

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Tribunal Decision

Appellant: Anna Constantinou

Appellant's Address: Hairdressing Salon and Premises, Ground Floor and Basement 17-19 Castle Arcade, Cardiff. CF10 1BU

Appeal number: 681529336600/192NV17/1

The Matter Appealed against: 2017 Rating List

Date of Hearing: 29th January 2020

Appearances: Mrs S Walters for the Valuation Officer and Ms A Constantinou (the Appellant).

Date of Decision: 26th February 2020

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr J Bowen (Chair), Mr Edwards and Mr Sullivan

Tribunal Clerk: Mr J Evans accompanied by Mrs J Blizzard-Phillips

Introduction:

1. The appeal before the Tribunal arose from a proposal to alter an entry in the Non-Domestic Rating List. The Valuation Officer received the proposal on 5th July 2017 (the Material Day). In making the proposal the appellant cited a number of temporary events that had taken place in Cardiff which she contended had affected her property's value.
2. In her proposal Ms Constantinou asked that the rating list entry be altered on the following grounds –

“The rateable value altered to £1 with effect from 29th May 2017. Hardship financially, roads and access stopped for football, cricket and everything else. Stops people coming to the salon.”
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 Valuation Officer's Case:

4. Mrs Walters; representing the Valuation Officer, prescribed copies of written documentation to the Tribunal. The following is a summary of its contents:
5. The issue for the Tribunal to determine was whether the rateable value of the appeal property was correct as at 23rd May 2017, or whether an allowance should be granted due to a material change in circumstances.
6. Reference was made to the Local Government Finance Act 1988 which provides the assumptions to be made when determining the rateable value of a non-domestic property and the grounds on which an appeal can be made in relation to a material change of circumstances.
7. The appeal property is located in the centre of Cardiff City, and is situated on the ground floor within the popular Castle Arcade, with the majority of units being fully occupied by varying retail traders. The property is a shop made up of two retail units and a basement, and is fully occupied as a hair salon. Plans of the property's floor space, its location and photographs of the property's front were included in Mrs Walters' evidence pack.
8. The Appellant is contending that an allowance should be granted with effect from 29th May 2017 on the basis that roads were closed and access to the salon was stopped for football, cricket and everything else. The Appellant had made reference to the following events that took place around 29th May 2017:
 - UEFA Champion League 2017
 - 4 day festival at Cardiff Bay from 1st until 4th June.
 - Pedestrian bridge was shut by the Castle from 31st May until 5th June.

The Appellant stated that during the lead up to the events and during the events themselves, trade had been significantly impacted.

9. The Valuation Officer submits that the events quoted were too transient to have had any effect on the appeal property's annual rent. The Appellant's request to their landlord for a rent reduction due to the cited inconvenience caused was unsuccessful, which leads the Valuation Officer to conclude that the lease agreed between the parties already takes into account the events.

10. By the time the appeal was served, the cited events had finished, therefore the effects could not be observed by the Valuation Officer.
11. Rents paid for shop units in Cardiff city centre reflect all the perceived advantages and disadvantages of being located there; a rent would be agreed between the landlord and tenant based on these. Therefore, a tenant would be aware of any disruption caused by the events cited and this would be reflected in the rent they would be willing to pay a landlord.
12. Having analysed the Appellant's trade figures, the Valuation Officer identified that there was a general trend that trade had fallen over the years since 2013, and that trade levels in 2017 were lower than previous years. There were similar drops in monthly trade from before the MCC date in 2017, as well as afterwards, therefore, the Valuation Officer could not identify a specific and ongoing reduction in trade from the date of the MCC and nothing which could be linked to any short term event.
13. There have been no other appeals made by any retail property within Castle Arcade or the city centre citing the change in circumstances that the Appellant had.
14. The Valuation Officer's presentation included an Appeal History Summary which confirmed that a nine-year lease was agreed in 2009, and that there had been rent reviews conducted on 9th March 2012 and 9th March 2015, where the rent passing on the appeal property had remained at £11,500.
15. In conclusion, the Valuation Officer submitted that there was not any significant evidence to warrant a reduction in the appeal property's rateable value and requested that the Tribunal confirm the current rateable value of £11,500 with effect from 1st April 2017.

Summary of the Appellant's Case:

16. Ms Constantinou informed the Tribunal that she has worked as a hairdresser for 40 years and over that time, she has paid £200,000 in business rates, £128,000 in VAT of rent and £40,000 worth of VAT on sales.
17. Ms Constantinou is appealing her current rateable value of £11,500 on the basis that a material change of circumstance which included the Champions League, a 4 day festival and road closures during May and June 2017, had caused trade to be the quietest ever.
18. As a result of the city being taken over and people told not to go in during the Champions League and cricket events, Ms Constantinou had written to Savills; the agent for Castle Arcade requesting a two week credit on the rent of her salon, as for those two weeks, trade had

been stopped and clients were prevented access to the salon. No response was received from the agent.

19. Reference was made to an email received from Adrian Field; Executive Director for Cardiff Bid, who was looking for feedback to give to FAW, Cardiff Council and other key stakeholders about the impact on trade within the BID area, in particular during the UEFA Champions League events. Mr Field noted that the impact on business during these events had been worse than expected and that he was personally disappointed by the lack of the promised additional pre-event cleansing, the “don’t travel in unless absolutely essential” messages and some of the barriers in locations where they had not been planned to be. Mr Field also noted that fans did not arrive into the city centre as early as expected, that many bought food and drink from Tesco metro etc rather than going to bars/pubs, locals stayed away and office workers on Friday in particular, worked from home in many cases.
20. Reference was also made to an email received from Annie Jones; Social Media & Events, Castle Quarter Arcades, where it was noted that *“the impact [of the cited events] on business was worse than expected.”*
21. Ms Constantinou read extracts from an article which addressed how high streets will look in years to come. The article noted that 20% of fashion sales has moved from the high street to the internet, and that there have been big changes in shopping habits. Even well known, large companies are struggling and costs such as rates and wages continue to rise while sales decrease.
22. In conclusion, Ms Constantinou requested the Tribunal to find a lower rateable value appropriate and to allow her appeal.

Cross Examination of the Appellant’s case:

23. The following points were noted during Cross Examination:
 - Ms Constantinou did not accept that the events were too transient compared to the length of her lease.
 - During the events, people were not able to drive into the city centre and signs were up, encouraging people not to go into the city.
 - According to Ms Constantinou’s trade figures, there were two months in 2016, where she had taken less than she had done in the same months in 2017.

Reasons for the Tribunal's Decision:

24. Having considered all of the evidence before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons –
25. The Local Government Finance Act 1988, as amended provided that 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 year to year. Whilst the established case law of *Lotus and Delta Limited v Culverwell (VO)* and *Leicester City Council* provides that when determining a property's rateable value, the first step is to consider the actual rent passing on the appeal property. In this case, both the appeal property's current rent and current rateable value are £11,500.
26. In cases such as this, case law had determined that the burden of proof rested with the appellant to discharge both 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.
27. The Tribunal recognised that the cited events had caused some disruption to certain types of retail outlets in the areas affected. However, the Tribunal was not persuaded that Ms Constantinou had presented evidence of sufficient quality to show that these events had affected rental values.
28. The reason for this was that Ms Constantinou had provided trade figures from 2013 – 2017. However, the Tribunal noted that there was a general trend that trade had fallen over the years since 2013 and that there were similar percentage drops in monthly trade from before the MCC date in 2017 as well as afterwards. With this in mind the Tribunal was not persuaded that the appellant's evidence had supported the appellant's contention that the events she cited, which had occurred briefly in May and June 2017, had adversely affected values. The fact that Ms Constantinou's landlord had refused to reduce her rent suggested there was little or no consequential impact on rental value.
29. Having considered all the evidence, and whilst sympathising with Ms Constantinou's plight, the Tribunal finds the current rateable value to reflect the rent the appeal property would command year to year and that it is not excessive. The Tribunal therefore confirms the rateable value of £11,500 for Ground Floor and Basement, 17-19 Castle Arcade, Cardiff, CF10 1BU, with effect from 1st April 2017.

Appeal Dismissed.

Certified a true copy on 26th February 2020