

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr K Mawdesley t/a Red Wharf Bay Vine Yard,

Appeal property: Red Wharf Bay Vine Yard, Llain Gam, Beach Road, Pentraeth

Appeal number: 694534262852/285NV17/17

The Matter Appealed against: Non-Domestic Rating List (2017)

Date of Hearing: 11th March 2021

Appearances: Mr Mawdesley & Mrs T Davies (for respondent Valuation Officer)

Date of Decision: 7th June 2021

Decision of Tribunal: Dismissed

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 24th March 2020, the appellant ratepayer, Mr K Mawdesley, made a proposal to alter the Rating List on the grounds that a property was required to be shown in it. The subject of the proposal was known as "Red Wharf Bay Vine Yard", Llain Gam, Beach Road.
2. In making his proposal to alter the Rating List, Mr Mawdesley stated that a new entry of Rateable Property into the Non Domestic List 2017 should be made with effect from June 2018.
3. In his detailed reasons for making the proposal, the appellant stated –

The property is listed as agricultural land only, when it includes a substantial retail component.

Details of this included –

- Vineyard which opened in 2018.
 - Inspected by Valuation Office Agency in September 2018 and verbally advised that no business rates payable as the property would receive small business rates relief.
 - Sought Grant funding and refused as "incorrectly" registered as agricultural land only, with no retail component.
 - The vineyard includes a public house and is licensed to sell alcohol.
 - The kitchens have been inspected and graded by the local authority.
4. 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

5. In his evidence, Mr Mawdesley said that the Valuation Officer had initially told him that the "Cabin" was at best an overflow of the office he used for his agricultural business. He was subsequently told that the non-agricultural use of the cabin was "*de-minimus*" and did not fall to be assessed for rating purposes.
6. Mr Mawdesley referred to a document that the VO had sent him on 8th March 2021 in which they maintained that the use between domestic and non-domestic use was *de minimus*, which he had come to understand was a different matter. He admitted that whilst he had submitted evidence to the VO that the cabin was not agricultural, he now contended that it was and had asked that the property should be included as an entry in the non-domestic rating list.
7. The appeal property was built in 2011 solely for domestic purposes. In September 2017, Mr Mawdesley started to use it for business storage. In June 2018 he had received the statutory licenses so it could be used to sell alcohol. Whilst the property was not used for domestic purposes, the building still maintained comfy chairs, wall hangings and book-shelves. Mr Mawdesley stated that both parties had accepted that the building was used for business purposes. He explained that during his deliberations with the VO, it was generally accepted that the outbuilding was used for business purposes other than that related to the vineyard. However, the VO was not prepared to amend the list in favour of the ratepayer because the business use is so limited that it failed the '*de minimus*' test.
8. Mr Mawdesley refuted the VO's assertion that the use made to the cabin was not sufficiently commercial. He said that he had sent the VO photographs of the cabin which showed that part of the area was used as his office and for retail purposes. Mr Mawdesley said that the photographs taken by the VO when the property was inspected on 9th October 2020 was a snapshot which reflected the impact of the (Covid 19) crisis.
9. Mr Mawdesley explained that if his appeal against the VO's decision not to insert the property under consideration into the 2017 rating list was unsuccessful, he would not be able to claim a grant of £10,000 which was available to businesses in Wales due to covid.
10. With reference to the Land Tribunal judgment of *Tully v Jorgenson (VO) [2003]* and also to sections 6, part 11, 7.2 and 7.3 of the Rating Manual, Mr Mawdesley opined that his business activity from the property in dispute had exceeded the *de minimus* test as well as "*materially affecting the enjoyment of the residence as a residence, having regard to the extent and amount of use, and taking into account of any structural changes that had been made to the property to facilitate that use*".
11. Mr Mawdesley was also aware of the expression "minute to midnight" rule which Mrs Davies had referred to in her evidence. He said that this had no impact because the building was permanently used for storage and as an office.
12. In support of his case, Mr Mawdesley referred to the VO's guidelines, which provided some advice as to where the threshold for *de minimus* use lay. The VO's guidelines suggested that the *de minimus* rule came into effect where business use was below 5%. The appellant referred to an extract from the Rating

Manual which depicted *Hambledon District Council v Buxted Poultry Ltd [1992]* which involved the use of Agricultural Buildings for storage of items that were not associated with the agricultural land and therefore the storage of such items negated the exemption.

13. Referring to the point at which the *de minimus* test applied, Mr Mawdesley said that case law stated that 6% to 8% of other use could not be regarded as *de minimus* and in second reference, that 6% of other use could not be regarded as *de minimus*. Both of these situations would have been sufficient to negate the exemption. However, the same extract stated that 1.4% of other use could be regarded as *de minimus* and would not negate the exemption.
14. With reference to an appeal made by a business known as “Wyevale Nurseries” in 2015. Mr Mawdesley pointed out that the figure of 5% was referred to in that case as the bar for *de minimus* test used in the VOA’s own rating manual. However, Mr Mawdesley was unable to verify that figure.
15. Mr Mawdesley contended that the business use of the outbuilding for non-agricultural purposes greatly exceeded the VO’s guideline for the *de minimum* threshold because –
 - a. The outbuilding had a legally defined non-agricultural business purpose and was used permanently for that purpose. Mr Mawdesley said that the building was Bonded Premises registered with HMRC and permanently used to store wine, normally between 300 and 1000 bottles which was dependent on the time of year. This status allowed him to only pay duty when the wine was sold rather upon its receipt.
 - b. The building was permanently used to store the retail products (ceramics etc.) that were sold during vineyard tours and at markets and craft fairs. It was also permanently used to store the equipment needed to operate a stall at craft fairs and markets (gazebo, display tables, floor covering and other miscellaneous items).
 - c. The building was used to store and refrigerate the food that was provided to attendees at wine tasting events. Such use fluctuated dependent on the number of tours, but he estimated that such use equated to about 50% of the time.
 - d. Mr Mawdesley held a premises license for the building and had legal status from where alcohol can be supplied, although this was mainly undertaken in a separate building. The building was also used to display and sell ceramics.
 - e. The building was used as an office, mostly for the non-agricultural side of the business which he used for several hours each weekday. Usual activities include the marketing and arranging of wine tastings and vineyard tours, to oversee the retail operation of the company at markets and craft fairs, organising importation of products from Spain, and latterly building up an online presence for the business.
16. Equipment required for agricultural purpose was kept in a separate shed.

17. Mr Mawdesley considered that several of the points he had raised in his case, or taken individually, would have negated the exemption as they far exceed the *de minimus* bar.
18. In response to requests made by the VO for details about his business activity, Mr Mawdesley explained that the first lockdown occurred as he neared the end of his second year of trading. He said that his business ‘took off’ in the second half of 2019 and his accounts for the year ending April 2020, depicted a turnover of £16,389. This was up from the previous year’s trade of £7,060. Mr Mawdesley said that had it not been for the Covid pandemic, he expected to double his turnover in the following trading year. This expectation was based on a growing awareness of the vineyard (“for example, over 100 people had pre-bought 2020 vineyard tours as presents in the form of vouchers; a company organising events for tourists arriving on cruise ships in Holyhead had decided to start bringing visitors to the vineyard”) and he had identified many more events away from the vineyard from which he could trade. He added that visitor numbers were 135 in 2019, which represented about 20% of turnover in ‘ticket’ sales or about 40% of turnover if subsequent purchases of wine and ceramics were included. Mr Mawdesley also provided the Tribunal with details of payments made to HMRC in respect of duty on sold wine.
19. At the conclusion of his case, Mr Mawdesley contended that his business activity from the premises exceeded the *de minimus* bar and asked the Tribunal to insert the appeal property into the Rating List.

Summary of the Valuation Officer’s case

20. Mrs Davies is employed by the Valuation Office Agency as anon-domestic rating valuer who has 16 years’ experience of rating and valuation matters. She is a member of the Royal Institute of Chartered Surveyors and is the authorised representative of the Valuation Officer for the purposes of this appeal. In undertaking this duty, Mrs Davies assumed a dual role as advocate and expert witness.
21. In her role as advocate, Mrs Davies referred to the statutory basis on which valuations for rating purposes are undertaken. The valuation before the Tribunal is produced in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (LGFA88), as amended. It stated –

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.

(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 sub-paragraph (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 sub-paragraph (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 in which the Antecedent Valuation Date, 1st April 2015, was identified as the day by reference to which the rateable value 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 1st April 2017.
23. Mrs Davies explained that the burden to prove one's case that the Rating list was inaccurate rested with the appellant. In support of this statement, Mrs Davies referred to *Vines Ltd v de Mauny (Valuation Officer) (2010) UKUT 322 (LC) (20 September 2010)* where, the member NJ Rose commented at Para 45, "*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 metre is too high, not on the VO to prove the opposite*".
24. The appeal property is situated North East of Pentraeth. It is nested in open countryside and situated on Lon y Traeth which leads to Traeth Coch, Pentraeth. The property comprised a vineyard of 400 vines, a cabin that is used to store wine and associated items from the vineyard, and the use of the domestic residence on an ad hoc basis during tours and wine tasting. The VO had not entered the subject property into the 2017 Rating List because it was deemed to be exempt.
25. Whilst Mrs Davies had not undertaken a personal inspection of the premises, she explained that representatives at the VOA had done so, initially on 25th September and again, for the purposes of this appeal, on 9th October.
26. In her VO3 (of her schedule of evidence) Mrs Davies referred to a plan of the property in which the component parts of the hereditament were colour coded. The area in orange represented the vineyard, the part-coloured blue related to the off licensed area and the green highlighted area represented the part used for shows and talks. The extent of the "Hereditament" is the house, gardens and vineyard.
27. In her VO6, Mrs Davies referred to a number of photographs of the "Cabin" which supplemented those which were advanced by the ratepayer in his evidence. Mrs Davies referred to photos of the Cabin which she stated demonstrated that the area was not set up for retail use.

28. Mrs Davies said that the respondent's case pack was prepared without having had sight to any papers that the appellant had submitted. Despite this, she made the following observations regarding the evidence presented by the appellant –

- a. The public house was, in fact, the domestic residence which he used on an appointment only basis for vineyard visits. It was not open to the general public for the purchase beverages whilst passing.
- b. This is in fact the conservatory and domestic garden which Mrs Davies considered reverted to domestic use after the tours had been completed.
- c. The cabin was a summerhouse which was used for the storage of the ceramics which Mr Mawdesley had imported into Wales. It was laid out without regard to retail space; and contained two comfy chairs and no sales racking or till.
- d. In her role as advocate, Mrs Davies explained that the Vineyard was exempt under the Local Government Finance Act 1988, Schedule 5, 2 (1). She said that Agricultural land was defined as –
 - i. land used as arable, meadow or pasture ground only,
 - ii. land used for a plantation or a wood or for the growth of saleable underwood,
 - iii. land exceeding 0.10 hectare and used for the purposes of poultry farming,
 - iv. anything which consists of a market garden, nursery ground, orchard or allotment (which here includes an allotment garden within the meaning of the Allotments Act 1922), or
 - v. land occupied with, and used solely in connection with the use of, a building which (or buildings each of which) is an agricultural building by virtue of paragraph 4, 5, 6 or 7

29. However, with continued reference to the Act, Mrs Davies pointed out that agricultural land did not include –

- a. land occupied together with a house as a park,
- b. gardens (other than market gardens)
- c. pleasure grounds
- d. land used mainly or exclusively for purposes of sport or recreation, or
- e. land used as a racecourse.

30. The definition of dwelling was contained within the Local Government Finance Act 1992 (the '92 Act) or is a dwelling by the virtue of The Council Tax (Chargeable Dwellings) Order 1992 (SI No 549) as amended, to be ascribed a band and shown in the Valuation List.

31. She explained that Section 3(2) of the '92 Act provided a dwelling was any property which –

- a. by virtue of the definition of hereditament in Section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and
- b. is not for the time being shown or required to be shown in a local or a central non-domestic Rating List in force at that time; and

- c. is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance Act 1988 (the "LGFA 1988");
 - d. and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption."
 - e. Consequently, unless a hereditament is non-domestic and is shown or required to be shown in the local or central Rating List or is exempt under Schedule 5 of the 1988 Act, it will, subject to the other provisions of Section 3, constitute a dwelling which is to have a band ascribed to it.
32. For Council Tax and Non-Domestic Rating purposes, before a property could be entered into either a valuation List or a Non-Domestic Rating List the existence and extent of the hereditament had to be established. This process was administered by S.115 of the General Rate Act 1967, as amended.
33. Mrs Davies said that in this case, the hereditament comprised the house, the garden(s) and vineyard (which is depicted in her VO 2 Location plan). The red line displayed the extent of the hereditament. She explained that where a building within the curtilage of a dwelling, or a room(s) within a dwelling, is used exclusively for working at or from home, such accommodation may be treated as non-domestic for rating purposes.
34. However, she explained that if the room used for work purposes was not exclusive, which was often the case, and no physical alterations had been made to the property to make it suitable for work purposes, and where a person working at home used furniture and equipment of the kind that were commonly to be found in domestic property, the use will generally constitute domestic use for the purposes of living accommodation under section 66(1)(a) of the LGFA 1988.
35. Mrs Davies said that rateability may arise if the accommodation was constructed or adapted so that its domestic character was lost or where equipment of a non-domestic sort was used to a significant extent. Similarly, if employees or clients visited the premises, such use would remove it from within the ambit of use for the purposes of living accommodation. The question will always be one of fact and degree in each case and no single factor will be determinate.
36. Guidance on the meaning of "living accommodation" was given by the President of the Lands Tribunal in *Tully v Jorgensen* (VO) 2003 RA 233 . This case concerned the use by the taxpayer of a former bedroom for the purpose of her full-time employment. That part of the property which continues to be used wholly as living accommodation will remain as domestic property, and the hereditament will be treated as a composite within section 64(9) of the LGFA 1988. With regard to the request for making an entry into the Non-Domestic Rating List, Mrs Davies had regard to the following statutory provisions:
- a. Under Section 64(9) LGFA 1988, "a hereditament is composite if part only of it consists of domestic property".
 - b. Under Section 66(1) of the LGFA 1988, to be domestic property it has to be "used wholly for the purposes of living accommodation."
 - c. Section 67(4) of the LGFA 88 provides that a hereditament is a relevant composite on a particular day if it is a relevant composite immediately before the day ends.
 - d. For the purpose of deciding the extent (if any) to which a hereditament consists of domestic property on a particular day, the state of affairs

existing immediately before the day ends shall be treated as having existed throughout the day Section 67 (5) of the LGFA 88).

37. Consequently, Mrs Davies was required to consider the use made of the cabin within the dwelling at 'a minute before midnight', and if not in use, when next in use it is regarded as non-domestic purpose, then on first inspection, that room should be the subject of an entry in the rating list.
38. To support her case, Mrs Davies also referred to Tully v Jorgensen (VO) 2003, which fixated on the nature of a mixed-use room. In this case, it was found that where mixed activity that fell within the definition of "Living Accommodation" as set out in section 66(1)(a) of the Local Government Finance Act 1988, then it did not fall to be rated. However, if structural alterations were made to the property, or where there is a change in the intensity of use so that part of the dwelling lost its residential character, then a case can be made for a non-domestic rating assessment for this part of the dwelling'.
39. However, Mrs Davies explained that as no physical alterations have been made to the property other than the creation of a small workspace for the purposes of the business, which is used solely for storage purposes, the use made was considered to be *de minimis*. She said that at the end of the working day, the room - in all sense and purposes - reverted back to being a sunroom/garden room. Mrs Davies said that the furniture and equipment used was of a kind that was commonly found in domestic property and there is no interference with domestic use of the remainder of the property. As a corollary, the character had not changed, and the room is and continues to be domestic.
40. Mrs Davies said that she had had regard to the *de minimus* test which the appellant had referred to in his evidence. She said that her decision not to alter the list in the manner specified by the appellant was influenced by the fact that no physical adaptation had been undertaken to allow for the use alongside the vineyard. In arriving at her decision, Mrs Davies also had regard to the following matters –
- a. The number of days per annum it was open to the public.
 - b. The level of visitor numbers and fair maintainable trade.
 - c. The degree of advertising/promotion.
 - d. The intention of the occupiers. Were they seeking to achieve the highest possible trade in mitigation of their costs?
 - e. The occupant's use of the cabin within the subject dwelling for domestic purposes; where this is the dominant use and the non-domestic use and adaptation is minor then it is likely the property will be domestic only and not a composite.
41. In her conclusion, Mrs Davies referred to her VO2 which outlined the extent of the hereditament. Whilst she recognised that commercial use was made of this area, she pointed out that no physical alterations had been made to the area. She also pointed out that access to the garden is via a step and that the access was not compliant with accessibility legislation.
42. Mrs Davies said that the business use made of the area was not exclusive and no alterations had been made to it other than the installation of IT equipment in

the same way many people do when they work from home. In view of the foregoing, Mrs Davies said that the use made of the property failed the *de minimus* test and asked the Tribunal to dismiss the appeal.

43. In view of the foregoing, Mrs Davies believed that the cabin and the other elements, whilst used for business, it nevertheless utilised a small portion. She added that the garden and the conservatory reverted to domestic use at the end of each day when tours were completed.
44. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

45. Having considered all of the evidence submitted before it and having had regard to the legislation and case law quoted above, the Tribunal decided to dismiss this appeal. In arriving at this decision, it gave the following reasons –
46. The Tribunal was grateful to the parties for the meticulous way in which their respective cases were advanced. Mr Mawdesley had provided a great deal of information about the nature of his business and from where it was conducted. Details of its turnover and other business-related information was held to be of great use in these proceedings. The Tribunal was equally appreciative of Mrs Davies' advocacy and expert witness testimony in which she referred to the relevant facets of law which were necessary for it to arrive at its decision.
47. The Tribunal was satisfied that Mrs Davies had applied the correct tests in her endeavours to reveal the identity and extent of the hereditament. None of this appeared in dispute. The conservatory appeared to be part of the house and the cabin was recognised by both parties as the overflow. In its understanding of S.64 – S.66 of the LGFA88, the Tribunal considered that the concept of the “*de minimus*” test was to ensure that an insignificant amount of non-domestic use made to a property could be disregarded.
48. In his evidence, Mr Mawdesley placed great weight on the amount of non-domestic use that was conducted from the subject property. In his evidence he said that business activity exceeded the bar for the *de minimus* rule. However, the Tribunal agreed with Mrs Davies in that the outcome of a case such as this relied on a wider consideration of other facts referred to in paragraph 41 as well as having regard to the general concept of the *de minimus* rule.
49. On balance of all the facts that were presented, the Tribunal was not persuaded that Mr Mawdesley had proved that an entry for the appeal property should be accommodated within the 2017 Rating List. From the admitted facts it appeared to the Tribunal that the property under consideration had not been constructed or adapted for use as business accommodation.
50. With regard to *Tully v Jorgenson (VO) [2003]*, the Tribunal saw the correlation between the issue that was considered in that case and with the issues that were presently under consideration. Where use of an area was mixed, the Tribunal accepted that where the dominant use was domestic, then by merely making use of a small part for non-domestic purposes will not enable it to become a

composite hereditament. The Tribunal was not persuaded that the creation of a small workspace area merited its inclusion as a separate entry in the 2017 Rating List as Mr Mawdesley had contended.

51. Moreover, the Tribunal noted that the property did not appear to have any trimmings and trappings of retail use save for items of storage that were placed there.
52. Whilst the Tribunal recognised that Mr Mawdesley made good use of the space for business purposes, a small part of which was used as storage, the Tribunal agreed with Mrs Davies' analysis which was the use was de minimus. The Tribunal was clear that from the evidence before it, the property retained its physical characteristics of domestic property and that it contained furniture and other equipment normally associated with domestic property. It was not persuaded from his evidence that Mr Mawdesley's use interrupted the domestic use of the rest of the property. As a corollary, the appeal was dismissed.

Certified a true copy on 7th June 2021