

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Shop Lettings Ltd

Appeal Properties: Part 1st Floor, Lyric Buildings, Carmarthen SA31 1BA
Pearl Assurance, 1st Floor, Lyric Buildings, Carmarthen SA31 1BA
2nd Floor, Lyric Buildings, Carmarthen SA31 1BA
Front Offices, 3rd Floor, Lyric Buildings, Carmarthen SA31 1BA
Rear Offices, 3rd Floor, Lyric Buildings, Carmarthen SA31 1BA

Appeal numbers: 682533510618/285NV17/1
682533510593/285NV17/2
682533510648/285NV17/3
682533510416/285NV17/4
682533510529/285NV17/5

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Wednesday 11th August 2021

Appearances: Mr L Baudry (for the appellant) and Mrs TS Davies (for the respondent Valuation Officer)

Date of Decision: 6th September 2021

Decision of Tribunal: Items 1, 2 & 4 dismissed, items 3 & 5 allowed in part

Members of the Tribunal: Mr A Hallett (Chairperson), Mr R Handy & Mr N Edwards

Tribunal Clerk: Mr G Harris

Introduction:

1. The appeals under consideration followed proposals made by Shop Lettings Ltd in relation to 5 properties located within the Lyric Buildings, Carmarthen which the respondent Valuation Officer received on 4th June 2019. The proposals sought reductions in the Rateable Values (RV) with effect from 1st April 2017 on the following grounds –

The Lyric Buildings are grade II listed premises enclosing the Lyric theatre. The windows are 1930's basic steel frame. The walls have no cavity. The Buildings are the highest spot of Carmarthen and suffer from extreme weather. It can't be insulated inside as it would reduce the breathability of its wet slid wall. It necessitates active drying through HVAC and intensive heating. The service charge cost is £7400 pa. The building was occupied by the Carmarthen council up 2002 then by public bodies and exempt charities. The council developed new modern

attractive offices at low running cost. The last charities Cerebre exercised their break option to go into one of these offices. The Lyric Buildings are now 94% vacant. The 3 floors of offices with a 175m² chop and 400m² night club were sold for £110000 in 2019. The Valuation scheme is ignoring the special situation of those listed buildings. To fight dry rot, it should be valued like the Lyric theatre at £11500/1761m²=£6.5m²

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 Case

3. Mr Baudry explained that he had purchased the appeal property at auction on 14th February 2019 for £410,000. The Lyric building included 11 premises totalling 2500m² over 4 floors and constituted an envelope surrounding the Lyric Theatre, which remained council owned. It was a historic grade II listed building built in the 1820's.
4. The building was 18m tall and located at the highest spot of Carmarthen. The third floor of the Lyric Building was probably one of the most exposed in Carmarthen. The building had been built without a cavity and had a plain 45cm deep wall. There had been issues with water ingress which had damaged rooms and had been used as an excuse for one of the tenants to move out. Queen Street and the backyard faced the River Towy, this meant the effect of wind driven rain was stronger than on King Street. This made the Queen Street facing offices unsuitable for people during the rainy months and should only be considered as storage.
5. Mr Baudry stated that the sum of the RV for the appeal properties was £105,000 which was a sharp contrast to the current market value, which he contended based on the selling price in March 2019 should be assumed to be nil.
6. Mr Baudry wanted to improve the property but couldn't invest as the offices were always getting damaged by water ingress, as such it was better to let as they were, as a space where an entrepreneur may take the tenancies. The previous management had imposed a service charge of £70,000 per annum for the offices. Most of the rent paid by the last tenant of the rear office, 3rd floor had been used to reimburse the landlord for the landlord's contribution to the service charge budget and gas heating effectively reducing the rent paid to the landlord to below £1,000 and probably a negative amount.
7. In his written submission Mr Baudry provided calculations based on his contentions and proposed that the RVs of the appeal properties be reduced as follows –

- Part 1st Floor, from £10,750 to £3,124
 - Pearl Assurance, 1st Floor from £22,750 to £12,300
 - 2nd Floor, from £43,000 to £23,172
 - Front Offices, 3rd Floor, from £11,250 to £8,700
 - Rear Offices, 3rd Floor, from £17,250 to £6,222
8. To support his contentions Mr Baudry provided the tribunal with a written statement, photographs and plans of the appeal property, together with copies of leases and service charge information. Also included was a surveyor's valuation of the appeal property made shortly after the purchase date.
9. In conclusion, Mr Baudry stated that the current scheme, used to price the offices as offices which were part of a listed building with significant defects, made the appeal properties uncompetitive. He contended that they should be valued using a bespoke scheme for the Lyric Buildings and that a significant rate reduction would be necessary to attract tenants.
10. Mrs Davies introduced a summary of each appeal, which were all proposals against the respective compiled list entries for each property and provided the Tribunal with photographs and plans of each floor together with maps of the building's location in Carmarthen. The property had been inspected by her colleague on 19th February 2021 and had been fully vacant at this date.
11. Mrs Davies explained that the properties had been valued, assuming that the property was in a state of reasonable repair, in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 which 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 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.*
12. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the rateable value of the hereditament was to be determined, this was 1st April 2015 for the 2017 Rating List.

13. Mrs Davies argued that it was for the appellant to prove his case, on the assumption that the appeal had been made on the basis that the appellant had evidence to suggest the assessment was incorrect. Although not enshrined in Legislation, authority could be found in the case *Vines Ltd v de Mauny (Valuation Officer)* (2010) where the member NJ Rose commented –

“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 m is too high, not on the VO to prove the opposite.”

14. Mrs Davies referred the Tribunal to Case Law which she believed to be pertinent to the case under consideration. The case *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council* (1976) set out the procedure for consideration of the weight of evidence. *Archer Ltd v Robinson (VO)* (2002) and *Brighton Marine Palace & Pier Co v Rees (VO)* (1961) considered the condition of the appeal property. The assessment of Rateable Value was undertaken on the assumption that repair work had already been carried out.
15. Mrs Davies had looked at the basket of rents available, she had considered office accommodation in located in secondary locations within Carmarthen and including those of offices located in listed buildings. The 2011 rent of £51/950 per annum agreed sometime before the AVD of 2nd Floor, Lyric Buildings had analysed at £80/m². Front Offices, 3rd Floor, Lyric Buildings had been let on 1st April 2017 for £7,260 which analysed at £42.79, RV £11,250.
16. First Floor Coopers Chambers, 20 Lammas Street was located on the street adjacent to the appeal property in the same elevated position had been let at £10,000 per annum with effect from 1st March 2014. The property was not listed but was not purpose-built accommodation. The rent had analysed at £93.92, with RV £9,500 based on £90/m². Howies Ltd Building, 18 Parc Dewi Sant was a listed building in a former hospital, located further from the town centre. It had been let on 4th August 2014 for £20,000 per annum, which analysed at £77.70, the RV £16,500 was based on £75/m².
17. 18 Spillman Street, not listed, had let at £6,800 on 26th August 2014. The rent analysed at £69.57, the RV of £6,200 had been based on £70/m². Part 1st Floor, 34 King Street, at the other end of the street from the appeal property, also a listed building, had been let at £4,000 per annum on 1st September 2014. The rent analysed at £44.23, the RV £5,600 had been based on £70/m². 10 Quay Street, a listed building in a secondary location, considered to be the best comparison by Mrs Davies had been let on 1st February 2015 for £18,000, the rent analysed at £109.76, RV £14,000 was based on £90/m².
18. Mrs Davies provided the tribunal with a table of settlement evidence highlighting similar older properties within the locality which had been

subject to appeals and settled prior to a tribunal hearing which she contended further supported the tone of the list. Caebanc, Penlanffos Road had been withdrawn by the ratepayer at £65/m², Office, 1st Floor 25 Red Street had been agreed at £70/m² by the occupier's agent following discussions and 78 Water Street had been withdrawn by the ratepayer at £90/m².

19. Mrs Davies explained that she had used older offices in secondary locations as comparable properties to the appeal properties, rather than modern offices. She was unable to value the property in line with the Lyric Theatre as theatres were considered on their Fair Maintainable Trade achieved by the number of available seats and as such was not comparable. Each assessment had been valued in line with the Valuation Scheme used for offices in periphery locations in Carmarthen which stated –

The value is applicable to offices in Carmarthen, excluding the town centre and other higher value locations within the town, constructed pre 2000, with or without benefit of passenger lifts.

20. Responding to the appellant's case Mrs Davies contended that the valuation provided by Mr Baudry, prepared for marketing purposes in 2019 did not reflect the rental value at the AVD. Similarly, the purchase price reflected the condition of the building and market at the transaction date in 2019 and not the value as at the AVD.

21. Mrs Davies explained that when valuing a property there was an assumption that there was a standard level of repair except in cases where there was an unusually poor state of repair and therefore uneconomic to repair. In line with case law, the assumption was that repair work had already been undertaken. Having regard to the scope of the proposals and in line with the Rating Hypothesis and relevant case law, the properties had been valued vacant and to let assuming a reasonable state of repair, which Mrs Davies believed to be the correct approach.

22. In light of the above, Mrs Davies requested that the Tribunal confirm the following-

- Part 1st Floor – dismiss the appeal as the valuation was correct
- Pearl Assurance – dismiss the appeal as the valuation was correct
- 2nd Floor – confirm the revised tone of £60/m², reducing the RV to £37,000 with effect from 1st April 2017
- Front Offices, 3rd Floor– dismiss the appeal on the grounds of invalidity, following which Mrs Davies would amend the rating list by way of a Valuation Officer's Notice
- Rear Offices, 3rd Floor – confirm the revised tone of £70/m², reducing the RV to £13,500 with effect from 1st April 2017

23. Under cross examination Mrs Davies explained that the rent had been included incorrectly in respect of the Front Offices, 3rd Floor making the proposal invalid.

24. Referring to the condition of the building, Mrs Davies explained that the issues relating to repair, as illustrated in the photographs, was probably due to the building not being maintained to a high standard prior to purchase, the last refurbishment had been over 20 years ago. The economic test had not been undertaken as costs had not been provided by the appellant despite requests for such information during discussions.
25. At the conclusion of the hearing, the tribunal decided to reserve its decision.

The Reasons for Decision

26. Having considered all the evidence placed before it the tribunal decided as follows: -
27. In his proposal Mr Baudry had contended that the Rating List was inaccurate and that the RV of the appeal properties should be reduced. In line with the case *Vines Ltd v de Mauny* 2010 the Tribunal accepted that the burden of proof rested with the appellant on the basis that 'he who asserts must prove.' Therefore, in the case under consideration the persuasive burden of proof rested with the appellant ratepayer and not the respondent Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.
28. The Tribunal noted that the five proposals had been made against the compiled list entries for each of the subject properties. As such the valuations for each property had to be made in line with the assumptions defined under Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988 and based on matters affecting the properties on the AVD, in this case 1st April 2015.
29. The tribunal noted that there was an assumption that the property was in a reasonable state of repair, or that repair work had already been carried out, when valuing a property. Although the appellant had contended that the property was in a state of disrepair having suffered from water ingress over a number of years, he had provided no evidence to support his contentions in relation to the state of the building at the AVD, or that repair works were uneconomic for a reasonable landlord. Nor had he provided any evidence to undermine the Valuation Officer's valuation of the property. Similarly, the Tribunal could place little weight on the appellant's valuation of the building by a surveyor in 2019 as it had been conducted some 4 years after the AVD.
30. The Tribunal believed Mrs Davies had therefore been correct in her approach to use the basket of rental evidence available as the starting point in her valuations, and saw no reason for her to depart from the valuation scheme used in the valuation of older offices located in secondary locations in Carmarthen. The Tribunal considered the evidence

supplied by Mrs Davies to be both logical and compelling and supported her contentions in relation to the unit rates applicable in the valuations.

31. Referring to Mrs Davies' contentions that the proposal relating to Front Offices, 3rd Floor Lyric Buildings was invalid, the Tribunal agreed that the stated rental amount of £100 per quarter with effect from 7th April 2015 was incorrect, as the tenancy provided in evidence confirmed the rental amount as £7,260 per annum. The Tribunal also noted that the tenancy had been agreed close to the AVD, further supporting the assumption that the property had been in a state of reasonable repair.
32. With this in mind, the Tribunal dismissed items 1 and 2 on the agenda, dismissed item 4 as being invalid and orders the Valuation Officer to amend the Local Rating List in respect of items 3 and 5 in accord with the following as contended for by Mrs Davies -
- 682533510618/285NV17/1, Part 1st Floor, Lyric Buildings, Carmarthen SA31 1BA – appeal dismissed
 - 682533510593/285NV17/2, Pearl Assurance, 1st Floor, Lyric Buildings, Carmarthen SA31 1BA – appeal dismissed
 - 682533510648/285NV17/3, 2nd Floor, Lyric Buildings, Carmarthen SA31 1BA – RV reduced from £43,000 to £37,000 with effect from 1st April 2017
 - 682533510416/285NV17/4, Front Offices, 3rd Floor, Lyric Buildings, Carmarthen SA31 1BA – appeal dismissed as invalid
 - 682533510529/285NV17/5, Rear Offices, 3rd Floor, Lyric Buildings, Carmarthen SA31 1BA – RV reduced from £17,250 to £13,500 with effect from 1st April 2017

Certified a true copy on 6th September 2021