

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Rajanathan Sivagnanam

Appeal Property: 861-863 Llangyfelach Road, Treboeth, Swansea SA5 9AW

Appeal number: 685533629667/285NV17/26

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Thursday 12th March 2020

Appearances: Mr R Sivagnanam (Appellant) & Ms T Anstey (for the respondent Valuation Officer)

Date of Decision: 2nd April 2020

Decision of Tribunal: That the rateable value of the appeal property should be an amount greater than the amount shown in the rating list at the date of the proposal.

Members of the Tribunal: Mr B Al-Khanchi (Chairperson), Mr JK Lewis & Mrs LM Thomas

Tribunal Clerk: Mr G Harris

Introduction:

1. The appeal under consideration followed a proposal made by Mr Sivagnanam in respect of 861-863 Llangyfelach Road, which the respondent Valuation Officer received on 29th July 2019. The proposal sought a reduction in the Rateable Value (RV) of the appeal property from £12,750 to £8,059 on the following grounds –

I would like to raise that the rateable value was inaccurately calculated when the property was valued in 2017.

In 2010, the property was valued based on zones. But in 2017 the calculation was not zone based. However, some of the similar business premises in SA5 were still calculated based on zones in 2017.

List of few similar shop and premises in SA5 calculated based on zones

- 485 Llangyfelach Road, Brynhyfryd, Swansea SA5 9HE
- Gnd flr 676 Llangyfelach Road, Treboeth, Swansea SA5 9EN
- 685-687 Llangyfelach Road, Treboeth, Swansea SA5 9EL
- 61 Crwys Terrace, Penlan, Swansea SA5 9AH
- 3-4 Brynhyfryd Square, Brynhyfryd, Swansea SA5 9EB
- 5-6 Brynhyfryd Square, Brynhyfryd, Swansea SA5 9EB
- 2 Brynhyfryd Square, Brynhyfryd, Swansea SA5 9EB
- 493 Llangyfelach Road, Brynhyfryd, Swansea SA5 9EA
- 139 Ravenhill Road, Ravenhill, Swansea SA5 5AH
- 147-149 Ravenhill Road, Ravenhill, Swansea SA5 5AH

- Tesco Mobile at Tesco Extra, Pontardulais Road, Fforestfach, Swansea SA5 4BA
- 64-66 Penlan Road, Treboeth, Swansea SA5 7DD
- PK Howard 24 Conway Road, Penlan, Swansea SA5 7BD
- 61 Robert Street, Manselton, Swansea SA5 9NB

So, I would like to raise that the calculation for 2017 should also be zone based at a base rate of £80 per sq. m

I propose the following calculation should be followed for 2017 based on zones

Floor	Description	Area m²/unit	£/m² unit	Value (£)
Ground	Retail Zone A	83.7	80.00	6,696
Ground	Retail Zone B	13.9	40.00	556
Ground	Office	8.7	10.50	91
Ground	Internal Storage	34.2	10.50	359
Ground	Internal Storage	25.3	10.50	266
Ground	Staff Toilets	2.7	0.00	0
Ground	Kitchen	8.7	10.50	91
Total Area		177.2		
Property parts subtotal rateable value				£8,059

2. 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

3. Ms Anstey introduced herself and explained that appeal arose from a proposal which sought to reduce the rateable value from £12,750 to £8,059 with effect from 8th February 2019. The main issue before the tribunal related to the Valuation Officer's calculation of area and the method of valuation adopted, with the appellant asking for the shop to be valued on a zoning basis as opposed to an overall rate being applied.
4. Ms Anstey explained that it was her opinion that the appeal property was a Type 2 Convenience Store as defined in Section 922 of The Rating Manual and Practice Note 2017. According to the guide convenience stores whose dedicated sales was greater than 80m² and less than 280m², were valued according to the overall approach. The guide further defined 'dedicated sales area' Has the area dedicate to the sale of goods only and did not include stores, ancillary offices etc. The dedicated sales area calculation had been used as a marker to see if the hereditament fell to be a convenience store. Ancillary areas such as toilets and offices had then been included in the valuation which was on an overall basis.

5. Ms Anstey explained that Paragraph 6.1 of the Rating Manual stated that such stores should be measured to gross internal area (GIA). Prior to the emergence of convenience stores as a separate class within the Rating Manual many shops had been valued by way of a zoned method, based on net internal areas (NIA) held on the VOA's database. It had not been practical to re-inspect so many properties hence many of the valuations were based on NIA until such time an inspection took place.
6. Ms Anstey explained that in this case, the appeal property had been recorded by the VOA as having a NIA of 162m². This measurement was the result of an inspection carried out in 2018 following an appeal by the previous owner. However, when Ms Anstey inspected the property on 13th February 2020, she found the previous measurement to be inaccurate. In light of this she referred the Tribunal to a copy of her inspection report where the correct calculation of area on a NIA basis and GIA basis was provided as evidence.
7. Ms Anstey explained that the appeal property was a standalone store with parking to the front, it had previously been a residential property. Photographs, together with a plan of its layout and map of its location were provided in evidence. Convenience stores were valued on an overall basis meaning that a rate per square meter was applied not favouring one area of the premises over another. As such, Ms Anstey's proposed valuation was as follows –

Floor	Description	Area m ² /unit	£/m ² unit	Value (£)
Ground	Sales Area	178	80.00	14,240
Total Area		178		
Total Value				14,240
Adopted Rateable Value				£14,000

8. Ms Anstey explained that the basis of valuation for the appeal property had been defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 as –

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from non-domestic rating] 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. Ms Anstey argued that it was for the appellant to prove his case, on the assumption that the appeal had been made on the basis that the appellant had evidence to suggest the assessment was incorrect. In the case *Vines Ltd v de Mauny (Valuation Officer)* (2010) NJ Rose commented –

“It is, however, important to bear in mind that this is an appeal by the ratepayer, not the VO. The onus, therefore, is on the ratepayer to show that the base rate of £160 per m is too high, not the VO to prove the opposite.”

10. Referring to the comparable properties referred to by Mr Sivagnanam in his Statement of Appeal Ms Anstey did not believe that they were particularly comparable and therefore were not the best evidence from which to base a valuation. The reason for this were because 106 Sterry Road, Gowerton was located some 8km from the appeal property and was not a standalone shop. It was attached to a tanning studio on one side with a small car park on the other then a row of retail units. Spar Stores, Llandysul was located over 60km away. The Post Office, Felinfach, Lampeter had been valued on a zoned basis and two areas had been adjusted to reflect masking. Preseli Stores, Crymych was more than 3 times the size of the appeal property.
11. Ms Anstey considered that there were many properties within the convenience store valuation scheme that were nearer to the appeal property which had been valued on an overall basis and valued on GIA where available.
12. Mr Sivagnanam stated that he had 2 shops, the appeal property and another in Cardiff. He had recently closed the Cardiff shop with the loss of 5 jobs, 4 staff remained employed in Swansea. He had also received a letter from the billing authority requesting the payment of overdue business rates.
13. Mr Sivagnanam explained that the previous owner had made an appeal which had resulted in the RV being reduced from £14,000 to £12,750 which the VOA were now claiming to be a mistake. He accepted that the Rating Manual required that convenience stores be measured to GIA however referred to paragraph 8.1 which stated –
- 8.1 The rental method is the primary method adopted in this class of property. Care should be taken when carrying out analysis and valuation of properties in type 2 and type 5 as they may have excessive areas of ancillary space and therefore are not directly comparable to types 1, 3 and 4B*
14. Mr Sivagnanam contended that the appeal property had ancillary stores which had been included in the report following the inspection on 13th February 2020, an area behind the door had been included in the valuation which the appellant believed should be taken out.

15. Mr Sivagnanam questioned whether the appeal property should be classed as being a parade shop as defined by Communities and local Government as –
- *a group of 5 to approximately 40 shops in one or more continuous rows;*
 - *has a high number of independent small or micro-businesses with some multiples (Tesco Metro, Sainsbury's Local, Boots) and symbol affiliates (Spar, Londis, Budgens etc.) and,*
 - *being largely retail based (convenience stores, newsagents, greengrocers, bakers etc) though may include some local services (hairdressers, café etc).*
16. Mr Sivagnanam explained that Historic England described a shopping parade as “*purpose-built rows of shops, often with generous residential accommodation above*”. Mr Sivagnanam provided a plan of the hereditament's location and pointed out that within 100 yards there was a public house, a Londis and another shop and with the appeal property benefiting from accommodation above, he believed that it should be considered to be within a parade.
17. Mr Sivagnanam contended that it was not fair that he was paying £80/m² across the whole of his shop whereas some of the shops provided in his Statement of Appeal had varying amounts applied to storage areas and zones. For example, the mezzanine storage area in Presceli Stores had been valued at £3.50/m² compared to the ground floor sales area being £70/m². In another example, The Post Office, Felinfach had varying amounts applied to zone B. Mr Sivagnanam questioned if the VOA could manually apply varying rates at a particular store why not apply the same principles to his property and help him do something to survive. In addition a Tesco store was due to open in the immediate future which would further effect his trade.
18. Mr Sivagnanam explained that the appeal property had been valued using a zoned approach for the 2010 Rating List but this had been changed to an overall basis for 2017. He contended that if it had been zoned for the 2017 List then his rateable value would have remained the same.
19. At the conclusion of the hearing, the tribunal decided to reserve its decision.

The Reasons for Decision

20. Having considered all the evidence placed before it the tribunal decided as follows: -
21. In his proposal Mr Sivagnanam had contended that the Rating List was inaccurate and that his RV should be reduced. In line with the case *Vines Ltd v de Mauny* 2010 the Tribunal accepted that the burden of proof rested with the appellant on the basis that ‘he who asserts must prove.’ Therefore, in the case under consideration the persuasive burden of proof

rested with the appellant ratepayer and not the respondent Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.

22. The Tribunal believed the appellant had not been able to sustain his argument that the Valuation Officer's revised assessment was incorrect and had not, with reference to evidence, undermined the Valuation Officer's valuation of the property. Ms Anstey had cogently explained why she had not adopted a zoning method of valuation and that her revised valuation, based upon a slightly larger unit, had an impact in the new Rateable Value for which she sought. With this in mind, there was no justification to adopt a zoning approach as advanced by Mr Sivagnanam in his evidence.
23. In view of the foregoing, the Tribunal decided that the Valuation Officer had been correct to value the property as a Convenience Store as defined in Section 922 of The Rating Manual and Practice Note 2017 on an overall basis using GIA measurements.
24. With regard to its location, and having examined the map and photographs, the Tribunal did not agree with Mr Sivagnanam's assertions that the appeal property fell to be situated within a parade of shops, with the nearest non-domestic property, a public house, being some 100 yards away and there being just 3 businesses in the locality, including the appeal property. The Tribunal could not consider the future opening of Tesco, however noted that Mr Sivagnanam could make a further appeal once it had opened if it instigated a material change of circumstances which effected his trade.
25. The Tribunal sympathised with Mr Sivagnanam but noted that the Valuation Officer had a duty maintain the correctness of the Rating List and therefore orders the Valuation Officer to amend the RV of 861-863 Llangyfelach Road, Treboeth, Swansea from £12,750 to £14,000 with effect from the date of this decision.

Certified a true copy on 2nd April 2020.