

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr G Slattery

Appeal property: 50A Holton Road, Barry, CF63 4HE

Appeal number: 695033616578/285NV17

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 21st June 2023

Appearances: Mr G Slattery & Mrs T Anstey (for respondent Valuation Officer)

Date of Decision: 18th July 2023

Decision of Tribunal: Allowed (to the extent conceded by the Valuation Officer)

Members of the Tribunal: Mr H Patrick (Chairperson), Mr R G Harris & Mr J Pickering

Tribunal Clerk: Mr J Evans

Summary of the Case

1. 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 before it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.
2. On 23rd July 2019, the Valuation Officer (the VO) received a proposal to alter an entry in the Non-Domestic Rating List (the List). The proposal maker, Mr Slattery, attended the hearing to give evidence about why he believed the List should be altered.
3. When the List was first compiled for 1st April 2017, it was described as a Hairdressing Salon and Premises. Its Rateable Value was £14,750 with effect from 1st April 2017. As a corollary, its valuation was derived from a shop analysis that had been applied to other shop units elsewhere on Holton Road. Mr Slattery is the proprietor of his business and took up occupation of the unit on 23rd July 2019. Mrs Anstey is a professional valuer and employed as such by the Valuation Office Agency. She adopted a dual role of advocate and expert witness.
4. Holton Road is a busy shopping centre that serves the local community. The appeal property comprises the ground floor of 50A Holton Road and included a total area of 66.05m². An extract from What Pub Guide which

Mrs Anstey included in her schedule of evidence described the property as a former shop situated on one of the main shopping streets of Barry. It was a single room with no bar and where customers were served at a table. In addition to cask ales (stillaged on gravity), the premises also served over a dozen ciders plus wines, spirits and soft drinks.

5. Mr Slattery considered that the property should be valued as a public house rather than as a shop. Mrs Anstey had agreed that the description should change and proposed that the List entry should be amended to show Bar and Premises with effect from 23rd July 2019. Mr Slattery contended that as the use of the property had changed, the Zone approach adopted by the VO for other retail units in the vicinity was no longer appropriate and suggested that she adopt an analysis of Fair Maintainable Trade (FMT) which was generally used for other licensed properties. He ventured that his property was the only licenced premises that was valued in the same way as a shop. However, Mrs Anstey pointed out that there were other similar units situated elsewhere in Wales that had also been valued in the same way as the subject. He rejected the notion that Holton Road was a busy area and drew attention to the lack of car parking near the premises despite evidence before the Tribunal which suggested otherwise.
6. In her evidence, Mrs Anstey referred to the definition of Rateable Value as it is found in Schedule 6 of the Local Government Finance Act 1988, as amended, an extract from the Rating Lists (Valuation Date) Wales Order 2014, which established 1st April 2015 as the Antecedent Valuation date (AVD) and extracts from superior court decisions in respect of *Vines Ltd v de Mauny (Valuation Officer) (2010 [UKUT])* and to *Lotus & Delta v Culverwell (VO) & Leicester City Council (1976)*.
7. The *Vines Ltd* case affirmed the general understanding that the burden of proof in cases such as this rested with the appellant rather than with the VO whereas *Lotus* established a set of propositions one should adopt in one's consideration of evidence for rating purposes. The substance of these cases was not disputed at the hearing, but the Tribunal fully comprehended what they entailed.
8. The underlying level of value adopted for Holton Road up to the appeal property was £320/m². This value was agreed as part of the RSA negotiations for Holton Road. However, the appropriate level of value for the subject was £300/m² and it was Mrs Anstey's opinion that this was supported by the valuations of two shops: 54 Holton Road and Gnd Flr Front, 58 Holton Road. Both these properties were the subject of rating appeals where one was represented by a professional firm of chartered surveyors. In both cases, the appeals were withdrawn.
9. The starting point in the valuation of a hereditament was the analysis of the actual rent, as per *Lotus*. Having made the necessary adjustments, Mrs Anstey arrived at a rent of £7,785 in terms of Rateable Value. The subject was leased on a five-year term from 1st August 2018 for a rent of

£9,000 per annum, although the basis of this rent was unknown. Under the terms of this lease, the Landlord paid for repairs and insurance. In view of this and bearing in mind that it was agreed after the AVD and did not reflect market conditions at that time, Mrs Anstey attached little weight to it. Other factors that militated against the reliability of the rent were the adjustments that would be necessary to conform with the terms of the hypothetical tenancy.

10. Mrs Anstey accepted that the mode and category of the shop had changed to that of Bar and Premises from 23rd July 2018. However, similar premises that existed elsewhere in South East Wales were valued by reference to shops that surrounded them, particularly in situations where no physical changes had taken place to the property. She considered that the properties contained in VO7 were comparable because other properties of the same mode and category as the appeal premises had values equal to the shops surrounding them. She considered the same would be true for the appeal property. The assessments demonstrated the tone set for shops in this parade and suggested that the assessment of the appeal property was in line with the general level in terms of both the adopted basic £/m² and the value relativities.
11. Following an alteration to the survey details of the premises, Mrs Anstey said that the existence of a pillar had a small impact on rateable Value. However, due to rounding down, it had no effect on the level of RV. She conceded the point which Mr Slattery had made which was the plans depicted it was in the wrong place.
12. Mrs Anstey had made it clear that the property would require no physical changes in order to return it to use as a shop. Although Mr Slattery had challenged her on this point she pointed out that the property had to be considered vacant and to let; that she must take account of economic factors as they existed at the 1st April 2015 (the Antecedent Valuation Date) and have regard to the property “as things stand” (*rebus sic stantibus*) at the material day.
13. Mrs Anstey responded by pointing out that the subject property must be valued according to the rating hypothesis and that vacant and to let, she believed that its use would be a retail unit as it was before Mr Slattery’s occupation and since no alterations had taken place to it, the continued use would be that of a retail unit. With this in mind, she referred to the superior court decision of *Williams (VO) v Scottish Newcastle Retail Ltd and Domecq Retailing Ltd* (Also known as the City Duck Case) which addressed matters affecting the physical state or physical enjoyment of the property and the mode and category of the hereditament’s occupation.
14. Mrs Anstey explained that case law that surrounded the principle of Rebus contained two limbs: The physical limb and the use limb. With regard to the first limb, the question that would be asked was what alterations might be envisaged by an incoming tenant which would affect the rental bid? In the City Duck case the courts held that the correct approach with regard to

the physical limb was to look at the *“totality of the works in the context of the hereditament and then ask the question: are these works minor? It is essentially a matter of impression and common sense: would a reasonable man, looking at the hereditament as it stands at the material day and the proposed alterations, describe those alterations as minor?”*

15. In deciding the City Duck case, the courts upheld the principles expounded in *Fir Mill* case in that *“a dwelling house must be assessed as a dwelling house; a shop 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 having regard to the principle characteristics of use”*.
16. In view of the foregoing, Mrs Anstey surmised that mode and category of occupation meant a use for the same general purpose. She added that in the case of new hereditaments the use assumed should be that to which the hereditament is likely to be when first occupied.
17. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

18. The Tribunal accepted that general approach to valuing a licenced property such as pubs and bars was, as Mr Slattery stated, by reference to an analysis of its fair maintainable trade, or FMT. The findings of *Fir Mill* in that a shop must be valued as shop but not any particular type of shop might conceivably lead to the conclusion that an analysis of FMT for the appeal property was the correct approach. However, each case must be determined on its own merits. Although Mr Slattery had advocated for this approach, he had not advanced a valuation that was based on his property's FMT. He also did not challenge the actual valuation that Mrs Anstey had advanced and did not provide the Tribunal with any information about his own trade or an alternative valuation to that produced by Mrs Anstey.
19. The appeal property had to be valued as it stood and bear also in mind that at the material day matters that affect the physical state or physical enjoyment of the property and the mode and category of its occupation must be considered. On the material day the appeal property was used as licenced premises and so the rule that apply here is that it must be valued as one but what must also be considered was what alterations might be permissible to envisage by an incoming tenant.
20. The Tribunal understood that works of a minor nature might be envisaged, but the reality of this case that no works would be required to occupy it as a shop should the unit become vacant and to let. Whilst Mr Slattery had cross examined Mrs Anstey on this point, it was satisfied that the property could be used as a retail unit without any alteration and could be occupied as such as soon as it was practicable to do so.

21. The fact that no changes would be required meant that Mrs Anstey's valuation of the appeal property was considered fair and reasonable because vacant and to let it could readily be used as a shop. From its reading of this case, the Tribunal understood that the circumstances at the appeal property were in stark contrast to the circumstances reported in the Milton Keynes case. In this case the conversion of two properties to an alternative use, as a shop or restaurant, included removal of brick frontages, internal walls, suspended ceilings, raised concrete floor, lift shafts for goods, hoists, staircase to first floor, and customer WCs. Having separated out the fitting out works for the alternative use the works were held to be more than minor.
22. Whilst the Tribunal understood Mr Slattery's frustration that his property should not be shown as a hairdresser's salon, it recognised that Mrs Anstey had addressed this issue in her submission. With this in mind the Tribunal upheld Mrs Anstey's contentions that the property should be shown in the Rating List as a Bar and Premises and that its value was correctly shown at £14,750 RV. The Tribunal therefore allows this appeal but only to the extent conceded by Mrs Anstey.