

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Tribunal Decision

Appellant: Richard Ian Griffiths (Owner)

Appeal Property: Public House & Premises, White Swan Inn, Llanfrynach, Brecon, LD3 7BZ

Appeal number: 685430714099/541NV17/11

The Matter Appealed against: 2017 Rating List - Validity of proposal

Date of Hearing: 12 March 2020

Appearances: Mr N Pritchard of A C Meredith (Agent) accompanied by Mrs Pritchard & Mr R Stocker
Ms T S Davies for the Valuation Officer (VO) on behalf of the caseworker Ms C Barlow

Date of Decision: 14 April 2020

Decision of Tribunal: 14 April 2020

Members of the Tribunal: Mr B Fraser (Chair), Mrs J Worswick & Mr R Waters

Tribunal Clerk: Mrs S Gwilliam

Introduction:

1. Mr Pritchard, agent for the owner, contended in a proposal received by the VO on the 1 May 2018, that the appeal hereditament should be shown in the 2017 Rating List as a new entry with a Rateable Value (RV) of £1 as circumstances affecting the RV altered with effect from the 14 December 2017. Attached to the proposal was a statement of reasons which is reproduced as follows:
2. *"This statement of reasons is made in support of the accompanying application to alter the 2017 Rating List for the premises known as the White Swan, Llanfrynach, Brecon, Powys LD3 7BZ ("the Premises").*
3. *The Applicant, Richard Ian Griffiths, owns the freehold of the Premises which are described in the Rating List as "Public House & Premises" and has a current rateable value of £25,000.*
4. *The "hereditament" for rating purposes comprise a Public House & Restaurant. The premises are at the end of a terrace of private dwelling houses which front onto the public roadway which passes through the village of Llanfrynach. The premises face in a roughly north westerly direction towards St. Brynach's Church. The White Swan Inn is an amalgamation of three adjacent terraced cottages in a row of five.*
5. *The original building which dates from the early 19th Century, comprises a 2-storey solid masonry structure with a pitched slate roof; the first floor comprises living accommodation which is separately rated. To the rear of the premises there is a single storey addition which accommodates the extended public bar, catering kitchen and ancillary rooms and a function room. This extension is principally of brick and blockwork construction with a plain cement render. The roof finishes are*

in reconstituted slate or bitumen impregnated felt with a gravel finish. The roof to the function room is part slate and part felt finish as described. Fixed to the top of the roof covering to this part of the building are 2 pvc framed double glazed skylight units which offer natural daylight to the function room.

- 6. To the rear of the premises there is a beer garden with a timber framed pergola, a concrete slabbed and stonework patio area. There is also a grassed area and a tarmac car park. Within the car park area there is a closed off area with lapboard fencing and double gates. This encloses the liquid propane gas cylinder and fuel oil tank.*
- 7. The Premises have been the subject of a number of commercially unsuccessful lettings in the last six years. In July 2012 the Premises were let on a commercial lease to tenants who were unable to trade profitably and left in February 2014 owing rent and leaving the Premises in a run-down condition. In April 2014, the Premises were further let on a commercial lease but, again, the tenants were unable to trade profitably, and the lease was surrendered in January 2016 with the tenants owing outstanding rent. The Premises were further let in February 2016 but the tenants were again unable to trade profitably and they ceased trading in September 2017 and the lease surrendered by mutual agreement on 14 December 2017. Those tenants currently occupy the first floor living accommodation in a caretaker capacity and pay domestic rates on that accommodation.*
- 8. Application for planning permission was made for alteration and modernisation of the Premises with a view to making the Premises more commercially viable by, inter alia, incorporating bedrooms for bed and breakfast to improve the Premises' commercial viability. Because of the Premises rural location, reliance has been on the small village community of Llanfrynach and the numbers are too small to sustain the Premises. Passing trade is insufficient to boost those numbers. The applicant has previously applied for consent to extend the pub in order to provide new facilities, including rooms for paying guests, as a viable route to improve the financial footing of the business. However, the application was withdrawn in June 2017 due to design concerns raised by the local authority and a further application is being lodged.*
- 9. The Premises have been unoccupied since September 2017 when trading ceased and are incapable of beneficial occupation since that time. Neglect by successive tenants has led to a serious deterioration in the condition of the Premises as evidenced by the attached photographic evidence comprising seven photographs.*
- 10. An important aspect of the proposed new works will see the remodelling and rationalisation of the layout of the existing building in order to improve its functionality and facilities. Plans are attached. The oldest, most historically important part of the property, consisting of the terrace houses facing St Brynach Church, will be subdivided back into three cottages. The end of terrace cottage to the north, will remain as the public house, while the other mid-terrace cottages will be converted into two residential units - one reserved for staff.*
- 11. The existing rear extensions are to be demolished in their entirety. Their facilities will be replaced with a new rear extension, built directly behind the pub cottage to the north side of the carpark. The new building will contain a central, dual-purpose bar; a new more flexible dining and function space; a smaller more efficient kitchen; and toilets and welfare facilities. Five new guest bedroom suites will be provided above.*

12. *The compact characteristics of the old cottages will be maintained in the new pub extension. While ground floor spaces will be fully accessible to disabled users, the modest scale of the pub building makes it difficult to provide disabled access to upper floor rooms. This is overcome with the provision of two new purpose built accessible suites, located in a new single storey building adjacent to the pub entrance.*
13. *A further terrace building, located behind the new pub extension, will provide two new cottages and four new apartments.*
14. *On completion, the White Swan Inn will provide:-*
A smaller licensed public bar and pub dining for 40 covers.
Coffee and afternoon tea facilities.
5 in-house guest suites.
2 dedicated accessible guest suites.
3 family guest cottages.
4 single bedroom guest apartment.
15. *The collapsed ceilings illustrated in the photographs are part of the work needed to carry out the redevelopment of the Premises and, as the works proposed in the planning permission are redevelopment, there is no basis in applying the assumption in para 2 (1) (b) of Schedule 6 to the Local Government Finance Act 1988 to override the reality principle and to create a hypothetical tenancy of the previously existing Premises in a reasonable state of repair. This is both because a building under redevelopment, like a building under construction is incapable of beneficial occupation and, in any event, the hypothetical landlord of a building undergoing redevelopment would normally not consider it economic to restore it to its prior use [Newbigin (Valuation Officer) v SJ&J Monk (a firm) [2017] UKSC14].*
16. *As a result, the rating list should be altered so that the description of the Premises should be altered with effect from 14 December 2017 to "building under reconstruction" and the rateable value of the Premises should be reduced to the nominal amount of £1 or nil."*
17. The Tribunal Clerk reported that on the 11 March 2020, the VO caseworker emailed Mr Pritchard informing him that following an inspection by a VO specialist on the 9 March 2020, it was identified that no physical alteration had occurred to the property or surrounding area and therefore she considered that the subject proposal was invalid since, as at the material date of the 1 May 2018, no physical alteration to the property or locality had occurred. Furthermore, she stated that the lease surrendered by mutual agreement on the stated effective date, 14 December 2017, was not a physical manifestation of circumstance.
18. 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 VO's Case

19. Ms Davies, representing the VO, provided the Tribunal with copies of her presentation. She apologised to Mr Pritchard that he had dealt with several caseworkers within the VOA and the oversight regarding the validity of the proposal.

20. She explained that the Appellant was seeking a new entry in the Rating List with effect from the 14 December 2017 at a RV £1 and the valuation before the Tribunal was produced on the following statutory basis:

Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (LGFA 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.*

21. The Rating Lists (Valuation Date)(Wales) Order 2014 states that the 1 April 2015 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purpose of local and central non-domestic rating lists.

22. Further, Material Change of Circumstances is defined in Paragraph 2(7) of Schedule 6 of the LGFA 1988 as:

- Matters affecting the physical state or physical enjoyment of the hereditament – matters relating to either (1) the physical state of the hereditament e.g. extensions or part demolitions and/or (2) the physical enjoyment/use of the hereditament.*
- The mode or category of occupation of the hereditament – changes to the type or category of a hereditament e.g. a change in use of a premises from a shop to a factory. (NB: A change in intensity of use or occupier would not, on its own, constitute an MCC.)*
- The quantity of minerals or other substances in or extracted from the hereditament.*
- Matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there. This relates to changes affecting the property which the hypothetical landlord and tenant would observe on the ground if they were standing at the property, e.g. an increase in pedestrian flow, an extension of licensed trading hours or frequency of aircraft movements.*
- The use or occupation of other premises situated in the locality of the hereditament covers all changes of use of premises in the locality.*

23. The VO explained that since there is no statutory definition of locality, advice was sought from case law, which suggests that the starting point is to have regard to the area surrounding the hereditament in which comparable premises and facilities can be found.
24. Regulation 4 (1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 SI 758(W. 63) provides that a RV may be reduced due to a "... *material change of circumstances which occurred on or after the day on which the list was compiled*".
25. The MCC must have occurred after the rating list went live which in respect of the 2017 revaluation was the 1 April 2017.
26. Ms Davies described the appeal hereditament as a public house and premises built in the early 19th century located on a public roadway near the village of Llanfrynach. The two-storey property was inspected by S Jones MRICS Tech Lead Built Environment and Mineral Surveyors (BEAMS) from the VOA on the 9 March 2020. However, she was still awaiting his survey report.
27. She explained that the proposal sought a reduction with effect from the 14 December 2017, however in her opinion, there had not been a material change in circumstances at that date nor a physical alteration to the property in accordance with sub paragraph (a) of Paragraph 2(7) of Schedule 6 to the LGFA 1988, nor had there been a physical alteration to the locality as in sub paragraph (e) of the aforementioned Schedule.
28. The VO stated that whilst the building was noted to be in a poor state of repair as at the material day, the day the proposal was served on the VO, the property itself was in occupation albeit the domestic flat above the commercial aspect of the property. She questioned what the MCC actually was and remarked that the only change stated within the statement of reasons was that the lease was mutually surrendered on the 14 December 2017, which she opined was not a physical manifestation of a change to the building.
29. During the inspection in March 2020, and whilst the VO appreciated that planning permission was being sought, it was noted that there was no scheme of works underway and the property remained as it was when the lease was surrendered. She clarified that she was unable to consider the removal of the property due to its condition as she did not deem it fell under the scope of the subject proposal. For a property to be removed from the List for undergoing refurbishment, a scheme of works must be in place and that those works commenced.
30. In conclusion, the VO believed that she had illustrated that the Appellant's arguments lay beyond the scope of a MCC and therefore she requested that the Tribunal determine the proposal invalid and dismiss the appeal.
31. In response to questions, Ms Davies stated:
- The VO had not received a copy of the BEAMS Report, however once the report was available, if found that the property is incapable of beneficial occupation, the VO would raise a report and ascribe a nominal value. However, the issue fell outside the remit of the subject appeal.
 - She was unable to comment on Mr Stocker's Schedule of Condition as she was not the caseworker.

- When the VO received the proposal on the 1 May 2018, it was treated as being valid. The appeal property was inspected on the 25 May 2018 and the findings were conveyed to Mr Pritchard by Mr A Morse of the VO via email in August 2018. Whilst Mr Morse acknowledged that a major scheme of works was planned, at the time of inspection, there was no evidence of any such works. The premises merely showed some disrepair from a water leak on the first floor and was in his opinion not enough to merit a nominal value being ascribed at that stage. Mr Morse added that once work started in earnest, the VO would re-inspect the property and probably agree to place a nominal value on the property from that date and describe the property as a building under reconstruction.
- Ms Davies did not know why the issue concerning the validity of the proposal had not been identified earlier.
- Whilst she appreciated that the Appellant was awaiting planning permission, stripping out works could have commenced.
- The Appellant does have the option of submitting proposals against the compiled list or to request a deletion.
- If the VO realised that the proposal was invalid, an invalidity notice would have been have issued.

Summary of the Appellant's Case

32. Mr Pritchard provided the Tribunal with his schedule of evidence which included a copy of the originating proposal and statement of reasons; redevelopment plans for the property; internal and external photographs of the property; a list of repairs required at a cost of £343,689 compiled by Mr R Stocker MRICS Chartered Quantity Surveyor; an email to Mr Pritchard from Mr A Morse dated the 2 August 2018; a letter from the Welsh Government to Ms T Nettleton (Brecon Beacons National Park Authority) dated the 4 October 2019 regarding the planning application; *Newbigin (VO) v SJ & J Monk* 2017; *Jackson (VO) v Canary Wharf Limited* (2019); *Barber (VO) v Cere III TW Sarl* (2015).
33. He explained he was only informed of the VO contention that the proposal was considered invalid at 08:30 the day before the hearing.
34. The appellant explained that the owner purchased the property in 2001. The property was initially manager run and then tenanted to three different tenants. The pub never made a profit and each tenant left owing rent and, overtime, the condition of the property deteriorated further. The final tenant surrendered the lease with mutual agreement in December 2017 but remained living in the domestic flat at the property in a caretaker capacity until shortly after the VO's inspection in May 2018.
35. The owner initially submitted a planning application in 2016 but it was rejected. A further application was submitted but Welsh Government called it in, and the owner is awaiting a decision.
36. In relation to the validity of the proposal and in accordance with the definition of an MCC, Mr Pritchard stated that the VO had only referred to matters affecting the physical state or physical enjoyment of the hereditament. However, in this

instance, he considered that there had been a change to the mode or category as the property could no longer be considered a public house.

37. He outlined the cases of *Newbigin (VO) v SJ & J Monk* 2017 and *Jackson (VO) v Canary Wharf* 2019 and stated that the VO needs to assess the objectively known facts. The subject property is vacant and once planning permission is granted, major renovation works will completely alter the fabric of the building. He added that the VO has to look at the whole facts and not just whether a development scheme is in place.

38. Mr Pritchard explained that whilst he accepted the effective date may need to alter, he had considered the *Newbigin* case prior to completing the proposal, and as a consequence, requested that a nominal figure be ascribed, as opposed to requesting a deletion, since the property is under reconstruction.

39. In response to questions, Mr Pritchard stated:

- Whilst the *Canary Wharf* case went further than the *Newbigin* case, in that the property in question had been stripped back to its shell awaiting a tenant, he admitted that in both cases there was a physical alteration. In this instance planning permission was being sought.
- The owner has spent in the region of £80,000 on fees to get to the current stage and therefore he questioned why this should be ignored, particularly when the property concerned in the *Canary Wharf* was empty for some two years.
- In his opinion, the absence of a contract and re-construction works are not absolutely necessary. There is no prescribed formula and that the objective facts should be considered.
- The previous tenant occupied the domestic flat for a short time acting as caretaker and was planning on agreeing a new lease for the redeveloped property.
- Whilst the MCC might not be considered physical, there had been a change to the mode or category of occupation, the property could no longer be considered a public house.
- A water leak had caused a physical change to the property; those collapsed ceilings are part of the works required to carry out the redevelopment.
- A copy of Mr Stocker's report was sent to the VO following receipt of Mr Morse's email.

40. Both parties were given the opportunity to summarise their cases.

41. Ms Davies reiterated the salient points of the VO's case and requested that the Tribunal determine that the proposal was invalid and dismiss the appeal.

42. Mr Pritchard summarised his case and requested that the Tribunal determine that the subject proposal was valid.

43. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Reasons for Decision

44. Having considered all the evidence placed before it the Tribunal decided as follows:

45. The sole issue for deliberation before the Tribunal was the validity of the subject proposal.

46. The subject proposal was received by the Valuation Office on the 1 May 2018 requesting that The White Swan Inn, Llanfrynach, Brecon, be shown in the 2017 Rating List as a new entry with a Rateable Value of £1, as circumstances affecting the Rateable Value altered with effect from the 14 December 2017 due to the building undergoing redevelopment.

47. The Tribunal considered the statutory definition of a Material Change of Circumstance as specified in Paragraph 2(7) of Schedule 6 of the Local Government Finance Act 1988:

“(7) The matters are—

- (a) matters affecting the physical state or physical enjoyment of the hereditament,
- (b) the mode or category of occupation of the hereditament,
- (c) the quantity of minerals or other substances in or extracted from the hereditament,
- [(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,]
- (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises situated in the locality of the hereditament”.

48. From the information supplied and inspection notes conducted on the 25 May 2018, it was clear to the Tribunal that on the material day, 1 May 2018, the appeal hereditament was vacant, showing some signs of disrepair following a water leak and that the owner was awaiting planning permission to redevelop the property into a smaller licensed public house with dining and guest accommodation.

49. The Tribunal also considered the case law referred to by the appellant and noted that in both cases the properties were actually undergoing redevelopment programmes. In this instance, whilst planning permission was being sought to completely alter the fabric of the hereditament, no physical works had commenced and the property, with the exception of some disrepair following the water leak, remained largely as it did when it was open and operating as a public house. A change of occupier is not a change in the mode or category of occupation.

50. Whilst the Tribunal appreciated the appellant's objectives regarding the redevelopment of the property, having considered all the evidence at the hearing, the Members were persuaded by the Valuation Officer that no material change of circumstance was identified and deemed the subject proposal invalid. Consequently, the Tribunal dismissed the appeal.

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