

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: M Armstrong

Appeal Property: 1011 & 1013 Carmarthen Road, Fforestfach, Swansea SA5 4AE

Appeal number: 685534563260/285NV17

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Wednesday 15th June 2022

Appearances: Mr J Ely of Knight Frank LLP (for the appellant) & Mrs K Yeats (for the respondent Valuation Officer)

Date of Decision: 28th June 2022

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mr H Patrick (Chairperson) & Mr JK Lewis & Mr EG Thomas

Tribunal Clerk: Mr G Harris

Introduction

1. The appeal before the tribunal followed a proposal made by M Armstrong in respect of 1011 & 1013 Carmarthen Road, Fforestfach, Swansea SA5 4AE which the respondent Valuation Officer received on 19th August 2020. The proposal sought that the entry in the 2017 Rating List be divided into 2 with effect from 19th November 2019 on the following grounds –

The properties are, in fact, wholly separate and are operated independently of each other. They should be assessed, listed and rated separately.

2. The appeal property comprised both parts of a 1930's semi-detached house unit, utilised for self-catering accommodation with a total of 8 single bedspaces per part, assessed as a single rating assessment with effect from 6th January 2020 at RV £6,800. It was located on Carmarthen Road (A483) in Fforestfach, Swansea, the A483 being the main road between Swansea city centre and junction 47 of the M4.
3. The valuation under consideration had been produced 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.*

4. 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.
5. Case Law referred to in the appeal –
 - Woolway (VO) v Mazars [2015] UKSC 53 RA 373
 - Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 0200 (LC) RA/20/2015
 - FC Brown Steel Equipment Ltd (Bisley Office Eq) v Hopkins (VO) LC-2021-198
6. 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.

Parties' submissions

7. Mr Ely contended that the issue for consideration by the Tribunal related to whether one unit was accessible from the other without having to exit the demise into common space, the Legislation and case law being clear on the matter.
8. Whether a unit of property was a separate hereditament was a mixed question of law and fact to be determined by three broad principles derived from a series of leading cases in Scotland. These principles had been identified by Lord Sumption in Woolway (VO) v Mazars [2015] UKSC 53 RA 373, the 'Mazars' case, where he stated –

First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be assessed only via other property (such as a public street or the common parts of a building) of which the common occupier is not in

exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed.

9. Mr Ely stated that applying the primary geographical test, the two parts of the semi-detached house were contiguous and formed a single geographical unit horizontally, however as further explored in the VOA's Rating Manual Section 3, it was not simply a question of contiguity, there needed to be direct communication between the two parts.
10. Mr Ely stated that the appellant considered that direct intercommunication between the two units did not exist as they were clearly and obviously separated by a boundary wall. It was acknowledged that the wall had not been built to maximum height, being 29cm tall, but was a boundary wall nevertheless with the express intention of dividing and separating the extent of the boundaries of the two separate units.
11. The low height boundary wall was in keeping with many other properties of a comparable age and build in the immediate locality, and used for decades to define boundaries, separate parcels of land, and indicate demise. To rely on the wall's height was to ignore its original purpose. The VOA had accepted that the boundary wall would have to be crossed as opposed to passed through as would have been the case if the structure had been altered, opened up, or penetrated to create a means of direct access.
12. Mr Ely contended that it was clear that the intention of the narrow concreted yard area at the front of each property was not as a means of direct access between the two properties but as a service area to enable access to the front of the property for works, window cleaning etc. without encroaching on the public highway.
13. Referring to the 'York Museums' case Mr Ely explained that the boundaries of a hereditament simply needed to be capable of definition, paragraph 65 stated –

Nothing on the agreed plan identifies the boundaries of the area occupied by the shop, and there is nothing in the evidence which allows us to find that any physical boundary existed at the time. Nor did any document define the area from which the company was to operate the shop.

In this case, Mr Ely expanded, the tribunal was looking for anything that could be considered a boundary. Given that the boundaries of a hereditament need only be 'capable of definition' it was likely that a dwarf wall defining the boundary between two areas would have been deemed sufficient to define the extent of the shop to create two separate assessments regardless of its height and whether it could be stepped over from one area to the other.

14. Applying this principle to the subject case, Mr Ely contended that the presence of the dwarf boundary wall dividing the two concreted areas to the front of the properties 'physically' and 'visually' defined the boundary between them. It was therefore necessary to go out of one unit and into the other part via the street. The height of the boundary wall and whether or not it could be stepped over was irrelevant in defining what constituted a boundary, no such minimum height specification existed in definition, building code, rateable value guidance or law.

15. Mr Ely, referring to the 'Bisley Case' observed that whilst the Upper Tribunal case was similar in that it dealt with the correct unit of assessment, it differed in that the intention of the bridge was to link the two units under consideration whereas the intention of the wall in the subject case was to separate the two units. The language used by the Tribunal was one of exercising common sense –

a broad analysis of the premises is required and a judgement whether they can sensibly be said to compromise a single unit of property. Resolving the issue involves an exercise of judgement, but it is a judgement largely dependant on the impression which the subject matter makes on the decision maker and we do not think the exercise is one only an expert rating surveyor or specialist tribunal can perform.

16. In summary Mr Ely contended that in line with case law there would have to be 'very unusual' or 'exceptional facts' in place before two separate self-contained units could be treated as a single hereditament. With an active boundary wall in situ between the two properties, irrespective of height, there were no 'exceptional facts', there was no direct intercommunication and that the only access between the two properties was via a public highway. As such Mr Ely requested that the Tribunal revise the current entry in the Rating List to show two assessments: 1011 Carmarthen Road RV £3,200 and 1013 Carmarthen Road RV £3,200.

17. Mrs Yeats observed that the units were owned and operated by the same business, were contiguous and that there was interconnectivity within the boundary of the ringfenced hereditament. The forecourts were interconnected with only a dwarf wall providing separation between the two houses. The low height of the wall did not impede access between the houses, therefore the occupier could access all parts of the hereditament without having to enter other property in accord with the judgement set out by Lord Heuberger, in relation to horizontal interconnectivity, rather than vertical in the 'Mazars' case, hence the 'Geographical Test' was met.

18. Referring to the 'Bisley' case, Mrs Yeats considered the similarity between the conveyor bridge and the current appeal, where it was stated in the decision –

it would be possible, without significant difficulty, for a person to ascend the tower of the factory end, walk across the bridge and descend the stairs at the warehouse end, but the structure is not used for pedestrian access other than for maintenance.

it is possible to reach any part of the site from any other part without leaving premises which are agreed to be in exclusive possession of the ratepayer. The fact that passage across the bridge is usually reserved only for manufactured goods does not mean that it can be ignored.

When considering the geographical test how the bridge is used in practice is less important than the substantial physical connection which it creates between the two parts of the site.

19. It had also been commented in the 'Bisley' case –

Both Lord Sumption and Lord Gill, who delivered a concurring judgement, emphasised the primacy of the geographical test and the importance of it not being diluted by reference to functional considerations.

There is nothing in Mazars to suggest that the passage of people between different parts of the premises under consideration is necessary to satisfy the geographical test.

20. Mrs Yeats argued that it was possible without significant difficulty to walk between the properties, although agreed that it was not likely to be done. She explained that the assessment satisfied the cartographic test, in that it could be ringed round on a plan, therefore it should be classed as one hereditament.

Decision

21. The matter for consideration by the Tribunal was whether the assessment should remain in the Rating List as a single rateable hereditament or be shown as two entries, as contended for by the appellant. Or when was a wall a wall?

22. The Tribunal noted that had the property remained a domestic dwelling the wall would have clearly defined the boundary between the two semi-detached houses as indicated in photographs of similar dwellings provided by Mr Ely in his evidence. However, the dwellings were no longer domestic but rather self-catering units under the occupation of one business and had to be considered as such.

23. It was agreed that the units were contiguous, forming a single geographical unit, the question remained as to whether the wall prevented direct intercommunication between them.

24. After considering all of the evidence a majority of the Tribunal decided that the wall did not prevent direct intercommunication between the units. There were no 'exceptional facts', the dwarf wall could only be considered to be a visual rather than physical boundary had the units remained domestic or were in separate occupation.

25. In line with the 'Bisley' case it would be possible without significant difficulty to access one part from the other through the concreted forecourt

area without having to cross the public highway. The geographical test had not therefore been diluted by reference to functional considerations.

26. The Tribunal considering the 'York Museums' case together with 'Mazars' noted that the contiguous self-catering units, although operated independently, were nether the less under the occupation of one ratepayer and were 'capable of definition' i.e., could be ringed around on a plan as one. All parts could be accessed without going onto other property.

27. In light of the above, the Tribunal dismissed the appeal.