

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Gary Pemberthy

Appeal Property: Offices and Premises, 1st and 2nd Floors 23-25 Pier Street, Aberystwyth

Appeal number: 682029193609/541NV17/1

The Matter Appealed against: 2017 Rating List

Date of Hearing: 9 August 2023

Appearances: Mr G Pemberthy and Mrs R Morris for the Valuation Officer (VO)

Date of Decision: 12 October 2023

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mr N R J Edwards (Chairperson), Miss H C Lloyd and Mr K Curry

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The appeal before the Tribunal followed a proposal made by Rating Assessors UK on behalf of the appellant in respect of the appeal property, that was received by the Valuation Office Agency (VOA) on 2 June 2017 and accepted as valid. The appellant asserted that the current Rateable Value (RV) of £16,000 with effect from 1 April 2017 was incorrect, on the grounds that the RV was excessive and therefore wrong by law. He was of the opinion it should be altered to a RV of £10,000 with effect from 12 April 2017.

Legislation and Case Law

2. Reference was made to the Statute Law and the Definition of RV that was found within Paragraph 2(1) Schedule 6 to the Local Government Finance Act (LGFA) 1988.

“2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from local 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.”*

3. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the RV of the hereditament was to be determined, 1 April 2015 for the 2017 Rating List.

4. Reference was also made to the following case law:

Vines Ltd v de Mauny (Valuation Officer) (2010) UKUT 322 (LC) (20 September 2010) – This case set a general principle that the onus was on the appellant to prove its case.

Ladies Hosiery and Underwear Ltd v West Middlesex AC [1932] 2KB 679 – This case provides for correctness before uniformity.

Lotus and Delta v Culverwell (Valuation Officer) and Leicester City Council (1976) RA - This case provided guidance on the weight to be attributed to rental and assessment evidence.

Scottish and Newcastle v Williams (2000) Lands Tribunal (City Duck) – This case considered that valuation was to be undertaken as things stood 'rebus sic stantibus'.

John Laing & Son Ltd v Kingswood Assessment Area Assessment Committee (1949) – This case provided four essential ingredients that needed to exist to determine whether an occupier was in rateable occupation.

5. The following is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that a statement or item of evidence has been overlooked by the Tribunal.

Summary of the evidence

6. The subject appeal was adjourned at a Tribunal Hearing held on 26 April 2023 to enable the parties to undertake a joint inspection of the appeal property.
7. Following an inspection on 14 June 2023, parties had provided external and internal photographs of the appeal property and the VO had revised its valuation based on the following:

- Floor areas were revised.
- 15% allowance applied for shared access with basement and ground floors.
- A notional fire corridor had been reflected within the 2nd Floor office.
- Areas occupied as stores were valued as such.
- Additional rate of £7.00/m² had been applied to the areas serviced by air conditioning.
- No reduction given to the base rate /m² in line with other similar properties in Aberystwyth Town Centre.

8. Based on the above, the issues that remained in dispute were:

(1) an area of 5.98 m² office space on the 2nd Floor, which Mr Pemberthy considered should be excluded from the valuation in line with the fire corridors as it formed part of the fire exit escape route, and,

(2) the description of the use of mode of category to what Mr Pemberthy considered to be as internal storage area and not offices situated on the first floor and classification on its current use and not potential use, and the unit £/m² applied.

9. Regarding issue (1), Mr Pemberthy provided scaled plans of the appeal property and described the exit routes used throughout, and the importance of the fire exist escape route through the area of the office space being kept clear. He explained that the fire

regulations referred to the preferred escape route to be the shortest and safest route, which in this case was through the office space. Mrs Morris explained that the notional fire escape route (the office space area), as marked on the plan, had been included within the measurements with an allowance applied of 15% in her revised valuation. The fire exit areas marked passage had been excluded from the measurements in line with the RICS code of measuring practice.

10. Regarding issue (2), Mr Pemberthy contended that the planning application for the whole of 23-25 Pier Street was approved on 15 June 2016 for A1 retail use. The appeal property was operated as an online retail business and open to the public by appointment only.
11. With reference to the Basis of Valuation, Mr Pemberthy disputed the VO's approach under paragraph 2(1) of Schedule 6 of the LGFA 1988, where the VO informed him that in her opinion the appeal property would be marketed as all office space with no internal storage space; based on its potential use. Mr Pemberthy contended this approach to be inaccurate and its current use should be taken into consideration and not its potential use.
12. Mr Pemberthy explained that the physical characteristics of the property, its surroundings, and the rental levels to be considered for the purpose of estimating RVs, were to be considered in accordance with the governing regulations made by the Secretary of State. He contended this did not state anything regarding 'potential future use'. The appeal property had undergone a significant change of circumstance after its purchase in 2016. Previously the 1st Floor area was assessed with the Ground Floor as one hereditament, at that time the internal storage area was based on a zoned unit rate of £10/m².
13. To support his contention, Mr Pemberthy provided a letter from an estate agent, MS Properties, which stated they believed the area in dispute on the 1st Floor should be rated as internal storage and not additional office space in line with other commercial properties in the locality.
14. Reference was then made to comparable properties and their valuations of A1, B1 and online retail businesses situated in the locality of the appeal property which had been assessed by the VOA as having spaces classified as internal storage:

A1 Businesses:

- The Burtons Building, 1st, 2nd, and 3rd Floors 29A Terrace Road, Aberystwyth SY23 2AE– Ground Floor retail space and upper floors office space used for storage.
- The Works, 35 Terrace Road, SY23 2AE – Internal storage on 1st, 2nd, and 3rd Floors. (VO withdrawn, laid out over four floors with main value attributed to Ground Floor retail, valued as retail, town centre off prime).
- Summit Cycles, 63-65 North Parade, SY23 2JN – 2 areas of internal storage on the Ground Floor.
- Lampeter House, 6 Terrace Road, SY23 1NY – Internal storage on 2nd and 3rd Floors.
- Specsavers, 30 Great Darkgate Street, SY23 1DE – Internal storage on 1st Floor.
- New Look, 40 Great Darkgate Street, SY23 1DE – Internal storage on 1st and 2nd Floors. (VO withdrawn laid out over two floors with main value attributed to Ground Floor retail, town centre, prime, air-conditioning added at £7/m²).
- 23-25 Pier Street, SY23 2LN – Ground Floor (as bookstore) and 1st Floor (book storage).

B1 classified businesses:

- Aberystwyth Business Hub, 7A Great Darkgate Street, SY23 1DE – 1st Floor storage.
- Morris and Bates, 1 Alexander Road SY23 1PT – whole of 2nd Floor internal storage.
- Eglwys Seion Beauty Salon, 10 Baker Street, SY23 2BJ – Salon classified as an office with Ground Floor storage.
- Godwins Solicitors, 56 Portland Road, SY23 2DX – Internal storage on Ground Floor.
- Lloyds Bank, 12 Terrace Road, SY23 1NP – Internal storage on 1st and 2nd Floors.
- Cambrian Traders, 9 Terrace Road, SY23 1NY – Internal storage on 1st and 2nd Floors.

Two online retail businesses in Aberystwyth with internal storage:

- Swiss Watch Store, Unit 5, Close Deulan, SY23 3UD – Internal storage.
- Epic Militaire, Unit 19 Glan Yr Afon, SY23 3JQ – 3 large internal storage areas.

15. Mrs Morris explained that in June 2020, the local Billing Authority requested the VO to amend the description in the list to that of 'Shop and Premises' with effect from 1 April 2019 as it had been occupied as retail premises for some time. Subsequently, this proposal was now against the historic compiled list entry.
16. Having regard to the Basis of Valuation, the mode and category of the appeal property as at the AVD, 1 April 2015, and the case City Duck, Mrs Morris stated that she had valued the appeal property on its current occupation. Although the description had changed the underlying valuation remained the same. The planning permission detailed the change of use of the 2nd Floor into offices, therefore in considering 'rebus sic' stantibus' (as it stands), and the same mode or category of occupation, in her opinion the 1st and 2nd Floors would be valued as offices. The property was occupied predominantly for online retail, however, was open by appointment to the members of the public to visit.
17. However, following her inspection and consideration to the comparable properties and Mr Pemberthy's arguments, the description of the area under contention on the 1st Floor in her revised valuation had been changed to internal storage. The proposed unit £/m² rate for the internal storage within the office was based on using 70% of the main space rates applied to the 1st Floor offices. With the appeal property no longer being ancillary to the Ground Floor, she was unable to value this area on a factored Zone A approach as referred to by Mr Pemberthy.
18. In addition to the comparable properties provided by Mr Pemberthy, Mrs Morris referred to the following comparable properties:
 - 16 Terrace Road, SY23 1NP – described as office and premises, withdrawn valued on shop basis.
 - Ground and 2nd Floor 9 Market Street, SY23 1DL - described as office and premises, withdrawn valued as town centre office accommodation internal storage on 2nd Floor.
 - 5 Pier Street, SY23 2LJ – described as shop and premises, VT dismissed – laid out over three floors with main value attributed to Ground Floor retail, valued as retail, town centre non-prime location.
 - 20 Pier Street, SY23 2LN – described as shop and premises, VT dismissed - Ground Floor retail and associated stores, town centre non-prime location.
 - 1 Chalybeate Street, SY23 1HS – described as office and premises, VT dismissed - laid out over four floors with main value attributed to Ground Floor retail, valued as retail, town centre off prime).
19. In Mrs Morris' opinion her revised RV was reflective of the market values as at the AVD. Her valuation reflected the disability of shared access and the notional fire corridor on the

2nd Floor by applying a 15% allowance. The reduction followed factual evidence gained from the inspection on 14 June 2023, where measurements had been agreed between her and Mr Pemberthy. She requested the Tribunal to confirm her revised RV of £12,250 with effect from 1 April 2017.

20. During cross questioning, Mr Pemberthy requested the Tribunal to consider whether they could change the description of the appeal property that was currently shown as office and premises to also reflect its retail use.

Decision and Reasons

21. The Tribunal was aware it had to determine the accuracy of the appeal property's RV. Although, Mr Pemberthy requested an alteration to the description of the appeal property, the Tribunal found that the proposal was restricted to valuation only, its scope was not wide enough to alter the appeal property's description. Therefore, for the description to be altered prior to 1 April 2019, it should be considered by the VO as to whether it constitutes a minor list alteration. It should be noted that this did not have any bearing on the Tribunal's decision in relation to the basis of valuation.
22. Following an inspection of the appeal property, the Tribunal noted the areas under contention were (1) to the use of an area of the 1st Floor as part of the fire exit, and (2) to the valuation approach and unit £/m² applied to an area situated on the 2nd Floor.
23. With regard to (1) fire exit, the Tribunal accepted that this area of 5.98m on the 1st Floor was a route through the office as part of the fire exit, and was not actually a 'corridor', and why it was referred to as a 'notional fire corridor'. The Tribunal was not persuaded that Mr Pemberthy's contention undermined the approach adopted by the VO in relation to the inclusion of this area within the appeal property's measurement with a 15% allowance to be applied as a 'notional fire corridor' in accordance with Mrs Morris' revised valuation.
24. Regarding issue (2), the Tribunal was aware it had to have regard to what was in existence, as it stood, at the appeal property as at the Material Day, 1 April 2017 and the mode or category at the AVD, 1 April 2015. It found the photographs provided of the area in question situated on the 1st Floor demonstrated its use as an internal storage area with office space, and concluded this was reflected as such within Mrs Morris' revised valuation.
25. In considering the internal storage £/m² unit applied within the revised valuation, the Tribunal noted, with the appeal property no longer being ancillary to the Ground Floor, the £10/m² unit rate stated by Mr Pemberthy having previously been applied to the Ground and 1st Floor of the subject building was no longer applicable, as those areas were no longer one hereditament.
26. On examination of the comparable properties provided, the Tribunal found that, where Mr Pemberthy had referred to the appeal property being in the same operating requirement as Epic Militaire, described as store and premises, and SwissWatchStore described as factory and premises, Mrs Morris had used the same valuation approach for those properties for her revised valuation of the appeal property.
27. Regarding the comparable property 'Burtons', the Tribunal found that, although the same valuation approach was used, lesser weight was placed on this comparable.
28. From the comparable properties provided, the Tribunal concluded that, the majority of those properties, supported the valuation approach for the £/m² unit rate used by Mrs

Morris and although the ratepayer's use of space within the appeal property may have changed, the underlying valuation approach when considering vacant and to let had not.

29. With the change to the appeal hereditament namely the 1st Floor no longer being ancillary to the ground floor but instead to the 2nd Floor, the Tribunal concluded that Mrs Morris' valuation approach to the unit rate applied in respect of the internal storage area was fair and reasonable based on most of the comparable properties provided.
30. With no evidence provided by Mr Pemberthy to the contrary, the Tribunal confirmed the allowances applied by Mrs Morris, in her revised valuation, in relation to the measurement and value attributed to the air conditioning of £7/m² and to the 15% allowance given for shared access.
31. In view of the above information, the Tribunal determined, with the area of notional fire escape route to be considered within the valuation with a 15% allowance applied and the 1st floor area to be valued as internal storage, the appeal was allowed in part. Therefore, the Tribunal orders the 2017 Rating List to be amended as Offices and Premises, 1st and 2nd Floors, 23-25 Pier Street, Aberystwyth SY23 2LN with a revised RV of £12,250 with effect from 1 April 2017.