the material day. This is the day upon which its actual physical state and

mode and category of use must be considered. The exception to this rule is where disrepair exists.

18. Mrs Walters said that the property appeared to have been vacant since 2012. During an inspection of the premises taken on 24th September 2019, it appeared to her that the property retained the traits and attributes of a shop and premises and should be valued as one.
19. The statutory definition of rateable value assumes that the property is in reasonable repair unless the hypothetical landlord would consider the repairs uneconomic to remedy. Consequently, when a property is in need of repair that disrepair must be disregarded and the property is valued as if it is in a reasonable state or repair as befits the type of property and its locality. It is only where the works required go beyond what is reasonable; that the property would be uneconomic to repair, that the actual state of repair is to be reflected.
20. Mrs Walters referred to email messages sent by Mr Afzal from letting agents and auctioneers about the property being entered into their ballroom auctions on three separate dates. Whilst reserves were set at £80,000, Mrs Walters said that the auctioneers had considered this price as too high and had advised Mr Afzal to lower it. On a separate occasion, details of an online auction revealed that an estate agent had attempted to sell the property for £115,000 (February 2017). The property was subsequently marketed for £75,000 in a state of disrepair. On 20th January 2019, an email from Mr M Kirk of John Pye confirmed that an offer of £55,000 was the highest received at auction.
21. Mrs Walters considered that an offer of £55,000 demonstrated a demand for the property albeit that this reflected its state of repair. Whilst she appreciated that Mr Afzal's circumstances deterred him from selling the property in its existing condition, she was unable to take such matters into account for the purposes of a rating valuation.
22. The Act required that a non-domestic property in England and Wales had to be valued in accordance with a number of assumptions. One of these was that the hereditament was in a state of reasonable repair immediately before the tenancy was due to begin, although an exclusion from this assumption referred to those repairs which a reasonable landlord would consider uneconomic. This assumption operated within the context of two supporting judgments in *Newbiggin (VO) v Monk* and *Jackson (VO) v Canary Wharf Limited* [2019].
23. In light of the foregoing, Mrs Walters was required to consider if the property, in its existing condition, was reasonably fit for occupation by a reasonably minded tenant. She added that the likely starting point was an objective assessment of the mode or category of the former occupation. She added that only where it was clear that the damage or disrepair was not part of a scheme of reconstruction could the repairing assumptions be applied.

24. If the property was not in a state of reasonable repair, then one had to decide whether the requisite works to such a state of repair might be described as “repairs”. With reference to (other higher court judgments) *Lurcott v Wakely [1911]*, which was referred to in the *Monk* judgment, repair was regarded as the “*restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety*”. Mrs Walters also referred to *Proudfoot v Hart [1890]* which commented on what constituted good tenantable repair. In *Anstruther-Gough-Calthorpe v McOscar [1924]*, Banks LJ considered that the state of repair would be that which one might expect had the premises been managed by a reasonably minded owner.
25. In light of the established case law, Mrs Walters explained that –
- a. The landlord is a reasonably minded person and the premises are to be managed accordingly. The age of the building is important. The state of repair that an in-going tenant expects would vary according to the age of the property.
 - b. The locality will have a direct bearing on the standard repair. Poorer quality buildings may be situated in poorer localities which might influence the expected state of repair for those buildings.
 - c. The type of tenant likely to occupy the property needs to be considered.
 - d. The property should be in a state where an average annual repair bill would be necessary in the future. This is commensurate with the concept of a reasonably minded owner (landlord) and compliments the reference to the age of the buildings, locality and the type of tenant.
26. With regard to the “economic question”, Mrs Walters explained that the vital question to be asked was not whether the repair work would actually be done but could it be done economically? If it could, the repairs would be assumed to be done. However, if the works were uneconomic the property should be valued *rebus sic stantibus* in disrepair. In that case the effective date for that valuation to take effect will be the date when the hereditament first reached the state when it was in sufficient disrepair to justify a reduction in value.
27. Mrs Walters referred to an Upper Tribunal decision of *Thomas and Davies v Denly (VO)*, in which the court held that it was economically reasonable for repairs to be undertaken where the present value of the hereditament assuming repairs were undertaken exceeded the value in disrepair.
28. The appeal property comprised of a ground floor shop that formed part of a two-storey building and a separate entrance to the first floor which was a

domestic flat. The property is situated in Aberdare and set amongst other retailers such as Boots, Burtons, TUI, Thomas Cook and Cash Generator.

29. With the use of photographs, Mrs Walters referred to the external aspect of the property as well as a plan of its internal layout. With regard to its amenities, Mrs Walters said that the property benefitted from an electric roller shutter, suspended ceilings, carpeted floors, fluorescent strip lighting, painted/plastered walls, kitchen and WC facilities. The internal plans demonstrated the narrowing towards the rear of the premises.
30. With regard to the valuation of the subject property, Mrs Walters explained that the Zone A value adopted for Canon Street ranged from £160/m² to £300/m². After an inspection of the hereditament on 24th September 2019, Mrs Walters considered that the rateable value was incorrect due to survey data changes. Following a review of the rental information she concluded that the ZA value had to be reduced. As a corollary the ZA value on a number of units on Canon Street were reduced from £250/m² to £200/m². In addition, Mrs Walters gave a 10% allowance to reflect masking on specific areas of the subject property and a further 5% was deducted to reflect the fact that there was no heating as there was for other shops in the vicinity. This resulted in a reduction in the assessment to £13,500 with effect from 1st April 2017.
31. In her evidence, Mrs Walters went through all the aspects of the property that Mr Afzal considered required repair. Whilst the total cost (Cardiff Lofts & Extensions Ltd) gave an estimate of £62,404, the VOA only accepted a figure of £40,533 since other items of repair included in the other estimate were either general improvements or maintenance issues rather than repair. With reference to the "All In tender Price Index" of 0.8011 the cost of repairs at the AVD came to £32,470.
32. With reference to a Valuation Tribunal decision made in respect of 16/18 Princess Street (Ipswich) Ltd v Bond (VO) 2002, the Tribunal accepted that a hypothetical landlord would be prepared to take a risk by spreading the cost of repairs over five years and in effect take no rental income during that period in order to repair the property.
33. Mrs Walters explained that a good commercial rental yield for buy to let is around 7% to 8%. With reference to Parry's tables for years purchase/yields she amortised the costs of repairs over a five year period and this the results indicated that 7% - 18% yields were economic for the landlord to repair and still recoup a profit.
34. However, with references to case law and of decisions made by the Valuation Tribunal for England, she considered that it was economic and reasonable for a landlord to repair the appeal property. Unfortunately, she was not able to take Mr Afzal's circumstances into account during the course of her valuation for this property.

35. Mrs Walters explained that the appeal property's rateable value had already been reduced by a Valuation Officer's Report from RV £18,500 to RV £13,500 and confirmed that Mr Afzal would be entitled to appeal against that revision should he wish to do so. However, with regard to the case before the Tribunal, Mrs Walters said that she was unable to delete the property from the 2017 Rating List for the reasons advanced by Mr Afzal
36. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

37. Having considered all the evidence placed before it, the Tribunal decided to dismiss the appeal. The Tribunal recognised that the Valuation Officer had revised the list entry to show a reduction in the existing RV although the matter before the Tribunal concerned the question of deletion rather than valuation. As a corollary, the Tribunal makes no comment on the reduction Mrs Walters had made to the appeal property's RV. In arriving at its decision, the Tribunal gave the following reasons.
38. Whilst the Tribunal had considerable sympathy for Mr Afzal, it could not allow his personal circumstances to cloud the scope of the proposal which was to consider whether the appeal property should remain an entry in the Rating list or not.
39. In arriving at its decision, the Tribunal took account of the appeal property's shape and the amount of work that both parties had considered was deemed to necessary to repair it. The Tribunal also appreciated the difficulties Mr Afzal had encountered in his many attempts to lease or sell the property. The Tribunal understood that the area in which the property was situated had suffered due to the closures of shops brought about, in part by the expansion of supermarkets that occupied out of town locations and also the impact of on-line shopping. However, these matters were not instrumental in unravelling the issues that were presently before the Tribunal. The Tribunal was aware that the Valuation Officer had already reduced the appeal property's RV to £13,500 with effect from 1st April 2017 and that Mr Afzal could appeal this value should he still wish to do so.
40. The definition of Rateable Value was helpfully provided by Mrs Walters in her evidence and an extract can be found above. Mrs Walters had identified that the crux of this case hinged on the assumption that a property had to be in a state of reasonable repair immediately before the tenancy commenced, although those repairs which a reasonable landlord might deem uneconomic could be excluded.
41. Whilst the Tribunal accepted that the property had been vacant since 2012, the photographs presented by Mrs Walters depicted a property that contained to all intent and purposes the characteristics of a shop. The

Tribunal also had regard to the internal layout and external photographs Mrs Walters had taken of the property.

42. The Tribunal was assisted by the case law that Mrs Walters had referenced in her evidence. The main tenet leading cases such as *Monk* and *Jackson*, confirmed that a reasonable landlord would undertake to make good those repairs which were deemed economic to undertake. The Tribunal also understood that where repairs necessary to a property were deemed to be uneconomic, that property would be valued *rebus sic stantibus*, or as it stands.
43. With regard to the question of repair and whether those which were necessary and were deemed reasonable, the Tribunal considered the evidence that Mrs Walters presented in the form of Mr Afzal's estimated cost of repairs, was particularly compelling. Although Mr Afzal was told that the estimated cost of repairs tipped £100,000, he had not separated those aspects which could be considered acceptable repair and those which were improvements. Whilst the Tribunal understood that Mr Afzal had found it difficult to sell the property or lease it in its existing condition the Tribunal considered that Mrs Walters' analysis of accepted repairs, which amounted to some £32,470, was an amount which a reasonable landlord would commit to in order to put the property into a state of reasonable repair.
44. This was supported by Mrs Walters' use of Parry's tables which ably demonstrated that if a hypothetical landlord amortised the repair cost over a five year period, bearing in mind a yield of between 7% to 18%, then it was possible to see that the repair cost of repairs would have been recouped.
45. Whilst the Tribunal had considerable sympathy for Mr Afzal, it found that the grounds on which he had established his appeal and the evidence he had submitted at the hearing were not sufficient to delete the property from the Rating List. On this point the appeal must fail.

Certified a true copy on 26th February 2020