

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Paul Tolley

Appeal Property: Land Used for Storage and Premises, Land at 13 Tredegar Street, Risca, Newport NP11 6BU

Appeal number: 692033749590/285NV17/10

The Matter Appealed against: 2017 Rating List

Date of Hearing: 10th November 2022

Appearances: Mr P Tolley accompanied by Mrs K Olivas and Mr M Allen for the Valuation Officer

Date of Decision: 5th December 2022

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mr E G L Moore (Chair), Mr R G Harris and Mr R Henley

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The appeal before the Tribunal followed a proposal made by Mr Tolley in respect of the Land at 13 Tredegar Street, Risca, Newport, received by the respondent Valuation Officer on 24th September 2019. The appeal property is currently shown in the 2017 Rating List with a Rateable Value (RV) of £1,725 with effect from 16th April 2019.
2. Mr Allen explained that the appeal was made against a Notice of Alteration, issued on 16th April 2019, which increased the level of value from £1,375 with an effective date of 1st April 2017, to £1,725 with effect from 16th April 2019. Accordingly, the Material Day, the day at which the valuation must be considered, was 16th April 2019.
3. From the information provided, the issues raised by Mr Tolley were in relation to the following:
 - Mr Tolley explained that, to his knowledge, the appeal property for at least over the past 60 years has been in commercial use. Following planning permission in 1989, No: 13 Tredegar Street was converted into flats, and although previously the land had planning permission for three more dwellings to be built this was not undertaken as the commercial rights would have been surrendered. For the last 40 years, he believed no rates had been paid for the yard as it was included within the rates of the flats. Reference was made to a HM Land Registry ordnance survey which highlighted and ringfenced the area of the flats and land. Therefore, Mr Tolley considered no rates were payable for the yard.
 - The canopy area should be recorded as 50.4 m² in size and not 70 m² as detailed within the VO's valuation summary and the base rate of £5/pm be reduced, as this rate appeared to be too high for a small section of area covered by metal sheets, which provided no extra security to the land.
 - With the VO having referred to a storage (shipping) container, Mr Tolley explained that due to the coronavirus pandemic his plans for refurbishment were delayed, but remain ongoing, and once completed the container will be removed.

- With the use of a comparable property of Coal Merchants, Commercial Street, Risca, Newport NP11 6EE, which described the land as unsurfaced and unfenced, Mr Tolley considered the subject land should also be described as unsurfaced and not hard surfaced as proposed by the VO. With this change of description, the base rate should be reduced from £7.25/m² to £4.71/m² in line with the rate applied to Coal Merchants.
- When planning permission was given for the conversion of the flats next to the yard, Mr Tolley stated that the flats had to have the use of 4 car parking spaces; and therefore, he considered that the car parking spaces, which equated to an area of 112 m², and the area in which the swing gates opens into the yard should be deducted from the overall area of the appeal property.

Decision and Reasons

4. The matter to be determined by the Tribunal was whether the subject land was rateable and, if so, at what level of value, with effect from 16th April 2019.
5. As all properties are to be assessed for non-domestic rating, unless it is specifically exempt, the Tribunal referred to Paragraph 66 at Schedule 5 of the Local Government Finance Act 1988 (LGFA 1988). Paragraph 66(1) explains that subject to subsections (2), (2B) and 2E below], a property is domestic if –

- (a) it is used wholly for the purposes of living accommodation,*
- (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,*
- (c) it is a private garage which either has a floor area of 25 square metres or less or is] used wholly or mainly for the accommodation of a private motor vehicle, or*
- (d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.*

6. Reference was also given to the further exemptions from rating as contained within Schedule 5 of the LGFA 1988, which explains exemption extends to –

Agricultural and horticultural use; Fish farms; Places of religious worship etc.; Certain property of Trinity House; Sewers; The property of drainage authorities; Parks; Property used by the disabled; Air raid protection works; Swinging moorings; Road crossings over watercourses etc.; Property used for road user charging schemes; Property in enterprise zones; Property used by visiting forces etc.

7. Having considered the paragraphs in Schedule 5 of the LGFA 1988 and the information provided, the Tribunal found that the appeal property did not meet any of the above criteria and, therefore, concluded that the appeal property should be entered into the Non-Domestic Rating List. This was also re-affirmed by Mr Tolley having stated that the appeal property had always been used for commercial use.
8. With the appeal property found to be rateable for Non-Domestic Rating, consideration was given to the level of value to be applied. Reference was made to the statutory definition of RV that is found within Paragraph 2(1) Schedule 6 to the 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."

9. Being mindful of the statutory definition of RV and from the information provided, the Tribunal noted that Mr Allen had agreed with Mr Tolley on the area of the canopy at 50.4 m², along with the description of the subject land being "unsurfaced" and "fenced" at a base rate of £4.71/m². Therefore, the following issues remained to be determined:
 - The value of the canopied area,
 - The inclusion of the shipping (storage) container within the valuation, and
 - The inclusion of the 4 car parking spaces and area of the swing gate within the overall area of the appeal property, which equated to 191 m².
10. In considering the value of the canopy with a lean-to roof, the Tribunal noted that the value of canopied areas was generally applied throughout Wales to 'Other Additions' for storage land. With no evidence brought to the contrary, the Tribunal concluded that the value of the canopy should therefore be valued at £5/m² as applied by Mr Allen.
11. With regard to the shipping container, the Tribunal noted that the 4 tenets referred to by Mr Allen arose from the case law of "*John Laing and Son Ltd v Kingswood Assessment Committee and Others (1949)*". These 4 tenets are tests of occupation which are 'actual, beneficial, exclusive and not too transient', and, if all 4 tests are met a shipping container should be rated. From the information provided, at the Material Day, 16th April 2019, photographs showed that the shipping container had been in situ since at least 2018 and it still remained in place to the present day. With the length of time of the container being in situ and it being beneficially used for storage exclusively by Mr Tolley, the Tribunal concluded that the 4 tenets of rateable occupation had been met and the shipping container was to be included within the appeal property's assessment. With no evidence produced to the contrary, the rateable value to be applied is as provided by Mr Allen in his preferred valuation at £12.50/m² for an area of 13.50 m².
12. In relation to whether the 4 car parking spaces should be excluded from the overall area of the appeal property, the Tribunal noted that car parking spaces would normally be rateable. From the evidence provided, the Tribunal noted that the photographs did not show designated spaces, and, found no legal document or planning permission orders to support Mr Tolley's contention that the 4 car parking spaces were required to be available to the occupants of the flats. However, it was noted that Mr Tolley had mentioned that there had been occasions where the occupants of the flats were required to park elsewhere for a short period of time. Therefore, the Tribunal concluded that the 4 car parking spaces should be included within the appeal property's overall area. Consideration was also given to the area of the swinging gate, which the Tribunal found no reasonable evidence to move away from the national approach in valuing the entirety of the land area, therefore this should remain in the inclusion of the appeal property's area.
13. In view of the above information, the Tribunal determined that Mr Allen was correct in his approach and confirmed a RV of £1,300 with effect from 16th April 2019, for the Land Used for Storage and Premises, Land at 13 Tredegar Street, Risca, Newport NP11 6BU. Accordingly, the Tribunal orders the 2017 Rating List to be amended in accordance with Mr Allen's preferred valuation, as follows:

<i>Description</i>	<i>Area m²/unit</i>	<i>£ per m²/unit</i>	<i>Value (£)</i>
<i>Unsurfaced, Fenced Land</i>	<i>191.10</i>	<i>4.71</i>	<i>900</i>

Additional Features of the property included in the valuation

<i>Canopy</i>	<i>50.00</i>	<i>5.00</i>	<i>250</i>
<i>Storage Container</i>	<i>13.50</i>	<i>12.50</i>	<i>169</i>

Valuation sub-total 1,319

Rounded down to a RV of £1,300 with effect from 16th April 2019.

14. It was also noted that, with the determined valuation falling below the appeal property's original RV on 1st April 2017, due to the amendment made to the base rate to £4.71/m² for the area of 191.10 m², Mr Allen requested the Tribunal to issue an order to also amend the original valuation level of value to £4.71/m² with effect from 1st April 2017.
15. In considering Mr Allen's request, the Tribunal had regard to Regulation 34 of The Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2005, as amended.
16. In accordance with Regulation 34(7), the Tribunal concluded with the effect of the reduced level in value, this became a matter ancillary to the subject-matter and, therefore, Order the original compiled list valuation be amended to take into account a reduced level of value to £4.71/m² with effect from 1st April 2017 to 15th April 2019.