

# TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

**Appellant:** Mr Selim Majeed Khalaf

**Appeal Property:** Oldhams Supper Bar, Towyn Road, Towyn, Abergele LL22 9EN

**Appeal number:** 690533916541/285NV17

**The Matter Appealed Against:** 2017 Rating List

**Date of Hearing:** Friday 6<sup>th</sup> November 2020

**Appearances:** Mrs Lorraine Arrowsmith (for the respondent Valuation Officer)

**Date of Decision:** 26<sup>th</sup> November 2020

**Decision of Tribunal:** Appeal dismissed

**Members of the Tribunal:** Mrs JR Evans (Chairperson), Mrs LM Thomas & Mr K Privett

**Tribunal Clerk:** Mr G Harris

## **Introduction:**

1. The appeal under consideration followed a proposal made by Mr Khalaf in respect of Oldhams Supper Bar, Towyn Road, Towyn, Abergele LL22 9EN, which the respondent Valuation Officer received on 5<sup>th</sup> December 2019. The proposal sought a reduction in the Rateable Value (RV) of the appeal property from £15,250 to £12,000 with effect from 1<sup>st</sup> April 2017 on the following grounds –

*The previous tenant who was leasing for last 6-7 years had always paid £12,000 rent P.A. as the Towyn Road trading has deteriorated over last 10 years.*

2. Mr Khalaf was unable to attend the hearing to present his case and requested that the Tribunal hear and determine his appeal in his absence by way of a written submission, the respondent Valuation Officer (VO) attended the hearing via video link.
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 Case

4. Mr Khalaf did not provide an additional written submission to support his proposal but provided the tribunal with a partial copy of his lease together with his business rates bill issued by Conwy County Borough Council. The lease was for a sum of £12,000 per annum commencing 12<sup>th</sup> November 2019.
5. Mrs Arrowsmith introduced herself and the appeal, explaining that the issue before the tribunal was whether or not the RV of the appeal property was inaccurate when the property had been revalued on 1<sup>st</sup> April 2017 as contended by Mr Khalaf in his proposal. She 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. Although not enshrined in Legislation, authority could be found in the case *Vines Ltd v de Mauny (Valuation Officer)* (2010) where the member 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 £200 per m is too high, not on the VO to prove the opposite.”*

6. Mrs Arrowsmith 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.*

7. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the rateable value of the hereditament was to be determined, this was 1<sup>st</sup> April 2015 for the 2017 Rating List.
8. Mrs Arrowsmith provided the tribunal with photographs of the appeal property together with a plan of its location and that of some comparable properties. She explained that to value the subject property the VO had

looked at a range of rental values and believed it had been valued in line with other comparable properties using a Zone A rate of £150/m<sup>2</sup>. The RV had remained the same as that in the 2010 Rating List, and the 2017 valuation was as follows –

**Oldhams Supper Bar, Towyn Road, Towyn, Abergele LL22 9EN**

| <b>Floor</b>                  | <b>Description</b> | <b>Area m<sup>2</sup>/unit</b> | <b>Line factor</b> | <b>£ m<sup>2</sup>/unit</b> | <b>Value (£)</b> |
|-------------------------------|--------------------|--------------------------------|--------------------|-----------------------------|------------------|
| Ground                        | Retail Zone A      | 55.28                          | 1.000              | 150.00                      | 8292             |
| Ground                        | Retail Zone B      | 55.21                          | 0.500              | 75.00                       | 4141             |
| Ground                        | Retail Zone C      | 42.94                          | 0.250              | 37.50                       | 1610             |
| Ground                        | Kitchen            | 28.14                          | 0.100              | 15.00                       | 422              |
| Ground                        | Office             | 6.85                           | 0.100              | 15.00                       | 103              |
| Ground                        | Public Toilets     | 2.40                           | 0.100              | 15.00                       | 36               |
| Ground                        | Internal Storage   | 35.83                          | 0.100              | 15.00                       | 537              |
| Ground                        | Internal Storage   | 3.37                           | 0.101              | 15.00                       | 51               |
| Ground                        | Covered Area       | 18.53                          | 0.100              | 15.00                       | 278              |
| <b>Total Area</b>             |                    | 248.55                         |                    |                             |                  |
| <b>Valuation subtotal</b>     |                    |                                |                    |                             | 15470            |
| <b>Total Value</b>            |                    |                                |                    |                             | 15470            |
| <b>Adopted Rateable Value</b> |                    |                                |                    |                             | <b>£15,250</b>   |

9. Mrs Arrowsmith explained that according to the Lands Tribunal case Lotus & Delta v Culverwell (VO) and Leicester CC (1976) rental evidence should be taken as the starting point in determining the RV of an assessment. Mrs Arrowsmith referred to a Form of Return completed by Mr Khalaf on 20<sup>th</sup> February 2020 in which he had confirmed the rent as being £12,000 with effect from 12<sup>th</sup> November 2019 describing it as being 'Open market value'. Mrs Arrowsmith highlighted a capital amount of £27,000 paid for equipment and an amount of £6,000 paid back for repairs. As the assumption was that the property was in a reasonable state of repair, together with the fact that the rent had been agreed some 4 years after the AVD, she had placed little weight on the rental evidence. Although Mr Khalaf had stated in his proposal that the previous tenant had also paid £12,000 per annum, he had not provided any evidence to support his contention.
10. To support her valuation Mrs Arrowsmith referred to a rental summary and photographs of comparable properties located on Towyn Road. The rent pertaining to The Pharmacy, Towyn Road had been agreed 2 years pre AVD and the hereditament valued using a Zone A rate of £150/m<sup>2</sup>. The Black Cat Snack Bar was subject to a rent of £10,000 per annum with effect from 1<sup>st</sup> April 2014, which analysed to £188.47/m<sup>2</sup>, had also been valued using a zone A rate of £150/m<sup>2</sup>, a compiled list appeal had been withdrawn in relation to this property following discussions with the VO. Both properties were larger than the appeal property and both rents analysed to an amount higher than the zone A rate used in their valuations.

11. Mrs Arrowsmith provided the tribunal with a list of zoned properties located on Towyn Road ranging in area from 52m<sup>2</sup> to 347m<sup>2</sup>. The largest, situated next door to the subject property, had not been subject to a 2017 list appeal. All the hereditaments had been valued using a zone A value of £150/m<sup>2</sup>.
12. Mrs Arrowsmith contended that the zone A rate of £150/m<sup>2</sup> used in the valuation of the appeal property was fair and reasonable and requested that the tribunal dismiss the appeal.
13. At the conclusion of the hearing, the tribunal decided to reserve its decision.

### **The Reasons for Decision**

14. Having considered all the evidence placed before it the tribunal decided as follows: -
15. In his proposal the appellant 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.
16. Although the appellant had provided a copy of his current lease, it had been agreed 4 years post AVD as such the tribunal placed little weight on it. Mr Khalaf had contended in his proposal that the previous tenant had always paid £12,000 per annum but had not provided any supporting evidence. Therefore, the Tribunal believed the appellant had not been able to sustain his argument that the Valuation Officer's assessment was incorrect and had not, with reference to evidence, undermined the Valuation Officer's valuation of the property.
17. The Tribunal accepted that the zone A value of £150/m<sup>2</sup> used by Mrs Arrowsmith in her valuation of the property was in line with neighbouring properties on Towyn Road and had been supported by rental and settlement evidence. The appeal was dismissed.

Certified a true copy on 26<sup>th</sup> November 2020