

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Huw Roberts

Appeal Address: Car Park and Premises, Car Park at Harrison Court, St Davids Street, Carmarthen SA31 3DX

Appeal number: 682529337793/192NV17/93

The Matter Appealed against: 2017 Rating List

Date of Hearing: 29th April 2021

Appearances: Mr H Roberts and Mrs S Nash, the Valuation Officer (VO)

Date of Decision: 27th May 2021

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mr K Curry (Chair), Mrs M Jones and Mr P O Williams

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The subject appeal arose from a proposal submitted by Mr Roberts in respect of the subject property received by the Valuation Office (VO) on 5th July 2017. Mr Roberts considered that the 2017 Rating List was inaccurate due to the increase in his rateable value (RV).
2. 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 VO's evidence

3. Mrs Nash stated her qualifications and duties to the Tribunal. The following is a summary of her case:
4. Reference was made to basis of valuation within Schedule 6 (2)(1) to the Local Government Finance Act (LGFA) 1988 (as amended by the Rating (Valuation) Act 1999) which states:-

"2(1) The RV of a non-domestic hereditament 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 if the tenant undertook 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 that rent."

5. In accordance with The Rating Lists (Valuation Date) (Wales) Order 2014, and paragraph 2(3)(b) of Schedule 6 (Non-Domestic Rating: Valuation) to the LGFA 1988, Mrs Nash explained that the proposal was a compiled list appeal, which meant that she could only have regard to circumstances as at 1st April 2017, the date that the list was compiled. No consideration could be given to events or material change of circumstance, such as COVID, that occurred after that date.

6. On matters of agreement, Mr Roberts had advised Mrs Nash that as at 1st April 2017 there were a total of 45 spaces at the appeal property, 28 housed within the garage plus 17 outside, which she accepted. She also accepted the revised trade figures that Mr Roberts had submitted in support of his appeal.
7. Mrs Nash stated the matters of contention concerned the increase to Mr Roberts RV as at 1st April 2017.
8. With the use of ordnance survey maps, photographs, and an inspection in August 2019 of the appeal property, Mrs Nash described the property as being a private car park, located within the same site as the appellants business property, with spaces typically being reserved by businesses in Carmarthen for their exclusive use. There is a mixture of open spaces plus spaces located within a single storey garage/workshop structure. The car park is tarmac surfaced with numbered, marked spaces. She understood that each space was available at a rate of £36 per month plus VAT.
9. The valuation against which the appeal property has been made is £8,100, with effect from 1st April 2017, based upon 44 (27 indoor and 17 outdoor) car spaces @ £186 per space.
10. Mrs Nash explained that the last business rates revaluation took place on 1st April 2017, which was when the Valuation Office Agency reviewed and adjusted RVs to reflect changes since the previous revaluation in 2010. The increase in the appellant's RV was a direct result of a review for revaluation purposes.
11. The approach to valuation was based upon an analysis of receipts leading up to the valuation date of 1st April 2015. Mrs Nash explained that 3 years receipts are requested to assess trends and fluctuations in trade and a standard 40% to be applied to the average figure to arrive at the RV.
12. In calculating the appeal property's RV, Mrs Nash gave regard to a form of return completed by Mr Roberts on 7th July 2015, which quoted the following receipts: -

2013 - £20,808 (50 spaces) 2014 - £20,380 (50 spaces) 2015 - £20,500 (50 spaces)
13. In adopting an average of the figures:

$£20808 + £20380 + £20500 = £61,688 / 3 \text{ years} = £20,562$

$£20,562 \times 40\% = £8224$ giving a rounded down RV of £8100 supported by receipts.
14. Mrs Nash stated that car park valuations will vary depending upon the level of income achieved, and so it is difficult to compare on a like for like basis. No two car park valuations would be the same unless they generated the same amount of income. Within Carmarthen there are a wide range of values, dependent upon the level of income achieved at each site.
15. Following further discussions with Mr Roberts, who supplied revised gross receipts information, net of VAT, Mrs Nash revised her calculations as follows: -

2013 £31 per space plus £5 included for rates $£36 \times 12 \times 44 \text{ spaces} = £19008$

2014 £31 per space plus £5 included for rates $£36 \times 12 \times 45 \text{ spaces} = £19440$

2015 £31 per space plus £5 included for rates $£36 \times 12 \times 43 \text{ spaces} = £18576$

Total £57024 / 3 years = £19,008 average x 40% = £7603 rounded to £7600

Having regard to the age and condition of the garage building she applied a 5% allowance to those spaces, which reduced the £/m² from £169.00 to £160.55 per space.

16. Mrs Nash proposed her revised valuation as follows:

Floor	Description	Area m ² /unit	£ per m ² /unit	Value (£)
Ground	Parking Spaces Indoors	28.00	160.55	4,495
	Parking Spaces Outdoors	17.00	169.00	£9,836
			Valuation sub-total	7,368

The total of all the elements in the revised valuation is £7,368, which has been rounded down to a RV of £7,300 with effect from 1st April 2017.

17. Mrs Nash stated that Mr Roberts was seeking a revised RV based upon a 45% reduction being applied to the value of the internal car parking spaces, which would give a RV of £5,425.92, rounded down to £5,400.

18. Having checked the Valuation Office Agency (VOA) records, Mrs Nash explained that Mr Roberts had agreed an appeal on the 2005 Rating List. In the 2005 Rating List the car spaces within the garage were previously uplifted to reflect the benefit of them being inside, so whilst the outdoor spaces were valued at £100, the indoor spaces were valued at £140. As there was no difference in pricing for an indoor or outdoor space, her colleague agreed to reduce the indoor spaces to bring them in line with the outdoor spaces. Therefore, both the indoor and outdoor spaces were valued at the same level which took effect from 1st April 2006 and, as a result, the same level of value have been applied to subsequent lists. There was no record to suggest that the reduction was associated with or due to increased maintenance costs of the building. So, whilst Mr Roberts has applied a 45% reduction to his calculation, this is incorrect as the indoor spaces have already had the benefit of the same price being applied as the outdoor spaces. By applying this reduction, he is in effect seeking double the reduction agreed on the original appeal. His proposed valuation is not supported by the level of receipts reported to the VOA by Mr Roberts.

19. On conclusion, Mrs Nash stated that in calculating the RV, she emphasised that regard was given to the actual receipts' information provided by Mr Roberts, both in terms of receipts declared on the form of return and subsequent revised receipts. Her revised valuation was not based on estimated receipts or by making a comparable with other car parks in the locality. Whilst the RV has increased, she was satisfied that it was based upon fact in terms of evidence provided by Mr Roberts.

20. Based on her evidence, Mrs Nash requested that the Tribunal confirm her revised RV of £7,300 with effect from 1st April 2017.

21. During cross questioning, the following responses were noted:

- Mrs Nash clarified that, where Mr Roberts said that the previous agreement was based on the condition of the indoor building, as she was not part of the previous

discussions for the appeal made against the 2005 Rating List, she could only report to the Tribunal what was stated on the VOA's records.

- Mr Roberts stated that he had no documentation to support his verbal agreement for the 2005 appeal.
- Mrs Nash explained that the calculations used in relation to RV for car parks are based on gross receipts. The VOA does not ask for accounts or expenditure, it purely asks for gross receipts net of VAT and this formula is used across the board, therefore Mr Roberts has not been dealt with any differently to other car parks.
- With Mr Roberts having provided gross receipts stating £36 per space (£31 per space plus £5 rates) for the years 2013, 2014 and 2015, Mrs Nash confirmed she had applied the same rate of £36 per space as Mr Roberts.

Summary of the Appellant's evidence

22. With reference to his grounds of appeal, as contained within the Proposal Form, and written submission which included photographs, Mr Roberts stated his case as follows:

23. Mr Roberts explained that he was still not satisfied with the answers from the VO based on the figures for the years 2013 to 2019 and on how the appeal property's RV had increased over 70% in the space of one tax year, 2016/2017, particularly as the charging rate of the car park had not been increased in the last 10 years. Ultimately, he considered the 70% of the percentage of the gross turnover to be horrendous.

24. Although the appeal property was registered as a 'car park' it does not operate on a traditional car parking basis. Spaces are reserved typically for businesses in Carmarthen for their exclusive use 24/7 at a nominal rate of £36.00 + VAT per space. Mr Roberts stated that this property did not operate a cash collection system for hourly / daily car parking but was being charged a rateable value higher than the Local Authority Pay and Display car park at Richmond Park in Priory Street, Carmarthen who were being charged £129.00 per space whilst the appeal property was being charged at £186.00 per space.

25. During his discussions with Mrs Nash regarding other car parks in Carmarthen, Mr Roberts agreed that Mrs Nash was correct in terms of the information she provided of RVs of all the car parks in Carmarthen, however, having checked the information online and the tariffs that morning, he considered there to be no consistency.

26. From the online information, Mr Roberts explained that he took the charging for the two-hourly rate as the standard fee across all car parks to which the appeal property was being compared with, apart from the Co-op. With the Co-op car park having 950 spaces and costing £3.50 per hour, the council car parks costing £1.80 per hour and the appeal property working out at £1.18 per day, Mr Roberts maintained that the other car parks can generate more money than the appeal property and considered this to be the crux of the matter. The capacity for income for Co-op car park would be 14.8 times greater than the appeal property and the council car parks 7.6 times greater. The RV for the Co-op being £458 per space and the appeal property's RV £186 per space.

27. Reference was then made to other car parks RV £ per space in Carmarthen:

- John Street Car Park – £603
- St Peters Street Car Park – £240
- Spilman Street Car Park – RV £400
- Quayside Car Park – RV £356
- Friars Park Car Park – RV £617

- Lammas Street Car Park – RV £587
- Station Approach Car Park – RV £178
- Old Vicarage Car Park – RV £175
- Ty Werthin Car Park – RV £275
- Richmond Car Park – RV £129
- Blue Street Car Park – RV £581
- HSBC Car Park – RV £192

All of which have the capacity to earn 7.6% times greater daily than the appeal property.

28. Having regard to the appeal property, Mr Roberts explained that he had paid a fortune for an old building. Coming up to three years this year, he had placed a new roof on the building at a cost of £50,000. Photographs show evidence of the asbestos roof and glass panelling being removed and replaced with Galvanised sheets. These sheets required replacing as they were being vandalised by residents of the adjoining Bro Myrddin Housing Association throwing rocks onto the roof, resulting in panels breaking and falling to the ground. This garage area was holding 28 car spaces and was deemed unsafe by a health and safety officer. It was either closure of the garage or replacing the roof to make it safe for people to park. There was no assistance for the roof works. No assistance for the loss of revenue whilst the work was completed and no increase in amount of parking charges.
29. Mr Roberts stated that there were 45 chargeable parking spaces in total. These were charged out to local businesses at £31.00 + £5.00 for the Rates i.e. £36.00 per month prior to 2017. There have been voids and periods when the spaces were full. The average for the three-year period in question would have been $44 \times £31.00 \times 12 = £16,368.00$. This being the gross turnover.
30. When the spaces changed the signs were re-written at a cost of £28.00 which was covered in the initial monthly payment, and not in addition to.
31. The cost of the liability insurance and building insurance has always been in excess of £1,000.00 per annum and has increased substantially due to glass panes being broken, and this last month having a further excess due to a water leak in the yard requiring the broken pipes to be replaced.
32. The CCTV was upgraded in March 2020 to a full digital system on the instruction of Carmarthenshire County Council having received complaints from neighbours and police of activity in the garage at night, which could not be closed as the Local Authority needed the space at the end of the road as a turning circle. The CCTV cost a further £12,000.00
33. The whole site has security lighting which cost around £400.00 a year to maintain.
34. The car park has had two leaks in the last four years leading from the street mains to University of Wales building. As this was all on private land, Welsh Water would not replace it and it was deemed private work and not covered under insurance. Again, the car park was disrupted, with additional cost of £2,800.00 and £1,180.00, through no fault of his own to serve others.
35. As he receives very little from the Local Authority and although the road sweepers use the car park area to turn around, they refuse to clean the car park. Therefore, the car park

and garage are swept with Jet Sweep Road sweepers every two months to clean up the bird droppings at a cost of £162.00,

36. With the APCOA and Local Authority Car Parks providing free car parking under the Lockdown, the demand for the appeal property's paid car parking has dwindled.
37. One of Mr Roberts' long standing businesses with 9 parking spaces were relocating out of town this last month, where they had free parking. With all the lockdowns and business closures, he has been unable to replace them. Therefore, currently operating at 36 paid spaces.
38. As can be seen there are numerous ancillary costs built in to the 'gross income' which the VOA are basing their valuations. The increases imposed in 2017 saw the rates payable go up by 68.75%. to 30% of the gross income received.
39. Mr Roberts requested justification of the increases as he believes they are clearly disproportionate to the viability of the operation.
40. Under the current Pandemic Lockdown climate, he sought a review to reduce the RV to the pre 2017 value and a waiver of rates payable until April 2022.
41. With reference to his spread sheet, Mr Roberts explained the current gross turnover of the operation £22,032.00 and the rates payable were now £4,092.00 or 18.57%. As a % of the net turnover before tax the rates payable equated to 43.40%.
42. Mr Roberts proposed valuation was provided as follows:

"The car park is split into two parts and a reasonable concession should be applied for the internal spaces due to their much higher maintenance costs. This reduction for internal spaces was previously agreed with the VOA prior to the 2017 increases. An acceptable reduction of 45% on the internal spaces would result as:

<i>Chargeable Car Parking Spaces</i>	<i>Net receipts per space</i>	<i>Annual Net Receipts</i>	<i>40% RV Figure</i>	<i>45% Reduction on 28 spaces</i>
28	£ 36.00	£ 12,096.00	£ 4,838.40	£ 2,661.12 Internal
16	£ 36.00	£ 6,912.00	£ 2,764.80	£ 2,764.80 External
44	£ 36.00	£ 19,008.00	£ 7,603.20	£ 5,425.92 Total
Total RV based on reasonable reductions				£ 5,425.92
New RV rounded down				£ 5,400.00"

43. Mr Roberts stated that, due to the Council determining that the appeal property was surrounded by a residential area, he was not allowed to operate commercial activity hence the reason why it is a car park. The appeal property was situated at the end of a cul-de-sac street and effectively all residents must come up to that street to turn around and therefore he cannot close off the car park. These additional factors are the reasons he has asked for a substantial reduction in the RV, whether it be broken down internally, externally or for the whole site, which he feels does not make any difference.

44. Having spoken to his MP, at the time was Simon Hart, and two Councillor members all who received copies of his proposal form have agreed that a 73% increase was completely out of order and the length of time of 3 and a half years it has taken to receive a hearing.
45. Mr Roberts mentioned that there appears to be no consistency regarding how valuations and RVs are conducted and completed in Carmarthen. By going slightly further west to Tenby, Sultan car park has 320 spaces and £8 per space, Buckfields car park at £85 per space and Copitall £120 per space. The argument that Carmarthen is a wealthy area compared to Tenby he fails to see as valid; it is just the Welsh Assembly Government making its charge and taking its slice from Carmarthen. He considers the £186 per space and the increase of 70% plus based in 2017 for the appeal property to be completely out of order. He wishes this to be explained and justified to him and if the 185% turnover has been applied to every other business in the area, then he would be happy to pay the increase in RV to the appeal property.
46. On conclusion, Mr Roberts stated that he believes the appeal property's rate should be substantially lower and he was probably naive in not separating items in his receipts.
47. In view of his evidence, Mr Roberts requested that the Tribunal confirm his proposed valuation of £5,400 with effect from 1st April 2017.
48. During cross questioning, the following responses were noted:
- Mrs Nash explained that each car park was valued individually and valued on their individual receipts, therefore, the income generated can vary from one car park to another. For the 2017 revaluation receipts were reviewed across the board for car parks in Carmarthen giving increases in RVs, which would be expected with the last revaluation having taken place 7 years ago. RVs in the Carmarthen area have roughly increased between 20% and 100% between lists. For example, Mr Roberts in his appeal form mentioned Richmond Car Park in Priory Street, this car park saw a 100% increase between lists, in 2010 its RV was £3,300 and has increased to £6,600 in 2017. Revaluation is the time information was reviewed and Mr Roberts had provided his form of return.
 - Mr Roberts stated that he has not increased his tariffs to help the working people in Carmarthen.
 - Mrs Nash stated that the issues regarding the roof occurred after 2017.
49. At the conclusion of the Hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

50. Having considered all the evidence placed before it the tribunal decided as follows: -
51. The issue to be determined by the Tribunal was the accuracy of the appeal property's RV within the 2017 Non-Domestic Rating List, therefore, reference was made to the definition of RV as set out in Schedule 6 (2)(1) of The Local Government Finance Act 1988, as amended by Section 1(2) of the Rating Valuation Act 1999. This states that the RV of a non-domestic hereditament 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, subject to the statutory assumptions.
52. The Tribunal was required to value all non-domestic hereditaments for the 2017 Rating List by reference to the antecedent valuation date (AVD) of 1st April 20015 but taking the

physical circumstances as at the material date. The material date for the subject appeal was the compiled list entry date of 1st April 2017.

53. With the material date being 1st April 2017, the Tribunal was unable to consider under this appeal the issues raised by Mr Roberts regarding the repairs to the appeal property's roof in 2018, upgrade of the CCTV in 2020, leaks in the car park in the last four years, any effects from COVID19 lockdowns and the waiver of any rates payable until April 2022.
54. In considering the proposed valuations, the Tribunal found that both parties had used the same method of approach with the exception to the % of the RV figure. Mrs Nash had based her valuation on the standard 40% (applied to the average figure derived from assessed trends and fluctuations in trade) and Mr Roberts valuation was based on 45%, due to much higher maintenance costs for the garage building housing the internal car parking spaces.
55. Regarding the maintenance costs, the Tribunal found that Mrs Nash had considered the age and condition of the garage building as at the material date, 1st April 2017, by applying a 5% allowance to the £/m² internal car parking spaces.
56. In considering the same level of value being applied to the appeal property's internal and external car parking spaces in previous rating lists, due to there being no difference in their pricing, the Tribunal noted that this had subsequently been carried over into the 2017 Rating List.
57. In respect of other car parks situated in Carmarthen, the Tribunal found that where car parks are assessed by way of gross receipts, the information provided demonstrates that these car parks have different amounts of car parking spaces and have applied different pricing structures, therefore, variations in the RVs would occur.
58. Being mindful that Mr Roberts had provided his actual form of return of receipts and revised receipts and having considered the % of the RV figure, where the same level of pricing being applied to the appeal property's internal and external car parking spaces (no benefit whether being parked indoor or outdoor), with a 5% allowance applied for maintenance and the gross receipts taking in to account the appeal property's locality and expenditure, the Tribunal concluded that there was no further justification for the % of the RV figure to increase to 45% from the standard 40%.
59. In such cases, the burden of proof rests with the Appellant and having examined all the evidence submitted the Tribunal felt that Mr Roberts had failed to discharge his burden of proof.
60. In view of the above information, the Tribunal determined that Mrs Nash was correct in her approach and order that the appeal property, Car Park at Harrison Court, St David's Street, Carmarthen SA31 3DX, in the 2017 Rating List be amended to a RV of £7,300 with effect from 1st April 2017, in accordance with Mrs Nash's proposed revised valuation stated in Point 16 above.

Certified a true copy on 27th May 2021.