

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mrs Saima Rasul

Appellant's Address: 33 Market Street, Bridgend CF31 1LJ

Appeal number: 691529561649/192NV17/10

The Matter Appealed against: 2017 Rating List

Date of Hearing: Thursday 8th November 2018

Appearances: Mrs S Rasul (appellant) & Ms V Crisp (for the respondent Valuation Officer)

Date of Decision: 27th November 2018

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mr B Al-Khanchi(Chairman). Mrs A Wingrave & Mrs LM Thomas

Tribunal Clerk: Mr G Harris

Introduction:

1. Mrs Rasul made a proposal to alter an entry in the 2017 Rating List on 11th August 2017, in which she sought a reduction in the Rateable Value (RV) in respect of 33 Market Street, Bridgend from an amount of £38,750 with effect from 1st April 2017, on the following grounds –

Into council listed this is a shop but this property is a bar and pub since 8/4/15 I bought this property and rateable should be calculate for a reason

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. Mrs Rasul explained that she purchased the appeal property on 8th April 2015. Before she bought the property it had been empty for six years, although it had been used for a period of 6 months as a restaurant and once as a shop, over the course 15 years the property had only been occupied twice.

4. Mrs Rasul explained that the previous owner had decided to sell the property because it had been empty for some time and due to its location at the edge of the town rather than being in the town centre. After she had purchased the property Mrs Rasul decided to change its use to a public house/bar due to it's out of town location. In light of this Mrs Rasul contended that the property should be valued as a bar rather than as a shop as it was a totally different type of business.
5. To support her contentions, Mrs Rasul explained that the bar was only open on a Friday evening from 6pm to 3am and on a Saturday from 6pm to 4am. Mrs Rasul stated that she couldn't cover her business rates as there weren't many customers due to the location of the property
6. Ms Crisp introduced her credentials as a representative of the Valuation Officer and presented the Tribunal with a background to the appeal. The hereditament comprised a basement, ground and first floors built in the 1960s. Ms Crisp provided the Tribunal maps of its location on Market Street, Bridgend together with external and internal photographs. She confirmed it had been inspected by a colleague on 21st November 2017 and had been entered into the 2017 Rating List at RV £38,750.
7. Ms Crisp explained that the RV of a non-domestic hereditament was defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988, as amended by the Rating (Valuation) Act 1999, as –

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.*
8. The value was taken at the Antecedent Valuation Date (AVD). The property and its locality must be considered as they physically existed at the material day but at the level of rental values and in the economic climate that existed at the AVD. For Rating Lists compiled on 1st April 2017 the AVD was 1st April 2015.
9. Ms Crisp explained that for the purposes of rating valuation, the hereditament must be valued on the assumption that the premises were vacant and to let in their actual physical state and for a use within the same mode or category of occupation as the actual use. The meaning of

‘same mode or category of occupation’ had been considered in the case *Fir Mill v Royston UDC and Jones* (1960) where it had been held that “a shop [must be valued as] a shop, but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory...” and so on.

10. This decision had been reviewed in *Williams v Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd* (2001) where it had been held that a restaurant was not in the same mode and category of occupation as a shop and could not be valued as a shop, nor a shop as a restaurant. To apply a shop value to premises occupied as a restaurant would be to value the premises in a different mode or category of occupation in breach of the assumption made under Schedule 6 of the above Legislation.
11. Ms Crisp contended that if however a restaurant could command the same rent as a shop then it was appropriate to have regard to the evidence of shop values. The valuation would still be on the basis of the value as a restaurant. In the case *Reeves (VO)* (2007) the tribunal held that premises occupied as a college should be valued in its actual mode or category of occupation but if it could be shown that its value as an educational establishment was the same as that for office use then the rents of an office were admissible as evidence.
12. To support her contentions Ms Crisp referred to the *Williams v Scottish & Newcastle* case where it was stated –

“Any evidence relating to the rents or assessments of other hereditaments may be taken into account provided it is relevant to the valuation. There is no rule that evidence relating to another hereditament is irrelevant if that other hereditament is in a different mode or category of occupation”.
13. In the case *Burvill v Jones* (2013) rental evidence from industrial units on the same industrial estate were held to be relevant in the valuation of a MOT test centre even though it was in a different mode or category of use, it was stated –

“the rental evidence from the other units on the K9 estate is relevant to the valuation of the appeal hereditament as vacant and to let. They immediately adjoin the appeal hereditament, their rents reflect the locational and many of the physical characteristics shared by the subject property and the appeal hereditament could be used by other than an MOT test centre by undertaking minor physical works.”
14. Ms Crisp explained that the property was currently valued as a shop and her valuation, based on a zone A value of £200/m² was as follows –

33 Market Street, Bridgend CF31 1LJ

Floor	Description	Area m ²	£/m ²	Value (£)
Ground	Retail Zone A	85.19	200.00	17038
Ground	Retail Zone B	89.87	100.00	8987
Ground	Retail Zone C	89.09	50.00	4455
Ground	Remaining retail zone	27.90	25.00	1759
Ground	Internal Storage	5.75	20.00	115
Ground	Office	13.72	20.00	274
Basement	Internal Storage	16.85	10.00	169
First	Retail Area	206.79	20.00	4136
Ground	Retail Area	94.34	20.00	1887
Total area		671.95		
Valuation sub-total				38820
Rateable Value				£38,750

15. Ms Crisp submitted to the tribunal a table of shops located on Market Street where she stated that the analysed rental evidence supported her use of £200/m², together with a settled appeal of a comparable property located at 15 Market Street.
16. Ms Crisp explained that public houses were valued on the receipts method of valuation, where fair maintainable turnover (FMT) has to be established split between drinks, food and accommodation, in accordance with guidance set out under the 2017 Approved Guide to the Valuation of Public Houses.
17. The FMT adopted should represent the annual trade considered to be maintainable at the AVD having regard to the physical nature of the property and its location as at 1st April 2017. Whilst the actual trade is the starting point for the valuation in estimating the FMT, the trends over the previous years as well as the amount of receipts in the year closest to the AVD would be considered in addition to the economic circumstances and regulatory framework at that time. In this case no trade history was available, because the bar opened on 8th April 2015. The only available trade related to a letter received from the appellant's accountant stating that the annual turnover for the period ending 31st March 2017 was £137,023.
18. Ms Crisp explained that the guide addressed the issue of bars and pubs being valued on a rental basis, it stated –
 - a) *Where a licenced property forms part of a distinct market for a particular location, for which there is relevant market evidence, consideration needs to be given as to whether the property will be more correctly valued on a floor area comparative basis, rather than by reference to the FMT in accordance with the foregoing guidance.*
 - b) *Such properties will usually be found together in major towns or cities, often co-located with restaurants, occupying sites close to, or on the edge of, prime retail locations.*

c) They will often comprise refitted premises converted in the 1990s or later, with large open plan areas (typically greater than 400m²), although size is not necessarily definitive. Interchangeable use between bar and restaurant must be possible without offending the rating principle of “rebus sic stantibus”. Public houses retaining their traditional nature will not satisfy these criteria.

19. In conclusion, Mr Crisp stated that it was important to remember that the hereditament has to be valued vacant and to let. She said that the appeal property was not a traditional pub but a property that was interchangeable in use as a bar, a restaurant or a shop without making any structural alterations, thus not offending “*rebus sic stantibus*”. In light of the relevant case law, rental evidence from the other retail units along Market Street was relevant to the valuation of the appeal property which could be used other than a bar by undertaking minor physical works. As such Ms Crisp asked that the tribunal confirm the current RV of £38,750.
20. At the conclusion of the hearing, the tribunal decided to reserve its decision.

The Reasons for Decision

21. Having considered all the evidence placed before it the tribunal decided as follows: -
22. In her proposal Mrs Rasul contended that the Rating List was inaccurate on the grounds that the appeal property should be valued as a bar or public house rather than as a shop. However with the burden of proof resting on the appellant, the tribunal was not persuaded by the strength of her case as no evidence to support her contentions had been provided. It was insufficient to merely say the property should be valued as a bar without providing an alternative valuation or a breakdown of her trade to assist in an alternative valuation.
23. The Tribunal accepted that the property was currently used as a bar however the property had to be valued under the statutory terms ‘vacant and to let’. The appeal property, although in the mode and category of use as a bar, had the physical state of that of a shop requiring only minor alterations to return it to such a state. Looking at the property empty and to let at the AVD, a hypothetical tenant would consider the property to be a shop due to its location, the fact it benefited from a large retail frontage and its open plan layout.
24. The tribunal believed that Ms Crisp had been correct to value the property with regard to rental values of premises along Market Street, in line with the cases *Reeves (VO)* (2007) and *Burvill v Jones* (2013) as its value would be that of a shop located in the same area. This was further supported by guidance set out under 2017 Approved Guide to the Valuation of Public Houses for converted properties. As such the tribunal dismissed the appeal.

Certified a true copy on 27th November 2018