

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr J Bradley

Appeal Address: Shop and Premises, Unit 3 Swansea Road, Merthyr Tydfil CF48 1HT

Appeal number: 692533254900/285NV17/57

Appellant: Mr Christopher Jones

Appeal Address: Shop and Premises, Unit 5 Swansea Road, Merthyr Tydfil CF48 1HT

Appeal number: 692533244354/285NV17/58

Appellant: Ms Rachel Thomas

Appeal Address: Shop and Premises, Unit 8 Swansea Road, Merthyr Tydfil CF48 1HT

Appeal number: 692533218264/285NV17/59

Appellant: Ms Natalie Clarke

Appeal Address: Shop and Premises, Unit 9 Swansea Road, Merthyr Tydfil CF48 1HT

Appeal number: 692533222578/285NV17/60

The Matter Appealed against: 2017 Rating List

Date of Hearing: 29th June 2021

Appearances: Mr J Bradley, Ms Rachel Thomas, Ms Natalie Clarke and Mr A Gwyn, Valuation Officer

Date of Decision: 27th July 2021

Decision of Tribunal: Appeals Dismissed

Members of the Tribunal: Mr B Al-Khanchi (Chair), Mr S Hennah, Mr D O Evans and Mr E Roberts (observer)

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The subject appeals arose from Proposals made by the above-mentioned appellants to alter the 2017 Rating List in respect of the above properties, which were received by the Valuation Office Agency (VOA) on the 22nd, 17th, 7th, and 10th January 2019. The grounds contained in the proposals for each of the appeals were read to the Tribunal by the Clerk and are replicated, in full, as follows:
2. *“Item 57 – The Rateable Value (RV) should be altered to £1.00 with effect from 21st April 2018. The RV is inaccurate because of an alteration made by the Valuation Officer (VO) for the reasons the public access is restricted, storage areas and toilet area should be a lower rate. Rateable in excess of reality”.*
3. *“Item 58 – The RV should be altered to £1.00 with effect from 21st April 2018. The RV is inaccurate because of an alteration made by the VO for the reasons the public access is restricted to only a small portion of the shop. The majority of the property is storage, toilet, and kitchen; not been measured correctly. RV exceeds the value of the property”.*
4. *“Item 59 – The RV should be altered to £1.00 with effect from 21st April 2018. The RV is inaccurate because of an alteration made by the VO for the reasons restricted public*

access, private toilet, takeaway only with limited retail space. The rent paid is not reflective of RV. I do not believe measurements taken are accurate”.

5. *“Item 60 – The RV should be altered to £6,000 or below with effect from 21st April 2018. The RV is inaccurate because of an alteration made by the VO for the reasons zones were not considered, Zone A from entrance windows 6.1m to Zone B – half the rate of Zone A. Exempt areas were measured in error e.g. the toilet and cleaning storage area from shelving to the backdoor. The toilet door and the back door open into the room on to each other, making it an unusable space. Valuation Scheme states ‘fair and consistent’ similar properties in a retail park within the vicinity start at a RV as low as £85/m², therefore £350/m² is questionable. I would like a detailed breakdown on this please. What method was used to decide this figure? The margins are largely different. A hair salon in Merthyr for comparison is £100/m². RV is higher than the rent, which is not realistic or viable. We will come under real hardship if this is not promptly overturned, causing us to close. With all my research and data compiled, I believe that the RV should fall below the £6,000 threshold. Making it exempt for payable business rates under the small business rate relief scheme, just like similar size businesses in the area”.*
6. It was agreed by all parties present that Mr Gwyn would present his evidence first due to a large part of his evidence being the same for each of the subject appeals. It was noted that Mr Bradley was acting on behalf of his own appeal - Items 57 and on behalf of Mr C Jones – Item 58. He would also be stating the main issues for all four appeals with the other appellants present adding to his statement of case in relation to their own appeals.
7. This is a summary of the cases 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

8. Mr Gwyn stated his qualifications, duties to the Tribunal and his dual role of being both advocate and expert witness. Copies of his documentary evidence were provided to the Tribunal. The following is a summary of its contents:
9. Mr Gwyn explained that the issue before the Tribunal was regarding the appellants contesting the £/m² rate used to value the appeals hereditaments of £450.00/m² for Items 57 and 58 and £350.00 for Items 59 and 60. However, the issues raised by the appellants appeared to be regarding procedure rather than the RV.
10. The appeals have been validly served in accordance with the statutory definition of RV and Mr Gwyn 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.”
11. 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.

12. With the appellants contesting both the survey data and £/m², Mr Gwyn 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 was on the appellant to prove its case and not the VO. Therefore, in respect of the subject appeals it was for the appellants to show that the base rate of £/m² was too high; correctness before uniformity as laid down in the case of *Ladies Hosiery and Underwear Ltd v West Middlesex AC [1932] 2KB 679*.
13. With the use of location plans, Mr Gwyn explained that the appeals hereditaments were located on the peripheries of the town of Merthyr Tydfil, the county town of the county of Merthyr Tydfil located in South Wales. The town of Merthyr Tydfil was approximately 40km northwest of the capital city of Cardiff.
14. The appeals hereditaments were located on a purpose-built out of town shopping centre approximately 3km west of the town centre of Merthyr Tydfil with direct access to the main arterial route through the South Wales Valleys of the A470 with direct access on to junction 32 of the M4 and 2km south of the A465 Heads of the Valleys Road providing access east to Midlands via the A40 and M50, and west to junction 43 of the M4 and Swansea.
15. With the use of a VOA survey layout plan and photographs of the appeals hereditaments, Mr Gwyn described these properties as single storey purpose-built retail units completed in 2018 forming part of the larger complex of Trago Mills, an out-of-town shopping centre incorporating retail and leisure space across a complex of over 200,000m². The wider complex features ample parking, and a range of retail and leisure outlets under weather protected parades with breakout areas for food and refreshments.
16. The appeals hereditaments were of steel portal frame construction, with double glazed shop front window and entrance doorway opening onto the covered walkways of the Trago Mills wider complex. These properties comprised of small retail areas with suspended tile hung ceilings, painted plaster finish walls, a counter area of which behind was a w/c to the rear with a back door, electric lighting and were centrally heated.
17. Whilst the appellants contested that the appeals hereditaments should be valued using a Zone A approach, with the toilets and storage areas not to be included in the RV, and, if included at a lower rate, Mr Gwyn explained that although the appellants were correct in stating that typical high street retail properties were measured to Net Internal Area (NIA) using a Zone A approach, the approach for the subject properties differ in line with comparable retail warehouse units in the area and further afield.
18. Mr Gwyn stated that while the valuation of retail hereditaments on a high street for which NIA would be the accepted measuring standard, within rating it is an established principal that the retail hereditaments within out-of-town shopping centres are measured to Gross Internal Area (GIA). This was not a set of circumstances unique to the appeal hereditaments but was the common basis of measurement for all the hereditaments of the same nature at the neighbouring Cyfarthfa Retail Park, located on the opposite side of the A470 with its location indicated in proximity to the subject properties at Trago Mills Merthyr Tydfil.

19. All of the hereditaments located at Cafarthfa Retail Park, including the assessments in the rating list for Unit 10B and The Carphone Warehouse, Cyfarthfa Retail Park were measured on the same GIA basis.
20. As well as the wider use of the GIA measurement standard of out-of-town shopping centres can be further evidenced of all hereditaments of a similar nature at comparable retail sites such as the McArthur Glen Designer Outlet Centre near Bridgend, South Wales.
21. Furthermore, the measuring standard of GIA has also been used and accepted specifically at Trago Mills sites at the following locations:
- Trago Mills (South Devon) Ltd, Liverton, Newton Abbot, Devon, TQ12 6JD
 - Trago Mills, Two Waters Foot, Liskeard, Cornwall PL14 6HP
22. With this information in mind, Mr Gwyn was of the opinion to ensure uniformity and consistency, both locally and nationally, in the measurement approach that it was correct for the appeals hereditaments to be measured and valued in accordance with the established principle, and with hereditaments that it is most alike to in nature.
23. Reference was then made to the case law of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] which established the use of comparable assessments as indicative of comparable values. Mr Gwyn stated that the units at Cafarthfa Retail park, located within 1km of the appeal hereditament and measured on the same basis, have been agreed through previous appeals in the 2017 list and as recently as in 2020. As such, he asserted they were the best evidence indicative of RV of units of a similar nature in the immediate area.
24. Having established the use of the GIA measurement on comparable schemes in the locality and further afield, Mr Gwyn referred to the following withdrawn settlement evidence from discussion held of other units at Cyfarthfa Retail Park, Swansea Road, Merthyr Tydfil in support of the accepted measurement approach in the locality and in establishing the tone of the £/m²:
- Unit 10B – a coffee shop measuring approximately 141m² GIA and valued at a base rate of £360/m² and
 - The Carphone Warehouse – measuring approximately 114.60m² GIA and valued at a base rate of £350/m².

Whilst these two units mentioned are larger than Trago Mills units they were the smallest ones on site at Cyfarthfa Retail Park and therefore the most comparable to the subject appeals hereditaments. The agent, Gerald Eve, withdrew these appeals on the basis on the tone-setting discussions held in November 2020. These values were not reduced as a result of the proposals but were withdrawn, and as such established the tone in the locality for smaller sized retail warehouse properties in the locality.

25. Mr Gwyn was of the opinion that the tone for the locality had been set and that his settlement evidence suggested a consistent approach should be applied at Trago Mills. Therefore, he saw no reason as to why the appeals hereditaments should be subject to treatment different to that of an accepted, tested and established value, and method, only a stone's throw away from the appeals hereditaments without contravening a fundamental law of rating in the principle of equality.

26. Reference was also made to his settlement evidence that existed for rating appeals for Units 45A, 6A/6B, 72, 96, 27, 13, 4, 63, 68, 69, 70, 71, 73, 80 and 97-98 (agreed at £400/m²) and Units 5 and 76 (agreed at £500/m²) at McArthur Glen Designer Outlet.

27. In following the first assertion of the process of the case precedent of Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141:

“(i) where the hereditament which is the subject of consideration is actually let, that rent should be taken to be the starting point.”

28. Mr Gwyn provided a schedule of rental information outlined in the VOA's Forms of Return held for the rents on the properties of Units 2, 3, 5, 6, 7, 8, 9, 10, 11 and 12, Swansea Road, Merthyr Tydfil. Particular attention was drawn to the analysed rents of the appeal properties as follows:

- Item 57 – Unit 3 – this rent was of £23,100 against a RV of £17,750 and breaks down to an adapted £/m² by the VO of £450 against the analysed rent of £531.
- Item 58 – Unit 5 – this rent was of £18,250 against a RV of £17,750, this is an adopted value £/m² of £450 against an analysed rent of £435.
- Item 59 – Unit 8 – this rent was of £13,764 against a RV of £13,750, this is an adopted value £/m² of £350 against an analysed rent of £319.
- Item 60 – Unit 9 – this rent was of £12,000 against a RV of £14,000, this is an adopted value of £/m² of £350 against an analysed rent of £278.

He understood that the leases were agreed to be for a duration of 1 year, with the landlord retaining responsibility for outside repairs and insuring. While these rents were post AVD, in this instance 3 years, Mr Gwyn stated that he had undertaken analysis of those rents to bring them in line with the hypothetical rating tenancy where possible.

29. On conclusion, Mr Gwyn stated that having demonstrated the analysis of the passing rents as of April 2018 and alongside the settlement evidence discussed in the immediate locality for comparable properties at Cyfarthfa Retail Park, he believed that the appellants had not provided sufficient evidence to support the £450/m² and £350/m² adopted as being unreasonable.

30. In view of his evidence, Mr Gwyn requested that the Tribunal dismiss the subject appeals and confirm their current entries with effect from 21st April 2018, date entered in the Rating List, as follows:

- Item 57 – Unit 3, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £17,750 (£450/m²)
- Item 58 – Unit 5, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £17,750 (£450/m²)
- Item 59 – Unit 8, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £13,750 (£350/m²)
- Item 60 – Unit 9, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £14,000 (£350/m²)

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

- Mr Gwyn stated that he had not personally inspected the appeals hereditaments and therefore accepted Mr Bradley's comment on the properties not being centrally heated and the lighting being provided by the appellants.
- In relation to the comparable properties with seating area not being comparable to the appeals hereditaments and therefore unfair to be used as such, Mr Gwyn explained the rating assumption is that the hereditaments are vacant and to let and in terms of rating and the rents payable would reflect the physical characteristics of the properties. Consideration must be given to what the property would let for on the hypothetical rating assumption and not the actual agreed tenancy restrictions that were in place.

- Mr Gwyn stated that rating was carried out on the hypothetical basis and not based on the actual lease.
- Mr Gwyn stated that unfortunately, where the appellants had been led to believe that their rents included the rates, this was not a valuation consideration in terms of rating.
- With the use of his location plan, Mr Gwyn explained that the plan specifically shows the sensitivity of location. The units with the base rate of £450/m² were situated on the main walkway for Trago Mills, whereas units of larger areas had a base rate of £350/m² and due to their size, an element of quantum had been considered. The four units towards the bottom of the plan were believed to be in a poorer location, possibly due to footfall and this was reflected by the rent paid; therefore, the base rate was £350/m².
- With the regard to 10B Cyfarthfa Retail Park base rate being £360/m² and Mr Bradley's appeal property base rate of £450/m², Mr Gwyn explained that as he was aware of the rent paid by Mr Bradley being particularly high, consideration was given to the basket of evidence of rents, and it was fair to say that Mr Bradley's RV was set lower than the rent and even lower than the analysed figure of £535/m².
- With the use of a survey layout of the units, Ms Clarke explained that attached to her unit was another unit trading as an ice cream parlour, and then there was a gap with car parking spaces and then another unit 13, which was a Tourist information centre.
- Regarding a 'tenancy agreement' or 'rent under a licence', Mr Gwyn explained the VOA's form of return process, where forms are sent out to appellants requesting them to confirm the rents paid on their properties. In terms of whether it's a lease or licence he believes the properties are rated based on the hypothetical tenancy on whether an actual tenancy exists or not, the basket of evidence is compiled to consider what the £/m² should be on the hypothetical rating tenancy and is not based on the actual lease or licence that exists.
- In relation to the length of time it took for the appellants in receiving their rate bills, Mr Gwyn explained that over the 8-month period his understanding was that the properties were completed in April 2018. At that point the BA would have informed the VOA of the new entries coming into the rating list, however, he believes there was a delay in the May in the BA raising reports and in gathering of the rental information from Trago Mills on which to base the RV and this was done by November 2018. The process in bringing the entries into the rating list was completed by December 2018. Rate liability applies from the start date the properties became capable of occupation. Unfortunately, there appears to have been some miscommunications between the appellants and Trago Mills as to what communications Trago Mills had with the VOA.
- Where Ms Clarke thought it fair to say that Trago Mills were the true liable parties if communications were going through them and not individual tenants of the units, Mr Gwyn expressed that, although there clearly was a breakdown of communications between Trago Mills and the appellants, the delay was not relevant to the valuation, the valuation was done on the hypothetical tenancy.
- Regarding Ms Clarke believing she has been singled out with a unique reference scheme to that of salons situated outside Trago Mills shown in her document Z extra 3, Mr Gwyn explained that her hairdressing unit has not been treated as a typical high street shop as it is situated on an out-of-town retail park and therefore the approach would be that typical for an out-of-town retail park.
- In relation to Unit 13, Mr Gwyn explained that this unit had been assessed differently as it was a Tourist Information Centre and had features within the unit more typical to that of an office with raised flooring, therefore as it was not classed as a retail unit it was assessed in line with comparable office properties in the locality.
- With Ms Thomas stating that the use of Unit 13 having changed to a retail unit as a dog parlour, Mr Gwyn stated that he was not aware of the change of use, however,

this would be considered at the next revaluation. The purpose for this Hearing, is whether the appeals hereditaments have been correctly rated, not the unit that is not under appeal.

- Mr Gwyn confirmed that a shop and an office did not fall under the same class order.
- Mr Gwyn explained that the withdrawal on the comparable property of Car phone warehouse established the fact that the agent representing the appellant did not disagree with the value or the approach used in assessing the property's RV. The moving to a different location was not relevant in this case.
- Regarding McArthur Glen Retail Park, Mr Gwyn explained the point was not on how close this site was to Trago Mills but to establish the point that the GIA approach to measurement was accepted in out-of-town retail parks, as was in the case for Cyfarthfa Retail Park and other Trago Mills sites. It also shows consistency in approach by the VOA and in accordance with the nationally adopted basis.

Summary of the Appellants' Evidence

32. In addition to the grounds as stated within their proposal forms and with the use of a licence agreement, Mr Bradley explained that following discussions amongst the traders occupying the units at Trago Mills, he believes there was a case to answer relating to the full circumstances as to the way the occupiers have been treated poorly by all concerned and to question the clarity and maybe honesty of the process.
33. The facts being that the VOA, Trago Mills and Merthyr Tydfil Borough Council (MTBC) must have met to discuss the overall rateable position some time before the Trago Mills store opened, which was believed to be in 2015. This meeting would have discussed rents and the process by which the RV would have been set. To be clear, Trago Mills and MTBC would have known their rent charge and therefore the rate charge of the units. The VOA would also have known their intention to accept £70/m² from Trago Mills and £450/m² from the units. This of itself was clearly unfair on the units notwithstanding the unfair trading terms, the likelihood rates payable by the units offset some of Trago Mills charges.
34. In a meeting held on 23rd February 2018, occupiers of the units at Trago Mills were invited to discuss the renting of the units. At this meeting, many occupiers were concerned that 45% of the rental charges was said to be the proposed figure for rates as detailed in Trago Mills' initial guidance. This had been followed by a more ambiguous reference to the Licensee being responsible for the payment of rates, which was the reason to ask the question "*how much will the rates be*"? The answer as testified to in the affidavit (signed in the presence of a solicitor and for this document to have all the legal force to which it was entitled) provided was unequivocal "*the units have been cleverly sized so as to avoid rates*" came the answer. Had the rates been additional, Mr Bradley stated that he and the other occupiers would not have agreed to the license. Unfortunately, they had already proceeded and invested a lot of money into the businesses. It might be said that Trago Mills may have known the units would be far less popular if rates were extra and that by denying a rate charge then rents could be higher than normal as it turned out to be. It may also be said that this denial of rates increased the rate charge as a higher rent meant higher rates. It would appear the VOA was aware of the arrangements.
35. Mr Bradley explained that the occupiers needed to know why it has taken 8 to 9 months for the rates bills to arrive in the units again it may be deliberate in that the businesses have settled in and invested are less likely to back out.

36. Mr Bradley described the units at Trago Mills current conditions as with the benefit of hindsight trade in the first few months reflected the unreadiness of the Trago Mills operation and year on year the units' takings were down by 50% such that the occupiers of the units were not taking enough money to cover costs. Trago Mills has constantly sought to thwart the units' trade by various means. For example, for his coffee business he bought a fast panini machine at a cost of £6,000 then Trago Mills bought the same model to copy the current promotional offer he had in place. Outside seating were deliberately left or pulled into the open, regardless of the weather, so that customers used Trago Mills' dry seating area. "A" board advertising the Trago Mills dining offer were placed at each exit point whilst the occupiers of the units were banned from using "A" boards. Christmas trees last year blocked the view of his coffee shop from existing customers. This year Trago Mills went one better and, following his success in selling hot chocolate, have built a shed style café to sell mull wine and hot chocolate in the yard directly outside his coffee shop at Unit 3.
37. Mr Bradley explained that he had mentioned above points to illustrate what he considers to be bad practises by Trago Mills towards their tenants. Mr Pinhay of Trago Mills was quite careful to have mix of businesses and to not have them duplicate offerings, but he was doing what he does not want individual traders to do. In the terms of the licence, tenants of the units at Trago Mills were forbidden to advertise their businesses anywhere other than in the confines of their units, give out samples or allowed table and chairs to provide seating areas; however, all those opportunities were open to Trago Mills. Trago Mills have been able to give out free tea and coffee, they refuse to engage in proper business to business discussions and Mr Bradley contended that Trago Mills has no wish or worry about the treatment of their tenants.
38. With the use of a floor plan of Unit 3, Mr Bradley referred to the GIA method used by the VOA in the measuring of the appeals hereditaments. Mr Bradley explained that the units at Trago Mills should be measured by way of NIA in accordance with shops that were not an industrial or manufacturing units. In addition, the trading position and conditions of the licence meant that the rate /m² was too high.
39. Firstly, in utilising the NIA method for Unit 3, gives the following measurements
- Internal frontage dimension to be 4.740 metres, which the public is only allowed to access the first 2.840 metres and this should therefore be defined as Zone A.
 - The remainder of the unit comprises an all-staff operational area with storage etc. this is therefore Zone B.
 - In accordance with the NIA procedure the toilet, internal wall, plant/services and columns are treated as nil.
 - The toilet is 2.830 metres x 1.860 metres and therefore has an area of 4.3 m² in Zone B.
 - The dividing wall is 2.830 metres x 130mm and therefore has an area of .37 m² in Zone B.
 - The columns (2) are 305mm x 90mm each and therefore have a combined .05 m² in Zone A.
 - The electricity board is 1.2 metres x 210mm and therefore has an area of .252 m² in Zone B.

Therefore, the net sq. meterage for Zone A is $4.740 \times 2.840 = 13.4616$ less $0.05 = 13.4116$ say 13.41 and the net sq. meterage for Zone B is $4.740 \times 5.550 = 26.30$ less $4.922 = 21.378$ say 21.38.

40. Secondly, with there being several comparators locally, three were provided as follows:
- Costa Coffee Shop, Cyfarthfa Retail Park, CF48 1HY (Unit 10B) £360/m².
 - Pizza Hut, Cyfarthfa Retail Park, CF48 1HY (Unit C) £230/m².
 - Costa Coffee Shop, St Tydfil's Shopping Precinct, CF47 8ED £150/m².

The above properties have tables and seating and public access to most of their premises. They have freedom to advertise around their premises and do not have to deal with a direct competitor who has access to seating, tables, and the freedom to advertise at will.

In contrast to the terms of his and the other appellants at Trago Mills where their licence forbids tables, chairs, and any form of free-standing advertising on the Trago Mills site except for Trago Café.

In so far as the trading restrictions affect RVs this adverse trading condition should be allowed under unreasonable or anti-competitive terms that affect RVs.

It should be noted that the records show that the Trago unit was charged £70/m² (including the catering facilities) and presently all the independent units are much more, and in the appellants case, it was £450/m², this of itself appeared iniquitous. Therefore, the appellants' contended that their rate per m² should be no more than £150/m² and that even this would fail, under test of reasonableness, and be too high; perhaps most fair would be that charged to Trago at £70/m².

41. Mr Bradley contended that the RV for Unit 3 based on the above calculation is as follows:
- Zone A 13.41 m² x £150 = £2011.50
Zone B 21.38 m² x £75 = £1603.50
Total = £3615.00

Even by using the Costa coffee shop in Cyfarthfa Retail Park figure were to be used the RV would be £8676.00

Any of the above would be reasonable by comparison to the current unworkable RV of £17750 for Units 3 and 5.

42. With no further evidence by Mr Bradley or from Ms Thomas, Ms Clarke referred to the following additional information for her property at Unit 9.
43. With the use of emails from the VO, Google maps, valuation scheme descriptions, affidavit dated 3/12/19 and articles on government recognises importance of hair & beauty by creating dedicated personal care sector, Ms Clarke explained that the Units at Trago Mills site have been rated using GIA, which according to the RICS standards of rating, was applicable to industrial large entities. Whilst Trago (Unit 1) was a large entity, the individual units are micro (40 m²). She believed that the appeal properties should if anything has been rated via NIA which was standardised for retail and requires zoning. An email was provided to show that the VO stated that even if NIA was used the amount would show the same, she had no idea on how that would be.
44. If the appeal properties were seen to be the same as Unit 1 then should the £70/m² be given instead of the £350-400/m² as issued. It appears that it has been unfairly rated uniquely to fit financials expected from the whole site with the small units baring a large hit, hence the unique valuation scheme ref: 490268.

45. Reference was then made to Unit 13 at Trago Mills site which has been rated £5,500 at a base rate of £180.00/m² and sized 32.4 m² under the valuation scheme ref: 490248. Ms Clarke expressed that Unit 13 was used by the local council and its rates suspiciously fell just under the £6000 payable threshold, due to small business rate relief. In an email dated September 2019 from the VO stating all units are seen as open market value and that occupying business use has no effect. Therefore, if Unit 13 has a lower rate due to it being used as an office, then it should be considered that she ran a personal care service which traditionally also attracts a lower rate like an office. On that basis, Ms Clarke asked that she was reimbursed the business rates that she had paid to date in the interest of fairness and equality.
46. The valuation scheme stated, *“similar properties in the area to be valued fairly and consistently”*. Ms Clarke stated that the properties put forward as comparable by the VO were situated on the same site, where collectively the appellants were disputing the rates, except for Unit 13 Trago Mills site. Ms Clarke believed those comparable have no bearing at this moment. Unit 13 was rated as a comparable to the orbit centre, Rhyd y Car 2.3 miles from Trago Mills site.
47. Also, there were hair salons situated just outside of the main gates of Trago Mills on Brecon and Heol Tai Mawr. All rated similarly from £2300 - £3950, using the valuation scheme ref: 343105. All of which were in proximity and well within the 2.3-mile radius that Unit 13 was based upon. Ms Clarke could not see any other salon rated using the valuation scheme ref: 490268. All salons seemed to have the same ref: 343105 except for her unit, Unit 9.
48. Ms Clarke stated that the occupiers of the units at Trago Mills did not have sole possession of their units in its entirety. Whilst they had access to the units, they did not have access to the main gates. Therefore, when the main gates were locked, they were also locked out of their units. Their licence stated 52.5 hours trading, yet Trago Mills does not abide by this and most recently been closing as early as 4.30 pm every day. Therefore, the appeals properties were not able to run their businesses effectively under these circumstances. Ms Clarke has now ceased trading from there as a result. Sadly, there are only 2 out of the 10 original business' left, which speaks for itself.
49. On conclusion, Ms Clarke explained that it was clear that they were misled from the offset and have been unfairly rated from then on. She believed that the RV should be significantly reduced to at least meet that of Unit 13 at the time. As a salon, she should have the same valuation scheme reference as all the others nearby, generating a much lower RV alike. In her opinion, Trago Mills would be the true liable party in any case.
50. During cross questioning, the following responses were noted:
- Mr Gwyn wished to remind the Tribunal that the VOA was not responsible for the billing of the rates only the setting of the valuation. He was sure that had the appellants contacted the local billing authority at the point of completion they would have been able to confirm that rates would have been payable on those units.
 - In relation to Point 10 of the Licence document referred to in the affidavit which read *“For the avoidance of doubt any sums payable in respect of the Unit by was of business rates shall be borne by the Licensee”*, Mr Bradley stated that he was not a legal expertise but would identify himself as the licensee. However, this was the very point raised in the meeting with the Trago Mills MD which he unequivocally said in the same document *“the Units have been cleverly sized such that they will not attract rates”*.

- In relation to the statements that the rent was so high to include the rates payable, Mr Gwyn asked if the appellants accepted that the rents were a fair reflection of their occupation they agreed to take on. Mr Bradley stated that the only reason why they had accepted the high rents was because they in effect were told they included the rates and made the judgement that it was worth the risk. Unfortunately, by accepting the higher rent they brought upon themselves a much higher rating value, which became uneconomical, particularly as they believed the rates were covered by the rent.
- Ms Clarke asked what the definition was of a “licensee”, therefore it was agreed that the Clerk would provide the Tribunal with a dictionary definition of a “licensee” for them to consider during deliberations and for this to be reported in the Tribunal’s reasons for decision.

51. With no further questions, Mr Gwyn summarised his evidence by stating that it was unfortunate that there was a lack of communication between the landlord and the tenants, and that there were no enquiries made to the BA as to whether any rates would have been payable. However, he must consider the circumstances of the rent, and must take the rent as it is and analyse the rent to take it back to the hypothetical tenant assumptions. On reflection of the rental values that were paid and based on the measurement approach on out-of-town retail, he considers that these values sit comfortably and reasonably with similar comparable properties within the area. In his opinion, the appellants have not provided enough evidence to suggest that the RVs were incorrect.

52. Mr Bradley summarised that the signed affidavit clearly shows that these units were not going to attract rates or charges. The appellants have tried to make their businesses work but with those rates were not able to. He and many others have had to close their businesses for all sort of reasons; some having gone into liquidation because of those high charges. In his opinion it is completely unfair to think that businesses could operate at that level and to compare it with other sites that have seating available was not right.

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

The Reasons for Decision

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

55. The issue to be determined by the Tribunal was the accuracy of the appeals hereditaments 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.

56. 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.

57. 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.

58. Having considered the rental information of the appeals hereditaments, the Tribunal empathised with the appellants where they were led to believe that the agreed rent included any rates that may become payable and that there was a breakdown in communication between them and their Landlord, Trago Mills. However, from the Licence document and the Affidavit signed by the appellants the rates would fall to the “licensee”, which according to the Collins Concise English dictionary defines a licensee as “*a person who holds a licence*”, therefore in this case the licensees were the appellants.
59. The Tribunal believed the issues concerning Trago Mills “rules” and “lack of communication” fell outside of their remit and, therefore, the appellants may wish to discuss those issues with Trago Mills directly.
60. In 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 appeals hereditaments.
61. On examination of the method of approach to be used to reach a RV for the appeals hereditaments, the Tribunal found no evidence to move away from the GIA nationally adopted basis used for such units located on a retail park. Furthermore, the Tribunal considered that the comparable retail parks brought by the VO of Trago Mills other sites, McArthur Glen and Cyfarthfa demonstrated that the GIA approach to measurement used for out-of-town retail parks was correct.
62. With the rental information supplied for the appeals hereditaments being correct and based on the evidence submitted of comparable properties, the Tribunal concluded that the settlements of comparable properties supported that a tone had been established in the locality. Therefore, the VO was reasonable in allocating a base rate of £450.00/m² for Items 57 and 58, and a base of rate of £350.00 for Items 59 and 60.
63. In such cases, the burden of proof rests with the appellants and having examined all the evidence submitted, the Tribunal felt that the appellants had failed to discharge their burden of proof.
64. In view of the above information, the Tribunal determined and confirms that the appeals hereditaments remain in the 2017 Rating List with their current entries, as follows, with effect from 21st April 2018:
- Appeal No: 692533254900/285NV17/57 – Unit 3, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £17,750 (£450/m²)
 - Appeal No: 692533244354/285NV17/58 – Unit 5, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £17,750 (£450/m²)
 - Appeal No: 692533218264/285NV17/59 – Unit 8, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £13,750 (£350/m²)
 - Appeal No: 692533222578/285NV17/60 – Unit 9, Swansea Road, Merthyr Tydfil CF48 1HT – RV of £14,000 (£350/m²)

Appeals Dismissed.

Certified a true copy on 27th July 2021.