

**Appellant:** Mr Peter Wagenaar

**Appeal Number:** 695535833938/285NV17

**Appeal Address:** Offices and Premises, 21 Grosvenor Road, Wrexham, LL11 1BT

**The Matter Appealed against:** Deletion from 2017 Non-Domestic Rating List

**Date of Hearing:** 6 July 2023

**Appearances:** Mr Wagenaar (Appellant) and Mr Richard Read representing the Valuation Officer

**Date of Decision:** 16 August 2023

**Decision of Tribunal:** Appeal Dismissed

**Members of the Tribunal:** Mrs L M Thomas (Chairperson), Mr R Henley and Mr J Pickering

**Tribunal Clerk:** Mr R Williams

### **Introduction:**

1. The subject appeal arises from a proposal submitted by the appellant to the Valuation Officer on the 22 August 2012, seeking deletion of Offices and Premises, 21 Grosvenor Road, Wrexham, LL11 1BT, from the 2017 Non-Domestic Rating List for a period of 3 months with effect from 23 December 2021.
2. The following 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.

### **Legislation & Case Law**

- The Local Government Finance Act 1988
- The Rating Lists (Valuation Date) (Wales) Order 2014, Statutory Instrument No. 2014/1370 (W.139)
- Aviva Investors v Bunyon (VO)
- Thomas and Davies (Merthyr Tydfil) Limited v Denly (VO)
- Porter (VO) v Trustees of Gladman Sipp

### **Valuation Officer submission**

3. The Valuation Officer opined that the appeal property should remain entered in Non-Domestic Rating List whilst refurbishment works were carried out on the appeal property.

4. The Valuation Officer explained that the appeal property was previously used as offices. Following a successful planning application, the appeal property's permitted use was changed from offices to consulting rooms.
5. The Valuation Officer considered that the works carried out by the appellant on the appeal property following occupation were minor refurbishment/fit out works for conversion into consulting rooms. These works included upgrading the central heating system, installation of sanitary basins in all consulting rooms, replacement of existing lighting and installation of new floor coverings.
6. The Valuation Officer contended that the works carried out were not beyond economical repair and therefore the appeal property was capable of beneficial occupation and should remain an entry in the Non-Domestic Rating List.
7. The Valuation Officer referred to case law in support of his contention. In the Valuation Tribunal for England case of *Aviva Investors v Bunyan (VO)*, the President of that Tribunal determined that a warehouse remained capable of beneficial occupation, as the minor repairs fell to be disregarded under the statutory repair assumptions therefore it was inappropriate to delete the assessment as it was capable of beneficial occupation.
8. In the Upper Tribunal case of *Thomas and Davies (Merthyr Tydfil) Limited v Denly (VO)*, the court considered what works of repair might reasonably be viewed as "economic". In this case, the court held that a hypothetical landlord would consider it economic to undertake repairs (and not improvements) which cost the equivalent to 5.64 times the rateable value. This equalled about three years' rental income.
9. In respect of the appeal property and having reviewed the level of expenditure spent, the Valuation Officer did not consider the cost of repair works were uneconomic, as they did not exceed 5.64 times the appeal property's £18,000 Rateable Value.
10. Accordingly, the Valuation Officer requested that the appeal property should remain entered in Non-Domestic Rating List and the appeal be dismissed.

### **Appellant's submission**

11. The appellant informed the Tribunal that having outgrown its former practice, a decision was made to relocate to the appeal property, which required a re-fit and refurbishment to make it suitable for use as consulting rooms. Accordingly, an application for change of use was made to the local authority and following approval that the works were satisfactory, the appeal property was occupied as working practice on 2 May 2022.
12. The appellant believed that the scope of works carried out along with the fact that the appeal property had been vacant for approximately a year were sufficient factors to warrant a temporary exemption from payment of Non-Domestic rates. An application was made to the local authority in respect of a

6-month empty property rate exemption; however, it was not granted as the 6-month exemption had already been applied to the property.

13. As a result of the failed application to the local authority and as the appeal property was not being used for the purpose it was designed for to provide treatment in a safe and hygienic environment, the appellant approached the Valuation Office for a temporary exemption from the Non-Domestic Rating List for the period the works were being carried out.
14. The appellant challenged the relevance of the case *Aviva Investors v Bunyan (VO)* when there were no safety implications regarding the public requiring access/exit from the property, as the works undertaken did not pose any risk to the public. Whereas with the appeal property there would have been consequences to the welfare and safety of the public visiting the appeal property when works were being carried out. The lack of heating or sanitisation would not be acceptable in meeting Health and Safety requirements and would have been in breach of any such regulations.
15. The appellant also saw no relevance in the *Thomas and Davies (Merthyr Tydfil) Limited v Denly (VO)* case as he was not arguing for a temporary exemption from the Non-Domestic Rating List on the ground of uneconomic repair costs.
16. The appellant referred the Tribunal to case law he provided in respect of *Porter (VO) v Trustees of Gladman Sipps* in support of his contention of the safety implication and quoted from the case stating that a building is only a building if it is ready for occupation and whether it is ready for occupation is to be assessed in the light of the purpose which it is designed to be occupied. He added that the appeal property was not ready occupation for its intended purposes as consulting rooms as there was no heating or sanitation and therefore appeal property did not constitute a hereditament until those works were complete.
17. The appellant explained that had he been able to trade and treat patients at the appeal property, he would be more than willing to pay the Non-Domestic rate charges. He considered it unfair and unreasonable to pay 3 month of rate charges for a property that was not suitable for occupation and which did not constitute a hereditament.
18. Responding to case law referred to by the appellant, the Valuation Officer explained that the determination in respect *Porter (VO) v Trustees of Gladman Sipps* was in respect a newly constructed office building which could not be entered into the Non-Domestic Rating List without the service of a completion notice. He commented that as the appeal property did not require building control, the said case was not relevant.

## **Reasons for Decision**

19. Having regard to relevant legislation, referenced case law and the evidence provided, the Tribunal decided as follows:

20. The Tribunal was mindful that Non-Domestic property must be valued in line with the statutory definition of Rateable Value, as contained in paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, and in accordance with The Rating Lists (Valuation Date)(Wales) Order 2014, Statutory Instrument No: 2014/1370 (W139), which determined that a hereditament must be valued by having regard to rental values achieved at the Antecedent Valuation Date, 1 April 2015, whilst looking at the physical circumstances of the property at the Material Day, 1 April 2017.
21. In accordance with the statutory definition of Rateable Value, the Tribunal was also aware that when valuing a hereditament for rating purposes, it must assume that the appeal hereditament was in a reasonable state of repair, except in those circumstances, where it would be deemed to be uneconomical for a hypothetical landlord to carry out those repairs and that relevant case law provides direction when dealing with specific matters of dispute such as the issue of 'repair'.
22. In the subject appeal the Tribunal accepts that there is no dispute as to the appeal hereditament's general level of value and that the only issue to be determined is whether or not the appeal property should be deleted from the Non-Domestic Rating List for a period of 3 months or whether it was capable of beneficial occupation within the definition of Rateable Value.
23. Given the circumstances surrounding the subject appeal and having regard to the statutory definition of Rateable Value, the Tribunal was persuaded by the Valuation Officer that the repairs carried out to the appeal property did not mean that it was beyond economic repair or that it was incapable of beneficial occupation.
24. The Tribunal was of the opinion that the works carried out were that of refurbishment and must be considered within the context of the rating hypothesis, where it is assumed that the appeal property was in a reasonable state of repair and that a landlord would carry out any repairs necessary to put the property into good order, as long as it was economically viable to do so.
25. It was confirmed in evidence that the works carried out on the appeal property were that of upgrading the central heating system, installing sanitary basins, replacing existing lighting and installing new floor coverings; works which the Tribunal concur with the Valuation Officer, were of improvement and not repair and were not uneconomic. Therefore, the works undertaken did not warrant an alteration in the appeal property's rateable value.
26. On the weight of the evidence presented, the Tribunal opined that the appellant had failed to persuade that the appeal property was in such a state of disrepair sufficient to render it incapable of beneficial occupation having regard to the statutory definition of rateable value and that the Valuation Officer was correct in its decision not to remove the appeal property from the Non-Domestic Rating List. Accordingly the appeal was dismissed.