

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr J D M Francis

Appeal property: 12 Union Street, Swansea, SA1 3EF

Appeal number: 68553402146/285NV17

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 11th March 2021

Appearances: Mr and Mrs Francis (Appellants) and Mrs S Harris (for Respondent Valuation Officer)

Date of Decision: 20th May 2021

Decision of Tribunal: Allowed

Members of the Tribunal: Miss C A Cobert (Chairperson), Mr A E Sangster & Mrs L M Thomas

Tribunal Clerk: Mr J Evans

Introduction

1. On 3rd February 2020, the Valuation Officer received a proposal to alter an entry in the Non-Domestic Rating List (the “list”). In the proposal, the appellant ratepayers, Mr and Mrs Francis, sought a reduction in the existing Rateable Value of £36,750 to £1.00, with effect from 1st April 2017.

2. In making their proposal, the appellants gave the following grounds –

The previous tenant went into receivership in March 2012 and the property took 2 years 4 months to let. The net effective rent that was agreed was £24,000pa which was significantly below the rateable value.

The property has been vacant since July 2019 and is currently on the market. Based on advice from our letting agents we are seeking a headline rent of £19,500pa which is likely to equate to a net effective rent of around £15,000pa. To date, we have had no interest or offers for the property.

3. This document 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.

Summary of the Appellant’s Case

4. In his evidence, Mr Francis explained that the property had been vacant since July 2019 and is currently on the market. He said that his letting agents had advised him to seek a headline rent of £19,500pa which is likely to equate to a

net effective rent of around £15,000pa. At the time of the appeal, no interest had been expressed from a prospective tenant.

5. Based on their analysis and discussions with the District Valuer, the appellants proposed that a reduction in RV to £24,000 for the appeal property was appropriate.
6. The appeal property is known as 12 Union Street, Swansea SA1 3EF. The property is situated on a pedestrianised shopping street within Swansea city centre. It comprises a mid-terraced property with sales to the ground floor and ancillary areas to the rear. The first floor is used as storage. The appeal property was originally entered into the compiled 2017 Rating List at a rateable value of £36,750, effective from 1 April 2017. This rateable value was subject to appeal by the previous tenant and agreed at £30,500.
7. In support of a reduction in the property's RV, the appellants considered that the actual rental evidence of the open market letting of the property, which transpired on 1st July 2014 comprised the most compelling evidence.
8. The appellants did not consider that the rental evidence of 21 Union Street was relevant to the assessment of 12 Union Street, because it related to a letting in 2004. Other evidence of lease renewals on the same side of Union Street supported a lower rateable value. At the hearing, Mr Francis said that the VO's decision to maintain the same differential between rateable values on the west and east side of Union Street was not an accurate means of assessing rateable value where actual market transactions are available. He added that this trading location has suffered from a continual decline as a secondary retail location in the town centre since 2007.
9. The appeal property had been let at a rent of £30,000 pa for a term of 10 years with a tenant's only break at the fifth year. The tenant received a rent-free period of 12 months as part of the agreed terms. The total rent received for the property over the five-year period was therefore £120,000 (broken down as 1 year at nil rent and 4 years at £30,000 per annum). This produced an annual net effective rent over the five-year period of £24,000 per annum, which the appellant analysed as £470 /m² (Zone A).
10. Whilst the VO had analysed the incentive over 10 years (which will give a higher rental value), Mr Francis said that the VOA was unaware of the tenant's break clause. Mr Francis explained that the tenant had exercised a break clause at the fifth year. This was in line with the procedure for considering evidence in the rating context established by *Lotus & Delta Limited v Culverwall (VO) & Leicester City Council*.
11. The appellants did not consider that the rent which had been agreed at 12 Union Street was below the market rent for this area as per *Hodges Ltd v Howells (VO)*, because –
 - a. The property was widely advertised by a leading firm of letting agents (Calam Retail) for a period of 2 years and 4 months before being let. The

letting agents advised that the offer received was at the best terms they could expect to obtain in the market at the time of letting.

- b. The property was let as a fully fitted retail unit with a shop front, air conditioning and WCs on both floors. It was capable of immediate occupation and use and there was no obligation or requirement for the tenant to carry out any works or capital expenditure at the property. The rent-free period was purely an incentive.
 - c. The letting took place nine months before the antecedent date, but neither Ms Harris nor the appellants has been able to find directly comparable evidence of open market lettings closer to the date as the market was very weak with few transactions taking place.
12. In their discussions with Mrs Harris, it appeared that one of the key transactions used as evidence to support a rate of £600 Zone A for 12 Union Street and the rental tone on the west side of Union Street was the rent for 21 Union Street. Mr Francis explained that the VO understood that this transaction was a rent review which reflected market rents in November 2014. However, the appellants received confirmation of the lease terms from Mr David Halliday of Rydens, who was the retained surveyor for Subway. The appellants understood that the passing rent for this unit of £38,000 pa was agreed at the lease renewal in November 2004. The rent reviews were upwards only, and no increase had been agreed in the reviews in November 2009 and November 2014. This suggested to the appellants that the property had been overrented at both of these dates (i.e. the passing rent is in excess of market rent). In their view, the rental evidence of 21 Union Street was not deemed relevant to the assessment of 12 Union Street, because it related to a letting that transpired in 2004.
13. As an indication of the decline in rents over the period of the lease, Mr Francis pointed out that terms had been agreed for a new lease with effect from November 2019 at less than half the previous rent (approximately £300 Zone A).
14. Mr Francis stated that other evidence of lease renewals on the same side of Union Street supported a lower rateable value. He explained that other evidence existed that was close to the antecedent dates which supported lower levels of rent. Although he accepted that evidence of a lease renewal was not as compelling as an open market letting, it was evidence of an agreement between landlord and tenant.
15. Mr Francis provided details of lease renewals on the following properties –
- a. 17 Union Street (Coral Betting) - agreed rent analysed at a rent of £478 Zone A (June 2013).
 - b. 19 Union Street (Cancer Research) - agreed rent analysed at a rent of £350 Zone A (December 2015). This was a rent of £20,000 per annum. The previous rent was £35,500 pa demonstrated a fall in rental values over the lease period. Although this evidence is either before or after the antecedent date, there is no evidence to support any change from the agreed figures.

16. The appellants considered that a more accurate method of assessing RV was by way of scrutinising market transactions rather than the placement of weight to rateable values on the west and east side of Union Street.
17. Mr Francis said that it was the appellant's view that the open market letting of 12 Union Street and the lease renewals comprised the best evidence of rental levels. He said that the current assessment of 12 Union Street was set at a level of 133% of the tone for 28, 29 and 30 Union Street. These are situated opposite the subject property. The level had increased from 107% in 2005 and Mr Francis considered that the VO had overstated the differences in rent between the two sides of the road at the AVD when rents had fallen significantly in Swansea, and secondary locations like Union Street had been particularly hard hit.
18. Moreover, the appellants pointed out that the units at 28, 29 and 30 Union Street are very small, where virtually the whole of the ZA area comprised the trading area. He said that an analysis of small kiosk retail units like these by way of zoning proved difficult because most tenants will consider premises of this size based on its overall cost per month or per year. As a corollary, the analysis on such terms was less reliable. The appellants depicted these trends in the following table -

Address	2005 Rating List ZA	% of 28 - 30 Union Street	2010 Rating List ZA	% of 28 - 30 Union Street	2017 Rating List ZA	% of 28 - 30 Union Street
12 Union Street	750	107%	975	126%	600	133%
25/26 Union Street	600	86%	675	87%	450	100%
28 Union Street	700	100%	775	100%	450	100%
29 Union Street	700	100%	775	100%	450	100%
30 Union Street	700	100%	775	100%	450	100%

19. Mr Francis referred to the VO's schedule of evidence and to her comments on Zone A values about which she said only one previous appeal had been made on properties on the west (left hand) side of the street; and that appeal was by the previous tenant of 12 Union Street.
20. However, having scrutinised details on the VOA's website, the appellants had discovered six list changes that had taken place (including one on 12 Union Street), which demonstrated that several ratepayers have successfully agreed reductions in their rateable values. This information was replicated in the following table –

Address	Initial 2017 Rating List ZA	Revised ZA	Date of Revision
12 Union Street	£700	107%	15/04/2019
14 Union Street	£700	86%	10/02/2020
18 Union Street	£550	100%	10/02/2020
20 Union Street	£550	100%	10/02/2020
21 Union Street	£550	100%	10/02/2020
25/26 Union Street	£500	£450	19/02/2020

21. Mr Francis said that a continual decline in rents at 12 Union Street had occurred since a peak in 2007. Our experience is consistent with market analysis carried out by the independent property analyst, Property Market Analysis (PMA). In their recent report they stated:

“Swansea’s PMA Non Food Retail Score fell significantly from a peak of 189 in 2005, ranking the city 70 of the 200 PROMIS Centres at that time, to 141 and a position of 72 by the end of 2019, reflecting the impact of strong competition and structural weaknesses within the local retail market area. While there have been several attempts to regenerate Swansea city centre in recent years, the retail environment remains somewhat dated and unappealing.

At the time of our December 2019 survey the vacancy rate in Swansea city centre stood at 22.5% of units, significantly above the Retail PROMIS average and a marked increase on the level recorded in March 2018.

Vacancy rates in Swansea, have, for the most part, exceeded the Retail PROMIS average throughout our period of record. Although, Swansea’s vacancy rate was initially relatively stable following the onset of the financial crisis of 2008, at a time when vacancy rates were rising nationally, this was short-lived with vacancies increasing significantly from 2011 onwards.”

22. With reference to a graph, Mr Francis explained that the data it contained indicated that no material changes had occurred in rental levels in the period before and after the antecedent date, and there was no actual rental evidence to support any change from the agreed levels.

23. In light of the foregoing, the appellant's valuation for a revised valuation based upon an underlying level of value of £470/m² was set out as follows –

Floor	Description	Area m2/unit	£/m2	Value
Ground	Retail Zone A	30.84	470	14495
Ground	Retail Zone B	27.42	235	6444
	Internal			
Ground	Storage	15.37	47	722
	Internal			
Ground	Storage	3.2	47	150
	Internal			
First	Storage	76.8	23.5	1805
	Air Conditioning	58.26	7	408
	Total			24024
	Say RV			24,000

Summary of the Valuation Officer's case

24. At the hearing, Mrs Harris stated that she represented the Valuation Officer for Wales in her capacity as advocate and expert witness. She confirmed that the appeal property was 12 Union Street, Swansea and that its current Rating List entry showed a Rateable Value of £30,500 with effect from 1st April 2017.
25. In her capacity as advocate, Mrs Harris referred to the grounds cited by the appellants in their proposal. These details are already shown above.
26. In making her presentation, Mrs Harris explained that her valuation before the Tribunal was produced on the following statutory basis:

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

27. Mrs Harris also referred to The Rating Lists (Valuation Date) (Wales) Order 2014 Valuation Date 1 April 2015 is specified under paragraph 2(3)(b) of Schedule 6 (Non-Domestic Rating: Valuation) to the Local Government Finance Act 1988 which establishes that 1st April 2015 is the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of the local and central non-domestic rating lists which are to be compiled for Wales on 1 April 2017.

28. Mrs Harris also referred to the extracts of the *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] and to *Hodges Ltd v Howells (VO)* [1993]. In “Lotus”, Mrs Harris pointed out that the following propositions established a procedure for considering evidence in the rating context. They were –

- Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point.
- The more closely the circumstances under which the rent is agreed as to time, subject matter and conditions related to the statutory requirements contained in the definition of rateable value the more weight should be attached to it.
- 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 actual rent of the subject hereditament.
- Assessments of other comparable properties are also relevant. When a rating 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.
- In the light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the different types of evidence depending on the one hand the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
- 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.

29. Mrs Harris explained that the Land Tribunal case of *Hodges Ltd v Howells (VO)* (1993) considered whether greater weight should be attached to a rent of £12,000 pa, which took effect from March 1988 and should therefore be adopted as the Rateable Value. The VO's perspective was that this rent was not the rent which might reasonably be expected in the open market and that the Rateable Value should be higher and in line with rents on other nearby shops and agreed assessments. The Valuation Officer supported the assessment of £18,000 rateable value. The Lands Tribunal adopted the propositions from the *Lotus & Delta* case that indicated how conflicting rental evidence should be considered. In that case, the Lands Tribunal accepted the actual rent was less than the rent that might reasonably be expected to be paid in the open market and, following the evidence, determined £16,375 RV.

30. With regard to the appeal property, Mrs Harris explained that it was situated on a pedestrianised shopping street within Swansea city centre and close to the prime retail street known as Oxford Street.
31. The property comprises a mid-terraced property with sales to the ground floor, Zones A and B with ancillary areas to the rear and storage on the first floor. The property is currently vacant and previously used as a hair salon.
32. As a result of an inspection undertaken by the VO on 15th March 2019, Mrs Harris said that the survey details were amended to include storage areas to the rear of the property. Prior to this, the whole of the ground floor was valued as sales whereas the first floor had office use.
33. Mrs Harris explained that following her discussions with the Rating Surveyors Association, the level of Zone A for this part of Union Street was revised from £700 to £600. This level of value was discussed with the previous tenant who made the earlier appeal.
34. Mrs Harris provided the following table which depicted evidence that was itemised in her "Notice of Information to be Used in Evidence".

Address	Area ITZA m2	Date of rent	Rent	Analysed Rent	Assessed at £/m2
12 Union Street	66.78	01/07/2014	£30,000	£470	£600
21 Union Street	57	01/11/2014	£38,124	£635	£500
17 Union Street	58.29	24/06/2013	£21,625	£478	£550

35. Mrs Harris referred to a table which included evidence of settlements which had taken place on other assessments in Union Street.

Address	Total Area	Area ITZA	Assessed at £/m2	Rateable Value	Remarks
12 Union Street	153.63	66.78	£600	£30,500	2017 appeal by tenant agreed ZA £600
25/26 Union Street	138.42	63.22	£450	£29,000	2017 appeal agreed with GL Hearn
Gnd Fl 29 Union Street	68.30	42.67	£450	£19,000	Appeal decided by VT, ZA £450
30 Union Street	45.20	25.98	£450	£11,000	Appeal agreed with ratepayer

36. With reference to a location plan of Union Street, Mrs Harris drew to the Tribunal's attention that the subject property is situated on the left hand side of the street. She also pointed out that ZA levels were higher the closer the property

was to the prime retail area of Oxford Street. She added that this side had historically been a busier side and benefited from uninterrupted terrace of properties that led from Oxford Street to The Kingsway. The level of ZA attributed to these properties reflected this attribute over previous rating lists. The level of ZA attributed on Union Street were shown in the following table –

Address	2005 Rating List ZA	2010 Rating List ZA	2017 Rating List ZA
12	£750	£975	£600
25/26	£600	£675	£450
28	£700	£775	£450
29	£700	£775	£450
30	£700	£775	£450

37. Mrs Harris said that there had only been one previous appeal on a property situated on the left-hand side of the street as viewed on the plan above and that appeal was that made by a previous tenant of 12 Union Street. Four properties on the opposite side of the street had been the subject of three appeals. She said that these appeals were resolved and the outcomes of which are depicted in her “Settlement Evidence” on page 8 of her schedule of evidence.
38. For the reasons expanded upon in the extract she provided in respect of “Hodges”, Mrs Harris was not inclined to agree that the rent was the best indication of value based on the Valuation Tribunal decision and settlements on other properties on Union Street. Moreover, the rent on the subject property transpired nine months prior to the AVD and adjustments to the rent so as to arrive at a rental value which accorded with the statutory requirements contained in the definition of Rateable Value would be required.
39. As a result of this appeal, Mrs Harris considered the new rental information which came to light in regard to 21 Union Street. Whilst the Valuation Office understood that the rent on this property was from 1st November 2014, Mrs Harris said that it appears that it was a nil increase on a previous rent review. As a corollary, Mrs Harris reconsidered the Zone A rate that was previously applied to the subject property. In arriving at a level of value she had considered the Valuation Tribunal decision on 29 Union Street, the agreements on 25/26 and 30 Union Street and also the discussions and agreement with the Rating Surveyors Association. She maintained the differential between the Zone A on 12 Union Street and the opposite side of the street and, basing this on a similar difference in the Zone A values to those prevailing in the 2010 Rating List, proposed a Zone A of £550.

40. Mrs Harris' valuation of the subject property was set out as follows –

Floor	Description	Area m2	£/m2	Value
Ground	Zone A	30.84	550	16962
Ground	Zone B	27.42	275	7541
Ground	Storage	15.37	55	845
Ground	Storage	3.2	55	176
First	Storage	76.8	27.5	2112
	Air conditioning	58.26	7	408
				28044
Rateable Value				£28,000

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

Decision of the Tribunal

42. Having considered all the evidence placed before it, the Tribunal decided to allow the appeal but only to the extent conceded by the Valuation Officer in her revised valuation. In so doing, the Tribunal orders the VO to alter the 2017 Rating List to accord with its decision.

43. In any rating appeal, the Tribunal was bound to consider the evidence in light of the requirements of Paragraph 2(1) of Schedule 6 of the Local Government Finance act 1988, as amended. Consequently, the Tribunal had to consider what rent the appeal property could reasonably have been expected to realise had it been let on the open market as at the 1st April 2015, that being the antecedent valuation date for the purposes of all entries in the 2017 Rating List. Such an assessment was subject to various assumptions which related to the terms of the presumed letting, and the date at which various, mainly physical factors relevant to the property and its locality, must be considered. The Tribunal also took account of the evidential process of considering types of evidence as set out in "Lotus".

44. In arriving at its decision, the Tribunal also had regard to the fact that economic conditions must be reflected as they were on the Antecedent Valuation Date of 1st April 2015, and that physical circumstances must be considered as at the Material Day, which in this case was 1st April 2017.

45. The rent on the appeal property was of a ten-year duration for £30,000 pa with a tenant's break at year five. The appellants calculated that annual net rent over five years was £24,000, and it was this figure that underpinned their contention for a reduction in RV to £24,000. By contrast, the VO maintained that the passing rent was undervalued and relied upon *Hodges Ltd v Howells (VO)* to demonstrate that it was unreliable for the purposes of this rating assessment.

46. From the photographic evidence in Mrs Harris' schedule of evidence, the appeal property was clearly visible from the corner of Union Street and Oxford Street. With that in mind, the Tribunal accepted the Mrs Harris assertion that properties situated closer to the more prime retail location of Oxford Street attracted a higher ZA value than those properties that were situated away from it. The Tribunal had noted that the ZA value of the corner unit occupied by H Samuel, £800/m² and that the units situated adjacent to it were greatly lower in their ZA value and that these values had been derived through settlements. Despite this, no changes in ZA value had been determined on the western side of the street to match those on the eastern side during the life of the 2017 list. Furthermore, the ZA level of value for the western side had been reduced from £700 to £600 following discussions with the Rating Surveyors Association. As a corollary, the Tribunal concluded that Mrs Harris was correct in her approach to maintain a differential in her valuation approach in respect of the two sides of Union Street.
47. The Tribunal recognised that the parties were confounded by the scarcity of directly comparable rental evidence in this part of the town. Consequently, the use of the passing rent on the subject property, even though it was concluded nine months prior to the AVD was therefore inevitable and the merits of its inclusion as evidence required scrutiny. Whilst the Tribunal attached some weight to this rent, the Tribunal accepted Mrs Harris' comments that as nine months had passed since the rent came into effect, it required adjustment to accord with the statutory definition of RV. However, the Tribunal had greater regard to the November 2014 rent on 21 Union Street which underpinned a ZA value of £500/m² and supported Mrs Harris' adopted underlying value of £550/m² for the subject property.
48. Whilst the Tribunal considered carefully the information Mr Francis had advanced in his evidence, it did not consider that it was sufficiently compelling to overturn the revised ZA values that had been settled by the RSA. Both the western and eastern side of the street had a settled look about it and did not consider that Mr Francis' analysis was sufficiently compelling to overturn the underlying level of value that existed on Union Street.
49. In the final analysis, and having taken all the evidence in account, the Tribunal considered that Mrs Harris' revised valuation of £28,000 was not unreasonable or unfair. As a corollary, the decision of this Tribunal is that the appeal is allowed but only to the extent Mrs Harris had conceded for in her evidence.

Certified a true copy on 10th May 2021