

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mrs B Drake

Appellant's Address: Tyn-Y-Fron, Betws-Y-Coed

Appeal number: 690530711353/541NV17/8

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 10th February 2021

Appearances: Mrs B Drake (Appellant) & Mrs T Davies (For respondent Valuation Officer)

Date of Decision: 15th April 2021

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mr A G Hallett (Chairperson), Mr A E Sangster & Mrs L M Thomas

Tribunal Clerk: Mr J Evans

Introduction

1. The appeal before the tribunal followed a proposal to alter an entry in the 2017 Non-Domestic Rating List (the list). The respondent Valuation Officer received the proposal on 30th April 2018. As the proposal was neither well-founded nor was it withdrawn, the VO remitted the matter to the Valuation Tribunal for Wales as an appeal.
2. The appeal property was described as guest house and premises and appeared in the list as Tyn-Y-Fron, Betws-Y-Coed. In making their proposal, the appellant ratepayers, Mr and Mrs Drake said that the existing assessment should be divided into two and that the "split" should take effect from 1st April 2017. The reasons for this were that two separate properties operated from the site.
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 Panel 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 Appellant's Case

4. In her opening remarks, Mrs Drake explained that "Tyn-Y-Fron" had been assessed for Non-Domestic Rates as one unit even though it comprised two detached properties which were independent of each other and used

for different purposes. One is a 5 double bedroomed Guest House and the other a 2 bedroomed (4 single bed space) Self-Catering Cottage. The combined Rateable Value is £9,650, rounded to £9,600. As stated in the proposal, the Appellant sought a list alteration to show two entries with effect from 1st April 2017, rather one.

5. In her evidence, Mrs Drake provided a history as to how the proposal to alter the list was made, and by whom. She said that since the proposal was lodged with the VO, progress was slow. She referred the matter to a Senedd Member, Janet Finch-Saunders who wrote to First Minister, Mark Drakeford about the matter.
6. Mrs Drake informed the Tribunal of the appeal property's location and provided details of the extent of the hereditament.
7. The appeal properties are contained within one hereditament but are not contiguous. Mrs Drake identified the key features of the properties –
 - Neither property has mains gas
 - The electricity is metered for each property with separate utility companies; British Gas for the Guest House and Eon for the Cottage
 - Water/drainage is charged and billed separately for each property. For the financial year ending 31st March 2021 for the Guest House it was £733.02 and for the Cottage £600.26
 - Parking is allocated individually to the Guest House and the Cottage
 - Each property has a dedicated website through which direct bookings can be processed
 - The marketing of each property uses different channels
 - Each property has a separate postal address (used by companies on drop down tabs etc)
 - The accounts are reported as a whole as advised by the Appellant's Accountant
 - The Appellant's business is run by Barbara and Nigel Drake as equal partners
 - This is the only employment for the Appellant
8. In support of her case for a split in the assessment, Mrs Drake referred to three other properties in the Betws-Y-Coed area on which the VO had separated assessments. She also referred to two other potential examples but pointed out that information on these properties, and possibly others, was limited and in any event, unavailable to Mrs Drake.
9. In her discussions with the VO about other properties which were split, Mrs Drake identified Beaver's Grove as one such property. The VO's response to this information was that the list entry was incorrect and had to be amended. Mrs Drake asserted that the resultant amendment was evidence that the VOA had impugned its own list.

10. Mrs Drake referred to the following properties that were split assessments

—

Beaver Grove, Llanrwst Road, Betws-y-Coed, LL24 0HA

- a. The Appellant cites that this is a directly comparable property in support of her contention that the existing assessment should be separated. This property is 300m from the appeal property on the opposite side of the same road, the A470. This property was advertised for sale at the time the Appellant was viewing properties in the area (2015) and in fact the sales particulars are still available on the internet, although it was never actually sold. Beaver Grove comprises a regency style house, a cottage and a flat above the coach house within one hereditament. The investment property value shown in its balance sheet dated 30th June 2019 is consistent with the sale price when it was marketed in 2015.
- b. Beaver Grove House has a current RV of £5,600 and comprises eight single bed spaces valued at £700, effective from 10th April 2018. Beaver Grove Cottage has a current RV of £3,000 comprising five single bed spaces at £600, effective from 20th June 2017. Beaver Grove Cottage and Beaver Grove House are listed as available to rent on the internet and through various online travel agent sites. She said that these properties were strong comparable properties because both were self-catering properties in which economies of scale could be achieved through marketing.
- c. Mrs Drake shared information about Beaver Grove with the VOA on 23rd June 2020. During the following 10 weeks, a VOA Case Worker emailed the Appellant to obtain map details of Beaver Grove.
- d. The VO subsequently advised the appellant that Tyn-Y-Fron should continue to be assessed as a single valuation albeit with two survey elements. The VO also stated that Beaver Grove House and Cottage should be assessed as a single valuation since both buildings were situated within the same curtilage. The VO advised Mrs Drake that the requisite steps would be taken to correct the list entry for Beaver Grove House and Cottage. However, Mrs Drake said that, in making this statement the VOA had impugned the Rating List.

11. The Bistro and Bistro Flat, Holyhead Road, Betws-y-Coed, LL24 0AY

This property was based in a hamlet near the appeal property. It comprised a detached farmhouse and four cottages which are adjacent to the farmhouse. The four cottages are contained within one RV listing at £9,800 and the farmhouse is a separate listing with a RV of £6,800.

12. Cottages at Rhydianfair, LL24 0LY

Mrs Drake was not as familiar with these properties as she was with the others, but she was of the view that Cefn Bach, Cefn Canol and Cefn Cestyll were all contained within one hereditament yet separately assessed for rates.

13. Climbers Hut 1 and 2, Garth Farm, LL24 0ES

Mrs Drake did not claim to have intimate knowledge of this farm but it appears that there are two climbers huts, each assessed separately for NDR.

14. Mrs Drake referred to an extract of the Rating Manual Section 3, which dealt with the identification of the hereditament and the tests that must be satisfied in order to achieve that aim. These tests are the Occupation Test, Geographic and Functional Test.

15. With regard to these tests, Mrs Drake referred to the following quotes –

“merely because one person occupies nearby, or contiguous properties does not necessarily make them one hereditament”

“the unity on a plan is not simply a question of contiguity: it is not simply a question of whether two pieces of property touch. There needs to be direct communication between the two parts. Normally if it is necessary to go out of one part and into the other part via the street or common parts (for example, from one floor to another in an office building) this will mean the two parts are separate hereditaments notwithstanding there being a single occupier”.

“where two parts of a property or two spaces are geographically distinct, a functional test may, nonetheless, enable them to be treated as a single hereditament but this will only be so where the use of one is necessary to the effectual enjoyment of the other. It will be the exceptional situation.”

Whether part is used for an entirely different purpose - *“The aspect of the functional test has long established that premises, comprising a single geographical unit and in a single occupation may form more than one hereditament if parts of the premises are used for entirely different purposes.”*

16. With continued reference to the Rating Manual, Mrs Drake explained that the “York Union” case was generally considered as the leading case in respect of the exception to “*entirely different purpose*”. She also added that the contiguous properties must also be used by the common occupier for the same purpose. In her final quoted reference, Mrs Drake added that *“To be classed as contiguous, some part of a wall, fence or other means of*

enclosure of one property must form part of a wall, fence or other means of enclosure of another property in the same occupation”.

17. In her summary of this point, Mrs Drake said that –

- *The Guest House and Cottage are detached buildings with their own separate access*
- *No walls of either property form the external boundary of the hereditament*
- *The nature of business undertaken in each of the properties is different and separate*
- *Whilst there is common ownership by the Appellant, the test of whether or not properties are contiguous extends beyond that as cited above*

18. In her closing remarks, Mrs Drake considered that she had provided a basket of evidence which demonstrated that comparable properties around Betws-y-Coed had been split for rating purposes. She had provided information from the VO's Rating Manual which confirmed that the properties are not contiguous and that the appeal property should be split into two. She said that the only “defence” offered by the VOA was that the comparators were wrong. By making this statement the VOA had impugned its list. Throughout this appeal there has been no reference to the Calculation of the Valuation (i.e. the tone of a Single Bed Space or DBU) which is subject to a separate Appeal at the Valuation Tribunal.

19. Mrs Drake asked the Tribunal to uphold her contention that the subject property is split with effect from 1st April 2017.

Summary of the Valuation Officer's Case

20. In her evidence, Mrs Davies provided the Tribunal with details of her qualifications as a chartered surveyor and the areas of her professional expertise. She also said that her evidence would be presented in her role as advocate and expert witness.

21. In her role as advocate, Mrs Davies explained that the substance of the matter before the Tribunal was founded in a proposal which sought to split the existing list entry into two. The valuation before the Tribunal is produced on the following statutory basis as prescribed by Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (the Act) 2(1). Paragraph 2(1) of the Act states –

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.

And if the subject is a composite property or partially exempt –

(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 subparagraph (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 subparagraph (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.

22. Mrs Davies also referred to the Rating Lists (Valuation Date) (Wales) Order 2014 SI No 2014/1370 W139. This regulation specified that 1st April 2015 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists which are to be compiled for lists in Wales on 1st April 2017.
23. Bed Space Valuation - The assessment seeks to find the fair maintainable bed space price for the property at a point in time by seeking to establish the gross receipts from actual bookings, excluding VAT and analysing the fair maintainable receipts at that fixed point which in this case is 1st April 2015. The VO was required to establish whether the gross receipts are in line with expectations for that type of holiday let in that location. The fair maintainable trade then has a percentage applied to it which is dependent on factors such as location and level of trade. For individual self-catering units or guest houses, the receipts are analysed over the accommodation available, thus being the bed spaces, for self-catering this is done via single bed spaces (SBS) and for guest houses as double bed units (DBU). Consideration is given to the location of the property as well as the quality of the accommodation to derive a price per bed space. To derive at a

scheme price or indeed the bed price and to allow fair comparison a basket of evidence is considered as holiday let properties differ in their characteristics, and clientele, for example family friendly, beach front and walkers. This means that properties can be considered on the same basis, that is having regard to their actual trade.

24. Pertinent Cases

- a. Calver v Thomas (VO) (2013) (UKUT) 0482 (LC) (2013)
- b. Redrose Ltd v Thomas (VO) (2013) UKUT 0482 (LC) (2013)
- c. Beaconside and Jones v Gidman (VO) UKUT 0497 (LC) (relates to two decisions, Beaconsfield and Stowford lodge)
- d. Dennett v Crisp (VO) (2013) UKUT 035 (LC) (2013) RA8
- e. Andrew Wishart v Laurie Hulse (VO) UKUT 0224 (LC)
- f. Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee [1932] 2 KB 679, set out the principle that in determining a property's value, correctness must not be sacrificed for uniformity. 'it is not sufficient, in order to prove unfairness, to make comparison only with a few properties, but the comparison must be with a general level of assessment'.

25. The hereditament comprised a large, detached stone-built house which was previously extended under slate pitch roof, set in mature gardens, alongside a detached self-contained holiday cottage, converted during the 1980's. Again, this is a stone-built property under a slate pitched roof. The cottage was renovated in 2016.

26. Mrs Davies said that in any valuation for rating purposes, the first task was to identify what the hereditament under consideration was. She explained that the appeal property is a guest house with a self-contained cottage in its gardens. With reference to a site plan, she pointed out that the properties at Tyn-Y-Fron were situated in the same geographical location because they were situated within the same curtilage or within the same grounds, were contiguous and not separated by a public highway. Mrs Davies appreciated that no inter-connection between the two units existed.

27. Mrs Davies explained that rating is a tax on property which arises from the occupation of land and property. Consequently, the identification of the hereditament is inextricably bound up with the concept of rateable occupation. The concept of rateable occupation was developed to determine whether an occupier of a property was liable to pay rates due to that occupation. This matter was addressed in the leading case of *LCC v Wilkins (VO) (CA) [1957]*, which affirmed the requirements of the ingredients necessary for rateable occupation.

28. Mrs Davies said that the first condition or ingredient was that there must be an actual occupation. Secondly, that it must be exclusive for the

purposes of the possessor. Thirdly, that the possession must be of some value or benefit to the possessor and Fourthly, the possession must be for not to transient a period’.

29. Mrs Davies said that the rateable occupier in this case is the appellant. Mrs Drake and her husband own the two cottages with the sole purpose of achieving an income by letting them on a short-term holiday basis. Mrs Davies appreciated that the ratepayers do not physically occupy the cottages, but the exclusive occupation of the property was for the purpose of letting them from which an income was received. Moreover, the fourth ingredient of non-transient occupation was also satisfied because the ratepayer’s occupation of the properties was not short term or transient in period. However, each booking was considered a transient period because they were short term arrangements and could not be considered a separate tenancy for the purposes of rating.
30. To support her case, Mrs Davies referred to the Upper Tribunal decision of *Calver v Thomas (VO) 2013*, where three self-contained holiday lets were deemed to be in one ownership and run as a business. They were deemed to be a single contiguous business unit and assessed as one rating entry.
31. With reference to *Woolway v Mazars UKSC*, Mrs Davies submitted the following quote from Lord Neuberger in Para 56 of the Supreme Court Judgement:
- “in my opinion, two separate self-contained floors in the same office building, whether or not they are contiguous, cannot be said to satisfy such a test, at least in the absence of very unusual facts. Once they cease to be self-contained, because, say, an internal means of access (for example an internal staircase) is constructed, so that each floor is accessible from the other without going onto other property – for example common parts of the building – then the two hereditaments will normally be treated as have been converted into one larger hereditament. Unless there is a means of access, each floor is self-contained from the other, and as such can be occupied independently of the other.”*
- Accordingly, I see no good reason why they should be treated as a single hereditament merely because they happened to be let and occupied by the same tenant. It is true that they are in the same building, but it is hard to see why a different result should obtain if, for instance, the respondents had occupied the second floor of Tower Bridge House and the sixth floor of an adjoining building”.*
32. Mrs Davies said that the grounds of each unit were clearly inter-connected. She added that there was no impediment to the access between each, the occupier therefore, could access all parts of the hereditament without having to enter other property and this would accord,

in my opinion, with the judgement set out by Lord Neuberger above. It would be incorrect to split Tyn-Y-Fron Guest House and Cottage, as in my opinion they are owned and operated by the same person, as one contiguous business unit and for the purposes of rating occupied by one rateable occupier which is Mr and Mrs Drake.

33. In view of the foregoing, Mrs Davies asked the Tribunal to dismiss the appeal.

Decision of the Tribunal

34. Having considered the evidence placed before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons –
35. Although Mrs Drake had referred to instances of other properties situated elsewhere in the vicinity which had been split, this evidence of comparability did not justify the split to the appeal property Mrs Drake had sought in her appeal. The decision to split or merge properties is a more fundamental aspect to rating and comparing one site that is not split to others that are, is not a good measure as to whether Tyn-Y-Fron should remain one or be separated into two parts. The issue to split Beaver Grove House and Cottages was not a matter before this Tribunal. However, the fact that the VO had realised that a correction was necessary and had taken remedial steps was not evidence that the VO had impugned the list.
36. The Tribunal accepted that the close proximity of property to each other does not necessarily indicate that they are one hereditament. A road that separates two units might provide one with a simple example. The quotation that Mrs Drake took from the Rating Manual, that described the relationship between the functional test and properties in a single geographic unit and in single occupation “may form more than one hereditament if the parts were used for different purposes” did not, in the Tribunal’s opinion, apply in this instance. The reason for this was that the properties were put to use as different limbs of her holiday accommodation. Whilst they were marketed differently, they provided both self-catering and catered accommodation from the same site. Customers in the self-catering units were not precluded from making use of facilities from the other building.
37. The leading authority on the identification of the hereditament is the Supreme judgment made in respect of Woolway (VO) v Mazars [2015]: it is in this case that the York Union case to which Mrs Drake referred in her evidence, along with many other precedents which addressed matters associated with the identification of the hereditament, are mentioned. Whilst Mrs Drake had correctly identified the primary tests that must be considered when the identification of the hereditament is required, the

Tribunal drew considerable support from the findings in the Mazars case that Mrs Davies had referred to in her evidence.

38. The fact that the appellants had separate accounts, metered services, car parking and other issues raised above were commercial considerations taken by the appellants. These issues, which Mrs Drake had raised in her appeal were not considered to be germane to the nature and scale of the properties under consideration.
39. Having examined all of the issues raised by the respective parties, the Tribunal recognised that contiguity was not the sole characteristic of geographical proximity and that contiguous units were often interconnected and easily accessed by one another. In Mazars, the Superior Court had observed that two floors in an office block that were separated by several floors and which comprised different occupations, were not sufficiently interconnected because one passed through common parts of the building that were not owned by Mazars. It is this feature along with others that the ratepayer's case at the Supreme Court had failed.
40. In the case before the Tribunal, it was clear that the subject properties were situated within the same geographic location and were owned and operated by the ratepayer, who was clearly in rateable occupation of the land and of what was on it. One could easily pass from one building to the other without crossing over parts that were not owned by the ratepayer.
41. In view of the foregoing, the Tribunal rejected the appellant's argument that the two buildings on Tyn-Y-Fron should form a single separate hereditament and dismissed the appeal.

Certified a true copy on 15th April 2021