

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Penny Edge

Appeal Property: 15 Lloyd Street, Llandudno LL30 2UU

Appeal number: 690530812619/285NV17

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Wednesday 9 December 2020

Appearances: Penny Edge (appellant) and Nigel Davies (for the respondent Valuation Officer)

Date of Decision: 25 February 2021

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr L Moore (Chairperson) & Mr W J T Powell

Tribunal Clerk: Mrs C Jones

Introduction:

1. In accordance with Regulation 30(2) of the Non-Domestic Rating (Alteration of Lists & Appeals) (Wales) Regulations 2005, with the agreement of the parties, this appeal was heard by two members of the Valuation Tribunal Wales (VTW).
2. Both the appellant and respondent Valuation Officer (VO) attended the hearing via video link.
3. The appeal under consideration followed a proposal made by Penny Edge in respect of the appeal property, which the VO received on 2 July 2018. The proposal sought that the existing entry be divided into 20 with effect from the 1 July 2018 on the following grounds –

There are 20 small businesses self-employed occupying premises.

4. 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

5. Mr Davies explained that the appeal property was situated on Lloyd Street, Llandudno, just off the main commercial thoroughfare of Mostyn Street. He understood the property was previously occupied as a charity shop.
6. The appellant had taken occupation of the appeal property from the 1 July 2018 and was proposing that the property be split into 20 separate assessments. She had delineated areas within the shop with the use of tape and allowed dealers to display their own goods within the marked space.
7. Mr Davies stated that the material day for the appeal was the 2 July 2018 and at that time the areas were let on monthly agreements, with each party required to give one months' notice to quit. He understood that since then the agreements had moved to a term of 3 to 6 months.
8. Mr Davies clarified that the occupiers were all self-employed but under the arrangement agreed to 'cover' the shop one day a week. The position being that they were not always on site and in the event of a transaction the occupier providing cover that day dealt with it.
9. The appellant solely took the lease on a 3-year term in 2018. She had responsibility for the management and all outgoings at the property. Mr Davies therefore believed the appellant was in 'Paramount Control' of the property and that the appeal should fail as he did not think the necessary ingredients for rateable occupation, such as exclusivity and transience, were met in this case. The lead case of *John Laing & Sons Ltd. v Kingswood Area Assessment Committee* provided guidance. First there must be actual occupation; secondly, it must be exclusive for the purposes of the possessor; thirdly, the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period.
10. The VO told the Tribunal that in his opinion the length of the agreement was too transient for the delineated area to be considered occupied. Equally, he did not believe that the requirement for exclusivity was met, given that the nature of the use was in effect a co-operative venture.
11. Mr Davies referred to the recent decision by the Supreme Court, where it found that ATM's located within supermarkets should not be separately assessed. This decision referred to the 'Laing' case and the *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co [1895] AC 117, 126*. The Halkyn case provided a good analogy for the matter in hand and in his view the appellant retained paramount control. Mr Davies referred the Tribunal to the following quote from the case: -

"Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive, he does not

cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in occupation, but the occupation of the landlord is paramount, to that of the lodger subordinate.”

12. Mr Davies concluded his evidence by stating that in view of the above, he was asking the Tribunal to dismiss the appeal.
13. The appellant told the Tribunal that herself and 20 stalls/dealers currently occupied the appeal property. They all sold antiques and collectables, and most had been in occupation from July 2018.
14. Ms Edge gave the Tribunal her background prior to occupying the appeal property. She had previously joined the Whitchurch Antiques Emporium (England) in 2015 and left in 2018. She had been doing antique fairs in Wales and her intention was to set up a similar business model to the Whitchurch one in Wales.
15. The Whitchurch Antiques Emporium was set up in 2014 and was still in being. It consisted of two floors occupied by 20 individual units plus cabinets. All the occupiers were exempt from paying business rates. All had their own individual rating assessments. The owners owned the premises and had their own stalls within the centre and were also exempt from rates payable from 2014 to 2020.
16. The appellant contended that this business was a transient one. For example, when she left in June 2018, 4 other units/stall holders also left within a few weeks with more unit holders leaving during the summer 2020. The stall holders were charged a rent monthly and only 2 unit holders manned the till on any given day. They kept all the revenue from their sales but were not present every day. The Llandudno Antiques Centre operated under the same practices and principles as Whitchurch.
17. Ms Edge explained that the Llandudno Antique Centre provided the opportunity for 20 stall holders and 5 individual unit holder cabinets businesses to earn an income. Unfortunately, since March 2020, 4 stall holders had left due to the Covid-19 situation because they had underlying medical conditions and were in the vulnerable age bracket.
18. She had reduced the notice period to 1 month earlier in the year, because of the Covid-19 situation. She did not believe the business to be too transient as it had been working successfully for 2 years and 6 months. The appellant stated that trading had been very difficult in the present climate, but they had remained open after the lockdown, firebreaks, and travel restrictions. All the stall holders had keys and had free access to the premises. The property was not exclusive to herself.
19. The appellant gave examples of premises that were rates exempt locally, as reproduced below: -

<u>Premises</u>	<u>Comments</u>
Potters Gallery, 1 High Street, Conwy	Each stall holder pays £150 per annum rent & 50% commission on every sale. The art gallery is called a co-operative. Twice as large as the appeal property
Handmade Hub, Dolgarrog	Individual crafters not paying rates
Ewe Felty Thing, Llandudno	Individual crafters paying rates

20. Ms Edge concluded her evidence by stating that she believed in the business model of supporting small businesses, as she had mentored businesses in the past and needed help herself now. She would happily occupy more empty buildings if they were rates exempt. She believed it was a crying shame how many buildings were empty across North Wales. She appreciated the fact that she had received a rates holiday, like many other businesses in Wales since April 2020, and was very grateful as she could not have managed without it.
21. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

22. Having considered all the evidence placed before it, and in accordance with Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988 and The Rating Lists (Valuation Date) (Wales) Order 2007 SI 2007/3153 the Tribunal in arriving at its decision, decided as follows.
23. The appellant contended that the existing entry in the 2017 Rating List for 15 Lloyd Street, Llandudno should be divided into 20 separate entries.
24. 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 and not the Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.
25. The Valuation Officer contended that the length of the tenants' lease agreements was too transient for the trading areas to attract separate rateable values. Additionally, he believed Ms Edge, as owner, was in Paramount Control of the property. The rateable occupation was exclusive to the owner only and not the individual tenants. Therefore, the test of exclusivity, had not been met in this appeal.

26. The Tribunal was aware that there was no statutory definition of rateable occupation. Therefore, it had to look for guidance from relevant case law in making its decision. It agreed with the Valuation Officer's statement that the *John Laing & Sons Ltd v Kingswood Area Assessment Committee 1948* was a lead case in determining rateable occupation. This case provided the four elements of occupation that must all be present for occupation to exist. The occupation must be actual, exclusive, beneficial, and not too transient. These principles have since been accepted by the *House of Lords in London County Council v Wilkins (Valuation Officer) [1957] [1956]*.
27. The Tribunal was mindful that the general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation) retains general control over the occupied parts, the owner will be treated as being in rateable occupation.
28. For this appeal to succeed, the appellant had to prove that each rateable occupier could demonstrate exclusive occupation and it must be clear that the occupier had a use of the premises which was not shared by another. The appellant gave the example of Whitchurch Emporium where there were twenty occupiers of individual units which were separately occupied. In this case the occupiers of the subject property did not have 'individual units' merely taped off areas in a single unit, where they held responsibility for transactions on each other's sales. In the Tribunal's opinion this did not demonstrate exclusive occupation.
29. Looking to the issue of transience, the Tribunal again sought guidance from relevant case law. It was aware that in the case of *Sir Robert McAlpine & Sons Ltd v Payne (1969)*, building huts on site for six or seven months were found not to be rateable as it was deemed not long enough to satisfy the requirement of "permanence". However, in *London County Council v Wilkins (1956)*, builders huts that remained on site for over twelve months were held to be rateable.
30. In this case the areas were stated to be let on monthly agreements. The Tribunal was therefore not persuaded that the lease agreements satisfied the criteria of "permanence".
31. Although the appellant had provided details of local properties she regarded as comparable to hers, the Tribunal determined that insufficient detail was submitted to support the appellants contentions that they were directly comparable.
32. Whilst the Tribunal empathised with the appellant's wish to replicate the Whitchurch Antiques Emporium business model in Wales, from the evidence submitted it did not feel that the businesses could be considered like for like.

33. Considering the foregoing the Tribunal believed the appellant was in paramount occupation and it therefore decided to dismiss the appeal.

Certified a true copy on 25 February 2021