

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ana Miah

Appeal Address: Restaurant and Premises, 11 Heol-Y-Deri, Cardiff CF14 6HA

Appeal number: 681533365305/285NV17/12

The Matter Appealed against: 2017 Rating List

Date of Hearing: 27th May 2021

Appearances: Mrs V Crisp, Valuation Officer

Date of Decision: 14th June 2021

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mrs B C Martin (Chair), Mr A E Sangster and Mrs J Worswick

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The subject appeal arose from a proposal submitted by the above-mentioned Appellant, received by the Valuation Office Agency on 20th March 2019, in respect of the subject property on the following grounds:

"I propose that the 2017 Rating List entry shown for the above property's rateable value (RV) should be altered to £1 with effect from 1st April 2017, as the RV applied is incorrect and excessive".

2. In the VTW's returned Proforma from Ana Miah, Ms Miah indicated that she would not attend the hearing, however, had provided a written submission; reiterated as follows:

"In respect of my above appeal, as I have opted for the appeal to be heard in my absence, I wish for the Tribunal to take into consideration my following issues before determining the outcome of this appeal.

- 1.) *I have invested over £100,000 in improving this property both externally and internally. The list of improvements carried out: Roof improvement, signage and shopfront, external redecoration, new extraction system, full kitchen refurbishment, air condition system, new carpet, and furniture along with redecoration internally.*
- 2.) *Having spoken to similar size businesses in the area, most of them are paying a lot less in business rates than myself and I cannot understand the disparity between premises.*
- 3.) *My location is a small suburban area with very little footfall apart from local residents my customers have to travel fair distances to find me.*
- 4.) *My restaurant provides a vital service to my local community, we help the community in many different projects and fundraising matters to help with the upkeep of the village.*

5.) *We need all the help we can get help keep the business afloat and provide employment to local people. These jobs are a lifeline for many of the families who live locally.*

6.) *Due to the pandemic, we have found very difficult to keep the business open, so any reduction on the rateable value would be a huge boost at these very difficult times.*

3. In accordance with the VTW's Protocol 2a(a), Ms Miah requested that the content of her email dated 19th May 2021 be submitted as supporting evidence in respect of the subject appeal; reiterated as follows:

"Thank you, Ms Crisp, for your email below, I appreciate your input and thoughts on my appeal due to be heard on 27th may, I take into consideration what you say and the comparables that you have listed in your attachments, with due respect, these are completely different businesses and properties who have much wider shopfronts with street level floor space.

Majority of my floor space falls on the zone C of the 6.1m rule on your calculation denominator, this alone will make significant difference on the rateable value of my premises.

Secondly, I have invested a lot of money in upgrading this property to bring up to its current level with full air conditioning as well as mechanically extracted fresh air system, there are a lot of storage space which forms the bulk of the sq. meterage".

Please take into consideration all of my above points".

4. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

Summary of the Valuation Officer's (VO) Evidence

5. Mrs Crisp stated her qualifications and duties to the Tribunal. She explained her dual role of being both advocate and expert witness and copies of her documentary evidence were provided to the Tribunal. The following is a summary of its contents:
6. The appeal had been validly served in accordance with the statutory definition of Rateable Value (RV) and Mrs Crisp referred the Tribunal to Statute Law and the Definition of RV that is found within Schedule 6 (2)(1) to the Local Government Finance Act (LGFA) 1988.

"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."

7. The VO confirmed the Date of Valuation, in accordance with The Rating Lists (Valuation Date) (Wales) Order 2014, that the 1st April 2015 is specified under paragraph 2(3)(b) of Schedule 6 (Non-Domestic Rating: Valuation) to the LGFA 1988 as the day be reference to which the RVs 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.

8. Mrs Crisp understood that there was no dispute in factual matters and referred to the legal argument in the case of *Vines Ltd v de Mauny (VO) (2010) UKUT 322(LC) (20 September 2010)* where the onus is on the appellant to prove its case and not the VO.
9. With the use of ordnance survey maps and photographs, Mrs Crisp explained that the appeal property comprised of a ground floor restaurant and its locality in relation to her comparable properties. She believed that this property was last inspected on 10th April 2004 by one of her colleagues.
10. Whilst no Regulation 31 had been issued, Mrs Crisp drew attention to the current rent passing on the appeal property of £40,000 with effect from 1st September 2016, as stated on the FRI, although she understood this included living accommodation.
11. With reference to the component parts of the appeal property's valuation, Mrs Crisp explained the following:

11 Heol-Y-Deri, Cardiff					
Ref	Floor	Description	Area m²/unit	£ per m²/unit	Value (£)
1.1	Ground	Restaurant Area	47.57	280.00	13,320
1.2	Ground	Restaurant	47.88	140.00	6,703
1.3	Ground	Restaurant	40.45	70.00	2,832
1.4	Ground	Public Toilets	16.85	28.00	472
1.5	Ground	Kitchen	36.16	28.00	1,012
1.6	Ground	Staff Toilets	N/A	0.00	0
1.7	Ground	Internal Storage	19.32	28.00	541
1.8	Ground	Rear Restaurant Area	90.03	35.00	3,151
1.9	Ground	Office	7.02	35.00	246
1.10	Ground	Internal Storage	5.46	28.00	153
1.11	Ground	External Storage	40.12	14.00	562
Additional Features of the Property included in the Valuation					
		Air Conditioning System	225.93	7.00	1,582
		Surfaced Open Spaces	1	150	150
		valuation sub-total			30,724
Adjustments made to the sub-total					
Size or quantity allowance			-10.00%		
					-3,072

Mrs Crisp stated the total of all the elements above was £27,652, which has been rounded down to a RV of £27,500 with effect from 1st April 2017.

12. Reference was then made to the case of *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council (1976) RA 141* which sets out a procedure for considering evidence for rating purposes, to which Mrs Crisp provided her comparable settled assessments of evidence of shop and premises in Heol-y-Deri, Cardiff with a Zone A of £280.00/m² as follows:

Address	Total Area m ²	ITMS	SU Values	OA's	End Adj	RV	Agent	Settled Type
4C	149.30	89.43	£25,041	£0	1.00	£25,000	Colliers International	VT Dismissed
International 8	356.14	135.97	£38,071	£0	0.90	£34,250	Colliers International	Withdrawn
13	74.24	48.71	£13,640	£318	1.00	£13,750	Ms Anna Miah	Withdrawn

13. In response to the appellant's case, Mrs Crisp provided her observations regarding the evidence presented, as follows:

- a) The definition of RV, as shown above, assumes that property is in reasonable repair and that the tenant will bear the cost of repairs.
- b) As she did not know which properties were being referred to, she could not comment on them individually. However, shops by and large are valued in terms of Zone A, that is the first 6.1 linear meters from the frontage is deemed to be the most valuable and is known as the Zone A, the second 6.1 is Zone B and is valued at half the rate of the Zone A, with Zone C at a quarter and so on. This can mean that some properties which would appear to be larger may have, for instance, a lot of storage which attracts a much lower rate in terms of £/m².
- c) A basket of rents is examined in determining the levels of value that should be attributed to an area, in this case Heol-Y-Deri. Therefore, the location is reflected in the level of RV.
- d) The date of the proposal was 20th March 2019, which proceeds the COVID 19 pandemic.

14. On conclusion, Mrs Crisp stated that the appeal property has been valued as a shop, the Zone A rate £/m² adopted is based on rental evidence and comparable assessments, which have been agreed in the vicinity and supports this rate. Therefore, she requested the Tribunal to dismiss the appeal.

15. During cross questioning, Mrs Crisp provided the following responses:

- Mrs Crisp stated that she could not confirm but assumed that the occupier for 13 Heol-Y-Deri, Ms Anna Miah, was the same person as for the subject appeal.
- Although the appellant has spent a lot of money on the subject property, Mrs Crisp explained that she considers this would not have made a difference to the appeal property's RV, air conditioning would have been in addition and there was no dispute in the areas; the Zone A rate used across the board.
- Mrs Crisp explained that had the proposal been made after the pandemic of COVID, she was aware but not in detail that Billing Authorities have got reliefs available. Also, several appeals have been made on the grounds of COVID.

16. At the conclusion of the Hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

17. Having considered all the evidence placed before it the tribunal decided as follows: -

18. 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.
19. The Tribunal was required to value all properties for the 2017 Rating List by reference to the 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.
20. Being mindful of the basis of valuation, the Tribunal was aware that it also had to consider the basket of rents and not just one rent in isolation as per the formulated valuation process set down in the leading Case of Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council.
21. The Tribunal noted that the only rent information provided was that of the appeal property which had a passing rent of £40,000 with effect from 1st September 2016, which was believed to have included living accommodation. There was no dispute presented by the appellant on the areas within the VO's valuation for the appeal property and any improvements would be taken into consideration under the basis of valuation. With the appeal having been made prior to the COVID 19 pandemic, any issues surrounding the pandemic could not be taken into consideration for this appeal.
22. With no other rental information provided and continuing to take guidance from the process set down in the Case of Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council, the Tribunal considered the comparable properties provided to support the tone established for the locality of the appeal property.
23. On examination of the comparable properties presented, the Tribunal noted that those properties had been based on the same Zone A rate of £280.00/m² as the appeal property, were situated in the same location and had also been discussed with an agent and an occupier.
24. Based on the evidence provided, the Tribunal concluded that the VO was correct in her approach to assess the appeal property in line with shops and the settled comparable properties supported that a tone had been established in the locality. Therefore, the VO was reasonable in allocating a Zone A rate of £280.00/m² for the appeal property.
25. In such cases, the burden of proof rests with the Appellant and having examined all the evidence submitted, the Tribunal felt that Ms Miah had failed to discharge her burden of proof.
26. In view of the above information, the Tribunal determined that the VO was correct in her approach and confirmed that the appeal property, 11 Heol-Y-Deri, Cardiff CF14 6HA, should remain in the 2017 Rating List with a RV of £27,500 with effect from 1st April 2017, based on the valuation provided in Point 11 above.

Appeal Dismissed.

Certified a true copy on 14th June 2021.