

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ms A Constantinou

Appeal property: Gnd Fl and Bst 17-19, Castle Arcade, Cardiff, CF10 1BU

Appeal number: 681529337320/192NV17/2

The Matter Appealed against: Non-Domestic Rating List Appeal

Date of Hearing: 29th January 2020

Appearances: Ms A Constantinou and Mrs S Walters for Respondent
Valuation Officer

Date of Decision: 26th February 2020

Decision of Tribunal: Dismiss

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

Tribunal Clerks: Mr J Evans and Mrs Jo Blizzard-Phillips

Summary of the Case

1. This appeal came to the Valuation Tribunal for Wales following a proposal made by Ms Constantinou in which she sought an alteration to an entry which appeared in the 2017 Non-Domestic Rating List. The list entry that was the subject of the proposal was the appeal property, 17 – 19 Castle Arcade, Cardiff.
2. In making her proposal, Ms Constantinou sought a reduction in the existing level of Rateable Value (RV) of £11,500 to RV £1.00. In her proposal she cited financial hardship and the number empty units that were situated inside the arcade.
3. Since the VO had not agreed to alter the list to the extent the appellant had sought for in her 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. Having discussed the running order of the respective cases, the Tribunal agreed that Mrs Walters would submit the respondent's case first.
5. 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.

Decision of the Tribunal

6. Mrs Walters explained that she had appeared before the tribunal on behalf of her colleague, Cheryl Barlow. Although, Ms Barlow had constructed the respondent's case she was unable to present it. In view of this, Mrs Walters explained that her capacity to act in this case was restricted to one of advocacy only.
7. In her role as advocate, Mrs Walters explained that the crux of the case centred on the level of underlying value that the Valuation Office Agency had adopted for the appeal property.
8. Mrs Walters explained that the statutory basis on which a rating valuation was based was established by Paragraph 2(1), Schedule 6 of the Local Government Finance Act 1988, as amended (the "Act") in which the definition of Rateable Value was provided 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.

9. 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.
10. The respondent also made reference to two superior court judgments in respect of –
 - a. *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council [1976]*, and

b. Vines Ltd v De Mauny (VO) (2010)

11. The essence of “*Lotus and Delta*” focused on the point that the rent on the subject property was the starting point, not the finishing point and that where rents were available on similar properties, they too could be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent set on the subject property.
12. Mrs Walters explained that “*Vines Ltd v De Mauny (VO)*” judgment established that the burden of proof rested with the appellant ratepayer rather upon the Valuation Officer.
13. The appeal property is situated on the ground floor of the popular Castle Arcade which, in turn is located in the centre of Cardiff City. The majority of units in the arcade were occupied by a number of retail traders.
14. The appeal property is a shop and made up of two retail units (17 – 19) and a basement. It was fully occupied as a hair salon. Ms Barlow inspected the property on 10th January 2020 and found that the shop measurements which were recorded were correct.
15. In the respondent’s response to the appellant’s contention that the entry in the Rating List was incorrect, Ms Walters referred to statements that Ms Barlow had prepared and pointed out that for the purposes of a rating valuation she was required to value it on the basis that the shop was vacant and available to let and that no regard was had to the use of the shop. As a corollary the premises was valued as a shop without being specific as to the type of shop.
16. Ms Barlow explained that the shop was leased in 2009 for a period of 9 years with a stepped rent over three years. The rent reviews that followed in 2012 and 2015 remained at the same level (£11,500 pa) and mirrored the RV which appeared in the List. The appellant was not subject to an upward only rent review.
17. In support of her valuation, Ms Barlow referred to the rents of the following properties also located within Castle Arcade –

Address	Transaction Type	Date of Rent	Annual Rent	Analysed Rent	Adopted Rate psm
Appeal property	Lease renewal	01/03/2012	£11,500	£349.97/m2	£350
37 Castle Arcade	New letting	15/11/2013	£5,500	£453.42/m2	£350
28 Castle Arcade	New letting	27/06/2014	£9,900	£349.33/m2	£350
44 Castle Arcade	New letting	01/12/2015	£6,900	£376.04/m2	£350
47-49 Castle Arcade	New letting	11/07/2014	£15,500	£473.93/m2	£350
Gnd & 1st Flr 16 Castle Arcade	New letting	31/07/2014	£9,400	£520.06/m2	£350
35 Castle Arcade	New letting	28/10/2014	£16,750	£344.18/m2	£350

18. In her Appendices 8, Ms Barlow referred to a Regulation 31 notice which gave notice of the rents of the properties she alluded to in her Appendices 6 and which she intended to rely upon at the hearing to support her valuation of the subject property.

19. Having reflected upon the basket of rental evidence, Ms Barlow did not consider that the underlying level of ZA value of £350/m² was excessive. She placed less weight on the particulars used to derive the value of 28 Castle Arcade and 36/38 Castle Arcade because they had smaller retail spaces and that this had a consequential impact on respective values. With regard to 6A Duke Street, Ms Barlow drew attention to the fact that this property was located in a less prime location than the subject property which in turn was in its RV.

20. Ms Barlow acknowledged that Ms Constantinou had disputed her property's floor area, she explained that the measurement had been done to Net Internal Area specifications as required by the VOA's code of measuring practice. This practice requires that areas such as staff toilets in the basement are excluded from the valuation.

21. In view of the foregoing, Ms Barlow requested that the tribunal confirmed the existing Rating List entry of £11,500 with effect from 1st April 2017.

22. In her evidence, Ms Constantinou said that whilst she had received a lot of paperwork from the VOA about her case, the little time that was spent talking about her case involved being asked to withdraw the appeal.

23. Ms Constantinou referred to a breakfast meeting that was held in 2016 by the "Economy, Infrastructure and Skills Committee" which involved input from ratepayers, businesses and politicians about the viability of business rates in Wales. During the meeting members and businesses were advised about how business rates were calculated, how rates could be reduced to help promote economic development and how certain categories of properties could be assessed.

24. The committee also discussed how larger properties might benefit from relief schemes, the appeals system and how this can be improved and the introduction of more regular Non-Domestic Rating Revaluations and removing transitional relief arrangements.
25. Ms Constantinou said that the impact of the 2017 rating revaluation had had shown a 7% increase in her rates compared to the previous period. Although she was in receipt of small business rate relief (8%), she did not think that this was sufficient bearing in mind of how much rates she paid.
26. Ms Constantinou also referred to the fact that an average of 5.6 units had vacated the high street between 2010 and 2017.
27. In view of the foregoing, Ms Constantinou asked the Tribunal to confirm a revised figure of RV £9,600 with effect from 1st April 2017.

Decision of the Tribunal

28. Having considered all of the evidence placed before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons –
29. It is a well-known fact that the plight of the high street had been documented by the media for a number of years. Although Ms Constantinou's case referred to the general governance of business rates and also explored how it might be improved, the Tribunal had no control nor could it allow itself to be influenced by such matters when it came to make its decision.
30. In cases such as this the Tribunal had to consider the property's value in accordance with Schedule 6 to the Local Government Finance Act 1988, as amended and in regard to Rating Lists (Valuation Date) (Wales) Order 2014. Moreover, the Tribunal was required to consider the hereditament vacant and available to let on the statutory terms of the hypothetical tenancy. Although the appeal property had been put to use by Ms Constantinou as a hair salon, it was valued vacant and to let as a shop without being specific as to what type of shop.
31. Case law had established that in cases of this two aspects to the burden of proof existed: 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.
32. Whilst Ms Constantinou had gone to some length to identify aspects of business rates that had seemingly alienated some stake holders, the Tribunal was not persuaded that she had presented evidence of sufficient quality which undermined the underlying Zone A values that the Valuation Officer had applied to the appeal property and also to other units within the arcade. She had not included a revised valuation for the subject property

nor had she supported her revised valuation of RV £9,600 with any evidence to justify the a reduction. By contrast the Valuation Officer's valuation was underpinned with a Zone A value of £350/m² and this was derived from an analysis of new lettings on other properties in the arcade and that had occurred before the Antecedent Valuation Date (1st April 2015). The Tribunal saw no reason to attach weight to the evidence of new lettings that prevailed in Castle Arcade.

33. Whilst the Tribunal recognised Ms Constantinou paid a great deal in terms of rent and rates, this was not a justifiable reason to restore the previous list entry of RV £9,600.

34. Although Ms Constantinou's Rateable Value had increased by 7% since her property had been revalued for the 2017 Rating Revaluation, which served to show that rents had increased and as RV, by its very definition, had a correlation with rents, it followed that RV's would increase if rents had increased.

35. In view of the foregoing the Tribunal decided to dismiss the appeal.

Certified a true copy on 26th February 2020