

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Moussa Salem (Occupier)

Appellant's Address: Kiosk at Promenade, Craig Y Don Parade, Llandudno
LL30 1BG

Appeal number: 690529612189/541NV17/42

The Matter Appealed against: 2017 Rating List

Date of Hearing: Tuesday 3 March 2020

Appearances: Mrs T S Davies for the respondent Valuation Officer

Date of Decision: 23 April 2020

Decision of Tribunal: Confirm the reduced RV of £9,200 with effect from 1 April 2017

Members of the Tribunal: Mr R Handy (Chairperson)
Mrs J Angell
Mr M Dugdale

Tribunal Clerk: Mrs C Jones

Introduction:

1. Mr Salem made a proposal to alter an entry in the 2017 Non-Domestic Rating List in relation to the appeal hereditament, which was a kiosk on the Promenade in Llandudno. The Valuation Officer (VO) received the proposal on 22 August 2017 and in making his proposal, the appellant sought a reduction in the appeal hereditament's entry in the Rating List from £9,600 to £6,000 with effect from the 1 April 2017.
2. The Clerk reported that prior to the hearing the appellant had asked that his appeal be heard in his absence as he was unable to attend.
3. 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 Case

4. The Tribunal Clerk read out the proposal, and a submission provided by the appellant, as copied below: -

"We run a small kiosk that operates at the best for 4 months of the year, June to September, providing that the weather is fine, although we cannot hold the rates valuation office responsible for the weather.

We are very dependent on the local council to operate the paddling pool adjacent to our kiosk, which they only open from June (ish) until September and as you will appreciate this is very weather dependent for customers. Even if the weather is first class all year round it will still only produce customers for a little over those four months, due to the location so far from the centre.

Our little kiosk is not in the main part of the promenade or major tourist centre for Llandudno, it is some 200m out of the edge of the built up area and approximately 1200m from the centre of town and pier, which is the main tourist and visitors destinations. There are no houses within a 500m radius of the kiosk so little opportunity of locals popping in.

We are being asked to pay £110.00 p/m² or a rateable value of £9600 per year on only 88m², however, approximately 43% or 37m² is taken up by the kitchen and storage room therefore only allowing 57% or 51m² as an area for making the margin to pay these rates.

Looking through the business rates valuation page on .gov.uk it appears that we are paying one of the highest rate valuation and yet we are the farthest from the main visitors' thoroughfares. Further, hotels and restaurants (and both in same premises) with multiple floor levels and all year-round trading are paying a great deal less (when multiple floors are taken into consideration) in rateable value than ourselves, this is surely grossly unfair.

A good example is 1 North Parade LL30 2LP, this is a restaurant premises adjacent to the Pier, the busiest part of Llandudno, these premises are only £80 p/m² and R/A of £9,300. Further, a number of the Valuations on the website have no data attached but the ones that are available reinforce the view that the valuations are based on differing values for usage and when taken as a total floor area their cost per square meter comes down considerably."

5. The VO told the Tribunal that the survey data had been agreed with the appellant but the price per metre square to be adopted was not agreed. She referred to a plan in her evidence to show the location of the kiosk at the Craig Y Don end of the Promenade in Llandudno. She also referred to a plan and an external photograph of the kiosk and explained that the property had not been inspected for the purpose of this appeal.
6. Mrs Davies said that she had altered the price per meter square from £110.00 in her original valuation to £105.00, which reduced the RV from £9,600 to £9,200. She drew the Tribunal's attention to rental details for the subject property and her revised valuation, as copied below; -

Rental Details for subject property

Address Kiosk at Promenade, Craigydon Parade, Llandudno, LL30 1BG	Occupier Mr M Salem and Mr Abdallah Garraoui		
Situation & Description	Lease Details 10 year lease (with effect form 01-Oct-2009) 3 Year Review Pattern Full Repairing Insuring Lease Last Review 18-Jul-2012		
	Rateable Value in Rating List £9600		
Adjustments			
	Rent <u>9240</u>		
Adjusted rent in terms of RV	<u>9240</u>		
Net Adjusted Rent	<u>9240</u>		
Analysis			
Description	Area (sq m)	Analysis Factor	Analysis Equated Area
Sales Area	88.07	1.00	88.07
			88.07
	<u>88.07</u>		
		Amount per m2	<u>104.92</u>

Revised Valuation

Address in Rating List: Kiosk at Promenade, Craigydon Parade, Llandudno, LL30 1BG							
Scheme Ref: 387475				Property Description: Kiosk & Premises			
Line	Floor	Description	Area m ² /units	Line Factor	£/m ²	Value £	Remarks
1	Ground	Sales	88.07	1.00	105.00	9247	
2							
3							
Total Area			88.07				
Sub Total						9247	
Total value						9247	
ADOPTED RATEABLE VALUE:						£ 9200	
THIS VALUATION IS EFFECTIVE FROM 1 APRIL 2017							

7. In response to the appellant's case Mrs Davies stated that Schedule 6 of the Local Government Finance Act 1988 sets out the main provisions in relation to valuation for non-domestic rating.
8. Mrs Davies referred the Tribunal to guidance given by the Lands Tribunal in the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976]. This guidance dealt with the issue of the weighting of evidence, rental and assessment. In this case The Lands Tribunal set out six propositions to be followed when considering the weighting of evidence, as follows: -
 - i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point;
 - ii) the more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19 (6) of the General Rate Act 1967, the more weight should be attached to it;
 - iii) where rents of similar properties are available, they too are properly to be looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the level of value indicated by the actual rent of the subject hereditament.
 - iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
 - v) In the of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in the properties.
 - vi) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent.
9. Mrs Davies believed this proposition made it clear that the actual rent was less susceptible to being undermined by assessment evidence than rents on comparable properties. The propositions had been adopted with approval in several post 1990 rating cases (assessment to rateable value) and Mrs Davies was of the opinion they should be applied to the evidence in this case also.
10. In conclusion of her evidence, Mrs Davies stated that as the appeal hereditament was a standalone kiosk, she had considered the passing rent on the unit and adopted this. She had appreciated that this was not in a town centre location or trading 12 months of the year. A passing rent of £9,240 was payable therefore she had revised the RV to £9,200. As the passing rent supported the reduction to £9,200, she requested that the Tribunal confirm the revised entry with effect from 1 April 2017.

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

Reasons for Decision

12. In arriving at its decision, the Tribunal had regard to the statutory provisions in relation to rateable value, as copied below: -

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

Extract

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from local 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.*

(1A) The rateable value of a composite hereditament none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent which, assuming such a letting of the hereditament as is required to be assumed for the purposes of sub-paragraph (1) above, would reasonably be attributable to the non-domestic use of property.

(1B) The rateable value of a non-domestic hereditament which is partially exempt from local non-domestic rating shall be taken to be an amount equal to the rent which, assuming such a letting of the hereditament as is required to be assumed for the purposes of sub-paragraph (1) above, would, as regards the part of the hereditament which is not exempt from local non-domestic rating, be reasonably attributable to the non-domestic use of property.

13. The Tribunal considered the appellant's contention that the appeal hereditament was situated off the main promenade and away from the town centre of Llandudno. The Tribunal disagreed that the appeal hereditament was situated in a poor location because it was situated in a

prime location, being very near to the Craig Y Don Paddling Pool which was one of the largest outdoor paddling pools in Wales. The appellant's contention that the property was isolated was not considered to be well-founded since Craig Y Don was situated in a suburb of Llandudno, and the popular tourist attraction of Bodafon Farm Park was located within a few hundred yards of the appeal hereditament. It was commonly understood that the main walking and cycling routes between Llandudno and Penrhyn Bay, Rhos-on-Sea and Colwyn Bay also went directly past the kiosk. No evidence had been produced by the appellant to demonstrate that the location of the appeal property had an adverse effect on its trade.

14. The Tribunal felt it could not attach much weight to the evidence presented by the appellant on 1 North Parade, Llandudno. This property was a restaurant situated in the centre of Llandudno and therefore was not considered to be directly comparable with the appeal hereditament as it differed in characteristics and location.
15. Considering the correlation between rateable values and rents and given the value of the prevailing rent on the subject property, the Tribunal was happy that the £105m² applied in Mrs Davies' revised valuation was reasonable.
16. 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 appellant ratepayer and not the respondent VO by virtue of a statutory duty to prepare and maintain the Rating List. The appellant provided no contrary rental evidence or information in support of his contention for a reduction in the rateable value.
17. Although sympathetic to the plight of the appellant, the Tribunal did not believe that he had produced any hard evidence to justify a reduction in the property's rateable value. For the reasons given above, the Tribunal decided to confirm the revised rateable value of £9,200 with effect from the 1 April 2017.

Certified a true copy on 23 April 2020