

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mrs J Smyth

Appeal Property Address: Carreg Llwyd Place, South Street, Rhayader/Brynafon Country House, Nantmel, Rhayader

Appeal number: 685335254287/285NV17/1 & 685335449875/285NV17/2

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 13th April 2022

Appearances: Mrs J Smyth (Appellant) & Mrs T Suzanne Davies (for Valuation Officer)

Date of Decision: 11th May 2022

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr H Pattrick (Chairperson), Mr J C Alexander & N G Huttchinson

Tribunal Clerk: Jonathan Evans

Introduction

1. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as having been overlooked.
2. The Valuation Officer received two proposals which challenged an alteration to delete an entry in the 2017 Rating List (the "list"). The first was received on 31st March 2021 and the second was received on 19th July 2021. The notice of alteration which gave rise to the first proposal was dated 7th March 2021. Although the VO accepted that both proposals were validly made, they were not well founded and, as a result, the details of the two proposals were remitted to the Valuation Tribunal for Wales.
3. The details of the proposals referred to "Brynafon Country House", Nantmel, Rhayader and also in respect of "Carreg Llwyd Place", South Street, Rhayader. However, it appeared that the later of the two proposals was a duplicate of the first, where the difference in the details given appeared only to be related to a change in the property's name.
4. The substantive issue before the tribunal was that the VO should not have deleted the hotel and premises from the List. The date of this deletion was 4th December 2020.

Legislation

The Local Government Finance Act 1988, as amended –

- Paragraph 2(1) of Schedule to the Act – the definition of Rateable Value
- Section 66 (2BB) to the Act (as inserted by the definition of Domestic Property provisions
- Schedule 6, para 2(7) to the Act – Material Day provisions

The Rating Lists (Valuation Date) (Wales) Order 2014

Decision and written reasons

5. The issues that gave rise to this appeal were complex. The statements of case advanced by the parties referred, on one hand, to the mistakes that the VO had made in dealing with this case, which was indubitably distressing and irritating to Mrs Smyth but on the other, the VO's statutory duty to maintaining the rating list in a correct form.
6. Whilst this decision and written reasons covers the appeals which followed the non-domestic rating proposals, the tribunal was required to deal with four council tax appeals which is dealt with under a separate decision document.
7. In her evidence, Mrs Davies explained that during the course of discussions between the VO and Mrs Smyth (in November 2015) about the 2010 list entry, the subject property was shown in the Rating list as Hotel and Premises against a Rateable Value of £30,250. There was no dispute between the parties that Mrs Smyth had been timely and correct in her submission of information as and when the VO had asked for it.
8. According to Mrs Davies, the VO inspected the property on 18th October 2015 to examine the extent of renovations that were undertaken at the premises. During the inspection, the VO observed that seven rooms were available to let although it was understood that prior to the commencement of the works a total of 23 rooms were available for letting.
9. Following the settlement of an appeal against the entry that appeared in the 2010 Rating List; the substance of which arose before Mr and Mrs Smyth purchased the property, the tribunal understood that 18 of the rooms were included in the revised assessment that had been derived from an analysis of its fair maintainable trade (FMT).
10. Whilst both parties accepted that the property should have been deleted from the list, they differed in their approach as to when the list should be altered in this regard. The tribunal understood the appellant's contention was that the subject property should have remained an entry in the list until all of its component parts were sold (24th September 2021), and that the effective date of the alteration of 4th December 2020 was incorrect. By contrast, Mrs Davies referred to the material day provisions that were set out in Paragraph 2(7) of Schedule 6 to the Act. Mrs Davies had referred to this in her schedule of evidence. In essence, what she was required to do under the auspices of the Act was to reflect in any assessment its physical attributes at the date of the material change of circumstances (MCC). For the purposes of the 2017 Rating List entry and having taken account of its materially diminished size, the VO valued the subject

property at £5,300 Rateable Value. It is this figure that Mrs Smyth sought to reinstate by way of making a proposal.

11. Mrs Davies explained that in November 2015 the VO considered that as a consequence of the renovation works, Brynafon Cottage should be deleted from the Council Tax list and reinserted into the Rating List . However, no alterations had in fact been made and regrettably it appeared that as the 2010 list had closed on 31st March 2017, the VO was barred from making an alteration to it unless proposals had been lodged in advance.
12. On this point, Mrs Davies stated that during the life of the 2010 list, the appeal property was valued according to its fair maintainable trade as at 1st April 2008. The issues that related to issues that came about as a result of the reduction in the availability of letting rooms would also be calculated according to their FMT. She reiterated her point that inaccuracies in the 2010 rating list could no longer be revisited because the list was closed.
13. Unfortunately, as details of the self-contained units had been provided by the appellant at the date of the appeal, it appeared that on 1st April 2017, the compiled rating list entry was in error. When the VO undertook a “date of schedule” alteration, it appeared that a compiled list error existed on 1st April 2017, and the VO took measures to correct that in its list of alteration. The effect of this was to bring the self-catering holiday lets, which were in Mrs Smyth’s ownership, into the council tax list following the deletion of the hotel and premises on 4th December 2020.
14. To compound matters further, the tribunal also understood that the local authority had served on Mrs Smyth backdated council tax bills which amounted to a significant amount of money. Clearly, had the VO made the requisite list alterations at the correct time, the sequence of events that subsequently unfolded would not have occurred. In fact, the tribunal examined closely the interaction that had taken place between Mrs Smyth and officers at the Valuation Office Agency during 2015. This included adhering to requests from the VOA to supply it with financial information and details of the business’ trade. Mrs Smyth had also informed the VO that she had intended to close the business at the end of the 2015 season because of the property’s poor state of repair. The tribunal also observed with interest what was happening at the appeal property in relation to matters that affected the 2010 rating list entries.
15. Mrs Davies submission referred to the days the cottages were both available and actually let. The calculations that were undertaken demonstrated whether the properties met the statutory criteria for inclusion in the Rating List or not. For this part Mrs Davies referred to S.66 (2BB) of the Act, as inserted by the Non-Domestic Rating (Definition of Domestic Property) Wales 2010 –

...which provides that a building or self-contained part of a building is not domestic property for the purposes of Part 3 if—

(a)for a period of at least 12 calendar months following assessment, it will be available for letting commercially, as self-catering accommodation, for periods totalling 140 days or more; and

(b)in the 12 calendar months prior to assessment—

(i)it has been available for letting commercially, as self-catering accommodation, for periods totalling 140 days or more; and

(ii) it has been so let for periods which amount in total to 70 days or more.

16. It appeared to the tribunal that all the alterations which had taken place had allowed the VO to re-examine from when the self-contained holiday lets had met the statutory requirement as referenced in S.66 (2BB) of the Act. The fact that the VO had made a number of errors, particularly that which failed to properly record the 2017 date the VO had inspected the premises will not come as any consolation for Mrs Smyth as none of this was of her making but she has been left with a significant liability in her council tax.
17. The nature of this appeal calls into question why the VO decided to delete the appeal property from the Rating List with effect from 4th December 2020. In her cross examination of the VO's case, Mrs Smyth raised her concerns that the VO had failed to maintain the lists in regard to the subject property. She also queried why Mrs Davies was unable to account with any great clarity about an inspection that was said to have occurred in July 2017. In response to questions from Mrs Smyth Mrs Davies was unable to clarify why details that pertained to the July 2017 inspection had not been recorded on the physical documents. Mrs Smyth surmised from the answers that Mrs Davies gave highlighted errors and then suggested that the VO had made list alterations on information that was simply incorrect. Moreover, she referenced the fact that the VO had taken photographs of Brynafon Cottage in October 2015 and found it difficult to understand why the VO had not mentioned it subsequently.
18. Mrs Smyth's approach to her work in dealing with these two appeals has been impressive and she took note of the valuation schemes that were being used. As the VO has a statutory duty to maintain a rating list in a correct form, irrespective as to how haphazardly this might appear, it was clear that the list required an alteration because it was in error at the compilation date. The tribunal recognised that the VO was not entitled to alter an entry in the list which closed on 31st March 2017, no such restrictions apply to the maintenance of the council tax valuation list which came into force on 1st April 2005 and remains in force.
19. From the admitted evidence placed before it in respect of the non-domestic rating appeals, the tribunal accepted Mrs Davies' comment that the deletion of the hotel from the 2017 rating list may have occurred earlier than 4th December 2020 as she had indicated in her written statement. Whilst Mrs Smyth had in great detail highlighted the VO's shortcomings in the years which led to these appeals, it did not consider that evidence had shown that the corrective measures that the VO had subsequently undertaken were incorrect.
20. With this in mind, the tribunal considered that the date on which appeal property was deleted, 4th December 2020, was correct. In view of the foregoing and with much regret, the tribunal dismissed this appeal.
21. The tribunal agreed that the subsequent appeal which followed the later proposal was a duplicate of the first and decided it must be dismissed.