

Tribunal Decision

Appellant: Mr F & F Yavuzel

Appeal Address: Shop and Premises, 148-150 North Road, Cardiff.
CF14 3BH

Appeal number: 681533438306/285NV

17/62

The Matter Appealed against: Rateable value entered in the Compiled List
April 2017.

Date of Hearing: 5th March 2020

Appearances: Mrs S Harris representing the Valuation Officer,
accompanied by Mr G Jones, and Mr Yavuzel (the
Appellant).

Date of Decision:

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr A Park (Chair), Mr RG Harris and
Mr W Lewis.

Tribunal Clerk: Mrs J Blizzard-Phillips

Introduction:

1. The appeal before the Tribunal arose from a proposal to alter the property's compiled entry in the 2017 Non-Domestic Rating List.
2. In a letter accompanying the proposal, the Appellants explained that they had checked their business rates online and it had stated that the property has a ground floor retail area. The Appellants confirmed that there is no retail area, rather, there is a kitchen. The Appellants also stated that they could not afford to pay £6,300 per annum.
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 Harris; representing the Valuation Officer, prescribed copies of written documentation to the Tribunal. The following is a summary of its contents:
5. The appeal was received on 26th April 2019. On 2nd July 2019, an email was sent to the Appellant explaining that the Valuation Office had received insufficient evidence and that the case would be assigned to a valuer for further discussion.
6. An email was then sent to the Appellant on 9th October 2019, advising that the discussion period had started and inviting the Appellants to provide any evidence. A further email sent to the Appellants in October 2019 stated that the rent passing on the property supported the current rateable value as did the basket of rents in the area.
7. On 8th December 2019, the Valuation Office received a letter from the Appellants which outlined that there is a lack of car parking that hampers access to the property, that the property is located on a busy road, and that there are vacant units nearby. The Appellants also made points in relation to the type and quality of food the restaurant serves.
8. Mrs Harris contended that the first three points raised in the Appellants' letter were already established at the start of the current Rating List; 1st April 2017, and therefore are already reflected in the passing rent of £15,000, which in turn supports the rateable value of £12,000. The type and quality of food that the restaurant serves is irrelevant to its rateable value.
9. An email was sent to the Appellants on 4th February 2020, reiterating that the rateable value is supported by the rent passing and the basket of rents and that the Appellants had not provided any evidence to the contrary.
10. The Valuation Office inspected the premises with the Appellants on 19th February 2020. The Valuation Officer's recorded measurement of the premises was correct, although as the area described as "stores" was now used as a kitchen, it was agreed with the Appellants that the area's description would be altered. However, this amendment did not alter the valuation as under the valuation scheme, stores and kitchens are discounted to the same extent. It was also found that customer toilets have been provided in part of the stores area. Again, this did not change the calculation as both are discounted at the same rate under the valuation scheme for shops on North Road, Cardiff.
11. It was explained to the Appellants that the restaurant area was valued as retail space within its valuation, because under the rating hypothesis, the premises had to be valued as available and to let. Mrs Harris submitted that a hypothetical tenant would not limit the use of

the premises to that of a restaurant. This is evidenced by previous users of the premises which have included a music shop.

12. The Appellants telephoned the Valuation Office to discuss the case on 21st February 2020. During the telephone call, the Appellants mentioned that the previous tenant paid £13,500 per annum in rent as at June 2015. Mrs Harris noted that this supported the current rateable value.
13. On 28th February 2020, the Valuation Office emailed the Appellants again, stating that the current rateable value was correct based on the evidence to hand. The Appellants were asked to provide evidence once again. No further evidence was received.
14. In conclusion, Mrs Harris reminded the Tribunal that the property is located in a parade of shops and taking into account the hypothetical tenancy, vacant to let, the property would be a retail unit. The current rateable value is supported by the passing rent and the Appellants have not supplied any evidence to support a reduction. The issues mentioned by the Appellants, including a lack of parking, the busy road, and vacant units are all reflected in the passing rent and therefore are reflected in the property's valuation. Mrs Harris therefore respectfully requested the Tribunal to dismiss the appeal.

Summary of the Appellant's Case:

15. Mr Yavuzel informed the Tribunal that he and his brother run the restaurant which brought a new style of food to the UK. The restaurant provides hearty food to the people in Wales at a reasonable price.
16. The restaurant has no microwave or freezer; all food is cooked using only coals.
17. Mr Yavuzel's brother, who is the restaurant's chef, has won awards including Best World Cuisine in Wales, Top 50 restaurants in Wales awards to name a few.
18. The restaurant only uses fresh produce which costs a lot of money. The Appellants buy fresh lamb and chicken six days a week and fish five days a week. No food is kept to use for the next day.
19. The Appellants' current rent is £16,500. The Landlord realises that the restaurant is popular and has therefore increased the rent. The Appellants are looking for another premises.
20. The restaurant has to provide enough money for nine people to live; none of the family claim any benefits. The family came to the UK under the 1960s agreement where Turkish people could come to the UK to work but were not able to work for anyone else or claim benefits.

21. The restaurant has spent £40,000 on welsh produce and at local shops, helping the Welsh economy. The business' employees pay national insurance and the business paid £2,000 in income tax last year.
22. Mr Yavuzel submitted that he and his brother were not asking for the property's rateable value to be reduced to £0, but rather, they request a couple of thousand pounds relief.

Cross Examination of the Appellant's case:

23. The following points were noted during Cross Examination:

- The lease was renewed in June 2019 and the rent was increased to £16,500pa. The Landlord is holding the lease as he wants a higher rent. Mr Yavuzel and his brother are looking for another premises. The Landlord thinks because the restaurant is popular, the business is making a lot of money.
- The previous rent was £15,500 with effect from December 2018.

Summaries:

24. Mrs Harris submitted that the property's current rateable value of £12,000 is correct and respectfully requested the Tribunal to dismiss the appeal.
25. Mr Yavuzel submitted that there is no parking for the restaurant and customers can not stop on the road; the restaurant's location is bad. In conclusion, Mr Yavuzel submitted that it would be better for the business to pay lower rates than for it to close and there be an empty unit.

Reasons for the Tribunal's Decision:

26. 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 –
27. The Local Government Finance Act 1988, as amended provides 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 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, the appeal property's current rent is £16,500 which is higher than its current rateable value of £12,000.

28. The Tribunal noted that the previous tenant paid a rent of £13,500 per annum as at June 2015, which is also higher than the property's rateable value.
29. In cases such as this, case law has determined that the burden of proof falls to the Appellants to discharge both the persuasive or legal burden, which 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. Unfortunately, the Appellants had not provided any rental evidence to suggest that the property's current rateable value was incorrect. The quality and type of being food served, do not affect the property's rateable value and the issues of parking, bad location etc would be reflected in the passing rent of the property.
30. Having considered all the evidence, and whilst sympathising with the Appellants' plight, the Tribunal finds the current rateable value to reflect the rent the appeal property commands year to year and finds that it is not excessive. The Tribunal therefore confirms the rateable value of £12,000 for 148-150 North Road, Cardiff, CF14 3BH, with effect from 1st April 2017.

Appeal Dismissed.

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