

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Greg & Sandra Handler (Owners)

Appellant's Address: Glan Y Bala, Llanberis, Caernarfon LL55 4TY

Appeal number: 681029756186/541NV17/26

The Matter Appealed against: 2017 Rating List

Date of Hearing: Thursday 20 February 2020

Appearances: Mr & Mrs Handler
Mrs T S Davies for the respondent Valuation Officer

Date of Decision: 31 March 2020

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr D Subacchi (Chairperson)
Ms M Griffith
Ms S Wheldon

Tribunal Clerk: Mrs C Jones

Introduction:

1. Mr & Mrs Handler made a proposal to alter an entry in the 2017 Non-Domestic Rating List in relation to the appeal hereditament which was a self-catering holiday unit and premises. The Valuation Officer (VO) received the proposal on 20 September 2017 and in making their proposal, the appellants sought a reduction in the appeal hereditament's entry in the Rating List from £12,000 to £6,000 with effect from the 1 April 2017.
2. The following 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 Appellants Case

3. Mr Handler explained they had taken on the premises in 1998, which was in a bad state of repair and needed substantial works. The appellants had a list of all the works done including the cost, for every year since 1998 apart from the last 12 months, which they could not print due to a computer problem. He stated that there were 3 letting units at the appeal property rather than two, after taking on the coach house.

4. Mr Handler believed the calculation used for single bed space, which was measured in area, was flawed. The issues raised by the owner of Rosemoor Country Cottages and Nature Reserve highlighted that most self-catering holiday accommodation owners had small businesses, but they formed a very important part of the economic make-up for Wales.
5. The appellant believed the current Business Rates system on the self-catering accommodation sector, prevented growth in the sector to the detriment of tourism in Wales. In practice, the VOA derived from receipts and expenditure data, the so called 'bed space value/s which they then use to set rateable values (RV) for individual properties. These bed space values had been increasing considerably from the 2005 valuation onwards.
6. Economic circumstances, however, had only deteriorated for most self-catering businesses. As changes in rateable value should broadly reflect changes in profitability for businesses in these sectors, the Welsh Association of Self-Catering Operators could not see that the VOA were or had been doing this properly for the Self-Catering sector. As a result, the VOA threatened the viability of small self-catering businesses, especially ones that had several units within their curtilage, which owners were largely dependent on for their income, and whose RV exceeded the current threshold for full Small Business Rates Relief of £6,000.
7. Mr Handler considered that it was patently clear the whole non-domestic rating system, based on premises, rather than profit-making ability, was archaic and not fit for purpose. The current system was also responsible for the existence of a specific 'Catch 22'; if premises are improved then the business is punished by a higher business rate, negatively affecting its profitability. For tourism businesses such as Self-Catering this was a specific problem, as the fabric of the building was in large part of its ability to attract customers.
8. The appellant explained that the VOA had identified Glan-Y-Bala by its post code, which was for part of the Llanberis Parish and included the Llanddeiniolen Parish. The VOA identifies 'Llanberis Parish' as a 'prime location' and the 'Llanddeiniolen Parish' as a 'poor location'. He stated that looking at parish boundaries identified on the map, Glan-y-Bala was situated in the Llanddeiniolen Parish.
9. The appellant quoted recent Upper Tribunal (Lands Chamber) decisions to support his appeal, as follows: -

Dennett v Crisp (VO) [2013]

Redrose Limited v Thomas (VO) [2014]

Beaconside Country House & Cottages v Gidman (VO) [2016]

Wishhart v Hulse (VO) [2018].

Summary of the VO's Case

10. Mrs Davies distributed her evidence pack and explained that the list of all the settlements had not been included in her original pack to the appellants. She confirmed that this had been given to the appellants now, prior to the hearing.
11. She stated that the appeal arose from a proposal seeking a reduction to £6,000 with effect from the 1 April 2017, therefore it was a compiled list appeal. The survey data had been agreed between the parties, but the single bed space figure could not be agreed.
12. The appeal property was a self-catering holiday let made up of three units located in Llanberis. Mrs Davies referred the panel to the comparable summary of properties included at section VO7 of her evidence pack. She also drew the Tribunal's attention to her revised agreed valuation as copied below: -

GLAN Y BALA, LLANBERIS, CAERNARFON LL55 4TY			Property description; Self Catering Holiday Unit & Premises Special Category and code: Holiday Homes Self Catering/131		
			Basis of measurement: Net Internal Area		
COMPONENT PARTS OF THE PROPERTY					
Ref	Floor	Description	Area m2/unit	£ per m2/unit	Value (£)
1.1	First	Single Bed Space - Padarn	9.00	480.00	4,320
2.1	Ground	Single Bed Space - Coach House	4.00	720.00	2,880
3.1	Ground	Single Bed Space - Peris	3.00	800.00	2,400
valuation sub-total					9,600
The total of all the elements above is £9,600 which we have rounded down to a rateable value of £9,600. This is effective from the 1 April 2017.					

13. The VO made the following observations regarding the evidence presented by the appellant. The proposal sought a valuation on a Receipts & Expenditure basis however, a second appeal submitted by the appellants had been agreed at a revised RV of £9,600. She referred the

Tribunal to Appendix 4 & 5 of her evidence pack. This showed that the appellants' son Gregory Handler had signed an agreement form to revise the RV of the appeal property to £9,600 on a different form. Mr Handler had given email authority for his son to sign form VO 7302 on behalf of himself and his wife.

14. Furthermore, the settlement summary produced showed an established basis of valuation had been reached for the 2017 rating list and properties with 5 or more units were to be valued as a percentage of gross receipts. Properties with 4 units or less were to be valued as a price per bed space.
15. In conclusion of her evidence, Mrs Davies stated that the appeal property was made up of 3 separate self-catering units and was correctly valued in line with the established method for the 2017 Rating List. She therefore requested that the Tribunal dismiss the appeal.
16. In conclusion of his evidence, Mr Handler stated that although he had given his son authority to sign on his behalf whilst he was away in America, he had not fully realised that his son was signing an agreement to revise the RV. He told the Tribunal that he would never have signed it himself, had he been in the country.
17. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

18. Having considered all the evidence placed before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons.
19. It made its decision having regard to the prevailing legislation, Schedule 6 of the Local Government Finance Act 1988.
20. Mr & Mrs Handler contended that the Rating List was inaccurate and that the RV for the appeal property should be reduced from £12,000 to £6,000. In cases such as this, higher court authorities had accepted that the burden of proof rested with the appellant on the basis that 'he who asserts must prove'. Moreover, it was an accepted tenet of law that any assertions made before a Tribunal should be underpinned by evidence. Therefore, in the case under consideration the persuasive burden of proof rested with the appellants and not the respondent Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.
21. The Tribunal believed the appellants had not been able to sustain their argument that the assessment was incorrect and had not, with reference to evidence, undermined the VO's valuation of the property. The Tribunal believed that Mrs Davies had correctly valued the property considering the established basis of valuation that had been reached for the 2017 rating list.

22. The Tribunal accepted the VO's explanation that self-catering properties with 4 units or less were valued as a price per bed space. This was the accepted and followed method throughout Wales. Unfortunately for the appellants it was self-catering properties with 5 or more units that were valued as a percentage of gross receipts. Whilst the Tribunal had sympathy for the appellants, it was not in its opinion in receipt of evidence of enough quality to depart from the practice adopted by the VO in this instance.
23. Furthermore, the Tribunal became aware during the hearing that the appellants had submitted two proposals on the same grounds which related to the same property. The appellants had already agreed a reduction in the property's RV on a different form to revise the RV of the appeal property to £9,600.
24. The Tribunal was mindful that Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 barred an interested person from making a proposal where he had made a proposal to alter the same list in relation to the same hereditament on the same ground and arising from the same event.
25. As the VO did not challenge the validity of the proposal before the Tribunal, it decided to answer the question before it of whether a reduction in the RV of the appeal property to £6,000 had been proved.
26. For the reasons given above, the Tribunal decided to dismiss the appeal.

Certified a true copy on 31 March 2020